

Chapter 1: Recent developments in the legal and political framework

In this chapter, Myria presents the latest developments within the legal and political framework as regards human trafficking and smuggling in Europe and Belgium.

1. Developments in the European legal and political framework

1.1. Human trafficking

In 2012, the European Commission adopted its human trafficking strategy for the period 2012-2016¹⁹⁴. Myria, then known as the Centre for Equal Opportunities and Opposition to Racism, presented it in a previous annual report¹⁹⁵. In October 2014, the Commission published an interim report on the implementation of this strategy¹⁹⁶. The five priorities defined in the strategy are as follows:

- identifying, protecting and assisting victims of trafficking;
- stepping up the prevention of trafficking in human beings;
- increased prosecution of traffickers;
- enhanced coordination and cooperation among key players and policy coherence;
- increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

The interim report presents the efforts made relating to the first four priorities, while the

¹⁹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU Strategy toward the Eradication of Trafficking in Human Beings 2012-2016*, 19 June 2012, COM(2012)286 final.

¹⁹⁵ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 71-72.

¹⁹⁶ Commission Staff working document, *Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings*, Brussels, 17 October 2014, SWD(2014)318 final, COM (2014) 635 final.

fifth one is covered by each of the key priorities. Below are the main points.

a) Identifying, protecting and assisting victims of trafficking

The Commission stresses the importance of the early identification of victims in order to provide effective protection. This is why it is important to have the appropriate national referral mechanisms. The Commission has funded several projects in this domain¹⁹⁷.

The strategy also provided for the development of a European model of a transnational referral mechanism by 2015. However, the interim report doesn't mention any progress in this field.

The other measures adopted by the Commission concern the publication of guidelines to identify trafficking victims, aimed at frontline staff and consular services, as well as a document on the rights of trafficking victims¹⁹⁸. The Commission also placed special emphasis on labour market intermediaries since a comparative study on their regulation and the role of social partners within the framework of preventing trafficking for the purpose of labour exploitation is underway¹⁹⁹. Finally, minors are also the subject of specific attention: the Commission is preparing a communication providing guidelines on integrated child protection systems²⁰⁰, and it

¹⁹⁷ The details of these projects can be found on the Commission's anti-trafficking site: http://ec.europa.eu/anti-trafficking/node/1_en

¹⁹⁸ http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf

¹⁹⁹ <http://www.eurofound.europa.eu/research/projects.htm>

²⁰⁰ The European Forum on the Rights of the Child focused on this issue over the past few years, in an effort to contribute to the development of European guidelines in this field in order to support the Member States in the implementation of their responsibilities in terms of child protection. The Commission presides over this Forum. Its role is to advise and assist the Commission and other European institutions in terms of integration of the

recently published a guide on the guardianship of child trafficking victims deprived of parental care, in collaboration with the EU's Fundamental Rights Agency (FRA)²⁰¹.

b) Preventing and reducing the demand

The Commission will submit a report to the Parliament and the Council by 2016 assessing the impact of national laws criminalising the use of services provided by trafficking victims. A study is actually underway concerning the impact of the trafficking prevention measures²⁰² and the gender aspect in the phenomenon of trafficking²⁰³. On the other hand, the European Coalition against Trafficking²⁰⁴ still has to be set up.

c) Investigation and prosecution of traffickers

The Commission contributes to the regular training of those in charge of investigations and prosecutions, through the many projects it funds. Financial investigations have taken place in several Member States, and Europol is working on an analysis of the financial investigations in terms of trafficking, based on the information provided by the Member States.

The Commission is proactively working on facilitating cooperation at all levels, especially between civil society organisations and the law enforcement authorities of the Member States. As announced in its strategy, it is also

rights of the child in all EU policies, as well as sharing information and good practices.

²⁰¹ <http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>

²⁰² The results were expected for the end of June 2015. These results were still unknown when this report was finalised (July 2015).

²⁰³ The results are expected for December 2015.

²⁰⁴ The aim of this coalition is to improve cooperation with companies and other stakeholders, to meet any new challenges that arise and to discuss prevention measures for human trafficking, especially in high-risk sectors such as the sex industry, agriculture, construction and tourism.

working on a report in order to increase knowledge on the use of the internet and social networks to recruit people in relation to all forms of trafficking²⁰⁵ as well as a study on the jurisprudence and practices in terms of trafficking for the purposes of labour exploitation²⁰⁶.

We should mention once again the adoption of Directive 2014/42/EU of 3 April 2014 on freezing and confiscating the proceeds of crime²⁰⁷. This will allow Member States to considerably increase the possibility of freezing and confiscating the proceeds of trafficking. The directive provides for a broad definition of proceeds than can be frozen or confiscated. It provides more opportunities to confiscate the proceeds of crime in cases where the person concerned is fleeing or is ill. It also contains rules on the extended powers of confiscation when a judge considers as established that the proceeds in question were obtained through criminal means. Under certain conditions, it authorises the confiscation of proceeds transferred to third parties.

d) Coordination, cooperation and policy coherence

The EU Anti-Trafficking Coordinator is responsible for monitoring the implementation of the European policy framework and in particular the strategy. Within this framework, she supervises the coordination of activities in terms of trafficking within the Commission and with other external players. She also coordinates the allocation of funding in an effort to reflect European priorities.

²⁰⁵ The report was expected for mid-2015. This European report still wasn't available when this report was finalised (July 2015).

²⁰⁶ The results are expected for December 2015.

²⁰⁷ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, *O. J.*, L127/39 of 29 April 2014. The Member States must incorporate it by 4 October 2015.

The European network of National Rapporteurs or equivalent mechanisms holds two monthly meetings; as announced in the strategy, the European civil society platform against trafficking was launched: it convenes every two years and an e-platform has been set up, allowing more frequent communication between the platform's members.

Finally, the Commission funds many projects concerning trafficking to a large number of countries and regions, both inside and outside the EU. The Member States have also stepped up their cooperation with many countries outside the EU. Preventing and combating trafficking in human beings, as well as victim protection, are systematically dealt with in the agreements and partnerships with countries outside the EU, and in all the EU dialogues on migration and mobility.

1.2. Smuggling in human beings

Following the dramatic events in the Mediterranean, the European Commission presented a series of measures to react to the current challenges in terms of migration²⁰⁸. One is an action plan for 2015-2020 against migrant smuggling²⁰⁹. This plan sets out concrete measures to prevent and combat migrant smuggling:

- **improve policing and legal procedures:** in particular, by revising existing European legislation on the subject²¹⁰; by

²⁰⁸ http://europa.eu/rapid/press-release_IP-15-5039_fr.htm. For Myria's opinion on this subject, see the Annual Report 2015: *Migration in figures and rights*, Chapter 3, *Accès au territoire*, available at: www.myria.be.

²⁰⁹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions, *EU Action Plan against migrant smuggling (2015-2020)*, Brussels, 27 May 2015, COM(2015)285 final.

²¹⁰ The current legislation is comprised of the Council's Directive 2002/90/EC of 28 November 2002 defining facilitation of unauthorised entry, transit and residence, *Official Journal*, L328 of 5 December 2002, p. 17 and the 2002/946/JAI Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised

initiating cooperation with financial institutions in order to implement financial investigations to seize and confiscate the proceeds from migrant smuggling, and by creating a thematic group on migrant smuggling;

- **improve the collection and sharing of information:** among other things, by deploying European liaison officers in the EU's key delegations and by increasing support for Europol to detect and, if necessary, to remove contents placed online by smugglers to advertise their activities;
- **improve the prevention of smuggling and assistance for vulnerable migrants:** especially by launching prevention campaigns in third countries on the risks linked to smuggling; by launching a consultation and an impact assessment, in 2016, on a possible annual revision of Directive 2004/81/EC on residence permits²¹¹; by offering to open negotiations on readmission agreements with the main countries of origin of irregular migrants, and by defining the objectives regarding the number of controls to be carried out in the Member States in the economic sectors most exposed to illegal work;
- **strengthen cooperation with third countries:** among other things, by financing projects aimed at helping third countries to develop strategies to fight migrant smuggling.

entry, transit and residence, *Official Journal*, L328 of 5 December 2002, p. 1.

²¹¹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *O. J.*, L261 of 6 August 2004, p. 19.

2. Developments in the Belgian legal and political framework

In Belgium, the main developments primarily concern the amendments to the Royal Decree of 16 May 2004 on the fight against smuggling and trafficking in human beings²¹². On the one hand, the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in Human Beings has been expanded. On the other hand, Myria has been officially appointed as an independent component of the National Rapporteur mechanism.

In addition, a new joint circular (confidential) from the College of Public Prosecutors and the Minister for Justice on the fight against human trafficking (COL 01/2015) came into force on 15 May 2015.

We should also mention the recent law expanding the guardianship of unaccompanied foreign minors (hereafter: UFM).

Finally, there is the new action plan for 2015-2019 against human trafficking, adopted in July 2015²¹³.

2.1. Expansion of the Interdepartmental Coordination Unit and appointment of National Rapporteurs

The Royal Decree of 21 July 2014²¹⁴, published in the Belgian Official Gazette on 1 September 2014, amended the Royal Decree of 16 May 2004. Among other things, this decree defined the composition and the tasks of the Interdepartmental Coordination for the Fight

against Trafficking and Smuggling in Human Beings (hereafter: Interdepartmental Unit).

a) Expansion of the Interdepartmental Coordination Unit

Myria is delighted that new players will be joining the expanding Interdepartmental Unit²¹⁵.

First of all, it was necessary and normal to formally include the victim reception centres in the coordination mechanism. They play a decisive role in the implementation of measures relating to victim protection. As underlined in the King's report²¹⁶, even if they already annually attended certain meetings of the Office of the Unit, they weren't members of the mechanism. The presence of one of their representatives²¹⁷ will help to reinforce the multidisciplinary approach adopted in Belgium. Note that this representative has the same right to vote as the other members of the Unit, except on issues where there is likely

²¹⁵ Prior to this amendment, the Unit was composed as follows: a representative of the Prime Minister; a representative for every Deputy Prime Minister who has no representative in another capacity; a representative of the Minister for Justice; a representative of the Minister of the Interior; a representative of the Minister for Foreign Affairs; a representative of the Minister of Employment; a representative of the Minister for Social Affairs; a representative of the Minister for Social Integration; a representative of the Minister of Development Cooperation; a representative of the College of Public Prosecutors; a representative of the Federal Prosecutor's Office; a representative of FPS Justice's Criminal Policy Service; a representative of the FPS Justice's Directorate-General for Legislation, Freedoms and Human Rights; a representative of the Federal Police's central "Human Trafficking" unit; a representative of State Security; a representative of the FPS Interior's Immigration Office; a representative of the FPS Employment, Labour and Social Dialogue's Social Law Inspectorate; a representative of the FPS Finance's Special Taxation Inspectorate; a representative of the FPS Social Security's Social Inspectorate; a representative of FPS Foreign Affairs, Foreign Trade and Development Cooperation; a representative of the former Centre for Equal Opportunities and Opposition to Racism; a representative of Child Focus.

²¹⁶ The report to the King precedes the provisions of the royal decree and explains the amendments adopted.

²¹⁷ The report to the King suggests organising alternation between the three specialised reception centres.

²¹² *Belgian Official Gazette*, 28 May 2004.

²¹³ The plan is available at: http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf. For an analysis of this action plan, see: www.myria.be.

²¹⁴ Royal Decree of 21 July 2014 amending the Royal Decree of 16 May 2004 on the fight against the smuggling and trafficking of human beings, *Belgian Official Gazette*, 1 September 2014.

to be a conflict of interest²¹⁸ (for instance, during discussions on the role and organisation of reception centres). The royal decree also now provides for two formal meetings to be held every year between the Office and the specialised reception centres²¹⁹.

The Unit has also been expanded to include one representative from the Financial Intelligence Processing Unit (CTIF), in order to stress the attention given to the financial aspect of the fight against trafficking. Myria is very much in favour of this expansion: it has emphasised the importance of financial investigations in the fight against this form of crime²²⁰ for many years.

Finally, another important element of the expansion is the inclusion of representatives from the regions²²¹ and communities²²² in the coordination mechanism. In view of the current increased federalisation of Belgium, it would seem crucial to associate federated entities with this mechanism. The regional inspection services have been given new competences, even if they don't (yet) have the competence to establish facts in terms of trafficking, while the communities have competences in terms of training and support for persons (especially youth support, reception and integration of persons).

At federal level, the Unit now has two new representatives: the minister responsible for equal opportunities, and the minister responsible for the Law of 1980 on access to

²¹⁸ Article 5, §1, 2 of the Royal Decree of 16 May 2004 replaced by Article 5 of the Royal Decree of 21 July 2014.

²¹⁹ Article 11bis of the Royal Decree of 16 May 2004, inserted by Article 8 of the Royal Decree of 21 July 2014.

²²⁰ See Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 142; Human Trafficking, Annual Report 2013, *Building bridges*, p. 122.

²²¹ Article 5, para. 1 of the Royal Decree of 21 July 2014 expands the composition of the Unit to one representative for every region (Brussels-Capital Region, Flemish Region, Walloon Region).

²²² Article 5, para. 1 of the Royal Decree of 21 July 2014 expands the composition of the Unit to one representative for every community (Flemish, French-speaking and German-speaking communities).

the territory, stay, establishment and return of foreigners (the law on foreigners). The former is relevant as regards social policies that can be set up and act a barrier to human exploitation²²³. As for the second one, it would appear that this competence is increasingly attributed to a secretary of state for the Minister of the Interior and is no longer exercised by the actual Minister of the Interior, who is already a member of the Unit. Since the smuggling and trafficking of human beings mainly concerns foreign nationals, it was subsequently important to provide a specific representative for this domain, regardless of the minister with competence over the Law of 1980²²⁴.

To be complete, we should also mention that the College of Public Prosecutors is now represented, as an observer, within the Office of the Interdepartmental Coordination Unit²²⁵.

b) National Rapporteur or equivalent mechanism

The other important aspect of the Royal Decree of 21 July 2014 concerns the appointment of a National Rapporteur or equivalent mechanism. Article 19 of Directive 2011/36/UE on trafficking²²⁶ did indeed ask Member States to establish "National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting"²²⁷. Article 16 of the initial proposal formulated by the

²²³ See the commentary on Article 5 of the Royal Decree of 21 July 2014.

²²⁴ *Ibid.*

²²⁵ Article 11 of the Royal Decree of 16 May 2004, replaced by Article 7 of the Royal Decree of 21 July 2014.

²²⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, *O.J.*, L101 of 15 April 2011.

²²⁷ Article 19 of Directive 2011/36/EU.

Commission²²⁸ specified the – non-exhaustive – tasks of the National Rapporteur:

- determine the trends in the trafficking of human beings;
- assess the results of the actions undertaken to fight this phenomenon;
- report to the competent authorities.

Among the National Rapporteur's tasks, the text finally adopted by the Parliament and the Council (Article 19 of the directive) added the gathering of statistics in close collaboration with the relevant civil society organisations active in this field. Furthermore, reporting is now far more vaguely defined, with the directive simply mentioning that it is a question of drawing up reports. Closer inspection of preamble 27 of the directive reveals that the gathering of statistics seems to be an important task that the Union wanted to entrust to the National Rapporteurs. Moreover, the latter specifies that such National Rapporteurs are already part of an informal Union network, "which provides the Union and its Member States with objective, reliable, comparable and up-to-date strategic information in the field of preventing and combating trafficking in human beings at Union level"²²⁹.

Note that the Parliament had suggested, in an amendment, that these National Rapporteurs should be independent, but this wasn't retained in the final version of the text. The Member States are still free to set up this mechanism in the form they consider most appropriate in accordance with their internal organisation²³⁰.

²²⁸ Proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, repealing Framework Decision 2002/629/JHA, 29 March 2010, COM(2010)95 final, Article 16 and recital 17.

²²⁹ This informal network was set up at Union level on the basis of the Council's conclusions of 4 June 2009. Myria and the Crime Policy Service of FPS Justice (chairmanship of the Office of the Unit) are part of it.

²³⁰ Recital 27 of the directive.

This notion of National Rapporteur isn't new and must be separate from the coordination mechanism, which the directive doesn't however mention. The Ministerial Declaration of The Hague adopted by the European Union in April 1997 was the first international document recommending that the Member States establish a national reporting mechanism, which led to the concept of National Rapporteur. The latter would be responsible for informing the government of the development of the scale, the nature and the methods of trafficking of women²³¹. As for the Council of Europe's Convention on Action against Trafficking in Human Beings of 16 May 2005 (Article 29, §4), it clearly makes the distinction between a coordination and a monitoring mechanism. While it requires the State Parties to adopt measures as may be necessary to ensure the coordination of the policies, by setting up coordinating bodies²³², it explicitly recommends the appointment of National Rapporteurs or other equivalent mechanisms²³³. These National Rapporteurs are above all monitoring bodies. The emphasis is placed on the independence of such bodies²³⁴. In its third general report on its

²³¹ The Hague Ministerial Declaration of 1997 on European guidelines with a view to adopting effective measures to prevent and combat the trafficking of women for the purposes of sexual exploitation, ministerial conference under the presidency of the EU, The Hague, 24-26 April 1997, available at www.legislationline.org

²³² Article 29, 2: "Every Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of their governments' department and other public agencies against trafficking in human beings, where appropriate, through setting up coordinating bodies".

²³³ Article 29, 4: "Every party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements".

²³⁴ The Explanatory Report to the Convention (§ 298) specifies that "the institution of a National Rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the parliament containing its findings and recommendations".

activities²³⁵, GRETA²³⁶ mentions that it had the opportunity to reiterate, during an exchange of views in September 2012 with the European Commission's Experts Group on Trafficking in Human Beings and Mrs Myria Vassiliadou, the EU Anti-Trafficking Coordinator, "the fundamental difference between 'National Rapporteur' and 'national coordinator': while the former is conceived as an independent institution, the latter is required to have the necessary authority to coordinate the relevant governmental structures as well as associate specialised non-governmental organisations"²³⁷.

In our opinion, the European directive and the composition of the informal network of National Rapporteurs maintain the vagueness and confusion over the role and the nature of this National Rapporteur mechanism, even though the initial idea was to create an independent monitoring and reporting mechanism on the phenomenon and the policies conducted. The informal network is indeed composed of both coordination mechanisms and independent National Rapporteurs (such as the Dutch rapporteur or the Finnish one).

This vagueness is also maintained by the solution chosen by Belgium, even though the directive's requirements could be considered as having been met²³⁸. The National Rapporteur is organised into two parts. On the one hand, there is the coordination body (the Interdepartmental Coordination Unit) and on the other hand, an autonomous public service, exercising its tasks in complete independence: Myria (Federal Centre for the Analysis of Migration Flows, the Protection of the Basic

Rights of Foreigners and the Fight against Trafficking).

Through its missions and, in particular, the publication of its independent policy assessment annual report²³⁹, Myria was already performing the role of National Rapporteur *de facto*²⁴⁰. The royal decree therefore has the merit of officially devoting this role to Myria, thus making it the independent component of the mechanism. It has "extensive expertise on the aspects linked to its report or cases in which it institutes civil proceedings". In order to remove any doubt concerning the possible coordination of the policy²⁴¹, several amendments to the formulation of Myria's tasks were made to the Royal Decree of 16 May 2004²⁴².

Furthermore, the legal mission of the Interdepartmental Coordination Unit for the Fight against the Trafficking and Smuggling of Human Beings – whose main task is the coordination of the relevant policy – is also critical evaluation²⁴³. It mainly executes this

²³⁹ Article 2 of the Royal Decree of 16 May 2004.

²⁴⁰ It requested official recognition as National Rapporteur: see Trafficking and Smuggling of Human Beings, Annual Report Rapport 2010, *Combating social fraud to prevent trafficking in human beings*, p. 131.

²⁴¹ Comments on articles 2 and 3 of the Royal Decree of 21 July 2014.

²⁴² Hence, the coordination role has been removed from Articles 1 and 3 of the Royal Decree of 16 May 2004. Myria is now tasked with stimulating and monitoring the policy to combat smuggling and trafficking in human beings and not its coordination (Article 1). At the same time, as regards specialised reception centres, it is no longer responsible for their coordination but simply ensuring collaboration between these different services (Article 3).

²⁴³ See Article 8 of the Royal Decree of 16 May 2004: "The Unit's mission is to:

- 1° enable efficient coordination between the departments involved, who will share the necessary information for this purpose, with a view to ensuring a sustained policy to combat smuggling and trafficking in human beings and, in particular, with a view to dismantling and eliminating the activities of smugglers and their networks;
- 2° critically assess the evolution of the results in the field in the fight against smuggling and trafficking in human beings;

²³⁵ This report covers the period from 1 August 2012 to 31 July 2013 and is available via the following link: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Gen_Report/GRETA_2013_17_3rdGenRpt_fr.pdf

²³⁶ GRETA (Group of Experts on Action against Trafficking in Human Beings) is a group of independent experts tasked with monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the States Parties.

²³⁷ Point 51 of the report, p. 29.

²³⁸ On this subject, see the report to the King, pp. 65143-65144.

duty within the framework of the elaboration of a national action plan or specific evaluations such as the evaluation of the multidisciplinary circular²⁴⁴. The government is also required to submit a biennial report to parliament on the enforcement of the law on human trafficking²⁴⁵. In practice, it is the Federal Public Service (FPS) Justice which prepares this report and presides over the Office of the Unit. According to the Royal Decree, the Unit is the other full member of the National Rapporteur mechanism, as a coordination body and state rapporteur, even though the “main task of the Interdepartmental Unit is still, of course, the coordination, the proposal and the implementation of the policies (...)”²⁴⁶.

Concerning representation within the informal network of National Rapporteurs, the royal decree specifies that “the representative of FPS Justice represents the government when it is a question of policy and the Federal Centre for the Analysis of Migration Flows, the Protection of the Basic Rights of Foreigners and the Fight against Trafficking gives its opinion on points for which it has specific expertise. In case of differing points of view, everyone gives their own point of view in a personal capacity. The FPS Justice representative for the government and the Centre as an independent institution”²⁴⁷.

It is clear that the solution adopted by Belgium isn't simple. In fact, it is the only

The two-pronged structure adopted by Belgium does raise questions in terms of perception and representation of the mechanism abroad

country in the Union to formally adopt such a two-pronged structure. While the royal decree clarifies the role of Myria by removing any coordination tasks from its responsibility thus making it an independent rapporteur, it seems to us that this further confuses the mission of the Interdepartmental Coordination Unit, which is both the policy's coordination body and the state rapporteur²⁴⁸. The coordination and the evaluation mission are both as important and have their own specificity. In addition, this solution also raises questions, especially in terms of perception and representation of the mechanism abroad.

2.2. New joint circular on crime policy regarding the fight against the trafficking of human beings (COL)

A new joint circular from the College of Public Prosecutors and the Minister for Justice regarding the fight against the trafficking of human beings, came into force on 15 May 2015 (COL 01/15)²⁴⁹. Its aim is to define the investigation and prosecution policy in terms of trafficking in human beings according to the applicable legal provisions. It addresses judges and police officers responsible for prosecuting acts of trafficking. It replaces the previous circular, COL 01/07, and takes into account the legislative amendments made on a national²⁵⁰ and international²⁵¹ level. Unlike

3° contribute to the formulation of proposals and recommendations concerning the fight against smuggling and trafficking in human beings; (...)”.

²⁴⁴ See the report to the King, p. 65143. This is the circular of 26 September 2008 relating to the implementation of a multidisciplinary cooperation concerning the victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgian Official Gazette*, 31 October 2008.

²⁴⁵ Art. 12 of the Law of 13 April 1995 containing provisions with a view to curbing trafficking and smuggling in human beings.

²⁴⁶ Report to the King, p. 65144.

²⁴⁷ Comments on articles 10 and 11 of the Royal Decree of 21 July 2014.

²⁴⁸ Amendments could also have been made to the Royal Decree of 16 May 2004 in order to clarify the context in which the Unit's evaluation task is situated.

²⁴⁹ COL 01/2015 relating to the investigation and prosecution policy in terms of trafficking of human beings.

²⁵⁰ The Law of 29 April 2013 aimed at modifying Article 433quinquies of the Criminal Code with a view to clarifying and extending the definition of trafficking of human beings; this law partly transposes directive 2011/36/EU and the Law of 24 June 2013 on the suppression of the exploitation of begging and prostitution, the trafficking and smuggling of human beings according to the number of victims.

²⁵¹ In particular, European directive 2011/36/EU on the trafficking of human beings.

the previous COL, where only the annexes were confidential, this COL is entirely confidential. Subsequently, we shall only present it briefly.

This new COL pays more attention than the previous one to taking(take?) into account the interest of the victims and, in particular, the non-punishment clause. Hence, close dialogue between the different sections of the same public prosecutor's office is encouraged in order to avoid prosecutions that are irreconcilable with a person's status as victim²⁵².

Furthermore, there must be a greater synergy between the youth division of the public prosecutor's office and the reference judges in trafficking in order to better detect and protect underage trafficking victims. As a result, the youth division of the public prosecutor's office will systematically be invited to "human trafficking" coordination meetings regarding the judicial district.

Besides the priorities of the crime policy, this new COL also defines the process aimed at elaborating an image of the phenomenon as well as the manner of ensuring the coordination of investigations and prosecutions. The tasks of the reference judge are specified within this framework. Above all, they are the interlocutor of the stakeholders in the field and partners. The latter's attention is also drawn to the importance of the financial aspects in this type of crime.

The COL also contains a series of annexes, including indicators aimed at identifying human trafficking situations.

²⁵² As previously mentioned, the non-punishment clause was the focal point of the Myria's annual report in 2012. It made various recommendations within this framework and especially encouraged greater dialogue between the different sections of the public prosecutor's office (Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, available at www.myria.be).

2.3. Extension of the guardianship of UFM to vulnerable unaccompanied European minors who are the victims of human trafficking

Unaccompanied minors from a member country of the European Economic Area who are the victims of trafficking now have the right, like all third country nationals, to a guardian. As previously mentioned, Myria hoped and prayed for such an extension of the "guardianship" law, given the large number of underage victims from member countries of the Union, such as Romania and Bulgaria²⁵³. This right has been in force since 1 December 2014, the day the Law of 12 May 2014 amending the law on guardianship came into force²⁵⁴. This follows a decision reached by the Constitutional Court which considered that the legislator had to intervene to guarantee the protection of European UFM (unaccompanied foreign minors) by laying this statute down in law²⁵⁵. A circular of 8 May 2015 clarifies the notion of UFM following the legislative amendment and establishes a single reporting sheet²⁵⁶.

A European UFM has the right to a guardian if they meet each of the following criteria:

- under 18 years old (is a minor);
- is from a Member State of the EEA or Switzerland;
- isn't accompanied by a person with parental authority or guardianship;
- isn't registered in one of the population registers;
- isn't in possession of a legalised document by which the parent or

²⁵³ See Trafficking in and Smuggling of Human Beings, Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, p. 131.

²⁵⁴ Law of 12 May 2014 amending Title XIII, Chapter VI, of the Programme Act (I) of 24 December 2002 regarding the guardianship of unaccompanied foreign minors, *Belgian Official Gazette*, 21 November 2014.

²⁵⁵ Const. Court, 18 July 2013, no. 106/2013. See also: *Migration Annual Report 2013*, pp. 87-88.

²⁵⁶ Circular of 8 May 2015 relating to the report sheet for unaccompanied foreign minors and their care, *Belgian Official Gazette*, 20 May 2015.

- guardian authorises them to travel alone and stay in Belgium;
- has requested a temporary residence permit as a victim of human trafficking or is in a vulnerable situation.

The Guardianship Service will assess the child's vulnerability by referring to the International Convention on the Rights of the Child and taking into account the illegal nature of their stay, their unstable social situation, their possible pregnancy and possible mental or physical handicap. European UFM are likely to have been the victims of human trafficking and must be considered as vulnerable²⁵⁷.

2.4. Other measures

Within the framework of the 2015 action plan against social fraud and social dumping, we should also mention the recent adoption of a "white paper" for the construction industry. This "white paper" was elaborated by the trade unions, employer organisations from the construction industry and the federal authorities (the State Secretary for the Fight against Fraud, the Service d'Information et de Recherche Sociale (SIRS), the FPS Social Security, FPS Employment, the National Social Security Office (NSSO) and the National Employment Office (NEO)²⁵⁸). The Belgian construction industry has been hit very hard by unfair competition and social dumping resulting from the abuse of the European rules on posted workers, among other things. In order to fight this international fraud, a three-sided approach has been proposed (regarding Belgium, Benelux and Europe). As regards

Belgium, it is mainly a question of reinforcing control and transparency through various measures (especially the assessment of conditions within the framework of the prior registration of cross-border jobs²⁵⁹ and the limitation of the number of vertical subcontractors (i.e. per speciality)). A specific point concerns human trafficking: it is suggested that local authorities be called upon to investigate and crack down on abuses. Collaboration at all levels of power is indeed essential in order to effectively fight social dumping.

²⁵⁷ When this report was written, the Aliens Act hadn't been adapted to this amendment of the law on guardianship. Consequently, European unaccompanied foreign minors (known as UFM [MENA in French]) are still currently excluded from the residence procedure for UFM (Article 61/14 of the Aliens Act). On this subject, see *Migration in figures and in rights*, Annual Report 2015, pp. 86-87.

²⁵⁸ *Plan pour une concurrence loyale, 40 mesures concrètes pour la construction*, adopted on 8 July 2015. This plan is available via the following link: http://www.tommelein.com/wp-content/uploads/bsk-pdf-manager/150_PCL_BOUW_8_JULI_2015_-_FINAAL_FR.PDF

²⁵⁹ The famous "LIMOSA" system. LIMOSA is an acronym for "Landenoverschrijdend Informatiesysteem ten behoeve van MigratieOnderzoek bij de Sociale Administratie" (Transnational Information Network for the Study of Migration Flows within the social administration services).