

# Chapter 1

## Recent developments in the legal and political framework

*In this chapter Myria examines the latest developments of the legal and political framework in the area of human trafficking and smuggling at the European and Belgian level. There are various developments to report, particularly at the Belgian level.*

### 1. DEVELOPMENTS IN THE EUROPEAN LEGAL AND POLITICAL FRAMEWORK

#### 1.1. | Human trafficking

On 19 May 2016, the European Commission published its first report on Member States' progress in the fight against human trafficking.<sup>284</sup> This report, which according to Article 20 of the European Directive on Trafficking in Human Beings<sup>285</sup>, must be drawn up every two years, highlights trends in the fight against human trafficking, analyses the progress made, and highlights the key challenges still to

be tackled by the EU and the Member States. For example, sexual exploitation appears to be

the most widespread form of human trafficking<sup>286</sup>, while child trafficking is on the rise in the EU. One of the main challenges is to make concerted and coordinated efforts to prevent and tackle child trafficking, and provide the necessary assistance to the children who are its victims. Another challenge is the collection of data to monitor the phenomenon of human trafficking. The report also highlights the fact that the criminal networks involved in human trafficking have exploited the migration crisis to target the most vulnerable people, especially women and children. Human traffickers abuse asylum systems more readily, which are not always linked to national referral mechanisms. Finally, as regards the focus of this report, new technologies allow organised criminal gangs to reach a wide range of potential victims, conceal their activities and commit a large range of criminal offences, in much shorter time periods and on a much larger scale than in the past. For example, Member States have pointed out that many victims of human trafficking have been recruited online, particularly for the purpose of sexual and economic exploitation. As such, one of the main challenges is to take measures to prevent and tackle the use of new technologies as a means of recruiting victims of human trafficking.

As part of Anti-Trafficking Day on 17 October 2016, the Commission proposed an inventory of the projects they funded between 2004 and 2015, which are in line with one of the 40 priorities of the 2012-2016 strategy to

<sup>284</sup> Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016), 19 May 2016, COM(2016)267 final. This report also includes a staff working document.

<sup>285</sup> 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, OJ, L101 of 15 April 2011.

<sup>286</sup> According to this report (*op. cit.*, pp. 14-15 and 35), Belgium is one of the countries most likely to attract human traffickers due to strong demand for sexual services and cheap labour. According to Myria, the various human trafficking cases of sexual and economic exploitation are the result of an effective multidisciplinary system of actors and specialised centres trained in the successful detection and supervision of victims, and prosecution of traffickers.

combat human trafficking. In principle, the results of these projects will serve to support future policy initiatives to combat human trafficking within the EU.

On 2 December 2016, the Commission presented two reports on preventing and combating human trafficking, and protecting victims. The first report assesses the extent to which Member States have taken the necessary steps to transpose Directive 2011/36.<sup>287</sup> Major efforts have been made in the meantime, but there are still a number of stumbling blocks. Examples include special measures to protect children, suspecting children of being underage and determining their age, access to unconditional assistance, the non-punishment and compensation of victims.

The second report relates to "users" and assesses the impact of national legislation, which penalises the use of services which are the object of exploitation of human trafficking.<sup>288</sup> Only ten Member States have adopted laws which criminalise the use of services which are the object of exploitation of human trafficking. According to most of these countries, it is still too early to assess their impact at this stage. Fourteen Member States (including Belgium) have not yet taken any measures in this respect. Three of them have adopted a limited and selective criminalisation of the use of services provided by victims of human trafficking. The report also points out that the approaches and practices of Member States differ widely, which does not have a dissuasive effect on the demand for such services.

## 1.2. | Human smuggling

Following the dramatic events in the Mediterranean Sea, the European Commission proposed a series of measures in May 2015 to respond to the current

migration challenges.<sup>289</sup> One of these is an action plan 2015-2020 against the smuggling of migrants<sup>290</sup>, which was covered in our previous annual reports.<sup>291</sup> On 10 March 2016, the Justice and Home Affairs Council of the European Union adopted conclusions on the smuggling of migrants<sup>292</sup>, reinforcing the 2015 Action Plan. The Council stressed the importance of tackling all forms of migrant smuggling, including in countries of origin and transit countries. The Council also highlighted the fact that migrant smuggling is a serious form of organised crime. This can only be stopped with a comprehensive, multidisciplinary and cross-border approach on the part of Member States, involving all actors (including judicial and police authorities, labour inspectorates, border police, immigration services, NGOs and the relevant EU agencies including Europol, Eurojust and Frontex). As such, the Council called on Member States to work more closely with Europol, in particular by sharing reliable and up-to-date information and intelligence on migrant smuggling and by actively cooperating with its European Migrant Smuggling Centre<sup>293</sup>, as well as with Eurojust, within the newly established thematic group on migrant smuggling. Migrant smuggling cases should also be subject to more in-depth financial investigations.

The importance of cooperation in the area of human smuggling was also evident at a seminar organised in June 2016 on the use of social media in human smuggling. Representatives from the Member States, international organisations, EU agencies and also companies such as Facebook attended this seminar organised by the EMN (European Migration Network).<sup>294</sup>

Between January and April 2016, the Commission consulted the public in order to support the current evaluation and analysis of the impact of European legislation on migrant smuggling, and to gather different views on possible legislative improvements.<sup>295</sup> Indeed, one of the points in the European action plan is to

287 Report from the Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with article 23(1), 2 December 2016, COM(2016)722 final.

288 Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with article 23(2) of the Directive 2011/36/EU, 2 December 2016, COM(2016)719 final.

289 [http://europa.eu/rapid/press-release\\_IP-15-5039\\_n1.htm](http://europa.eu/rapid/press-release_IP-15-5039_n1.htm). For Myria's position on these subjects, see 2015 Annual Report: *Migration in figures and rights*, Chapter 3, *Access to the Territory*, available at [www.myria.be](http://www.myria.be).

290 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.

291 2015 Annual Report on Trafficking and Smuggling in Human Beings, *Tightening the Links*, p. 58 and 2016 Annual Report on Trafficking and Smuggling in Human Beings, *Beggars in the hands of traffickers*, p. 71.

292 [www.consilium.europa.eu/fr/press/press-releases/2016/03/10-council-conclusions-on-migrant-smuggling](http://www.consilium.europa.eu/fr/press/press-releases/2016/03/10-council-conclusions-on-migrant-smuggling).

293 See also Part 2, Chapter 1, point 3 of this report (the role of social media and the internet in human trafficking).

294 [https://emnbelgium.be/sites/default/files/publications/emn-informs-00\\_emn\\_inform\\_on\\_social\\_media\\_in\\_migrant\\_smuggling.pdf](https://emnbelgium.be/sites/default/files/publications/emn-informs-00_emn_inform_on_social_media_in_migrant_smuggling.pdf).

295 [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting\\_0031\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting_0031_en.htm).

improve the European legal framework to combat migrant smuggling. The Commission has published a summary of the responses received.<sup>296</sup> The survey yielded no less than 2425 contributions. More than 90% of respondents feel that current European legislation is not efficient enough to meet the objectives. The two main shortcomings were the inadequate protection of people who provide humanitarian aid, and insufficient respect for the human rights of illegally-transported persons.<sup>297</sup> The vast majority of respondents were also in favour of only criminalising assistance in entering or transiting if it is given in exchange for financial gain.

As far as we know, this consultation has not yet led to proposals for amending European legislation.

## 2. DEVELOPMENTS IN THE BELGIAN LEGAL AND POLITICAL FRAMEWORK

In 2016 and early 2017, the most striking developments occurred mainly in Belgium. Most of the measures concern both human trafficking and human smuggling, so they are addressed under a single heading.

### 2.1. | New residence document in the context of the reflection period

The procedure by which victims of human trafficking<sup>298</sup> may be eligible for specific residence permits includes a reflection period of 45 days in an initial phase. This period should give the victim the opportunity to calmly decide in

an informed manner whether or not to cooperate with the judicial authorities. In concrete terms, up until now this implied that an order to leave the territory was issued. On the ground, the distribution of such an order was often unsatisfactory for both the actors in the field, and the victims.<sup>299</sup> For example, the reception centres found it much more difficult to build up a relationship of trust with victims: urging a victim to cooperate is not evident if the victim assumes that he or she will be expelled from the country after 45 days.

In addition, during its first evaluation visit, the Council of Europe Group of Experts in the fight against human trafficking (GRETA) had recommended that Belgium grant a temporary residence permit during the period of reflection and not an order to leave the territory.<sup>300</sup>

These recommendations were included in the National Action Plan on combating human trafficking 2015-2019, which therefore provided for a legislative amendment on this point.<sup>301</sup>

A law of 30 March 2017 replaced this order to leave the territory with a temporary residence document, for which the model still needs to be laid down in a royal decree.<sup>302</sup> According to this decision, which was adopted on the same day, suspected victims of human trafficking will now receive an Annex 15.<sup>303</sup> This Annex serves as a certificate of temporary residence.

Myria can only welcome this positive measure in the interest of victims of human trafficking.

<sup>296</sup> Summary of replies to the public consultation on "tackling migrant smuggling: is the EU legislation fit for purpose?": [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/public-consultation/2016/20170321\\_summary\\_of\\_replies\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/public-consultation/2016/20170321_summary_of_replies_en.pdf).

<sup>297</sup> Most of the people who completed the survey are active in the field of migration and human rights.

<sup>298</sup> This procedure also applies to victims of human smuggling in aggravating circumstances (see the following section).

<sup>299</sup> Explanatory memorandum to the draft law amending Article 61/2 of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals in order to replace the order to leave the territory with a temporary residence document in the procedure for victims of trafficking in human beings, *Doc. parl.*, Chamber, Session 2015-2016, No 2045/001, p. 4.

<sup>300</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, first evaluation round, Strasbourg, 25 September 2013, point 161, p. 42.

<sup>301</sup> Point 5.4 of the Action Plan, see: [www.dsb-spc.be/doc/pdf/ACTIEPLAN\\_MH\\_MH\\_2015\\_2015\\_2019-EN-13072015.pdf](http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_MH_2015_2015_2019-EN-13072015.pdf).

<sup>302</sup> Article 2 of the Law of 30 March 2017 amending Article 61/2 of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals in order to replace the order to leave the territory with a temporary residence document in the procedure for victims of trafficking in human beings, *BOJ*, 10 May 2017.

<sup>303</sup> Royal Decree of 30 March 2017 amending Article 110bis and replacing Annex 15 of the Royal Decree of 8 October 1981 on the entry into the territory, residence, establishment and expulsion of foreign nationals, *BOJ*, 10 May 2017.

## 2.2. | New circular letter on multidisciplinary cooperation

On 23 December 2016, a new circular letter on multidisciplinary cooperation between all relevant departments was signed and published in the Belgian Official Journal of 10 March 2017.<sup>304</sup> This circular letter updates and replaces the circular letter of 26 September 2008.<sup>305</sup> The emphasis is now much more on Belgian or foreign underage victims, and the fact that European citizens can also be victims of human trafficking.

This circular letter organises the Belgian national referral mechanism for both victims of human trafficking<sup>306</sup> and victims of smuggling in aggravating circumstances.<sup>307</sup> Both categories of victims are eligible for the status of specific protection. Thanks to this status, which provides assistance from specialised reception centres, they are entitled to a residence permit, on condition that they cooperate with the authorities.

The aim of the circular letter is to determine not only the way in which suspected victims are identified, referred and supervised, but also the procedures to be determined in order to obtain the protection status. The circular letter therefore clarifies the role of each partner (police services, social security inspectorates, Immigration Office, magistrates from the Public Prosecutor's office, specialised reception centres for victims) and reminds these various partners of certain legal obligations.

For example, the circular letter also reiterates that victims often do not regard themselves as such, because they feel that their conditions of exploitation and pay are better than what they could get in their country of origin.

However, according to the Belgian legislature, the situation of the victims must be assessed on the basis of Belgian employment conditions and not the criteria applicable in the country of origin of the victim. As such, just because a victim does not regard him or herself as such does not mean that he or she is not a presumed victim. Even a victim who does not regard him or herself as a victim should also be properly informed and referred.

The circular letter reiterates the obligations in terms of providing information to victims, the formalities to be carried out simultaneously by the front-line services when dealing with a suspected victim and the type of assistance provided by specialised reception centres. The circular letter largely covers the various steps of the procedure. As such, it stresses that Belgians can also be victims of human trafficking and they should consequently also be referred to specialised reception centres.

Finally, as in the previous circular letter, two categories of victims receive special attention: the victims of human trafficking who work for diplomatic staff, and child victims of human trafficking. As regards the latter, the circular letter highlights the vital cooperation between the magistrate responsible for human trafficking, and the magistrate the of the youth court.

## 2.3. | New circular letter on the investigation and prosecution policy as regards exploitation in begging

Almost simultaneously with the presentation of Myria's last report, for which the focus was on human trafficking for the purpose of exploitation in begging, new guidelines were adopted by the College of Public Prosecutors General (COL).<sup>308</sup> Since this is a confidential document, we can only provide the broad outlines, including a summary provided by the College.

304 Circular letter of Friday 23 December 2016 on the introduction of multidisciplinary cooperation with regards to victims of human trafficking and/or certain more serious forms of human smuggling, *BOJ*, Friday 10 March 2017.

305 Circular letter of 26 September 2008 on the introduction of multidisciplinary cooperation with regards to victims of human trafficking and/or certain more serious forms of human smuggling, *BOJ*, 31 October 2008.

306 This concerns people who are recruited, transferred, housed, etc. for the purpose of exploitation. Only a limited number of forms of exploitation are mentioned here (see Article 433*quinquies* of the Criminal Code)

307 Human smuggling consists of assisting the illegal entry, transit or residence of a non-EU national in or on Belgian territory, with a view to obtaining a financial advantage (Article 77 bis of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals). In order to qualify for the status, smuggling must have taken place in certain aggravating circumstances, which are listed exhaustively under article 77*quater*, 1° to 5° of the Aliens Act. These include, for example, the minority of the victim, the use of force, putting the victim's life in danger, etc.

308 COL 20/2016 New ministerial guidelines on the investigation and prosecution policy as regards exploitation in begging. The guidelines were adopted on 22 September 2016 and entered into force on 1 October 2016.

Following a definition of the concept of 'begging',<sup>309</sup> COL reiterates that not all situations of begging are exploitative and that attention should be focused on potential situations of exploitation. For example, criminal policy priorities include situations of begging by minors or with minors, and any exploitation of begging of an adult which may be a case of human trafficking. The COL also intends to make a transparent assessment of the phenomenon of the exploitation of begging. In addition, the reference magistrates of human trafficking within the Public Prosecutors' offices are also the official reference magistrate for the exploitation of begging. Consultation between reference magistrates and magistrates of other subsections, including the juvenile sections, for example when a minor is a victim of the exploitation of begging, is encouraged. Taking victims into consideration is the focus of particular attention.

Finally, the guidelines contain a list of specific indicators and a list of police tasks and questions that the investigators can use during hearings.

## 2.4. | Reform of the Social Inspectorate of the FPS Social Security

Since 1 July 2017, the inspectorate of the National Social Security Office and the social inspectorate of the FPS Social Security have been merged into a single inspectorate within the National Social Security Office. This merger is part of the federal government's policy of stepping up the fight against tax and social security fraud by, *inter alia*, strengthening the inspectorates and streamlining their operation.<sup>310</sup>

It should be recalled that Belgium has been an international benchmark in the fight against human trafficking for nearly two decades, especially in the area of economic exploitation.

Over the last ten years, the Social Inspectorate has ensured, in the fight against human trafficking for the purpose of

economic exploitation, that a strong policy on paper was translated into an effective policy on the ground.

Myria would like to see this reform of the social inspectorate guarantee that the fight against human trafficking remains one of the priorities of the new inspectorate.

## 2.5. | National and Brussels-focused security plans

As part of this overview of legal and political developments, the approval of the National Security Plan (NSP) 2016-2019, which was officially proposed on 7 June 2016, should also be mentioned. This document is the guiding principle of police operations and is published every four years by the Minister of Security and Home Affairs, and the Minister of Justice. It reports on the contribution of the integrated police to the security policy laid down by the federal government, which is included in the Framework Memorandum on Integral Security 2016-2019.<sup>311</sup>

Every four years the NSP defines 10 priority security areas, which require special attention from the police forces and all other relevant authorities. Human trafficking and smuggling remain one of these priorities.<sup>312</sup>

As one of the key elements in the fight against these phenomena, the NSP mentions the following: (translation) "destabilising criminal organisations engaged in human trafficking and depriving them of their financial gains, disrupting human smuggling and tracking human smuggling networks". Some of the concrete measures cited here reflect the will to work towards an integrated approach to the problem of "teenager pimps/loverboys" between the integrated police, the Judiciary and the social actors, to protect the victims and prosecute the perpetrators; the willingness to conduct financial investigations in as many cases as possible; the contribution to a proper referral of child victims of human smuggling.

The Government of the Brussels-Capital Region also adopted a Global Security and Prevention Plan (GSPP)

309 As regards the phenomenon of begging, Belgian law distinguishes between three cases: begging *per se*, the exploitation of begging, and human trafficking for the purpose of the exploitation of begging. Only the last two cases are punishable.

310 [www.socialsecurity.be/site\\_nl/employer/infos/fusion\\_inspections/index.htm](http://www.socialsecurity.be/site_nl/employer/infos/fusion_inspections/index.htm).

311 The Framework Memorandum on Integral Safety (FMIS) is the strategic reference framework of safety policy for all actors who can contribute to it, taking into account their competencies, responsibilities or social objectives.

312 The NSP is available in full or abridged version via the following link: [www.politie.be/fed/nl/over-ons/geintegreerde-politie/nationaal-veiligheidsplan](http://www.politie.be/fed/nl/over-ons/geintegreerde-politie/nationaal-veiligheidsplan).

on 2 February 2017.<sup>313</sup> Following the last State reform, the Brussels-Capital Region acquired new powers in this area. The GSPP defines an overall strategic reference framework for the period 2017-2020, prior to the adoption of the Zonal Security Plans (ZSP) and taking into account the National Security Plan (NSP) and the Framework Memorandum on Integral Security (FMIS). Human trafficking and smuggling are also considered priority areas, with particular attention for the specific situation in Brussels. For example, exploitation of begging is mentioned as a particular point of attention.<sup>314</sup>

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313 [www.veiligheid-securite.brussels/nl/plan](http://www.veiligheid-securite.brussels/nl/plan).

314 See in particular points M4.1 and M. 4.2 of the GSPP.