

# Chapter 1

## Recent developments in the legal and political framework

### 1. Developments in the European legal and political framework

#### 1.1. | Human trafficking

Two major events took place in 2022 at European level: the first concerns the publication of the third evaluation report by the Council of Europe's Group of Experts (GRETA) on Belgium's implementation of the Anti-Trafficking Convention. The second concerns the tabling by the European Commission of a proposal to revise Anti-trafficking Directive 2011/36/EU.

##### 1.1.1. | GRETA's report concerning Belgium's implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings

On 20 October 2022, GRETA published its third evaluation report on Belgium<sup>382</sup>, dedicated to access to justice and effective remedies for victims of human trafficking.

The emphasis is on the implementation of the Convention's provisions establishing substantive and procedural obligations as regards access to justice for victims. This report assesses the progress made by Belgium in the fight against human trafficking since the previous evaluation report, published on 16 November 2017<sup>383</sup>.

With this third evaluation cycle in mind, Myria devoted the focus of its 2019 annual report to access to legal aid and victim protection<sup>384</sup>. GRETA welcomes Myria's thorough and comprehensive reports, which are an important tool for study and action in the field of human trafficking<sup>385</sup>.

GRETA commends a number of positive changes since its last evaluation report, in particular the adoption of the Law of 22 May 2019, which enshrined the principle of non-punishment of victims of trafficking in the Belgian Criminal Code<sup>386</sup>. However, it considers that the authorities should take additional measures to ensure that this principle is implemented in practice, especially with regard to child victims who have committed offences under coercion<sup>387</sup>.

Nevertheless, GRETA notes that there are still challenges ahead. The report stresses that presumed victims should be better informed of their rights, the steps to be taken to benefit from them and the consequences of their identification as victims of trafficking, in particular by further developing information tools for child victims<sup>388</sup>.

382 GRETA, Evaluation Report on Belgium, third evaluation round, [Access to justice and effective remedies for victims of trafficking in human beings](#), 20 October 2022.

383 For a brief summary, see Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-71.

384 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, Part 2.

385 GRETA, Evaluation Report on Belgium, §17.

386 This principle is set out in the new §5 of Article 433 quinquies: "The victim of trafficking in human beings who takes part in offences as a direct consequence of his or her exploitation shall not incur any penalty for these offences". For a brief analysis, see Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 97-99.

387 GRETA, Evaluation Report on Belgium, §§113 to 122

388 *Ibid.*, §§ 31 to 46.

Another area of concern is effective access to compensation<sup>389</sup>. GRETA believes that additional measures are needed, including revising and simplifying the criteria for access to legal aid and ensuring adequate funding for specialised centres that provide legal representation for victims of trafficking who do not qualify for legal aid. Similarly, the criteria for access to the Financial Assistance for Victims of Intentional Acts of Violence should be reviewed.

GRETA also urges the Belgian authorities to allocate sufficient human and budgetary resources to the police units responsible for combating trafficking, and to the labour inspectorate to enable it to fulfil its mission effectively and proactively.

Lastly, GRETA is concerned about the low number of children identified as victims of trafficking and calls on the authorities to improve the training of professionals in the field and to step up the assistance provided to unaccompanied minors.<sup>390</sup>

### 1.1.2. | Proposal for a directive on trafficking in human beings amending Directive 2011/36/EU

On 19 December 2022, the European Commission presented a proposal to revise the 2011 anti-trafficking directive<sup>391</sup>.

It carried out an evaluation of the 2011 Directive<sup>392</sup> and an impact analysis<sup>393</sup>, as well as various consultations.

In its evaluation, the Commission noted that the directive had made an effective contribution to the fight against trafficking in human beings within the European Union, in particular by contributing to greater harmonisation of criminal law in the Member States. However, it noted that difficulties remained at several levels: the interpretation of offences related to human trafficking in the Member States was not always identical, but it was above all the implementation of the directive that posed problems, particularly for the assistance and support to be provided to victims<sup>394</sup>. In addition, shortcomings were also noted in investigations and prosecutions, particularly when it came to strengthening the capacity of law enforcement and judicial authorities to conduct financial investigations, or to cope with the challenges posed by the increasing digitisation of human trafficking.

Lastly, and this is a sensitive issue, the Commission also noted that the effectiveness of the directive was limited in terms of reducing demand through legislation, due to non-transposition or the very different approaches taken by Member States

to the optional provision aimed at making it a criminal offence to knowingly use the services of victims of human trafficking. The evaluation showed that stakeholders were divided on the effectiveness of this measure in reducing demand<sup>395</sup>.

The impact assessment conducted showed that a combination of legislative and non-legislative measures would be the most effective way of improving the current framework.

389 *Ibid.*, §§ 73 to 93.

390 *Ibid.*, §§ 195 to 210.

391 Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, COM(2022) 732 final.

392 Commission staff working document, Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, SWD(2022) 427 final. A summary of the evaluation (SWD(2022) 428 final) is also available (in French, English and German).

393 Commission staff working document, Impact assessment report accompanying the document proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, SWD(2022) 425 final. A summarised version is also available.

394 In particular regarding the application of the principles of non-prosecution and non-punishment, the provision of targeted assistance and support services to meet the specific needs of particularly vulnerable victims, including children, and access to compensation.

395 The evaluation revealed that it is often difficult to prove knowledge, even if the data does not allow us to conclude that removing the knowledge requirement leads to a higher number of prosecutions and convictions.

The Commission's proposal addresses a number of points. Here are the main ones:

- inclusion of an explicit reference to the online aspect of trafficking offences in the directive;
- introduction of a mandatory system of penalties for legal persons: measures such as exclusion from entitlement to any public benefit, aid or subsidy, and temporary or permanent closure of establishments used to commit the offence could be imposed;
- formal creation of national referral mechanisms and national focal points responsible for referring victims: at national level, these take very different forms. The aim is to improve victim referrals, particularly in cross-border cases;
- make it a criminal offence to use the services of victims of human trafficking in the knowledge that the person concerned is a victim of such an offence. The aim is to discourage demand and thus increase the effectiveness of preventing and combating human trafficking<sup>396</sup>;
- annual obligation to collect data and report on indicators in the field of human trafficking: data collection, led by Eurostat, would be much broader and more frequent (annually instead of every two years at present).

At the time of finalising this report (August 2023), the Council had approved the proposal but the European Parliament had not yet taken a stance.

### Commission's fourth report on Member States' progress in the fight against trafficking in human beings

On the same day as the tabling of its proposal to revise the anti-trafficking directive (19 December 2022), the European Commission published its fourth report on the progress made by Member States in the fight against trafficking in human beings<sup>397</sup>. It covers developments between 2019 and 2022 and provides an analysis of statistics for the period 2019-2020<sup>398</sup>. Following on from the previous one, this report highlights the impact of the COVID-19 pandemic on human trafficking. For instance, the restrictions associated with this period and the lockdowns contributed to further isolating the victims, sometimes together with their traffickers. The identification of victims and their referral to assistance, support and protection services, as well as their access to justice, have become more complex. In addition, the COVID-19 pandemic considerably accelerated the shift of criminal activities towards the digital arena.

Lastly, the reference period was also marked by Russia's military aggression against Ukraine, which began on 24 February 2022 and led to a massive influx of people fleeing the war into the EU, 90 % of whom were women and children. The risks of human trafficking were considered to be very high from the outset.

Between 2019 and 2020, 14,311 victims of human trafficking were recorded in the EU, slightly more than in the previous two-year period (14,145). While women and girls still represent the majority (63 %) of all victims recorded in the EU, the proportion of male victims (33 %) has increased. Of these victims, 53 % were EU citizens and 43 % were third-country nationals. Finally, it should be noted that 37 % of all registered victims were citizens of the country in which they were registered (internal trafficking).

Sexual exploitation remains the most widespread form of trafficking in the EU (51 %). The report notes that technology is widely used as a means of recruiting, advertising and sexually exploiting victims. While Nigeria remains one of the main countries of origin of trafficking for sexual exploitation, there has been an increase in the number of women and trans(gender) people from South America trafficked for sexual exploitation<sup>399</sup>. The 'loverboy' method has frequently been cited as a means of recruiting victims.

<sup>396</sup> During the Commission's public consultation on the subject, Myria expressed its reservations about the adoption of such a measure, which would be counterproductive in the fight against traffickers. See also Myria, *Annual Report 2021. Trafficking and smuggling of human beings. Visibly invisible*, pp. 39-40. Others have also questioned the effectiveness of such a measure in the fight against trafficking. See in particular *La Strada International, The Impact of Criminalising the 'Knowing Use' on Human Trafficking, policy paper*, December 2022.

<sup>397</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Commission and the Commission of the Regions on the progress made in the fight against trafficking in human beings (fourth report), 19 December 2022, COM(2022) 736 final.

<sup>398</sup> These statistics are available in the staff working document accompanying the report.

<sup>399</sup> This is an observation also made by Myria in this part, Chapter 3, point 2.1.2.

Trafficking for the purpose of labour exploitation increased considerably during the reference period (15 %)<sup>400</sup> and mainly concerns men (66 %). The activities of criminal networks are thus mainly channelled through businesses that operate with a large volume of cash and employ a high proportion of low-paid workers, as well as seasonal workers. There are many high-risk sectors including agriculture, construction, forestry, food processing, assembly lines, hotels, retail, car washes, beauty and cleaning services, transport, housekeeping and home help. Here too, there has been an increase in the online recruitment of victims by traffickers. Member States underlined the particular vulnerability of migrants to this form of exploitation.

As for other forms of exploitation, cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, in which women are recruited to give up their newborn babies on the promise of compensation or to take part in illegal surrogacy programmes, have been reported.

On a positive note, law enforcement cooperation intensified considerably over the period 2019-2022, both at EU and international level. However, despite the progress made in cross-border police and judicial cooperation, the number of prosecutions and convictions of traffickers remains low.

However, progress has been made on a number of fronts. For instance, to detect cases of human trafficking facilitated by the use of technology, Member States have put in place various strategies. These include monitoring the internet (both the surface web and the dark web), combined with real-time open-source intelligence analysis, the creation of a dedicated cyber unit to combat human trafficking, and the deployment of 'cyber patrols'.

Member States have also taken measures to increase and improve the use of financial investigations in cases of human trafficking, as well as initiatives to improve informal and formal national referral mechanisms for victims.

### 1.1.3. | Other measures

Other measures likely to have an impact on the fight against human trafficking have also been adopted or proposed at European level.

#### Legislation on digital services

A comprehensive set of new rules<sup>401</sup> regulating the responsibilities of digital services that act as intermediaries within the EU to connect consumers to goods, services and content have been adopted by the European Union. In this context, digital services include online platforms.

In particular, this legislation on digital services<sup>402</sup> is a tool for identifying, monitoring and removing online content linked to human trafficking. It introduces due diligence obligations for intermediary service providers, such as online platforms, with the aim of reducing illegal and harmful content online.

#### Proposal for a new directive on the recovery and confiscation of assets

The Commission proposed a new directive on asset recovery and confiscation<sup>403</sup>. It should strengthen the ability of competent authorities to identify, freeze and manage assets, and strengthen and extend the ability to confiscate so as to cover all relevant criminal activities carried out where appropriate by criminal organisations. It would particularly apply to human trafficking.

<sup>400</sup> The report emphasises that this form of exploitation is under-reported, which means that the actual number of victims is probably much higher.

<sup>401</sup> <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

<sup>402</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (O.J., L 277 of 27.10.2022, p. 1). This regulation came into force on 16 November 2022. It shall apply to the whole of the EU from 17 February 2024.

<sup>403</sup> Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation of 25 May 2022, COM/2022/245 final.

### Corporate responsibility<sup>404</sup>

In line with the EU Strategy on Combating Trafficking in Human Beings<sup>405</sup>, the Commission has adopted several measures addressing the responsibility of companies to reduce demand and detect potential cases of human trafficking in their activities and supply chains.

In July 2021, the Commission and the European External Action Service published guidelines to help EU companies take appropriate measures to address the risk of forced labour in their activities and supply chains<sup>406</sup>.

In addition, the Non-Financial Reporting Directive (NFRD)<sup>407</sup> was revised in 2022, giving rise to the Sustainability Reporting Directive<sup>408</sup>. Under this new directive, large companies in the EU must report on the effects of their activities on the environment and respect for human rights.

The Commission has also proposed a directive on corporate sustainability due diligence<sup>409</sup>. This establishes a horizontal framework to encourage companies operating within the EU to contribute to the respect of human rights and the environment in their own operations and throughout their value chains. This will be achieved by identifying, preventing, mitigating and addressing their negative impacts on human rights, including human trafficking.

On 14 September 2022, the Commission presented a proposal for a regulation banning products produced using forced labour from the EU market<sup>410</sup>.

## 1.2. | Human smuggling

There are a number of measures relating to human smuggling at European level that should be mentioned<sup>411</sup>. At the end of 2022, the European Commission presented two action plans in response to the increase in illegal migration along the Central Mediterranean and Western Balkans routes. Structured around 20 operational measures, the action plan for the Western Balkans<sup>412</sup> sets out four priority pillars to: improve border management; combat migrant smuggling; promote cooperation on readmission and return; and align visa policies. The action plan for the Central Mediterranean<sup>413</sup> gives priority to strengthening cooperation with partner countries and international organisations, and to improving the coordination of search and rescue operations. Furthermore, as part of the EU's global partnerships on migration with countries located along irregular migration routes to the EU, the European Commission launched tailor-made operational partnerships against migrant smuggling with Morocco, Niger and the Western Balkans in 2022<sup>414</sup>.

404 For more details on this subject, see Part 1, Chapter 3.

405 [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Commission and the Commission of the Regions on the EU Strategy on Combating Trafficking in Human Beings 2021-2025](#), 14 April 2021, COM (2021) 171 final.

406 European Commission, [New EU guidance helps companies to combat forced labour in supply chains](#).

407 [Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups](#), O.J., L 330 of 15.11.2014, pp. 1-9.

408 [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation \(EU\) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting](#), O.J. L 322 of 16.12.2022, pp. 15-80. It must be transposed by the Member States by 6 July 2024.

409 See Part 1, Chapter 3, point 2.

410 [Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market](#), 14 September 2022, COM (2022) 453 final.

411 Source: European Migration Network (EMN), [Annual Report on Migration and Asylum 2022](#), July 2023.

412 European Commission, [EU Action Plan for the Western Balkans](#), 5 December 2022.

413 European Commission, [EU Action Plan for the Central Mediterranean](#), 21 November 2022.

414 European Commission, [EU working together with African partners on migration: Launch of Team Europe initiatives](#), 12 December 2022.

## 2. Developments in the Belgian legal and political framework

In Belgium, the work of the Special Parliamentary Commission on Trafficking and Smuggling of Human Beings is the main focus of attention.

### 2.1. | Special Parliamentary Commission on Trafficking and Smuggling of Human Beings

#### 2.1.1. | Context and missions

As mentioned in the previous annual report<sup>415</sup>, a special commission responsible for evaluating legislation and policy on human trafficking and smuggling was set up within Parliament in February 2022. It was composed of 13 full members and as many alternates, appointed by the Chamber of Representatives from among its members, according to the rule of proportional representation of the political groups. The creation of the Commission was a response to one of the points in the government agreement, which was to make these criminal phenomena a priority and to step up the fight against them<sup>416</sup>.

The Parliamentary Commission was tasked with taking stock of the current situation in the fight against human trafficking and smuggling, assessing the legal provisions in force both for the prosecution of perpetrators and the protection of victims, and examining international cooperation in the fight against human trafficking. It was also asked to pay particular attention to the plight of minors and other vulnerable profiles. Lastly, it was also tasked with submitting a report<sup>417</sup>, containing conclusions and possible recommendations.

The Parliamentary Commission began its work on 9 March 2022 and completed it on 31 May 2023, receiving two extensions<sup>418</sup>.

It was assisted in its work by two experts, one Dutch-speaking and one French-speaking. It also organised 23 sessions at which it heard from numerous experts and departments<sup>419</sup>. Besides the Minister of Justice, the bodies and individuals heard came from a variety of backgrounds (federal, local and international): institutional players, including the body coordinating policy on human trafficking<sup>420</sup>, the police<sup>421</sup>, labour inspection services<sup>422</sup>, magistrates, specialised reception centres for victims of trafficking and minors, civil society players<sup>423</sup> and those working with minors<sup>424</sup>, lawyers, trade unions, academics, European and international organisations<sup>425</sup>, and a Dutch player involved in the in the fight against human trafficking<sup>426</sup>. As an independent national rapporteur on human trafficking, Myria was heard on two occasions<sup>427</sup>. At the end of the hearings, the experts submitted their report to the Parliamentary Commission with around 30 recommendations<sup>428</sup>. However, on 31 May 2023, on a proposal from the majority, the members of the Commission adopted their own set of recommendations, based on a new structure and, in terms of content, on the reports of both the hearings and the experts. They were approved by the plenary session of the Chamber of Representatives on 15 June 2023<sup>429</sup>.

<sup>415</sup> Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 56.

<sup>416</sup> *Government agreement of 30 September 2020*, point 6.2.2: "The fight against human smuggling and trafficking will be stepped up. (...) To this end, the strategy and legislation will be evaluated by the Parliamentary Commission or working group".

<sup>417</sup> *Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling*, 12 June 2023, *Parl. Doc.*, Chamber, session 2022-2023, Doc. 55-2530/002.

<sup>418</sup> The mandate of the Special Commission was initially eight months. It twice asked the Conference of Presidents, which accepted the request, to allow its work to continue. The mandate was extended for the first time until 31 March 2023 and then until 1 June 2023: see Report of the Special Commission, *op. cit.*, Doc 55-2530/002, p. 7.

<sup>419</sup> Sixty-three individual experts were heard, representing a total of 46 organisations or institutions. The full reports of the hearings made available by the authorities/persons heard are attached to the Committee's report and can be accessed online on the Chamber of Representatives website: see Annex 4 to the Special Committee's report, *op. cit.*, pp. 295-297. Criminal

<sup>420</sup> Policy Department, Fedasil, Immigration Office.

<sup>421</sup> The following were heard: the THB section of the Central Directorate for Combating Serious and Organised Crime within the federal judicial police (DJSOC), members of the federal judicial police, the local police (Brussels and Liège), maritime and river police, railway police, road and highways police, airport police, and border control police. It should be noted that no member of the local or federal judicial police in a major district such as Antwerp was heard.

<sup>422</sup> Only the NSSO's inspection services were heard.

<sup>423</sup> Fairwork, ECPAT, Conseil des Femmes francophones de Belgique, Fondation Samilia, UTSOPI (representing sex workers), Sister's House (refuge for migrant women), Klaprozen vzw.

<sup>424</sup> Delegate-General for children's rights in the Wallonia-Brussels Federation and Child Focus.

<sup>425</sup> European Co-ordinator for Combating Trafficking in Human Beings, Council of Europe, Eurojust, ILO.

<sup>426</sup> *Comensha* (Netherlands).

<sup>427</sup> On 25 April 2022, during the first session of hearings, and on 6 February 2023, during the last session, to present, together with the stakeholders providing it with data, a summary report with figures on the phenomena of trafficking and smuggling of human beings over the last 10 years.

<sup>428</sup> The experts' report and recommendations form an annex to the Committee's report: see Annex 3 to the Committee's report, *op. cit.*, pp. 166-294.

<sup>429</sup> *Motion adopted at plenary session*, *Parl. doc.*, Chamber, session 2022-2023, Doc 55-2530/004.

### 2.1.2. | Analysis of the main recommendations

The Parliamentary Commission adopted no fewer than 100 recommendations<sup>430</sup>, far more than those initially proposed by the experts. Moreover, many of those proposed by the experts were not taken up by the Commission: in particular, the absolute priority of the fight against trafficking for the purpose of labour exploitation, with a redistribution of available resources and capacities<sup>431</sup>; and a series of measures proposed to deal with begging by Roma families<sup>432</sup>.

The Committee's recommendations cover both structural and operational aspects (in terms of investigations and prosecutions, as well as victim support). Special attention is also paid to minors. Measures have also been formulated to improve the fight against human trafficking. Lastly, recommendations that reach beyond human trafficking have been proposed too. The Borealis case, named after the company on whose site more than a hundred presumed victims were found, came to light during the work of the Parliamentary Committee<sup>433</sup>. It is therefore not surprising that it had a major influence on the Committee's work, which shone a light on labour exploitation.

However, the Committee's main recommendation is the creation of a new structure to monitor and combat human trafficking and smuggling. Myria examines the report's main recommendations below.

#### a. Main structural recommendation : creation of a national coordination centre to combat human trafficking and smuggling

The main structural recommendation of the Parliamentary Commission is the creation of a national coordination centre for the fight against human trafficking and smuggling, an institution placed under the authority of the Minister of Justice, involving a revision of the Royal Decree of 16 May 2004<sup>434</sup>.

This structure would incorporate the current coordinating body (the interdepartmental coordination unit) and the centre for information and analysis on human trafficking and smuggling (CIATTEH), which, despite being provided for in the Royal Decree of 2004, was never set up<sup>435</sup>. It would also be given new tasks.

The new coordination centre, inspired by the Dutch model<sup>436</sup>, would have an operational role (central contact point for victims), information and analysis (in particular to identify the nature and the extent of acts of trafficking<sup>437</sup>), and an intra-federal coordination role (recommendations 1 and 2). On reading the Committee's other recommendations, it would appear that it also has a scientific research role (recommendation 4), a training and awareness-raising role (recommendation 87), and a role as a centre for reporting child victims (recommendation 92), or even their disappearance (recommendation 93<sup>438</sup>).

The aim is to restructure and unify the landscape of the fight against human trafficking, especially by involving the federated entities to a greater extent. Major cases such as the Borealis case have demonstrated the limits of the current system, which prevented a large number of presumed victims from being dealt with quickly. This new structure would therefore play a central coordinating role in terms of registration, reception and information<sup>439</sup>. It would also have the power to place victims in the centres.

430 See Chapter 3 of the Committee's report, *op. cit.*, pp. 104-128.

431 See experts' recommendations 2 and 9, *ibid.*, pp. 276 and 281.

432 See experts' recommendations 28 to 30, *ibid.*, pp. 288-289.

433 On this subject, see also Part 1, Chapter 1, point 2.1 and Part 1, Chapter 4, point 12 of this report.

434 Royal Decree of 16 May 2004 on combating trafficking and smuggling in human beings, *M.B.*, 28 May 2004.

435 For an analysis of the problems observed at the time, see Myria, *Annual Report: Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, November 2005, pp. 66-68.

436 See the explanation of Mr. Ben Segers on this subject: Commission report, *op. cit.*, p. 30.

437 See the motivation of recommendation 1.

438 This recommendation provides for the strengthening of procedures for reporting the disappearance of unaccompanied foreign minors by implementing a national protocol on the disappearance of minors, including the central contact point.

439 See the motivation of recommendation 1.

While Myria agrees with the idea of the need to unify and coordinate the landscape of the fight against human trafficking, as well as a continuous and evolving improvement of the image of the phenomenon<sup>440</sup>, it is cautious about the implementation of such a large-scale structure. It also wonders whether it will be a real solution to the coordination problems observed in the field.

Given the wide range of tasks assigned to this national coordination centre, a number of questions arise regarding its deployment:

**1. As a central point of contact for victims of trafficking and aggravated forms of smuggling<sup>441</sup>:**

this central point of contact, accessible 24/7, which is already in place<sup>442</sup>, would be integrated into the national coordination centre. Among other things, it would be responsible for receiving reports (through an online form, chat, phone or a central number) and coordinating the transport of detected victims to a specialised reception centre (recommendations 2 and 37). It would act as a centre for the uniform recording of notifications and the actions taken. In this respect, one of the recommendations on victim support (recommendation 48) states that the aim is even to make the national coordination centre the official and central body for notification, not only of the start and end of support, but also of placement, planning of centre occupancy rates and the possible activation of an emergency plan.

It would also act as an information centre to help improve the image of the phenomenon, for the benefit of all players and in particular the national rapporteur (Myria). It would also include the labour exploitation hotline<sup>443</sup> and the guardianship department.

Myria supports the idea of centralisation with regard to potential victims, which would guarantee them uniform treatment, as well as a better understanding of the phenomenon.

It also sees the fact of having a central contact point to obtain up-to-date data on the image of the phenomenon as a step forward. Another positive point is the possibility for this central contact point to organise the transportation of victims<sup>444</sup>.

Nevertheless, a number of questions remain: what will happen in terms of cooperation and the possible reinforcement of reception centres? How would such a central contact point organise the transportation of victims and with what resources, bearing in mind that when the question of transportation arises, it is often frontline services (police and inspection services) that are primarily concerned? In addition, this central contact point would be responsible for coordination and even for placing victims in the centres. Does this mean that it would have some sort of hierarchical or injunction power over the reception centres?

As for the most vulnerable victims (illegally staying third-country nationals without agency<sup>445</sup>), they can very often only be detected through the intervention of frontline services, whether specialised or not, whose awareness must continue to be raised. There is a risk that such a central contact point could create the illusion that active and proactive detection by frontline services – on the basis of human trafficking indicators – is less important, which must be avoided at all costs.

Myria also wondered whether the guardianship department should be integrated into this central coordination point. This department has a specific role to play in relation to unaccompanied foreign minors (UAM). Its remit is therefore broader than just victims of human trafficking, but also narrower since such victims may be Belgian. It therefore seems preferable to develop ways of collaborating with this department rather than considering integrating it.

440 In particular, see the motivation of recommendations 3 and 5.

441 See recommendation 2 and its motivation.

442 On 30 July 2022, World Day Against Trafficking in Persons, the Minister for Justice launched a new website entitled Stop Human Trafficking. Available in 13 languages, it provides information on the forms and indicators of human trafficking, as well as contact details for the three specialised reception centres. This human trafficking contact point (meldpunt) acts as a helpline for victims or people wishing to report a potential case of trafficking.

443 It is not clear to Myria which hotline this is. Does it refer to the contact point for fair competition, which has a much broader scope and purpose than trafficking in human beings?

444 This was one of the problems raised during the Committee's work and was highlighted by Myria in a previous report: see Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 34-35.

445 The detection of these most vulnerable victims was not the subject of a specific point in the Committee's recommendations. On this subject, see also Part 1, Chapter 4, point 11 and, for an example of victims with no agency, the focus of Myria's *Annual Report 2022, Trafficking and smuggling of human beings*, dedicated to Vietnamese victims of human trafficking and smuggling and entitled "Bound by debt".



Finally, Myria has worked with the three specialised reception centres to develop a common database to store victims' files (MyEldo). This electronic file management system includes a series of data, including information on the start and end of support for victims. It would be counterproductive to duplicate databases or analyses. Myria is therefore at the disposal of the authorities to consider effective ways of working together.

## 2. As an operational information and data analysis center:

the aim is to obtain an up-to-date picture of the phenomena of human trafficking and smuggling. The following are envisaged within this context: structural links and automatic data sharing between the central contact point and the information and data analysis centre (recommendation 3); and giving the latter a scientific research mission, by forging various collaborations (National Institute of Criminalistics and Criminology (NICC), universities, Myria, etc.) (recommendation 4).

While the aim is laudable, Myria also questions the feasibility of such a project, given that the databases of the various services (police, inspectorates, judiciary, Immigration Office) are not 'linked' and the data recorded is not comparable. However, an integrated analysis centre of this kind would be very worthwhile, provided that the mistakes of the past are not repeated. The information and data analysis centre provided for in the 2004 royal decree never saw the light of day, in particular for reasons linked to the lack of clarity and agreement on its objective (strategic or operational), budget, and data processing linked to the protection of privacy.

## 3. As an "intra-federal" interdepartmental

**coordination unit:** multi-year 'rolling' action plans would be adopted, with quantitative and qualitative criteria to be determined in order to evaluate them (recommendation 6), as well as an internal dashboard listing the staff resources allocated to combating these phenomena (recommendation 8). An annual report should also be submitted each year to the Chamber for public debate, containing statistical information and a progress report on the action plan and recommendations of the Parliamentary Commission (recommendation 7).

The unit's current office would be responsible for setting up and coordinating thematic working groups with the relevant authorities.

Myria supports a continuous updating of the resources allocated to the fight against trafficking. However, this presupposes constant input from the services concerned. It will therefore be essential for this new coordination centre to have sufficient leverage over the various players. Effective collaboration will also have to be put in place.

## 4. As a central coordination body with

highly diverse missions: how will existing justice departments that currently perform this role (in part) be integrated? Are there any plans to increase the number of staff? How will the centre be run? In this respect, Myria notes that in parallel with the Committee's work, the Minister of Justice announced on 21 June 2023, in response to a parliamentary question, the creation of a post of national operational coordinator within FPS Justice<sup>446</sup>. In fact, it was one of the Parliamentary Committee's two experts who was appointed to this role. This recruitment procedure, which lacks transparency<sup>447</sup>, and the exact role of this coordinator<sup>448</sup> gave rise to another parliamentary question<sup>449</sup>.

<sup>446</sup> See the Minister of Justice's answer to Mr. Ben Segers' question, Verbatim Report, Chamber Commission on Justice, 21 June 2023, Parl. Doc., Chamber, CRIV 55 COM 1130, pp. 30-32.

<sup>447</sup> The job offer was only published in Dutch and the position was that of Policy Officer (level B) and not Operational National Coordinator, which implies a different level of responsibility.

<sup>448</sup> Their main task will be to draw up a crisis plan to avoid a repeat of the problems of insufficient reception capacity that came to light with the Borealis case.

<sup>449</sup> See the oral questions of Mrs. Vanessa Matz and the Minister of Justice's answer, Verbatim Report, Chamber Commission on Justice, 5 July 2023, Parl. Doc., Chamber, CRIV 55 COM 1152, pp. 7-9.

## b. Operational recommendations

Many of the recommendations deal with operational aspects and aim to improve the flow of information and the specialisation of those involved. In particular, as regards **investigations and prosecutions**:

- make large-scale financial investigations part of a chain approach to dismantling major international networks (follow the money) (recommendation 13), a recommendation also made several times by Myria in its annual evaluation reports<sup>450</sup>;
- develop the specialisation of investigating judges, by entrusting certain investigating judges in one division with all investigations into human trafficking (recommendation 16), and set up specialised chambers in the courts (recommendation 15);
- ensure that coordination meetings are actually held between those specialising in human trafficking in each judicial district, in accordance with the circular issued to public prosecutors ('COL' meetings)<sup>451</sup> (recommendation 19);
- introduce an obligation for public prosecutors' offices to provide information to the federal public prosecutor's office (recommendation 22);
- involve specialised reception centres more during (major) control operations, in order to guarantee a quality first interview (recommendations 49 and 50).

Many recommendations aim to strengthen the training of those involved, even if this exists already in practice. Besides staff at the Immigration Office (recommendation 56) and Fedasil (recommendation 54), these recommendations mainly concern magistrates (reference and youth magistrates) (recommendations 20, 21 and 91), the police (recommendations 29 and 32), inspection services (recommendations 40 and 41), at both federal and regional level. Concerning the police in particular, they must be trained to distinguish between victims and perpetrators (recommendation 82.1).

While Myria supports the idea of harmonised training, particularly for federal and regional inspectorates, it nevertheless has reservations about the coordination of such training. Is it the role of the new coordination centre to organise such training? One of the recommendations (recommendation 42) provides for the reporting of inspections carried out and victims reported to the national coordination centre, and for these figures to be communicated as indicators for evaluating the inspectorate's training programme.

Numerous recommendations are also aimed at strengthening resources<sup>452</sup>, both as regards the police (recommendation 26), especially through the creation of multidisciplinary teams within the federal judicial police, including profiles specialising in combating online crime (recommendations 27, 31 and 75) and the introduction of a system for appointing reference persons within local police areas, and the inspection services (recommendation 35), in particular by empowering regional labour inspectors to investigate human trafficking<sup>453</sup> (recommendations 36 and 42/1). As regards the last point, Myria primarily considers that this is an avenue that should be explored, and that it would be preferable to also discuss it at the level of the Interdepartmental Coordination Unit, not only in terms of the tools to be developed, but also in terms of the objectives to be achieved. It should also be noted that other recommendations aim to increase the resources allocated to the fight against human trafficking: investment in computer software for the police (recommendation 30) or in appropriate equipment for inspection services (recommendation 38).

<sup>450</sup> See, in particular, Myria, *Annual Report 2022. Trafficking and smuggling of human beings, Bound by debt; Annual Report 2019. Trafficking and smuggling of human beings. Empowering victims.*

<sup>451</sup> Also see Part 1, Chapter 4, point 8 of this report.

<sup>452</sup> Also see recommendations 80 and 81 for forms of crime other than sexual or labour exploitation.

<sup>453</sup> At present, only certain federal social inspectors are authorised to investigate human trafficking: inspectors from FPS Employment and Labour, FPS Self-employed and the National Social Security Office (ECOSOC teams): see article 81 of the Act of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.

### Victim support

Around ten recommendations concern victim support. Some of them are positive. For instance, keeping a list of lawyers specialised in human trafficking and smuggling through the legal aid offices and ensuring the immediate appointment of a lawyer<sup>454</sup> (recommendation 24).

Myria also welcomes other legislative recommendations, such as the introduction of a simplified procedure for granting victim status when victims have complied with the conditions of the procedure but their status is terminated for reasons beyond their control (discontinuation of proceedings, dismissal of the case, amicable settlement) (recommendation 57), and an effective mechanism for compensating victims by amending the Act of 1 August 1985 (recommendation 52). The same applies to the proposed amendment to Article 61/2, § 2 of the Act of 15 December 1980 (Aliens Act) on the reflection period, which would be extended to three months in certain situations where 45 days would not be sufficient (recommendation 47)<sup>455</sup>. However, Myria notes certain ambiguities or contradictions regarding this point, since this extension would be possible ‘when undeniable progress has been made’ and ‘by decision of the reference magistrate’. Myria has doubts about the type of progress this refers to. It should also be noted that for the moment, the reflection period does not require any cooperation from the victim who, in principle, is not yet reported to the authorities. Myria therefore questions how this kind of recommendation will be implemented.

Furthermore, as already mentioned, since the Borealis case came to light during the Commission's work, it is not surprising that some of its recommendations attempt to respond to the problems raised by this emblematic case: for instance, the office of the Interdepartmental Unit drawing up an action plan for forecasting and crisis management for the reception of victims (recommendation 44); the possibility of setting up one or more observation centres for people identified as potential victims of trafficking or smuggling, where they could stay for a maximum of 45 days (recommendation 43); or the personalisation of support programmes taking into account the specific profile of the victim (recommendation 46).

### Minors

Several recommendations aim to improve the detection and protection of child victims, which Myria welcomes. For instance, the following are all steps in the right direction: encouraging the reception of UFM in small structures while guaranteeing specific security measures (recommendation 53); providing a single point of contact (SPOC) in all Fedasil reception centres, at partners' premises, and adequately training them (recommendation 55); and strengthening interaction between youth prosecutors and magistrates responsible for human trafficking and awareness-raising (recommendation 91).

On the other hand, Myria is not in favour of making the central contact point for victims the reporting centre for child victims instead of the guardianship department<sup>456</sup>, which has a much broader role than that of pure reporting, even though it is not responsible for Belgian victims. Myria believes it would be preferable to examine how effective collaboration can be achieved in terms of reporting, placing and registering persons as potential victims, and strengthening the resources of this department.

It should be noted that Myria has been given a specific task in this domain: it has been asked to produce a supplement to its annual report, dealing specifically with (statistics relating to) child victims (recommendation 94). This is a major challenge, requiring the cooperation of many players. It also requires careful consideration and an appropriate framework. Myria will initiate a dialogue on this subject.

<sup>454</sup> These are recommendations that Myria also made in a previous report: see Myria, Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims, pp. 170-171. This is also one of GRETA's points of attention within the framework of the focus of its third evaluation cycle.

<sup>455</sup> On this subject, also see Part 1, Chapter 4, point 12.

<sup>456</sup> The main reason given for this is that the guardianship department isn't available 24/7.

### c. Recommendations specific to the purposes of exploitation, human trafficking, prevention, awareness-raising and evaluation

As already mentioned, the Parliamentary Commission's attention was largely focused on labour exploitation. Other forms of exploitation received little attention and few recommendations.

**Regarding sexual exploitation,** the Commission focused in particular on the legal and regulatory frameworks that are still lacking following the sexual criminal law reform (recommendations 72, 73 and 74)<sup>457</sup>, paying greater attention to hidden forms of sexual exploitation, including stepping up the fight online (recommendation 75) and awareness-raising, particularly in the hotel sector and among clients (recommendations 76 and 77). However, Myria regrets that the Commission has not paid more attention to this form of trafficking and, for instance, to the international approach of criminal organisations, who trade victims (of prostitution) themselves on an international level, or to the proactive detection of various profiles of victims of sexual exploitation in a vulnerable position (e.g. those without documents).

As regards **human smuggling,** the Commission stresses the importance of improving coordination between the administrative and judicial sides (recommendation 84), developing an operational guide (recommendation 86) and ensuring an effective channel of communication between frontline services and the federal judicial police in each district (recommendation 89).

Finally, prevention and awareness-raising are the subject of a number of recommendations, as is evaluation. A national prevention plan should therefore be drawn up and awareness campaigns continued (recommendation 98).

In addition, the office of the National Coordination Centre (and in the meantime the Interdepartmental Unit) is tasked with drawing up an operational action plan based on the recommendations of the Parliamentary Commission, and for following up and monitoring the progress made. However, the question arises as to the extent to which this body is best placed to carry out this work, given that a series of recommendations is not limited to human trafficking but related more broadly to other themes (see below) and potential players.

### d. Recommendations broader than human trafficking: focus on labour exploitation

A number of recommendations aim to take advantage of the Belgian Presidency of the EU to focus greater attention on human trafficking and labour exploitation: play an active role in the evaluation of the European Labour Authority (recommendation 9), or advocate a strict European framework against social dumping and better organised migration to prevent exploitation (recommendation 14).

Two recommendations concern legislative aspects, namely the ratification of Convention 143 of the International Labour Organisation (ILO) on migrant workers (recommendation 12) and the concrete examination of the transposition of Article 13, § 4 of the 'sanctions' directive (i.e. the granting of temporary residence to third-country nationals concerned who are victims of particularly abusive working conditions)<sup>458</sup>, while taking care to avoid the erosion of the system for combating human trafficking.

#### *Points of attention broader than human trafficking*

As already mentioned, the Borealis case came to light during the Commission's mandate. Much of the members' (and experts') attention has subsequently been focused on aspects related to labour exploitation, but far more broadly than human trafficking. Several recommendations deal with issues such as the creation of a new offence of aggravated labour exploitation (recommendation 61). However, Myria wonders how this could be defined in a zone between 'simple labour exploitation' and 'human trafficking'. The priority, in this context, is to offer alternatives and support to people in such situations, but without risking legal uncertainty or eroding the system of victim status in human trafficking.

<sup>457</sup> In the wake of the Committee's work, a draft bill laying down provisions on the employment of sex workers was adopted by the Council of Ministers on 23 June 2023. The employment contract would be subject to the usual regulations, with the exception of certain specific aspects relating to the four freedoms commonly recognised for sex workers (right to refuse a sexual partner, right to refuse specific sexual acts, right to interrupt or stop the activity at any time, right to impose one's own conditions on sexuality). The draft bill also defines the conditions that an employer must meet in order to be approved, with approval subject to strict requirements in order to prevent the abuse and exploitation of sex workers. In addition, a person of trust must be appointed. The draft bill has been sent for consultation to the National Labour Council, the Management Committee of the National Social Security Office (NOSO), the Social Information and Research Service (SIRS), the Data Protection Authority (DPA), the Council for Equal Opportunities between Men and Women and members of the academic world specialising in the areas concerned.

<sup>458</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, O.J., L168 of 30 June 2009, p. 24. This paragraph provides that Member States shall define, within the framework of their national law, the conditions under which they may issue residence permits of limited duration to interested third-country nationals, on a case-by-case basis, depending on the length of the corresponding national procedures.

Some of the recommendations relate to cases of exploited workers in precarious residence situations. The Parliamentary Commission recommends that workers be better informed about the possibility of claiming any wage arrears and that consideration be given to how to make the 'sanctions' directive operational, without jeopardising the system of support for trafficking victims (recommendations 62 and 63).

A single secure frontline point of contact should be set up, in conjunction with the central contact point on human trafficking, where potentially exploited and illegally residing workers can anonymously report this exploitation and assert their rights (recommendation 64).

Various recommendations also touch on the issue of preventing work-related abuse<sup>459</sup>, by making workers less dependent on their employers (recommendation 65), combating fraudulent postings (recommendation 66) and stepping up the fight against social dumping (recommendations 67, 68 and 71).

Lastly, Myria has been asked to examine the possibility of using the methodology and tool for estimating the number of victims developed by the ILO<sup>460</sup> to assess the extent and nature of labour exploitation in Belgium (recommendation 70).

## 2.2. | Other measures

A new website entitled Stop Human Trafficking has been up and running<sup>461</sup> since the World Day Against Trafficking in Persons, 30 July 2022. Available in 13 languages, it provides information on the forms and indicators of human trafficking, as well as contact details for the three specialised reception centres. This human trafficking contact point operates as a helpline for victims or people wishing to report a potential case of human trafficking.

It should also be noted that, in connection with human trafficking, following the sexual criminal law reform, the College of Prosecutors General adopted a new circular analysing the new provisions, including the abuse of prostitution<sup>462</sup>.

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459 On this subject, also see Part 1, Chapter 3 and Chapter 4.

460 On this subject, also see the Committee's report, *op. cit.*, p. 224: the suggestion to develop a tool to estimate the number of victims of labour exploitation was specifically formulated by the two experts in their report.

461 [www.stophumantrafficking.be/fr](http://www.stophumantrafficking.be/fr).

462 Circular No. 05/2022 of 9 June 2022 of the College of Prosecutors General at the courts of appeal on the Law of 21 March 2022 amending the Criminal Code with regard to sexual criminal law, published in the *Moniteur belge* on 30 March 2022 and coming into force on 1 June 2022 (COL 05/2022). The circular is available on the website of the public prosecutor's office.