

Child Trafficking in the European Union

Challenges, perspectives
and good practices

**European Union Agency for
Fundamental Rights**

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- Challenges, perspectives and good practices

July 2009

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Foreword

Trafficking in human beings is a major problem today, both in the European Union and beyond. Even if reliable statistics are not available, it is clear that every year a significant number of people, largely women and children, fall victim to trafficking for sexual exploitation, labour exploitation or other purposes.

Article 5 of the EU Charter of Fundamental Rights explicitly prohibits trafficking in human beings. In addition, regarding children, Article 24 of the Charter of Fundamental Rights enshrines the principle that the child's best interests must be a primary consideration in all situations, and that children have a right to such protection and care as is necessary for their well-being.

This study by the European Union Agency for Fundamental Rights reveals that the disappearance of children from shelters and similar facilities is widespread, and that there is a high risk of these children falling victim to trafficking. Despite these stark facts, there remains no monitoring of the problem, and policies to prevent such disappearances have only been developed in a few of the EU Member States.

Also, this comparative analysis of the situation in the Member States indicates that laws outlawing child trafficking are often not applied, despite their existence in national legislation. At present, convictions for child trafficking are relatively rare in the Member States, and often victims of child trafficking are not even identified as victims. The existing EU legislation to combat trafficking in human beings therefore needs to be updated and supplemented to ensure more effective legislation in all Member States. The Agency has identified good practices in some Member States concerning the identification of victims of child trafficking, which could be integrated into EU legislation and implemented in all Member States as minimum standard.

Another problem is the wide disparity in sanctions between the different Member States. Again, updated legislation could help in further approximating criminal law in this area to ensure effective and dissuasive legislation in all Member States. Also most important is the inclusion of a much more comprehensive definition of child trafficking in EU legislation.

At the same time, the protection and care of victims of child trafficking needs to be prioritised according to the principle of the best interests of the child. The Agency therefore proposes that the protection and care (standards of living, education, health care, family tracing) of victims of child trafficking should be made obligatory for Member States. Victims of child trafficking need to be ensured of appropriate guidance from legal guardians with satisfactory professional backgrounds, and enough time to develop personal contact with them.

The current situation requires urgent action. The European Union's political leaders have an obligation to take measures to ensure that child trafficking is eradicated and that all victims of this crime can benefit from the level of care and protection which they deserve.

In this respect, the Agency welcomes the recent proposal of the European Commission for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims (COM (2009) 136).

Finally, I would like to thank the authors, Professor Rick Lawson and Nelleke Koffeman, LL.M from the University of Leiden, and the other legal experts of FRALEX for their contribution, along with the staff of the Fundamental Rights Agency for their work and commitment.

Morten Kjærum, Director

Executive Summary

Trafficking in human beings is a major problem today, both in Europe and beyond. Even if reliable statistics are not available, it seems clear that every year a significant number of people, largely women and children, fall victim to trafficking for sexual exploitation, labour exploitation or other purposes. Action to combat trafficking in human beings is receiving more and more attention, both at the level of law-making and policy implementation. The European Union – the organisation *par excellence* to deal with cross-border phenomena – is well placed to contribute to the fight against child trafficking.

The EU and child trafficking: general challenges

It is impossible to make even remotely accurate statements concerning the actual prevalence of trafficking in human beings, be it nationally, at the EU level, or globally. This situation is no different in relation to the particular case of children. There are some estimates by rather authoritative sources, but no study has thus far been able to give a complete and comprehensive picture.

By its very nature trafficking is hard to quantify. It often involves a complex series of events in different countries. Evidence may be difficult to obtain, and victims are often deterred from co-operating with the authorities. In addition to these inherent practical difficulties, further obstacles of a legal and organisational nature exist: the fact that different definitions of trafficking co-exist, that different methods of data collection are used, and that some authorities simply fail to give adequate priority to addressing this phenomenon.

In the absence of solid data it is obviously difficult to formulate effective counter-trafficking policies. A common definition and standard is therefore urgently needed, not only to address trafficking itself, but to facilitate better understanding of the scale and nature of the problem. This report suggests that the definition contained in the Council of Europe's Convention on Action against Trafficking in Human Beings is currently the most comprehensive definition available.

This report also suggests that EU legislation should ensure that in all EU Member States sufficient data collection takes place, coordinated at governmental level. Good practices which could inform EU policy in this regard were identified in Ireland and in Romania.

International standards in the fight against child trafficking

In recent years, the phenomenon of trafficking in human beings has been addressed by many specific international instruments, both at the level of the UN and the Council of Europe. In general the level of ratification by EU Member States is encouraging but leaves room for improvement.

All Member States are party to the relevant general human rights treaties – such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights. While these instruments contain no express rules specifically relating to trafficking, the various elements of trafficking may involve violations of several protected rights, such as freedom from arbitrary detention, and the prohibition on forced labour. States parties are under an obligation to provide measures of protection from abuse and exploitation by private parties through legislation and policy implementation. In relation specifically to children, all Member States are party to the UN Convention on the Rights of the Child (CRC). The protection of the core rights and principles enshrined in the CRC may be said to form a constitutional tradition common to the Member States and thus constitutes also a general principle of Community law by virtue of Article 6(2) of the EU Treaty.

However, participation in treaties relating specifically to trafficking could be improved. ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is the only specialised trafficking treaty to which all Member States are party. Twenty-four Member States have become party to the United Nations Convention against Transnational Organised Crime, while 3 have merely signed it. The ‘Palermo Protocol’ (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children) counts 23 Member States as party with 4 having merely signed it. Only 20 Member States have become party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography with the remaining 7 having only signed it.

Two recent instruments of the Council of Europe – the Convention on Action against Trafficking in Human Beings (2005) and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) – have so far received relatively few ratifications by EU Member States. Fourteen EU Member States are party to the 2005 Convention and it has been signed by a further eleven. The 2007 Convention has been signed by two thirds of all EU Member States but has been ratified only by Greece.

The report invites all the Member States to become party to the above-mentioned international instruments.

The role of the EU in the fight against trafficking

The EU Charter of Fundamental Rights provides in Article 5 that no one shall be held in slavery or servitude, or be required to perform forced or compulsory labour. Article 5 (3) expressly prohibits trafficking in human beings. Because trafficking in human beings is often (though not exclusively) transnational in nature, coordination and cooperation between States is indispensable. Hence the 1999 Tampere Presidency Conclusions of the European Council asked for close co-operation between countries of origin and transit. Likewise, measures were taken to facilitate the creation of joint investigation teams to combat trafficking in human beings. The Lisbon Treaty too emphasises the importance of a co-ordinated, cross-national response between the various investigating and prosecuting authorities that fight against trafficking in human beings and exploitation of children.

In recent years the EU has increasingly paid attention to the fight against trafficking, notably through two Framework Decisions: the Council Framework Decision on combating trafficking in human beings of 2002 (2002/629/JHA) and the 2003 Council Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA). For both mentioned instruments new proposals were made by the European Commission in 2009: a proposal for a new Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims¹ and a proposal for a new Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography². Another key instrument in the area is Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Several European Union initiatives include the combating of trafficking within their scope, in particular STOP, DAPHNE and AENEAS.

Nevertheless the report finds that current EU legislation should be updated and supplemented. It would be advisable to have one central piece of legislation addressing trafficking in human beings in the EU in order to avoid differences in definition and terminology. Thus, it would be advisable to integrate existing standards of Council Directive 2004/81/EC and Framework Decision 2002/629/JHA into one central piece of EU legislation or, if more than one document is necessary, consistency and coherence in definitions and terminology needs to be ensured.

The report also expresses the opinion that a primary consideration for EU legislation towards child victims of trafficking should be the best interests of the child victims. As a central principle of the UN Convention on the rights of the child the principle of best

¹ Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA {SEC (2009) 358} {SEC (2009) 359}, COM (2009) 136 final – CNS 2009/0050

² Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA {SEC (2009) 355} {SEC(2009) 356}, COM (2009) 135 final - CNS 2009/0049

interests of the child has acquired the status of a general principle also of Community law by virtue of Article 6(2) of the EU. States have an important interest in prosecuting child traffickers and in regulating immigration. However these policy goals should not be allowed to overshadow the best interests of child victims of trafficking.

The implementation of EU legislation combating trafficking in human beings needs to be regularly reviewed to ensure that it is effective and does not merely exist on paper. Following the model of Article 17 of the Racial Equality Directive, the European Commission should be entrusted with the task of drawing up a periodic report on the implementation of the relevant EU legislation taking into account the views of the European Union Agency for Fundamental Rights, as well as the views of relevant non-governmental organisations. Currently such an inclusion of views of relevant non-governmental organisations and of the Agency is not foreseen in the reporting clause contained in Article 10 of the 2002 Council Framework Decision on combating trafficking in human beings (2002/629/JHA).

Challenges for EU legislation addressing child trafficking³

Problems of definition of child trafficking

The EU legal framework lacks a clear definition of child trafficking. The definition of trafficking in human beings provided by the Council Framework Decision on combating trafficking in human beings of 2002 is the clearest, with its special qualification for child victims. This definition, however, covers only child trafficking which occurs for the purposes of labour or sexual exploitation.

Certain types of exploitation for other purposes, such as organ extraction or exploitative forms of adoption, are not covered by the 2002 Framework Decision on combating trafficking human beings. The definition of trafficking in the 2002 Framework Decisions in this respect falls short of the definition of “trafficking in children” of the Council of Europe Convention on Action against Trafficking in Human Beings from 2005 which entered into force on 1 February 2008 and which is the best in this regard. The definition in the Council of Europe Convention goes even further than the Palermo Protocol, as its scope extends explicitly to all forms of trafficking, “whether national or transnational, whether or not connected with organised crime”. It is clear that the Council of Europe Convention applies also to victims who entered or are present illegally in a Member State.

³ Some of the challenges for EU legislation identified here might need to be revisited once the recent proposals of the European Commission (see above) are adopted. These proposals of the European Commission are not further commented here pursuant to Article 4(2) of Council Regulation 168/2007 establishing the European Union Agency for Fundamental Rights.

This comparative report has shown that, unfortunately, child trafficking also lacks a uniform definition at the Member State level. For instance, in some EU Member States intra-state trafficking is explicitly made punishable under national law, while in others intra-state trafficking is not covered. According to the law in some Member States the consent of the (child) victim in the trafficking is irrelevant to its classification as an offence. However, in some Member States the prosecution services or courts will not consider an offence to have been committed where the consent of the child has been obtained.

Not all Member States have included the forms of exploitation listed in the Palermo Protocol in their national laws for the purposes of criminalising trafficking. For instance exploitation by the removal of organs or tissue is not covered by the national laws of some Member States. In addition to the forms of exploitation that are covered by the definitions in the Palermo Protocol and the Framework Decision, a small number of Member States also made trafficking for the purpose of begging punishable.

This report suggests that EU legislation should use the more comprehensive definition of trafficking contained in the CoE Convention on Action against Trafficking in Human Beings.

Identification of victims of child trafficking

Identification of victims of child trafficking is crucial to prosecute traffickers and to protect and assist victims of child trafficking.

Good practices regarding identification of victims of child trafficking which could inform European policy were identified in Finland and in the Czech Republic. In Poland and Lithuania not a single victim of child trafficking was identified. The effectiveness of any measure to fight child trafficking and to assist the victims of child trafficking will depend on the success to identify victims of child trafficking.

The report suggests that guidelines for the identification of victims of child trafficking should be integrated in EU legislation based on good practices identified in Finland and in the Czech Republic.

Age assessment

In some countries, no formalised policy on age assessment and/or benefit of doubt concerning age could be identified. Such policies are crucial to the effectiveness of any measure to fight child trafficking and to assist child victims of trafficking.

The report suggests that EU legislation should integrate a policy on age assessment of victims of child trafficking as well as a policy giving victims the benefit of doubt concerning their age in order to combat child trafficking effectively. Both is relevant also for other children, not just victims of trafficking.

Scarcity of convictions for child trafficking

Final convictions based on child trafficking could only be detected in four Member States in the period 2000-2007. These available figures indicate that there are generally very few final convictions in child trafficking cases. In five Member States it emerges that no final convictions were issued in the period 2000-2007. In one Member State no case of child trafficking was even identified and/or prosecuted in the named period. In some Member States statistics concerning the convictions for child trafficking are conflated with statistics for convictions for trafficking in human beings in general or other offences like smuggling and prostitution. Thus it is not possible to state how many child trafficking cases ended in conviction in these countries.

The report suggests that EU legislation guarantees minimum standards regarding data collection and guidelines on the identification of victims of child trafficking to make existing legislation regarding child trafficking more effective.

Differences in policies for sanctioning child trafficking

In only two Member States is there a specific offence of child trafficking, with accompanying sentencing rules. In all other Member States child trafficking is either covered by a general provision in law penalising trafficking in human beings, or a combination of several criminal provisions. In most of these Member States more severe penalties can be imposed for the offence of trafficking in human beings if the victim is a minor. In most national laws this is achieved by taking the minority of the child victim as an aggravating circumstance.

An overall conclusion that can be drawn is that prison sentences and other sanctions that may be imposed for the offence of child trafficking differ widely between Member States.

The report suggests further approximation in sanctioning of child trafficking through appropriate EU legislation.

Policy of non-punishment of victims of child trafficking

In a significant number of Member States a formalised policy of non-punishment of child victims of trafficking for both border offences and illegal prostitution is pursued. However, in half of the Member States no formalised policy on non-punishment is pursued. This means that in these countries child victims of trafficking could be prosecuted for border offences or other offences like illegal prostitution. In these countries there is a higher risk that victims of child trafficking might not develop a relationship of trust with state authorities, which would permit them to escape dependency on their traffickers.

The report suggests that EU legislation addressing child trafficking should include minimum standards regarding a formal policy of non-punishment of child victims of trafficking to ensure that victims of child trafficking develop a relationship of trust with state authorities in order to permit them to escape their dependency on their traffickers.

Detention

In the vast majority of EU Member States the detention of child victims of trafficking pending their deportation is as such not prohibited by law. However, it is often explicitly considered to be a measure that may only be applied as a last resort. In the UK this principle of last resort is explicitly extended to the detention of parents with dependent children. In Finland the basic principle is that a child who is believed to be a victim of trafficking may not be detained under any circumstances.

The report suggests that EU legislation should ensure that a child who is believed to be a victim of trafficking should not be detained.

Specialised shelter for child victims of trafficking

In three Member States (Belgium, Bulgaria, Italy) trafficked children are sheltered in accommodation established for the purpose of sheltering victims of child trafficking. Specialised shelters for child victims of trafficking are not provided for in most Member States. Child victims may be placed in shelters for adult victims of trafficking, in specialised shelters for unaccompanied minors, or in other facilities for (vulnerable) children. In some Member States no suitable shelters or comparable facilities for victims of child trafficking exist.

The report suggests that EU legislation should guarantee that victims of child trafficking are sheltered in suitable facilities which are suitably tailored to their needs.

Children leaving shelters with unknown destination

According to numerous NGOs and government sources in various Member States the disappearance of children from shelters with unknown destination is wide-spread. Despite this there is no monitoring of the problem through the collection of statistics in at least nine Member States. Despite the existence of the practice few Member States have been prompted to develop policies of prevention. In this respect a good practice was identified in the Czech Republic which offers a long term perspective to unaccompanied children.

The report suggests that EU legislation should guarantee that statistics on children leaving shelters or otherwise disappearing need are collected and made available for public scrutiny and that policies for preventing and responding to such disappearances

are in place and effective, including a long term perspective for victims of child trafficking to stay in the country.

Granting of a reflection period

Member States with the exception of Denmark, Ireland and the United Kingdom are obliged to grant a reflection period to third country nationals who may be victims of trafficking by virtue of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-countries national who are victims of trafficking. This reflection period allows the victims to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. However, the application of Council Directive 2004/81/EC to child victims of trafficking is only optional, not mandatory.

In the majority of Member States a reflection period of a minimum of 30 days for both minor and adult victims is provided for by law. In some Member States there is at present no statutory provision in national law which provides for a period of reflection for (child) victims of trafficking.

In almost half of the Member States, a residence permit is issued only if victims cooperate with the police and prosecution. Conditioning the grant of a residence permit to victims of child trafficking upon their cooperation in criminal proceedings has received criticism as contrary to the best interest of the child. In particular such an arrangement ignores that child victims may not be in a position to co-operate with authorities. It also fails to address the danger that the child may suffer reprisals if redelivered into the hands of traffickers after an unsuccessful investigation.

In a significant number of Member States no children at all were granted temporary stay on grounds of trafficking in the period 2000-2007. In ten Member States no statistics on the number of children being granted temporary stay on grounds of trafficking for this period are available. Thus, there is currently no evidence in a significant number of Member States that child victims of trafficking are actually benefitting from the reflection period provided for by EU law.

The report suggests that a generous reflection period for child victims of trafficking needs to be obligatory, not merely optional, and not dependent on co-operation with authorities.

Socio-economic rights only optional for victims of child trafficking

The EU legal framework focuses on the criminalisation of traffickers of children, rather than the protection of victims. The main protection measure provided for in EU law for child victims of trafficking is Council Directive 2004/81/EC. This directive contains

guarantees for victims of trafficking regarding subsistence standards of living, access to emergency health care and access to the education system. However, vis-à-vis children this directive is not mandatory, only optional. It is only if Member States choose to extend the application of this directive to children that they are obliged to provide socio-economic rights to victims of child trafficking.

In some Member States the socio-economic rights of victims of child trafficking are dependent on the residence status of these children. Thus, a refusal to grant temporary residence to victims of child trafficking will most likely also have repercussions for access to socio-economic rights like health care and education in these Member States.

Currently, EU law does not provide for mandatory socio-economic rights for all child victims of trafficking. Admittedly, child victims of trafficking may fall under the more general provisions in EU law on social assistance to unaccompanied minors who are asylum seekers. However, these provisions are not specifically tailored to the specific situation of child victims of trafficking.

The report suggests that socio-economic rights (standard of living, healthcare, education) for victims of child trafficking need to be guaranteed by EU legislation and should not be merely optional or discretionary.

Legal guardians

The concept of a “legal guardian” is not uniformly defined in all EU Member States. Legal guardians operating in the Member States differ according to their professional backgrounds and in some cases have no professional background at all. Training of legal guardians also differs between Member States. In some countries, legal guardians receive no training at all. In almost all Member States, the preparation time for a legal guardian is not regulated and there are no guarantees in place that the legal guardian has sufficient time for pursuing the best interests of the child or sufficient personal contact with the child.

In some countries the appointment of a legal guardian is dependent on international protection or application for refugee status. Thus, not every victim of child trafficking is automatically ensured assistance by a legal guardian.

Law and practice regarding appointment of a legal guardian were found to diverge in Member State practice. In some Member States, the appointment of a legal guardian is a very rare occurrence because victims of child trafficking are not identified and/or because childcare institutions do not focus on this issue.

The report suggests that EU legislation should ensure child victims of trafficking assistance by a legal guardian with a satisfactory professional background. A legal guardian should also be guaranteed sufficient time for preparation and personal contact with victims in order to protect the best interests of the child in all relevant procedures and matters arising.

Access to legal assistance

The national regulations regarding access to legal assistance differ widely between Member States. In some Member States, legal assistance for victims of child trafficking is only organised informally by NGOs. Finland is the only country where authorities keep track of the number of trafficked children receiving legal aid.

The report suggests that EU legislation should ensure that child victims of trafficking are guaranteed sufficient legal assistance to enable them to pursue their rights and to obtain appropriate compensation in an effective manner.

Family tracing

In a number of Member States the duty for state authorities to trace the family of unaccompanied minors or child victims of trafficking in particular, arriving in the country is laid down in law or in a policy document. In some Member States, family tracing is only compulsory for the authorities if an asylum application has been submitted. In nine other states no comprehensive family tracing programme is existent or information on the existence of such programmes is not available.

The report suggests that EU legislation should guarantee family tracing in EU legislation. Such family tracing should not be merely discretionary, but mandatory.

Potential Contribution of the EU

There is a strong case to up-date the EU legislation addressing child trafficking. From the perspective of the principle of subsidiarity (Article 5 TEC), the current diversity in definitions, strategies and measures between the Member States shows that there is an urgent need for co-ordinated action at the EC level in order to bolster the effectiveness of the fight against child trafficking and to ensure care and protection of the child victims.

1. The EU and child trafficking: general overview

For the purposes of this study, the definition of child trafficking is based on the definition in the CoE *Convention on Action against Trafficking in Human Beings*. Child trafficking shall mean the recruitment, transportation, transfer, harbouring or receipt of persons under 18 years of age, for the purpose of exploitation, including sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. In this connection it is immaterial whether or not the child consents to be exploited. Child trafficking may, but does not have to involve 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.

Although the urgent need for data concerning child trafficking has been stressed repeatedly, at present no accurate collection, registration and exchange of data at European level takes place. Hence no reliable statements can be made concerning the prevalence of child trafficking in the EU.

1.1. The actual prevalence of child trafficking

'Trafficking in human beings is a major problem in Europe today. Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes, whether in their own countries or abroad. All indicators point to an increase in victim numbers'. These are the opening lines of the Explanatory Report to the 2005 Council of Europe *Convention on Action Against Trafficking in Human Beings*.⁴

Yet it is impossible to make even remotely accurate statements concerning the actual prevalence of trafficking in human beings, be it in individual States, be it within the EU, be it at world level. The same applies to child trafficking. There are some estimates by rather authoritative sources, like the U.S. Department of State or the International Organisation for Migration (IOM), but no institution or NGO has been able thus far to give complete and comprehensive statistics on this phenomenon. Trafficking, like many crimes, appears inherently difficult to quantify.

⁴ *Convention on Action Against Trafficking in Human Beings*, Warsaw 2005, CETS no. 197. Explanatory report online accessible at <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm> (last accessed 09.11.2008).

According to U.S. Government-sponsored research completed in 2006, and published in June 2008, approximately 800,000 people are trafficked across national borders around the world annually. The research claims that approximately 80 percent of transnational victims are women and girls and that up to 50 percent are minors. The majority of transnational victims are said to be females trafficked into commercial sexual exploitation. These figures do not include “millions” of female and male victims around the world who are trafficked within their own national borders – the majority for forced or bonded labour.⁵ The U.S. State Department does not have absolute numbers on child trafficking.

In 2000 the IOM developed the Counter Trafficking Module (CTM) database to collect information and monitor IOM's assistance to victims of human trafficking. The CTM database specifically allows for the individual reconstruction of the trafficking process of each victim. It further monitors the IOM assistance, movement and reintegration process in central systems. It is a standardised tool available to all IOM missions. The IOM claims that the CTM database is the largest database world-wide containing only primary data. The IOM website shows that by the end of May 2006, the CTM database contained 9,376 registered cases of victims of trafficking, whereof 34 percent were trafficked internally and 66 percent transnationally. Sixteen percent of the total number of victims were under the age of 18. The registered victims of trafficking in the database concerned 77 different nationalities travelling to 99 destination countries.⁶

In 2000, the International Labour Organisation estimated that among children in “unconditional worst forms of child labour”, 1.2 million had been trafficked.⁷

To the extent that statistics exist, their authority is often put into question as they vary according to their sources. Governments, non-governmental organisations (NGOs) and international agencies can all give different figures for the same phenomenon in the same region. One such example comes from Greece where the Ministry for Public Order estimated in 2002 that there were between 3,000 and 5,000 trafficked women and children in the country. The Research Centre for Women's Affairs in the country however reported the very different figure of 60,000.⁸

Eurojust – which, according to its Annual report of 2007, aims to establish a centre of expertise on trafficking in human beings – registered 71 trafficking in human beings

⁵ U.S. Department of State, *Trafficking in persons report*, June 2008, Publication 11407, p. 7. Online at <http://www.state.gov/g/tip/rls/tiprpt/2008/> (last accessed 18.08.2008).

⁶ Fact sheet on the Counter Trafficking Module on the IOM website, online at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/research/Data_and_Research_on_Human_Trafficking.pdf (last accessed 03.09.2008).

⁷ Information obtained from M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 12 and 57. According to the authors of this report representatives of ILO-IPEC clarified that the figure was not 1.2 million *per year* but in total when the estimates were established in 2000.

⁸ Research Centre for Women's Affairs, cited in Kelly, E. *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, IOM, Geneva, 2002.

cases in 2007, compared to 29 in 2006.⁹ At the same time other sources suggest that 120,000 women and children are trafficked into the EU every year, mostly from the Balkans.¹⁰

1.2. The difficulty of data collection on child trafficking

The Greek example above illustrates the difficulty to quantify the phenomenon of child trafficking. As was recently noted by the Association of Southeast Asian Nations (ASEAN) and the International Organisation for Migration (IOM), 'trafficking is an underground and organised criminal activity that cannot be measured by traditional data collection methods. Victims are often unwilling or unable to come forward and report their experiences to the authorities. As such, recorded crime statistics do not accurately reflect the real incidence of trafficking in persons.'¹¹

In 2004, an authoritative report was published by *Terre des Hommes: Lost Kids, Lost futures, The European Union's response to Child Trafficking*. The authors confirm that a widely acknowledged problem with trafficking in human beings in general and child trafficking in particular is that data are either unavailable or unreliable.¹² They *inter alia* refer to a study of the United Nations Children's Fund (UNICEF) that observed in 2003 that no substantial study based on empirical research into the trafficking of children in Europe had yet emerged.¹³

According to the *Lost Kids, Lost futures* report it is the lack of standardised methods of data collection for trafficked victims that 'makes it very difficult to draw comparisons between States and to be clear about the extent to which child trafficking affects particular regions.' In addition they ascribe the lack of information about the phenomenon of child trafficking to the failure by authorities to see trafficked children as victims rather than criminals and their failure to distinguish between children under and persons over 18 years old. Furthermore the authors point out that there are differences between the various ways in which adolescents and younger children are exploited and

⁹ Eurojust, *Annual report 2007*, p. 29, online at http://www.eurojust.europa.eu/press_annual_report_2007.htm (last accessed 28.08.2008).

¹⁰ Figure cited in Limanowska, B. *Trafficking in Human Beings in Southeastern Europe*, UNICEF, UNHCHR, OSCE-ODIHR, Belgrade, 2002, as quoted by M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, *Terre des Hommes*, Geneva, September 2004, p. 11-13.

¹¹ The Association of Southeast Asian Nations (ASEAN) and the International Organisation for Migration (IOM), *ASEAN and Trafficking in Persons, Using data as a tool to combat trafficking in persons*, International Organisation for Migration, Geneva 2007, p. 2, online at <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=14477> (last accessed 27.08.2008).

¹² M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, *Terre des Hommes*, Geneva, September 2004, p. 11.

¹³ The authors of *Lost Kids, Lost futures* refer to C. Somerset, F. Donati, P. Plaza and J. Gorton, *End Child Exploitation: Stop the Traffic*, UNICEF UK, London 2003.

conclude that methods of data collection should also take these distinctions into account.

¹⁴

The *Lost Kids, Lost futures* report makes clear that ‘trafficking can be a result of a complex series of events over an extended period of time and in different places which makes a single case of trafficking difficult to identify.’ The report makes a clear link between the lack of valuable and reliable data and the lack of a common and consistent definition endorsed by all EU Member States (see section C.1.1 for discussion of this critique).

Still according to *Lost Kids, Lost futures*, there are variations across regions as to the extent to which, and the sectors in which, trafficked children are exploited. For example, according to recent reports referred to in the *Lost Kids, Lost futures* report, the extent of child trafficking in Germany appears to be relatively high whereas authorities in Finland are unaware of any child trafficking cases and just one case was reported in Portugal in 2003. “Any statistics which are released by the authorities must be considered in their proper context”, the report asserted, “certain national authorities seem to be unaware of the existence of child trafficking within their borders. This may simply be due to the existence of few cases, or it may be due to the authorities’ limited awareness and lack of structure needed to identify and respond adequately to cases. If figures for child trafficking started increasing, it might be that this was not due to an increase in the actual phenomenon, but rather an improvement in detection”.¹⁵

1.3. Acknowledging the urgent need for data on child trafficking

The urgent need to collect reliable data on child trafficking has been underlined time and again.

¹⁴ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union’s response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 11.

ASEAN and the IOM wrote in 2007: ‘Even if there is agreement on the meaning of “trafficking”, there are potentially many different types of “data on trafficking”. For example, there are global estimates of the number of trafficking victims and the profits made from trafficking. There is data from some countries about the exact number of people arrested and prosecuted for trafficking offences. There is data from victim support services about the injuries suffered by particular victims of trafficking. There is data from surveys of communities about knowledge and attitudes towards trafficking. Potentially, each of these examples involves some form of “data on trafficking”, but the data in each example is very different.’ ASEAN and International Organisation for Migration, *ASEAN and Trafficking in Persons, Using data as a tool to combat trafficking in persons*, International Organisation for Migration, Geneva 2007, p. 4, online at <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=14477> (last accessed 27.08.2008).

¹⁵ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union’s response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 11-13.

In *Council Resolution on the contribution of civil society in finding missing or sexually exploited children* of 2001¹⁶, the Commission is invited to have a study drawn up on the actual extent of the phenomenon of missing or sexually exploited children; the existence, role and structure of the civil society organisations actively supporting the search for missing or sexually exploited children and legal issues arising from the involvement of such organisations. This resulted in the study 'Childoscope', carried out in 2004 by *Child Focus* and the Institute for International Research on Criminal Policy of the University of Ghent.¹⁷ A prominent finding of the study however is that statistics regarding sexual exploitation of children and missing children are generally unavailable in the EU.¹⁸

The 2003 *Council Resolution on initiatives to combat trafficking in human beings, in particular women*¹⁹ encourages the Commission and Member States to set up a monitoring system on trafficking in human beings that would provide accurate data on this phenomenon.

The *Parliament Resolution on the Commission Communication on combating sex tourism*²⁰ calls on the Council to combat the sexual exploitation of children by providing an information system that would include an exchange of computerized data on missing children.

The preamble of the *Parliamentary resolution on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation*²¹ of 2006 notes the lack of a common agreed definition of trafficking in children (see section C.1.1. for further discussion of this critique) and the lack of common guidelines for comparative data, research and analysis. The Resolution asserts that these are major obstacles to effective actions and policies. Therefore the EP urges the Commission to cooperate with the Council of Europe and other international organisations – like the International Organisation for Migration – in the development of common guidelines for data collection. Parliament recommends the establishment of a common centre as soon as possible for the implementation of common definitions, for the collection of comparable homogeneous data, for situation assessment and development, for information

¹⁶ Council Resolution on the contribution of civil society in finding missing or sexually exploited children, *OJ C* 283, 9.10.2001, p. 1-2.

¹⁷ See www.childoscope.net (last accessed 28.07.2008).

¹⁸ Press release referring to International Missing children's day – Commission's actions in favour of children and young people, 25. May 2006, MEMO/06/214.

See also H. Sax and I. Golden, *Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection)*, 2008, p. 8.

¹⁹ Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women, *OJ C* 260, 29.10.2003, p. 4-5.

²⁰ European Parliament Resolution on the Commission Communication on combating child sex tourism (COM(96)0547-C4-0012/97) and the aide-mémoire on the European contribution to reinforcing the prevention of the sexual abuse and exploitation of children, 24 November 1997, A4-0306/97, *OJ C* 358, 24.11.1997 p. 37.

²¹ Parliamentary resolution on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation, adopted 17 January 2006, 2004/2216(INI), *OJ C* 287 E, 24.11.2006, p. 75-84.

exchange and for evaluation of the links between the purpose of anti-trafficking laws, policies and action and their actual impact. Parliament furthermore regrets the lack of reliable data on the phenomenon of trafficking in Europe and the fact that neither the Commission nor Europol, nor any other EU body, had been able to publish precise figures about the EU-wide extent of trafficking in human beings, and regrets particularly the lack of data on more vulnerable groups, such as children.

To approach the matter from a different angle: under the 2007 CoE *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* Member States are to collect and store data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with that Convention.²²

1.4. Data collection by national rapporteurs and high representatives

As a possible way to meet the need for data on child trafficking as stressed by several legal instruments and NGOs the appointment of a national rapporteur on child trafficking in every Member State in combination with the appointment of an EU rapporteur, or a high-representative on this topic, has been promoted.

The *Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation* (1997)²³ formulates as an action point for state parties to 'provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women'. As the Declaration makes no reference to age considerations, one may assume that the Declaration also applies to minor girls.²⁴

The *Parliamentary Resolution for further actions in the fight against trafficking in women* of 1998 calls on the Council to appoint an EU Rapporteur on trafficking.²⁵

²² Art. 37 (1) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote 2007, CETS no. 201). This Convention has not yet entered into force.

²³ The Hague Ministerial on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997.

²⁴ The Declaration makes no reference to age considerations. See M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 32.

²⁵ European Parliament Resolution on the communication from the Commission to the Council and the European Parliament 'For further actions in the fight against trafficking in women' (COM(1998) 726- C5-0123/1999 – 1999/2125(COS)), A5-0127/2000, *OJ C* 59, 23.02.1999, p. 307-313.

The *Parliamentary Resolution on child trafficking and child soldiers* of July 2003 recommends the appointment of a high-level representative for children's rights to both the Council and the Commission who would ensure overall co-ordination of all EU policies related to children.²⁶ The resolution furthermore urges the Commission and Council to draw up a common EU policy on child trafficking that would focus on the judicial and legal aspects as well as on prevention and victim protection.

In 2004 the Experts Group on Trafficking in Human Beings, established by the Commission, made detailed recommendations which went in the same direction. In this connection it is useful to recall that the Experts Group consisted of twenty individuals specially qualified in this field, proposed by the governments of the EU Member States (including Candidate Countries), as well as by international, inter-governmental and non-governmental organizations active in preventing and combating trafficking in human beings. The mission of this Group was to issue opinions or reports to the Commission at the latter's request or on its own initiative. The Experts group recommended *inter alia*:²⁷

- *'Member States should establish a central place where information from different sources and actors is systematically gathered and analysed. This could be a National Rapporteur or a comparable mechanism. Such a mechanism should meet the following requirements:*
 - o *main task should be the collection of data on trafficking in the widest possible sense, including monitoring the effects of implementation of national action plans;*
 - o *an independent status;*
 - o *a clear mandate and adequate competences to have access to, and actively collect, data from all involved agencies, including law enforcement agencies, and to actively seek information from NGOs. The mandate to collect data must be clearly distinguished from executive, operational or policy co-ordinating tasks, which should be fulfilled by other bodies;*
 - o *the competence to directly report to the government and/or the Parliament and to make recommendations on the development of national policies and action plans, without itself being a policy making agency.*
- *Once national data collection mechanisms are established, the EU should establish a similar mechanism at the European level, the task of which is to bring together at a European level the information collected at national level, to identify gaps and*

²⁶ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 33.

²⁷ See *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 22.12.2004, online available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings at pp. 22-23 (last accessed 04.09.2008).

bottlenecks at European level and to issue recommendations to the Commission and the Council of the EU to address those gaps and bottlenecks. Again, such a European mechanism should also be open to representations from NGOs.

- *In order to make national data comparable common guidelines for the collection of data should be developed, both with regard to the type of data and to the methods used.'*

More in particular as regards child trafficking the Experts Group on Trafficking in Human Beings also recommended that 'Quantitative and qualitative research focused on children should be implemented, including the different factors influencing the risks for children and the different kinds of exploitation they suffer (i.e. sexual exploitation, labour exploitation, illegal adoption, removal of organs)'.²⁸

²⁸ *Ibidem*, p. 27.

2. International standards on the fight against child trafficking

2.1. International standards

2.1.1. UN Convention on the Rights of the Child (CRC) and Optional Protocol on the sale of children, child prostitution and child pornography

Whereas general human rights treaties – such as the 1966 UN Covenants and the European Convention on Human Rights – apply to “everyone” and hence also cover children, a key point of reference is the UN Convention on the Rights of the Child (CRC). The CRC contains a broad range of civil, political, social, economic and cultural rights of the child.

In the international legal framework for the protection of children, including the instruments that address trafficking-related activities, the principle of the best interests of the child occupies a central position.

The principle could already be found in the 1959 Declaration of the Rights of the Child²⁹ and other human rights instruments, like the Convention on the Elimination of All Forms of Discrimination against Women³⁰. However the Convention on the Rights of the Child was the first international legal instrument that gave the principle its full scope and extended it to cover all decisions affecting the child. Article 3 of the CRC provides that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration”. According to the CRC general comment No.5 (2003) the effective implementation of the whole Convention requires the development of a children’s rights perspective, in particular in the light of the articles-*inter alia*, article 3- identified by the Committee as general principles. On the basis of article 3, as stated by the Committee, “every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and children’s interests are or will be affected by their decisions and actions-by, for example, a proposed or existing law or policy or administrative action

²⁹ The *Declaration of the Rights of the Child*, (proclaimed by GA Resolution 1386 (XVI) of 20/11/1959), art.2.

³⁰ The *UN Convention on the Elimination of All Forms of Discrimination against Women*, (Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1), art. 16

or court decision, including those which are not directly concerned with children, but indirectly affect them”.³¹

The Convention on the Rights of the Child and other international legal instruments, like the UN Convention for Children with disabilities³², as well as international judgments evoke the principle in respect to a wide range of matters: parental responsibility,³³ deprivation of liberty,³⁴ juvenile justice,³⁵ and measures to assist children with disabilities³⁶. The best interests of the child should be a primary consideration in all actions and decisions affecting victims of trafficking, including their treatment by the criminal justice system,³⁷ the question of their return to the country of origin (in case the victim is outside the country of origin)³⁸, the issuance of a residence permit,³⁹ their representation by a legal guardian,⁴⁰ the removal of the victim from the family environment⁴¹. The Principles and Guidelines of the High Commissioner on Human Rights and Human Trafficking state that in all cases the best interests of trafficked children shall be paramount.⁴² The question of how to determine in this context what is in the best interests of the child is tackled by the Committee on the Rights of the Child in its General Comment no 6 (2005) which however does not cover all cases of child trafficking, but refers specifically to the treatment of unaccompanied and separated children outside their country of origin. In that case the determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and needs. The assessment should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.⁴³

In the specific context of child trafficking, the principle is given prominent position in the relevant instruments of the United Nations and the Council of Europe.

³¹ CRC/GC/2003/5, para. 12.

³² The UN *Convention on the Rights of People with disabilities*, (Adopted and opened for signature, ratification and accession by General Assembly res A/RES/61/106 of 13 December 2006, entry into force 3 May 2008, in accordance with article 45(1).

³³ The UN *Convention on the Rights of the Child*, art.18. See also ECtHR, 27 June 2000, *Nuutinen v. Finland*, (appl.32842/96), paras 110-111, 128, also to be found via www.echr.coe.

³⁴ The UN *Convention on the Rights of the Child*, art.37.

³⁵ The UN *Convention on the Rights of the Child*, art.40.

³⁶ The UN *Convention on the Rights of People with Disabilities*, art.7.

³⁷ The UN *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, art.8.

³⁸ The CoE *Convention against Trafficking in Human Beings*, art.16.

³⁹ The CoE *Convention on Action against Trafficking in Human Beings*, art.14.

⁴⁰ The CoE *Convention on Action against Trafficking in Human Beings*, art 10.

⁴¹ The CoE *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, art.14.

⁴² The United Nations High Commissioner For Human Rights *Principles and Guidelines on Human Rights and Trafficking*, E/2002/68/Add.1 (2002), guideline 10.

⁴³ The GRC/GC/2005/6, para. 20.

The 2004 report that the Experts group on Trafficking in Human Beings submitted to the European Commission stresses that, consistent with the international instruments, a child's rights approach should be integrated as normative framework in the further development of policies and measures against trafficking both at European Union and at national level. In this kind of approach the primary concern is to combat exploitation of children, whereas considerations related to immigration or crime control are secondary.⁴⁴

The CRC is supplemented by the *Optional Protocol on the sale of children, child prostitution and child pornography* which addresses a wide variety of trafficking-related activities.⁴⁵ It applies to both intra-state and cross border trafficking activities. Apart from the preamble to the document, the term 'trafficking' is not explicitly mentioned in the Protocol.⁴⁶

By ratifying the *Optional Protocol on the sale of children, child prostitution and child pornography*⁴⁷ to the CRC state parties (including all EU Member States) agree to ensure that the following acts are covered by their criminal law: 'Offering, delivering or accepting, by whatever means, a child for the purpose of: (a) sexual exploitation of the child; (b) transfer of organs of the child for profit; (c) engagement of the child for forced labour' as well as 'improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international instruments for adoption'. The Optional Protocol covers these offences whether they are committed domestically or cross border and by an individual or on an organised basis.⁴⁸

At the time of writing, although all the Member States have signed the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Czech Republic, Germany, Finland, Hungary, Ireland, Luxembourg, and Malta still have not ratified it.

2.1.2. ILO Convention 182

The *ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*⁴⁹ of 1999 binds State Parties to punish some of the practices through which trafficked children are exploited in their countries of

⁴⁴ The Report of Experts Group on Trafficking in Humman Beings, par. 25.

⁴⁵ The supplementary *Optional Protocol on the sale of children, child prostitution and child pornography* (adopted and opened for signature, ratification and accession by UN General Assembly resolution A/RES/54/263, New York, 25 May 2000), has been ratified by 20 and signed by 7 EU Member States. Status as of 1 October 2008, online at http://www2.ohchr.org/english/bodies/ratification/11_c.htm.

⁴⁶ See also M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 20.

⁴⁷ The *Optional Protocol on the sale of children, child prostitution and child pornography* (adopted and opened for signature, ratification and accession by UN General Assembly resolution A/RES/54/263, New York, 25 May 2000) entered into force on 18 January 2002.

⁴⁸ See art 3 and 4.

⁴⁹ All EU Member States have ratified this Convention. See <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182> (last accessed 10.03.2009).

destination, including trafficking itself. The Convention identifies the four worst forms of child labour namely: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, and forced labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the commercial sexual exploitation of children; (c) the use, procurement or offering of children for illicit activities, in particular for the production and trafficking of drugs; (d) work which is likely to harm the health, safety or morals of children.

2.1.3. Palermo Protocol

The *Palermo Protocol*⁵⁰ which came into force in 2003 supplements the UN Convention against Transnational Organised Crime (2000).⁵¹ The scope of the Protocol is threefold; (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims and (c) to promote cooperation among States Parties.⁵² Because the *Palermo Protocol* supplements the UN Convention against Transnational Organised Crime it applies only to cross border trafficking which is conducted by organised networks. Intra-state trafficking is excluded from the scope of the Protocol, as well as trafficking not connected with organised crime.⁵³

The Palermo Protocol calls for the adoption of measures to protect victims from re-victimisation, to alleviate the factors that make persons vulnerable to trafficking and to discourage the demand of services that involve exploitation of persons⁵⁴. The protocol

⁵⁰ The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations) is also known as the *Palermo Protocol* after the place where it was signed. The *Palermo Protocol* officially came into force in December 2003 following the fortieth ratification. It has been signed by all 27 Member States of the EU and has been ratified by 23 member states. The Convention and the Protocol have also been signed and approved by the EC.

Status as of 26.09.2008. Online at

<http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html>.

(last accessed 31.10.2008). Council Decision 2001/87/EC of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea (*OJ L 30*, 1.2.2001, p. 44-44) authorises the Council, on behalf of the European Community, to sign the United Nations Convention against Transnational Organised Crime and its Protocols on combating trafficking in persons, especially women and children. Accordingly the Community signed this Convention and its protocols on 12 December 2000. By virtue of Council Decision 2006/619/EC of 24 July 2006 (*OJ L 262*, 22.9.2006, p. 51-58), the *Palermo Protocol* has been approved on behalf of the European Community.

⁵¹ The United Nations Convention against transnational organised crime (2000)⁵¹ has been signed by CZ, EL and IE and ratified by all 24 other EU member states.⁵¹

⁵² Art. 2.

⁵³ See H. Sax and I. Golden, *Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection)*, 2008, p. 4.

⁵⁴ Art. 9

states that each State Party shall provide for “*Assistance to and protection of victims of trafficking in persons*” by supplying housing, counselling and information, by giving medical, psychological and material assistance, employment, educational and training opportunities, and by ensuring that victims have the possibility for obtaining compensation for damage suffered.⁵⁵ Moreover, the Protocol provides for a safe repatriation of victims of trafficking in persons.⁵⁶ It also encourages States Parties to consider adopting measures to allow victims to remain in their territories.⁵⁷

Before the *Palermo Protocol*, no clear agreed definition of trafficking in human beings existed in international law.⁵⁸ In particular there was often confusion over the difference between smuggling and trafficking in human beings. The distinction between trafficking and smuggling in human beings in international law was mainly achieved through two distinct protocols supplementing the UN Convention against Transnational Organised Crime (2000): the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (referred to in this report as *Palermo Protocol*) and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*.⁵⁹

The 2000 *Palermo Protocol* was the first international legal instrument to provide for a clear and comprehensive definition of trafficking in human beings. According to Art. 2 par. 3 ‘trafficking in persons’ means:

‘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.’

The consent of a victim shall be deemed irrelevant if any of these means are used. 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.’

Hence, according to the Protocol ‘trafficking in persons’ involves three cumulative elements: action, means and purpose. In the case of trafficking of children, defined in this protocol as all persons under 18, the crime shall be considered trafficking even if none of the above mentioned means is used. Thus, trafficking in children involves only two elements: action and purpose.

⁵⁵ Art. 6.

⁵⁶ Art. 8.

⁵⁷ Art. 7.

⁵⁸ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union’s response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 34.

⁵⁹ Both adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/55/25 55/25 of 15 November 2000. Entered into force on 28 January 2004 – 118 State Parties as of 12 March 2009. See <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=377&chapter=18&lang=en> (accessed last on 12 March 2009).

At the time of writing, although all the Member States have signed these instruments, three States still have not ratified the Convention against Transnational Organised Crime: the Czech Republic, Greece and Ireland; the same three and Luxembourg have not ratified the Palermo Protocol.

2.2. Council of Europe standards

Two conventions of the Council of Europe contribute to the European fight against trafficking in human beings, and in particular against child trafficking. The first is the *Convention on Action against Trafficking in Human Beings*⁶⁰ (2005), the other is the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (2007) which has not yet entered into force.⁶¹

2.2.1. CoE Convention on Action against Trafficking in Human Beings (Warsaw, 2005)

Each State Party to the CoE *Convention on Action against Trafficking in Human Beings* has to criminalise the intentionally committed conduct that is considered to be trafficking in human beings within the meaning of article 4 of this Convention.⁶² Also the use of services which are the object of exploitation with the knowledge that the person concerned is a victim of trafficking in human beings, must be criminalised. Furthermore, forging a travel or identity document; procuring or providing such a document; and retaining, removing, concealing, damaging or destroying a travel or identity document of another person when committed intentionally and for the purpose of enabling the trafficking in human beings, need to be made punishable.⁶³ If the offence is committed against a child this is considered to be an aggravating circumstance in the determination of the penalty for the committed offence. The Convention does not set any standards for

⁶⁰ *Convention on Action Against Trafficking in Human Beings*, Warsaw 2005, CETS no. 197.

⁶¹ In October 2007 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote 2007, CETS no. 201 has been opened for signature. Only one state (Greece) has ratified the instrument thus far and as a result the Convention has not yet entered into force. At present 19 out of 27 Member States have signed the Convention. . Online overview at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=8&DF=3/10/2009&CL=ENG> (last accessed 10.03.2009).

⁶² Namely 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.' Art 4.

⁶³ Art 20.

the penalties that may be imposed for these offences, but merely underlines that these *inter alia* involve deprivation of liberty and can give rise to extradition.⁶⁴

The definition of trafficking of the *Palermo Protocol* was adopted in the *CoE Convention on Action against Trafficking in Human Beings* (2005).⁶⁵ However, this Convention goes further as its scope extends explicitly to all forms of trafficking, 'whether national or transnational, whether or not connected with organised crime'.⁶⁶

According to the *CoE Convention on Action against Trafficking in Human Beings*, 'trafficking in children' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons under 18 years of age, for the purpose of exploitation. 'Exploitation' includes sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. In this connection it is immaterial whether or not the child consents to be exploited. Child trafficking may, but does not have to involve 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. Concerning the definition of trafficking, the *CoE Convention on Action against Trafficking in Human Beings* (2005) offer the most comprehensive definition and therefore constitute best practice in this respect.

At the time of writing the Council of Europe Convention on Action against Trafficking in Human Beings has been signed, but still not ratified by Belgium, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Slovenia, Sweden. The Czech Republic, Estonia and the European Community have neither signed nor ratified the Convention.

2.2.2. CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 2007)

According to the Council of Europe, the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* 'provides a comprehensive and exhaustive coverage of the protection of children against sexual exploitation and abuse, which consolidates existing standards in the field. The new instrument fills gaps, ensures coherency in Europe and the equal protection of all of its children by establishing clear

⁶⁴ Art. 23.

⁶⁵ The Convention is not restricted to CoE member states; non-member states and the European Community also have the possibility of becoming Party to the Convention. GRETA, a group of independent experts on action against trafficking in human beings, will monitor implementation of the Convention. The Convention has entered into force on 1 February 2008.

⁶⁶ Art. 2. In the case of transnational trafficking, the Convention applies to both victims who entered legally or are present legally and to those who entered illegally or are present illegally.

common standards and definitions that are applicable in all European countries, in particular through harmonising criminal law and other relevant measures.⁶⁷

On the basis of the CoE *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (2007) each Party has to ensure that the following offences are criminalised: (a) recruiting a child into prostitution or causing a child to participate in prostitution; (b) coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes; and (c) having recourse to child prostitution.⁶⁸ The Convention does not set any standards as regards the gravity of the penalties that may be imposed, but it is stated that penalties must be effective, proportionate and dissuasive, taking into account the seriousness of the offences committed. These sanctions include penalties involving deprivation of liberty which can give rise to extradition, but for example also monitoring or supervision of convicted persons.⁶⁹

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse has been opened for signature only recently. Only Greece has ratified the instrument thus far and as a result the Convention has not yet entered into force. At present 19 out of 27 EU Member States have signed the Convention.

2.2.3. European Convention on Human Rights (ECHR)

At a more general level, the European Convention on Human Rights (ECHR) contains several provisions that are also relevant for the issue of child trafficking: notably Article 3 (prohibition of torture, forced labour and inhuman or degrading treatment), Article 4 (prohibition of slavery and servitude), Article 5 (right to liberty and security) and Article 8 (right to respect for private and family life).

So far the European Court of Human Rights has not dealt with cases where trafficking in human beings was the central issue. But the Court rendered an important judgment in the case of *Siliadin* (2005), which involved a young girl from Togo who was lured to France under a false pretext and then was kept as an unpaid 'housemaid' for years. The Court observed that "'domestic slavery' persists in Europe and concerns thousands of people, the majority of whom are women". It reiterated that Article 4 ECHR, which prohibits slavery, servitude and forced labour, enshrines one of the fundamental values of democratic societies. The Court went on to consider that, in accordance with contemporary norms and trends in this field, the Member States' positive obligations

⁶⁷ http://www.coe.int/t/transversalprojects/children/violence/SexualAbuse_en.asp.

⁶⁸ Art. 19.

⁶⁹ Art. 27.

under Article 4 of the Convention must be seen as requiring “the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation”.⁷⁰

In the case of *Z. and others v the UK* (2001) – a case in which the local authorities had failed to protect four children against neglect and abuse by their parents – the Strasbourg Court observed: “The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (...). These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (...)”.⁷¹

It seems logical to assume that similar obligations exist when domestic authorities are aware – or should have been aware – of situations where child trafficking occurs. The Convention would then require them to provide effective protection, both at the level of legislation and in terms of operational measures.

Further support for this position may be found in a report adopted in 2006 by the Commission for Democracy through Law (the ‘Venice Commission’). Against the background of allegations that the USA was secretly transferring prisoners from one European State to another, and detaining individuals in facilities within the territories of European States, the Commission observed: “Council of Europe Member States are under an international legal obligation to secure that everyone within their jurisdiction enjoys internationally agreed fundamental rights, including and notably that they are not unlawfully deprived of their personal freedom”.⁷²

The Venice Commission continued: “Active and passive co-operation by a Council of Europe Member State in imposing and executing secret detentions engages its responsibility under the European Convention on Human Rights. While no such responsibility applies if the detention is carried out by foreign authorities without the territorial State actually knowing it, the latter must take effective measures to safeguard against the risk of disappearance and must conduct a prompt and effective investigation into a substantiated claim that a person has been taken into unacknowledged custody”.⁷³

⁷⁰ ECtHR, 26 July 2005, *Siliadin v. France* (appl. no. 73316/01), paras 111-113, online at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>.

⁷¹ ECtHR, 10 May 2001, *Z. a.o. v. UK* (appl. no. 29392/95), para. 73, also to be found via www.echr.coe.int. References to other case-law omitted.

⁷² See Venice Commission, *Opinion on the international legal obligations of Council of Europe member States in respect of secret detention facilities and inter-State transport of prisoners* (2006), doc. CLD-AD(2006)009, para. 155. See [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp#_Toc130704788](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp#_Toc130704788).

⁷³ *Ibidem*, para. 159.

3. The role of the EU in the fight against child trafficking

3.1. EU standards on the fight against child trafficking

Article 5 of the EU Charter of Fundamental Rights provides in paragraph 1 that “No one shall be held in slavery or servitude”, and in paragraph 2 that “No one shall be required to perform forced or compulsory labour”. Article 5 (3) expressly prohibits trafficking in human beings.

In accordance with Article 52(3) of the Charter of Fundamental Rights, paragraphs 1 and 2 of this provision of the Charter correspond to Article 4 ECHR, which was discussed above.

At EU level trafficking in human beings is considered to be a priority area (see the following section). Article 29 EU (which was first introduced by the Treaty of Amsterdam) expressly refers to the fight against trafficking in human beings.⁷⁴

The Lisbon Treaty (which is currently not in force) also makes explicit reference to trafficking in human beings in Article 63(a):

“The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals

⁷⁴ Art. 29 EU (*OJC* 340, 10.11.1997) is placed under Title VI on ‘Provisions on police and judicial co-operation in criminal matters’ and reads:

‘Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, *trafficking in persons and offences against children*, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32;
- closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of Articles 31(a) to (d) and 32;
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e). (emphasis added)’

residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.⁷⁵

As to secondary legislation, the two central legal instruments on child trafficking that are currently in force are the 2002 *Council Framework Decision on combating trafficking in human beings*⁷⁶ and the 2003 *Council Framework Decision on combating the sexual exploitation of children and child pornography*.⁷⁷ Both Framework Decisions aim to approximate the laws and regulations of the Member States in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. Both instruments also aim to introduce at European level, common framework provisions in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition.⁷⁸ In 2006, the European Commission reported to the Council and the European Parliament on the transposition of the 2002 *Council Framework Decision on combating trafficking in human beings*.⁷⁹ In 2008, the European Commission published a Commission Working

⁷⁵ By virtue of Art. 69 the Lisbon Treaty (*OJ C* 306, 17.12.2007) the European Parliament and the Council will have the power to adopt legislation concerning trafficking in human beings, in particular women and children. They are furthermore empowered to adopt directives on minimum rules concerning the definition of criminal offences and sanctions for serious crimes with a cross-border dimension. Included within the list of crimes that justify such a harmonised approach are '(...) trafficking in human beings and sexual exploitation of women and children (...)'

Moreover, Art. 6 of the Consolidated Treaty of the European Union (*OJ C* 115, 9.05.2008) acknowledges the binding legal nature of the Charter on Fundamental Rights of the European Union. Some of the provisions of the Charter, may be regarded as setting a specific framework for the protection of the rights of trafficked children Charter of Fundamental Rights of the European Union from 7 December 2000, C 364/1. For instance Art. 5 (based on Art. 4 ECHR, and prohibiting slavery and forced labour); Art. 24 (reflecting basic principles and rights of the CRC, namely the right to protection, the right to participation and the best interest principle); and Art. 32 (prohibition of child labour). See H. Sax and I. Golden, *Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection)*, 2008, p. 5-6.

⁷⁶ Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [2002] *OJ L* 203, 01.08.2002, p. 1-4. This Framework decision replaced the *Joint Action of February 1997 to combat trafficking in human beings and sexual exploitation of children* which aimed at establishing common rules for action to combat these types of crime in order to contribute to the fight against certain forms of unauthorised immigration and to improve judicial cooperation in criminal matters. Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, *OJ L* 63, 04.03.1997, p. 2-6.

⁷⁷ Council Framework Decision on combating the sexual exploitation of children and child pornography, 22 December 2003, 2004/68/ JHA, *OJ L* 13, 20.1.2004, p. 44-48. These two framework decisions were already presented in draft by the European Commission in its *Communication on Combating trafficking in human beings and the sexual exploitation of children* of 2001, COM(2000) 854-1 final, *OJ C* 357 of 14.12.2001.

⁷⁸ See <http://europa.eu/scadplus/leg/en/lvb/l33137.htm> and <http://europa.eu/scadplus/leg/en/lvb/l33138.htm> (last accessed 03.09.2008).

⁷⁹ Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings {SEC(2006) 525}, COM (2006) 187 final, dated 2.5.2006

Document titled “Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings”.⁸⁰ For both mentioned instruments new proposals were entered by the European Commission in 2009: a proposed for a new Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims⁸¹ and a proposal for a new Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography⁸².

By virtue of the 2004 *Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities*⁸³ third-country nationals who cooperate in the fight against trafficking in human beings can be granted a residence permit of limited duration.

Furthermore, the European Conference on Preventing and Combating Trafficking in Human Beings of 2002⁸⁴ resulted in the ‘Brussels Declaration’⁸⁵ which DG Justice, Freedom and Security (as it is now called) takes as its primary policy document on trafficking in human beings. The Declaration gives a set of recommendations, standards and best practice relating to the fight against trafficking in human beings and is divided into four general sections: mechanisms for cooperation and co-ordination, prevention of trafficking in human beings, victim protection and assistance and police and judicial co-operation. The Declaration considers that the European policy against human trafficking needs to address the entire trafficking chain; that the root causes of trafficking must be at the forefront of any long-term effort to fight human trafficking and that a global approach to trafficking must address all forms of exploitation, including sexual exploitation, labour exploitation, in particular child labour, and begging. The Declaration

⁸⁰ Commission Working Document Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures, COM(2008) 657 final, dated 17.10.2008

⁸¹ Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA {SEC (2009) 358} {SEC (2009) 359}, COM (2009) 136 final – CNS 2009/0050

⁸² Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA {SEC (2009) 355} {SEC(2009) 356}, COM (2009) 135 final - CNS 2009/0049

⁸³ 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 subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *OJ L* 261, 6.8.2004, p. 19-23.

⁸⁴ European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge of the 21st Century (18 – 20 September 2002). The declaration has subsequently been presented by the Commission to the Council of the European Union which adopted Council Conclusions on the Declaration on 8 May 2003, *OJ*, C 137, 12.06.2003 p.1.

⁸⁵ *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*, Annex to Council Conclusions of 8 May 2003, *OJ*, C 137, 12.06.2003, p.2-9, online at: http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings (last accessed 04.09.2008).

furthermore formed the basis for the setting up of the Experts Group on Trafficking in Human Beings by the Commission.⁸⁶

3.1.1. The EU definition of trafficking in human beings

EU legislation confused for a long time the distinct concepts of trafficking in human beings and smuggling in human beings. This confusion over the difference between the two terms was partly caused by definitions used in instruments like the *Council Decision on supplementing the definition of the form of crime 'traffic in human beings'*⁸⁷ and by a number of the 1999 Tampere Council conclusions which used 'trafficking in human beings' as almost synonymous with the smuggling of human beings.⁸⁸ At the same time Conclusion 46 of the 1999 Tampere Council Conclusions highlights the importance of shared definitions and states that '*with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors, such as (...) trafficking in human beings, particularly exploitation of women, sexual exploitation of children*'.

⁸⁶ This Expert Group published a report in 2004, with the aim to strengthen EU action against trafficking in human beings. *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 22.12.2004, online available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings (last accessed 04.09.2008).

⁸⁷ The *Council Decision on supplementing the definition of the form of crime 'traffic in human beings'* is addressed specifically to the European Police Office (Europol). This Decision defines 'traffic in human beings' as: '*the subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material.*' (see Annex to the Europol Convention, 3 December 1998, OJ C 26, 30.01.1999, p. 21). The Decision came into force on 1 January 1999. Van Reisen and Stefanovic are of the opinion that: 'While it is commendable that the decision places a special emphasis on children as particularly vulnerable victims, there is an additional confusion in terminology brought about by the use of new terms such as 'assault of minors' and 'trade in abandoned children', which are different from the terminology used in the other legal documents of the EU. The definition of trafficking provided here differs greatly from the general definition provided by the recent Council Framework Decision on combating trafficking in human beings, which is also the consequence of developments over time following the introduction of the Palermo Protocol in 2000. It is therefore clear that the Europol definition is in vital need of an update. However, Europol recognises that different forms of exploitation are related to child trafficking even if its actions are focused on the fights against sexual abuse of children and child pornography.' M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 27.

⁸⁸ Presidency Conclusions, Tampere European Council 15 and 16 October 1999, specifically conclusions nos. 3, 22, 23, 26 and 48 online at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm and http://www.europarl.eu.int/summits/tam_en.htm (last accessed 03.09.2008).

In 2002 the then Council of Justice and Home Affairs adopted the *Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union*.⁸⁹ The Plan clearly recognises the distinction between smuggling and trafficking in human beings.⁹⁰

Concerning this difference, the European Council considered in its 2002 *Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union*⁹¹ the following:

*'The expressions 'smuggling' and 'trafficking' are often used synonymously, although a clear distinction should be drawn as they are substantially different (...) smuggling means helping with an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element. This is not necessarily the case with trafficking where the key element is the exploitative purpose. Trafficking involves the intent to exploit a person irrespective of how the victim comes to the location where the exploitation takes place.'*⁹²

The 2002 *Council Framework Decision on combating trafficking in human beings* reflects the definition of trafficking in human beings of the *Palermo Protocol*.⁹³ This central EU instrument defines trafficking in human beings as 'the recruitment, transportation, harbouring, and subsequent reception of a person, including exchange or transfer of control over that person', where use is made of means such as coercion, force or threat, abduction, deceit or fraud, and/or abuse of authority or of a position of vulnerability, or

⁸⁹ Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, presented to the Council in February 2002 and adopted by the 2411th Council of Justice and Home Affairs on 2 May 2002, *OJ C* 142, 14.06.2002, p. 23-36. Van Reisen and Stefanovic call this plan 'the clearest expression of political will of the member states relating to trafficking in human beings.' M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 30.

⁹⁰ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 30.

⁹¹ Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, presented to the Council in February 2002 and adopted by the 2411th Council of Justice and Home Affairs on 2 May 2002, *OJ C* 142, 14.06.2002, p. 23-36.

⁹² Art 87 and 88 of the Comprehensive Plan.

⁹³ Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [2002] *OJ L* 203, 01.08.2002, p. 1-4, replaces the Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, *OJ L* 63, 04.03.1997, p. 2-6. Amended by Council Outline Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings. The *Lost Kids, Lost futures* report observed: 'The framework decision clearly reflects both the development of the international approach to trafficking in human beings and that of the EU. In the joint action, for example, trafficking was weakly defined as "any behaviour which facilitates entry into, transit through, residence in or exit from the territory of a member state for the purposes set out in point B (b) and (d)". Only trafficking for the purpose of sexual exploitation is recognised both in the case of adults and children. The definition given under the framework decision is much more comprehensive, reflecting the definition given in the Palermo Protocol' (M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, Terre des Hommes, Geneva, September 2004, p. 25-26).

payments 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, 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'.⁹⁴ The consent of a victim shall be deemed irrelevant if any of the abovementioned means are used.⁹⁵ The Framework Decision states explicitly that if a child victim (any person below 18 years of age) is involved, 'it shall be a punishable trafficking offence', even if none of the above-mentioned means have been used.⁹⁶

Nevertheless, the use of the definition of the *Palermo Protocol* in the 2002 Framework Decision has not removed all lack of clarity about the definition of trafficking in human beings at EU level.

In October 2003 for instance, the Council adopted the *Resolution on initiatives to combat trafficking in human beings, in particular women*.⁹⁷ In the document trafficking in human beings is defined as 'a crime aiming at the sexual or labour exploitation of persons, in particular at the sexual exploitation and domestic slavery of women and children'. The term 'domestic slavery' is not used in other EU legislation and documents related to child trafficking. 'This illustrates the confusion created by the lack of a consistent definition of child trafficking'.⁹⁸

3.2. Fight against trafficking in human beings as a priority area for the EU

Several EU instruments on trafficking in human beings set the fight against this phenomenon as a particular priority area. Already in 1997 the Parliament called on the Member States of the EU to ensure that 'protecting children and young people against sexual exploitation, trafficking in human beings and paedophile activities becomes a central concern of the state'.⁹⁹

By virtue of Article 29 EU, as introduced by the Treaty of Amsterdam, trafficking in human beings and offences against children were designated as particular priority areas

⁹⁴ Art. 1 par. 1.

⁹⁵ Art. 1 par. 2.

⁹⁶ Art. 1 par. 3.

⁹⁷ Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women, *OJ C* 260, 29.10.2003, p. 4-5.

⁹⁸ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 31.

⁹⁹ European Parliament Resolution on the Commission Communication on combating child sex tourism (COM(96)0547-C4-0012/97) and the aide-mémoire on the European contribution to reinforcing the prevention of the sexual abuse and exploitation of children, 24 November 1997, A4-0306/97, *OJ C* 358, 24.11.1997 p. 37.

for closer cooperation between Member States in the context of police and judicial cooperation in criminal matters.

In the preamble to the *Council Decision to combat child pornography on the internet* of 29 May 2000¹⁰⁰ it is recognised that 'the traffic in human beings and the sexual exploitation of children constitute a serious infringement of fundamental human rights and in particular of human dignity'. It is furthermore stated that 'respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union's concerns'.

The *Parliament Resolution on child trafficking and child soldiers* of July 2003 furthermore stresses that the fight against child trafficking must be a priority of the EU to be reflected in budgetary decisions. To this end the Parliament suggests the creation of a separate heading to be created in the budget to raise the profile of the EU in this area.

The 2004 Report of the Experts Group on Trafficking in Human Beings added: 'The fight against trafficking in human beings must be clearly defined as a law enforcement priority. Adequate personal and financial resources must be allocated. A certain percentage of these resources should continuously be devoted to the fight of trafficking in human beings. At the lower level police officers should be encouraged and motivated to invest in human trafficking cases'.¹⁰¹

3.3. The need for ratification of international instruments

Several European and international legal instruments have urged State Parties to ratify all relevant international instruments relating to the fight against child trafficking.

The EU *Parliamentary Resolution on child trafficking and child soldiers* of July 2003 contains a recommendation for the EU to put pressure on all third countries which have not done so to ratify all relevant international instruments relating to the fight against child trafficking.

Furthermore, the 2003 Council *Resolution on initiatives to combat trafficking in human beings, in particular women*¹⁰² calls on all Member States to ratify and fully implement all

¹⁰⁰ Council Decision to combat child pornography on the internet, 29 May 2000, 2000/375/JHA, OJ L 138, 9.6.2000, p. 1-4.

¹⁰¹ See *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 22.12.2004, online available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings at pp. 40-41.

¹⁰² Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women, OJ C 260, 29.10.2003, p. 4-5.

international instruments against trafficking in human beings. The same goes for the Council Conclusions of 3 May 2003.¹⁰³

The very first recommendation of the Experts Group on Trafficking in Human Beings was that 'All EU Member States should ratify and implement the UN Trafficking Protocol.' The Experts Group also called for 'ratification and application of the relevant ILO standards, in particular ILO Convention No. 29 on forced labour and ILO Convention No. 182 on the worst forms of child labour.'¹⁰⁴

3.4. Harmonisation of EU Member States' criminal law

On the basis of the 2002 Council *Framework Decision on combating trafficking in human beings* Member States are obliged to make punishable offences of trafficking in human beings that are committed 'for the 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'. Although trafficking for purposes of forced marriage, begging or illicit activities are not explicitly mentioned by the Framework Decision, these could be interpreted to be covered respectively by 'other forms of sexual exploitation' and 'labour exploitation'.¹⁰⁵

These offences need to be made punishable by 'effective, proportionate and dissuasive criminal penalties, which may entail extradition'.¹⁰⁶ If an offence is committed against a victim who is considered to be particularly vulnerable, Member States are obliged to make this offence punishable by terms of imprisonment with a maximum penalty that is not less than eight years.¹⁰⁷ According to the Framework Decision a victim shall be *inter alia* considered to be particularly vulnerable when the victim is under the age of sexual majority under national law.¹⁰⁸ Thus, it is left to the discretion of the Member States to decide whether a longer sentence will be applied when a child victim is involved. In

¹⁰³ Council Conclusions of 8 May 2003, *OJ*, C 137 of 12.06.2003 p.1, online at: http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings (last accessed 04.09.2008).

¹⁰⁴ See *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 22.12.2004, online available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings at pp. 16 and 19.

¹⁰⁵ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking*, *Terre des Hommes*, Geneva, September 2004, p. 25.

¹⁰⁶ Art. 3 par. 1.

¹⁰⁷ Art. 3.

¹⁰⁸ Art. 3 par. 2.

addition to common definitions and common standards of sanctions, the Framework Decision also sets common standards of liability and jurisdiction.

Other types of exploitation, for instance for purposes like organ extraction or exploitative forms of adoption, are not covered by the Framework Decision. Hence under the Framework Decision Member States are not obliged to make such offences punishable.

The *Council Framework Decision on combating the sexual exploitation of children and child pornography*¹⁰⁹ of 2003 also aims at the harmonisation of criminal law of the Member States. In particular Member States are obliged to adopt criminal law provisions penalising sexual exploitation of children and child pornography, as these offences are considered to be serious violations both of human rights and 'of the fundamental right of a child to a harmonious upbringing and development'. According to this Framework Decision the sexual exploitation of children includes: the coercion or recruitment of a child into prostitution; profiting from the exploitation of a child for such purposes; and engaging in sexual activities with a child where it is forced, where some form of remuneration is given in exchange for engaging in the sexual activities or where some form of abuse is made of a position of trust or of authority or influence over the child. All these offences must be punishable by penalties of at least one to three years of imprisonment.¹¹⁰ In aggravating circumstances – *inter alia* where the exploited victim is a child below the age of sexual consent under national law – these offences must be made punishable with criminal penalties of a maximum of at least between five and ten years of imprisonment.¹¹¹

Furthermore under this Framework Decision Member States are obliged to make punishable the production, distribution, dissemination or transmission, the supplying or making available and the acquisition or possession of child pornography.¹¹² Also the instigation of, or aiding or abetting in the commission of one of the above-mentioned offences must be made punishable.¹¹³

¹⁰⁹ Council Framework Decision on combating the sexual exploitation of children and child pornography, 22 December 2003, 2004/68/ JHA, *OJ L* 13, 20.1.2004, p. 44-48.

¹¹⁰ Art. 5 par. 1.

¹¹¹ Art. 5 par. 2.

¹¹² Art. 3.

¹¹³ It has been argued that this Framework Decision relates to only one of the activities for which children are trafficked, and not to the act of child trafficking itself. Van Reisen and Stefanovic state: 'In reality the sexual exploitation of a child may or may not be related to trafficking. The act of exploitation itself may be separate from the act of trafficking, and is quite often conducted by different individuals. Legal provisions in member states pertaining to the sexual exploitation of children, as required by this framework decision, thus contribute to the fight against child trafficking only to a very limited extent.' M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 26.

3.5. Coordination and Cooperation between EU Member States

A worldwide phenomenon, trafficking in human beings can be national or transnational. Likewise, the response to it has to be both national and transnational. Coordination and cooperation between States is indispensable.

In the 1999 *Tampere Conclusions* the European Council asked for close co-operation with countries of origin and transit in developing information campaigns on legal immigration 'and for the prevention of all forms of trafficking in human beings' while also calling for assistance to the authorities of these countries 'to strengthen their ability to combat effectively trafficking in human beings'.¹¹⁴ The Council had furthermore called for the creation of joint investigation teams to combat trafficking in drugs and human beings as well as terrorism.¹¹⁵ As a follow-up to this conclusion in June 2002 the *Council Framework Decision on joint investigation teams* was adopted.¹¹⁶ Under this Framework Decision 'authorities of two or more member states may set up a joint investigation team to carry out criminal investigations in one or more of these states'.¹¹⁷

In the *Parliamentary Resolution for further actions in the fight against trafficking in women*¹¹⁸, the Parliament recognised the need for a multidisciplinary approach involving all actors, and advocated international co-operation between origin, transit and destination countries, which was at that time lacking in EU policy.

As regards child pornography on the Internet the *Council Decision to combat child pornography on the internet* of 29 May 2000¹¹⁹ provides for various measures such as a wide and speedy cooperation between Member States concerning the facilitation of investigation and prosecution of relevant offences; cooperation between Member States

¹¹⁴ M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 27-28.

¹¹⁵ Presidency Conclusion no. 45, online at http://www.europarl.europa.eu/summits/tam_en.htm.

¹¹⁶ Council Framework Decision on joint investigation teams of 13 June 2002, 2002/465/JHA, *OJ L* 162, 20.6.2002, p. 1-3.

¹¹⁷ 'These teams are to be set up for a specific purpose and limited period, which will be decided by the member states concerned. Joint investigation teams are not compulsory, or permanent. They can be used by member states at their discretion. Since these teams can be set up for a variety of purposes including drug trafficking and terrorism, it is implied that the likelihood of teams being established to fight trafficking in human beings will heavily depend on how this issue scores against the other two in the priorities of the member states. In the past it has tended to be the lowest of the three.'

M. van Reisen and A. Stefanovic, *Lost Kids, Lost futures, The European Union's response to Child Trafficking, Terre des Hommes*, Geneva, September 2004, p. 27.

¹¹⁸ European Parliament Resolution on the communication from the Commission to the Council and the European Parliament 'For further actions in the fight against trafficking in women' (COM(1998) 726- C5-0123/1999 – 1999/2125(COS)), A5-0127/2000, *OJ C* 59, 23.02.1999, p. 307-313.

¹¹⁹ Council Decision to combat child pornography on the internet of 29 May 2000, 2000/375/JHA, *OJ L* 138, 9.6.2000, p. 1-4.

and Europol; a constructive dialogue of Member States with (the audiovisual and information services) industry and the adjustment of criminal procedural law to technological developments.¹²⁰

The Lisbon Treaty emphasises the importance of a co-ordinated, cross-national response between the various investigating and prosecuting authorities that fight against trafficking in human beings and exploitation of children. Sax and Golden observe that 'Article 69(f) further endorses cross-national co-operation between investigating and police enforcement networks in relation to training and investigation techniques, as well as in relation to the collection, storage, processing, analysis and exchange of criminally-sensitive information. A more joined-up approach of this nature would facilitate the detection, investigation and ongoing monitoring of those suspected of trafficking in children. Moreover, it would enable more lucid access to the criminal records of those who have been convicted of offences against children across the Member States.'¹²¹

In the context of awareness-raising campaigns, reference can be made to the first EU Anti-Trafficking Day 'Trafficking in Human Beings: Time for Action' of 18 October 2007. On this day some 150 delegates from EU Member States, non-governmental organisations, inter-governmental bodies and individual experts met for discussion. Part of the discussion focused on the outcome of the work carried out by the European Commission's Expert Group on Trafficking in Human Beings that has developed a list of indicators as part of a policy evaluation method in order to enhance national policies in the area of concerns.¹²²

Since 1996 the European Union has introduced a series of programmes to combat trafficking in human beings and the sexual exploitation of children within the EU. These concern STOP, AGIS, DAPHNE PHARE, TACIS, CARDS, AENEAS.¹²³ These

¹²⁰ See H. Sax and I. Golden, *Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection)*, 2008, p.8.

¹²¹ H. Sax and I. Golden, *Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection)*, 2008, p. 5-6.

¹²² See http://ec.europa.eu/justice_home/news/information_dossiers/anti_trafficking_day_07/index_en.htm (last accessed 21.08.2008).

¹²³ For more information about (all last accessed 28.08.2008):

AGIS (expired) see: http://europa.eu.int/comm/justice_home/funding/agis/funding_agis_en.htm.

STOP (expired) see: http://europa.eu.int/comm/justice_home/funding/stop/funding_stop_en.htm.

DAPHNE II see: http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm.

PHARE see: http://europa.eu.int/comm/enlargement/financial_assistance.htm.

TACIS see: http://europa.eu.int/comm/europeaid/projects/tacis/index_en.htm.

CARDS see: http://europa.eu.int/comm/europeaid/projects/cards/index_en.htm.

AENEAS see: http://ec.europa.eu/justice_home/fsj/immigration/relation/printer/fsj_immigration_relations_e

programmes are managed by the European Commission and provide funding opportunities for projects that have been and are aiming at improving the prevention of and the fight against trafficking in human beings as well as the identification, referral and protection of suspected victims. Thereby the public authorities and non-governmental organisations (NGOs) are involved.¹²⁴

[n.htm](#) and
http://europa.eu.int/comm/europeaid/projects/eidhr/themes-migration_en.htm.

¹²⁴ See <http://europa.eu/scadplus/leg/en/lvb/l33089b.htm> (last accessed 28.08.2008).

4. Comparative Overview of EU Member States

The comparative overview of the law and practice concerning child trafficking in the EU Member States in the present chapter is based on the 27 reports that were made by the members of the FRALEX Network. References to sources of domestic law and practice are also based on the national reports.

4.1. Preliminary remarks

4.1.1. The prevalence of child trafficking

An obvious starting point for any analysis of the fight against child trafficking would be to get an insight in the actual scale on which child trafficking occurs in the Member States. Even though the FRALEX members were not explicitly asked to provide such data, several national reports do contain relevant information. Because it may place the information – and the statistics in particular – in this chapter in a context, the present authors consider it useful to pay some attention to the actual prevalence of child trafficking. It must however be born in mind that because these statistics were not officially required for this study, this section by no means claims to give an exhaustive overview of the scope of the phenomenon of child trafficking in the EU Member States. But even if attempts to gather such statistics had been made, it would not have been certain that such data would be available and reliable.

It must be noted that the data available – if there are any – are rather difficult to compare as registration methods differ greatly. It emerges that even the data on the same phenomenon in the same region originating from different sources, such as governments and NGOs, may give very different results. For example, according to the Bulgarian Ministry of Interior statistics, 31 girls were victims of forced prostitution in 2005, whereas 24 girls were in 2006,¹²⁵ while during the same two years, 521 (2005) and 358 children (2006) passed through so-called child pedagogical rooms¹²⁶ for reasons 'in connection with prostitution'.¹²⁷

¹²⁵ Bulgaria/*Government reply to questions of the UN Committee on the Rights of the Child for the review of the second report for implementation of the UN Convention of the Rights of the Child*, p. 25, available at: <http://www2.ohchr.org/english/bodies/crc/crcs48.htm> (accessed 04.08.2008).

¹²⁶ Bulgaria/*Правилник за детските педагогически стаи* [Regulations for Child Pedagogical Rooms] (07.08.1998). These are based in each municipality to search for and register children who commit crimes and antisocial acts, to prevent crimes by and against children, and to protect child victims of crimes. They are staffed by members of the police force with

Several national reports demonstrate that in some countries the position of the authorities is that child trafficking is a rare phenomenon. Sometimes child trafficking is even denied by the authorities. The report on Latvia reads for instance: 'The official position is that child trafficking has been eliminated in Latvia.'

According to the Danish Action Plan on trafficking in human beings, it is estimated that in recent years very few children have been trafficked to Denmark. The authorities registered seven children believed to have been trafficked during 2005-2006.¹²⁸ In Finland only a handful of victims of child trafficking have been identified since 2005,¹²⁹ when Finland's first National Plan of Action against trafficking in human beings was adopted by the Government.¹³⁰ Various Luxembourg sources report that child trafficking is a rare phenomenon in Luxembourg, and has been classified as a 'marginal' or an 'isolated' incident.¹³¹ According to *inter alia* the Luxembourg State Public Prosecutor's Office there were no cases of child trafficking between 2000-2007.¹³² In Slovenia the number of discovered and hence publicly known cases of trafficking in children remains relatively very low. Also the Slovakian Ministry of the Interior has informed the authors of the Slovakian report that at present there is no victim of trafficking registered under the age of 18 years.¹³³ In Slovakia, there is a lack of generally accessible relevant

pedagogical qualifications, and are subordinate to the Ministry of Interior. Their activities are supervised by the prosecution offices and the local commissions for combating antisocial behaviour of children (the latter are subordinate to the Central Commission which is established at the Council of Ministers).

¹²⁷ Bulgaria/Government reply to questions of the UN Committee on the Rights of the Child for the review of the second report for implementation of the UN Convention of the Rights of the Child (2008), p. 29, para. 68-70, available at:

<http://www2.ohchr.org/english/bodies/crc/crcs48.htm> (accessed 04.08.2008)

¹²⁸ Seventh Periodic Report by the Government of Denmark on Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (May 2008), Ministry of Foreign Affairs and Department of Gender Equality (In English).

¹²⁹ The statistics in Annex 2 of the Finnish national report show that in the years 2005-2007 no more than 7 child victims of trafficking were registered in the victim assistance system.

¹³⁰ National Plan of Action against Trafficking in Human Beings: Finland, Helsinki 2005, Ulkoasiainministeriön julkaisusarja 18/2005. For further information, see webpage of the Ministry for Foreign Affairs

<http://www.formin.fi/public/default.aspx?nodeid=38595&contentlan=1&culture=fi-FI>.

¹³¹ Interview of 17 June 2008, with Luxembourg's Children's Rights Ombudscommittee President; telephone conversation of 20 June 2008 with an agent from the Youth Protection Service of the Grand-Ducal Police's Criminal Investigation Department; and, reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division. See also Luxembourg/Ombuds-Comité fir d'Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 17, available at <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008).

¹³² Letter of 25 June 2008, from State Prosecutor's Office, and e-mail of 6 July 2008 from Caritas representative.

¹³³ Response of the Ministry of Interior to the information request, 02.07.2008. Annex 2 of the Slovakian national report however contains data gathered by the specialised department of the Presidium of the Police office concerning solved crimes of trafficking in human beings. National plan of action against trafficking in human beings for years 2008-2010, [http://www.rokovania.sk/app/materiál.nsf/0/DFEE85DAC7D71C70C12574390036224B/\\$FILE/Zdroj.html](http://www.rokovania.sk/app/materiál.nsf/0/DFEE85DAC7D71C70C12574390036224B/$FILE/Zdroj.html) (25.06.2008), which shows that there were indeed cases of child trafficking officially registered in the period 2000-2007.

information concerning trafficking. Statistics of the authorities concerned are discrepant and unreliable, because they are disunited. This is most probably due to lack of united monitoring and data collection system, as well as due to confusing definition of the crime which does not enable complex monitoring of children trafficking.

The authors of the Lithuanian report state that 'although Lithuania is among countries that are often mentioned in trafficking in human beings context, trafficking in children is not as widespread in Lithuania' as is often suggested. Since 2005, only four child victims were officially registered.¹³⁴

Other authors of national reports estimate that, although the official statistics may not show high figures, the problem of child trafficking may in reality be much more widespread. The Irish report for example asserts that it is thought that at present approximately only 5 per cent of victims of trafficking are being identified at points of entry in Ireland. Data from the Polish Ministry of the Interior show that in 2002-2006, sixty victims under the age of 15 and ten aged 16-17 were identified.¹³⁵ The authors of the Polish report remark in this respect: 'Everybody agrees that this is not the real face of the problem. However, what that face is, nobody knows'.¹³⁶

¹³⁴ Data of the IT and Communications department under Ministry of Interior (<http://www.nplc.lt/stat/atas/ird/1ga/1ga.htm>). The IOM Vilnius bureau's depersonalised database of victims of trafficking that are returning to Lithuania counts for 70 underage girls in 2004-2007. This number includes as well persons that do not wish to cooperate with pre-trial investigation services, persons whose cases were investigated abroad and persons where trafficking is only suspected.

¹³⁵ *Wydział Statystyki Ministerstwa Sprawiedliwości* [Ministry of Justice Department of Statistics] 'Prawomocnie skazane osoby dorosłe z oskarżenia publicznego za przestępstwa handlu ludźmi za lata 2000-2006' and Information from Ministry of Interior and Administration website: http://www.mswia.gov.pl/portal/pl/391/2001/Dane_statystyczne.html, (22 July 2008).

¹³⁶ The survey by the Nobody's Children Foundation of the representatives of the police and Border Guard concerning the phenomenon of child trafficking in Poland and the situation of unaccompanied, underage foreigners staying in Poland shows that knowledge of this phenomenon is relatively slight. The answers to the question on how many children become victims of child trafficking in Poland annually varied within the range of 0 to 20,000 cases. Over 55 per cent of the respondents indicated figures ranging from 0 to 100. At the same time, the vast majority (87.6 per cent) of people surveyed (239 police officers and 51 officers of the Border Guard) declared that they had never found themselves during their professional career in a situation in which a suspicion arose that a child might have been a victim of trafficking. Over six (6.6) per cent of the respondents admitted that they had been in such a situation once, while 5.5 per cent suspected the same more than once; this happened more than twice as often to Border Guard officers than to police officers. 86.9 per cent of those surveyed confirmed that they sometimes encounter children of a foreign origin who appear neglected. The study also revealed that 75.2 per cent of the respondents at least occasionally have contact with underage foreigners unattended by their parents. Almost 70 (69.6) per cent of those surveyed have, at least from time to time, contact with foreign children without any identity documents. The same percentage of respondents disclosed that, in conducting their professional duties, they encountered foreign children whom they suspected to be under the strong influence of an adult. More than 60 (66.2) per cent of those surveyed did not suspect that the person identifying themselves as the guardian of the foreign child might have lied about it. Over fourteen (14.5) per cent of those surveyed remembered only one such situation while 16.5 per cent had doubts about it several times.

Several reports provide statistics that may give some insight in the scope of the problem. For instance, in Belgium in the year 2006 a total of 14 minors applied for the status of victim of trafficking.¹³⁷ According to Czech police sources, the number of investigated cases of child trafficking was for the years 2001-2005: five, two, one, one and four respectively. Taking into account other offences as well, the total numbers of cases of commercial sexual exploitation of children in the respective years were seven, ten, twenty-one, fifty-five and sixty-seven.¹³⁸ The Dutch report provides statistics on the number of victims reported to the Dutch Coordination Centre on Trafficking in Human Beings (*Comensha*) and on the number of cases of trafficking in human beings that also concern minors that are registered by the Public Prosecution Office. These numbers show obvious differences the causes of which are uncertain. For example, for the year 2006 *Comensha* reported 103 child victims of trafficking¹³⁹, whereas the public prosecution office only reported a total of 24 cases of trafficking that also concern minor victims.¹⁴⁰

Apart from statistics on numbers of children being trafficked throughout the EU Member States, various national reports also provide information on countries of origin, transit countries and countries of destination. The Finnish authors observe that Finland is mostly considered to be a transit country for child trafficking, and to a lesser extent a destination country.¹⁴¹ Also Polish publications on human trafficking emphasise that Poland is a transit country in the network of illegal transportation of victims from Eastern to Western Europe.¹⁴² Thirdly, Slovenia is considered to be primarily a transit and, to a lesser extent, a source and destination country for persons trafficked for the purposes of commercial sexual exploitation. And also Sweden is not solely a country of destination but functions as a transit country. The authors of the Swedish report observe that there may be an overlap between these two since many trafficking victims are on the move the whole time and exploited during transit. The Lithuanian report reads on this point: 'Although in general Lithuania is origin, transit and destination country for trafficking in human beings, the prevalent part of victims are those that were trafficked from Lithuania to other countries and are returning home.'

Strikingly, several EU Member States are often referred to as countries of origin in the various national reports. The authors of the Romanian report acknowledge that

¹³⁷ ALIENS OFFICE, *Report of Activities 2006*, p. 74. The numbers relate to applicants who apply for a residence permit as a victim of human trafficking.

¹³⁸ *National plan on combating commercial sexual exploitation of children*, p. 16. See Resolution of the government of the Czech Republic No. 949 of 16.08.2006, on the *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)]; available at <http://www.mvcr.cz> security and prevention, trafficking in human beings, documents (Czech only).

¹³⁹ Table copied from the Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 10, currently available in Dutch only at www.bnrm.nl.

¹⁴⁰ Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 30, currently available in Dutch only at www.bnrm.nl.

¹⁴¹ Ministry of the Interior, written answer on questions, received on 19 June 2008.

¹⁴² A. Morawska (2005) 'Proceder handlu dziećmi-perspektywa doświadczeń europejskich' in: *Kwartalnik Dziecko Krzywdzone. Teoria. Badania. Praktyka Problem handlu dziećmi i dzieci cudzoziemskich bez opieki*. Vol. 12/2005.

'Romania is largely a country of origin for trafficked persons and only to a small extent a transit country for trafficking networks. For instance, during the first six months of 2008, the National Authority for the Protection of Children's Rights (NAPCR) of Romania received 250 requests regarding unaccompanied Romanian children abroad, 138 of whom have been repatriated'.¹⁴³ In cases that resulted in convictions in Sweden in 2006, the perpetrators mainly recruited women and girls from *inter alia* Estonia, Slovakia, Romania and Bulgaria in order to exploit them for sexual purposes in Sweden. In addition there was also recruitment from Poland, Latvia and the Czech Republic.¹⁴⁴ The Slovenian report observes that for the purposes of sexual exploitation people may be trafficked to Slovenia from *inter alia* Slovakia, Romania, Bulgaria and Slovenia and Bosnia.¹⁴⁵ Data from a specific project in the UK¹⁴⁶ suggest that 17-25 years old were trafficked from *inter alia* Lithuania.

Lastly, numerous national reports made clear that for several reasons it has turned out to be difficult to collect data on child trafficking. The authors of the Swedish report state that it is 'difficult to estimate, how many children are being trafficked to Sweden due to the open borders within EU.' The authors of the Swedish report are of the opinion that there is a 'need for a complete survey in order to get a complete picture of the situation in Sweden regarding issues pertaining to children being victims of trafficking.' According to the Bulgarian Supreme Prosecution Office,¹⁴⁷ trafficking in children for the purpose of sexual exploitation, theft and begging abroad is difficult to investigate 'as the children leave Bulgaria legally and are accompanied by an adult who is usually their parent, and in all cases with the consent of both parents'.¹⁴⁸ In conclusion, the authors of the Danish report observe that 'it has proven difficult to identify conclusively whether women and children have indeed been trafficked for prostitution, since they often do not wish to contribute to uncovering their cases and do not want the Danish authorities and organisations to help and support them'.¹⁴⁹

4.1.2. The principle of best interests of the child

In four Member States, the obligation to take the principle of the best interests of the child as a primary consideration in all actions and decisions affecting children, arises

¹⁴³ See NAPCR site <http://www.copii.ro/comunicate.aspx> (08.07.2008).

¹⁴⁴ Skr. 2007/08:167, p 5

¹⁴⁵ http://www.vlada.si/activities/projects/fight_trafficking_in_persons/ and US State Department <http://www.state.gov/g/tip/rls/tiprpt/2007/82807.htm>.

¹⁴⁶ The UK Poppy Project, set up in 2003, provides accommodation and support to women who have been trafficked into prostitution. This service is only available to adult victims aged over 18 years of age.

¹⁴⁷ Bulgaria/Главна прокуратура [Supreme Prosecution Office] (2005), *Информация относно противозаконния трафик на български деца в чужбина* [Information on Trafficking in Bulgarian Children Abroad], p.10, <http://www.prb.bg/php/document.php>, accessed 4.08.2008.

¹⁴⁸ Bulgaria/ Главна прокуратура [Supreme Prosecution Office] (2005), *Информация относно противозаконния трафик на български деца в чужбина* [Information on Trafficking in Bulgarian Children Abroad], p. 11, <http://www.prb.bg/php/document.php>, accessed 4.08.2008.

¹⁴⁹ Denmark/Regeringen (2007) *Handlingsplan til bekæmpelse af handel med mennesker 2007-2010*, p. 5.

directly from Article 3 of the Convention on the Rights of the Child (CRC) (Bulgaria, Czech Republic, Lithuania and the Netherlands). In others, the principle is taken up in the national constitution and specific acts (Poland and Slovenia). In Austria, the principle is part of some constitutions at provincial level.

In another group of Member States, the principle is established in specific acts, such as the Aliens Act (Belgium, Denmark, Spain, Slovenia and Sweden), an Act on the Protection of the Rights of the Child (Latvia, Spain and Romania), a Child Welfare Act (Finland), a Child Protection Act (Estonia), a Law on Children (Cyprus) or a Law on Welfare and Legal Protection of Children (Slovakia).

The principle may also be established by constitutional/Supreme Court case law (Germany, Spain, France and Italy). The Spanish report makes clear that 'as result of case law of the Constitutional Court the principle has thus truly become a general principle of law, guiding its interpretation and supplementing any possible gap.' Also in Ireland the principle is developed in case law. In Germany in the context of proceedings under the Residence and the Law on the Asylum Procedure conflicts have arisen as result of the German interpretative declaration on the UN CRC.

According to the national report in the UK the principle is described as 'the welfare principle' and well established. In Luxembourg the principle is neither taken up in the national constitution, nor are CRC provisions directly applied by national courts.

The Hungarian and Maltese report mention that the determination of what is in the best interests of the child is left to the discretion of the person exercising authority over the child.

4.1.2.1. Age assessment

Those Member States that do pursue a specific policy on age assessment for unaccompanied minors, use different methods for this purpose. Medical tests are carried out in Belgium, Czech Republic, Denmark, Germany, Estonia, Spain, France, Luxembourg, the Netherlands, Poland, Romania and Slovakia. In a minority of Member States (Belgium, Denmark, Germany, Malta, the Netherlands) an X-ray of the bones of the child (for instance the wrist bone, collar bone or the teeth) is made. This method is however criticised in various Member States.¹⁵⁰ In Greece and Ireland, the age is determined on the basis of interviews with the child. In Finland, Italy and the UK several indicators, such as the victim's physical appearance and mental maturity, are taken into account.

¹⁵⁰In Germany the x-ray procedure is in the process of being abandoned and other procedures apply in cases of doubt. In Ireland the pilot project on use of x-rays of the collar bone was discontinued, as the method was not appropriate for use with multi-ethnic groups. Information obtained from Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 34-6.

In Cyprus, Latvia, Slovenia no formalised policy on age assessment is pursued. In Bulgaria information on the method used is not made public. The reports on Hungary, Lithuania, Portugal and Sweden do not provide (clear) information on this point.

4.1.2.2. Benefit of the doubt

A benefit of the doubt is laid down in law or policy documents in Belgium, Austria, Germany, Estonia, Greece, Spain, France, Italy, Hungary, the Netherlands, Slovakia and Finland. It is furthermore applied in Lithuania and Romania, under the condition that the person in question does not refuse the age assessment test. In the UK only when physical appearance *very strongly* suggest that the person is aged 18 or over, the benefit of the doubt is not applied. Furthermore, in Austria the Aliens Police Law itself does not contain a *benefit-of-the-doubt* rule, but the *Verwaltungsgerichtshof* [Administrative Court] ruled that in case of doubt age below 18 has to be assumed.¹⁵¹ In Belgium the benefit of the doubt is provided for in legislation, but the practical application thereof is strongly criticised.

In the Czech Republic, Denmark, Ireland, Latvia and Sweden no policy giving the child the benefit of the doubt is pursued. Such a policy is not applicable under Cypriot law, because in this Member State no policy on age assessment is pursued.

The reports of Luxembourg, Poland, Portugal and Slovenia do not discuss the issue of the benefit of the doubt.

¹⁵¹ Austria/Verwaltungsgerichtshof/2005/01/0463 (16.04.2007); See also 2007/21/0370 (24.10.2007).

4.2. The regulation of child trafficking in criminal law

This sub-section examines the role of criminal law in regulating child trafficking across the Member States in terms of the sanctioning of perpetrators and the treatment of victims. It begins by setting national law in the context of Member States' international commitments (discussed in greater depth above), and then sets out substantive criminal law relating to offenders and victims, as well as legal procedures and access to justice for victims.

4.2.1. Ratification of international legal instruments

All EU Member States have ratified the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹⁵²

All EU Member States are furthermore party to the CRC. The supplementary Optional Protocol on the sale of children, child prostitution and child pornography (2000)¹⁵³ has been ratified by 20 and signed, but not ratified by the remaining 7 EU Member States.¹⁵⁴

The United Nations Convention against Transnational Organised Crime (2000)¹⁵⁵ entered into force on 29 September 2003. It has been signed by the Czech Republic, Greece and Ireland and ratified by all other 24 EU Member States.¹⁵⁶ One of the protocols supplementing the Convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹⁵⁷ (2000) – also known as the Palermo Protocol after the place where it was signed – officially came into force in December 2003 following the fortieth ratification. Like the Convention the Protocol has been signed by all 27 Member States of the EU and has been ratified by 23 Member

¹⁵² See <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182> (last accessed 10.03.2009).

¹⁵³ The *Optional Protocol on the sale of children, child prostitution and child pornography* (adopted and opened for signature, ratification and accession by UN General Assembly resolution A/RES/54/263, New York, 25 May 2000) entered into force on 18 January 2002.

¹⁵⁴ AT, BE, BG, CY, DK, EE, EL, ES, FR, IT, LT, LV, NL, PL, PT, SE, SI, SK, RO and U.K. ratified the Protocol; CZ, DE, FI, HU, IE, LU and MT signed it. Status as of 10/03/2009, online at <http://treaties.un.org> (last accessed 10/03/2009).

¹⁵⁵ The Convention was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.

¹⁵⁶ Status as of 26.09.2008. Online at <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html>.

¹⁵⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations) – also known as the Trafficking Protocol or the *Palermo Protocol* after the place where it was signed – supplements the *United Nations Convention against Transnational Organised Crime*.

States.¹⁵⁸ The Convention and the Protocol have also been signed and approved by the EC.¹⁵⁹

The CoE Convention on Action against Trafficking in Human Beings (Warsaw 2005) has been ratified by 12 EU Member States, signed by 13 others and neither signed nor ratified by two EU Member States.¹⁶⁰ It entered into force on 1 February 2008.

In October 2007, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote 2007)¹⁶¹ has been opened for signature. Only one State has ratified the instrument thus far and as a result the Convention has not yet entered into force. At present 19 out of 27 EU Member States have signed the Convention.¹⁶²

4.2.2. Criminal law and child trafficking: criminalisation

4.2.2.1. National standards

Not all national reports draw specific conclusions with regard to the question whether national legal provisions criminalising child trafficking are in line with international standards. For that reason, this sub-section provides some general observations based on the national reports, supplemented with some deeper analyses of the authors of national reports.

The criminal laws of the EU Member States differ when it comes to the penalisation of child trafficking. This offence is either covered by a specific child trafficking provision

¹⁵⁸ The Protocol has been signed by CZ, EL IE and LU and ratified by all 23 other EU Member States Status as of 10/03/2009, online at <http://treaties.un.org> (last accessed 10/03/2009).

¹⁵⁹ Council Decision 2001/87/EC of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea (*OJ L 30*, 1.2.2001, p. 44-44) authorises the Council, on behalf of the European Community, to sign the United Nations Convention against Transnational Organised Crime and its Protocols on combating trafficking in persons, especially women and children. Accordingly the Community signed this Convention and its protocols on 12 December 2000. By virtue of Council Decision 2006/619/EC of 24 July 2006 (*OJ L 262*, 22.9.2006, p. 51-58), the *Palermo Protocol* has been approved on behalf of the European Community.

¹⁶⁰ The *Convention on Action Against Trafficking in Human Beings* (Warsaw 2005) CETS No.197 has been ratified by: AT, BG, CY, DK, FR, LV, MT, PT, PL, RO, SV and UK. It has been signed by: BE, FI, DE, EL, ES, HU, IE, IT, LT, LU, NL, SI and SE. CZ and EE have neither signed nor ratified the Convention. Status as of: 30.10.2008, online at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=03/10/2009&CL=ENG>.

¹⁶¹ CETS no. 201

¹⁶² Online overview at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=8&DF=03/10/2009&CL=ENG> (last accessed 10.03.2009).

(e.g. in Ireland), or by a specific trafficking in human beings provision (e.g. in Finland) or by a combination of various provisions that together cover the offence of trafficking in human beings (e.g. Estonia). In most Member States the offence of trafficking in human beings has been included in the national criminal code only recently, e.g. in 2004 (Czech Republic).

The exact conduct that is made punishable by these trafficking in human beings provisions or these combinations of provisions in criminal law, differs between Member States. In other words, there is no uniform definition of trafficking in human beings as criminal offence applied by all Member States.

In line with the definition of trafficking in human beings as provided for by the *Palermo Protocol* (2000)¹⁶³, Article 1 of the 2002 *Council Framework Decision on combating trafficking in human beings* defines trafficking in human beings as ‘the recruitment, transportation, harbouring, and subsequent reception of a person, including exchange or transfer of control over that person’, where use is made of means such as coercion, force or threat, abduction, deceit or fraud, and/or abuse of authority or of a position of vulnerability, or payments 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, 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’. The consent of a victim shall be deemed irrelevant if any of the abovementioned means are used.¹⁶⁴ The Framework Decision states explicitly that if a

¹⁶³ According to Art. 2 par. 3 of the *Palermo Protocol* (2000)¹⁶³ ‘trafficking in persons’ means: ‘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.’ Hence, according to the Protocol ‘trafficking in persons’ involves three cumulative elements: action, means and purpose. In the case of trafficking of children, defined in this protocol as all persons under 18, the crime shall be considered trafficking even if none of the above mentioned means is used. Thus, trafficking in children involves only two elements: action and purpose. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations) – also known as the Trafficking Protocol or the *Palermo Protocol* after the place where it was signed – supplements the *United Nations Convention against Transnational Organised Crime*. The Protocol has been signed by CZ, EL IE and Luxembourg and ratified by all 23 other EU Member States Status as of 10/03/2009, online at <http://treaties.un.org> (last accessed 10/03/2009).

¹⁶⁴ Several national reports (e.g. BE, BG, CY, DE, RO and SE) explicitly underline that under their national law the consent of the (child) victim is irrelevant. The Latvian report however notes in this respect that it ‘seems that prosecution or courts still differentiate situations with and without child consent; in former case they simply qualify a less serious offence – transporting a child with his consent to or from Lithuania for prostitution purposes (Paragraph 3 Article 307). In the Latvian authors’ view, ‘after 2005 amendments of Article 157 the provisions of Para 3 Article 307 (at least for transporting a child with his consent to or from

child victim (any person below 18 years of age) is involved, 'it shall be a punishable trafficking offence', even if none of the above-mentioned means have been used.¹⁶⁵

As a result, trafficking for the purpose of sexual exploitation (including child pornography) has been made punishable in all EU Member States. In line with the Palermo Protocol and the above-mentioned Framework Decision in various Member States other forms of exploitation were also included in the definition of trafficking in human beings in the national criminal laws (e.g. in 2004 in Austria and in 2005 in Belgium and Germany). Luxembourg's primary child trafficking legislation¹⁶⁶ stands alone in focusing solely on the trafficking and exploitation of children in the context of sexual exploitation and abuse.¹⁶⁷ However, the Luxembourg report refers to a series of bills before the Chamber of Deputies that would bring Luxembourg's child trafficking legislation into line with the current international standards. These include a bill ratifying the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005) and the Palermo Protocol to prevent, suppress and punish trafficking in persons (2000).

In Germany and Denmark, a political debate has also taken place for a long time on the question of whether those persons using the services of prostitutes should be subject to (stricter) criminal prosecution. In Germany, programmes are also discussed addressing those persons and aiming at increasing their level of sensitivity in relation to human trafficking and other offences that prostitutes might be subjected to.¹⁶⁸

Cyprus continues to be the only country in the EU issuing the 'artiste' work permit, a well-known conduit for trafficking, in spite of international criticisms.¹⁶⁹ The Cypriot report

Lithuania for prostitution purposes) in most cases cannot be applied as they are covered by stricter provisions of Article 157 (transporting a child where the offender is aware of or seeks the child to be involved in prostitution or to gain profit from prostitution of that child).

However, examples of court practice show that (at least some) courts do not share this point of view (e.g. judgement of Siauliai region court in case 1-19-210/2007).¹⁶⁵

¹⁶⁵ Several national reports (AT, DE, FI, MT, PT, RO, SE and SK) indeed make clear that according to their national law, if minors are concerned, the use of specific means (e.g. the use of force or threat) is no condition to qualify as child trafficking. However, the Italian report observes that the only aspect in Italian criminal law on trafficking in human beings which does not seem to be in line with international standards is the 'requirement for special means of commission (force, threat, deceit, etc.) to have been used, which according to international standards should not be necessary in relation to minors.' This aspect is pointed out in the Italian literature by F. Viganò (2006), 'Art. 600', in: IPSOA (ed) *Codice penale commentato*, Milano, pp. 4134 and 4135

¹⁶⁶ The Law of 31 May 1999 aimed at reinforcing measures against the trafficking of humans and sexual exploitation of children.

¹⁶⁷ Recently however, bills have been introduced in the Chamber of Deputies that would bring Luxembourg legislation in line with the aforementioned definitions of trafficking in human beings.

¹⁶⁸ See above, para 2.

¹⁶⁹ See for instance *Country Narratives: Trafficking in Persons Report 2008*, United States State Department (<http://www.state.gov/g/tip/rls/tiprpt/2008>). The report, which places Cyprus in Tier 2 Watch List for a third consecutive year, criticises the Cypriot government for not fully complying with the minimum standards for the elimination of trafficking, pointing out that although Cyprus passed a new trafficking law and opened a government trafficking shelter,

points out that the de facto split of the island in two by a peculiar demarcation line since 1974, is considered to be 'a soft border' of the EU, which creates conditions for trafficking south and north of the demarcation line. It will be interesting to see if, amongst the measures adopted for the combating of trafficking under the new laws enacted in 2007, the Cypriot government decides to revise its policy of issuing visas to foreign "artistes" working in cabarets, most of which operate as fronts for the prostitution of trafficked women of all ages.¹⁷⁰

On the basis of the national reports, it cannot be concluded that apart from Luxembourg, all Member States have included in their national laws on trafficking in human beings all other forms of exploitation that are taken up in the definition discussed above. For instance it would appear that exploitation by the removal of organs or tissue is not covered by the national laws of the Czech Republic and France. Exploitation of a person's labour or services, including at least forced or compulsory labour or services, is covered by the laws of 25 out of 27 Member States, and does not seem to be taken up in the provisions on trafficking in human beings in Estonian and Luxembourg criminal law. Exploitation by ways of slavery or servitude is only mentioned in the national definitions of trafficking in human beings as cited in the reports of the Czech Republic, Denmark, Estonia, France, Italy, Cyprus, Latvia, Hungary, the Netherlands, Austria, Romania, Slovenia, Slovakia, Finland and the United Kingdom.

In addition to the forms of exploitation that are covered by the definitions in the Palermo Protocol and the Framework Decision, a small number of national reports made clear that in their Member States (Belgium, Bulgaria, Greece, France, Ireland, Italy and Poland) also trafficking for the purpose of begging is made punishable.¹⁷¹ In Poland it has been stressed that the competent authorities have been undertaking action to counteract the problem of the exploitation of children for the purposes of begging.¹⁷² An area of concern for Greek prosecutors and police authorities is the protection of children who beg in the streets and are victims of trafficking as it has been proved extremely difficult to find evidence that they are exploited for financial profits.

these efforts are outweighed by its failure to show tangible progress in victim identification and protection. Special criticism is directed against the use of the 'artistes' visa'. The report states that, despite promises in the government's 2005 National Action Plan to abolish the "artiste" work permit, this employment category has not as yet been abandoned.

¹⁷⁰ See for instance the U.S. Department of State Country Report on Human Rights Practices -in Cyprus for 2006, released by the Bureau of Democracy, Human Rights, and Labour on 06.03.2007, available at: www.state.gov/g/drl/rls/hrrpt/2006/78807.htm (18.10.2007); *Mapping the Realities of Trafficking in Women for the Purpose of Sexual Exploitation in Cyprus*, October 2007, by the Mediterranean Institute of Gender Studies, available at: <http://www.medinstgenderstudies.org/wp/?p=322> (22.10.2007).

¹⁷¹ The Belgian report observes in this respect: 'Begging can of course be seen as a form of economic exploitation, which can already be punished under the new article 433^{quinqies} §1, first paragraph, 3° (employment in circumstances that violate human dignity). The explicit mention therefore seems to be rather a political response to concern in society about organised begging.'

¹⁷² Information acquired at a meeting organised at the Office of the Commissioner for Human Rights initiated by *Komitet Ochrony Praw Dziecka* [Committee for the Protection of the Rights of the Child] in 2008. Information on the phenomenon is also available at: <http://dzieciulicy.ngo.pl/x/18209>, last access on 22 July 2008.

Other additional forms of exploitation that may be taken up in the national definitions of trafficking in human beings are the use of people: to commit offences against a person's will (Belgium¹⁷³, Bulgaria and France); for labour and services carried out in violation of the legislation on working conditions, salary, health, and protection at the workplace (Romania); the holding of a person in compulsory submission regardless of his/her consent (Bulgaria); the recruitment of minors for armed conflicts (Greece) and carrying out certain activities in violation of human rights (Romania)¹⁷⁴. Exploitation by forcing a person to drug dealing is not explicitly mentioned in any of the national reports, but may be covered by the more general aim 'to commit offences'. The Portuguese report explains in this respect: 'There is no mention of trafficking for "illicit activities" or "forced marriages" because the concepts of "exploitation of work" and "sexual exploitation" include those practices.'

Furthermore several offences are made punishable in various national laws, even though they may not necessarily be defined as trafficking in human beings. These include: child sex tourism (e.g. in EL and IE); illegal adoptions (e.g. in Bulgaria, Denmark, Germany, Estonia, France, the Netherlands, Austria, Poland, Portugal and Sweden) and forced marriages (e.g. Belgium, Bulgaria, the Netherlands and Sweden).

In some Member States (e.g. Denmark, the Netherlands and Portugal) also the persons who have sexual intercourse with a minor victim of trafficking or the persons knowingly benefiting from illegally removed organs are liable to punishment. The Belgian report provides for a good example: the Belgian legislator has also adopted some additional legal provisions, so as to make it possible to punish those who take advantage of the situation of victims, in particular through rack-renting.¹⁷⁵

Certain national reports (Latvia, the Netherlands, Austria, Romania, Slovenia, Sweden and the United Kingdom) underline that under national law also intra-state trafficking is explicitly made punishable. By contrast, the Cypriot report notes that 'there are no legal provisions dealing with child trafficking within Cyprus itself.' Also the authors of the

¹⁷³ The Belgian report remarks in this respect: 'The actions in view of using someone to *commit offences* were normally already punishable under the rules of participation in offences, soliciting or ordering the commission of offences and sometimes even under offences related to criminal organisations and terrorist groups. The new offence does turn behaviour which would traditionally be merely a preparatory act into a serious crime in its own right, even if that was not the explicit goal.'

¹⁷⁴ Art.2.(2).(a)-(e) of the Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), as amended by Romania/BUG 79/2005 (14.07.2005).

¹⁷⁵ The Belgian report reads on this point: "Rack-renting is the situation in which a landlord lets his properties for an obviously unreasonable price, while they do not meet the housing quality standards. Often, these houses are rented to foreigners, who stay in the country illegally, and who cannot enforce their rights, as they lack access to the justice system. It had been noticed that victims of human trafficking often become victims of rack-renting afterwards. Therefore, the Belgian legislator opted to act against rack-renting in the framework of the larger combat against human trafficking and human smuggling. The new articles 433*decies* until 433*quinquiesdecies* were inserted into the Criminal Code (right below the articles concerning human trafficking). Rack-renting is now considered as an autonomous offence, irrespective of whether the offender has any part in trafficking."

Finnish report note that: 'Cross border trafficking is the only form of trafficking that is found relevant in the Finnish context; trafficking within Finland has not been detected nor recognised as a problem in the country.'¹⁷⁶

The report of Germany points out that EU enlargement has made the prosecution of human trafficking more difficult. Given that potential victims can now reside legally in the country, the relevant control procedures of the Residence Law usually applied by the authorities, often resulting also in the detection of victims of trafficking, are not carried out in cases involving EU citizens.

Other reports, such as the Spanish and the Portuguese, make clear that national legislation allows national courts to prosecute cases of trafficking that have occurred outside the state borders. Closely connected therewith, the Swedish report points out that in Sweden in extradition cases, the requirement for double criminality for Swedish nationals and residents with regard to cases of serious sexual crimes committed abroad against children below 18 years of age is eliminated.

4.2.2.2. Sentencing for the offence of child trafficking

As discussed above, the Criminal Codes of Ireland and Lithuania seem to be the only ones within the EU that provide for specific provisions on child trafficking, with their own accompanying sentences. The national reports on these countries however, do not compare the penalties for child trafficking with those that can be imposed for the offence of trafficking in adults.

In all Member States child trafficking is either covered by a general provision in law penalising trafficking in human beings, or a combination of several criminal provisions. In most of these Member States more severe penalties can be imposed for the offence of trafficking in human beings if the victim is a minor (Belgium, Bulgaria, Czech Republic, Denmark, Germany¹⁷⁷, Greece, Spain, Italy, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Austria, Slovenia and Finland). In most national laws this is achieved by taking the minority of the child victim as an aggravating circumstance.

Within this group of minors, some national laws make a distinction between children of certain ages. For instance in Latvia, a perpetrator of trafficking may face imprisonment for 3-8 years if the victim is an adult; for 5-12 years if victim is a child under the age of

¹⁷⁶ Ministry of the Interior (Veikko Pyykkönen), written answer on questions, received on 19 June 2008.

¹⁷⁷ Article 232 (3) and 176 (1) Criminal Code define a child as a person below the age of 14. The authors of the German national report observe that 'Accordingly, the aggravation of paragraph 3 of article 232 does not apply in case the exploited person is a child above the age of 14. In that regard the definition of a child in the German Criminal Code differs from that of article 1 of the UN Convention on the Rights of the Child as well as of article 4 (d) of the Council of Europe Convention on Action against trafficking in human beings of 2005.' Furthermore, as the German authors point out, there are separate provisions on the trafficking of persons below the age of 21 (article 232 (1) 2nd sentence).

18, and even 10-15 years if victim is a child under the age of 14. In Luxemburg and Malta respectively, the maximum sentence for trafficking a child under the age of 11 and 12 years old is more severe than for trafficking a child that is between 11 and 18 years old, which is overall a higher term than for trafficking an adult. In the Netherlands a distinction is made only between children under the age of 16 on the one hand, and persons between 16 and 18 years old and adults on the other hand.

The Romanian report makes clear that in Romania 'penalties no longer differ according to the age of the child victim.'¹⁷⁸ The Swedish report states that on the basis of chapter 29, section 2 of the Swedish Penal Code 'both the exploitation of some other person's vulnerable position or that person's special difficulties in protecting himself, are considered aggravating circumstances.'

Within the offence of child trafficking, a distinction in terms of sentencing is often made between the different purposes for which a child may be trafficked. For instance, under Cypriot law the exploitation of the labour or services of a person through threats or the use of violence or other forms of coercion, kidnapping, fraud, abuse of power or exploitation of the persons' vulnerable position or the making or collecting of payments or other benefits in order to secure the consent of the person exercising control over another person intending to exploit that person amounts to a felony is punishable with imprisonment up to ten years if the victim is a minor, while sexual exploitation or prostitution of children is a felony punishable with at least twenty years of imprisonment. In by far most Member States where a distinction is being made between different forms of exploitation (namely in all Member States where the offence of trafficking in human beings is covered by a combination of articles in law), the maximum sentences that can be imposed for child trafficking for the purpose of sexual exploitation is more severe than the maximum sentence that can be imposed for trafficking for other purposes.

Almost all national reports cite sentences in terms of imprisonment. Some reports also referred to an additional or subsidiary fine that may be imposed to convicted perpetrators of child trafficking. For the purpose of a good comparison, all the prison sentences are taken up in a table on the following pages. It must be noted however, that while some national reports gave both a minimum and a maximum penalty, it seems that in other Member States the sentences are expressed in minimum or maximum sentences only.

An overall conclusion that can be drawn on the basis of the national reports is that the prison sentences that may be imposed for the offence of child trafficking differ widely between Member States. The maximum penalty that may be imposed in the Netherlands for example is 8 years imprisonment¹⁷⁹, while in Ireland a perpetrator may even be sentenced to life imprisonment.¹⁸⁰

¹⁷⁸ See by comparison Art.13.(1) of the of Romania/Lege 678/2001, *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001) and Art.13.(1) of the Romania/Lege 678/2001 (21.11.2001), as amended by Romania/BUG 79/2005 (14.07.2005).

¹⁷⁹ Like in many other Member States this maximum sentence may be higher if – apart from the fact that the victim is a minor – another aggravating circumstance such as 'committed in

Fines that may be imposed, may vary between a minimum of 5,500 euros (Belgium) and a maximum of BGN 10,000 (approx. 5,000 euros)¹⁸¹ (Bulgaria), 74,000 euros (the Netherlands), 550,000 euros (Belgium) or even 1,500,000 euros (France).

Other examples of sentences that may be imposed are forfeiture of every authority and right granted to the offender over the person or property of the person to whose prejudice the offence is committed (e.g. Malta), the deprivation of certain rights – for instance the right to hold a public office or to join armed forces – the prohibition to exercise certain professions in case of conviction for trafficking of human beings (e.g. the Netherlands) and the confiscation of goods (Romania).

The reports on Estonia, Hungary and Slovakia¹⁸² do not contain any information concerning sentencing for child trafficking.

Prison sentences that may be imposed for the offence of child trafficking in the EU Member States	
Member State	Prison sentences that may be imposed if a minor victim is involved
AT	1-10 years imprisonment
BE	10-15 years imprisonment
BG	2-10 years imprisonment
CY	minimum 20 years imprisonment for child trafficking for the purpose of sexual exploitation and up to 10 years imprisonment for child trafficking for other purposes
CZ	maximum 10 or 12 years imprisonment
DE	1-10 years imprisonment

association'; 'resulting in serious bodily harm'; 'threatening the life of another person' or 'resulting in death' applies.¹⁷⁹ Under Dutch law, in these circumstances the maximum sentence may amount to 8, 12, respectively 15 years' imprisonment.

¹⁸⁰ The Irish national report does not contain any information on the sentencing practice in Ireland, as 'until recently in Ireland neither the Illegal Immigrants (Trafficking Act) 2000 nor the Child Trafficking and Pornography Act 1998 has ever resulted in a successful prosecution for the crime of trafficking, though individuals have been arrested and charged.'

¹⁸¹ Bulgaria/*Наказателен кодекс*, Art. 159a, para. 2, item 1-6. (27.09.2002).

¹⁸² The authors of the Slovakian national report have clarified that in its Annex the report on Slovakia does contain tables and statistics on prosecutions, accusations and convictions, but that the data differs due to different methodology and different monitored information. Moreover, according to the authors it is impossible to provide statistics specifically concerning sentencing for child trafficking because child trafficking is part of the crime 'trafficking in human beings' (See Report on Slovakia, para. 107 and Annex, Tables and Statistics).

DK	maximum 8 years imprisonment
EE	n.a.
EL	minimum 10 years imprisonment
ES	minimum 7.5 years imprisonment
FI	2-10 years imprisonment
FR	maximum 10 years imprisonment
HU	n.a.
IE	maximum life imprisonment
IT	8-30 years imprisonment
LT	3-12 years imprisonment
LU	2-5 years imprisonment if the victim is a child below 18 years old and 5-10 years imprisonment if the victim is a child below 11 years old
LV	5-12 years imprisonment if the victim is a child below 18 years old and 10-15 years imprisonment if the victim is a child below 14 years old.
MT	2-10 years imprisonment
NL	maximum 6 years imprisonment if the victim is a child is between 16 and 18 years old and maximum 8 years imprisonment if the victims is a child below 16 years old.
PL	3-10 years imprisonment
PT	3-10 years imprisonment
RO	5-25 years imprisonment
SE	2-10 years imprisonment
SI	3-10 years imprisonment
SK	n.a.
UK	maximum 14 years imprisonment

4.2.2.3. Statistics on final convictions

Only the reports of Bulgaria, Greece, Germany, Spain and Sweden do contain certain statistics on final convictions based on child trafficking. In Spain the following final convictions based on child trafficking cases have been documented: none in 2000 and 2001; three in 2002; seven in 2003; three in 2004; eleven in 2005; one in 2006 and three in 2007.¹⁸³ The Swedish report provides for certain statistics but does not substantiate where these numbers come from. According to the report in Sweden no final convictions were issued in the years 2000-2002 and 2005, one was issued in the years 2004, 2006 and 2007, against six final convictions in 2005.

According to statistics of the Greek Ministry of Justice for the reporting period one final decision was issued by the Criminal Appeal Court of Ioannina and two final decisions were issued by the Criminal Appeal Court of Crete. The perpetrators were convicted for trafficking of children¹⁸⁴ to incarceration ranging between 10 and 12 years and to imprisonment ranging between 12 to 20 months. No breakdown per year was made available by the Ministry of Justice. As the relevant authorities failed to create a central database for the phenomenon of trafficking in Greece, the Ministry of Justice was unable to provide information within the available timeframe on final criminal decisions on cases involving children issued by all Appeal Courts of the country.

The German report notes that regarding the statistics on the number of final convictions in child trafficking cases, it is important to bear in mind that the German Criminal Code does not provide for one single criminal offence covering all possible scenarios in accordance with the definitions of the international conventions. In general, child trafficking' has not been dealt with as a separate offence in the context of trafficking in human beings.¹⁸⁵ For the years 2002-2006 the German report nevertheless provides for

¹⁸³ The source for the data for the years 2003 and 2005 is the Ministry of the Interior Annual Book of Statistics (for 2003 and 2005), Technical Secretary General. <http://www.mir.es>. These data refer to the National Corps of the Police Office, the *Guardia Civil* and the Autonomous Basque Police Office. The source of the remaining data is the Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005, 2006 and 2007) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

¹⁸⁴ On the basis of article 351 of the Criminal Code.

¹⁸⁵ Statistics of the Statistisches Bundesamt [Federal Statistical Office] only refer to the relevant criminal offences of human trafficking without identifying the age of the victims. They display around 10 convictions per year for the offence of article 236 ('child trafficking') of the Criminal Code between 2002 and 2006. See Rechtspflege – Strafverfolgung [criminal prosecution] 2006, Fachserie 10 Reihe 3, p. 34, online available at https://www.ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,sfgsuche,rgebnis.csp&action=newsearch&op_EVASNr=startswith&search_EVASNr=243. Statistics of the *Bundeskriminalamt* (BKA) [Germany's Federal Criminal Police Office] on human trafficking, 'Bundeslagebild Menschenhandel' ['Federal Situation Survey Human Trafficking'] display a total number 614 victims of human trafficking for the purpose of sexual exploitation. They further indicate for the period between 2000 and 2007 that (1) the vast majority of victims of trafficking (95%) are female and (2) between 3,6 % (2000) and 12 % (2007) of human trafficking victims are children in accordance with the definition of article 1 of the UN Convention on the Rights of the Child. http://www.bka.de/lageberichte/mh/2007/bundeslagebild_mh_2007.pdf. (22.07.08), p. 8-9.

some statistics; in these years the number of final convictions lay at 9 or 10 convictions per year.¹⁸⁶

In Bulgaria, cases on trafficking in human beings have been reported since 2006. In 2005, the prosecution offices in Bulgaria paid particular attention to trafficking in children. A special register is kept at each prosecution office in the country for all crimes of trafficking in children that are investigated. In 2004 and 2005, the investigative authorities opened criminal proceedings on 71¹⁸⁷, and 111¹⁸⁸ cases respectively of trafficking in children. These figures derive from a broad interpretation of trafficking, including smuggling under Art. 279 and Art. 280 of the Criminal Code and persuasion to engage in prostitution under Art. 155 of the Criminal Code.¹⁸⁹ Also in the Netherlands statistics exist on the number of cases registered by the Dutch Public Prosecution Office, that also concern minors. These statistics are: 27 in 2002; 41 in 2003, 32 in 2004, 36 in 2005 and 24 in 2006.¹⁹⁰

The French report is not completely clear on the matter of final convictions and refers to a case of child trafficking in 2007 as 'one of the only convictions'.

In five Member States no final convictions were issued in the prescribed period. (Cyprus, Ireland, Lithuania, Slovenia and Finland). In Ireland and Slovenia, arrests and charges were brought, but these were not followed by a conviction. In Lithuania no cases of child trafficking were even identified.

Five other national reports do provide statistics on convictions for trafficking in human beings in general, but these numbers are not broken down into age categories of the victim (Czech Republic¹⁹¹, Denmark, Poland, Romania¹⁹² and the United Kingdom¹⁹³).

See also Lagebericht Situation Survey Human Trafficking Nordrhein-Westfalen: 10% (2007), p. 5, <http://www1.polizei-nrw.de/lka/stepone/data/downloads/18/01/00/lagebild-menschenhandel-2007.pdf> (22.07.08).

¹⁸⁶ The authors of the German report observe: 'This number only relates to the criminal offence of Art. 236 German Criminal Code, which mainly covers illegal adoptions. The number of convictions for other offences in the context of human trafficking is much higher and likely also includes child victims.'

¹⁸⁷ The victims being 60 girls and 11 boys.

¹⁸⁸ The victims being 100 girls and 11 boys.

¹⁸⁹ Bulgaria/Главна прокуратура [Supreme Prosecution Office] (2005), *Информация относно противозаконния трафик на български деца в чужбина* [Information on Trafficking in Bulgarian Children Abroad], pp. 7, 8, <http://www.prb.bg/php/document.php>, accessed 4.08.2008.

¹⁹⁰ Statistics taken from table in the Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 30, currently available in Dutch only at www.bnrm.nl.

¹⁹¹ In the Czech Republic the number of final convictions based on trafficking in human beings is in years 2000 2001 2002 2003 2004 2005 2006 2007 respectively: 16, 15, 20, 5, 12, 20, 2 and 4 (number of sentenced persons). According to police sources, the number of investigated cases of trafficking in human beings (Sec. 232a of the Penal Code) for the years 2000-2007 was 13, 27, 15, 10, 13, 16, 16 and 11 respectively. The number of cases concerning individuals under the age of 18 (child trafficking *stricto sensu*) was as follows for the years 2001-2005: 5, 2, 1, 1 and 4 respectively. Taking into account other offences as well, the total numbers of

The reports of Estonia, Italy, Latvia¹⁹⁴, Lithuania¹⁹⁵, the Netherlands¹⁹⁶ and Slovakia inform that no statistics on final convictions based on child trafficking are available. According to the Austrian national report this is due to the fact that the Austrian Ministry of Justice does not dispose of statistics containing convictions according to Sec. 104a CC, which are disaggregated by the age of victims.¹⁹⁷ The Estonian report simply notes that 'there is no easily accessible statistics regarding the number of final convictions based on child trafficking cases for the 2000-2007 period.' The Slovakian report gives two reasons for the lack of data: (1) the fact that there is no unified data collection and

cases of commercial sexual exploitation of children in the respective years were 7, 10, 21, 55 and 67.

National strategy to combat trafficking in human beings, p. 21. See *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at:

http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf

(in English) (last accessed 15.06.2008). See *Report to the Minister of the Interior on the status of trafficking in human beings for 2007*, p. 3 (only in Czech), available at:

http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/zprava2007-stav4536.pdf and

National plan on combating commercial sexual exploitation of children, p. 16. See Resolution of the government of the Czech Republic No. 949 of 16.08.2006, on the *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)]; available at <http://www.mvcr.cz> security and prevention, trafficking in human beings, documents (Czech only).

¹⁹² Data concerning the total number of convictions per year for trafficking in human beings, including trafficking in children is available. Separate statistics relevant for child trafficking are not available. See letter 18653/1154/2008 of the Superior Council of Magistracy, on file with the national Fralex expert.

¹⁹³ The revised *UK Action Plan on Tackling Human Trafficking* does reveal that there were 84 convictions for trafficking for sexual exploitation under the Sexual Offences Act 2003 between May 2004 and May 2008. However, this Act applies to adults as well as children and it is not clear how many of these 84 convictions related to child trafficking. (...) Steps have been taken to begin to collate systematic data on trafficking. The collection of data began in April 2008. The 2003 Act applies only in England, Wales and Northern Ireland. Thus, these statistics do not include convictions in Scotland. Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.16. The authors of the UK report furthermore observe that UK courts have taken a robust attitude towards the sentencing of persons convicted of child trafficking offences. Sentences for trafficking offences range from 5 years imprisonment for the trafficking of one individual for prostitution/sexual purposes, to 23 years imprisonment for trafficking several women, including girls for purposes of prostitution.

¹⁹⁴ According to information provided by the representative of the Latvian Prosecutors Office, there have been one or two such cases, but not in the last three years. Interview with a representative of the State Prosecutors Office (01.08.2008).

¹⁹⁵ The report on Lithuania clarifies that according to data of the National Courts Administration, during 2005-2007 in the first instance courts – which means that possible changes after appeal or cassation procedures are not taken into account – there were 2 convictions (both in 2007) for a child sale or purchase. The conviction statistics until 2005 was grouped into bigger categories, thus it is not possible to identify exact statistics for child trafficking. <http://www.teismai.lt/teismai/ataskaitos/statistika.asp> (Only in Lithuanian).

¹⁹⁶ The lack of data is due the method of registration by the Dutch Public Prosecution Service. Statistics exist however on the number of cases registered by the Dutch Public Prosecution Office, that also concern minors. See above.

¹⁹⁷ Information of the Ministry of Justice by e-mail (04.07.2008); requested by e-mail (23.06.2008).

information register, but that instead each authority uses its own methodology and monitors different facts¹⁹⁸ (2) the fact that there is confusion over the definition of child trafficking in the Criminal Code.¹⁹⁹

The reports of Belgium, Hungary, and Portugal²⁰⁰ do not contain any information regarding statistics on final convictions.

4.2.3. Substantive criminal law and child trafficking: victims

As the national reports show, a policy of non-punishment of child victims of trafficking may entail that a child may not be prosecuted for prostituting him- or herself, but it may also entail that the possession of false documents may not be held against a child. Thus, a distinction has to be made between border offences and (illegal) prostitution, begging and other illegal activities. Not all national reports make this distinction however.

In several Member States (Germany, Spain²⁰¹, Finland, Luxembourg, Netherlands, Poland, Portugal, Sweden and Slovenia) the offering of sexual services as such is – to a certain extent – regulated or not criminalised. In most of these countries however child prostitution, is by definition qualified as a coerced offence which is *not* legalised. This does not mean that the child him- or herself is punishable; only the person forcing the child into prostitution may be prosecuted.

4.2.3.1. Formalised policy of non-punishment:

In Cyprus, Greece, Finland, the Netherlands, Poland, Romania and the United Kingdom, a formalised policy of non-punishment of child victims of trafficking for both border offences and criminal activities such as illegal prostitution is pursued. The Slovenian report only provides information on a policy of non-punishment that is pursued as

¹⁹⁸ In the year 2006 the on-line information system OBET² was created to guarantee coordinated data collection. This system is operated by the Ministry of Interior.
[http://www.rokovania.sk/appl/material.nsf/0/F5A1E9CABC49EAD9C12572B10032F68B/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/F5A1E9CABC49EAD9C12572B10032F68B/$FILE/Zdroj.html) (23.06.2008).

¹⁹⁹ The Slovakian report reads: 'According to Slovak law "child trafficking" means illegal adoption or the commending of a child to a third person for a reward, for the purpose of using the said child for work or for other purposes. On the other hand trafficking in human beings also involves trafficking in children. However, for the purpose of data collection and statistics child victims of human trafficking are registered along with adult victims. Article 179 paragraph 2 and Article 181, Slovakia/zákon 300/2005 (20.05.2005). '

²⁰⁰ The table in Annex 1 of the Portuguese report provides for the number that in 2002 a total of 10 final convictions for child trafficking were issued, but the authors of this report do not substantiate this claim. For the years 2000-2001 and 2003-2007 no statistics are included in the report.

²⁰¹ Under Spanish law the issue of prostitution is simply not regulated.

regards prostitution. The authors of this report observe however that in the absence of *de jure* criminalisation, *de facto* prejudiced criminalisation still persists.²⁰²

Although the texts of the national reports on Hungary and Lithuania are not too elaborate on this point, it seems that also in these Member States a policy of non-punishment is pursued.²⁰³

4.2.3.2. No formalised policy of non-punishment:

In half the number of Member States (Austria, Belgium, Bulgaria, Denmark, Germany, Spain, France, Ireland, Italy, Luxembourg, Malta, Portugal and Slovakia), no formalised policy of non-punishment of child victims or trafficking is pursued.

In Austria for example, if a child older than 14 years old has conducted criminal behaviour, the usual criminal proceedings (for juvenile offenders) are initiated. According to the national report, this is due to the lack of sensitisation on side of the police, but also due to lack of coordination with the respective local youth welfare authorities. Children engaging in prostitution face administrative penalties in Austria.

The Irish Immigration, Residence and Protection Bill 2008 states that those under 18 years of age will not be held liable for the costs of their removal from the State. However, otherwise, the Bill does not exempt separated children from punishment for immigration related offences and other offences related to their having being trafficked.²⁰⁴

The Maltese law does not seem to provide any exemption for children in respect to the offence of loitering²⁰⁵ for purposes of prostitution and consequently any such child would at law still be liable to prosecution. 'However', the authors of the national report observe, 'one must also consider in this instance that the Criminal Code establishes the offence of

²⁰² International Organization for Migration and The Peace Institute (2003) *Where in the puzzle: trafficking from, to and through Slovenia* (assessment study), Ljubljana, pp. 19, 22 and 68. Available at:

http://www.iom.hu/PDFs/Trafficking_from_to_through%20Slovenia.pdf.

²⁰³ The Lithuanian report reads on this point: 'In 2006 the Seimas (the Parliament) has criminalized any sexual intercourse with a child where money or other forms of remuneration or consideration is offered, is promised or is given as payment in exchange for the child engaging in sexual activities (Paragraph 1 of the Article 151¹ of the Penal Code)'.

²⁰⁴ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 28.

²⁰⁵ Article 7(2) of the White Slave Traffic (Suppression) Ordinance which provides: (2) Any person who in any street or other public place or in any place exposed to the public loiters or solicits for the purpose of prostitution or for other immoral purposes, shall be liable, on conviction, to imprisonment for a term of not more than six months.

inducing a minor to prostitution, whereby the offence address the perpetrator and views the child as the victim by whom no offence is seen to have been committed²⁰⁶.¹

The reports on the Czech Republic and Latvia do not provide specific information on the issue of a policy of non-punishment.

²⁰⁶ Articles 197, 204, 204A and 204B of the Criminal Code available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf

4.3. Victims of trafficking in legal proceedings

4.3.1. Participation of the child in all relevant legal procedures

Various national reports underline that in the Member State concerned any child must be heard during any judicial or administrative procedure where his or her rights and interests are involved, thereby taking into account the age and maturity of the child (e.g. Bulgaria, Spain, France, Ireland, Romania, Finland and the United Kingdom). In Bulgaria, this is the case if a child over the age of ten is concerned and the hearing is not damaging to the interests of that child.²⁰⁷ In some Member States, for example in Spain, when a minor requests a hearing directly or through his/her representative, a refusal must be justified and communicated to the Public Prosecutor's Office and the parties involved.

For other Member States it is clear from the national reports that the participation of the child in relevant legal procedures – such as the asylum procedure – is provided for by various provisions in law (Belgium, Czech Republic, Germany, Estonia, Greece, Hungary, the Netherlands, Austria, Poland and Slovakia). For instance in Hungary, a child having the power of judgement²⁰⁸ – a child who is able to understand the essence of facts and decisions concerning his or her case in accordance with his or her age, mental and emotional development – can be involved in child protection procedures. The German report expresses the critique that depending on the quality and willingness of the legal representative to be involved, situations may arise where the child is left to his or her own devices in the (legal) proceedings, which may in fact go against the consideration of the best interests of the child in a given situation.

The Portuguese report refers to very general provisions concerning the right to be heard only, whereas the report on Luxemburg announces that participation of the child in relevant legal procedures is provided for in a bill that is currently pending.

According to the Cypriot report children do not participate in relevant legal procedures. The authors of the reports of Italy, Latvia and Sweden have found no evidence of participation of the child in the decision-making/obligatory hearing in all relevant legal procedures. The reports of Denmark, Malta and Slovenia did not contain any info on this point.

²⁰⁷ Bulgaria/*Закон за защита на детето* [Child Protection Act] (13.05.2000), Art. 15, para. 1.

²⁰⁸ Hungary/Government Decree No 149 of 1997/10.09.1997.

4.3.2. Child sensitive procedures during prosecutions of offenders

In March 2001 the *Council Framework Decision on standing of victims in criminal proceedings*²⁰⁹ was adopted. By virtue of this Decision Member States need to ensure that crime victims (thus including victims of trafficking in human beings) who cooperate in criminal proceedings enjoy protection. Victims who are particularly vulnerable need to be enabled to benefit from specific treatment best suited to their circumstances.²¹⁰ In accordance with various legal instruments child victims of trafficking are considered to be particularly vulnerable.²¹¹

In various Member States (e.g. in Hungary, Lithuania, Poland and Slovakia), the starting point is that the hearing of a child victim of trafficking should not be repeated, so as to avoid re-victimisation of the child. In Poland before taking a decision to admit and take a child's statement as evidence, thorough consideration must be made of whether the importance of such statements makes them irreplaceable by other evidence.

In nearly all Member States (namely: Belgium²¹², Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, Spain²¹³, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and the United Kingdom²¹⁴) (child) witnesses in court proceedings may be interviewed without the presence of the accused, for instance. Under certain circumstances, for instance if the child has not yet attained the age of fourteen, this practice is obligatory. The interviewing may take place *inter alia* via video recording (e.g. in Ireland and the Netherlands), via questioning via videoconference (e.g. in DE and ES), or by reading out a written statement (e.g. in the Czech Republic and Greece).

²⁰⁹ Council Framework Decision on the standing of victims in criminal proceedings of 15 March 2001, 2001/220/JHA, *OJ L* 82, 22.03.2001, p. 1-4.

²¹⁰ Art. 2(2), Art. 8(4) and Art. 14(1) of Council Framework Decision on the standing of victims in criminal proceedings of 15 March 2001, 2001/220/JHA, *OJ L* 82, 22.03.2001, p. 1-4.

²¹¹ See for instance the preamble under 5 of the Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (*OJ L* 203, 01.08.2002, p. 1-4) which recognises that '*children are more vulnerable and are therefore at greater risk of falling victim to trafficking*.' Furthermore, Art.9 (2) of the Council Framework Decision on combating the sexual exploitation of children and child pornography of 22 December 2003, 2004/68/JHA (*OJ L* 13, 20.1.2004, p. 44-48) reaffirms that children that are victims of sexual exploitation should be considered as particularly vulnerable victims pursuant to the Framework Decision on the standing of victims in criminal proceedings.

²¹² The Belgian Code of Criminal Procedure contains a chapter dealing specifically with the interrogation of minors who are victims or witnesses of certain crimes, including child trafficking. Articles 91*bis* to 101 CCP.

²¹³ Under Spanish law starting point is that confrontations should not be held involving underage witnesses. This may only be different if the judge considers it to be indispensable and not detrimental to the interests of these witnesses, as demonstrated by an expert report.

²¹⁴ In the UK all child witnesses, defined as those under the age of 17, are treated as vulnerable witnesses. Furthermore guidance drafted by an expert group of police officers with experience of child trafficking work will shortly be published. Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.33.

In Denmark, the person charged is not to be allowed to attend the video interview of the child, but will have an opportunity to familiarise himself with the contents thereof subsequently and to request a re-interview of the child. In Italy the accused and defence lawyers can see the child during his/her testimony, without the child seeing them.

Furthermore, in most Member States hearings in cases concerning child trafficking may be held in-camera (e.g. in Hungary). This may even be obligatory in all cases that concern the rights and interests of the child, or it may be ordered by the court in a specific case.

In Hungary, Italy, and Portugal only the presiding judge may examine a minor witness, thereby either or not assisted by an expert.²¹⁵ In various other Member States (Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Spain, Latvia, Austria, Poland, Slovenia, Slovakia and the United Kingdom) child witnesses can be or are automatically interviewed before the police or in the court by or in the presence of an expert, namely a social worker, a pedagogue or a child psychologist. These interviews may take place in a designated children's interview room. In certain cases the child victims had the right to be accompanied by a person of his or her trust (e.g. in Belgium, Germany and Poland). In Greece, a child psychologist is appointed as expert in order to prepare the witness for the examination by the magistrates and / or the staff of the investigation authority. In Italy psychological assistance for victims is available over the entire course of any criminal proceeding.

Child victims who testify in court as a witness may be entitled to a witness protection programme (e.g. in France, the Netherlands, Slovenia and Slovakia). This may entail the assignment of a different identity (e.g. in Romania), the temporary placement in a secure place of residence (e.g. in Bulgaria) or the non-disclosure of the victim's address (e.g. in France). The Austrian Task Force against Trafficking is discussing the necessity of witness protection programmes for children (under involvement of the youth welfare)²¹⁶ and examines the interaction of judiciary, police and youth welfare in that regard.²¹⁷

²¹⁵ According to the Hungarian national report the purpose thereof is to ensure that the child is interviewed only once if possible. But as the report points out, Media sources consider this solution less efficient, charging that previously children had been heard by experienced (and possibly female) police officers, while now they are interrogated in the middle of a trial room before a judge, a prosecutor and witnesses. Information taken from the website of "Magyar Narancs": <http://www.narancs.hu/index.php?gcPage=/public/hirek/hir.php&id=14880> (accessed on 23.06.2008).

²¹⁶ *TF Working Group on Child Trafficking Report 2008*, p. 8.

²¹⁷ *Task Force against Trafficking Report 2008*, pp. 13-14. NPA 3.5 'Examination of existing protection programmes for witnesses of MoI taking into account especially trafficking in human beings problem and examination of execution of particular measures for affected of trafficking in human beings'.

Under the national law of Estonia a young minor (under 14 years old) shall not be cross-examined.²¹⁸ In Greece and Portugal, minors (under 18, respectively 16 years old) are exempted from making statements under oath.

Latvian law provides for specific rules concerning the hearing of minor victims. For instance, the length of an examination of a minor shall not exceed six hours, including an interruption, during a twenty-four-hour term without the consent of such minor. A minor who has not reached 14 years of age shall not be notified regarding liability for refusal to testify and for the conscious provision of false testimony. Furthermore, if the questioning is conducted with the intermediation of a psychologist, a minor person to be questioned shall not sign minutes.²¹⁹

In Hungary since 2005 police officers engaged in victim protection have to take part in aptitude/competence tests, as this activity requires an empathetic attitude, considerable helpfulness and other character traits.

The Swedish report refers to very general provisions in law and policies on the best interests of the child only. The Maltese report does not contain any info on child sensitive procedures.

4.3.3. Access to justice for child trafficking victims: the role of legal guardians

4.3.3.1. Appointment of legal guardian during legal proceedings

In Belgium, victims of crimes can even participate in the debates preceding release of the offender from prison and they can ask for victim-related conditions to be imposed (e.g. a prohibition to contact the victim or to reside in a certain area).²²⁰ In the Netherlands, victims of trafficking in human beings need to be informed of their right to have an interview with the Public Prosecutor. Furthermore, victims of trafficking in

²¹⁸ In the UK cross-examination of witnesses by the accused in person is prohibited in certain circumstances, e.g. (in Scotland) if a witness under the age of 12 is to give evidence and the offence where the offence in question is a homicide offence, a sexual, violent, or child cruelty offence, abduction or kidnapping. UK/Criminal Procedure (Scotland) Act 2005, s.288E. This applies also to any pre-trial examination of the witness by the accused: see section 291(6),(7).

²¹⁹ Latvia/Kriminālprocesa likums [Criminal Procedure Law] (21.04.2005), available at : <http://www.likumi.lv/doc.php?id=107820>. Article 153.

²²⁰ Article 2, 6°, b) of the Act of 17.05.2006 on the External Legal Position of Prisoners, which deals with early release from prison, exit permits, etc. also allows victims who were minors and for which the guardian did not join criminal proceedings as an injured party, to manifest themselves in the proceedings in the *strafuitvoeringsrechtbank / tribunal d'application des peines* [Execution of Sentences Court].

human beings need to be informed of their right to speak in court²²¹ and the opportunity to submit a written statement.²²²

The overall impression given by the national reports is that the concept of a 'legal guardian' is not uniformly defined in all EU Member States. In the Netherlands for example, a legal guardian is a professional from a specific guardianship and family supervision organisation for unaccompanied minor asylum-seekers and refugees. In Portugal and Greece, a legal guardian is in principle a relative, and at last resort an employee of social services (Greece) or a public prosecutor (Portugal). The Czech report states that legal guardians are not necessarily lawyers, whereas in Ireland a legal guardian could be any person, while in Luxembourg NGOs also provide guardianship. In Bulgaria no legal guardian is appointed, but in principle the child's parents represent a child in administrative proceedings and if that is not possible a social worker does so, while a lawyer represents the child in court.

As the person of legal guardian and his or her tasks may differ between Member States, the question of who appoints them, is also different. For instance, guardians may be appointed by: the Court, in some cases after selection by a youth welfare authority, or other professional institution (Czech Republic, Germany, Estonia, Greece, , Italy, Finland), by a local youth welfare authority (Austria), by a Legal Guardianship Office of the Federal Ministry of Justice (Belgium), by the national Red Cross (Denmark), by a specific national guardianship and family supervision organisation for unaccompanied minor asylum-seekers and refugees (Netherlands), or by the national Office for Immigration (Romania).

In various Member States (e.g. Denmark, France, Latvia, Lithuania, the Netherlands, Slovenia and Sweden) legal representation in Court proceedings may be regulated separately from (legal) guardianship (or any similar institution).

As regards the appointment of a legal guardian a distinction has to be made between (unaccompanied) foreign child victims of trafficking and state national child victims. If the child is a state national, in most Member States (e.g. in Hungary and Lithuania) general child protection measures apply. Under Spanish law for instance, a legal guardian is appointed to all children 'in a vulnerable position', whereas in Cyprus the Social Welfare Office is under a general obligation to take care of children in need.

In a great number of Member States (Belgium, Czech Republic, Denmark²²³, Germany, Estonia, Greece, Italy, Lithuania, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania and Sweden) a legal guardian is appointed to all unaccompanied minor aliens that arrive or are found in the country's territory. This rule may be subject to some restrictions however. For instance in Estonia a guardian is only appointed if the child enjoys international protection, in Hungary a guardian is only appointed if the child applies for refugee status, whereas Luxembourg asylum law specifically provides for a

²²¹ Article 302 Code of Criminal Procedure.

²²² *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Annex 2 under 7.

²²³ The Danish report speaks of a 'personal representative' instead of a legal guardian.

guardian in that situation, but the law for the protection of youth confers discretion on a judge to appoint a guardian when he/she deems it appropriate.²²⁴ Under Finnish law a legal guardian is appointed for unaccompanied minors arriving or found in the country's territory, including victims of trafficking.

According to the Latvian report, Latvian legislation does not provide for legal guardianship, 'because thus far no unaccompanied child has been identified as a victim of child trafficking'. Portuguese legislation only foresees legal guardianship by the family of the child or – if no family is known – the public prosecutor. The current policy of the UK Government is that the establishment of a formal scheme for the automatic appointment of a guardian when a child is identified as a trafficking victim is not required; nor in its view is it necessary in any case that such a scheme be established, whether or not the unaccompanied child has been identified as a trafficking victim, because all unaccompanied children seeking asylum in the UK come within the provenance of child services authorities and Local Safeguarding Children Boards (LSCB) or Child Protection Committees (CPC).

In France 'the public prosecutor must designate an ad hoc administrator for any unaccompanied minor claiming refugee status. The ad hoc administrator is not a guardian. He or she is simply in charge of the protection of the minor in the waiting facility.'

In Ireland there is no framework in place for the appointment of a *guardian ad litem* (GAL).²²⁵ In practice however, the Health Service Executive representative and the Refugee Legal Service representative operate as quasi-GALs for victims of child trafficking seeking asylum. A GAL service is furthermore provided by an NGO.²²⁶ The GAL service is not a child advocate so that it would not increase the professional services to which a child victim would have continual access.

The Slovenian report reads on this point: 'An alien minor, i.e. a person younger than 18, who has entered the Republic of Slovenia illegally, unaccompanied by his/her parents or other legal representatives, or who illegally resides in the Republic of Slovenia, must be immediately returned to the country of origin or handed over to representatives of the country of which he/she is a national. If this is not possible,²²⁷ the police shall notify the *Center za socialno delo*

²²⁴ Bill No. 5874 that is before the Chamber of Deputies provides for a guardian for an accompanied minor who is a trafficking victim.

²²⁵ The Court may only appoint a GAL in public proceedings under section 26 of the Irish Child Care Act 1991 or section 11 of the Children Act 1997 and under the Children Act 2001 in respect of special care orders.

²²⁶ NGO Barnardos which is made up of staff and self-employed practitioners. Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 40.

²²⁷ Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 60/2. An alien minor specified in the preceding paragraph of this Article may not return to his/her country of origin or to a third country which is willing to accept him/her until suitable reception is provided; in no case may unaccompanied minors be returned in violation of the European Convention on Human Rights and Fundamental Freedoms, adopted with Protocols 3, 5 and 8 and supplemented with

[Department of Social Security] which must immediately assign a special custodian to the minor.'

Several reports point out that the law and practice as regards the appointment of a legal guardian may diverge. The authors of the Czech report for example, point out that in practice guardians are not always appointed to unaccompanied minor aliens. The Austrian report makes clear that 'in reality, victims of child trafficking are often not identified and referrals are not taking place.' In Greece 'unaccompanied minors who are third country nationals, in several cases cannot enjoy the protection and the assistance of a legal guardian mainly because the childcare institutions, which are competent for the accommodation of unaccompanied children, are not willing to undertake the obligations that a legal guardian has vis-à-vis the children²²⁸.' However, recently, positive steps have been taken to improve the effective implementation of the national legal framework concerning the appointment of legal guardians. The Irish report reads: 'In practice, it is almost unheard of for a separated child to be appointed a GAL, a matter which has been highlighted by many NGOs, and indeed by the Special Rapporteur for Child Protection. Indeed in the recent past there has only been one occasion where this has occurred.'²²⁹

4.3.3.2. Age limit for assignment of a legal guardian

France is the only Member State in which the age limit for qualifying for a legal guardian is 21 years. By far most Member States (Bulgaria, Czech Republic, Denmark, Estonia, Greece, Spain, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Austria, Poland, Romania, Sweden, Slovakia and the United Kingdom) have set this limit at 18 years, although in Luxembourg under exceptional circumstances even a person up to 21 years old may be appointed a legal guardian.

Under Cypriot law, the age limit is set at 16 years, and may exceptionally be extended to the age of 18. Also in Germany the age limit is 16, but under new law, which still has to be fully implemented, this will be the age of 18 for unaccompanied minors. In Austria minors between 14 and 18 years are able to apply for asylum and actually initiate proceedings, if their interests cannot be safeguarded by their legal representatives²³⁰. In

Protocol 2 and its protocols 1, 4, 6, 7, 9, 10 and 11 (Ur. l. RS-MP, 7/94), the European Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Ur. l. RS-MP, 1/94) or the Convention on the Rights of the Child (Ur. l. RS-MP, 9/92).

²²⁸ See the survey on the status of unaccompanied minors who are seeking asylum in Greece available at: http://hosting01.vivodinet.gr/unhcr/UAM_english.pdf, accessed on June 20th, 2008.

²²⁹ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003) at 5. Seven Afghan minors were involved in a hunger strike in a cathedral in Dublin. Freda McKittrick, Barnardos, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

²³⁰ Sec. 16 para. 3 *Asylgesetz* [Asylum Law], Austria/BGBl 100/2005 (16.08.2005).

proceedings relating to the Aliens Police Law, minors are capable of acting legally already at the age of 16, even if the result of such actions could be to their disadvantage.

The reports of Belgium, Portugal and Slovenia do not contain any particular information on the age limit for assignment of a legal guardian.

4.3.3.3. Training of legal guardians

In Belgium and Finland, specialised training specifically on representing child victims of trafficking is available for legal guardians. In several other Member States (Italy, Lithuania, Luxembourg, the Netherlands and Poland) specialised training on how to represent unaccompanied minor aliens in general (and not only trafficked children) is offered to legal guardians. In another group of Member States (Czech Republic, Denmark, Estonia and Austria) no specialised training is provided for, but legal guardians receive the same training as other professionals, active in the field of trafficking in human beings (see section D.7.6.). In Hungary and Latvia no specialised training for legal guardians exists. For the UK this question is not applicable as it is not the policy in the UK to appoint a legal guardian for a trafficked child on a routine basis.

In Germany critique has been issued on the level of education of legal guardians. According to the authors of the Lithuanian report a major problem is not the lack of training or education programmes, but a lack of personnel and their persistent turnover, as well as a lack of volunteers wishing to be guardians or curators.

The authors of various reports (Spain, France, Ireland, Cyprus, Malta, Romania, Slovenia, Sweden) have not found any information on specialised training for legal guardians.

4.3.3.4. Preparation time for legal guardians

In almost all Member States (Belgium, Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Italy, Cyprus, Latvia, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Romania, Slovenia, Slovakia, Sweden and the United Kingdom) the preparation time for a legal guardian is not regulated, or at least the authors of the national reports have found no evidence for such provisions. The authors of the Finnish and Irish report did not receive exact information of the national authorities but were ascertained that appropriate preparation time – including personal contact with the child – is provided to legal guardians.

In Lithuania, the preparation time amounts three months. In Bulgaria legal guardians have fourteen days to prepare a case, but the authors of the national report estimate that it is 'highly likely that two weeks are not sufficient time for preparation of the case of a trafficked child'. The authors of the German report also observe that 'the sheer number of cases puts even more burden on the persons acting as legal guardians. Against this

background, it appears that time for preparation of cases for legal guardians is often not sufficient. Extensive personal contact with the child is also often not possible.'

4.3.4. Access to other forms of legal assistance

In most national legal systems a child must be represented in court by his/her parents or another legal representative, such as a legal guardian (see above). Only in exceptional circumstances a child that has reached a certain age may represent him/herself in legal proceedings. In this respect, it is important to bear in mind that in numerous Member States (legal representatives of) victims of crimes have the right to be present during the criminal trial, to pose questions to the accused, witnesses and experts, to inspect files and to submit evidence. Furthermore, in most Member States the court is under a duty to inform the victim on the existence, possible discontinuation and resumption of criminal proceedings.

Not surprisingly the national regulations regarding access to legal assistance differ widely between Member States. For instance, in France legal aid is granted under no condition of residency to foreign minors, while in Italy free legal aid is - in theory at least - available for everyone who wishes to claim damages in a criminal procedure, whereas in the Netherlands legal assistance is available for those who are legally residing in the country.

In most EU Member States some form of legal aid is provided for. In Belgium, Bulgaria, Germany, Estonia, Spain, France, Lithuania, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom, this is provided for by law and in Italy by Presidential Decree. The Cypriot law provides for very general provisions on legal aid only.

In the Czech Republic, victims are not entitled to legal aid on the basis of a provision in law, but legal aid is often provided for by NGOs and other organisations. In Luxembourg there is no specific legal provision ensuring legal assistance to minors, although such assistance appears to exist informally. There is however, a bill on legal assistance to minors currently pending.

The Austrian report shows that 'due to the uneven allocation of resources and the lack of specialised support organisations for child victims of trafficking, it is difficult to ensure that the right to psychosocial and legal assistance is upheld in practice.' The German report points out that although legal provisions ensuring access to legal assistance are existent, they are seldom successfully relied on by trafficked persons.

The Bulgarian report on this point reads: 'In regard to legal aid in criminal proceedings, the staff in crisis centres reported that they had not been involved in such matters and are not informed whether the child is provided with legal aid or not, but that social workers from child protection departments are usually involved in such proceedings.'

4.3.4.1. Statistics on access to legal assistance

On the basis of the national reports it may be concluded that Finland is the only EU Member State where authorities keep track of the number of trafficked children receiving legal aid.²³¹

In other states, only very general statistics, not broken down in age categories are available (Germany, Greece, Lithuania²³² Austria and Romania). In several other states, such statistics are not at all kept track of (Czech Republic, Estonia, Cyprus, Luxembourg, the Netherlands, Slovakia²³³ and Sweden). As far as the other Member States are concerned, the national reports give no information on this point.

4.3.5. Access to compensation

The options for child victims of trafficking to claim for compensation differ between the EU Member States. In a majority of Member States (Czech Republic, Denmark, Germany, Spain, Italy, Cyprus, Latvia²³⁴, Lithuania, Luxembourg, Malta²³⁵, the Netherlands, Austria²³⁶, Poland, Romania²³⁷ and Sweden) victims have the right to claim

²³¹ The number of children receiving such services is equivalent to the number of children within the assistance system. For the years 2000-2004 no statistics are available. The figures for 2005-2007 are 4, 7, 5 and 6 children respectively.

²³² The Lithuanian reports reads: 'Reports on the implementation of measures Programme on Prevention and Control of Trafficking in Human Beings do provide certain numbers. For instance, in 2007 of 80 persons that received shelter services from NGOs 47 persons have also received legal aid; and of 358 persons that received services from NGOs (without shelter) 36 received legal aid. Exact number of minors is not provided, but it is stated that 14.8% of all participants were underage girls.' and 'It is not state-guaranteed legal aid, but legal consultations as part of services provided for by NGOs to persons involved into prostitution, victims or possible victims of trafficking.' referring to a report of the Ministry of Interior on the implementation of measures of the 2005-2008 Programme on Prevention and Control of Trafficking in Human Beings in 2007.

²³³ The Slovakian report points out that even if these statistics would be existent, the authorities would refuse to disclose them due to the sensitive nature of the data.

²³⁴ The national report is not entirely clear on this point. It reads: 'The Criminal Procedure Law also guarantees that a person upon whom harm has been inflicted by a criminal offence shall, taking into account the moral injury, physical suffering, and financial loss thereof, be guaranteed procedural opportunities for the requesting and receipt of moral and financial compensation', under reference to Latvia/Kriminālprocesa likums [Criminal Procedure Law] (21.04.2005), available at : <http://www.likumi.lv/doc.php?id=107820>. Article 22.

²³⁵ The national report is not entirely clear on this point. It reads: 'The Criminal Injuries Compensation Regulations provide for the application for compensation by a victim of crime. However a person seeking compensation for injuries arising out of criminal activities must have sustained such injuries on the 1st January 2006 or thereafter and must be a citizen of Malta or one of the Member States. Moreover the maximum amount of compensation that may be liquidated is that of € 23,293.73c. Despite this, the criminal action does not bar any possible civil action for damages against the perpetrator.' Legal Notice 190 of 2007 available at: <http://www.doi.gov.mt/EN/legalnotices/2007/default1.asp>.

²³⁶ Sec. 67 CCP.

²³⁷ The national report is not entirely clear on this point. It reads: 'Victims of trafficking are eligible for civil damages paid by the perpetrator and financial compensation offered by the

compensation for damage suffered by joining the criminal proceedings with a civil claim as adversely affected parties. The compensation may be either paid for either by the convicted perpetrators, or by the state. Under Romanian law, when the injured party is a child, the criminal court is under a duty to decide *ex officio* on the subject of compensation.²³⁸

In the Netherlands and the UK the court can also impose an order for compensation. Under Dutch law the victim can ask for such a sanction, but it can also be imposed *ex proprio motu*.²³⁹ Even if the victim did not join in the criminal proceedings as a disadvantaged party, when passing a suspended sentence a court can impose a special condition to the effect that the accused should pay a specific amount to the victim; to the Violent Offences Compensation Fund [*Schadefonds Geweldsmisdrijven*] or to some other institution protecting the interests of victims of criminal offences. This condition is primarily of interest if there is no demonstrable victim, or if a victim does not wish to obtain compensation.²⁴⁰

Furthermore, in certain states child victims of trafficking may apply to a State compensation fund for crime victims (Belgium, Bulgaria, Denmark, Germany, Estonia, Cyprus, Luxembourg, the Netherlands, Austria²⁴¹, Portugal, Slovenia, Slovakia, Sweden and the United Kingdom). This option may be open either in addition to or subsidiary to the option of joining the criminal proceedings with a civil claim as adversely affected parties. In some Member States however application to a State compensation fund seems to be the only option for a child victim of trafficking.

The possibility to apply for such compensation funds may be subject to certain criteria. It may for instance only be open to nationals and EU citizens (e.g. in Malta), or it may only concern crimes that have been committed on the territory of the Member State concerned (e.g. in Poland²⁴²). Another requirement may be the final conviction of the

state, regardless of whether the crime took place in Romania or on the territory of another state.' Referring to: Art. 34.1 – 34.26 Romania/*Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor* [Law 211/2004 concerning some measures to ensure protection for crime victims] (26.10.2007). The section incorporates into the Romanian legislation Council Directive 2004/80/CE of 29.04.2004 regarding compensation for victims of crimes.

²³⁸ Art. 17 (3) Romania/*Codul de procedură penală* [Criminal Procedure Code] (28.03.2008)

²³⁹ The most important distinction between this and a claim as a disadvantaged party is that collecting the claim is taken out of the victim's hands and passed to the Central Judicial Collection Agency.

²⁴⁰ Article 257a Code of Criminal Procedure.

²⁴¹ The Austrian Task Force will examine the practical applicability of the Law regulating the compensation for crime victims regarding victims of trafficking in human beings. This law envisages state support for victims who suffered bodily injury because of a crime committed intentionally. Currently, third country nationals can claim this compensation only if they resided legally in Austria at the time of the commitment of the crime. Austria/BGBl 288/1972, last amended by BGBl I 2/2008 (04.01.2008); NPA 2007 (4.1) and *Task Force against Trafficking Report 2008*, p. 17.

²⁴² In Poland, compensation is granted if the offence was committed on the territory of the Republic of Poland to the detriment of a citizen of Poland or another Member State of the European Union. Article 4 of the *Ustawa o państwowej kompensacie przysługującej ofiarom*

perpetrators in a criminal procedure (e.g. in Slovakia)²⁴³, or the cooperation of the applicant with law enforcement agencies (e.g. in the United Kingdom).

The authors of the UK report observe that 'it can be seen that this scheme has a limited remit and does not provide compensation to a trafficked child to compensate for that trafficking, although it may compensate for criminal injuries suffered by that trafficking victim at the hands of his or her traffickers within the United Kingdom.' The authors of the German report note that the possibilities of the law on compensation for crime victims are not very widely used as the relevant actors involved appear not to be very familiar with the details of the law.

In Lithuania, Malta, the Netherlands, Slovakia²⁴⁴ and the United Kingdom an additional option exists for a separate civil suit in civil proceedings.

The reports on France and Hungary are not entirely clear on the issue of compensation. The French report reads: 'There are no specific legal provisions granting trafficked children access to justice, including the right to compensation. Under ordinary law, a legal guardian can press charges and claim compensation when a child is a victim of trafficking.', whereas according to the Hungarian report 'access to legal services (financial support or compensation) is provided in the form of legal advice and the preparation of legal briefs, in accordance with the Ministry of Justice and Law Enforcement Decree No17 of 2007/13.03.2007 on victim support.'

In Estonia, 'no specific legal provisions for granting trafficked children access to justice or the right to compensation' exist. Italian law does not provide for any form of compensation by public funds for victims of trafficking. Greece guarantees only the provision of legal aid and has not yet transposed in the national legislation the Directive 2004/80/EC relating to compensation to crime victims²⁴⁵. The Irish national report does not address the issue of access to justice including a right to compensation.

4.3.5.1. Statistics on compensation amounts

The only national report that includes statistics on payments of compensation to child victims of trafficking is that of the Netherlands. An overview of the number of minors involved in all compensation measures that had been imposed in cases of trafficking in

niektórych przestępstw umyślnych [Act on State Compensation for Victims of Certain Intentional Offences] (Journal of Law of 2005 No. 169, item. 1415, as amended).

²⁴³ In Sweden the opposite is true: in assessing compensation, the personnel at the Crime Victim Compensation and Support Authority is not bound by a court decision on damages.

²⁴⁴ The Slovakian national report reads: 'Another possibility is to file a defamation case in terms of Civil Code and in addition to damage compensation file also for compensation of non-pecuniary damage.' Article 13, Slovakia/zákon 40/1964 (26.02.1964).

²⁴⁵ On July 18th, 2007 Greece was convicted by the Court of European Communities (Case C-26/07) for failure to transpose in the national legislation the Directive 2004/80/EC relating to compensation to crime victims. For the relevant decision see at: eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0026:EN:HTML.

human beings²⁴⁶ in the period 2000-2007, and the total and average amounts of compensation paid to these child victims, was provided for by the Dutch Ministry of Justice. In the prescribed period the average compensation amount granted to a child victim of trafficking varied between 390 euros in 2006 and 12,667 euros in 2004.²⁴⁷

The reports of Cyprus, Finland, Ireland, Poland, Slovenia and Slovakia²⁴⁸ make clear that in those Member States no compensation was paid to child victims of trafficking in the period 2000-2007, for example because no such claim was made. In Italy no public compensation is provided for in national law, and thus no statistics are available.²⁴⁹

In most Member States no figures of the amount of compensation paid to trafficked children per year for the period 2000-2007 exist (Austria, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Lithuania, Luxembourg, Latvia and the United Kingdom²⁵⁰).

The German report points out that it is not standard practice for victims of human trafficking to pursue claims. 'Only few cases that are subject to criminal prosecutions are followed by a separate claim brought against the state and/or the perpetrator. The amounts paid are usually significantly lower than the claims initially pursued and, in most cases, they only represent a very small portion of the assets gained by the perpetrator through the exploitation of the victim.'²⁵¹

The reports of Belgium, Ireland, Hungary, Portugal and Sweden contain no information regarding statistics on compensation.

²⁴⁶ Convictions for offences under Art. 250a (*old*), Art. 250ter, Art. 273a and Art. 273f of the Dutch Penal Code.

²⁴⁷ The number of minors involved in compensation measures in cases of trafficking in human beings and the average amount paid to these children is as follows: in 2000, 4 minors, with an average amount of 3,250 euros; in 2001, 1 minor, with an average amount of 2,000 euros; in 2002, 15 minors, with an average amount of 1,310 euros; in 2003, 15 minors, with an average amount of 572 euros; in 2004, 6 minors, with an average amount of 12,667 euros; in 2005, 5 minors, with an average amount of 1,540 euros; in 2006, 6 minors, with an average amount of 390 euros and in 2007, 1 minor, with an average amount of 5,000 euros.

²⁴⁸ The national reports reads on this point as follows: 'According to a statement from the Ministry of Justice there has not been a single claim for compensation filed to compensate victims of trafficking. However, according to unofficial information there was at least one claim filed by a victim of trafficking. This information has not been validated.', referring to a response of the Ministry of Justice to the request for information, 02.07.2008.

²⁴⁹ The national report does not discuss the option of obtaining compensation by joining in criminal proceedings.

²⁵⁰ The UK report makes mention however of an recently made award of £62,000 from the Criminal Injuries Compensation Authority (CICA) was made to a Romanian national who was forced into prostitution.

²⁵¹ See, for example http://www.berlinkriminell.de/2/gericht_akt32.htm (27.07.08).

4.4. Return of and grant of temporary residence to victims of trafficking

4.4.1. Reflection period

By virtue of Council Directive 2004/81/EC²⁵² most Member States are obliged to grant a reflection period to third country nationals who may be victims of trafficking. This reflection period allows them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.²⁵³ The duration and starting point of the period shall be determined according to national law. During the reflection period, it is not possible to enforce any expulsion order against the third country national. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the traffickers or for reasons relating to public policy and to the protection of national security. The CoE *Convention on Action against Trafficking in Human Beings*²⁵⁴ also provides for a reflection period and even sets an explicit minimum duration; the reflection period must have a duration of at least 30 days.²⁵⁵

In a majority of Member States (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, France, Ireland, Cyprus, Hungary, the Netherlands, Poland, Portugal, Romania, Slovenia, Finland and Sweden) a reflection period for a minimum of 30 days for both minor and adult victims is provided for by law. Most countries offer a longer period of time for consideration, either because the minimum number of days is set higher, or because under certain circumstances the period with a minimum duration of 30 days may be extended to a maximum of two or three months. In Finland and Slovenia the reflection period may even last six months in total. In Belgium and Bulgaria the reflection period offered to minors is explicitly longer than that for adults (respectively 3 months for minors instead of 45 days for adults in Belgium and 2 months for minors instead of 30 days for adults in Bulgaria).

In Lithuania there is a reflection period mentioned in law, but the Government has not yet adopted a legal act specifying the procedure and the duration of the reflection period. In five other Member States there is at present no statutory provision in national law which provides for a period of reflection for (child) victims of trafficking (Estonia, Italy, Luxembourg, Austria and the United Kingdom). In Austria however, the reflection period

²⁵² 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 subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *OJ L* 261, 6.8.2004, p. 19-23.

²⁵³ Art. 6.

²⁵⁴ Council of Europe Convention on Action against trafficking in human beings, Warsaw 2005, CETS No.197.

²⁵⁵ Art. 13.

with a duration of 30 days is offered to victims on the basis of an internal Ministerial decree.²⁵⁶ In Luxemburg a bill was voted into law in July 2008, containing a 90 days reflection period. In the United Kingdom the use of a 30 day reflection period has been piloted.²⁵⁷ In addition, it has been announced that the UK Government intends to implement a reflection and recovery period of 45 days, with the implementation date set at April 2009.²⁵⁸

On the basis of the national reports it seems that the reflection period is not always respected or interpreted in line with the EC Directive. In Austria for instance, according to NGO information, the reflection period is only granted if the victim gives evidence.²⁵⁹ On the basis of the Belgian report it seems that in Belgium the victim has to cooperate with the authorities in order to be eligible for the granting of a reflection period. Also the Maltese report makes clear that a person who cooperates with authorities in relation to offences of trafficking in human beings is allowed a reflection period of not more than two months.²⁶⁰ The report of the Czech Republic points out that in practice the reflection period is not respected by the Czech Police; victims cannot refuse to give testimony during the reflection period, without fearing legal consequences and thus victims interrogated are not able to make a free and informed decision whether they want to cooperate with the relevant authorities or not.

Many national laws subject the grant of a reflection period to certain criteria. For instance, a reflection period may not be accorded where the victim poses a threat to public order, security or health or to the Member State's international relations. Furthermore, as provided for by Council Directive 2004/81/EC, in several Member States the reflection period may be suspended or terminated 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.

The Finnish report points out that, in Finland, the reflection period is not granted automatically to all victims of trafficking. The District Police or a border control authority has the authority to decide on granting and suspending the reflection period.

Under Latvian law, a commission of social workers, psychologists, lawyers, medical practitioners and police officials has to grant a third-country national the status of victim of trafficking in human beings. Only then he/she may submit a request for the granting of a reflection period of 30 days. However, as the Latvian report shows: 'the reflection period shall not be granted to the victim of trafficking in human beings if he or she has been recognised as the victim of a criminal offence that is related to trafficking in human beings.'

²⁵⁶ *TF Working Group on Child Trafficking Report 2008*, p. 11 (3.1.).

²⁵⁷ This was known as Operation Pentameter 2.

²⁵⁸ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.55.

²⁵⁹ ECPAT Austria (2006), *Monitoringbericht Österreich*, p. 23.

²⁶⁰ Article 3 Legal Notice 175 of 2007 available at:
<http://www.doi.gov.at/EN/legalnotices/2007/07/LN%20175.pdf>.

4.4.2. Right to residence and its conditioning on cooperation with authorities

Under Directive 2004/81/EC²⁶¹ third-country nationals – regardless of whether they entered the country legally or illegally – who cooperate in the fight against trafficking in human beings can be granted a residence permit of limited duration. Member States are free to extend the directive to those who have been victims of actions to facilitate illegal immigration.²⁶²

4.4.2.1. Residence permit during criminal proceedings

From 13 out of 22 Members States that offer some form of reflection period to (suspected) victims of trafficking it is known that the authorities also grant a residence permit if victims cooperate with the police and prosecution (Belgium, Bulgaria, Germany, Estonia, Greece²⁶³, France, Ireland, Latvia, Malta, the Netherlands, Austria, Finland and Sweden). For the most part the permit is issued after the victim has reported the case to police, is valid for a period of six months, and can be renewed for the duration of the criminal proceedings. In Luxemburg a recently-passed immigration bill provides for a residence permit on the condition that the individual cooperate with investigating authorities.²⁶⁴

In some countries (for instance in Austria and the Netherlands), the residence permit is to be granted *ex officio*. This means that it is not possible to apply for this residence permit and if an 'application' is filed no right to receive a decision exists.

Under various national laws the residence permit may be refused, revoked, suspended or terminated if the victim has not severed all relations with the traffickers (e.g. in Estonia, Ireland, Malta, Portugal and Finland) or if the competent authority is satisfied that it is in the interests of public security, public policy or public order to revoke the residence permit (Ireland).

²⁶¹ Official Journal L 261 of 06/08/2004.

²⁶² Art. 3.

²⁶³ The Greek anti-trafficking legislation (i.e. Law 3386/2005) does not guarantee a right/entitlement to residence to trafficking victims, irrespective of cooperation with police/prosecutor. However, the national aliens legislation, in the context of protection and care of unaccompanied children, provides for the issuance of residence permit on humanitarian grounds (article 44 par. 1 c' of Aliens Law 3386/2005) to persons (under 18 years of age) who are sheltered at Children's Protection Centers by order of the Prosecutor at no cost. This means that a trafficked child who does not want to cooperate with the authorities in the legal anti-trafficking framework is entitled to request a residence permit on humanitarian grounds provided he/she is accommodated at a Children's Protection Center by order of the prosecutor.

²⁶⁴ Luxembourg/*Projet de Loi No. 5802 portent sur la libre circulation et l'immigration* (07.11.2007), Arts. 92 and 93, voted into law on 9 July 2008, but not published as of 22 July 2008.

The Spanish report explicitly states that Council Directive 2004/81/EC should have been transposed into Spanish legislation before 6 August 2006, but that this has yet not been done.

In Belgium criticism is voiced on the legal requirement that protection of child victims of trafficking is conditional to their willingness to cooperate in criminal proceedings. Also the Finnish revised Plan of Action of 2008 specifies that it can be unreasonable to require child victims to cooperate with authorities. Before the child is asked to cooperate, an expert on child protection or child psychology shall give a statement on the child victim's preconditions for cooperation. The Plan of Action also notes that cooperation is not required if it is assessed that cooperation is not in the best interest of the child.²⁶⁵ According to the Austrian report in reality, child victims are often required to cooperate with the authorities in course of the hearings.

Dutch NGOs have pointed out that many victims are afraid of reporting to or cooperating with police, as a result of intimidation by perpetrators, fear of corrupt police and fear of reprisals.²⁶⁶

4.4.2.2. Continued residence permit after criminal proceedings

Some reports explicitly mentioned the possibility of obtaining a continued (permanent) residence permit after the termination of the criminal proceedings. In Belgium for example when the investigation finishes and the public prosecutor considers the involved person to be a victim of human trafficking this person is granted a right to residence for an indefinite period of time. In the Netherlands, after termination of the temporary residence permit, the victim may apply for a continued permanent residence permit.²⁶⁷ The outcome and the duration of the criminal proceedings are decisive factors for the decision on the granting of this permit.

4.4.2.3. Additional residence provisions

Under the law of most Member States that offer the above-described continued residence permit also other legal grounds for granting a residence permit to child victims

²⁶⁵ Ihmiskaupan vastainen tarkennettu toimintasuunnitelma, adopted by Government on 25 June 2008, pp. 10-11.

²⁶⁶ Letter of *Amnesty International, the Netherlands* to the State Secretary of Justice of 17 July 2007, online at: http://www.amnesty.nl/documenten/landenbrieven/mensenhandel_en_asiel_170707.pdf and interview with a representative of BLinN on <http://www.durftedenken.nl/post/?p=128>. See also <http://www.blinn.nl/?c=project8> (last accessed 21.07.2008).

²⁶⁷ The criteria for continued residence after expiry of a residence permit on the basis of the B-9 Regulation were amended with effect from 14 August 2006. Letter dated 14 August 2006 (*Parliamentary Papers II* 2005/06, 28 638, no. 26, online at www.overheid.nl) resulting in an Amendment to the *Vreemdelingencirculaire* [Aliens Circular] (2006/36A) dated 8 November 2006, *Staatsblad* [Law Gazette] 2006, 225.

of trafficking exist. For instance, children may be granted residence on humanitarian grounds or it may be that as a matter principle unaccompanied minors cannot be sent back to their country of origin. For further discussion of residence options like asylum and subsidiary protection, see section D.5.2.

4.4.2.4. Right to residence irrespective of cooperation

In the remaining Member States – although nine of these Member States do offer a reflection period (Czech Republic, Denmark, Cyprus, Lithuania, Hungary, Poland, Portugal, Romania and Slovenia) – cooperation with the police and prosecution is not a precondition for obtaining a residence permit.

Czech legislation contains a special provision ensuring the right to residence for children, Sec. 87 Aliens Act. This provision grants permanent stay to foreigners under 18 years of age who have been placed in foster care and under the precondition that at least one natural person into whose care the foreigner was placed holds permanent residence in the Czech Republic or if the institution in which the child has been placed is located in the Czech Republic. Nevertheless, according to information provided by various state authority officials and NGOs, these provisions have not been used yet in practice in cases of child trafficking.

In Spain the issuing of a residence permit for a child victim of trafficking is in no sense made subject to cooperation with police. Residence may be granted on other grounds. For instance under Spanish law if ‘nine months after the minor has been placed under the care of the competent youth welfare authorities, reunification with her/his family or his/her repatriation has not been possible, the minor will be granted residence in Spain.’

Greek law provides for the possibility of a residence permit on humanitarian grounds for a child that is accommodated at Children’s Protection Centre, by order of the Prosecutor. ‘The residence permit is granted gratis by decision of the Minister. It is valid for one year and renewable for one year until the issuance of final judicial decision of the criminal court.’

In Italy, it is possible for a residence permit to be granted even if the victim does not report the trafficker, because a sufficient condition for obtaining the permit is the situation of exploitation and the associated danger for the victim.²⁶⁸ Children who are victims of trafficking *and are actually in danger* are covered by this provision, irrespective of their actual cooperation with the police and prosecutors. At any time the permit can be revoked because of the victim’s conduct or the absence of the conditions specified by law for the permit to be granted.

²⁶⁸ See, again, Italy/Circolare ministeriale n. 1026/2006 (02.02.2006) and n. 11050/2007 (28.05.2007), quoted above.

Lithuania has opted out of the application of Directive 2004/81/EC to minors. But the national report underlines that minor aliens (especially, unaccompanied minor aliens) in general are receiving a better status than adult aliens. 'For instance, if an unaccompanied minor alien cannot be returned to the country of origin or any other country, he must be granted the right to reside in the Republic of Lithuania (Article 129 of the Law on the Legal Status of Aliens).'

In Portugal, a residence permit may be issued to the trafficking victim irrespective of police cooperation after the reflection period. 'The only condition is that the victim no longer has any contact whatsoever with the suspected trafficker. If the need for protection still exists, renewal is automatic, regardless of whether the victim cooperates or not with the police. According to Decree-Law 368/2007,²⁶⁹ this is in cases where there is a risk that traffickers will threaten the victim, their relatives or any person close to them.'

The Romanian report reads: 'An alien child may apply for asylum. If not the child may be granted tolerated stay on grounds of being a victim of trafficking, or temporary residence if the parents of the child cannot be identified or he/she is not accepted in his/her country of origin.'

Although in Slovenia 'the right to residence for an alien who is a victim of trafficking in human beings is not contingent on his/her cooperation with the police in the criminal proceedings', deciding to cooperate puts the victim in a 'privileged position'. According to the report: 'a temporary residence permit may be issued to victims of trafficking in human beings *regardless* of other conditions defined by the Aliens Act concerning the issuing of a residence permit, if the victim is prepared to cooperate as a witness in criminal proceedings and his/her testimony is important, which is confirmed by the body competent for the criminal prosecution.'

In Slovakia, the Police department shall issue a permit of tolerated residence to a foreign child found in the territory of the country.²⁷⁰ The period of tolerated residence for a child (including a child victim of trafficking) is granted for a maximum of 180 days and this period can be extended repeatedly.²⁷¹

Any decision about entitlement to residence in the UK, whether on a permanent or a temporary basis, is made irrespective of whether the person seeking permission to stay in the country has cooperated in an investigation or prosecution of those carrying out the trafficking. However, it has been announced that, by April 2009, the UK intends to implement measures allowing for the grant of a temporary residence permit to trafficking victims, whether adults or children, with a duration of one year in the first instance with the possibility of renewal.²⁷²

²⁶⁹ <http://www.dre.pt/pdf1sdip/2007/11/21200/0800808008.PDF> (16.07.2008).

²⁷⁰ Article 43 paragraph 1(d), Slovakia/zákon 48/2002 (13.12.2001).

²⁷¹ Article 43 paragraph 3 and 4.

²⁷² Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.5-6 and 56.

Denmark appears to pursue a markedly different policy in this respect, offering significantly less protection than the other Member States discussed so far. The national rapporteurs observed that 'there are no legal provisions ensuring the right of trafficked children (or other trafficked persons) to a renewable residence permit. Thus, the child will be sent back to the country of origin even if his or her report to the police leads to bringing charges against human traffickers and to their conviction', the national report reads.

For three Member States (Cyprus, Hungary and Poland) – despite the fact that the national laws offer a reflection period to victims – the national report gave no information on a residence permit for the duration of the criminal proceedings or the time thereafter.

4.4.2.5. Number of children being granted temporary stay

In a minority of Member States the number of children being granted temporary stay on grounds of trafficking is registered for the period 2000-2007.

In Bulgaria²⁷³, Cyprus, the Czech Republic, Estonia, Latvia²⁷⁴, Slovenia and Sweden no children at all were granted temporary stay on grounds of trafficking in the aforementioned period.

In Finland, the number of children (four in 2005; seven in 2006; five in 2007; and six in 2008) who have entered the assistance system as victims of trafficking or crimes related to trafficking from 2005 to date is registered.²⁷⁵ Furthermore, in the Netherlands some records are kept of the number of child victims who are granted a temporary residence permit. However, these statistics may incidentally and mistakenly include minors who applied for or were granted a temporary permit because they are the minor children of victims of trafficking who themselves applied for or were granted a temporary residence permit.²⁷⁶

²⁷³ The Bulgarian report reads as follows: 'According to the State Agency for Refugees, there are no cases of child refugees who were victims of trafficking for the period 2000-2007.'

²⁷⁴ The authors of the Latvian report remark that the legislative provisions described under chapter 'Care and Protection' of the national report are never applied in practice, as at present in Latvia no child has been granted temporary stay on grounds of trafficking. Subsequently, no specialised programs for re-integration or family tracing were developed and specialised shelters for trafficked children in do not exist Latvia and there are no plans to establish any such shelter. Interview with a representative of the police unit Office 3, Division 2 For the Fight Against Human Trafficking of the State Police Criminal Police Department (20.07.2008) ;
Written response from the Planning, Coordination and Control Department of the ministry of Interior (7.08.2008).

Interview with a representative of the resource centre for women „Marta”, 25.07.2008.

²⁷⁵ The number of children who have been granted temporary stay on grounds of trafficking equals the number of children who have been within the Finnish assistance system in the given years.

²⁷⁶ For the years 2000-2003 only the number of children who applied for a temporary residence permit are known, namely: seven in 2000, eleven in 2001 and thirteen in 2002. For these years

In Austria, Greece and Italy, the statistics available are not disaggregated by age. In Germany only data are available concerning the number of cases in which 'protection against deportation' ('Abschiebungsschutz') is granted for reasons of gender-specific persecution in 2006. In Ireland only statistics of unaccompanied minor that applied for asylum are registered.²⁷⁷

In ten Member States no statistics on the number of children being granted temporary stay on grounds of trafficking in 2000-2007 are available (Belgium, Estonia, France, Lithuania, Luxembourg, Hungary, Poland, Portugal, Romania, Slovakia and the United Kingdom). The Slovakian report suggests that one of the reasons for this lack of data is the confusing definition of "child trafficking" in the national Penal Code.

The reports of Denmark, Malta and Slovenia do not contain any information regarding statistics of the number of children being granted temporary stay on grounds of trafficking.

4.4.3. Administrative detention pending deportation and safeguards for children

4.4.3.1. Legal prohibition to detain children

In three Member States (Italy, Hungary, and Slovenia), detention pending deportation of minors is prohibited by law. In Hungary by virtue of the third country nationals Act, detention pending deportation cannot be imposed against underage nationals of a third country, whether they are victims of child trafficking or not. In Italy as general rule, the Italian legal system does not allow the deportation of foreign children below the age of 18,²⁷⁸ unless the minor constitutes a danger for public safety or State security, in which case he/she may be deported for this special reason.²⁷⁹ In Slovenia 'residence under stricter police supervision (i.e. confinement of free movement to the premises of the Centre in accordance with the Centre's house rules) for an unaccompanied alien minor cannot be ordered (due to his/her status as a minor).'²⁸⁰

it is not known how many of these applications were granted. In the years 2005 and 2006 seven, respectively thirty-four applications were made, out of which five, respectively twenty-seven were granted. For the years 2003, 2004 and 2007 no statistics are available. Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p.15, currently available in Dutch only at www.bnrm.nl.

²⁷⁷ In 2001, 22 unaccompanied minors were granted asylum from 600 applicants; in 2002, 93 from 288; in 2003, 38 from 271; in 2004, 58 from 128; in 2005, 56 from 131; in 2006 30 from 131; and in 2007, 32 from 91. The total number therefore of applicants was 1,942, with 321 of these being successful.

²⁷⁸ Article 19, par. 2, of Italy/ Decreto legislativo n. 286/1998 (25.7.1998) available at http://www.giustizia.it/cassazione/leggi/dlgs286_98.html (02.07.2008).

²⁷⁹ Article 13, par. 1, of the same Italy/ Decreto legislativo n. 286/1998 (25.7.1998).

²⁸⁰ Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 60/4.

4.4.3.2. Neither provision nor prohibition to detain children

In three other Member States (Ireland, Malta and Poland), the national law does not explicitly prohibit nor permit the detention of children pending their deportation. In Ireland 'there is currently no law allowing or prohibiting the detention of separated children seeking asylum... Separated children are not routinely detained in Ireland.'²⁸¹ In Malta 'there is no provision of law providing for the detention of children who are victims of trafficking, but such children will be put under a care order and consequently are placed within children's homes.' Polish law does not provide for a procedure for the administrative detention of a minor.²⁸²

4.4.3.3. No legal prohibition to detain children

In the vast majority of EU Member States the detention of children pending their deportation is as such not prohibited by law. However it is often explicitly considered to be a measure that may only be applied as a 'last resort' (e.g. in Germany, Estonia, Cyprus, the Netherlands, Austria, Sweden and the United Kingdom). In the United Kingdom this principle explicitly also applies to the detention of parents with dependent children. In Finland the basic principle is that a child who is believed to be a victim of trafficking is not detained under any circumstances.²⁸³

4.4.3.3.1. Special safeguards for detained children

Special safeguards for detained children may lie in an age-limit (for example in the Czech republic only 15-18 years old may be detained), or a limited duration of detention. Those reports that mention a maximum duration of the detention pending deportation, show that the legislation within the EU differs widely: while in Sweden an alien child may be detained for a maximum of 72 hours and if there are exceptional grounds, for a further 72 hours, in Germany this maximum is set at six weeks, in the Czech Republic at 90 days, in Bulgaria at two months, in Slovakia at 180 days²⁸⁴, compared to a 6 months maximum in Romania.

²⁸¹ Dr. Nanilie Mooten, *Making Separated Children Visible* (Irish Refugee Council, 2006), at 33.

²⁸² The Polish report refers to Article 88 of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland.

²⁸³ Ihmiskaupan vastainen tarkennettu toimintasuunnitelma, adopted by Government on 25 June 2008, pp. 10-11.

²⁸⁴ The authors of the Slovak national report point out that 'foreigners can be detained for a maximum period of 180 days for the purpose of a) administrative deportation of the foreigner, b) execution of his/her transport or c) his/her return in case of illegal entering into the Slovak Republic. There are no other limits concerning detention of children except of the condition mentioned in the Study: A child without legitimate guardian cannot be detained. There is no age limit for detention of children accompanied by his/her legitimate guardian; such a child should be in detention together with his/her family. (See Report on Slovakia, paras. 76-80).'

Special conditions for the detention of children may also provide special safeguards for detained children. For example, in many countries children are in principle placed in different institutions to adults. In Denmark children over 15 years of age who are waiting for deportation can be placed in the same detention with adults, but – as the Danish national report underlines – this is very seldom used.²⁸⁵ Furthermore, under Luxembourg's asylum law, children appear to be subject to the same administrative detention/detention pending deportation procedures as adults.

In most national laws it is provided that children should not be separated from their parents, siblings, adult relatives and/or legal representatives (Estonia, Latvia, Lithuania, the Netherlands, Austria²⁸⁶, Slovakia, Sweden and the United Kingdom).

Unaccompanied minors are often accommodated (detained) in specific institutions. In Lithuania unaccompanied minors are detained in a Refugee Reception centre. In Latvia this group of minor aliens is accommodated in the relevant State Border Guard structural unit, while in the Netherlands unaccompanied minor aliens may be detained in judicial juvenile institutions. In Sweden a child who does not have a custodian in Sweden may only be detained if there are exceptional grounds. In Slovakia a child without a legitimate guardian cannot be detained at all.²⁸⁷

In Denmark, children under the age of 15 who do not have a legal residence can be placed in a secure institution for children.²⁸⁸ In Cyprus pending deportation children are detained in a care institution. In France detained minors spend their time in specific centres or in closed educational centres. The Swedish Detention Unit in the city of Mårsta has access to administrators who specialise in trafficked children if so needed.

The report of the UK points out that the United Kingdom made a reservation to its ratification of the UN Convention on the Rights of the Child (UNCRC). This provides that 'The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [United Kingdom] law to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time'.²⁸⁹ In January 2008 the Home Office announced a review of the UK position with a view to deciding whether its reservation to the UNCRC could be withdrawn.²⁹⁰

²⁸⁵ Telephone conversation with department manager and personal and security consultant from Ellebæk Prison, Niels Etldard on 29.07.2008.

²⁸⁶ Sec. 79 para. 3 Aliens Police Law. In Austria in 2006, 185 children between the age of 14 and 18 years were held in pre-deportation detention; the proportion of unaccompanied minors thereof is not known. *Anfragebeantwortung* 748/AB XXIII. GP (26.06.2007) of the MoI, answer in response to questions 1 and 2.

²⁸⁷ Article 62, Slovakia/zákon 48/2002 (13.12.2001).

²⁸⁸ Telephone conversation on 04.07.2008 with Gitte Nielsen, Director at Center Gribskov (see para 165 for information on Center Gribskov).

²⁸⁹ See <http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations> (04.07.2008).

²⁹⁰ See Home Office Press Release (2008) *Home Secretary Moves to Ratify the Council Of Europe Convention Against Trafficking in 2008*, 14 January 2008.

The Greek report refers to a recent report of the Greek Children's Ombudsman, stating that the places of detention of children visited are not suitable to address their special needs²⁹¹.

The French report makes mention of the fact that the situation in certain waiting zones (in particular at Paris Charles de Gaulle airport) seems to be in violation of France's international commitments. Waiting zones in airports are not considered, under French law, as being part of French territory. As a consequence, minors who remain there are not protected against deportation. In October 2007 the UN Committee on the Rights of the Child expressed its grave concern about the situation of unaccompanied children in the waiting areas of French airports.

4.4.3.4. No information on detention pending deportation

The national reports of Belgium and Portugal do not contain any information on detention pending deportation.

4.5. Long-term solutions

4.5.1. Return of the child

The overall impression that the national reports give on this point is that in principle in almost all Member States, the principle of the best interests of the child is established as a (primary) consideration in decisions affecting children. Furthermore in most Member States a risk assessment is made prior to possible return of an unaccompanied minor alien: the child is being interviewed and consulted, family members have to be traced (see section D.6.10.) and adequate shelter in the home country has to be arranged. However, not many formalised procedures exist, and if they do exist, the practical application thereof may be problematic.

The Belgian report refers to the opinion of the Belgian Centre for Equal Opportunities and Opposition to Racism that the durable solution for the unaccompanied minor alien, ultimately determined by the Aliens Office, is sometimes too easily focused on a return to the country of origin. 'The Centre notes, however, that where the minor probably is a

²⁹¹ See paragraph 12 of this report on the activities of the Children's Ombudsman and the Report of CPT to the Government of Greece on the visit carried out in August/September 2005 (document CPT/inf (2006) 41 at <http://www.cpt.coe.int/documents/grc/2006-41-inf-eng.pdf> (see page 13 of the report and in particular paragraph 11 on the effective implementation of the safeguards that the Greek legislation and/or practice provides for persons detained) and the Report of CPT to the Government of Greece on the visit carried out in February 2007 at <http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.pdf> (see in particular paragraphs 27 and 31 for the living conditions in the detention facilities where children are also deprived their liberty), accessed on July 12th, 2008.

victim of trafficking, the file is studied with special care, in order to check whether the family might be involved in the trafficking.²⁹²

In Germany, there are no clear regulations on the assessment of means to guarantee that the child will be appropriately taken care of upon return, either by relatives or by representatives of relevant organisations. In practice it depends on the efforts made by the individual legal guardians whether all relevant aspects are carefully assessed or not.

The Danish authors observe that 'incidents of women returning to Nigeria and left there without support have been the focus of a number of television documentaries²⁹³, but have not yet led to Danish initiatives to introduce re-integration programmes in collaboration with local partners.²⁹⁴

The French report reads on this point: 'The return of the child to his or her country of origin is extremely rare. It is usually difficult to determine whether or not this would be in the child's best interests.'

The Hungarian report observes that every procedure – i.e. immigration, asylum, child protection, judicial proceedings and the protection of victims – has its own focus, which can collide with the child's interests at times. 'Authorities receive little methodological help and guidance on which legal provisions to apply as legal principles in cases are not directly linked to child trafficking.'

The Romanian report explicitly makes a distinction between the return of a Romanian unaccompanied child found abroad, and the return of an unaccompanied child of other nationality to the country of origin. For children of Romanian nationality, the local child welfare authorities have a duty to carry out a social assessment,²⁹⁵ to prepare a plan for the reintegration of the child and decide whether any special protection measures should be taken in relation to the child.²⁹⁶

²⁹² CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, p. 33, www.diversiteit.be.

²⁹³ Documentaries on trafficking, such as 'The Dark Side of the Moon; by Anja Dahlhoff, show examples of trafficked women returning to Nigeria from Denmark where they are left without assistance and support. The film was broadcast on BBC and CNN in June 2008.

²⁹⁴ See, for example, 'The Dark Side of the Moon', by Anja Dahlhoff, 2006. The documentary was broadcast in June 2008 on BBC and CNN.

²⁹⁵ Art. 7 (2) Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

²⁹⁶ The mandatory indicators include the assessment of risk and safety. After the return of the child, even if no protection measures are taken, the local child welfare authorities are under a duty to monitor the child for at least six months. Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004) Annex 1 to Romania/*Ordinul Autorității Naționale pentru Protecția Drepturilor Copilului, pentru aprobarea modelului de anchetă socială privind situația sociofamilială a copilului român aflat neînsoțit pe teritoriul*

The authors of the Estonia, Greece, Italy, Cyprus, Lithuania, Poland and Slovakia reports had found no evidence for a formalised process for identification of durable solutions based on a best interest determination, including risk and security assessment prior to possible return of the child. In Finland and Latvia, as the reported cases of child trafficking have been so few, a formalised process for identification of durable solutions based on best interest determination, including risk and security assessment prior to possible return of the child, is still to be developed.²⁹⁷ The Czech Republic, Malta and Austria reports did not provide any information on this point.

4.5.2. Grant of asylum or subsidiary protection

In all 27 EU Member States third country national child victims of trafficking may receive asylum if they qualify as a refugee. Apart from asylum in most Member States (Bulgaria, Czech Republic, Estonia, France, Ireland²⁹⁸, Italy, Cyprus, Lithuania²⁹⁹, Luxembourg, Malta, the Netherlands³⁰⁰, Poland³⁰¹, Portugal, Romania, Slovenia, Slovakia, Sweden

altui stat, în vederea repatrierii acestuia și a reintegrării sale sociale, și a structurii cadru a planului referitor la pregătirea reintegrării sociale a copilului care se află neînsoțit pe teritoriul altui stat și care urmează a fi repatriate [Order 107/14.03.2005 of the National Authority for the Protection of Children's Rights approving the model of social assessment regarding the social and family situation of the unaccompanied Romanian child found on the territory of another state, in view of his return, and approving the framework plan preparing the social reinsertion of the unaccompanied child who is to be returned]. Art. 13 (2) Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

²⁹⁷ In any decisions issued under the Finnish Aliens Act that concern a child under 18 years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health. Matters concerning minors shall be processed with urgency. The United Nations Committee on the Rights of the Child is concerned that this principle is not adequately respected and implemented in practice. The Finnish report furthermore reads: 'The Committee's concern is shared by actors of the civil society in Finland, according to whom the weak realisation of the child's best interests in practice, attributed to the insufficient knowledge of child protection issues and human rights within the assistance system, is one of the main reasons for why the assistance of child victims of trafficking in Finland does not meet the international standards on combating child trafficking.'

An English translation of the Act is found by number on

<http://www.finlex.fi/en/laki/kaannokset/>.

²⁹⁸ The Irish report speaks of 'humanitarian leave'.

²⁹⁹ The Lithuanian report reads: 'Article 129 of the Law on the Legal Status of Aliens provides for that aliens, including minor aliens under the age of 18 who stay unlawfully on the territory of the Republic of Lithuania may be returned voluntarily or by force to the country of origin or to a foreign country to which they have the right to depart. An unaccompanied minor alien can be returned "only provided that he will be duly taken care of in the foreign country to which the minor alien is returned, having regard to his needs, age and level of independence". This provision allows taking into consideration possible dangers in that country and take a decision with regard to the principle of the best interests of a child.'

³⁰⁰ Under Dutch law, even if a child victim of trafficking did not cooperate in de criminal proceedings, he/ she may also apply for continued residence on humanitarian grounds, which will be granted if the Minister of Justice is of the opinion that because of particular individual

and the United Kingdom) child victims of trafficking may be granted subsidiary protection.³⁰²

In Latvia a new law is pending which makes the granting of asylum or subsidiary protection to child victims of trafficking possible. In the UK a child victim of trafficking may even have three options; apart from asylum or subsidiary protection, discretionary leave may be granted to an unaccompanied asylum-seeking child, if there are not appropriate arrangements in the country of return to receive the child if returned.

The authors of the Austrian report remark that 'so far, victims of trafficking in human beings/child trafficking have not been regarded as 'persecuted' in the sense of the Geneva Refugee Convention by Austrian asylum authorities.' They also notice however, that currently three cases of applications of child victims for asylum are pending before the courts. The German report observes that granting subsidiary protection for victims of child trafficking is not standard practice in Germany, while relevant case law on this issue does not exist. The Greek report states that Greece has not yet transposed Council Directive 2004/83/EC, but that child victims of trafficking may nevertheless qualify as a refugee.

The Belgian report does not discuss the issue of asylum or subsidiary protection, but merely states that 'victims of trafficking can obtain a residence permit, provided that they are willing to cooperate with the judicial authorities. It should be recalled that the Centre for Equal Opportunities and Opposition to Racism considers this condition too harsh for minors, especially if they are younger than 16 and the Council of Ministers has adopted an Action Plan containing initiatives to remedy this situation.'

circumstances it cannot be required that the alien leaves the Netherlands, thereby taking account of the risk of reprisals and opportunities for reintegration. Aliens Circular, Chapter B.16, under 7.

³⁰¹ The Polish report speaks of 'tolerated residence'.

³⁰² *Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (OJ L 304, 30.09.2004, p. 12-23) lays down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Some provisions of the Directive may be relevant for child victims of trafficking. First, although trafficking is not explicitly mentioned in this Directive as a reason of persecution relevant for the granting of refugee status, the Directive seems to make it possible to qualify child trafficking as an act of persecution. Article 6 for instance states that the actors of persecution or serious harm can be either the state or non-state actors. Moreover Article 9 makes clear that acts of persecution may be *inter alia* 'acts of physical or mental violence, including acts of sexual violence'³⁰² or 'acts of a gender-specific or child specific nature' (Art. 9 (2) (f)). In addition it can be argued that under the Directive child victims can qualify for subsidiary protection, because trafficking in human beings could be regarded as torture or at least inhuman or degrading treatment, as listed as a case of 'serious harm' according to Art.15. In the third place, the principle of *non refoulement* (Article 21) can be applied when a child victim of trafficking is concerned.'

The reports on Denmark, Spain³⁰³ and Finland did not discuss the availability of asylum/subsidiary protection for child victims of trafficking separately or exhaustively. In Ireland, although the 2008 Immigration, Residence and Protection Bill has been welcomed as such legislation is long overdue, there has been much criticism of some sections contained therein. In particular, the authors of the Irish report observe, there is not sufficient protection in place for victims of child trafficking who may be seeking asylum, and much discretion is afforded to the Minister for Justice, Equality and Law Reform.

4.6. Policies of prevention, care and protection

4.6.1. Prevention of child trafficking: awareness-raising

Various national reports (e.g. Germany, Slovakia and Finland) point out explicitly or implicitly that the national debate on the issue of child trafficking has only begun recently. As such, awareness-raising activities form an important contribution to stimulating public debate.

The authors of the German report observe that 'A debate addressing child trafficking in a comprehensive manner, including all aspects and forms of trafficking in children, has not taken place yet. Some debates exist in relation to select aspects of trafficking, such as forced marriages and its possible criminalisation.' Also the authors of the Finnish report note that child trafficking has been acknowledged only recently in Finland, and that therefore there is no or little public debate on the issue. They even add to this that: 'to a certain extent, the topic is still seen as taboo.'³⁰⁴ The authors of the Slovakian national report are of the opinion that the general awareness of the problem of trafficking should be much higher.

In all Member States, some form of awareness-raising activities takes place. These campaigns however are primarily targeted at adults and (possible) adult victims of trafficking in human beings, although there are initiatives targeted at children too (e.g. in

³⁰³ The Spanish report merely reads: 'There is no specific legal provision on granting asylum to trafficked children.'

³⁰⁴ National expert on child trafficking, telephone interview on 9 June 2008 and written answer on questions, received on 15 June 2008. For the purpose of writing the Finnish national report, several NGOs specialised in human trafficking as well as NGOs focusing on children were contacted. Most of them answered that they do not have child trafficking on their agenda, why they cannot contribute to the debate on child trafficking. For the time being, no research is being carried out on child trafficking in Finland. Ministry of the Interior, written answer on questions, received on 19 June 2008; Lasten perusoikeudet ry – Children's fundamental rights, personal interview on 11 June 2008.

EE). Furthermore campaigns may be targeted at possible customers of sexual services (either or not provided for by children), as is the case in Denmark.³⁰⁵

In the years 2004 and 2005, the National Authority for the Protection of Children's Rights in Romania, implemented a nation-wide information campaign for the prevention and combating of child trafficking, with funding from the state budget. Italian and Greek authorities have also launched national awareness-raising campaigns on child trafficking.

In most Member States, national awareness-raising campaigns on trafficking in human beings in general were or are initiated by state authorities (Czech Republic, Denmark, Estonia, Greece, Ireland, Cyprus, Latvia, Lithuania, Hungary, Austria, Poland, Portugal, Slovenia, Slovakia and the United Kingdom). These campaigns may form part of a National Action Plan (e.g. in Estonia, Slovakia and Finland). Very often the campaigns are set up in cooperation with NGOs in the field (e.g. in Poland). In Germany and the Netherlands such campaigns are even primarily organised by NGOs which (may) receive state-funding for this purpose. The participation of NGOs will be further discussed below.

In Belgium and Bulgaria campaigns raising awareness of trafficking in human beings formed part of national awareness-raising campaigns on broader themes like illegal immigration (Belgium) or violence against women (Bulgaria). The report on the Czech Republic makes mention of a campaign that was initiated during the World Cup Football in 2006.

The Irish and UK report make mention of the launch of a new campaign entitled the "Blue Blindfold campaign" which according to the Irish report is being run in participating countries, namely Ireland, the United Kingdom, Poland, The Netherlands, Italy and Spain³⁰⁶.

In various Member States, awareness-raising of trafficking in human beings is taken up in education programmes. For instance in Sweden a film on child trafficking by ECPAT was used as an educational tool. In 2007, the Slovenian Ministry of Education introduced the theme of human trafficking into the standard Slovenian primary school curriculum. In Slovakia awareness raising campaigns were initiated in secondary education, by the International Organisation for Migration and NGOs. Also in Austria, the Netherlands and the UK teaching materials were developed.

³⁰⁵ See http://www.social.dk/ministeriets_omraader/udsatte_grupper/prostituerede/generelt_om_prostitution.html.

³⁰⁶ See <http://www.blueblindfold.co.uk/> and <http://www.blueblindfold.gov.ie/>.

Some reports point out that existing awareness-raising projects have been criticised. For example in Finland the campaigns are criticised for not being well targeted and for not reaching all victims, relevant authorities and NGOs.³⁰⁷ Furthermore, the lack of a responsible authority to coordinate and promote awareness-raising efforts, which would effectively include child and adult victims of trafficking as well as NGOs, is experienced as a problem by civil society (e.g. the Finnish National Committee for UNICEF).³⁰⁸ A number of NGOs in Finland, including the Finnish National Committee for UNICEF, see a link between the lack of awareness-raising efforts concerning child trafficking and the level of human rights education in schools. The authors of the Polish report are of the opinion that the number of publications and their distribution is still not sufficient to raise awareness as regards the problem. They consider permanent public campaigns and additional educational activities necessary.

As regards the results of awareness-raising campaigns, the Lithuanian report notes that 'surprisingly, public opinion polls still show that many people think that there is not enough information about the dangers of human trafficking.'³⁰⁹ The Latvian report cites the view expressed in a brochure issued by the Ministry of Interior on "Cooperation to Prevent Human Trafficking", which reads as follows: ' (...) when evaluating the informative events that have taken place in Latvia, until now, a conclusion can be made that, although they have achieved a positive effect, they have not reached a wide enough audience in society and among specialists. Only in some separate cases, the campaigns have been comprehensive, complex and have created a long term effect. (...) '.

4.6.2. Access to care and protection

In two Member States (Belgium and Latvia), access to all care and protection is related to the status of 'victim of human trafficking'. To be recognised as a victim of human trafficking in Belgium, the victim has to break off all contacts with the traffickers, has to be counselled by a specialised reception centre and has to file a complaint against the traffickers. In Latvia a commission of specialists (a social worker, a psychologist, a lawyer, a medical practitioner, an official of the State Police, as well as, where necessary, other specialists) assesses the compliance of a person with the criteria of a victim of the traffic in human beings. 'The provision of services shall be refused if the person does not comply with the criteria of a victim of the traffic in human beings; if the person has not submitted all the documents necessary for the receipt of the service; or the person repeatedly requests services during 1 year.' If a person has acquired the status of victim of trafficking in human beings, the victim will receive care services for a period not longer than six months.

³⁰⁷ Monika – Naiset liitto ry, written answer on questions, received on 24 June 2008.

³⁰⁸ The Finnish National Committee for UNICEF, written answer on questions, received on 19 June 2008.

³⁰⁹ During public opinion poll (2006, UAB "Revanda") 81% of respondents said that there is not enough information provided in Lithuania on the scope and dangers of the human trafficking (Apibendrinta 2006 m. ataskaita apie prekybos žmonėmis situaciją Lietuvoje, 2007, p. 23).

Two other Member States (Czech Republic and Finland) provide for an assistance system for victims of trafficking in human beings. In the Czech Republic, a system of supporting and protecting victims of trafficking in human beings from public funds, which is also to motivate victims to cooperate with the law enforcement authorities, was established in 2003 in the form of the 'Model for Supporting and Protecting Victims of Trafficking in Human Beings for the Purpose of Sexual Exploitation'.³¹⁰ The objective of the Programme to Support and Protect Victims of Trafficking in Human Beings is to provide victims of trafficking in human beings with support and to protect their dignity and human rights and to motivate them to testify. Also in Finland a multidisciplinary assistance system for helping and supporting victims of trafficking was established in accordance with Finland's first Plan of Action against trafficking in human beings.³¹¹

In Slovakia, legal provisions concerning complex care for a victim are favourable only to victims who cooperate during investigation of trafficking.

4.6.3. Integration programmes for child victims of trafficking

Romania seems to be the only EU Member State that has developed a specialised integration programme for trafficked children. Under this programme first the situation of the child will be assessed, then an individual intervention plan which comprises certain specific indicators (medical and psychological recovery, insertion/reinsertion into the education system or support for vocational training, reintegration into the family of origin or a foster family, other protection measures, legal advice, etc) will be drafted and finally this plan will be implemented and constantly monitored.³¹² Romanian law furthermore provides for specific provisions concerning the reintegration of trafficked children of Romanian nationality.

³¹⁰ Inclusion in the Programme to Support and Protect Victims of Trafficking in Human Beings is based on a voluntary principle and on the assumption that the victim cuts off all contact with the criminal environment. Information provided by a victim to law enforcement bodies within criminal proceedings should be at least reasonably relevant. Exceptions in this case are victims of trafficking in human beings who are have learning difficulties or who suffer from psychological problems. Such persons can be allowed to join the Programme without any requirement for cooperation with law enforcement authorities. The Czech name for the model is: 'Model podpory a ochrany obětí obchodování s lidmi za účelem sexuálního vykořisťování.'

³¹¹ National Plan of Action against Trafficking in Human Beings: Finland, Helsinki 2005, Ulkoasiainministeriön julkaisusarja 18/2005, pp. 10-12.

³¹² Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004); Romania/*Ordin pentru aprobarea Normelor metodologice privind întocmirea Planului de servicii și a Normelor metodologice privind întocmirea Planului individualizat de protecție* [Order 286/28.07.2006 of the National Authority for the Protection of Children's Rights approving the methodology for drafting the plan for services and the individualised protection plan]. Also, Response of the NAPCR no. 5483/13.06.2008, on file with Fralex national expert.

In the Czech Republic, the Netherlands and Slovakia special integration programmes for victims of trafficking in human beings in general are in place. An example of a Dutch integration programme, provided for by state-funded NGOs, is a 'buddy' project under which a victim of trafficking is matched to a Dutch person of the same age. Together, the victim and the 'buddy' may undertake enjoyable activities, such as talking, walking, visiting museums and cooking.

The Austrian Task Force against trafficking is currently working on the development options of integration for victims of trafficking in human beings who are already in possession of a residence permit. In Luxembourg special integration programmes are provided for in a bill that is currently pending.

For all other Member States (*inter alia* Bulgaria, France, Latvia and Sweden) no evidence of specialised integration programmes for trafficked children was found. Child victims of trafficking may nevertheless have access to general integration programmes for immigrants (Greece), for refugees (Denmark, Estonia and Hungary) or for unaccompanied minor aliens (Czech Republic, Ireland and Poland).

The reports of Spain and Ireland refer to special provisions that provide for assistance to vulnerable children in need. The German, Irish, Italian, Slovenian and UK reports refer to the access that trafficked children have to health care and education. In Finland child victims shall be entered into the assistance system immediately, so that the child has access to full health care, education and other social services through the assistance system. However, the Finnish report also clarifies that: 'Measures of social inclusion have not yet become standardised in Finland due to the limited number of reported cases of child trafficking.'³¹³

According to the Cypriot report, child victims of trafficking have no access to integration programmes. The Belgium, Malta and Portugal reports did not provide any information on integration programmes for child victims of trafficking.

4.6.4. Access to health care

The regulations regarding the provision of health care for (child) victims of trafficking differ widely between the Member States. The amount of health care provided may be dependent on the residency status of the child, the question whether the child has been recognised as a victim of trafficking in human beings, the question whether the child has entered a so-called assistance-system, the accommodation where the child is sheltered, his/ her nationality (third country national or EU citizen), the fact that the child victim is unaccompanied, or the simple fact that the child victim is a minor.

In most Member States, all people residing in the country's territory are entitled to free emergency health care. In some states however, this is at the same time the only free

³¹³ National Bureau of Investigation, written answer on questions, received on 5 June 2008.

medical care uninsured child victims of trafficking are in principle entitled to (Estonia and the United Kingdom³¹⁴).

The vast majority of Member States provide for access to basic psychological and medical services for victims of trafficking under most types of residency permits (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Cyprus, Lithuania, Hungary, Malta, the Netherlands, Austria, Poland, Portugal [in Portugal only during reflection period], Finland, Romania, Slovenia and Slovakia). The Irish report reads: 'As in the case of all children in care in Ireland, it is very difficult to obtain the requisite access to psychological care, due to lack of resources.'³¹⁵

In Luxemburg and Sweden legislation is in the making. The Luxemburg proposed bill on assistance and protection to victims of human trafficking provides for full health care services for trafficked children. The Swedish proposal for a new Act 'suggests that children that have applied for a residence permit and children hiding from the enforcement of a decision to refuse entry or deportation, shall be offered the same health and medical services as children living in Sweden. However the proposal does not include children without documents and children that for any other reason illegally stay in Sweden.'

4.6.4.1. Statistics on access to health care

In Finland³¹⁶, Italy³¹⁷, Lithuania³¹⁸ and Romania³¹⁹ certain statistics of the number of child victims of trafficking receiving health care are kept. It is however impossible to draw any

³¹⁴ In the UK a trafficked child who is a citizen of the UK is eligible to access the full range of medical services on the basis of need. Foreign nationals generally have no right to access services provided by the National Health Service free of charge. There are, at EU level, reciprocal arrangements in place for citizens of Member States of the European Union, but these arrangements extend only to emergency treatment or treatment planned and approved before travel. The UK also has reciprocal arrangements with other countries, but for treatment not covered by reciprocal arrangements with the country of origin, whether that person is an EU citizen or not, the policy, except for emergency or primary care, is to charge for treatment of persons 'not ordinarily resident' in the UK. Those who are 'ordinarily resident' for the purposes of eligibility to free healthcare include persons who have been granted asylum, humanitarian protection or DL to remain in the UK, as well as those given temporary leave to remain in the UK under the terms of the *Immigration Act 1971* pending the outcome of an application. Regardless of the legal position, however, the provision of necessary healthcare services to child trafficking victims is an integral part of the overall policy to safeguard the welfare of trafficked children. The rules relating to healthcare for foreign nationals in England are currently being reviewed jointly by the UKBA and the Department of Health.

³¹⁵ Irish Association for Young People in Care.

³¹⁶ The number of children receiving such services (four in 2005; seven in 2006; five in 2007; and six in 2008) is equivalent to the number of children within the Finnish assistance system.

³¹⁷ According to the Italian Interministerial Commission's statistics, in 2001 the number of trafficked children receiving full healthcare was 75; in 2002 it was 80; in 2003 it was 70; in 2004 it was 118; in 2005 it was 139; in 2006 it was 266.

³¹⁸ In Lithuania reports on the implementation of measures Programme on Prevention and Control of Trafficking in Human Beings do provide certain numbers. For instance, in 2007 of 80

conclusions from these statistics, because no conclusive statistics of the total number of child victims of trafficking are known.

In Greece, only general statistics, without a breakdown in age, are available. The Swedish report underlines that these kind of statistics are confidential and thus not publicly available. The reports of Cyprus, Luxembourg, Hungary, Malta, the Netherlands, Austria, Slovakia³²⁰ and the United Kingdom, explicitly state that no statistics are available, because these categories of data are not recorded.

The reports of the remaining Member States did not provide any information on numbers of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment) in the period 2000-2007.

4.6.5. Access to education

Concerning access to education, the regulatory frameworks in place in all Member States differ widely.

A considerable number of Member States provide access to education (or make that education compulsory) for all migrant children residing in the country, irrespective of their residence status (Estonia, Greece, Spain, France, Ireland, the Netherlands, Austria, Poland, Slovenia and the United Kingdom). This includes primary and secondary education and may also include vocational training.

In six Member States, access to education is available for children who reside in a reception centre or other shelter (Belgium, Czech Republic, Denmark, Spain, Hungary and Romania). Without making this more explicit the national reports of Cyprus, Italy and Malta make clear that under their national law trafficked children have full access to education. In Finland all school-aged children who are suspected to be victims of trafficking have access to primary and secondary schooling during the investigation

persons that received shelter services from NGOs 63 persons have also received medical aid, 52 – psychological care; and of 358 persons that received services from NGOs (without shelter) 84 received medical aid, 105 – psychological care. The exact number of minors is not provided, but it is stated that 14.8% of all participants were underage girls. There is not information about the amount of underage boys. Report of the Ministry of Interior on the implementation of measures of the 2005-2008 Programme on Prevention and Control of Trafficking in Human Beings in 2007.

³¹⁹ For the years 2000-2004 no Romanian statistics are available. In 2005 77 children received full health care services, compared to 73 in 2006 and 216 in 2007. Of these 216 children in 2007, 186 children were victims of trafficking within Romanian borders (so-called internal trafficking). Letter of the National Authority for Protection of Children's Rights no. 5483/13.06.2008, on file with the national Romanian Fralex expert.

³²⁰ The Slovakian report points out that even if these statistics would be existent, the authorities would refuse to disclose them due to the sensitive nature of the data.

process.³²¹ Child victims who enter the assistance system are automatically entitled to education.

In Lithuania unaccompanied minor aliens, minor asylum applicants and minors enjoying temporary protection in the Republic of Lithuania (thus supposedly all child victims of trafficking) are entitled to education. Luxembourg's asylum law provides that minors receiving asylum status or subsidiary protection will have full access to the Luxembourg educational system, under the same conditions as Luxembourg citizens.³²² Under Swedish law asylum-seeking children are entitled to education, pre-school activities and school childcare on the same terms as children resident in Sweden.³²³ Children who have had their asylum application rejected and who are avoiding enforcement of a refusal of entry or deportation order ('children in hiding'), do not have a corresponding right. The municipalities may however on a voluntary basis receive those children at school and they have also been allocated extra funds from the Government in order to do so.

In Portugal, during the reflection period access to education is provided to a child victim of trafficking on the same footing as Portuguese national.

In Germany, the right to attend school for children who illegally reside in the country is not clearly regulated, and practices vary considerably as a result of the German federal system and the fact that the power to legislate on schooling and education falls within the competence of the Länder.³²⁴

As the national reports of Bulgaria and Hungary show, there may be a gap between law and practice in both countries on the basis of the law³²⁵ child victims of trafficking (at least minor asylum seekers) are entitled to access to education. In practice however

³²¹ Ministry of the Interior, written answer on questions, received on 19 June 2008 and telephone interview on 9 June 2008.

³²² Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 49 (05.05.2006), as amended.

³²³ Sweden's Fourth Periodic Report to the UN Committee on the Rights of the Child 2002 2007 page 53.

³²⁴ The German report reads: 'While some heads of schools take on such children in the same way as children legally residing in the country, others turn down the applications, referring to the illegal stay in the country and the requirement to report those cases to the relevant authorities.' R. Fodor/E. Peter (2005) *Aufenthaltsrechtliche Illegalität und soziale Mindeststandards. Das Recht des statuslosen Kindes auf Bildung*. Rechtsgutachten im Auftrag der der Max Traeger Stiftung, p. 1, http://www.gew.de/Binaries/Binary29225/RG_im_Auftrag_der_Max-Traeger-Stiftung_Das_Recht_des_stat%C2%85.pdf (25.07.08).

³²⁵ Art. 23 of the Bulgarian Combating Trafficking in Human Beings Act education in state and municipal schools under the conditions and order of Public Education Act should be ensured for children who are victims of trafficking. Furthermore, the Constitution of the Republic of Bulgaria and the Public Education Act recognise the right to education as a universal right, and stipulate that education is compulsory and free of charge for all children up to the age of 16. Bulgaria/*Конституция на Република България* (13.07.1991), Art. 53. Bulgaria/*Закон за народната просвета* (18.10.1991), Art. 4.

Hungary/Act No 79 of 1993/12.07.1993 on public education, Article 110 says that nursery and school service are accessible with the same conditions for Hungarian and other children under asylum seeking procedure or for refugee children.

there are problems ensuring this right. This may be due to the fact that the child does not speak the language, or lacks basic literacy skills, or to the fact that the high school is located at a great distance from their shelter and there is no transportation provided for, or because difficulties in identifying the personal data or providing medical care for the child do not allow his/her enrolment in school.³²⁶ Research³²⁷ has shown that half of the children seeking asylum in Hungary do not attend school.³²⁸

4.6.5.1. Statistics on access to education

On the basis of the national report it may be concluded that in none of the Member States exact statistics on the number of children receiving education or training in the period 2000-2007, are available. The reports of Czech Republic, Greece, Spain, Italy, Cyprus, Lithuania, Luxembourg, the Netherlands, Austria, Slovakia³²⁹, Romania, Finland and Sweden, explicitly state that no such statistics are available, because these categories of data are not recorded. In Hungary, merely general statistics on foreign national children receiving education are available (but these are not included in the national report).

The reports of the remaining Member States do not provide any information on numbers of trafficked children receiving education/training in the period 2000-2007.

4.6.6. Children with special needs relating to ethnic background or disability

The different national reports give diverse responses to the request for evidence that special needs for children coming from different ethnic backgrounds and needs of children with disabilities have been taken into consideration in all relevant contexts and legal procedures. The reports of Cyprus, the Netherlands, Sweden and Slovenia refer to very general provisions in law, such as the constitution or the Law on the reception of asylum seekers. Furthermore, this issue is closely connected with the respect for the principle of the best interests of the child (see section D.1.2).

Under this paragraph, the majority of reports refers to the availability of translation services available for child victims of trafficking (this is e.g. the case for the reports on Bulgaria, Greece, France, Ireland, Lithuania, Luxembourg, Hungary, the Netherlands, Romania, Slovenia, Finland and the United Kingdom). Examples of other legal

³²⁶ Interviews with two directors of crisis centres, on 27.06.2008 and 7.07.2008.

³²⁷ Information source: website of UNHCR: http://www.unhcr-budapest.org/hungary/index.php?option=com_content&task=view&id=118&Itemid=56 (accessed on 18.06.2008).

³²⁸ Information taken from the website: <http://infovilag.hu/hir-9699-menekult-gyermekeknek-az-legjobb-ha.html> (accessed on 19.06.2008).

³²⁹ The Slovakian report points out that even if these statistics would be existent, the authorities would refuse to disclose them due to the sensitive nature of the data.

provisions or policies as mentioned in the national reports will be discussed in the following paragraphs.

The Austrian report makes mention of a close cooperation between *International Romani Union* and shelter for unaccompanied minor aliens. In the Czech republic there is an exemption for children with disabilities from the general obligation for asylum seekers to stay in the reception centre: people with disabilities will be provided with adequate housing. The report on Luxembourg points out that the unaccompanied minor is to be housed in premises that take into account his or her needs.³³⁰

The Lithuanian report states that most victims of trafficking in Lithuania are nationals of Lithuania or nationals of countries with similar social and historical background (Byelorussia, Ukraine, Moldova, etc.) and thus the latter do not have any particular special needs in comparison with Lithuanian victims. Most Lithuanians are speaking Russian language and there are no major communication problems.

On the basis of Polish law, non-citizens of Poland in the schooling age may be provided with school-based classes in the language and culture of their country of origin, provided by diplomatic or consular agencies of their country of origin acting in Poland or by cultural and educational associations of a given nationality. The school makes rooms and teaching aids available free of charge.

In Romania, asylum applicants with special needs have the right to specialised medical assistance,³³¹ and will be interviewed by specialised officers, who must take into account 'the special situation of such persons'.³³² A child who belongs to a national, ethnic, religious or linguistic minority has the right to his/her own religious and cultural life.³³³

In the UK, a court official appointed by a court to safeguard and protect the welfare of a child will have to take the particular circumstances of the individual child into account. Furthermore, *Aiming High for Disabled Children: Better Support for families 2007*³³⁴ and *Working Together to Safeguard Children 2006*³³⁵ are both government guidance that recognise the needs of disabled children.

³³⁰ Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 52 (05.05.2006), as amended.

³³¹ Art. 17 (1) (n) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

³³² Art. 46 Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

³³³ Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

³³⁴ HM Treasury/ Department for Education and Skills (2007) *Aiming High for Disabled Children: Better Support for families 2007*, available at: <http://www.everychildmatters.gov.uk/files/64301A568B221580F3F449A098CB3CE9.pdf> (09.07.2008).

³³⁵ HM Government (2006) *Working Together to Safeguard Children*, para.11.28-11.29, available at http://www.oxford.anglican.org/files/docs/Working_Together_2006_final.pdf (09.07.2008).

In Finland, policies taking into account the special needs of children with minority ethnic backgrounds and children with disabilities are currently being developed.³³⁶

In France, the housing expenses of children with disabilities are supported by the state or by social security.

A few reports discerned certain difficulties with bringing this ideal into practice. For instance the authors of the German report remark that 'while in many cases the special needs of children in the given situation are addressed, it cannot safely be maintained that this is the case in all circumstances and in all contexts.' The authors of the Bulgarian reports conclude on the basis of information received from directors of crisis centres that even the satisfaction of basic needs of the children who are accommodated in the centres seems to be a challenge. Representatives of Finnish NGOs and civil society find that cultural diversity is not taken sufficiently into consideration within the Finnish system. For this reason, certain NGOs have advocated for a more frequent use of trained multicultural support persons to provide assistance in interpretation and the understanding of cultural diversity.³³⁷

The authors of the Bulgaria, Denmark, Estonia, Spain and Italy reports found no evidence that special needs for children coming from different ethnic backgrounds and the needs of children with disabilities have been taken into consideration in all relevant contexts and legal procedures. The reports on Latvia, Malta and Portugal contain no information on this point.

4.6.7. Protection of children with particular vulnerabilities

Under this paragraph, most national reports identify unaccompanied minor aliens as particularly vulnerable children. For that reason quite a few reports refer to general measures to protect and support these minors. Examples of such measures are the quick appointment of a legal guardian/personal representative³³⁸, specialised

³³⁶ National Bureau of Investigation, written answer on questions, received on 5 June 2008; national expert on child trafficking, written answer on questions, received on 15 June 2008; Ministry of the Interior, written answer on questions, received on 19 June 2008.

³³⁷ Monika – Naiset liitto ry, telephone interview on 6 June 2008 and written answer on questions, received on 24 June 2008.

³³⁸ The Greek report observes that in Greece 'there is a «gap» in the implementation of the legal provisions concerning the designation of legal guardians for the unaccompanied children who arrive in Greece and as a result they may become easily victims of exploitation because they live and/or work in Greece without proper representation (while the consent of the parents is requested by the competent authorities to allow children to work, unaccompanied children do not benefit from the protective measures provided by the Greek legislation for working children due to the «gaps» of implementation of the provisions of national legislation on the appointment of legal guardians). See the survey on unaccompanied minors conducted by G. Dimitropoulou and I. Papageorgiou in 2008 for the status of unaccompanied minors who are seeking asylum in Greece available at: http://hosting01.vivodinet.gr/unhcr/UAM_english.pdf, accessed on June 20th, 2008). See also <http://hosting01.vivodinet.gr/unhcr/ProtectionPoints%20UAMS%202008.doc>, on the

accommodation for unaccompanied minor aliens and policies to prevent unaccompanied minors from disappearing from shelters (see section D.6.8).

The Romanian National Authority for the Protection of Children's Rights identified in addition to unaccompanied minor aliens, other categories of children at high risk of trafficking, namely: children living on the streets, children from very vulnerable families (extreme poverty, very low level of education, alcoholism, domestic violence, etc), children from poor Roma communities, neglected or abused children, children who dropped out of school, children, particularly those in rural areas, subjected to work exploitation, children with disabilities, children whose parents both work abroad, migrant children accompanied by vulnerable families, etc.³³⁹ In their strategies and national plans, the competent Romanian authorities address the objective of reducing the vulnerability of the groups at risk of trafficking, including the most vulnerable children.³⁴⁰ A somewhat similar approach is chosen in Spain, where 'cases reported to National Police frequently originate within the family or occur at random, so that they cannot be attributed to any particular organisation. The police have reported cases where parents were arrested for selling their underage children for the purposes of crime and prostitution. For this reason, prevention is implemented through assistance to families and protection for minors in a vulnerable family situation.'

The French report also refers to support projects for vulnerable children on the streets, whereas the Italian report refers to projects on alerting the population of poorer countries (possible countries of origin) on child trafficking.

The Hungarian department in charge of victim protection within the National Police Headquarters (ORFK) has created an information guide for staff on policy and protocol pertaining to the prevention of trafficking in persons.

Austrian NGOs criticise the fact that prevention measures tend to have a focus on Austrian children and issues within the family, even though the youth welfare authorities are responsible for all children on Austrian territory.³⁴¹ NGOs criticise that attention to marginalised groups is given rather in the form of prohibitions, e.g. the introduction of a provision prohibiting begging with children on the streets in the Viennese *Landes-Sicherheitsgesetz* [Viennese Security Law].³⁴² The authors of the Czech report merely state that the policies to prevent children in a vulnerable position (such as

recommendations of UNHCR's Office in Athens for the protection of unaccompanied asylum seekers in Greece (document in Greek), accessed on July 11th, 2008.

³³⁹ See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 14, on file with the national Fralex expert.

³⁴⁰ See Sections A.2.1. National Plans of Action against Trafficking, and B.1. Awareness-raising campaigns of Romanian report. Furthermore, since 2008, local teams of representatives from different authorities (social assistance, education, health, police, work inspectorate), NGOs and other representatives of civil society, who used to deal with the prevention of work exploitation in the case of children, have extended their mandate to any form of neglect, abuse, exploitation and child trafficking.

³⁴¹ Sec. 3 Federal Youth Welfare Act and *Alternative Report*, p. 14.

³⁴² See Sect. 2; Vienna/LGBI 51/1993, last amended by LGBI 33/2008 (03.06.2008).

unaccompanied asylum- seekers) becoming victims of child trafficking upon their arrival is inadequate.

According to the authors of the reports of Austria, the Czech Republic, Germany and Greece, no specific policies were developed in these countries. The authors of the Bulgarian report, could not find any evidence of specific policies, and the reports on Belgium and Slovenia did not discuss this topic at all.

4.6.8. Specialised shelter for child victims of trafficking

In three Member States, trafficked children are sheltered in accommodation that is set up for the purpose of accommodating this group only. Belgium has three shelters that are specialised in sheltering trafficked children and three shelters for adults only. In the Bulgarian cities Balvan, Pazardzhik and Dragoman three functioning crisis centres for child victims of trafficking are located.³⁴³ They were opened at the beginning of 2007. Children between six and 18 can be placed there for up to six months. The centres have an overall capacity of 30, and at the end of 2007, 26 children were using them. In Italy many shelters for trafficked children exist. According to the national report the total number is currently not available because such facilities are directly managed by local authorities and NGOs, with only an indirect connection to the Department of Rights and Equal Opportunities.

The Dutch Ministry of Health, Welfare and Sport and the Ministry of Justice are working on the development of new shelter possibilities, the so-called *categorale opvang* [categorical shelter] for (minor) victims of trafficking during the first three months after they have been identified as a (possible) victim.

Other Member States have specialised shelters for trafficked adults, where exceptionally children may be sheltered too (the Netherlands, Austria, Poland, Portugal and the United Kingdom³⁴⁴). In Slovakia any (child) victim of trafficking is entitled to accommodation (arranged for by NGOs) upon request.³⁴⁵

³⁴³ Bulgaria/Government reply to questions of the UN Committee on the Rights of the Child for the review of the second report for implementation of the UN Convention of the Rights of the Child, 2008, p. 17, para. 47, available at:

<http://www2.ohchr.org/english/bodies/crc/crcs48.htm>, (accessed 04.08.2008),

Bulgaria/Национална комисия за борба с трафика на хора (НКБТХ), Доклад за дейността на Националната комисия за борба с трафика на хора за 2007 г. [Report on the Activity of the National Commission for Combating Trafficking in Human Beings 2007], p. 45.

³⁴⁴ In Austria there is one such shelter. The shelter in Portugal is for accommodating adult females and (if necessary) their children only. Also the Dutch shelter is designed for adult female victims only, but incidentally girls between 16 and 18 years old may be accommodated there too. In London 35 beds are available as part of the Poppy project.

³⁴⁵ However, as the Slovakian national report points out, the relevant ministerial decree is binding only for subordinated subjects of the minister.

In various Member States specialised shelters for unaccompanied children are in place, run by an NGO which may have with state support (Czech Republic, Denmark, Hungary, the Netherlands, Austria and Slovakia³⁴⁶). The Danish authorities have made an agreement with an NGO establishing an emergency plan making it possible to accommodate a small number of trafficked children in Copenhagen. In Spain³⁴⁷, Portugal and the UK specialised shelters for vulnerable children at risk exist. In Germany the shelter possibilities differ between different *Länder*; a child victim may be sheltered in accommodation specialised for people under a witness-protection programme or in another specialised shelter.³⁴⁸ In France child victims of trafficking are kept in ordinary facilities for children. In Ireland the majority of separated children reside in privately managed hostel accommodation (which contain up to thirty-five children). In Malta child victims are predominantly placed under church-managed homes or may be accommodated in a residential home, hostel or similar institution.

In Lithuania, in principle, all child victims of trafficking should live with and be cared for by their parents or by their guardian/curator. The Programme on Prevention and Control of Trafficking in Human Beings provides for budgetary allocations to NGO projects that provide social care, protection and rehabilitation of victims of trafficking.³⁴⁹ Shelter services are provided only by few of these NGOs. Another option is sheltering women in centres run by NGOs for women and children at risk (e.g. victims of domestic violence).

Under the Dutch pilot project 'enclosed care' child victims of trafficking of certain high risk groups may also be placed in enclosed care institutions. Child victims of so-called 'loverboys'³⁵⁰ can be placed in 24-hour shelter of which the exact location is secret.³⁵¹ Furthermore, the Dutch Ministries are currently working on the development of new shelter possibilities aimed specifically at sheltering (minor) victims of trafficking.

³⁴⁶ Austria, the Czech Republic, Denmark and Slovakia each have one such shelter, in Hungary there are two shelters for unaccompanied children. The number of shelters in the Netherlands is unknown. In this country unaccompanied minors under 12 years old are placed in foster families. Children from 12-15 years old are placed in small-scale reception units. Elder children (15-18 years old) are placed in large scale shelters, mostly campuses for unaccompanied minor aliens

³⁴⁷ The Spanish national report comments that many reports of different institutions (e.g. the Ombudsman of Catalonia in its report of 2005)³⁴⁷ complain about the lack of places in these special centres, as well as the lack of attention paid to the children's mental health and the shortage of professionals trained to deal with vulnerable minors. Spain/Síndic de Greuges, *Annual Report 2005*, available at: http://www.sindic.cat/site/unitFiles/2188/38_Informe%20a1%20Parlament%202005.pdf (01.08.2008).

³⁴⁸ The authors of the German report observe that 'accommodation in these shelters, however, in practice does not seem to be the rule'

³⁴⁹ As it was mentioned above, discussions still continue between relevant NGOs and government agencies, on the definition of victim of trafficking. Many NGOs treat (almost) every person that prostitutes himself as a victim of trafficking, irrespective of his will to cooperate with law enforcement institutions. For instance, "Caritas" renders assistance to "women that are victims of prostitution or trafficking in Lithuania or foreign states" (see: http://www.anti-trafficking.lt/index.php?s_id=22&lang=lt).

³⁵⁰ 'Loverboys' are pimps who use seduction techniques to draw – mostly minor – girls into prostitution

³⁵¹ Website www.asja.nl. (last accessed 01.08.2008).

In Poland, there are no specialised centres, as there are no identified cases of child trafficking. Unaccompanied minor foreigners are placed in intervention and care facilities where Polish unaccompanied children are usually placed.

In Romania as regards sheltering a distinction is made between Romanian national and foreign national child victims of trafficking.³⁵² Furthermore, 12 specialised centres exclusively established for unaccompanied Romanian children who are returned to Romania and for child victims of trafficking were set up.³⁵³

According to the Slovenian report, under Slovenian law 'any alien minor who has entered the Republic of Slovenia illegally unaccompanied by his/her parents or other legal representatives or who illegally resides in the Republic of Slovenia must be returned immediately to the country of origin or handed over to representatives of the country of which he/she is a national. However, a return to his/her country of origin or to a third country which is willing to accept him/her may not take place until suitable reception is provided.' Temporarily the alien minor will be accommodated by the police in the Centre for Aliens, in a special division for minors.³⁵⁴

In Cyprus and Estonia, no specialised shelters for trafficked children exist. The authors of the Luxemburg report received no information from the Luxembourg authorities regarding sheltering. There is no information if there are any specific shelters for trafficked children in Sweden.³⁵⁵ The information regarding sheltering in the Latvian report is not clear to the authors of this report.

³⁵² Romanian nationals are sheltered in a specialised centre run by the National Agency against Trafficking in Persons (NATP) or in a centre of the local welfare authority. Foreign minor victims who applied for asylum are sheltered in specialised centres for trafficked children. Children who did not apply for asylum may be granted tolerated stay (in that case shelter is dependent on cooperation with police) or temporary residence (in the case the child is sheltered under same conditions as a Romanian child).

³⁵³ Furthermore each county child welfare authority manages at least one specialised emergency centre for abused, neglected, exploited or trafficked children (there is a total of 47 such centres), which will be used to host a child presumed to be a victim of trafficking, if no specialised centre is available.

³⁵⁴ The Slovenian report reads furthermore: ' Upon a proposal by the special custodian or with his/her prior consent, the police may also find another, more suitable form of accommodation for the minor if it is established during the procedure that accommodation under the supervision of a social security body would be more beneficial for the minor. Alien minors shall, as a rule, be provided with accommodation at the Centre together with their parents or legal representatives, unless it is assessed by social workers that other solutions may be better for them.' Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 60/3.

³⁵⁵ The social welfare services confirmed that there is no national overview of the number of shelters for trafficked women or children. Secure residence and support is usually supplied through the social welfare services or through non-profit organisations.

4.6.8.1. Children leaving shelters with unknown destination: statistics

In most Member States it is acknowledged that the danger of children disappearing from shelters with unknown destination cannot be ruled out. Numerous NGOs estimate that in various Member States a substantial number of children disappears from sheltering facilities (e.g. this is the case in France). In the UK, recent Parliamentary debates focused on the problem of trafficked children missing from local authority care. In Ireland for example 'it is known that children go missing from care in the early stages of entering care and they are therefore vulnerable at that time. The patterns show that children go missing from larger hostels where there is less adult supervision.'³⁵⁶ There is currently little information on why separated children leave care or what happens to them.' The Irish Health Service Executive stated in 2005 that they believed that the majority of separated children coming into care had been trafficked into the country.

In Portugal it seems that a child cannot leave an accommodation for an unknown destination. The child can leave the shelter if the destination is known and is one permitted by the authorities.

Despite the fact that disappearances are widely acknowledged to be a serious problem, particularly because of the risk of children becoming victim to trafficking, in nine Member States (Belgium, Greece, Spain, France, Italy, Austria, Poland³⁵⁷ and Romania³⁵⁸) no statistics of children who leave shelters with unknown destination are existent.

³⁵⁶ *Ibid*, Norah Gibbons.

³⁵⁷ According to the Polish national report there are no relevant statistics. However, research by the Nobody's Children Foundation shows that the vast majority of underage foreigners leave facilities on their own (only 5% of them spend more than a year in a facility) 'Dzieci cudzoziemskie w polskich placówkach opiekuńczo-wychowawczych i rodzinach zastępczych styczeń 2005-maj 2006'. A study report. Red. M. Kukułowicz. The employees of the Nobody's Children Foundation and the La Strada Foundation talked about widespread escapes by unaccompanied underage minors placed at the intervention facility in Warsaw.

³⁵⁸ No evidence so far has been offered as to the fact that such children may have again become victims of human trafficking. Most children seem to have been found soon after leaving the shelters at their parents' home. Response of the NAPCR no. 5483/13.06.2008, on file with Romanian Fralex national expert.

Only the national reports of the Czech Republic³⁵⁹, Hungary³⁶⁰, Ireland³⁶¹, Lithuania³⁶², the Netherlands³⁶³, Sweden³⁶⁴ and the United Kingdom³⁶⁵ contain official statistics on

³⁵⁹ 66 Children in 2007, 72 children in 2006, 63 children in 2005 and 26 children 2004 ran away from the Czech Facility for Foreign Children and can be considered as children who left with unknown destination. None of the children at the Facility have yet been identified as trafficking victims, but there is no monitoring mechanism of what happens to the runaway children from the Facility. However, according to information provided by an employee of the Facility, there are efforts at the Ministry of the Interior to create monitoring mechanisms for such children.

³⁶⁰ The Hungarian report only contains statistics for the year 2005. It appears that in that year 1853 children went missing. Information source:

http://www.szmi.hu/images/dok/9_11fej05gyv.xls (accessed on 18.06.2008).

³⁶¹ In Ireland 5,369 referrals were made to the HSE and 2,536 children were placed in care between 2000 and 2007. Of the 441 children who went missing, 53 are accounted for. Between 2000 and 2005, 328 of the unaccompanied minors referred to the HSE went missing; 81 in 2001, 54 in 2002, 56 in 2003, 66 in 2004 and 71 in 2005. Approximately one in five children from the period 2000-07 remain unaccounted for, including five Nigerian girls who went missing from their accommodation in June 2007, the youngest of whom was 11 years of age. Deputy Denis Naughten, Parliamentary Debates on Immigration, Residence and Protection Bill: Committee Stage. 29th April 2008. Available at <http://debates.oireachtas.ie/DDDebate.aspx?F=JUS20080429.xml&Page=2&Ex=228#N228> (visited 20th June, 2008)

³⁶² The Lithuanian Refugee Reception Centre provides for official data about children that have run away from them. In 2002 3 children ran away, in 2003 – 11, in 2004 – 4, in 2005 – 2, in 2006 – 1, in 2007 – none. No information is provided whether these children were found, as well as whether they were victims of trafficking.

³⁶³ The numbers of unaccompanied minor aliens disappearing from Dutch shelters with unknown destination are as follows: 240 in 2005, 181 in 2006 and 122 in 2007. Statistics obtained from the Ministry of Justice by email of 22 July 2008. These statistics are also publicly available in *Proceedings of the Dutch Lower House of the States-General*, Appendix, 2007-2008, no. 1778, p. 3629-3630, online at www.overheid.nl.

³⁶⁴ According to the Swedish Migration Board, 108 unaccompanied children disappeared from the shelters in 2007 and between 1 January and 27 May 2008, 42 unaccompanied children had left the shelters. During 2006, it was estimated that 95 children disappeared from Asylum Centers upon arrival to Sweden. According to Migration Board there has been an decrease compared to 2005 when 153 children disappeared from the shelters. A study by the Migration Board was published in 2003, regarding unaccompanied children disappearing during 2002. The Migration Board suspected 11 cases on trafficking in human beings. Government sources expressed the fear that as many as 30 asylum-seeking girls have been trafficked and that some of these children have been used for commercial sexual exploitation. Kunskap om sexuellt exploatering i Sverige, SOU 2004:71, (Government report “Knowledge about sexual exploitation in Sweden”, SOU 2004:71), p. 108

³⁶⁵ In 2007, ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) released findings of their study into missing children that focussed on three major cities in the UK. The findings by ECPAT showed that there were 80 cases of known or suspected victims of trafficking with 60% (48) of those cases being children who had gone missing from the care of Social Services. The scoping report by the Child Exploitation and Online Protection Centre (CEOP) provides evidence of child trafficking into and within the UK. 330 children were identified as trafficked cases after CEOP fitted each to a child trafficking profile developed by the LSCB. Within that report, over half of the children identified were found to be missing, some from care. Between 2004 and 2007, London Gatwick Airport children's team at West Sussex County Council admitted 145 unaccompanied minors into care. The council lost 42 of these children. More than 400 foreign children, many suspected of being trafficked into the sex or drug trade in Britain, have gone missing from local authority care. According to records in July 2004 and July 2007 from 16 local authorities

the number of children disappearing from shelters with unknown destination. None of these reports contain complete and exhaustive statistics for the full period of 2000-2007; often the data collection has only commenced in the year 2004 or 2005. Most statistics are kept by state authorities, although the UK report primarily refers to statistics from the NGO ECPAT UK.

Even though the statistics may not be complete, a general impression given by the national reports is that the disappearance of children from shelters with unknown destination is a rather wide-spread problem. While in Ireland and the Czech Republic the annual numbers lay between an average of 50 to 100 children per year, in the Netherlands, Sweden and the UK, the numbers per year may rise up to more than a hundred children per year. The Hungarian report even reveals the shocking number of 1853 disappeared children in the year 2005 only.

The Danish report refers to a research survey³⁶⁶ that has revealed that a significant number of unaccompanied asylum-seeking children disappear from the asylum centres.³⁶⁷ The authors of the Danish report observe that 'the problem is not elaborated further and no information is available concerning the circumstances of the disappearances, the children's background and arrival in Denmark, their plans or contacts. In spite of the graveness of these disappearances and the lack of information, no political or practical initiatives have been taken to track the children or prevent others from disappearing.'

The authors of the report of Luxemburg did not receive any relevant information from authorities. Four reports did not touch upon the issue of children disappearing from shelters with unknown destination (Belgium, Estonia, Latvia and Malta).

around England's ports and airports, an estimated 408 unaccompanied asylum seekers children disappeared from care.

ECPAT UK (2007) *Missing Out - A Study of Child Trafficking in the North-West, North-East and West Midlands*, available at

http://www.ecpat.org.uk/downloads/ECPAT_UK_Missing_Out_2007.pdf (09.07.2008).

'Saved from child traffickers, but not for long', *The Guardian*, 23 April 2008, available at <http://www.guardian.co.uk/society/2008/apr/23/child-traffickers> (09.07.2008). 'Lost 400 children may have been trafficked into sex or drugs trade', *The Guardian*, 23 April 2008, available at

<http://www.guardian.co.uk/society/2008/apr/23/childprotection.immigrationandpublicservices> (09.07.2008).

³⁶⁶ Det Nationale Forskningscenter for Velfærd (2006) *Uledsagede asylansøgerbørn* [Unaccompanied minors applying for asylum] SFI: 06:34 of 20.12.2006 financed by the Ministry of Social Affairs, available (in Danish) at: <http://www.sfi.dk/graphics/SFI/Pdf/Rapporter/2006/0634%20Uledsagede%20asylans%F8gerb%F8rn.pdf>

³⁶⁷ The total number of unaccompanied children disappearing from the Gribskov Asylum Centre amounted to 605 for the period from 2002 until June 2008 and was reported in the Danish newspaper *Information* 17.06.2008, see <http://menneskeret.dk/nyheder/arkiv/nyheder+2008/imr+-+uledsagede+flygtningeb%3%b8rn+skal+beskyttes> (11.05.2009); <http://www.information.dk/160937> (11.05.2009)

4.6.8.2. Policies to prevent and to respond to disappearances

Although even the statistics of a relatively small number of Member States should give reason enough to develop policies to prevent disappearances from shelters, the creation of such policies is not wide-spread practice yet.

In the Czech Republic, Germany, France, Lithuania and Hungary, no formalised strategies to prevent children from disappearing exist. The Hungarian report observes that 'in the referral documentation of the regional child protection services supervising children's care and accommodation, there is no or only minimal information about the risky background of the child, about the non-primary causes of placement, and there is no documentation about victims of trafficking or about children under the threat of trafficking.' The Swedish report points out that the UN Committee on the Rights of the Child has recommended improved joint action between Swedish Police, Migration Board and social services, to be able to act efficiently when children disappear. However, the authors of the Swedish report observe that the Swedish authorities do not have the authority to keep asylum-seeking children locked up.

In Romania the staff of the specialised centres is instructed to inform the children of the risks they face by leaving the centre, to supervise and 'create a trust relationship with the children'.³⁶⁸

In the Netherlands several protective measures to prevent these disappearances from shelters have been undertaken. A clear example concerns the more rapid assignment of guardians.³⁶⁹ In addition, a *Protocol Vermissing AMA* ('Missing Unaccompanied Minor Alien Protocol') was drawn up in 2003 which lays down the actions required to be taken by the authorities involved in the reception of unaccompanied minor foreign nationals. As of the first of January 2008 the pilot 'besloten opvang' ['enclosed care']³⁷⁰ which entails that unaccompanied minor aliens who belong to a group that is considered to be at high risk of becoming a victim of trafficking (presently in the Netherlands Nigerian girls and Indian boys), are placed in so-called enclosed care institutions. In the United Kingdom a child can be placed in secure accommodation as well. This is possible for a total of 72 (not necessarily consecutive) hours within any 28 day period without a court order.³⁷¹

³⁶⁸ Response of the NAPCR no. 5483/13.06.2008, on file with national Fralex expert.

³⁶⁹ In 2005, *Stichting Nidos* - the national guardianship and family supervision organisation for unaccompanied minor asylum-seekers and refugees - started the so-called *Schiphol project*. A team based at Schiphol national airport (Amsterdam) provides unaccompanied minors with temporary guardianship within several hours, i.e. almost immediately after the unaccompanied minor has entered the country.

³⁷⁰ The pilot is also often referred to as the Pilot 'beschermde opvang' [secured or protected care]. In this report it will be referred to as 'besloten opvang' [enclosed care].

³⁷¹ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991) (England and Wales), Reg. 10(1); UK/ Secure Accommodation (Scotland) Regulations No.1255 (01.04.1997) (Scotland), reg. 5; UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996) (Northern Ireland), reg. 6(1).

The UK government has furthermore made proposals to reduce the number of foreign trafficked children going missing or at risk of being trafficked from Local authority care in its *UK Action Plan 2007*. The government guidance *Young Runaways Action Plan 2008*³⁷² addresses the issue of runaways, missing and trafficked children. It will be supported by the guidance *Children Missing from Care and Home*³⁷³ (currently under revision) and *Every Child Matters* and the *Unaccompanied Asylum Seeking Child Reform Programme*.³⁷⁴ Also in Ireland the HSE and Garda Síochána and GNIB are in the process of completing a 'Missing Child from Care Protocol'.³⁷⁵

4.6.9. Hotline and other instruments to report missing and sexually-exploited children

By virtue of a Commission Decision of 15 February 2007 the national telephone numbering range beginning with '116' is reserved for harmonised services of social value, *inter alia* for a help line to report missing children.³⁷⁶

In Hungary, the Netherlands, Poland, Portugal and the UK this decision is implemented and the hotline with the 116 000 number is currently operative. In Austria, Belgium, Germany, Greece, Lithuania and Slovenia the Commission decision is implemented, the numbers are available, but the hotlines are not yet activated, due to technical difficulties or because the tender-procedure was not yet completed.³⁷⁷

The above leaves fourteen Member States (Czech Republic, Denmark, Estonia, Spain, France, Ireland, Italy, Cyprus, Luxembourg, Malta, Romania, Slovakia, Finland and Sweden) where at present the Commission decision is not (yet) implemented and no evidence has been found that it will be implemented in the near future. The reports of Bulgaria and Latvia contained no explicit information regarding the existence of a 116 000 hotline.

Despite the absence of or in addition to the 116 000 hotline, in almost all Member States other reporting instruments are available.

³⁷² HM Government (2008) *Young Runaways Action Plan*, available at: <http://www.dfes.gov.uk/publications/runaways/downloads/YoungRunawaysActionPlan.pdf> (09.07.2008).

³⁷³ Department of Health, Local Authority Circular (2002) *Children missing from care and from home – Good practice guidance*, available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_4012718.pdf (09.07.2008).

³⁷⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.69, action 79.

³⁷⁵ Department of Health and Children website http://www.dohc.ie/working_groups/aum/ (visited 20th June 2008).

³⁷⁶ Commission Decision of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value (*notified under document number C(2007) 249*) (2007/116/EC), *OJ L* 49, 17.02.2007, p. 30-32.

³⁷⁷ For instance in Slovenia, no legally authorised individual or legal entity has yet applied for it. http://www.aperk.si/sl/stevilka_116000_namenjena_storitvi.

In the United Kingdom for instance, the National Child Trafficking Advice and Information Line (CTAIL) is operative. In Denmark and Malta a hotline was installed as part of National Action Plan on trafficking in human beings to provide assistance to victims of trafficking. In Belgium and Finland (child) victims may directly contact the help lines of reception centres, while in the Netherlands the national coordination centre on trafficking in human beings operates a help and report line. In the Czech Republic NGO *La Strada* provides for a helpline and 24-hour safety hotline to report maltreatment and exploitation of children.

Police Forces in England and Wales will use a new child alert system (CRA).³⁷⁸ scheme, to contact the media at the earliest stage of suspected child abduction. CRA's will be sent out if the missing person is under 18 and believed to have been kidnapped, abducted or are in danger of serious harm.

Other reporting instruments that are mentioned in the national reports are: a confidential free number to encourage victims of human trafficking to report (Ireland); an information, help or report line on trafficking in human beings (Estonia, Italy, Poland, Portugal, Romania, Slovakia and the United Kingdom); a line to report missing persons (Lithuania, the Netherlands and the United Kingdom), a hotline or website to report child pornography on the Internet (Bulgaria, Luxembourg, the Netherlands, Poland and Sweden); a helpline or website to report exploitation (of children) (Bulgaria, Germany, Spain, Romania and Sweden); a helpline for (child) victims of crime (Poland and Finland); a general helpline for children (e.g. in Estonia, Greece, France, Lithuania, Luxembourg, Austria, Portugal, Romania, Slovenia and the United Kingdom); an anonymous police report line (Malta, the Netherlands and the United Kingdom).

4.6.10. Family tracing

By virtue of various international and European regulations Member States need to make every effort to locate the family of unaccompanied minors as quickly as possible.³⁷⁹

In a number of Member States the duty of state authorities to trace the family of unaccompanied minor aliens or child victims of trafficking in particular, arriving in the

³⁷⁸ 'Missing child alert system starts' *BBC news*, 26 March 2006, available at <http://news.bbc.co.uk/1/hi/uk/4847750.stm> (09.07.2008).

³⁷⁹ Art. 19 par. 3 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *OJ L* 31, 6.2.2003, p. 18–25; Art. 10(c) 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 subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *OJ L* 261, 6.8.2004, p. 19–23; Art. 30 par. 5 of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *OJ L* 304, 30.09.2004, p. 12–23 and Art. 10 Council of Europe Convention on Action against trafficking in human beings, Warsaw 2005, CETS no. 197.

country is laid down in law (Bulgaria, Greece, Spain, Cyprus, Lithuania, Luxembourg, Hungary, Poland, Romania and Slovakia) or in a policy document (Denmark and the Netherlands). Under UK law family tracing is only compulsory for the authorities if an asylum application has been submitted.

According to the Finnish report, in Finland the family tracing programme requires assessing whether family reunification is in the child's best interests in order to avoid re-victimisation in a situation where the child is initially victimised with support of parents or because parents themselves are in a state of dependency on the traffickers. In Bulgaria all cases of returned children are subjected to close monitoring.³⁸⁰

In nine other states no comprehensive family tracing programme is existent (Germany, France, Ireland³⁸¹ and Portugal), or information on the existence of such programmes is not available (Belgium, Estonia, Malta, Austria and Sweden).

The remainder of reports were either unclear on this point (Czech Republic and Italy) or did not discuss the topic at all (Latvia).

4.7. Policy tools used by Member States

4.7.1. National Action Plans

In a majority of Member States³⁸² a National Action Plan (or Strategy) on Trafficking in Human Beings in general has been issued in recent years. Some of these plans are still in force, others are in the meantime succeeded by new action plans of a later date. In Cyprus a NAP on combating trafficking in human beings and sexual exploitation of children in particular was issued in 2001. In Ireland a National Action Plan on trafficking in human beings is anticipated, whereas in Italy it is proposed. In Latvia, a new National Action Plan to Combat Trafficking in Human Beings for the period 2009-2013 is in the drafting process.

³⁸⁰ The Bulgarian report reads: 'According to the Coordination Mechanism for Referral, Care and Protection of Repatriated Bulgarian Unaccompanied Children and Children – Victims of Trafficking Returning from Abroad,³⁸⁰ social assistance departments and the child protection departments at the permanent address of the child are obliged to prepare reports every three months for every case of a returned child and for the activities planned for the case by the multidisciplinary team at local level, until the reintegration plan is completed, or long-term protection measures are put in place.'

³⁸¹ The Irish report notices that the Irish Naturalisation and Immigration Service are currently examining the introduction of DNA testing in cases of family reunification, but have not completed such research as yet.

³⁸² Member States and between brackets the year in which the first National Action Plan was issued. AT (2007), BE (2008), BG (2005), CZ (2008), DK (2007), EE (2006), FI (2005), LT (2005), LV (2004), NL (2004), PL (2003), RO (2006), SE (2008), SI (2004), SK (2008) and UK (2007).

In Denmark and the Netherlands, an appendix/addendum on Child Trafficking was added to the NAP on trafficking in human beings in general (Denmark in 2005, the Netherlands in 2006). In Finland, the NAP was revised in 2007 after a criticism that it was not child-friendly.

Several other national governments have set up a National Action Plan Against Commercial Sexual Exploitation of Children (Bulgaria, Czech Republic, Spain (2001), Lithuania (2000), Luxembourg (1996, but not yet fully implemented)). In addition to a general NAP on trafficking in human beings some Member States have issued action plans on somehow related topics, i.e. on Internet pornography (Austria), on Children and Adolescents (Spain), or on Action for Children (Slovakia). In Germany, the NAPs that may be of relevance are the National Plan of Action for a Child Friendly Germany and the National Plan of Action on the Fight Against Violence Against Women. In Malta no relevant National Action Plan is in force at all.

In only a handful of Member States NAPs are in some way subjected to an impact assessment. For instance in Denmark and Latvia annual reports on the implementation of the NAP are issued; in Romania the NAP is subjected to an evaluation, while in the UK it is subjected to an impact assessment and complemented with an update. In several other Member States, no official impact assessment is publicly available (Belgium (not yet), Bulgaria, Greece, Cyprus, the Netherlands, Romania and Slovenia).

The authors of various national reports distinguished a diverse set of results of NAPs such as the setting up of working groups and units, amendments of national legislation, ratification of international instruments etc.

4.7.1.1. Designated budgets

The Slovenian report is the only national report that gives an exact total budget for combating trafficking in human beings for the years 2008 and 2009, namely €190,000.³⁸³

In several other Member States (Denmark, Estonia, Latvia, Lithuania, Poland, Slovakia, Sweden and the United Kingdom) a budget was set for the implementation of a National Action Plan on THB.

In Denmark for example, a total of DKK 70 million (approx. 9.33 million euros) has been allocated for domestic activities under present general action plan for trafficking in human beings (2007). In Estonia a budget of 4,810,000 Estonian kroons (approx. 300,000 euros) was reserved for 2006-2009.

³⁸³ 2008-2009 Action Plan of the Interdepartmental Working Group for the Fight against Trafficking in Persons, p. 14, available at: <http://www.vlada.si/index.php?lng=eng&vie=cnt&gr1=act&gr2=pri> (last accessed 08.10.2008).

The 2002-2004 Lithuanian Programme on Prevention and Control of Trafficking in Human Beings and Prostitution foresaw a budget of 3.2 million litas (around 0.9 million euros). According to the data of National Audit Office of Lithuania, only 1.3 millions litas (around 0.4 million euros), i.e. 42%, were used.³⁸⁴

In Latvia, implementation of the National Action Plan 2004-2008 was possible only because of financial support of the United States government (which amounted to more than 200,000 USD). In 2005, state funding of 222,572 lats (approx. 316,691 euros) was foreseen, however only 28,000 lats (approx. 39,840 euros) were received by the Ministry of Welfare for provision of rehabilitation services and education of social workers.

For the implementation of the tasks included in the Polish National Programme for Combating and Preventing Trafficking in Human Beings in the years 2007-2008, the Ministry of Interior and Administration has earmarked state budget funds of PLN 200,000 (approx. 65,000 euros), plus PLN 150,000 (approx. 45,000 euros) as a designated subsidy for the financing or co-financing of tasks commissioned to foundations.

According to the Slovakian national plan of action against trafficking for the years 2008-2010 main activities are to be executed by the Ministry of Interior. 'The budget allocated for these activities within the Ministry of Interior is as follows: 8,300,500 SKK (approx. 270,000 euros) for the year 2008; 8,430,500 SKK (approx. 280,000 euros) for the year 2009; 8,800,000 SKK (approx. 290,000 euros) for the year 2010. Other ministries or state authorities do not have any special budget designated for anti-trafficking measures. There is no special budget for the Ministry of Interior to support research on child trafficking.³⁸⁵ However, the national plan of action against trafficking foresees specifically allocated finances for certain activities during the years 2008-2010.'

The Swedish government will invest SEK 213 million (approx. 21 million euros) in order to fulfil the 36 measures presented in the plan for combating prostitution and human trafficking for sexual purposes, that was adopted on 10 July, 2008.

The UK Home Office has increased funding for the work of UK Human Trafficking Centre (UKHTC).³⁸⁶ For the financial year 2008/9, there has been an increase from a budget of £834,084 (approx. 1 million euros) in 2007/08 to £1,712,000 (approx. 2 million euros) in 2008/09, and £1,602,000 (approx. 2 million euros) in 2009/10. The scoping study from the Child Exploitation and Online Protection (CEOP) Centre in 2007 on the extent of child trafficking was funded at a cost of £37,500 (approx. 50,000 euros).³⁸⁷

In the vast majority of Member States (Belgium, Bulgaria, Czech Republic, Germany, Greece, Spain, France, Ireland, Italy, Cyprus, Luxembourg, Hungary, Malta, the Netherlands, Austria, Portugal, Romania and Finland) no overall designated budget was

³⁸⁴ Lietuvos Respublikos valstybės kontrolė. Valstybinė audito ataskaita. Prekybos žmonėmis ir prostitucijos prevencijos ir kontrolės 2002-2004 metų programa. Vilnius, 2005 m. balandžio 29 d., Nr. 2040-4-42, p. 16.

³⁸⁵ Response of the Ministry of Interior to the Information Request, 02.07.2008.

³⁸⁶ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p. 7.

³⁸⁷ Home Office and Scottish Executive (2007) *UK Action Plan*, p. 93.

identified, but anti-trafficking measures are carried out based on general budget allocations. Nevertheless information on incidental amounts may be available, for example the Italian budget for *Numero Verde*, a national free phone number for victims of trafficking is 2.5 million euros every eighteen months; the Luxembourg government budgeted approximately 100,000 euros for the promotion of the rights of the child and against sexual exploitation of children for 2007 and previous years, and the budget for the two-year-pilot enclosed care [*Pilot besloten opvang*] which started in the Netherlands in January 2008 amounts to 4 million euros per year.

4.7.2. Involvement of stake-holders in policy-formulation

4.7.2.1. Direct participation of NGOs

In all Member States NGOs turn out to play a very active role in the development, implementation and evaluation of awareness-raising campaigns on trafficking in human beings in general, or even child trafficking in particular. Examples of active NGOs in the field are *ECPAT*, *La Strada*, *Terre des Hommes*, *UNICEF* and *Save the Children*. Furthermore the International Organisation for Migration plays an active role. For the most part NGOs cooperate with state authorities, or receive funding for their campaigns from the state-budget. Often mentioned in national reports are the campaigns against sex tourism (often initiated by *ECPAT* in cooperation with travel organisations) in *inter alia* Austria, Belgium, Germany, Luxembourg and the Netherlands.

In Greece, the Developmental Partnership to Promote Equal Rights for Trafficked Persons³⁸⁸ (ASPIDDA³⁸⁹), a consortium of governmental and non-governmental entities³⁹⁰, was established for the implementation of a project funded in the framework of the second round of the Community Initiative "EQUAL" Programme in Greece, with the aim to implement a project targeting the tragic consequences of trafficking in human beings. ASPIDDA prepared two guides to be used in the anti-trafficking awareness campaign: a multi-language Information Guide addressed to victims of trafficking (in Albanian, English, French, Greek, Rumanian, and Russian) and a Guide for Journalists "Trafficking in Human Beings and Greek Mass Media"³⁹¹.

³⁸⁸ See www.aspidda.org.

³⁸⁹ See http://www.aspidda.org/products/D10_AFISAaspiddaFINAL.jpg for a poster prepared in the context of public awareness campaign.

³⁹⁰ The International Organization for Migration (IOM – Greece), the NGO Solidarity (affiliated to the Church of Greece), the Hellenic Migration Policy Institute (IMEPO), the Rehabilitation Center for victims of torture and other forms of abuse (CRTV), the Research and Support Center for Victims of maltreatment and social exclusion (CVME), the National and Kapodistrian University of Athens, European Profiles S.A. and the Human Rights Defence Center (HRDC).

³⁹¹ For details on the products and/or public awareness products see http://ec.europa.eu/employment_social/equal/practical-examples/employ-07 aspidda_en.cfm

4.7.2.2. Direct participation of children

The participation of children in the development, implementation and/or evaluation of awareness-raising campaigns is not always very concrete.

Various national reports (e.g. that of Ireland, the Netherlands and Austria) refer to teaching materials that were developed and which require active participation of children, via workshops or even theatre productions (in the Netherlands). The Irish report points out the *STOP Sex Trafficking campaign* that also involves certain schools in helping to raise awareness for the issue. One such school, Scoil Mhuire Gan Smal, was awarded runner-up in the Social Innovator Competition in Dublin for their efforts. The group of twenty children, aged 16-17, organised information nights, petitions, set up a website, held workshops in the school, and put on a school play to highlight the problem of trafficking. The group is currently aiding another school in the area on similar projects.³⁹²

In Germany children were involved as actors and organisers in a campaign of UNICEF on the issue. The Czech report refers to the La Strada Czech Republic project, 'Prevention of trafficking in human beings with special regard to young people in corrective and educational facilities in the Czech and Slovak Republics'³⁹³ that aims to undertake research in corrective and educational facilities for young people in the Czech and Slovak Republics. According to the Italian report the direct participation of children in awareness-raising efforts is considered particularly relevant by the Italian government, civil society and NGOs fighting child trafficking. According to the latest report of *Save the Children Italy*, their direct participation could play a key strategic role in tackling this phenomenon.³⁹⁴ In Lithuania young people are part of teams of some NGOs.

The Danish report suggests that 'as Denmark is perceived as belonging to the category of receiving countries and/or transit countries for trafficked children, awareness-raising campaigns directed at children in Denmark, who might fall victim to promises of income in another place or country, has not been a political priority.'

The authors of reports of at least seven Member States had found no evidence of direct participation of children in awareness raising campaigns (Belgium, Bulgaria, Spain, Luxembourg, Hungary, Malta and Poland). The authors of the Maltese report explicitly mention that no evidence was found that campaigns were evaluated.

In Cyprus, children do not participate in the development, nor evaluation of awareness raising campaigns. Also in Finland the participation of children in awareness-raising

and <http://www.greekembassy.org/embassy/Content/en/Article.aspx?office=1&folder=9&article=20600>, accessed on July 23rd, 2008.

³⁹² For more information, see <http://www.stophumantrafficking.co.nr/> (visited 26th June, 2008)

³⁹³ See <http://www.strada.cz/cz/kdo-jsme/projekty/> (in Czech only) (last accessed 15.06.2008).

³⁹⁴ See http://www.savethechildren.it/2003/download/Pubblicazioni/imp_Rapporto_CRC.pdf, pp. 37-44.

efforts has been low; the development of materials specifically designed for children has not involved victims of child trafficking.³⁹⁵

Other reports (Estonia, France, Latvia, Portugal, Slovenia, Slovakia and Sweden) did not provide any (explicit) information concerning participation of children.

4.7.2.3. Direct participation of minority groups

Some evidence of direct participation of local communities and/or minority groups, such as Roma and Travellers, in preventive efforts was found by the authors of the national reports.

The report on the Czech Republic refers to the efforts of state authorities to include the issue of commercial sexual exploitation in the educational programmes for so-called Roma social assistants and Roma field staff, who work directly with the Roma community,³⁹⁶ whereas the Spanish report refers to general measures to improve the position of Roma people.³⁹⁷ The Slovakian report points out that in Slovakia trafficking mostly affects the poor and unemployed part of the population and those with low levels of education, among them Roma being the most vulnerable.³⁹⁸ The report adds to that: 'Albeit that there were not special preventive activities concerning Roma people, most of them were targeted at the children and youth, including the Roma. Many projects were realised in the Eastern part of the Slovak Republic due to the highest concentration of Roma population living there.'

According to the report on Romania 'both the National Agency against Trafficking in Persons and the National Authority for the Protection of Children's Rights reported only the participation of local Roma communities as beneficiaries (NATP brochures in one project have been translated into Romani), or the involvement of local Roma leaders, but without giving any details or providing evidence.³⁹⁹ In Finland some NGOs and the

³⁹⁵ National expert on child trafficking, written answer on questions, received on 15 June 2008.

³⁹⁶ *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children 2006-2008], p. 36, available at: <http://aplikace.mvcr.cz/archiv2008/dokument/2006/komercni06.pdf> (in Czech only) (last accessed 23.06.2008).

³⁹⁷ The Spanish report reads as follows: 'The high-risk situations than can lead to the traffic in minors in Spain most frequently originate from the family. The minors are 'exploited' by their own families, finally turning into offenders themselves. These children find themselves completely abandoned. Thus, this study deals not only with the legislation, action plans, policies and practices regarding trafficking in children, but also provides information on aid to families, protection of minors in a difficult family situation and of unaccompanied minors, as well as some aspects of sexual commercial exploitation, abuse etc., in view of the fact that in these cases the risk of trafficking is higher.'

³⁹⁸ National plan of action against trafficking in human beings for the years 2006-2007.

³⁹⁹ See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 13. See Response of NATP No.1494982/11.06.2008, point 13, on file with the national Fralex expert.

Finnish Roma Community are participating in the development of assistance programmes directed towards Roma beggars originating mainly from Romania.⁴⁰⁰

The Irish report refers to the involvement of many local community groups in *Ireland en Route*, a forum of NGOs, academics, intergovernmental and statutory agencies, who work separately and jointly to share information and pool ideas and learning on all aspects of trafficking in women and children for the purpose of sexual exploitation with a view to raising awareness and influencing best practice in each member organisation.

The Italian report simply states that local government is actively involved in preventive efforts. The Polish report however gives a concrete example of the participation of local communities, namely an open tender announced in June 2008 by the Mazowieckie Province for financial support in 2008 for the implementation of a human trafficking victims protection project.⁴⁰¹

The report on the UK mentions a Community Partnership programme⁴⁰² that recognised the diverse needs of different cultures and so aimed, *inter alia*, to improve mechanisms for safeguarding children and promoting good practice between statutory bodies, local minority ethnic communities and faith groups. Examples of direct participation of local communities in this programme include working with supplementary schools run by the Bangladeshi, Somali, Roma, Kosovan, Ethiopian and Southern Sudan communities to provide training on child abuse, including child trafficking and exploitation.

The German Association for Technical Cooperation (GTZ) has carried out several projects in countries of origin with a preventive view in the area of trafficking in women. These projects also involve local communities and/or relevant national NGOs in their preventive efforts.⁴⁰³

The report on Estonia expresses the concerns of the Russian community in Estonia, that materials and websites of campaigns are only available in the Estonian language.⁴⁰⁴

There is no indication that in Malta minority groups were involved in national preventive efforts.

⁴⁰⁰ The Finnish National Committee for UNICEF, written answer on questions, received on 19 June 2008.

⁴⁰¹ <http://www.mazowsze.uw.gov.pl/news.php?id=10464>, last access on 22 July 2008.

⁴⁰² London Safeguarding Children Board (2007) *Community Partnership Project Report*, p.23, available at: http://www.londonscb.gov.uk/files/conference07/community_partnership_project_30_nov_2007.pdf (09.07.2008).

⁴⁰³ See <http://www.gtz.de/de/themen/politische-reformen/demokratie-rechtsstaat/2691.htm> (24.07.08)

⁴⁰⁴ Estonia/Sotsiaalministeerium, Välisministeerium (2008) *Initial report from Estonia under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (not publicly available, in file with the compilers of the study), para 193.

According to the authors of the report on Lithuania, minority groups are not considered more vulnerable to the threat of trafficking than any other groups in that country. 'Thus there were no special anti-trafficking campaigns that were directed to concrete ethnic minorities.'

The authors of number of national reports (Belgium, Bulgaria, Czech Republic, Denmark, Greece, France, Cyprus, Latvia, Luxembourg, Hungary, Malta, the Netherlands, Austria and Finland) had found no evidence of participation of minority groups or local communities in preventive efforts. The reports on Austria⁴⁰⁵ and the Netherlands underline that there nevertheless may be good reason for such participation. The reports on Portugal, Slovenia and Sweden did not touch upon this issue at all.

4.7.3. Data collection mechanisms

4.7.3.1. Specific data collection on trafficking in human beings or child trafficking

In Bulgaria, Denmark, Ireland, Italy, the Netherlands, Portugal, Romania and the UK a specific data collection mechanism on trafficking in human beings, or even child trafficking in particular, is in place. These are the Bulgarian National Commission for Combating Trafficking in Human Beings, the Danish Centre for trafficking, the Irish Anti Human Trafficking Unit, the Italian Human Trafficking Observatory, the Dutch National Rapporteur on trafficking in human beings, Dutch Coordination Centre on Trafficking in Human Beings, the Dutch National Expertise Centre on Youth Prostitution and the Dutch National Expertise Centre on Human Trafficking and Migrant Smuggling, the Portuguese Observatory (research and monitoring centre), the Romanian National Agency against Trafficking in Persons and the Romanian National Authority for the Protection of Children's Rights and lastly the UK Human Trafficking Centre and the UK Child Exploitation and Online Protection Centre.

Not all mechanisms are already fully operational however. Recent Parliamentary debates in the UK focused on the lack of comprehensive statistical information on trafficking. In January 2008, the UK Minister for Women and Equality was asked to provide an estimate for the number of trafficked people who arrived in the UK in the last five years, broken down by (a) country of origin and (b) sex; and how many of these were (i) British and (ii) foreign nationals.⁴⁰⁶ However, the UK Human Trafficking Centre (UKHTC) only started data gathering from 1 October 2008.⁴⁰⁷ The Romanian National

⁴⁰⁵ 'This is problematic as - according to the Alternative Report - Roma people are affected to an alarming extent by child trafficking.'

⁴⁰⁶ *Hansard* (House of Commons), 14.01.2008, column 817W, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080114/text/80114w0001.htm> (09.07.2008).

⁴⁰⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.37.

Agency against Trafficking in Persons (NATP) is operational from January 2007 only. In the Netherlands criticism is made that thus far, hardly any impact assessment or effect studies concerning the Dutch fight against trafficking in human beings as laid down in legislation and policy documents have been carried out.⁴⁰⁸

The newly established Irish Anti Human Trafficking Unit has developed a detailed data collection instrument. 'It will be collecting data on suspects and victims of trafficking and have separate forms for children and adults. The data it collects will not be solely based on offences committed or the kind of exploitation suffered but will also examine demographics, the reasons victims had for leaving their country, information about the route they took into Ireland and the assistance they receive in Ireland. The data it collects are intended to be internationally comparable.' Comparison of the Irish data with data of other EU member States may be difficult however, since no other national report referred to similarly detailed data collection mechanisms.

The Bulgarian National Commission for Combating Trafficking in Human Beings did not specify in its written reply what kind of data is being collected. No data from the Italian Human Trafficking Observatory (2007) are currently available. The Romanian report notes that there are limitations in gathering relevant statistical data, caused by poor inter-agency communication and gaps in data collection.

4.7.3.2. Data collection mechanisms anticipated

At present, no systematic collection of comparative data relating to trafficking in human beings or child trafficking is taking place in Austria, but a statistical working group with the task of developing statistics displaying all state reactions in response to a criminal behaviour is in place. Furthermore, Austria currently coordinates 'a project aiming at the development of guidelines and standards for comparable and reliable data collection regarding trafficking in human beings; the project takes place together with five other EU Member States, Europol, the International Centre for Migration Policy Development (ICMPD) and the International Organisation for Migration (IOM); results are to be expected in spring 2009 and should deliver the basis for the proposal of a EU directive.⁴⁰⁹ According to the Czech report the Czech Ministry of the Interior 'was charged by a resolution, in cooperation with other ministries, with the development of a central system of data collection on trafficking in human beings. The deadline was 30.06.2008.'

⁴⁰⁸ Interview with a representative of the Bureau of the National Rapporteur on Trafficking in Human Beings (BNRM), The Hague, 10 June 2008.

⁴⁰⁹ Further information on this project available at: <http://www.iomvienna.at/index.php?module=Content&func=display&id=293&newlang=eng> (11.07.2008). See also NPA 2007 7.3; *TF Working Group on Child Trafficking Report 2008*, pp. 15-16. See also *Task Force against Trafficking Report 2008*, p. 27. NGOs demanded the development of indicators for data collection. See *Alternative Report*, pp. xiii, ix, 2-7.

4.7.3.3. Data collection by national police/ border guard

In various Member States (e.g. Belgium, Germany, Cyprus, Poland, Slovakia and Sweden), national police or border guards collect (not too detailed) data on trafficking in human beings. For example, in Germany the *Bundeskriminalamt* (BKA) [Germany's Federal Criminal Police Office] keeps track of statistics on human trafficking, 'Bundeslagebild Menschenhandel' ['Federal Situation Survey Human Trafficking']. The Cypriot police's Bureau on Combating Trafficking in Persons for example maintains a database recording *inter alia* information regarding trafficking and sexual exploitation of persons, both adult and children.

The Belgian General National Police Database uses standardised qualifications, which makes it difficult to obtain exact data about child trafficking. At the local level data police and administrative authorities collect data through a uniform data form on human trafficking. The Swedish National Crime Prevention Council produces statistics on crimes. In the past the National Police has published estimates of the numbers of victims, but it no longer does so.

4.7.3.4. Data collection by various institutions

In nearly all EU Member States some form of data collection takes place, but often this is not formalised, nor coordinated at governmental level. As a result, in several Member States different relevant state departments keep their own statistics (e.g. in Estonia, Greece, Spain, Hungary and Slovakia) thereby using their own methodology and with their own focus. Interestingly in Greece and Hungary the need for a formal data collection mechanism was included in the National Plan of Action/ National Strategy, but it was not implemented.

The Finnish Ministry of the Interior has a data collection mechanism concerning the number of children being taken in to the assistance system for helping and supporting victims of trafficking. In Lithuania in 2006 a joint de-personalised data base on victims of trafficking was established among institutions and organisations that are providing social support to them.⁴¹⁰

4.7.3.5. No official data collection

In France and Latvia no official relevant data collection mechanisms are reported to be in place. The Luxembourg report points out that 'there are very few data collection

⁴¹⁰ Apibendrinta 2006 m. ataskaita apie prekybos žmonėmis situaciją Lietuvoje, 2007, p. 69.

mechanisms, if any. It is a subject that has been brought up on many occasions, and the Luxembourg government is well aware of the problem.⁴¹¹

The national report on Malta does not discuss the issue of data collection mechanisms.

4.7.3.6. Data collection by NGOs

The reports on Denmark, France, Lithuania and Poland make explicit mention of data collection by NGOs on trafficking in human beings and/or child trafficking in particular.

4.7.4. Monitoring mechanisms (National Rapporteur)

From the national reports it seems that in only three Member States a National Rapporteur on trafficking in human beings is functioning. The Dutch National Rapporteur on trafficking in human beings was appointed for the first time in 2000. In the Czech Republic the Security Policy Department functions as National Rapporteur. It appears that Portugal has a National Rapporteur too, but the information in the national report on this point is not entirely clear.⁴¹² In Austria a National Coordinator on trafficking in human beings is anticipated.

In various other Member States (Belgium, Italy, Poland, Romania, Slovenia, Finland and the United Kingdom) the institution of a National Rapporteur on trafficking in human beings as such has not been established, but other relevant monitoring mechanisms on trafficking in human beings are provided for. These are the Belgian Centre for Equal Opportunities and Opposition to Racism, the Finnish Ombudsman for Minorities (that will be in function as of 2009), the Italian Human Trafficking Observatory, the Polish Team for Combating and Preventing Trafficking in Human Beings which includes an interdepartmental, multidisciplinary Working Group for human trafficking monitoring, the Romanian National Agency against Trafficking in Persons, the Slovenian Interdepartmental Working Group for the Fight Against Trafficking in Human Beings headed by a National Coordinator and the UK Inter-Departmental Ministerial Group on Human Trafficking.

⁴¹¹ Interviews of 17 June 2008 with Children's Rights Ombudscommittee President, and 19 June 2008 with ECPAT Luxembourg representative. See also UN Committee on the Rights of the Child (2005) *Review of the reports presented by the States party in application of Article 44 of the Convention* (CRC/C/15/Add.250), para. 17; Luxembourg/Ombuds-Comité fir d'Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 22, available at <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008); Luxembourg/*Projet de Loi No. 5754 relatif à l'aide à l'enfance* (22.08.2007), p. 19 (citing the lack of reliable national data in respect of child trafficking); and, ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 13.

⁴¹² The Portuguese report mentions the Rapporteur only once, without properly introducing it. See par. 46, page 10 of the national report, that reads: 'According to NGOs and the National Rapporteur there have been no campaigns specifically related to child trafficking.'

In another group of Member States (Bulgaria, Greece, Spain, France, Ireland, Cyprus, Lithuania, Luxembourg and the United Kingdom) relevant monitoring mechanisms on children's rights are in function. In the mandates of these mechanisms the issue of child trafficking may be explicitly included. Examples of these mechanisms are: the Bulgarian State Agency for Child Protection, the Cypriot Commissioner for the Rights of the Child, the Children's Ombudsman that is in function in Greece, Spain, France, Ireland, Lithuania and Sweden, the Irish Special Rapporteur on Child Protection, the Luxembourg Children's Rights Ombudscommittee and the UK Children's Commissioner.

In a last set of Member States (Denmark, Germany, Estonia, Latvia, Hungary, Malta and Slovakia), no National Rapporteur or other specific monitoring mechanism exists at all.

4.7.5. National Referral Mechanism

Under this heading – which concerns the existence of a National Referral Mechanism or similar systematic, formalised and standardised instrument for cooperation and referral, which addresses also the rights of trafficked children – the different national reports referred to rather different mechanisms (if they make mention of any relevant mechanism at all). Furthermore, not all reports specify the referral qualities if they mention that these mechanisms do have these qualities.

The Belgian report refers to circular letters (of 1994 and 1997) of the Ministers of the Interior and Work concerning the distribution of residence permits and work permits to aliens, victims of human trafficking as well as guidelines for the Aliens Office, the prosecutor offices, the police services, the inspection of social laws and the social inspection concerning the aid to victims of human trafficking. The Bulgarian report mentions the Bulgarian Coordination Mechanism for Referral, Care and Protection of Repatriated Bulgarian Unaccompanied Children and Children – Victims of Trafficking Returning from Abroad⁴¹³. The Greek report refers to a National Action Plan and Presidential decree. The Italian report refers to its National Observatory. In the Netherlands *Comensha*, the Dutch Coordination Centre on Trafficking in Human Beings functions as referral mechanism. The Polish report refers to the Polish Team for Combating and Preventing Trafficking in Human Beings, an opinion-making and consultative body. The Portuguese report speaks of 'a National Referral Mechanism' without concretising this. National Referral Mechanisms were also identified in Spain and in Sweden.

In Cyprus, a referral mechanism exists 'in law, but not in practice'. In Germany such a mechanism is 'not fully implemented yet'.⁴¹⁴ In Austria and Ireland no referral system is

⁴¹³ See http://www.stopech.sacp.government.bg/?sid=professional_eng&pid=0000000046 (accessed 09.10.2008).

⁴¹⁴ However, the German the Bund-Länder-Arbeitsgruppe Frauenhandel (BLAG) [State and Länder Working Group on Trafficking in Women] elaborated a 'concept paper on cooperation between the specialist counselling services and the police for the protection of victim witnesses

functioning yet, but it is planned. In the UK a National referral mechanism is in the making and a pilot project is currently running.

In nine Member States (Czech Republic, Denmark, Estonia, Luxembourg, Hungary⁴¹⁵, Malta, Romania, Slovakia and Finland) no formalised, standardised referral system exists. No information is available concerning France, Latvia, Lithuania and Slovenia.

4.7.6. Training strategy for professionals

Although in certain Member States the training of professionals is part of a National Action Plan on trafficking in human beings (e.g. in Denmark, Slovenia⁴¹⁶, Finland and the United Kingdom), in most Member States no clear and coherent training strategy by the state for all professional actors involved in the identification, care and protection of trafficked children – such as police, border guard, employees of relevant ministries, social workers, lawyers and judiciary – has been set up. In a large group of Member States, however (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, Spain, Ireland, Cyprus, Lithuania, Luxembourg, the Netherlands, Austria, Poland, Portugal, Romania, Slovakia and Sweden), certain groups of professionals, mostly the police, do receive specific training on trafficking in human beings. Training may be part of the standard curriculum of professionals, for instance of the Police Academy (e.g. in Denmark and the Netherlands) or they may be facultative (e.g. in Estonia). In a handful of Member States, training is partly organised by NGOs (e.g. in Finland, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom). In the Netherlands, police and prosecution officers are only to deal with cases of trafficking in human beings and to hear possible victims if they hold a specific certificate.⁴¹⁷

The Austrian report observes that NGOs criticise the fact that the focus of training on child trafficking is limited to a small number of professions (particularly police) and topics.

In France, Italy, Latvia and Malta, no formalised training strategy is pursued and the national reports on these countries also did not provide any information about other trainings on trafficking in human beings for professionals.

of human trafficking for purposes of sexual exploitation' and that Cooperation agreements were entered into following this concept paper in (almost) all Länder.

⁴¹⁵ In Hungary no legally binding referral mechanism exists. In when children are identified as victims of trafficking they are referred to safe houses. The whole procedure is not standardised. However, there are cooperation agreements and protocols in place covering a part of the process.

⁴¹⁶ In Slovenia training of professional actors involved in the identification, care and protection of trafficked children is 'a well-established part of the national preventive strategy against trafficking. It mainly involves training of the police in cooperation with NGOs and internal expert training and education of non-governmental organisations. Report on the work of the Interdepartmental Working Group for the Fight against Trafficking in Persons for 2006, p. 3, available at:

http://www.vlada.si/activities/projects/fight_trafficking_in_persons/.

⁴¹⁷ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter IV under 3.

4.7.7. Coordination and cooperation

The observation of the authors of the Belgian report that, 'because of the number of agencies and institutions that are involved in some manner, the division of tasks and its coordination can become somewhat difficult' does not stand on its own. The national reports give the overall impression that this is the case for a large group of Member States.

4.7.7.1. Task forces on (child) trafficking

In five Member States (Germany, Italy, Cyprus, the Netherlands and Austria) a formal task force on trafficking in human beings is in place.⁴¹⁸ Thirteen other Member States have a similar coordination body comprising of key state and non state actors relevant for anti-trafficking efforts, but named it differently. Here one may think of: an Interdepartmental Coordination Cell for the fight against Human Trafficking (Belgium, 1995), a State-Länder Working Group on Trafficking in Women (Bund-Länder-Arbeitsgruppe Frauehnhandel, BLAG) (Germany, 1997); an Inter- Ministerial Working Group to develop initiatives to combat trafficking in human beings (Denmark, 2000), a high-level National Steering Group against trafficking in human beings, operational task force suggested (Finland, 2004), a Coordination mechanism on the fight against trafficking in human beings (Hungary), an Anti Human Trafficking Unit (Ireland, 2007), a Multi-institutional Working Group (Lithuania, 2005), a Team for Combating and Preventing Trafficking in Human Beings (Poland, 2004⁴¹⁹), an Inter-Agency Working Group for Coordinating and Assessing the Prevention and Combating of Trafficking in Human Beings (Romania, 2003), a Development partnership co-operation against trafficking (Sweden, 2005), an Interdepartmental Working Group for the Fight Against Trafficking in Persons (Slovenia, 2003), an Expert group against human trafficking (Slovakia, 2006) and a Human Trafficking Centre (United Kingdom). Italy has both a formalised task force for investigating human trafficking and a coordination body for the social protection of trafficked victims.

These Task Forces or similar bodies are comprised of representatives from (a combination of) Ministries, National Police, Prosecution Services, judiciary and NGOs. The IOM is also frequently mentioned in the national reports as partner in these coordination mechanisms.

Another form of coordination that takes place in Member States is the organisation of round tables for which NGOs are invited (e.g. the Czech Republic and Estonia). In Belgium, already in 1996 as Parliamentary Committee on trafficking in human beings

⁴¹⁸ In Austria this Task force was set up in 2004, in Cyprus in 2007 and in the Netherlands in 2008. The reports of Germany and Italy did not provide any info as regards the year of setting up of the task force.

⁴¹⁹ It must be noted that the authors of the Polish national report mentioned this mechanism under the heading 'referral mechanism'.

was set up. In Finland and the Czech Republic even a working group on child trafficking in particular was set up.

The authors of the reports on five Member States (Greece, France, Latvia, Luxembourg and Malta) found no information regarding a Task Force or coordination body comprising of key state and non state actors relevant for anti-trafficking efforts.

4.7.7.2. Cooperation between Ministries

In a vast majority of Member States ministries cooperate in the fight against trafficking in human beings (thus including child trafficking). Very often National Action Plans as such form cooperation agreements. The reports of Belgium, Bulgaria, Czech Republic, Denmark, Germany, Greece, the Netherlands, Poland, Romania and the United Kingdom made explicit mention of (informal) cooperation agreements between ministries on this issue. In other Member States relevant ministries are represented in the national Task Force on trafficking in human beings or in other coordination mechanisms on trafficking in human beings (Italy, Lithuania, Hungary, Austria and Slovakia). In Estonia, Cyprus, Latvia and Slovenia, interdepartmental cooperation takes place, but it is not certain to what extent. In Spain collaboration between ministries has a permanent character and is not carried out through agreements.

The Latvian Ministry of the Interior has pointed out several deficiencies in the national cooperation regarding prevention of human trafficking in its brochure “Cooperation to Prevent Human Trafficking”.⁴²⁰ The brochure makes clear, for example, that whilst the Ministry of the Interior has the role of national coordinator in the fight against trafficking in human beings, this Ministry is equal to other state administration institutions in the hierarchy of state administration, meaning that the activities initiated and realised by this ministry do not always gain sufficient support from the other institutions. Furthermore it is considered problematic that the inter-institutional work group of the State programme for the elimination of trafficking in human beings mainly consists of low-ranking officials, not decision makers.

The authors of the reports on France, Malta and Sweden had found no evidence of cooperation agreements between Ministries.

4.7.7.3. Cooperation between States and NGOs

In thirteen Member States cooperation between the State and NGOs on trafficking in human beings in general is formally agreed at governmental level (Czech Republic, Denmark, Greece, Italy, Latvia, the Netherlands, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom) or at local level (Bulgaria). For example, in Denmark the Centre against Human Trafficking has a contract with *Save the Children Denmark* on

⁴²⁰ The language is not edited, as it is quotation from the brochure.

monitoring, participation in networks and assistance in education assignments. In Estonia and Spain cooperation between the State and NGOs concerning children's welfare is formally regulated via agreements. The Luxembourg report refers to formal agreements with reception centres that are run mainly by local associations and NGOs.

In other Member States, NGOs take part in a national Task Force or Working Group on trafficking in human beings (Cyprus, Austria and Poland), or are invited for round tables (Czech Republic, Ireland and Lithuania). In Germany, this cooperation is not yet standard practice, but initiatives are developed. The Finnish report makes mention of a network of NGOs on trafficking in human beings.

No evidence was found on cooperation agreements between the State and NGOs on child trafficking for Belgium, Hungary and Malta.

4.7.7.4. Cooperation with countries of origin outside the EU

In a majority of Member States cooperation with countries of origin outside the EU takes place first and foremost on trafficking in human beings in general and incidentally on child trafficking in particular (Bulgaria, Denmark, Germany, Greece, Spain, France, Ireland, the Netherlands, Austria, Slovenia, Finland, Sweden and the United Kingdom). Other reports make mention of broader cooperation agreements on the fight against organised crime, terrorism and other transnational crimes, of which trafficking in human beings is one element (Lithuania, Slovakia). In the Czech Republic and Italy, cooperation with countries of origin outside the EU is not initiated by the government, but by (state-funded) NGOs. An interesting Polish initiative concerns the organisation of annual meetings of experts from the countries of origin, transit countries and target countries (as seen from the Polish perspective), which are aimed at sharing information on the phenomena observed in human trafficking.⁴²¹

Furthermore, cooperation in the fight against trafficking in human beings takes place in the Council of the Baltic Sea States. This Council has established the Working Group for Cooperation on Children at Risk and the Task Force against Trafficking in Human Beings with focus on adults.

For Belgium, Estonia, Latvia, Luxembourg, Hungary, Malta and Romania, no evidence on this point was found by the authors of the national reports.

⁴²¹ Poland is hosting such meetings. Participants include representatives of different uniformed services operating in other countries. Meeting followed with conference organized on 8 March 2004 was organized with respect to cooperation with Ukraine, Moldova, Belarus and Russia – region of Kaliningrad. On 14-15 March 2005 the meeting with experts from Ukraine, Moldova, Netherlands, Germany and Italy was held. Its aim was to share best practices as regards counteracting human trafficking and methods used in action. On 8 November 2006 the meeting of Group G6 was held, involving representatives of Poland, France, Spain, Germany, United Kingdom and Italy. On 9-10 November 2006, the meeting of representatives of the EU and Ukraine on human trafficking was held.

4.7.7.5. Support programmes

Support programmes as part of Member States' international development assistance in countries of origin within the EU either on trafficking in human beings in general, or on child trafficking in particular, are developed in Denmark, Germany, Greece, Spain, Hungary, the Netherlands, Austria, Finland and the United Kingdom. Bulgaria is often mentioned as a country of origin receiving such support. For example, the Cypriot report mentions a conclusion of a legal cooperation agreement with Bulgaria dealing with international crime and trafficking.

The reports on Ireland and the United Kingdom refer to the G6 Initiative,⁴²² that coordinates an international campaign of activity to tackle the trafficking of human beings. Ireland, the UK, Netherlands, Poland, Italy and Spain are participating in the Initiative which is being supported by Europol, Interpol and Eurojust.⁴²³

In the Czech Republic, Ireland, Italy and Luxembourg, no official support programmes were set up, but such support programmes are offered by NGOs, sometimes supported by the state. In Estonia, France and Romania, no support programmes exist.

The authors of the reports on Poland and Slovakia have not identified any support programmes, and the Swedish authors did not receive any information from the relevant authorities on this point. The reports on Belgium, Latvia, Lithuania and Malta do not address the issue of support programmes.

4.7.8. Monitoring of implementation of guidelines on data protection

None of the 27 EU Member States have specific guidelines aimed at protection of personal data of the trafficked child currently in use. These are, however, anticipated in Luxemburg, while in Austria the issue of protection of personal data forms part of a project on the development of data collection on trafficking in human beings.

In most Member States (Cyprus, Czech Republic, Denmark, Greece, Spain, France, Hungary, Ireland, Lithuania, Netherlands, Poland, Romania, Slovakia and the United Kingdom) the protection of personal data of children is covered by general data protection legislation and as a result monitored by the national data protection authority.

⁴²² See <http://www.justice.ie/en/JELR/Pages/Lenihan%20welcomes%20launch%20of%20G6%20Human%20Trafficking%20Initiative> (09.07.2008) and http://www.justice.ie/en/JELR/Pages/Human_Trafficking_Bill_Published (05.08.2008).

⁴²³ The reports on ES, IT and NL do not discuss this initiative. The Polish report speaks of a meeting of 'Group G6', but refers to a group consisting of Poland, France, Spain, Germany, United Kingdom and Italy (see section E.4.4., footnote 199) According to the Irish report, the most recent meeting of the G6 Initiative took place in June 2008. Ireland has recommended a particular focus on the trafficking of children in the course of the G6 Initiative.

In some cases, specific acts such as the Act on the Publicity of Court Proceedings (Finland) or the Law on the Protection of Minors against Detrimental Effect of Public Information (Lithuania) are applicable.

The Danish report points out that ‘the Danish Immigration Service and the organisations mentioned can, in connection with the search for the child’s parents, exchange information regarding the child’s personal affairs without consent from the child or the appointed personal representative of the child. There is no explicit legal basis for this practice.’

The Czech report cites from an interview with the legal expert of *La Strada* Czech Republic⁴²⁴, who informed that ‘agreements between *La Strada* and the Ministry of the Interior contain obligations to report information and data on trafficking victims, whereas these obligations are contrary to valid legal provisions, for example provisions of the Act on the Social and Legal Protection of Children.’

For Belgium, Bulgaria, Italy and Sweden, no information on this point was found by the authors of the national reports.

⁴²⁴ Personal interview by the author with La Strada legal expert on 06.07.2008.

5. Good practice

5.1. Multi stakeholder approach; cooperation with NGOs

Various national reports emphasise the importance of a multi stakeholder approach of trafficking in human beings, and child trafficking in particular. For instance in the Netherlands the so-called '*ketenaanpak*' was chosen, which provides for intensive cooperation between all relevant actors (such as police and prosecution officers, care providers and legal guardians) in the fight against trafficking in human beings. Also in Finland better cooperation among authorities, courts and NGOs, was identified as a focal point in combating child trafficking on the operational level by Finnish law enforcement authorities.

Other examples of such multi stakeholder approaches are the Austrian Round Table on Child Trafficking in which international and inter-governmental organisations, non-governmental organisations and private persons participate, and the Cypriot multi-thematic coordination team comprising key state and non-state actors relevant for anti-trafficking.

Furthermore, several national reports (e.g. Italy, Hungary and the Netherlands) stress the important role that NGOs play in developing policies to fight child trafficking and providing sufficient care for child victims. In Hungary, certain NGO measures have been taken on board by the Hungarian government as good practices. An outstanding example is the school in Debrecen that has developed a preparatory language programme for refugee children on its own initiative and budget. Following that, similar programmes in other schools were financed by the Ministry of Education and Culture.

5.2. National Action Plans including follow-up

In most but still not all Member States⁴²⁵, National Action Plans (or Strategies) on Trafficking in Human Beings – sometimes supplemented with an appendix on child trafficking – or Action Plans on related topics have been issued in recent years (see section E.2.4).

⁴²⁵ Member States and between brackets the year in which the first National Action Plan was issued. AT (2007), BE (2008), BG (2005), CZ (2008), DK (2007), EE (2006), FI (2005), LT (2005), LV (2004), NL (2004), PL (2003), RO (2006), SE (2008), SI (2004), SK (2008) and UK (2007).

In only a handful of Member States, however, are these National Action Plans subjected to any kind of impact assessment.⁴²⁶ The Danish and Latvian annual reports on the implementation of the NAP, the Romanian evaluation of the NAP and the UK impact assessment and complementary update of the NAP are examples of good practices.

5.3. Specialised (data collection) mechanisms on trafficking in human beings

In nearly all EU Member States some form of data collection takes place, but often this is not formalised, or coordinated at governmental level. As a result in several Member States different relevant state departments keep their own statistics (e.g. in Estonia, Greece, Spain, Hungary and Slovakia), thereby using their own methodology and with their own focus.

For that reason the data collection mechanisms that do exist in eight Member States⁴²⁷ can be considered a good practice. In this respect it must be pointed out that in fact the Netherlands is the only EU Member State that has appointed a National Rapporteur on THB. In the Czech Republic the Security Policy Department functions as National Rapporteur. It appears that Portugal has a National Rapporteur too, but the information in the national report on this point is not entirely clear.⁴²⁸ In Austria a National Coordinator on trafficking in human beings is anticipated. As this was already formulated as an action point in several international instruments such as the 1997 *The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation* (1997)⁴²⁹, it might be recommendable that other Member States follow the Dutch example and appoint a National Rapporteur on THB.

⁴²⁶ No official impact assessment is publicly available in BE (not yet), BG, CY, EL, NL, SI and RO.

⁴²⁷ See section D.7.37. Namely: the Bulgarian National Commission for Combating Trafficking in Human Beings, The Danish Centre for trafficking, the Irish Anti Human Trafficking Unit, the Italian Human Trafficking Observatory, the Dutch National Rapporteur on trafficking in human beings, Dutch Coordination Centre on Trafficking in Human Beings, the Dutch National Expertise Centre on Youth Prostitution and the Dutch National Expertise Centre on Human Trafficking and Migrant Smuggling, the Portuguese Observatory (research and monitoring centre), the Romanian National Agency against Trafficking in Persons and the Romanian National Authority for the Protection of Children's Rights and lastly the UK Human Trafficking Centre and the UK Child Exploitation and Online Protection Centre.

⁴²⁸ The Portuguese report mentions the Rapporteur only once, without properly introducing it. See par. 46, page 10 of the national report, that reads: 'According to NGOs and the National Rapporteur there have been no campaigns specifically related to child trafficking.'

⁴²⁹ The Hague Ministerial on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997.

Two other data collection mechanisms that have been heralded as an example of good practice regarding the fight against trafficking are the Irish Anti Human Trafficking Unit (AHTU) and the data collection mechanism of the Romanian National Agency against Trafficking in Persons (NATP).

As explained above (see section E.5.1.) the newly established Irish Anti Human Trafficking Unit will be collecting data on suspects and victims of trafficking and have separate forms for children and adults. 'The data it collects will not be solely based on offences committed or the kind of exploitation suffered but will also examine demographics, the reasons victims had for leaving their country, information about the route they took into Ireland and the assistance they receive in Ireland. The data it collects is intended to be internationally comparable.'

The Romanian *Agenția Națională împotriva Traficului de Persoane* [National Agency against Trafficking in Persons (NATP)]⁴³⁰ has developed a national system of data collection on trafficking in persons (both for adults and children), operational from January 2007. The system uses a central database, a search application and a web-type interface. Access is permitted only for NATP (a specific department: Service for Monitoring, Evaluation and Research and Regional Centres) and to certain public institutions on the basis of explicit protocols.⁴³¹ This system collects information from the nominal database of Romanian children who are unaccompanied abroad and of repatriated Romanian child victims or alleged victims of child trafficking, as well as from the national system of data collection on child victims of internal trafficking, implemented by child protection authorities from each county.⁴³²

In its most recent Annual Report on Trafficking in Persons, the US State Department pays specific attention to the national database of the NATP as a 'Commendable Initiative'. According to the report this database was 'crucial for identifying and quickly responding to emerging trends in trafficking'. The report adds that: 'Through the use of the database, NATP was the first to identify an increase in labor trafficking of Romanians to the Czech Republic, and disseminate the information to law enforcement and policy officials. The national database is an effective tool for targeting trafficking trends and serves as a model for other countries.'⁴³³

⁴³⁰ The National Agency against Trafficking in Persons (NATP) established through the Government Decision no. 1584 of 08.12.2005, is a specialised body of the central public administration, with legal status, under the coordination of the Ministry of Administration and Interior, through the reorganisation of the National Office for Preventing Trafficking in Persons and Monitoring the Protection provided to its Victims within the General Inspectorate of the Romanian Police. The purpose of the Agency is to coordinate, evaluate and monitor, at national level, the implementation of policies in the field of trafficking in persons by the public institutions, as well as those in the field of protection and assistance provided to its victims.

⁴³¹ See Response of NATP No.1494982/11.06.2008, point 2, on file with the national Fralex expert.

⁴³² See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 2, on file with the national Fralex expert.

⁴³³ US Department of State, *Trafficking in Persons Report*, June 2008, Chapter *Commendable initiatives around the World*, p. 39, online at <http://www.state.gov/g/tip/>.

5.4. Specific care for the most vulnerable

On the basis of the 27 national reports, several initiatives on improving the care provided to (possible) child victims of trafficking provide for good practices.

A particular initiative that the US State Department also considers to be a 'best practice'⁴³⁴ is the Slovenian project 'Introducing mechanisms to identify, assist and protect victims of trafficking in human beings and sex- and gender-based violence in asylum procedures in Slovenia (PATS),' that is included in the Slovenian 2004 Action Plan of the Interdepartmental Working Group for the Fight Against Trafficking in Persons. This project introduced a mechanism to connect help and protection for victims of trafficking in human beings and/or sexual violence in asylum procedures in Slovenia. The project was operated by the Asylum Centre in Ljubljana, financed by the Ministry of Foreign Affairs and supported by the Ministry of the Interior. The United Nations High Commissioner for Refugees (UNHCR) also participated in the project.⁴³⁵ It has been extended to the wider region of South East Europe, to include Croatia and Bosnia and Herzegovina.⁴³⁶

Other good practices concerning care and protection for child victims of trafficking that may be highlighted here are the following:

The Danish National Action Plan (2007)⁴³⁷ highlights the requirement for the Danish Immigration Service to draw up, in collaboration with the personal representative of the

⁴³⁴ The full text of the opinion of the US State Department on this project is: 'The Project Against Trafficking and Sex and Gender Based Violence (PATS) provides trafficking awareness information and assistance to asylum-seekers most at risk, especially single females and children separated from their parents. Key elements of the project include: One-on-one information sessions with a social worker for those at risk; information on warning signs and the dangers of falling victim; information about where potential victims can access assistance; access to specialized assistance and protection for victims identified in the asylum procedures; and access to asylum procedures for identified trafficking victims. All at-risk asylum-seekers receive a small book, the purpose of which is disguised, that contains trafficking information and assistance contacts throughout Europe. The project is jointly administered by the Ministry of Interior's Asylum Section, two local NGOs (Kljuc and Slovenksa Filantropija), and the United Nations High Commissioner for Refugees (UNHCR) in Slovenia. Slovenia's Ministry of Foreign Affairs actively promotes the project regionally with other governments.' U.S. Department of State, *Trafficking in Persons Report*, June 2005, online at <http://www.state.gov/g/tip/rls/tiprpt/2005/46608.htm>. (last accessed 26.08.2008).

⁴³⁵ The primary role in the PATS project – especially in the direct work with potential victims – is carried out by non-governmental organisations which hold preventive and individual informative conversations every day with asylum applicants at the Asylum Centre. Report on the work of the Interdepartmental Working Group for the Fight against Trafficking in Persons for 2006, p. 10, available at: http://www.vlada.si/activities/projects/fight_trafficking_in_persons.

⁴³⁶ Report on the work of the Interdepartmental Working Group for the Fight against Trafficking in Persons for 2004, available at: http://www.vlada.si/activities/projects/fight_trafficking_in_persons.

⁴³⁷ See Denmark/ Regeringen (2007) *Action plan on combating trafficking in human beings 2007-2010*, p. 18.

trafficked child, an individual action plan for the benefit of the child or young person who has fallen victim to trafficking.

In Greek law it is laid down that cases of children who are victims of trafficking are heard by the first and second instance criminal courts within two years from the time the crime is committed. This is considered to be a very positive measure as it serves both the best interest and well being of the children concerned as well as the proper administration and delivery of justice.⁴³⁸

One of the three focal points identified by Finnish law enforcement authorities who work on combating child trafficking on the operational level is to work on the basis of the best interests of the child.

Examples of mechanisms to provide assistance and support to victims of trafficking in the United Kingdom are a helpline for trafficking victims and professionals, online training tool kits, as well as specialised groups dealing with research on trafficking and the provision of care for its victims.

The Czech Republic allows unaccompanied minors to stay in the country until they reach the age of majority for the simple reason of being an unaccompanied child. Children who are studying may then apply for a national residence status.⁴³⁹ Upon the condition of integration, a permanent residence permit may be granted to them.

5.5. Identification of victims

Early identification of victims, which facilitates easy entry into the assistance system, is a top priority for the Finnish Border Guard in combating child trafficking.⁴⁴⁰ For that reason, the Finnish Immigration Service has prepared instructions for authorities involved in asylum processes (including the police, the Finnish Border Guard and the Finnish Immigration Service), through which the authorities are informed on how to identify victims of human trafficking and unaccompanied minors who are at risk of becoming victims of trafficking upon arrival in the country. The instructions also include recommendations on how authorities can cooperate effectively in the process of victim identification and prevention of trafficking. The instructions underline sensitivity when dealing with under-aged asylum seekers who are at risk of becoming victims of human trafficking.⁴⁴¹

⁴³⁸ Law 3625/2007.

⁴³⁹ Pursuant to the provision of Sec. 66 of the Czech Aliens Act.

⁴⁴⁰ The Finnish Boarder Guard (Ilkka Herranen), contribution in seminar “Stopping trafficking in women – decreasing the demand for prostitution” (arranged by the Coalition of Finnish Women’s Associations) and personal interview on 11 June 2008.

⁴⁴¹ The Finnish Immigration Service cooperated with the Ministry of the Interior in preparing answers for questions asked by the author of this report. Answers were, hence, received by the

A Czech practice that has also been taken up in the US State Department 2005 Trafficking in Persons Report as a 'best practice'⁴⁴² concerns Czech Victim Screening and Identification Procedures. In cooperation with NGOs, the Government of the Czech Republic has formalised its victim screening process by issuing a pamphlet with a list of twelve basic questions to police officers which may help them identifying victims of trafficking in human beings. As the US report notes 'detailed questions are often essential for law enforcement to discover a human trafficking case.'

In the Netherlands, the *Aanwijzing Mensenhandel* [Instruction Trafficking in Human Beings] provides that police and prosecution officers are only to deal with cases of trafficking in human beings and to hear possible victims, if they hold a specific certificate.⁴⁴³

5.6. Specific policy on intra-state trafficking

The authors of the Dutch national report observe that 'discussions on child trafficking often tend to focus on 'cross-border situations', whereby victims are transferred from one country to another. It is however important to realise that child trafficking may also have a 'purely internal dimension'. In the Netherlands this internal dimension primarily concerns the so-called 'loverboys'; pimps who use seduction techniques to draw – mostly minor – girls into prostitution. Under Dutch law loverboys are classified as human traffickers if their victims are minors.'

It may be concluded that the Netherlands is one of the very few Member States that have recognised and effectively tackled the internal aspect of child trafficking. It is recommendable that this approach will also be chosen by other Member States.

Ministry of the Interior (Veikko Pyykkönen), written answer on questions, received on 19 June 2008.

⁴⁴² U.S. Department of State, *Trafficking in Persons Report*, June 2005, online at <http://www.state.gov/g/tip/rls/tiprpt/2005/46608.htm> (last accessed 26.08.2008). The report also notes that 'With EU support, the Czech Government also established an intranet site for police on how to identify and assist victims. The site, used on a daily basis, includes definitions of human trafficking, ways to identify trafficking victims, how to proceed with trafficking cases, and which NGOs to contact for victim assistance.' However, the Czech national report does not contain any information on that issue.

⁴⁴³ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter IV under 3, *Staatscourant* [Government Gazette] 2006, 58, online at www.overheid.nl. The instruction will be in force from 27.11.2006 to 31.03.2010.

6. Conclusions

6.1. Problems of definition of child trafficking in EU legislation

The EU legal framework lacks a clear definition of child trafficking. The definition of trafficking in human beings provided by the Council Framework Decision on combating trafficking in human beings of 2002 is the clearest, with its special qualification for child victims. This definition, however, covers only child trafficking which occurs for the purposes of labour or sexual exploitation.

Certain types of exploitation, for instance for other purposes such as organ extraction or exploitative forms of adoption, are not covered by the 2002 Framework Decision on combating trafficking in human beings. The definition of trafficking in the 2002 Framework Decisions in this respect falls short of the definition of “trafficking in children” of the Council of Europe Convention on Action against Trafficking in Human Beings from 2005 which entered into force on 1 February 2008 and which is the best in this regard. The definition in the Council of Europe Convention goes even further than the Palermo Protocol as its scope extends explicitly to all forms of trafficking, “whether national or transnational, whether or not connected with organised crime” and it is clear that the Council of Europe Convention applies also to victims who entered or are present illegally in a Member State.

This comparative overview has shown that, unfortunately, child trafficking also lacks a uniform definition at the Member State level. For instance, in some EU Member States intra-state trafficking is explicitly made punishable under national law, while in others intra-state trafficking is not covered. According to the law in some Member States the consent of the (child) victim in the trafficking is irrelevant to its classification as an offence. However, in some Member States the prosecution services or courts will not consider an offence to have been committed where the consent of the child has been obtained.

Not all Member States have included the forms of exploitation listed in the Palermo Protocol in their national laws for the purposes of criminalising trafficking. For instance exploitation by the removal of organs or tissue is not covered by the national laws of some Member States. In addition to the forms of exploitation that are covered by the definitions in the Palermo Protocol and the Framework Decision, a small number of Member States also made trafficking for the purpose of begging punishable.

6.2. Identification of victims of child trafficking and age assessment

Identification of victims of child trafficking is crucial in order to prosecute traffickers and to protect and assist victims of child trafficking.

Good practices regarding identification of victims of child trafficking which could inform European policy were identified in Finland and in the Czech Republic. In Poland and Lithuania not a single victim of child trafficking was identified. The effectiveness of any measure to fight child trafficking and to assist the victims of child trafficking will depend on the success in identifying victims of child trafficking.

In some countries, no formalised policy on age assessment and/or benefit of doubt concerning age could be identified. Such policies are crucial to the effectiveness of any measure to fight child trafficking and to assist child victims of trafficking.

6.3. Scarcity of convictions for child trafficking

Final convictions based on child trafficking could only be detected in four Member States in the period 2000-2007. These available figures indicate that there are generally very few final convictions in child trafficking cases. In five Member States it emerges that no final convictions were issued in the period 2000-2007. In one Member State no case of child trafficking was even identified and/or prosecuted in the named period. In some Member States statistics concerning the convictions for child trafficking are conflated with statistics for convictions for trafficking in human beings in general or other offences like smuggling and prostitution. Thus it is not possible to state how many child trafficking cases ended in conviction in these countries.

6.4. Differences in policies for sanctioning child trafficking

In only two Member States is there a specific offence of child trafficking, with accompanying sentencing rules. In all other Member States child trafficking is either covered by a general provision in law penalising trafficking in human beings, or a combination of several criminal provisions. In most of these Member States more severe penalties can be imposed for the offence of trafficking in human beings if the victim is a minor. In most national laws this is achieved by taking the child victim's status as a minor as an aggravating circumstance.

An overall conclusion that can be drawn is that prison sentences and other sanctions that may be imposed for the offence of child trafficking differ widely between Member States.

6.5. Policy of non-punishment of victims of child trafficking

In a significant number of Member States a formalised policy of non-punishment of child victims of trafficking for both border offences and illegal prostitution is pursued. However, in half of the Member States no formalised policy on non-punishment is pursued. This means that in these countries child victims of trafficking could be prosecuted for border offences or other offences like illegal prostitution. In these countries there is a higher risk that victims of child trafficking might not develop a relationship of trust with state authorities, which would permit them to escape dependency on their traffickers.

6.6. Detention

In the vast majority of EU Member States the detention of child victims of trafficking pending their deportation is, as such, not prohibited by law. However, it is often explicitly considered to be a measure that may only be applied as a last resort. In the UK this principle of last resort is explicitly extended to the detention of parents with dependent children. In Finland the basic principle is that a child who is believed to be a victim of trafficking may not be detained under any circumstances.

6.7. Specialised shelter for child victims of trafficking

In three Member States (Belgium, Bulgaria, Italy) trafficked children are sheltered in accommodation established for the purpose of sheltering victims of child trafficking. Specialised shelters for child victims of trafficking are not provided for in most Member States. Child victims may be placed in shelters for adult victims of trafficking, in specialised shelters for unaccompanied minors, or in other facilities for (vulnerable) children. In some Member States no suitable shelters or comparable facilities for victims of child trafficking exist.

6.8. Children leaving shelters with unknown destination

According to numerous NGOs and government sources in various Member States the disappearance of children from shelters with unknown destination is wide-spread. Despite this there is no monitoring of the problem through the collection of statistics in at least nine Member States. Despite the existence of the practice few Member States have been prompted to develop policies of prevention. A good practice in this respect was identified in the Czech Republic which offers a long term perspective to unaccompanied minors to stay in the country.

6.9. Granting of a reflection period

Member States with the exception of Denmark, Ireland and the United Kingdom are obliged to grant a reflection period to third country nationals who may be victims of trafficking by virtue of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-countries nationals who are victims of trafficking. This reflection period allows the victims to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. However, the application of Council Directive 2004/81/EC to child victims of trafficking is only optional, not mandatory.

In the majority of Member States a reflection period of a minimum of 30 days for both minor and adult victims is provided for by law. In some Member States there is at present no statutory provision in national law which provides for a period of reflection for (child) victims of trafficking.

In almost half of the Member States, a residence permit is issued only if victims cooperate with the police and prosecution. Making the grant of a residence permit to victims of child trafficking dependent on their cooperation in criminal proceedings has received criticism as contrary to the best interest of the child. In particular such an arrangement ignores the fact that child victims may not be in a position to co-operate with authorities. It also fails to address the danger that the child may suffer reprisals if redelivered into the hands of traffickers after an unsuccessful investigation.

In a significant number of Member States no children at all were granted temporary stay on grounds of trafficking in the period 2000-2007. In ten Member States no statistics on the number of children being granted temporary stay on grounds of trafficking for this period are available. Thus, there is currently no evidence in a significant number of Member States that child victims of trafficking are actually benefitting from the reflection period provided for by EU law.

6.10. Socio-economic rights only optional for victims of child trafficking

The EU legal framework focuses on the criminalisation of traffickers of children, rather than the protection of victims. The main protection measure provided for in EU law for child victims of trafficking is Council Directive 2004/81/EC. This directive contains guarantees for victims of trafficking regarding subsistence standards of living, access to emergency health care and access to the education system. However, vis-à-vis children this directive is not mandatory, only optional. It is only if Member States choose to extend the application of this directive to children that they are obliged to provide socio-economic rights to victims of child trafficking.

In some Member States the socio-economic rights of victims of child trafficking are dependent on the residence status of these children. Thus, a refusal to grant temporary residence to victims of child trafficking will most likely also have repercussions for access to socio-economic rights like health care and education in these Member States.

Currently, EU law does not provide for mandatory socio-economic rights for all child victims of trafficking. Admittedly, child victims of trafficking may fall under the more general provisions in EU law on social assistance to unaccompanied minors who are asylum seekers. However, these provisions are not tailored to the specific situation of child victims of trafficking.

6.11. Legal guardians

The concept of a “legal guardian” is not uniformly defined in all EU Member States. Legal guardians operating in the Member States differ according to their professional backgrounds and in some cases have no professional background at all. Training of legal guardians also differs between Member States. In some countries, legal guardians receive no training at all. In almost all Member States, the preparation time for a legal guardian is not regulated and there are no guarantees in place that the legal guardian has sufficient time for pursuing the best interests of the child or sufficient personal contact with the child.

In some countries the appointment of a legal guardian is dependent on international protection or application for refugee status. Thus, not every victim of child trafficking is automatically ensured assistance by a legal guardian.

Law and practice regarding appointment of a legal guardian were found to diverge in Member State practice. In some Member States, the appointment of a legal guardian is a very rare occurrence because victims of child trafficking are not identified and/or because childcare institutions do not focus on this issue.

6.12. Access to legal assistance

The national regulations regarding access to legal assistance differ widely between Member States. In some Member States, legal assistance for victims of child trafficking is only organised informally by NGOs. Finland is the only country where authorities keep track of the number of trafficked children receiving legal aid.

6.13. Family tracing

In a number of Member States the duty for state authorities to trace the family of unaccompanied minor aliens, or child victims of trafficking in particular, arriving in the country is laid down in law or in a policy document. In some Member States, family tracing is only compulsory for the authorities if an asylum application has been submitted. In nine other states no comprehensive family tracing programme is existent, or information on the existence of such programmes is not available.

In Finland, the family tracing programme requires assessing whether family reunification is in the child's best interest in order to avoid re-victimisation in a situation where the child is initially victimised with the support of parents or because parents themselves are in state of dependency on the traffickers. In Bulgaria all cases of returned children are subject to close monitoring.

6.14. Monitoring mechanisms (National Rapporteur)

From the national reports it seems that in only three Member States (Netherlands, Czech Republic, Portugal) a National Rapporteur on trafficking in human beings is functioning. In various other Member States the institution of a National Rapporteur on trafficking in human beings as such has not been established, but other relevant monitoring mechanisms on trafficking in human beings are provided for. In seven Member States no National Rapporteur or other specific monitoring mechanism exists at all.

6.15. National Referral Mechanism

National Referral Mechanism is a systematic, formalised and standardised instrument for cooperation and referral, which addresses also the rights of trafficked children. Various models exist in the Member States which differ significantly from each other. In a number of Member States no formalised, standardised referral system could be detected.

6.16. Ratification of international instruments

There remain several treaties of crucial importance to the fight against child trafficking to which many Member States are not party.

At the time of writing, although all the Member States have signed the Convention against Transnational Organised Crime and the Palermo Protocol, not all have proceeded to ratify these instruments. Thus the Czech Republic, Greece and Ireland are still not party to either of these treaties, and Luxembourg is still not party to the Palermo Protocol.

Neither has the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography been ratified by all Member States at the time of writing. The Czech Republic, Finland, Germany, Hungary, Ireland, Luxembourg and Malta do not yet count themselves among the parties to this Protocol.

At the time of writing thirteen Member States have yet to become party to the Council of Europe Convention on Action against Trafficking in Human Beings. The treaty has been signed but not ratified by Belgium, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Slovenia, and Sweden. The Czech Republic and Estonia have not signed the Convention. Although this instrument is specifically open to membership by the European Community it has not signed the treaty.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse has only recently been opened for signature. Only Greece has ratified the instrument thus far and as a result the Convention has not yet entered into force. Presently, 19 of the 27 EU Member States have signed the Convention.

6.17. Data collection on child trafficking

It is impossible to make even remotely accurate statements concerning the actual prevalence of child trafficking, be it in individual States, or within the EU. There are some estimates by rather authoritative sources, but no governmental body or NGO has been able to offer complete and comprehensive statistics on this phenomenon. Trafficking, like many crimes, is inherently difficult to quantify.

Admittedly in nearly all EU Member States some form of data collection takes place (the exceptions being France and Latvia), but often this is neither formalised, nor coordinated at governmental level. As a result in several Member States different interested state departments keep their own statistics (e.g. in EE, EL, ES, HU and SK) thereby using their own methodology and with their own focus. A specific data collection mechanism on trafficking in human beings or even child trafficking in particular is found only in Bulgaria, Denmark, Ireland, Italy, the Netherlands, Portugal, Romania and the UK – but even here not all mechanisms are fully operational. The instruments developed by the

Irish Anti Human Trafficking Unit and the Romanian National Agency against Trafficking in Persons (NATP) were identified as examples of good practice regarding data collection.

The lack of standardised methods of data collection for trafficked victims makes it very difficult to draw comparisons between states and to be clear about the extent to which child trafficking affects particular regions. Given the lack of reliable data, no sensible quantitative statement can be made as regards the age and sex of victims of child trafficking, their countries of origin or of destination and the kinds of exploitation to which victims are subjected.

7. Opinions

According to Art 4(1)(d) of Council Regulation 168/2007, the European Union Agency for Fundamental Rights is entrusted with the task of formulating opinions for the European Union institutions and the Member States. Its objective is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States, when implementing Community law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence.

A primary consideration for EU legislation towards child victims of trafficking should be the best interests of the child victims. The principle of best interests of the child has acquired the status of a general principle also of Community law by virtue of Article 6(2) of the EU Treaty because the principle constitutes a constitutional tradition common to the Member States as all Member States. The principle is also enshrined in Article 24 of the Charter of Fundamental Rights of the European Union. Member States have important interests in combating crime and in regulating immigration. However these policy goals should not be allowed to overshadow the best interests of child victims of trafficking. The best interests of the child must be respected, protected and promoted as a priority.

It would be advisable to have one central piece of legislation addressing trafficking in the EU in order to avoid differences in definition and terminology. Thus, it would be advisable to integrate existing standards of Council Directive 2004/81/EC and Framework Decision 2002/629/JHA into one central piece of EU legislation or, if more than one document is necessary, consistency and coherence in definitions and terminology needs to be ensured.

The application of EU legislation combating trafficking in human beings needs to be regularly reviewed to ensure that it is effective and does not merely exist on paper. Following the model of Article 17 of the Racial Equality Directive 2000/43/EC, the European Commission should be entrusted with the task of drawing up a periodic report on the implementation of the relevant EU legislation taking into account the views of the European Union Agency for Fundamental Rights, as well as the views of relevant non-governmental organisations. Currently such an inclusion of views of relevant non-governmental organisations and of the Agency is not foreseen in the reporting clause contained in Article 10 of the 2002 Council Framework Decision on combating trafficking in human beings (2002/629/JHA).

The European Commission made two new legislative proposals affecting the area of child trafficking in 2009: a proposal for a new Council Framework Decision on preventing

and combating trafficking in human beings, and protecting victims⁴⁴⁴ and a proposal for a new Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography⁴⁴⁵. The opinions of the Agency formulated in this section do not directly refer to or comment on these proposals pursuant to Article 4(2) of Council Regulation 168/2007 establishing the European Union Agency for Fundamental Rights.

7.1. Criminalisation of child trafficking

Charter of Fundamental Rights (Article 5)

Trafficking in human beings is prohibited.

The Framework Decision 2002/629/JHA on combating trafficking in human beings needs to be updated or supplemented based on the findings and conclusions in this report. The Framework Decision currently only covers child trafficking which occurs for the purpose of labour or sexual exploitation. Certain types of exploitation, for instance, for the purposes of organ extraction or exploitative forms of adoption, are not covered by the 2002 Framework Decision on combating trafficking in human beings.

The definition of trafficking needs to be expanded to cover the scope of the more comprehensive definition of “trafficking in children” of the Council of Europe Convention on Action against Trafficking in Human Beings from 2005 which entered into force on 1 February 2008 and which was identified as the best and most comprehensive definition in this regard. Accordingly trafficking in children is best defined in line with the CoE *Convention on Action against Trafficking in Human Beings*.

Currently the principle that the consent of children in the trafficking shall be irrelevant is not sufficiently explicit in EU legislation. The existing framework decision defines certain means of trafficking and states that consent of a victim of trafficking to the exploitation shall be irrelevant where any of the defined means have been used; furthermore, the framework decision states that child trafficking shall be punishable even if none of the defined means have been used. Currently, the framework decision does not state clearly that consent of children in the trafficking is irrelevant.

EU legislation should integrate a policy on age assessment of victims of child trafficking as well as a policy giving victims the benefit of doubt concerning their age in order to

⁴⁴⁴ Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA {SEC (2009) 358} {SEC (2009) 359}, COM (2009) 136 final – CNS 2009/0050

⁴⁴⁵ Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA {SEC (2009) 355} {SEC(2009) 356}, COM (2009) 135 final - CNS 2009/0049

combat child trafficking effectively. Both are currently missing in the existing legislation. Both might be relevant also for other children, not just victims of trafficking.

In view of the scarcity of convictions for child trafficking in the Member States, it is crucial for any effective measure combating child trafficking that minimum standards for the identification of victims of child trafficking are integrated into and made obligatory by EU legislation. Good practices regarding identification of victims of child trafficking which could inform European policy were identified in Finland and in the Czech Republic.

With regards to the differences in sanctioning of child trafficking identified in the Member States, a further approximation of sanctions for child trafficking in the Member States should be undertaken by EU legislation.

EU legislation needs to adopt a formal policy of non-punishment of child victims of trafficking. Such a policy of non-punishment is necessary to ensure that victims of child trafficking develop a relationship of trust with state authorities in order to permit them to escape their dependency on their traffickers.

EU legislation needs to contain an obligation to appoint national rapporteurs or institute other suitable monitoring mechanisms for trafficking in human beings. Also the existence of an adequate formalised and standardised referral mechanism needs to be guaranteed.

It is obvious that reliable and sufficient data are needed to formulate effective counter-trafficking policies. EU legislation should ensure that in all EU Member States sufficient data collection takes place coordinated at governmental level. Good practices which could inform EU policy in this regard were identified in Ireland and in Romania.

7.2. Protection and care of victims of child trafficking

Charter of Fundamental Rights (Article 24)

The rights of the child

- 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*
- 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*
- 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*

Council Directive 2004/81/EC on the residence permit issued to third-country nationals should either be updated or supplemented based on the findings and conclusions of this report. EU legislation should guarantee minimum standards for the care and protection of victims of child trafficking.

Protection offered to victims of trafficking by current EU legislation must be extended towards children on a mandatory rather than optional basis.

A generous reflection period for child victims of trafficking needs to be obligatory, not merely optional, and not dependent on co-operation with authorities.

Following the model of Finland, EU legislation needs to ensure the basic principle that a child who is believed to be a victim of trafficking should not be detained.

Victims of child trafficking need to be sheltered in suitable facilities which are sufficiently tailored to their needs.

EU legislation needs to guarantee minimum standards for a policy of preventing and responding to disappearances of children from shelters and facilities in the Member States. Such a policy should also include a long term perspective for the child victim to stay in the country following the model of the Czech Republic.

Statistics on children leaving shelters or otherwise disappearing need to be collected and made available for public scrutiny.

The enjoyment of socio-economic rights (standard of living, healthcare, education) should be guaranteed by EU legislation and not merely optional for victims of child trafficking.

Child victims of trafficking need to be assisted by a legal guardian with a satisfactory professional background. A legal guardian should be guaranteed sufficient time for preparation and personal contact with victims in order to protect the best interests of the child in all relevant procedures and matters arising.

Child victims of trafficking need to be guaranteed sufficient legal assistance to enable them to pursue their rights and obtain appropriate compensation in an effective manner.

Family tracing with appropriate safeguards should be made obligatory in EU legislation and not merely optional for victims of child trafficking.

7.3. Ratification of international instruments

All Member States, who have not already done so, are invited to become party to the following international instruments, which are all crucial to combat child trafficking effectively:

- UN Convention against Transnational Organised Crime
- Palermo Protocol to the Convention against Transnational Organised Crime
- Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- ILO Convention 182
- Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005)
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote 2007)

ANNEX

Background of the study

The European Commission asked the European Union Agency for Fundamental Rights on July 15, 2007 to develop indicators for measuring how children's rights are implemented, protected, respected and promoted in the Member States of the EU and to map the available objective, reliable and, as far as possible, comparable data and sources at national and EU level.

In October 2007, the European Commission requested the Agency to start collecting data on the basis of the indicators then under development as soon as possible in order for the Agency's work to contribute timely to the Commission's initiatives in the area of protection and promotion of the rights of the child.

Based on a consultation meeting with other international organisations and the European Commission, which took place in Vienna on 25 April 2008, it was decided to focus on the draft indicators regarding child trafficking in this first thematic study of the European Union Agency for Fundamental Rights on the rights of the child.

FRALEX is the legal experts group of the FRA. FRALEX national teams produced 27 national studies and one EU/international study based on a detailed questionnaire elaborated by the Agency. On the basis of these studies, the comparative report was developed. The national studies are dated August 2008. The writing of the comparative report was mainly completed in December 2009.

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