



**G R E T A**

Group of Experts on Action  
against Trafficking in Human Beings

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# **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Luxembourg**

First evaluation round

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims' rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Luxembourg authorities have taken a number of steps to prevent and combat trafficking in human beings. The legislative framework includes an offence of human trafficking with the Criminal Code and a Law on assistance to and protection and safety of victims of trafficking in human beings which governs the provision of assistance services and the collaboration with the police in this matter. A bill is currently before the Chamber of Deputies to strengthen this framework.

An inter-ministerial committee on human trafficking has been set up to facilitate multidisciplinary co-operation between public actors. This body whose status is informal is to be replaced by the Committee for monitoring of and action against trafficking in human beings which is also meant to involve civil society. Moreover, GRETA calls on the Luxembourg authorities to adopt an action plan against all forms of trafficking. It also underlines the importance of involving NGOs in the work of the new monitoring committee as well as in devising the action plan against human trafficking. Further, GRETA underlines the need to strengthen action to fight human trafficking for the purpose of labour exploitation in consultation with all relevant stakeholders. In addition, it considers that further efforts are needed regarding the training of all actors concerned (police, judges, prosecutors, labour inspectors, lawyers, social workers, etc.).

GRETA calls for the implementation without delay of a central data collection system, whose role will be crucial to devise an efficient anti-trafficking policy, and for support to research on human trafficking in Luxembourg.

Noting that there has been no information campaign on human trafficking in recent years, GRETA calls on the Luxembourg authorities to take steps in this respect, in particular to discourage the demand of services provided by victims of all forms of trafficking. It also considers that socio-economic measures should be taken in favour of groups vulnerable to trafficking (migrant workers, unaccompanied foreign children, the Roma, etc.) and in high-risk sectors (catering, construction, domestic work, cabarets, etc.). Whilst welcoming the fact that “artist visas”, which were abused, are no longer issued, GRETA underlines that information on risks of trafficking should be given to foreigners who wish to come to Luxembourg and belong to vulnerable groups (including domestic workers) in a language that they understand.

It falls to the grand-ducal police to identify trafficked victims as soon as there are reasons to believe that a person could be a victim. All victims that are detected must thus be referred to the police for identification and so as to have access to assistance. Contacts between the police and specialised NGOs are informal but it has been acknowledged that a referral framework would help clarify the role of the different stakeholders. Therefore, GRETA urges the authorities to adopt a multidisciplinary approach to victim identification by formalising the involvement of specialised NGOs as well as the labour inspectorate, and by developing guides and indicators in co-operation with these actors. Progress also needs to be made regarding the identification of children who are victims of trafficking, including for the purpose of forced begging, in accordance with the best interests of the child.

Assistance to victims is devolved to NGOs that have been granted a specific authorisation to do so. The means made available to them by the Luxembourg authorities are considered to be adequate. Assistance is not limited in time but will stop if no prosecution is initiated. GRETA underlines that the status of victim and assistance should not depend on whether criminal prosecutions are launched. Moreover, GRETA calls on the authorities to provide for assistance specifically adapted to child victims of trafficking, noting that they are currently taken care of within the general framework of child protection.

GRETA welcomes the fact that Luxembourg legislation provides for a recovery and reflection period of 90 days but urges the authorities to ensure that this period is systematically proposed to trafficked victims, without it being linked to possible co-operation with the authorities and before victims have made official statements to the investigators. Whilst welcoming the fact that residence permits can be granted not only if victims co-operate with the investigation but also on the basis of the victims' personal situation, GRETA calls on the authorities to make sure victims fully benefit from the right to be granted a residence permit in accordance with Article 14 of the Convention. Noting the existence of state compensation where compensation cannot be obtained from traffickers, GRETA asks the authorities to ensure that this scheme is fully accessible to all trafficked victims.

Concerning repatriation of victims to their country of origin, GRETA urges the authorities to ensure that the return of victims is without any danger of reprisals and revictimisation and, therefore, to develop co-operation with countries of origin to secure that a reliable risk assessment can be carried out.

Noting that the Criminal Code provides for the non-punishment of victims for illegal activities undertaken as part of human trafficking, GRETA encourages the Luxembourg authorities to include this principle in the training of the relevant professionals (judges, prosecutors, the police, etc.). GRETA welcomes the possibility of using special investigation techniques as well as the seizure and confiscation of assets resulting from trafficking. Considering the low sentences imposed in certain decisions issued over the last few years in respect of offences considered to be trafficking, GRETA considers that efforts in terms of training are needed in order to ensure the proper qualification of offences of trafficking and that proportionate and dissuasive sentences are passed for trafficking offences which are commensurate to the gravity of this human rights violation. Finally, it urges the Luxembourg authorities to take all necessary measures to protect victims and witnesses against possible reprisals and intimidation, including during and after the investigations and prosecutions.

## I. Introduction

1. Luxembourg deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 9 April 2009. The Convention entered into force for Luxembourg on 1 August 2009.<sup>1</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Luxembourg being in the third group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Luxembourg to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Luxembourg on 31 January 2012. The deadline for replying to the questionnaire was 1 June 2012. Luxembourg submitted its reply on 5 June 2012.

4. In preparation of this report, GRETA used the reply to the questionnaire by Luxembourg, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Luxembourg took place from 11 to 14 December 2012, carried out by the following delegation:

- Mr Nicolas Le Coz, President of GRETA;
- Ms Leonor Rodrigues, member of GRETA;
- Mr Gerald Dunn, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with officials from relevant ministries and public agencies (see Appendix II). Meetings also took place with the Ombudsperson, the Chair of the Ombuds-committee for the rights of the child, representatives of the Advisory Committee on Human Rights and parliamentarians of the Chamber of Deputies. These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and representatives of the International Organization for Migration (IOM). GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit to Luxembourg, the GRETA delegation visited two shelters for women at risk or victims of domestic violence which also accommodate women victims of human trafficking in Luxembourg.

8. GRETA is grateful for the excellent assistance provided by the contact person appointed by the Luxembourg authorities, Ms Claudine Konsbrück, Government Advisor 1st class in the Directorate for criminal and judicial affairs of the Ministry of Justice, as well as Ms Pascale Millim, Administrator in the same department.

9. The draft version of the present report was adopted by GRETA at its 17th meeting (1-5 July 2013) and was submitted to the Luxembourg authorities for comments on 30 July 2013. The authorities' comments were received on 14 October 2013 and were taken into account by GRETA when drawing up its final evaluation report, which was adopted at GRETA's 18th meeting (4-8 November 2013).

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

## **II. National framework in the field of action against trafficking in human beings in Luxembourg**

### **1. Overview of the current situation in the area of trafficking in human beings in Luxembourg**

10. Luxembourg is a destination country for victims of human trafficking. All victims since 2009 have been foreigners.<sup>2</sup> According to the available figures, three trafficking victims were identified in 2009 (two women and one child), seven victims in 2010 (six women and one man), eight victims in 2011 (seven women and one child), four in 2012 (two women, one man and one child), and two in the first half of 2013 (two women). Most of the persons identified were female and victims of trafficking for the purpose of sexual exploitation. In 2010, one of the people identified, who was male and of Polish nationality, was a victim of trafficking for the purpose of labour exploitation in the construction sector and, in 2011, one woman and one child were identified as victims of trafficking for the purpose of slavery or practices similar to slavery. In 2012, a woman and a boy, both of Chinese origin, were identified as victims of trafficking for the purpose of labour exploitation, and a man (Burkina Faso) and a woman (Romania) as victims of trafficking for the purpose of sexual exploitation. In the first half of 2013, two women, from Cameroun and Morocco, were identified as victims of trafficking for the purpose of sexual exploitation.

11. According to information received from a number of interlocutors during the evaluation visit, cases of trafficking for the purposes of labour exploitation in the catering and construction sectors and for the purpose of forced begging (in particular of persons of Roma origin, including children, who are said to be brought into Luxembourg for the day from neighbouring countries) are practised, though it is not possible at present to gauge exactly to what extent.

### **2. Overview of the legal and policy framework in the field of action against trafficking in human beings**

#### **a. Legal framework**

12. At international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Luxembourg ratified the United Nations Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others in 1983, the United Nations Convention against transnational organised crime in 2008 and the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime ("Palermo Protocol") in 2009. Luxembourg also ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women in 1989 and its Optional Protocol in 2003, as well as the United Nations Convention on the rights of the child in 1994 and its Optional Protocol on the sale of children, child prostitution and child pornography in 2011. In addition, Luxembourg is party to the International Labour Organization (ILO) Conventions on forced labour Nos. 29 and 105 (both ratified in 1964) and on the worst forms of child labour No. 182 (ratified in 2001). Finally, Luxembourg is party to several other Council of Europe conventions in the criminal law field which are relevant to action against trafficking.<sup>3</sup>

<sup>2</sup> Four victims from Estonia, two from Brazil, two from Bulgaria, two from Cameroon, two from China, two from Romania, one Nigerien, one Pole, one Portuguese and one reported by the authorities as originating from "eastern Europe".

<sup>3</sup> In particular: the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, the Convention on mutual assistance in criminal matters and its additional protocols, the European Convention on extradition, the Convention on the transfer of sentenced persons and its additional protocol and the European Convention on the compensation of victims of violent crimes.

13. As a Member State of the European Union (EU), Luxembourg is bound by EU legislation in the area of action against THB, in particular by Directive 2011/36/EU of the European Parliament and of the Council of the European Union (the Council) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>4</sup>, Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Directive 2004/80/EC relating to compensation to crime victims, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

14. Where Luxembourg's national legal framework for action against trafficking in human beings is concerned, a provision criminalising trafficking in human beings was introduced into the Criminal Code, in Article 382-1, by the Law on strengthening action against trafficking in human beings and the sexual exploitation of children of 31 May 1999, supplemented by the Law on trafficking in human beings of 13 March 2009. A bill on the transposition of EU Directive 2011/36 is currently examined by the Chamber of Deputies (see paragraphs 37 and 130). Furthermore, the Law on assistance to and protection and safety of victims of trafficking in human beings of 8 May 2009 determines the conditions for the exercise of activities and provision of assistance to victims of trafficking in human beings by services responsible as well as collaboration with the police in this respect. Moreover, that text provides for the creation of the Committee for monitoring of and action against trafficking in human beings, which will be set up by a grand-ducal decree whose adoption was to take place in January 2014 (see paragraphs 17).

15. The amended Law on the free movement of persons and immigration of 29 August 2008 provides for the recovery and reflection period as well as the granting of residence permits to victims of trafficking in human beings.

#### b. National Strategies and Action Plans

16. Luxembourg has not set up an action plan or strategy specifically tackling the issue of trafficking in human beings, but has adopted a national action plan on equality between women and men for the period 2009-2014. The areas of action mentioned in that plan include the setting up of a system for monitoring the implementation of the legislation on trafficking in human beings, under the theme of "violence, trafficking in human beings and prostitution". However, the action plan provides no details on measures to be taken regarding action against trafficking and the different types of exploitation.

### 3. Overview of the institutional framework for action against trafficking in human beings

#### a. Inter-ministerial "Trafficking" Committee

17. Action against trafficking in human beings is currently co-ordinated on an informal basis, within the framework of an inter-ministerial "Trafficking" committee chaired by the Ministry of Justice. In addition to the Ministry of Justice, the committee brings together the ministries of Foreign Affairs and Immigration, Families and Integration, the Interior as well as Equal Opportunities. The Public Prosecution Service and the police also participate. It is to be replaced by the Committee for monitoring action against trafficking in human beings, in accordance with the Law on assistance to and protection and safety of victims of trafficking in human beings of 8 May 2009 and the aforementioned grand-ducal decree to be adopted in January 2014. It will be responsible for co-ordinating anti-trafficking action.

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<sup>4</sup> Replacing Council Framework Decision 2002/629/JHA.

b. Ministry of Justice

18. The Ministry of Justice currently chairs the aforementioned Inter-ministerial "Trafficking" Committee. It is also tasked with preparing the grand-ducal decree establishing the future Committee for monitoring action against trafficking in human beings, to be adopted in 2013.

19. The Ministry of Justice is responsible for several areas of relevance to action against THB, notably the compensation of victims, legal aid, training of the judiciary (judges and prosecutors) and international judicial and police co-operation. The public prosecution authorities also come under the Ministry of Justice.

c. Ministry of Equal Opportunities

20. The Ministry of Equal Opportunities is tasked with national and international policy to promote equality between women and men and, in this connection, with co-ordinating the National Action Plan for Equality between Women and Men 2009-2014 (see paragraph 16).

21. Where trafficking in human beings is concerned, the Ministry of Equal Opportunities is in charge of the aspects of assistance to and protection and safety of victims. The ministry is responsible for co-ordinating the care of victims by the NGOs which are officially contracted and authorised to receive and assist women, girls and women accompanied by children (see paragraphs 101 and following). It also collaborates with non-contracted NGOs providing assistance and accommodation for men and child victims of trafficking, who come under the Ministry of Families and Integration.

22. In 2007, the Ministry of Equal Opportunities set up a Working Group on "Support arrangements for victims of trafficking in human beings" in which NGOs competent in the field of THB participate. The main task of this working group is to organise a network and a system for the reception and protection of THB victims by NGOs. It must also analyse the needs and follow-up of trafficked victims.

d. Ministry of the Interior

23. The tasks assigned to the Judicial Police coming under the Ministry of the Interior include action against trafficking in human beings. By law, the police are the sole authority entrusted with identifying trafficking victims. A special investigation team on human trafficking was set up in 2006, which saw its powers transferred to the Organised Crime Unit in 2008.

e. Ministry of Foreign Affairs

24. The Foreigners Department, within the Immigration Directorate of the Ministry of Foreign Affairs, has the power to allow a presumed victim of trafficking in human beings to remain legally on the territory for the duration of the reflection period, in accordance with Article 93 of the amended law on the free movement of persons and immigration of 29 August 2008. It falls to the minister himself to grant a possible victim a period of reflection as soon as that victim is reported (see paragraph 111), as well as any residence permits at the end of the reflection period (see paragraph 117).

f. NGOs and international organisations

25. Four non-governmental organisations are officially contracted to assist and accommodate victims of THB, namely: Femmes en détresse (FED), the Maison de la Porte Ouverte Foundation (FMPO), the Drop-in Service of the Red Cross and the Profamilia Foundation. The first two of these are NGOs which have already received victims of trafficking whom the police had identified and referred to them. It is also these NGOs which, in practice, are responsible for co-ordination between NGOs for the reception of and assistance to trafficking victims. The stated mission of these two NGOs is above all to help women in distress, including those who are victims of human trafficking. They recently broadened the scope of their action to cover children and men, as of the end of 2012. Up until now, there was no specific authorisation (“agrément”) for dealing with THB, which has meant that NGOs have not engaged in proactive activities aimed at detection or awareness raising; they restrict their action to providing reception and assistance for the victims referred to them on the basis of an agreement with the Ministry of Equal Opportunities (see paragraphs 101).

26. In addition, the Luxembourg branch of the NGO “End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes” (ECPAT) lobbies the authorities on the subject of the sexual exploitation of children, including as a result of THB.

27. IOM covers Luxembourg from its regional office in Brussels and is on hand for consultations in Luxembourg two days a week. It collaborates with the Luxembourg authorities in matters concerning the return of victims to their country of origin (see paragraphs 136).

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Luxembourg

#### 1. Integration of the core concepts and definitions contained in the Convention in the internal law

a. Human rights-based approach to action against trafficking in human beings

28. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.<sup>5</sup>

29. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>6</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>7</sup>

<sup>5</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>6</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, paragraph 282, ECHR 2010.

30. The Convention on action against trafficking in human beings requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

31. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>8</sup>

32. The Luxembourg authorities have pointed out that, by application of the principle of hierarchy of norms, the European Convention on Human Rights (ECHR) and the Convention on Action against Trafficking in Human Beings take precedence over national legislation, including Luxembourg's Constitution. Accordingly, in Luxembourg, trafficking in human beings is regarded not only as a criminal offence but also as a human rights violation. GRETA notes however that the court decisions in trafficking cases brought to its attention make reference neither to Article 4 of the ECHR nor to the Anti-trafficking Convention. On the other hand, one decision did refer to the discussions of Luxembourg parliamentarians on the introduction of the offence of trafficking, in which it was stated that the definition of trafficking supposes that the victim has been deprived of their fundamental rights.<sup>9</sup>

33. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Luxembourg authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in Luxembourg law

i. *Definition of "trafficking in human beings"*

34. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

35. In Luxembourg law trafficking in human beings has been made an offence in the Criminal Code by the law on trafficking in human beings of 13 March 2009. The definition given in Article 382-1 of the Criminal Code, in chapter VI-I entitled "Concerning trafficking in human beings", is as follows:

<sup>7</sup> See also, *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. c. France*, application No. 67724/09, judgment of 11 October 2012; and *C.N. v. UK*, application No. 4239/08, judgment of 13 November 2012.

<sup>8</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

<sup>9</sup> Luxembourg district court, criminal section, judgment of 21 October 2010.

“(1) The offence of trafficking in human beings shall be constituted by the recruitment, transportation, transfer, harbouring or receipt of a person, or ceding or transferring control over that person, with a view to:

- (i) committing offences of pimping or sexual attack or assault against that person;
- (ii) exploiting the labour or services of that person in the form of forced or compulsory work or services, servitude, slavery or practices similar thereto and in general in conditions contrary to human dignity;
- (iii) removing organs or tissues in contravention of the relevant legislation;
- (iv) having that person commit a crime or misdemeanour, against their will.”

36. The offence of trafficking as provided for in the Criminal Code covers the different types of acts provided for in the Convention as well as ceding or transferring control over a person. GRETA considers that this additional act is in the spirit of the Convention in that it emphasises the fact that the victim is treated as merchandise, as was made clear in the parliamentary discussions on the draft law, in which reference was made to the “sale” of victims for the purpose of exploitation when explaining this addition.

37. Regarding the types of exploitation included in the offence in the Criminal Code (CC), GRETA notes with interest that, in addition to the forms of exploitation required for inclusion, at a minimum, in the Convention, Article 382-1 covers the case of trafficking for the purpose of exploitation through the committing of a crime or misdemeanour by the victims against their will. A draft bill currently before the Chamber of Deputies proposes to add explicitly the exploitation of begging to this list.

38. The means constitute aggravating circumstances (Article 382-2 of the CC). These include the abuse of the particularly vulnerable situation of the individual concerned, resulting from their illegal or precarious administrative status, their precarious social situation, a pregnancy, an illness, an infirmity or physical or mental disability. In addition, there are the threat of use or use of force or other forms of constraint, abduction, fraud or deception, the offer or acceptance of payments or benefits to obtain the consent of a person having authority over the victim, or the fact that the offence was committed by an ascendant of the victim or by a person having authority over the victim or abusing the authority conferred upon them by their functions. All the means provided for in Article 4 of the Convention are covered. GRETA notes that the means are not a constituent component of the definition of THB in Luxembourg law but are treated as aggravating circumstances. Whilst recognising that this may contribute to making the prosecution of traffickers easier in terms of evidential requirements, GRETA stresses the need for the Luxembourg authorities to keep under review the possibility that this may lead to confusion with other criminal offences or to possible difficulties when it comes to mutual assistance in the anti-trafficking field with countries which have incorporated the means in their own definition of THB or to the interpretation of Article 4(b) on the consent of victims.

39. The committing of a trafficking offence against a minor (a person under 18 years of age under Luxembourg law) is considered as an aggravating circumstance, in accordance with Article 382-2(2).

40. According to Article 4(b) of the Convention, the consent of victims is irrelevant where any of the means provided for by the definition of THB has been used. In accordance with this provision, Article 382-2 of the Criminal Code states that the victim’s consent does not exonerate the perpetrator and accomplice from criminal liability for committing the offence or attempting to commit the offence of trafficking (paragraph 3), nor does it constitute an attenuating circumstance (paragraph 4).

41. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 139 to 145.

ii. *Definition of “victim of THB”*

42. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

43. The Law on assistance to and protection and safety of victims of trafficking in human beings of 8 May 2009 defines, under Article 1, a victim as “any physical individual who may be considered on the basis of clues as a presumed victim of trafficking in human beings”. GRETA takes note of this definition which exists autonomously from that of the victim of the criminal offence provided for in Article 382-2 of the Criminal Code and the fact that this grants possible victims of THB access to a set of assistance and protection measures and underlines that its full implementation should be ensured.

44. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them.

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

i. *Comprehensive approach and co-ordination*

45. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

46. Up until now, the action taken by the authorities has been co-ordinated by the Inter-ministerial “Trafficking” Committee (see paragraph 17). It meets at least twice a year and more frequently when requested by its members. NGOs are however not represented. This committee has drawn up an informal and confidential roadmap for multidisciplinary co-operation where victims of trafficking are concerned. It is intended to ensure that the different public stakeholders involved in the identification, stay and care of, assistance to, monitoring of and protection of victims are aware of their respective fields of competence and action.

47. In addition, a Working Group on “Support arrangements for victims of trafficking in human beings” has been set up at the initiative of the Ministry of Equal Opportunities in order to forge a link between the ministry and NGOs active in the area of trafficking (see paragraph 22). The Ministry of Equal Opportunities has responsibility for co-ordinating care and guidance for victims (see paragraph 21).

48. As previously mentioned (see paragraph 17), the Law on assistance to and protection and safety of victims of trafficking in human beings of 8 May 2009 provides for the setting up, in Article 10, of the Committee for monitoring action against trafficking in human beings. This body will be set up by a grand-ducal decree to be adopted in January 2014. It will be tasked with the introduction, monitoring and co-ordination of activities aimed at preventing and assessing the phenomenon of trafficking. It will also be responsible for gathering statistical data. It will be made up of representatives of the competent public bodies, assistance services and the NGOs authorised to operate in the sphere of trafficking in human beings.

49. According to many of interlocutors from both the authorities and civil society, there are indications that particular attention should be paid to the sectors of catering, particularly in restaurants employing migrants of Chinese origin, and construction (see in particular paragraphs 91 and 92). GRETA notes that only one victim of trafficking for the purpose of exploitation of forced labour was identified during the period 2009-2011, two victims in respect of slavery and similar practices in 2011, and two victims for labour exploitation in 2012. **GRETA urges the Luxembourg authorities to strengthen their action against trafficking for the purpose of labour exploitation and, in this connection, co-ordination between the public actors concerned.**

50. In this respect, GRETA has already noted the lack of an action plan or detailed strategy on action against trafficking, whether for the purpose of not only sexual exploitation, but also labour exploitation or other (see paragraph 16). **GRETA urges the Luxembourg authorities to adopt, in consultation with civil society, an action plan or strategy for state action aimed specifically at combating trafficking in human beings and covering the different types of exploitation.**

*ii. Training of relevant professionals*

51. Under Article 9 of the Law on assistance to and protection and safety of victims of trafficking in human beings, specialised police staff must undergo training in the identification of victims, human rights and protection of victims from traffickers. A grand-ducal decree has not yet been adopted for the implementation of this aspect of the law. The authorities have stated that training had taken place every three or four years at the Police College or through specialisation training in trafficking organised by the German police. This frequency is explained by the fact that there does not appear to be much staff rotation. The Luxembourg authorities have indicated that the training of police officers who come into contact with victims covers, in particular, the definition of trafficking, the different types of trafficking, the traffickers' modus operandi by type of trafficking, the interactions between the different stakeholders, the identification of victims (detection indicators) and contacts with victims (interviewing techniques, physical and legal assistance, etc.). Any new recruit is trained directly by the officer responsible for THB affairs within the Organised Crime Unit. GRETA emphasises the changing nature of the phenomenon of THB and the importance of having regular training. The authorities have stated that an investigator from the Organised Crime Unit of the grand-ducal police has been receiving training on a regular basis for 10 years, at a frequency of one training course/lecture per annum. Furthermore, the Luxembourg authorities have specified that staff deployed on external border control duties are trained in detecting THB.

52. With regard to basic training for members of the judiciary (judges and prosecutors), there is no module specifically covering trafficking. According to the authorities, the topic may be dealt with during practical training with the prosecutor's office and the police. Agreements have been concluded to give members of Luxembourg's judiciary access to the further training provided by the French National College for the Judiciary (*École Nationale de la Magistrature*) and the German Academy for the Judiciary (*Deutsche Richterakademie*), which includes THB among the topics on offer. The Luxembourg authorities have indicated that some prosecutors attended training sessions in Trier, Rome and Berlin in 2012, and in Amsterdam and Cracow in 2013. Some further training courses are also held in Luxembourg but for the time being none of them has covered trafficking.

53. GRETA notes that Article 9 of the Law on assistance to and protection and safety of victims of trafficking in human beings, which covers training, does not list labour inspectors among those who should receive training relating to THB. It observes the importance of the labour inspectors being trained in order to detect possible victims of trafficking for the purpose of labour exploitation. The Luxembourg authorities have stated that labour inspectors would receive such training in future.

54. The Luxembourg authorities have highlighted the existence of a budget earmarked for training for the NGOs providing assistance to victims of THB by the Ministry of Equal Opportunities within the overall state budget allocated to each of the NGOs through contractual agreements between them and the ministries. The authorities have stated that a number of training courses and lectures on the subject of trafficking or forced prostitution were organised through state budget funding between 2006 and 2009, which were mainly attended by the staff of accommodation centres, NGOs and ministries. They indicate that two events were held each year. GRETA notes however that there was no mention of any events organised during the period after 2009. The Luxembourg authorities have made reference to a multidisciplinary conference entitled “Et si on parlait de prostitution au Luxembourg?” (“Let’s talk about prostitution in Luxembourg”) which was held in June 2012 and during which a speaker from the Amsterdam police force shared his experience in fighting human trafficking for the purpose of sexual exploitation. It brought together representatives of the Ministry of Justice, the Ministry of Equal Opportunities, the police, the public prosecution service, as well as NGOs.

55. The Luxembourg Office for Reception and Integration (OLAI), which comes under the Ministry of Family and Integration, is responsible for the reception of persons seeking international protection. The Luxembourg authorities have indicated that the OLAI staff was trained in October 2013 by the NGO Femmes en détresse (FED). Other training sessions were planned, following which instructions are to be drawn up on the detection of victims and measures to raise awareness among those seeking international protection.

56. In Luxembourg’s one and only immigration removal centre, created in 2009, the staff had not been made aware of trafficking issues and the detection of victims among the people placed in the centre. It was however planned to provide such training in the near future. GRETA stresses that people irregularly present on the territory who are placed in an immigration removal centre are usually seen as a vulnerable group. The above-mentioned training session organised by the NGO FED was also addressed to the staff of the immigration removal centre.

57. The authorities have indicated that, at present, no THB-related training was provided for healthcare staff, in particular those providing outpatient care who are likely to come into frequent contact with victims of trafficking. The staff of reception centres for children in difficulty, who also have the task of receiving trafficking victims, are not specifically trained in the area of THB either; they are only trained to provide guidance to victims of sexual abuse.

58. As regards consular staff, the authorities have stated that, under agreements with the Belgian authorities, consular services are often provided by the Belgian authorities on the spot. They did acknowledge, however, that Luxembourg’s consular staff posted abroad were not systematically trained to deal with THB issues.

**59. GRETA considers that the Luxembourg authorities should ensure that all the professionals concerned receive periodic training to improve detection of potential THB victims, the identification of victims and the assistance provided to them as well as compensation procedures. This training should be aimed at members of the law-enforcement agencies, judges, prosecutors, labour inspectors, lawyers, staff working in shelters for trafficking victims, staff involved in child welfare, social workers, staff working in reception centres and the immigration removal centre for irregular migrants, diplomatic and consular staff, healthcare professionals as well as trade union staff (see also paragraphs 79, 97, 105, 148 and 157).**

*iii. Data collection and research*

60. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

61. Up until now, data on THB has been gathered via the police, the public prosecutor's office and the NGOs officially contracted by the Ministry of Equal Opportunities.

62. According to Article 11 of the Law on assistance to and protection and safety of victims of trafficking in human beings of 8 May 2009, all relevant data will be sent to the Committee for monitoring action against trafficking in human beings – which is being established (see paragraph 17) – by the police, the public prosecutor, criminal courts, assistance services, the officially contracted NGOs and the state bodies involved in preventing and combating trafficking. Statistics will be reported annually. These statistics will be broken down by sex, age, country of origin and type of trafficking and exploitation. They will include the number of complaints, prosecutions, convictions, victim protection measures and victim assistance measures.

**63. GRETA urges the Luxembourg authorities to render operational, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.**

64. GRETA is not aware of any research work on trafficking in human beings in Luxembourg. **GRETA considers that the Luxembourg authorities should carry out and provide backing for research into THB issues, so that the findings of that research help the public authorities to devise future anti-trafficking measures. Areas in which in-depth research is required include trafficking for the purpose of labour exploitation (particularly in the construction and catering sectors and domestic work) and child trafficking.**

*iv. International co-operation*

65. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

66. The amended law on international judicial assistance in criminal matters of 8 August 2000 serves as the legislative framework for international co-operation in the field of THB. Under Article 7 of that law, cases involving mutual legal assistance are treated as urgent or priority cases. The Luxembourg authorities have also mentioned the amended law on the European arrest warrant and handing-over procedures between European Union Member States of 17 March 2004. As for international instruments, they referred, *inter alia*, to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, the Convention implementing the Schengen Agreement of 19 June 1990, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and its additional protocol. They have mentioned co-operation within the framework of Europol and Interpol.

67. Article 26-3 of the Criminal Procedure Code stipulates that a complaint from a Luxembourg resident must be forwarded by the state prosecutor without delay to the competent authority of the state where the offence was committed, in the event of its competence not having been exercised. Where infringements of Articles 382-1 and 382-2 of the Criminal Code on trafficking are involved, the complaint is forwarded without delay to the parties to the Anti-trafficking Convention on whose territory the offence was committed. According to the Luxembourg authorities, spontaneous exchanges of information and reports are made directly between the competent judicial authorities, i.e. from prosecutor's office to prosecutor's office, in accordance with Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU, or between justice ministries, in accordance with Article 21 of the European Convention on Mutual Assistance in Criminal Matters.

68. Exchanges of police information may also take place, with the prior agreement of the judiciary when this concerns information relating to judicial investigations. The authorities have reported joint actions between the grand-ducal police and their counterparts in Belgium, France and Germany although, to date, there is no joint investigation team, within the meaning of the UN Convention on Transnational Organised Crime of 2000 (Article 19) and the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 2000 (Article 13), for THB cases. The Luxembourg authorities have cited the example of an international request for judicial assistance in a trafficking case in connection with Estonia which had worked satisfactorily in 2010.<sup>10</sup> A second investigation was mentioned where co-operation with Interpol made it possible, on the basis of information received from Interpol Warsaw, to close an investigation into a case where there were suspicions of trafficking.

**69. GRETA invites the Luxembourg authorities to continue developing international cooperation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.**

## **2. Implementation by Luxembourg of measures aimed to prevent trafficking in human beings**

70. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

71. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>11</sup>

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<sup>10</sup> Eurojust had informed the Luxembourg authorities that some women had filed a complaint in Estonia against a cabaret located in Luxembourg where they had become victims of sexual exploitation after being recruited on false promises by an agency based in Estonia. The Luxembourg police went to Estonia to exchange information within the framework of the international request for judicial assistance. Following receipt of the transcripts of the women's hearings in Estonia, a criminal investigation was initiated in Luxembourg. The suspects were arrested in July 2011 and convicted in early 2013 (decision of 7 February 2013, District Court of Luxembourg, 16th Chamber sitting for criminal matters).

<sup>11</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

a. Measures to raise awareness and discourage demand

72. The only campaign on a national scale carried out to date in Luxembourg was an awareness-raising campaign by the Ministry of Equal Opportunities aimed at reducing the demand for sexual services. It was launched in 2008 with the slogan: “paying a prostitute is funding trade in human beings”. A campaign specifically focusing on trafficking was envisaged by the Ministry of Equal Opportunities and was to be submitted to the Inter-ministerial “Trafficking” Committee for discussion. GRETA stresses the importance of communicating on trafficking for the purposes of sexual exploitation and also labour exploitation, including through a campaign aimed at alerting the general public to the different forms of THB and discouraging demand. The Luxembourg authorities have indicated that a campaign was planned after the setting-up of the future Committee for monitoring action against trafficking in human beings in the beginning of 2014. A budget request for this campaign has been made.

73. GRETA notes that, for the time being, in the absence of a specific authorisation from the authorities to take other action on trafficking, NGOs have been unable to carry out awareness-building operations aimed at vulnerable groups since the authorisation merely relates to the reception of and assistance to victims referred to them by the police. The adoption of a grand-ducal decree which provides for specific authorisations for trafficking should remedy this situation. **GRETA invites the Luxembourg authorities to ensure that NGOs are granted without delay the official authorisation that will enable them to expand their awareness-raising efforts.**

74. Moreover, GRETA considers it important that the authorities carry out initiatives aimed at vulnerable groups (migrant workers, Roma, unaccompanied foreign children, etc.) as well as in the risk sectors (catering, construction, domestic work, cabarets, etc.), through awareness-building measures and socio-economic initiatives. **GRETA considers that the Luxembourg authorities should take awareness-raising and socio-economic measures for groups vulnerable to trafficking and in high-risk sectors of the economy in order to prevent human trafficking.**

75. GRETA notes that, at the time, the bill on assistance to and protection of victims of trafficking in human beings stipulated, as a demand-d discouraging measure, that education programmes aimed at children during their schooling should extol the dignity and integrity of every human being and the importance of equality between women and men. This provision, however, was dropped from the version adopted.

76. Furthermore, there are two assistance hotlines and internet services for children in difficulty: “Aktioun Bobby”, a hotline run by the child protection department of the police, and “Kanner Jugendtelefon” – or KAJUTEL – a hotline and internet service run by volunteers, with the cost of calls paid for by the Ministry of Families and Integration and a subsidy of 400 000 euros. Several interlocutors stressed that the “Aktioun Bobby” hotline was not known well enough and, as a result, was underused.

77. GRETA reiterates that, pursuant to Article 19 of the Convention, Parties must envisage the criminalisation of the use of the services of a victim of human trafficking while knowing this to be the case. This provision targets the clients of victims of trafficking involving any form of exploitation: sexual, through forced labour or services, slavery or practices similar to slavery, servitude or organ removal.<sup>12</sup> The Luxembourg authorities have emphasised that an individual using the services of another person in the knowledge that they were a victim of trafficking in human beings was punished as a co-perpetrator of the offence, pursuant to Article 66 of the Criminal Code<sup>13</sup>, or an accomplice to the offence, pursuant to Article 67 of the Criminal Code.<sup>14</sup> These two provisions apply to all crimes and offences. GRETA notes however that there is no provision specifically prohibiting the use of the services of a person in the knowledge that they are a victim of trafficking in human beings. **Therefore, GRETA considers that the Luxembourg authorities would benefit from placing heavier emphasis on the sanctions faced by individuals using the services of a person in the knowledge that they are a victim of trafficking as a co-perpetrator or accomplice of the offence of trafficking in accordance with the Criminal Code. They could include this aspect in any information campaigns concerning trafficking for example, particularly in the risk sectors (prostitution, cabarets, catering, construction, domestic work, etc.).**

78. **GRETA considers that the Luxembourg authorities should continue their efforts aimed at discouraging demand for services provided by victims of any type of human trafficking, in particular in high-risk sectors.**

b. Border measures to prevent THB and measures to enable legal migration

79. The staff controlling external borders, which are located exclusively at Luxembourg-Findel Airport (the only international airport), are trained in detecting trafficking in human beings. GRETA underlines the importance of training at regular intervals, particularly in the detection of victims, for gauging the phenomenon and its trends. It also stresses the need to distinguish trafficking in human beings from illegal immigration within the work of the border police services. Border guards receive every year a compulsory training on human trafficking, false travel documents, drugs, etc. The contents regarding trafficking is the same as the training course of police officers (see paragraph 51).

80. The information on the legal conditions of entry to and stay on the territory of Luxembourg is available on the Ministry of Foreign Affairs Internet site and also on a site providing assistance for administrative procedures. Where long-stay visas (for work, studies, etc.) are concerned, Luxembourg's legislation stipulates that applications must be lodged in person and that an identity check is to be carried out at that time. GRETA stresses the importance of detecting possible victims at this stage and the value of providing the staff concerned with training in the detection of victims of THB. GRETA welcomes the fact that the Luxembourg authorities decided to abolish visas for performing artists on the grounds that these were abused for the purpose of trafficking in human beings.

<sup>12</sup> Explanatory report to the Convention, paragraph 231.

<sup>13</sup> Article 66 of the Criminal Code: "The following shall be punished as perpetrators of a crime or misdemeanour:  
- Persons having committed the infringement or having directly co-operated in the committing thereof;  
- Persons having, through any action whatsoever, provided assistance for the committing of the crime or misdemeanour, without which it could not have been committed;  
- Persons having, through donations, promises, threats, abuse of authority or power, culpable manoeuvres or trickery, directly caused this crime or misdemeanour; (...)".

<sup>14</sup> Article 77 of the Criminal Code: "The following shall be punished as accomplices to a crime or misdemeanour:  
- Persons having given instructions for it to be committed;  
- Persons having procured arms, instruments or any other means having served to commit the crime or misdemeanour, in the knowledge that they were to serve that purpose;  
- Persons having, except in the case provided for in paragraph 3 of article 66, knowingly helped or assisted the perpetrator(s) of the crime or misdemeanour with actions which prepared or facilitated it, or actions which consummated it."

81. With regard to domestic workers in diplomatic households, the Luxembourg authorities have indicated that persons accompanying diplomatic staff posted in Luxembourg are issued with a *titre de legitimisation* (special residence permit), which gives them leave to stay in Luxembourg, and are not covered by the Law on the free movement of persons and immigration. This limits greatly the possibility for the Immigration Department to act as they are not competent for such persons. GRETA underlines that the issuing of such special residence permits can provide an opportunity for an individual interview with domestic workers, in order to examine their work contract (in particular the working hours and remuneration) and to inform them of their rights, the risks of human trafficking and NGOs that could assist them. Regarding workers recruited in Luxembourg, the Immigration Department is only competent for requests from nationals of third countries who need a residence permit and a work permit. Officers responsible for such applications follow ongoing training to detect any irregularity in the light of the documents produced and, where required, inform the police.

82. **GRETA considers that the Luxembourg authorities should strengthen their efforts to:**

- **introduce a checklist to facilitate the detection of trafficking risks as part of the visa application and processing procedure;**
  - **provide regular training to staff involved in issuing visas and residence permits to improve their ability to detect possible victims of trafficking in human beings;**
  - **provide information to foreigners envisaging travel to Luxembourg who belong to vulnerable groups, including domestic workers and in particular those working in diplomatic households, in a language they understand, warning them of the risks of trafficking in human beings, informing them of the services to which they can turn for assistance and guidance and advising them of their rights.**
- c. Measures to ensure the quality, security and integrity of travel and identity documents

83. Luxembourg introduced biometric passports to make identity documents secure in line with Council Regulation (EC) No. 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, since amended by Regulation (EC) No. 444/2009 of the European Parliament and of the Council of 28 May 2009. The recommendations of the International Civil Aviation Organization (ICAO) are followed. Biometric passports are now issued in accordance with the Grand-ducal Decree of 25 January 2008 establishing procedures for obtaining a biometric passport or a biometric travel document for foreigners, stateless persons and refugees and for obtaining legalisation. In addition to making passports themselves secure, GRETA notes that the documents on the basis of which passports are issued should also be made secure and call on the Luxembourg authorities to ensure that this is the case. It is therefore important that the all stages for issuing passports be secured to avoid passports being delivered on the basis of non-secured documents that may have been forged.

### **3. Implementation by Luxembourg of measures to protect and promote the rights of victims of trafficking in human beings**

- a. Identification of victims of trafficking in human beings

84. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

85. Under Luxembourg legislation, the identification of victims lies within the remit of the Organised Crime Unit of the Judicial Police, on the basis of a confidential list of indicators for deciding whether an investigation for trafficking must be conducted. The list of indicators is known only to the departments participating in the Inter-ministerial "Trafficking" Committee (see paragraph 17). There are four investigators working on human trafficking within the Organised Crime Unit. According to the authorities, identification is established as soon as there are grounds to believe that an individual might be a victim of trafficking. It is not necessary for the possible victim to immediately make statements in order to be identified. Identification is a prerequisite for access to the assistance measures open to trafficking victims. However, the status of victim will be withdrawn if no criminal prosecution is subsequently lodged against the traffickers. The authorities have stated that different officers were responsible for investigation and identification respectively. GRETA underlines that victim status should not depend solely on prosecutions that might be brought by the authorities.

86. The police must inform the victims of the possibility of joining the criminal proceedings to obtain damages and explain to them how the criminal proceedings take place (Article 6 of Law on assistance to, protection and safety of victims of human trafficking). The police should inform them of their rights in terms of legal assistance (paragraph 127) and interpretation. They must also inform the victims of third countries of the possibility of being granted a reflection period (Article 93 of the Law on the free movement of persons and immigration of 29 August 2008) in which to recover from their ordeal and decide whether to co-operate with the investigation and prosecution authorities, as well as the possibility of being granted a residence permit (Article 95 of the aforementioned law) if they co-operate.

87. In practice, it appears that trafficking victims must consider themselves as such for the police identification process to be triggered, which limits the capability of identifying possible victims. GRETA reiterates that victims do not always see themselves as victims (e.g. by fear of reprisals, lack of knowledge about the status of victim, mental conditioning) and that it falls to the bodies competent for identification to assess whether a person might be a trafficking victim in the light of a number of criteria, without that person's own judgement of their situation being strictly necessary. The Luxembourg authorities have however indicated that the approach taken by the police is to interpret declarations, indicators and results from preliminary investigations in a broad and non-restrictive way as part of the identification process. They have added that, during interviews with possible victims, investigators follow four guiding principles which are of relevance to victims: their security; the status of their stay in Luxembourg (can they stay or should they be deported?); whether to keep their identity confidential (does their anonymity need to be preserved?); their level of fear and risks of new trauma.

88. In principle, any state service, NGO or individuals detecting a possible victim of THB must bring this situation to the attention of the police services so that they can take a decision on identification and referral to the specialised assistance services. As the authorities themselves acknowledge, it is crucial in such cases that possible victims are referred to the Organised Crime Unit, which decides whether or not to grant them victim status.

89. In addition, up until now, as indicated in paragraph 25, the official authorisation held by NGOs specialising in the sphere of trafficking is not specific to THB but a general approval specifying assistance to victims who are identified by the police and referred to them. As a result, the NGOs' potential for proactive detection has been lessened. Even so, they have said that they systematically referred people to the competent services in cases where they had the slightest suspicion. However, there is no official system for involving NGOs in the identification process. The adoption of the grand-ducal decree on trafficking should make it remedy this shortcoming. GRETA considers that specialised NGOs can substantially contribute to the victim identification process and should be involved in a multi-agency effort to ensure that no victim of trafficking remains unidentified. This is envisaged by Article 10 of the Convention, according to which identification is a collaborative process between the authorities and relevant victim support organisations.

90. As a rule, contact between the competent police services and NGOs is informal, since the division of responsibilities in the chain of detection and identification is not placed on a formal footing. A number of interlocutors from the authorities and civil society acknowledged that the country's small size made it possible to operate on this informal basis while recognising that a framework for referral would permanently establish these relations and give all the stakeholders a clear view of the respective roles.

91. The labour inspectors of the Labour and Mining Inspection (ITM) can carry out workplace checks both day and night but are not competent for identifying victims of THB. When the ITM observes situations prompting suspicions of exploitation, it cannot record an offence but it does contact the competent police services. One case in the construction sector was mentioned by the authorities: workers of Ukrainian origin working for a company based in Poland were detected by the labour inspectorate. Notwithstanding the co-operation initiated with the Polish labour inspectorate, the possible victims were quickly moved out of Luxembourg. The ITM informed the Luxembourg Public Prosecution Service which ultimately decided to drop the case as both suspects and victims had disappeared. The authorities have spoken of joint operations with representatives of the immigration police who are tasked with detecting irregular migrant workers. GRETA emphasises the great speed with which traffickers operate and the need for close collaboration with THB-trained police services in order to take action as soon as victims are detected and avoid treating them as irregular migrant workers. GRETA stresses the potential detection capability of the labour inspectorate as illustrated by this example.

92. GRETA notes that two victims identified in 2011 had been exploited for the purposes of slavery or similar practices. The case of a Chinese girl exploited in a restaurant as well as in the domestic context was mentioned by several interlocutors during the visit. The Luxembourg authorities have indicated that this case concerned a Chinese girl aged 14 who had been identified in 2012 as a possible victim of trafficking for the purpose of labour exploitation. During the investigations, it became apparent that she had been illegally registered as the biological daughter of the perpetrator, and that she had come to Luxembourg using a false passport on grounds of family reunification. She was then exploited as waitress, kitchen assistant, cleaning lady and baby-sitter in the Chinese restaurant and home of the perpetrator. She has since then been issued with an identity document reflecting her real identity and a residence permit. The investigation stage is over and the case is pending before the District Court of Diekirch.

93. Where child victims of trafficking are concerned, there is no distinct identification system. GRETA notes that three children were identified in the period 2009-2012. The Ombuds-comité fir d'Rechter vum Kand<sup>15</sup> (Ombuds-committee for the rights of the child) expressed concern in its last report, in 2012, that the number of unaccompanied foreign children irregularly present in Luxembourg was increasing and these were no longer isolated cases.<sup>16</sup> In its previous report for 2011, the Ombuds-committee also said that it had been contacted in connection with an unaccompanied child illegally present on the territory alleged to have been a victim of trafficking for the purpose of sexual exploitation. GRETA reiterates that this is a group which is particularly vulnerable to trafficking, which makes it all the more important that these individuals are detected by the various actors, public or otherwise, potentially coming into contact with them.

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<sup>15</sup> The Ombuds-comité fir d'Rechter vum Kand is an independent public authority created in 2003 which publishes an annual report on the situation of the rights of the child in Luxembourg, presented to the Government and the Chamber of Deputies. It may have individual cases of children in difficulty referred to it.

<sup>16</sup> Ombuds-comité fir d'Rechter vum Kand, 2012 report to the Government and the Chamber of deputies.

94. The authorities have reported growing problems in connection with begging, in particular by people of Roma origin, including children, on the streets of Luxembourg. These individuals often appear to travel or be transported in from neighbouring countries in the morning and to leave in the evening. GRETA draws attention to the fact that there may be potential cases of human trafficking for the purpose of forced begging among those situations. The authorities have stressed the difficulty of identifying victims of trafficking within these groups since, on the one hand, they are based abroad and are highly mobile and, on the other hand, the victims do not see themselves as victims. GRETA stresses that it is not necessary for the individuals concerned, and all the more so in the case of children, to consider themselves as victims in order to be identified and assisted.

95. Furthermore, GRETA believes it important to reinforce detection capability in the detention centre for irregular migrants, who form a group vulnerable to trafficking, in order to avoid them being treated exclusively as irregular migrants and kept in the detention centre.

96. The Luxembourg authorities have pointed to an upturn in the number of asylum seekers in recent years (500 applications in 2009, 700 in 2010 and 2 200 in 2011). GRETA stresses that asylum seekers constitute a group that is particularly vulnerable to trafficking. It notes in this connection that, during a visit to Luxembourg at the beginning of 2012, the Council of Europe Commissioner for Human Rights referred to plans to reduce the monthly cash allowance for asylum seekers<sup>17</sup>, even though they constitute a group vulnerable to trafficking. GRETA underlines the need to strengthen detection of possible victims among asylum seekers and to provide clear guidelines to staff of the Luxembourg Office for Reception and Integration (OLAI) (see paragraph 55).

97. **GRETA urges the Luxembourg authorities to:**

- **ensure that the identification of possible victims is not linked to criminal proceedings being started or continued;**
- **adopt a multidisciplinary approach to the identification of victims by officialising the role and input of specialised NGOs and by involving other relevant stakeholders, such as labour inspectors;**
- **develop tools (guides, indicators, etc.) for the different actors involved, including NGOs, to be able to identify victims of human trafficking and with a view to formalising and co-ordinating efforts made to improve detection and identification of trafficking victims;**
- **pay specific attention to the identification of victims of trafficking for the purpose of labour exploitation, including by strengthening proactive detection by the labour inspectorate;**
- **devote particular attention to the identification of child victims of human trafficking and, to that end, adopt tools and a procedure geared to their specific situation in accordance with the best interests of the child;**
- **ensure adequate training for all stakeholders involved in the identification process;**
- **take measures to improve the identification of victims of human trafficking for the purpose of forced begging, in particular children.**

b. Assistance to victims

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<sup>17</sup> Press release issued by the Commissioner for Human Rights after a visit to Luxembourg at the beginning of 2012, published on 12 March 2012.

98. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

99. According to the Luxembourg authorities, assistance to and protection of victims begin as soon as a victim is identified by the police. Assistance is not limited in time, but a decision by the authorities not to bring a prosecution results in the loss of trafficking victim status. The Luxembourg authorities have indicated that a victim who refuses to co-operate is not stripped from her victim status. For victims who are nationals of third countries, continued assistance depends, once the reflection period expires, on the obtention of a residence permit (Article 95 of the amended Law on the free movement of persons and immigration). GRETA underlines that adequate assistance as part of repatriation needs to be provided to victims who will not benefit from a residence permit at the expiry of the reflection period. GRETA considers that trafficking victim status and the assistance to which it entitles the victim should not depend on whether or not criminal prosecutions are lodged or continued.

100. Under Article 6 of the Law on assistance to and protection and safety of victims of trafficking in human beings, if the police have information that an individual may be a victim of trafficking, they should alert a specialised NGO without delay and ensure that the NGO can make contact with the victim as swiftly as possible. GRETA was told that the police services do not systematically refer victims to the NGOs. The authorities have stated for their part that some victims had asked to leave for their country of origin immediately without taking up the offer of assistance made. After a meeting with the specialised NGOs, the police agreed to ensure that all victims without exception be referred to assistance services. This is all the more important since those services are assigned responsibility by Article 7 of the aforementioned law, to inform the victim, when first in contact with them, of their rights, the administrative and judicial procedures and the services available to them. Accordingly, GRETA stresses the importance of referring all victims to the specialised NGOs so that they are aware of the assistance they can receive and benefit from it. GRETA also considers that the police should systematically inform victims about the assistance they are entitled to.

101. The assistance provided to trafficking victims is entrusted to those NGOs which have been granted formal authorisation to accommodate women victims of trafficking in their shelters, and principally to two NGOs, Femmes en détresse (FED, Women in distress) and the Foundation Maison de la Porte Ouverte (Open house foundation), which serve as a point of contact for other NGOs in the trafficking sphere. As there are no contractual agreements between the NGOs and the authorities specifically on trafficking, NGOs operate on an informal basis within the framework of a general agreement with the Ministry of Equal Opportunities, in accordance with the Law of 8 September 1998 governing relations between the State and the bodies working in the social, family and medical treatment fields (known as the ASFT law), which allows them only to assist and accommodate the victims presented to them by the police services. The assistance provided is the same regardless of where the victim is from. An authorisation for all trafficked victims, whether female or male, is provided for by a grand-ducal decree to be adopted in January 2014, which should ease the way NGOs can assist victims.

102. Under Article 2 of the aforementioned law, NGOs must provide victims with accommodation, welfare and socio-educative assistance, material and financial assistance and the medical, psychological or therapeutic assistance they need. The victims may also be provided with legal aid and translation services (see paragraph 127). NGOs receive a grant from the Ministry of Equal Opportunities, which depends on the overall state budget, since there is no budget heading specific to trafficking in human beings. Once a victim is identified, the Ministry of Equal Opportunities co-operates with the police and the specialised NGOs to provide them with accommodation, assistance and protection. NGOs consider that the funding received by them to meet the needs of trafficking victims on a case-by-case basis is satisfactory. The NGO-run shelters also pay the necessary contribution to the medical insurance scheme so that the victim is covered.

103. During the evaluation visit, the GRETA delegation went to shelters for women in distress or victims of domestic violence which could receive victims of trafficking. The first, Fraenhaus, is managed by the NGO FED and has 17 places, two of which are for victims of trafficking. The shelter has received three victims (two Bulgarians and one Romanian) since 2009, who stayed less than a week. Two of the shelter's nine salaried employees are specialised in trafficking. Through the offices of the FED, the victims may gain access to medical treatment and training. The second shelter, "Foyer Paula Bové", managed by the Foundation Maison de la Porte Ouverte and taking 30 people, reserves one bedroom for accommodating a victim of THB. The shelter has received four victims since 2009. There is a staff of 16 looking after the residents, including educators and a nurse.

104. Under Article 4 of the Law on assistance to and protection and safety of victims of trafficking in human beings, a victim who is a national of a EU country may perform paid work. However, it was pointed out to GRETA that access to the labour market was very difficult for nationals of third countries. In its opinion on the draft of the aforementioned law, the Advisory Committee on Human Rights had recommended that victims from third countries be included among those entitled to perform paid work, noting that many victims originated from third countries.<sup>18</sup> GRETA thinks it important, in line with Article 12(4) of the Convention, that THB victims be allowed access to the labour market, without discrimination in terms of national origin (Article 3 of the Convention), if they are legally resident on the territory thanks to the reflection period or a subsequent residence permit, to help develop their autonomy. In addition, GRETA notes that, notwithstanding the title of Article 4 ("exercise of paid work by certain victims and access to training"), the text fails to mention access to training.

105. There is currently no reception facility capable of accommodating male victims of human trafficking. As indicated in paragraph 10, during the period 2009-2011, there was only one male victim, who was placed in hotel accommodation, owing to a lack of shelters for male victims. In 2012 and the first half of 2013, there were two other male victims. This means that ad hoc solutions must be found for them by the police to begin with and then in co-operation with the Ministry of Equal Opportunities. The two officially contracted NGOs ultimately decided at the end of 2012 to assist male victims, and the delegation was told that there is now an agreement with the Caritas shelter to receive male victims. The Red Cross' Drop-In service for prostitutes has also broadened its field of action to cater for male prostitutes. Furthermore, according to the authorities, training for staff of shelters able to take in men was planned and budgeted for in 2013. A decree to be adopted in January 2014 will provide a framework for the assistance of male victims who would have previously been assisted on an ad hoc basis.

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<sup>18</sup> Opinion of the Advisory Committee on Human Rights, Draft law on assistance to and protection and safety of victims of trafficking in human beings, 16 March 2009.

106. Children come under a general system of child protection, pursuant to the law on child protection, and there is no specific, predefined approach for the child victims of trafficking. Unaccompanied foreign children are assigned an ad hoc guardian as soon as possible (Article 92 of the amended Law on the free movement of persons and immigration, Article 3 of the Law on assistance to and protection and safety of victims of trafficking in human beings) who can, *inter alia*, assist them where necessary in connection with criminal proceedings brought against the traffickers. They are placed in facilities coming under the Ministry of Families and Integration and the National Office for Children, whose staff are not specifically trained to assist victims of trafficking in human beings. Nevertheless, the children placed must now be supervised by the NGO FED. The care provided is said to vary greatly from one facility to another. The NGOs said that the schooling of the two child trafficking victims identified so far had not posed a problem. GRETA reiterates the need to adopt a tailored approach to child victims of THB reflecting their specific circumstances.

107. **GRETA urges the Luxembourg authorities to:**

- **not link the assistance provided to victims to criminal prosecutions being lodged or continued;**
  - **ensure that all victims detected have access to the assistance provided by the specialised NGOs;**
  - **provide for the concluding of contractual agreements specifically relating to trafficking in human beings with NGOs in order to make assistance to THB victims a permanent fixture and facilitate the NGOs' efforts to assist all victims (women, men and children);**
  - **grant access to the labour market and to training to victims from third countries who are lawfully resident in Luxembourg;**
  - **provide for specific assistance for child victims of trafficking that takes their specific circumstances into account.**
- c. Recovery and reflection period

108. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

109. Under Article 93(1) of the amended Law on the free movement of persons and immigration, possible victims of trafficking, regardless of whether they are over or under 18 years of age, are granted a 90-day reflection period in order to escape the influence of the traffickers, recover and make an informed decision on whether to lodge a complaint or give statements regarding the individuals or networks behind the trafficking. According to Article 93(2), no expulsion measure is possible during this period, and Article 93(3) stipulates that an attestation authorising the victim to stay on Luxembourg's territory during this period shall be issued. An individual granted this reflection period may lodge an application for asylum in parallel without this having any effect on the period. GRETA welcomes the fact that Luxembourg legislation provides for a recovery and reflection period which is longer than the minimum of 30 days envisaged in the Convention. This period is crucial to allow victims, on the one hand, to recover from the trauma linked to the trafficking situation and, on the other, to reflect on their co-operation with the criminal investigation and prosecution.

110. The authorities have stated that the reflection period is granted on the basis of the information supplied by the police, without much detail being required. Article 92(1) stipulates that once the police have indications that a national of a third country is a victim of human trafficking, they must immediately notify the Minister of Foreign Affairs and inform the presumed victim of the possibility of being granted a reflection period and residence permit in the conditions set out in Article 95 (see paragraph 86).

111. Furthermore, Article 93(4) stipulates that the Minister of Foreign Affairs, who is authorised to grant the reflection period, can decide to terminate that period if it is established that the victims have actively, voluntarily and at their own initiative renewed contact with the presumed perpetrators of the offence of trafficking or if the victims are considered as a potential threat to public order or national security. The authorities have stated that there had been no such cases to date. GRETA notes that renewed contact at the victim's own initiative with those behind their exploitation is not provided for in the Convention; it may prove difficult to establish whether a victim has voluntarily renewed contact or has been pressured into it. GRETA stresses that, in such a case, the recovery and reflection period must not be revoked without taking due account of an individual's personal circumstances and examining them in-depth.

112. Article 64 expressly stipulates that, during the reflection period, the person granted this period will have access to measures of security, protection and assistance.

113. The authorities have stated that no reflection period had been granted in 2009, three in 2010, one in 2011, one in 2012 and none in the first half of 2013. According to the authorities, this is down to the fact that some victims wish to return to their country of origin without delay or, in some cases, just after lodging their complaint.

114. Where the application of the reflection period to possible victims who are nationals of a European Union country is concerned, the authorities have acknowledged that, as things stood, this was problematic since Article 93(1) covered the nationals of non-EU countries.

**115. GRETA urges the Luxembourg authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.**

d. Residence permits

116. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

117. Article 95(1) of the amended Law of 29 August 2008 on the free movement of persons and immigration stipulates that, upon expiry of the reflection period, the Minister of Foreign Affairs will issue a victim who is a national of a third country as defined in Article 92(1) with a residence permit valid for six months if a number of conditions are met:

- either they have lodged a complaint or made statements with regard to individuals or networks presumed to have perpetrated the offence of trafficking, or their presence on the territory is necessary for the purposes of the investigation or proceedings, or their personal circumstances justify it;
- they have severed all links with the presumed perpetrators of the offence of trafficking;
- they are not considered as a threat to public order or national security.

118. GRETA welcomes the fact that a residence permit may be granted not only if the victim has decided to co-operate with the authorities or their presence on the territory is necessary for the prosecution but also owing to their personal circumstances.

119. However, according to the information supplied by the authorities, only two residence permits have been issued to victims of trafficking since 2010.

120. In accordance with Article 95(2) of the Law on the free movement of persons and immigration, the residence permit is renewable as long as the aforementioned conditions are fulfilled. Furthermore, the residence permit may be issued before expiry of the reflection period if the victim has lodged a complaint or made statements with regard to individuals or networks presumed to have perpetrated the offence of trafficking.

121. Article 96 of the above-mentioned law stipulates that the residence permit may be withdrawn and an expulsion measure may be ordered by the Minister of Foreign Affairs if the person concerned no longer meets the aforementioned conditions and in particular if they have actively, voluntarily and at their own initiative renewed contact with the presumed perpetrators of the offence, if they stop co-operating with the competent authorities, if the judicial authorities decide to break off proceedings, if their co-operation is fraudulent or their complaint is fraudulent or unfounded or, finally, if considerations of public order or national security are involved. The Luxembourg authorities have stated that they would assess the situation in the light of the information supplied by the police and the prosecutor's office as to whether any of the criteria for withdrawal were triggered. They have pointed out, however, that no such case had arisen to date.

122. Under Article 97(1) and (2) of the same law, the residence permit entitles victims to measures of protection and assistance and, unlike residence permits granted for private use, enables them to engage in paid work. The same provision provides that a grand-ducal decree shall determine the conditions of access by the victim to adult education, vocational training and professional skills development or a course to prepare their assisted return to their country of origin. Moreover, Article 97(3) stipulates that children holding this residence permit have access to the education system.

123. The authorities have stated that an asylum application may be made in parallel without this affecting the possibility of obtaining a residence permit in the context of trafficking.

124. **GRETA urges the Luxembourg authorities to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, in accordance with Article 14 of the Convention.**

e. Compensation and legal redress

125. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

126. Under Articles 30-1 and 46 of the Criminal Procedure Code, the police will inform the victims of an offence, in a language that they understand, except in duly authenticated cases of material incapacity, of their right to be assisted by victim assistance services and their right to claim damages as well as the possibility of receiving legal aid in the conditions provided for in law. In addition, as mentioned in paragraph 86, Article 6 of the Law on assistance to and protection and safety of victims of trafficking in human beings stipulates that the police shall inform the victim of the different possibilities of lodging a civil lawsuit and the functioning of the criminal procedure.

127. The Law on legal aid of 18 August 1995 provides for free and full legal aid for persons with insufficient resources on condition that they are Luxembourg nationals, foreign nationals authorised to take up residence in Luxembourg, nationals of the EU or foreign nationals assimilated to Luxembourg nationals in respect of legal aid through an international treaty. Legal aid may also be granted to foreign nationals whose resources are insufficient to pay for procedures relating to asylum, access to the territory, stay, or residence and expulsion of foreigners. GRETA notes that victims of THB who are unlawfully present are not currently expressly covered by the texts, unlike asylum seekers for example, said by the authorities to benefit from free assistance upon presentation of a certificate of international protection. The Luxembourg authorities have specified that although victims of trafficking are not expressly mentioned, they are considered as foreign nationals whose means are insufficient for the purpose of procedures pertaining to asylum, entry in Luxembourg, residence, etc. Victims of trafficking are systematically offered legal assistance.

128. As regards victim compensation, the victim may file a civil action as part of the criminal proceedings brought against the alleged perpetrators of the offence of trafficking in order to obtain compensation from them, after lodging a complaint or giving a statement, with or without the help of a lawyer.

129. In addition, the amended law of 12 March 1984 on compensation for certain victims of corporal harm resulting from an offence and the repression of fraudulent insolvency establishes a right to compensation covered by the State. The Luxembourg authorities have indicated that if payment cannot be obtained from the perpetrators, it could be asked from the Compensation Committee of the Ministry of Justice. However, to benefit from this, victims must either reside in Luxembourg on a habitual and regular basis or have been legally present in Luxembourg at the time of the acts or be a national of a Council of Europe member State. Moreover, the aforementioned law lays down three additional conditions. Firstly, the acts must have caused either bodily harm causing death or permanent or total work invalidity for longer than one month or be punishable under Articles 372 to 376 of the Criminal Code.<sup>19</sup> Secondly, the victims must have suffered damage entailing serious disruption to their living standards, resulting in a loss of or reduction in income, an increase in costs or exceptional outlay, inability to engage in professional activity, the loss of a school year, damage to physical or mental integrity or non-pecuniary damage or disfigurement as well as physical or mental suffering. Only the victims of the offences provided for in Articles 372 to 376 of the Criminal Code are dispensed from the requirement to provide proof of the damage to their physical or mental integrity, which, in their case, is presumed. Thirdly, the injured party must be unable in any way to obtain any other damages or compensation whatsoever. Finally, the payment of compensation may be refused, or the amount reduced, in the light of the conduct of the injured party at the time of the offence or their relations with the perpetrator of the offence.

130. GRETA notes that this procedure is currently not open to victims who are unlawfully present at the time of the offence. However, according to a draft law transposing EU directive 2011/36, trafficked victims should be exempted from the requirement of habitual or regular residence.

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<sup>19</sup> Articles 372 and 374 relate to indecent acts, including against minors, and articles 375 and 376 relate to rape. Article 373 has been repealed.

131. The decision on whether to award compensation within this framework is taken by a committee within the Ministry of Justice made up of one judge, one lawyer and two ministerial legal advisers. The application may be submitted through a lawyer, without the victim being required to attend. The authorities have reported that, to date, no compensation of this type has been awarded to a victim of human trafficking. It appears that, generally, there is a lack of information concerning the availability of this form of compensation.

132. **GRETA considers it important to add Article 382-1 to the list of provisions for which damage to physical or mental integrity may be presumed, dispensing with the requirement to establish incapacity.**

133. **GRETA urges the Luxembourg authorities to ensure that victims of human trafficking who are not EU nationals have access to compensation.**

134. **GRETA considers that the Luxembourg authorities should ensure that victims and those assisting them are fully informed of the possibilities of compensation which exist in domestic law (including before the Compensation Committee) and that training in the sphere of human trafficking for the personnel concerned (police, prosecutors and judges) covers the compensation of victims.**

f. Repatriation and return of victims

135. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection recognised in Article 40(4) of the Convention.

136. The Luxembourg authorities have stated that the repatriation and return of victims is organised with the assistance of the IOM under assisted voluntary return and reintegration (AVRR) arrangements but there is no specific programme. GRETA notes that this programme concerns a large number of beneficiaries. The IOM organised the return of one victim of Albanian origin during the period 2009-2012. The IOM's interlocutor is the Immigration Directorate of the Ministry of Foreign Affairs. According to the figures supplied by the authorities, there were four repatriations of victims of trafficking in 2010 and two in 2011. The Luxembourg authorities have said that some victims had wished to return to their country without delay (see paragraph 113). The Luxembourg authorities have specified that that it had not been felt necessary in such cases to take special precautions since the victims concerned wished to return to their country of origin without delay. In order to respect their wish, plane tickets were given to them and repatriation took place without any incidents. GRETA considers that victims who are repatriated should benefit from a certain number of assistance measures, in particular to ensure that their return is safe and that there are no risks of revictimisation in their country of origin.

137. **GRETA urges the Luxembourg authorities to take steps to:**

- **ensure that the return of trafficking victims is carried out with due regard for the rights, safety and dignity of the individuals concerned, which implies protection against reprisals and revictimisation;**
- **develop co-operation with trafficking victims' countries of origin to ensure that a reliable risk assessment is carried out, that their return is safe and that their reintegration is effective.**

#### **4. Implementation by Luxembourg of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### a. Substantive criminal law

138. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

139. The definition of trafficking in human beings used in Article 382-1 of the Luxembourg Criminal Code has already been referred to in paragraph 35 above. The offence is punishable by three to five years' imprisonment and a fine of 10 000 to 50 000 euros.

140. The following cases constitute aggravating circumstances punishable by five to 10 years' imprisonment and fines of 50 000 to 100 000 euros: deliberately endangering the victim's life, abusing the victim's particularly vulnerable situation (irregular or precarious administrative situation, precarious social situation, pregnancy, illness, physical or mental disability), using threats or force or constraint through abduction, fraud, deception, offering or accepting payments or benefits to obtain the consent of a person with authority over the victim, when the trafficker is a legitimate natural or adoptive ascendant of the victim or a person with authority over them or abuses the authority conferred upon them by their functions, or when the offence is committed by a public official or a law enforcement depositary or officer while discharging their duties (Article 382-2 (1) 1 to 6).

141. In cases where the offence was committed against a minor, it is punishable by 10 to 15 years' imprisonment and a fine of 100 000 to 150 000 euros (Article 382-1 (2) 3). Other aggravating circumstances punished in the same manner include: the use of violence, the fact that the offence was committed by people working in a conspiracy or a criminal organisation, the use of torture or the fact that the offence unintentionally caused the victim's death (Article 382-2 (2) 1 to 6).

142. Where complicity is concerned, Article 66 of the Criminal Code states that persons to be punished as the joint perpetrators of a crime are those having co-operated directly in the committing of the crime, those whose assistance made the offence possible and those having caused the crime through gifts, promises, abuse of authority and power, criminal subterfuge or deception. In addition, Article 67 stipulates that those having given instructions for a crime to be carried out, those having procured arms, instruments or any other means having served to commit the crime in the knowledge that they were to serve that purpose and those having knowingly helped or assisted the perpetrator(s) of the crime in acts which prepared or facilitated the crime or those consummated it shall be punished as the accomplices to the crime. Pursuant to this provision, those having used the services of a victim knowing this to be the case will therefore be accomplices to the offence.

143. As regards corporate liability, Article 34 of the Criminal Code stipulates that where a crime is committed on behalf or for the benefit of a legal person by one of its statutory bodies or by one or more of its *de jure* or *de facto* managers, this legal person may be declared criminally liable and incur the penalties provided for in Articles 35 to 38 (fines, confiscation, exclusion from participation in public tenders, dissolution). These provisions apply to all legal persons with the exception of the state and municipalities.

144. In Luxembourg law there is no specific offence of retaining, removing, altering, damaging or destroying another person's travel or identity document intentionally with a view to facilitating trafficking. The authorities pointed out that this could be prosecuted and punished on the basis of an ordinary law offence such as theft, destruction of moveable property, breach of trust or extortion. GRETA notes however that ordinary law offences are very general when compared with the situations listed in Article 20 (c) of the Convention. Travel and identity documents are key instruments in the context of transnational trafficking in human beings. Forged documents are commonly used for the transit and entry of victims to the countries where they will be exploited. Accordingly, identifying fake documents channels may result in the uncovering of criminal networks involved in trafficking in human beings. **GRETA invites the Luxembourg authorities to consider the possibility of incorporating in the Criminal Code the offence punishing the retaining, removing, altering, damaging or destroying of another person's travel or identity document intentionally with a view to facilitating trafficking.**

145. Concerning the consideration of previous convictions in other States Parties, Article 57-4 of the Criminal Code states that the rules established for reoffending will be applied in the case of a previous conviction having acquired the authority of *res judicata* passed in another EU Member State against the same person for different acts. A previous conviction is taken into account where the legal effects of that conviction are equivalent to those attached to a previous national conviction. The Luxembourg authorities have indicated that judges have discretion in taking into account previous convictions, including where they result from courts of countries that are not party to the Convention or are not members of the EU.

b. Non-punishment of victims of trafficking in human beings

146. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

147. Article 71-2 of the Luxembourg Criminal Code states that a victim of a trafficking offence as defined in Articles 382-1 and 382-2 of the Criminal Code will not be held criminally responsible for the illegal activities in which they participate under constraint. GRETA notes in this connection that the fact that a victim was forced to commit a crime or misdemeanour constitutes one of the purposes of exploitation provided for in the definition of trafficking in human beings set out in Article 382-1 of the Criminal Code (see paragraph 37). The Luxembourg authorities have stated that there had not yet been a case in which Article 71-2 of the Criminal Code had been applied in favour of a trafficking victim.

148. **GRETA encourages the Luxembourg authorities to draw attention within THB-related training programmes, particularly for the police, prosecutors and judges, to the Criminal Code provision stipulating the non-responsibility of trafficking victims for the illegal activities in which they were forced to participate.**

c. Investigation, prosecution and procedural law

149. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

150. Luxembourg law states that judicial proceedings may be launched both *ex officio* by prosecutors or officials entrusted with public prosecution duties and by the victim (Article 1, Criminal Procedure Code). The civil action may be pursued at the same time and before the same judges as the public prosecution. It may also be brought separately but in this case it would be suspended until there is a final judgment on the public prosecution (Article 3, Criminal Procedure Code).

151. Article 3-1 of the Criminal Procedure Code states that NGOs may exercise the rights afforded to the plaintiff in civil proceedings in respect of acts constituting an offence within the meaning of a number of provisions of the Criminal Code, including Article 382-1 relating to the offence of trafficking in human beings, which directly or indirectly damage the collective interests they are intended to defend. This option is open to them even if they do not justify a pecuniary or non-pecuniary interest and even if the collective interest coincides with the public interest whose defence lies with the public prosecutor. If a number of offences are involved, including trafficking, the victims must expressly state in writing that they are not opposed to the NGO taking a lead role in the proceedings and exercising the rights afforded to the plaintiff. **GRETA welcomes the possibility for NGOs to launch a civil action within the framework of criminal proceedings in THB cases.**

152. As previously explained, the Organised Crime Unit is competent for THB affairs within the Judicial Police. It falls to this unit to identify the victims and to carry out the investigations.

153. The authorities have mentioned a number of special investigation techniques which may be used by the police, subject to a decision by the state prosecutor or the investigating judge, regardless of whether or not the trafficking is carried out by an organised gang; these techniques include phone-tapping, surveillance or infiltration, including by a foreign police service (via international requests for judicial assistance) and the bugging of private premises (Articles 48-12 and following of the Criminal Procedure Code). **GRETA welcomes the possibility of using the special investigation techniques provided for in Luxembourg's legislation and, with reference to Recommendation Rec(2005)10 on "special investigation techniques" in relation to serious crimes including acts of terrorism, reiterates the importance of these techniques for effective investigations.**

154. GRETA notes that confiscations have been ordered in trafficking cases. The authorities have stated that the police had been made aware of the possibility of seizing assets (immoveable and moveable) or seizing equivalent property, where it is not established that the assets in question derive from the proceeds of trafficking but deemed that they correspond to the estimated amount, by order of the investigating judge. Furthermore, GRETA takes note of the sanctions taking the form of closures of establishments serving as a front for trafficking activities. **It welcomes the use of seizures of assets resulting from trafficking, followed by their confiscation, and also the shutting down of establishments having been used for trafficking activities.**

155. Where criminal prosecutions are concerned, the authorities have reported that 15 investigations were in progress in cases where the offence of trafficking was cited (12 cases concerned sexual exploitation, two cases were on labour exploitation and one case concerned a victim forced to commit offences). Since trafficking was established as an offence, there were five convictions in 2009, with prison sentences ranging between two and four years, one confiscation and one closure of an establishment, five convictions in 2010, with prison sentences ranging from 15 months suspended to four years, three confiscations and one closure of an establishment, and eight convictions in 2011, with prison sentences ranging between one and five years, two confiscations and one closure of an establishment. For 2012, the authorities have reported one case pending judgment in December 2012 and three convictions (of which two were not yet final).

156. GRETA notes that the sentences handed down are often less severe than those provided for in Articles 382-1 and following of the Criminal Code for trafficking offences with or without aggravating circumstances. The authorities have pointed out that it was possible to take account of attenuating circumstances, such as the absence of a criminal record, and set sentences below the thresholds established by the Criminal Code. GRETA notes that, in a decision fixing a 15-month suspended prison sentence, the situation of the victims had not been examined in detail as the offence had been qualified as recruitment for the purpose of sexual exploitation, with no indication of the aggravating circumstance of the means used (see paragraphs 38). GRETA questions the deterrent effect of such sentences, particularly if they are entirely suspended, for an offence which, it should borne in mind, results in a serious violation of the victim's fundamental rights. GRETA stresses the need, when no means is indicated, of clearly distinguishing whether the case at point involves the offence of trafficking or some other offence where no means have been established.

**157. GRETA considers that the Luxembourg authorities should ensure that offences qualified as human trafficking result in deterrent sentences proportionate to the crime and, to that end, ensure that training on THB for members of the judiciary (prosecutors and judges) is strengthened.**

d. Protection of victims and witnesses

158. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

159. Under Article 8 of the Law on assistance to and protection and safety of victims of trafficking in human beings, the police and NGOs must work together to provide effective protection for victims against reprisals or intimidation, including during the reflection period, investigations and prosecutions and court proceedings against the perpetrators. There is no witness or victim protection programme as such in Luxembourg, and protection measures are not described in its internal law.

160. Anonymous statements are not possible at present, for example. Nor is there any provision in Luxembourg law for new identities. As stipulated in the Criminal Procedure Code, audio or video recordings of the hearings of a witness or any minor can be made upon authorisation by a public prosecutor or an investigating judge and with the consent of the witness or the minor (or his or her legal representative). This procedure is not available before trial courts. Insofar as trafficking cases are concerned, Luxembourg law does not provide for the use of technical means to hear witnesses outside courtrooms or to make their voices unidentifiable.

161. In practice, the Judicial Police collaborates on a case-by-case basis with the German police when a victim has to be moved out of Luxembourg for their protection. GRETA notes that, in such cases, the victims benefit from the German witness protection programme under an agreement with the German authorities and the authority of a Luxembourg prosecutor. The authorities have also described practical measures that can be taken in other cases for the physical safety of victims and witnesses, regardless of their nationality, pointing out that a pragmatic approach was preferred. The police has a budget of 10 000 euros per annum for physical protection.

**162. GRETA urges the Luxembourg authorities to take all necessary steps to provide victims and witnesses with efficient and adequate protection against possible reprisals or intimidation (including through a victim and witness protection programme and the possibility of a change of identity), in particular during and after investigations and prosecutions.**

## 5. Concluding remarks

163. GRETA welcomes the measures taken by the Luxembourg authorities to combat human trafficking. It notes that the legislative framework regarding human trafficking, in particular regarding the definition of the crime, assistance to victims, the recovery and reflection period, residence permits and the principle of non-punishment, is globally satisfactory. However, the authorities should ensure that it is fully implemented in practice in order to achieve the best possible protection for trafficked victims.

164. GRETA notes the existing co-ordination between the different authorities within the framework of the Inter-ministerial "Trafficking" Committee, soon to be replaced by the Committee on the monitoring of the fight against human trafficking that will also involve civil society. However, the Luxembourg authorities should adopt an action plan or a strategy covering all forms of trafficking and following an approach focused on victims and their human rights.

165. In addition, the awareness of the public at large should be raised and demand should be countered by emphasising the serious violation of the victims' fundamental rights that results from trafficking, whether for the purpose of sexual exploitation, labour exploitation or others, and by laying emphasis on the punishment that will be imposed on persons using knowingly the services of a trafficked victim.

166. The identification of and assistance to trafficked victims should not be linked to prosecutions being launched or continued. Furthermore, Luxembourg must adopt a multidisciplinary approach to identification, by involving formally other field actors than the police, in particular specialised NGOs. The labour inspectorate must also be directly involved so that greater attention be given to risks of trafficking for the purpose of labour exploitation in Luxembourg. Given the recent development of begging in Luxembourg, the authorities should better detect and identify possible victims of trafficking for the purpose of forced begging.

167. It is also important that all identified victims be always informed of the assistance to which they are entitled as trafficked victims and can benefit for it, by referring them to specialised NGOs providing assistance.

168. Identification and assistance specific to child victims of trafficking should be adopted, taking into account the specificity and complexity of the situation of child victims, in accordance with the best interests of the child.

169. The possibility of obtaining compensation is crucial to victims. Therefore, the Luxembourg authorities should ensure good access to the compensation commission to all victims of human trafficking when they have not obtained compensation from traffickers within the framework of the criminal proceedings.

170. The training on human trafficking for judges and prosecutors should make it clear that in view of the seriousness of the violation of victims' human rights resulting from trafficking, the punishment imposed on traffickers should be both dissuasive and proportionate.

171. Further, victims being vulnerable to intimidations and reprisals from traffickers and trafficking networks, the Luxembourg authorities should make available and take all protection measures that are required before, during and after the judicial proceedings.

172. GRETA invites the Luxembourg authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the co-operation for achieving the purposes of the Convention.

## **Appendix I: List of GRETA's proposals**

### **Comprehensive approach and co-ordination**

1. GRETA urges the Luxembourg authorities to strengthen their action against trafficking for the purpose of labour exploitation and, in this connection, co-ordination between the public actors concerned.
2. GRETA urges the Luxembourg authorities to adopt, in consultation with civil society, an action plan or strategy for state action aimed specifically at combating trafficking in human beings and covering the different types of exploitation.

### **Training of relevant professionals**

3. GRETA considers that the Luxembourg authorities should ensure that all the professionals concerned receive periodic training to improve detection of potential THB victims, the identification of victims and the assistance provided to them as well as compensation procedures. This training should be aimed at members of the law-enforcement agencies, judges, prosecutors, labour inspectors, lawyers, staff working in shelters for trafficking victims, staff involved in child welfare, social workers, staff working in reception centres and the immigration removal centre for irregular migrants, diplomatic and consular staff, healthcare professionals as well as trade union staff.

### **Data collection and research**

4. GRETA urges the Luxembourg authorities to render operational, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.
5. GRETA considers that the Luxembourg authorities should carry out and provide backing for research into THB issues, so that the findings of that research help the public authorities to devise future anti-trafficking measures. Areas in which in-depth research is required include trafficking for the purpose of labour exploitation (particularly in the construction and catering sectors and domestic work) and child trafficking.

### **International co-operation**

6. GRETA invites the Luxembourg authorities to continue developing international cooperation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.

### **Measures to raise awareness and discourage demand**

7. GRETA invites the Luxembourg authorities to ensure that NGOs are granted without delay the official authorisation that will enable them to expand their awareness-raising efforts.
8. GRETA considers that the Luxembourg authorities should take awareness-raising and socio-economic measures for groups vulnerable to trafficking and in high-risk sectors of the economy in order to prevent human trafficking.

9. GRETA considers that the Luxembourg authorities would benefit from placing heavier emphasis on the sanctions faced by individuals using the services of a person in the knowledge that they are a victim of trafficking as a co-perpetrator or accomplice of the offence of trafficking in accordance with the Criminal Code. They could include this aspect in any information campaigns concerning trafficking for example, particularly in the risk sectors (prostitution, cabarets, catering, construction, domestic work, etc.).

10. GRETA considers that the Luxembourg authorities should continue their efforts aimed at discouraging demand for services provided by victims of any type of human trafficking, in particular in high-risk sectors.

### **Border measures to prevent THB and measures to enable legal migration**

11. GRETA considers that the Luxembourg authorities should strengthen their efforts to:
- introduce a checklist to facilitate the detection of trafficking risks as part of the visa application and processing procedure;
  - provide regular training to staff involved in issuing visas and residence permits to improve their ability to detect possible victims of trafficking in human beings;
  - provide information to foreigners envisaging travel to Luxembourg who belong to vulnerable groups, including domestic workers and in particular those working in diplomatic households, in a language they understand, warning them of the risks of trafficking in human beings, informing them of the services to which they can turn for assistance and guidance and advising them of their rights.

### **Identification of victims of trafficking in human beings**

12. GRETA urges the Luxembourg authorities to:
- ensure that the identification of possible victims is not linked to criminal proceedings being initiated or continued;
  - adopt a multidisciplinary approach to the identification of victims by officialising the role and input of specialised NGOs and by involving other relevant stakeholders, such as labour inspectors;
  - develop tools (guides, indicators, etc.) for the different actors involved, including NGOs, to be able to identify victims of human trafficking and with a view to formalising and co-ordinating efforts made to improve detection and identification of trafficking victims;
  - pay specific attention to the identification of victims of trafficking for the purpose of labour exploitation, including by strengthening proactive detection by the labour inspectorate;
  - devote particular attention to the identification of child victims of human trafficking and, to that end, adopt tools and a procedure geared to their specific situation in accordance with the best interests of the child;
  - ensure adequate training for all stakeholders involved in the identification process;
  - take measures to improve the identification of victims of human trafficking for the purpose of forced begging, in particular children.

### **Assistance to victims**

13. GRETA urges the Luxembourg authorities to:
- not link the assistance provided to victims to criminal prosecutions being lodged or continued;

- ensure that all victims detected have access to the assistance provided by the specialised NGOs;
- provide for the concluding of contractual agreements specifically relating to trafficking in human beings with NGOs in order to make assistance to THB victims a permanent fixture and facilitate the NGOs' efforts to assist all victims (women, men and children);
- grant access to the labour market and to training to victims from third countries who are lawfully resident in Luxembourg;
- provide for specific assistance for child victims of trafficking that takes their specific circumstances into account.

### **Recovery and reflection period**

14. GRETA urges the Luxembourg authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

### **Residence permits**

15. GRETA urges the Luxembourg authorities to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, in accordance with Article 14 of the Convention.

### **Compensation and legal redress**

16. GRETA considers it important to add Article 382-1 to the list of provisions for which damage to physical or mental integrity may be presumed, dispensing with the requirement to establish incapacity.

17. GRETA urges the Luxembourg authorities to ensure that victims of human trafficking who are not EU nationals have access to compensation.

18. GRETA considers that the Luxembourg authorities should ensure that victims and those assisting them are fully informed of the possibilities of compensation which exist in domestic law (including before the Compensation Committee) and that training in the sphere of human trafficking for the personnel concerned (police, prosecutors and judges) covers the compensation of victims.

### **Repatriation and return of victims**

19. GRETA urges the Luxembourg authorities to take steps to:
- ensure that the return of trafficking victims is carried out with due regard for the rights, safety and dignity of the individuals concerned, which implies protection against reprisals and revictimisation;
  - develop co-operation with trafficking victims' countries of origin to ensure that a reliable risk assessment is carried out, that their return is safe and that their reintegration is effective.

### **Substantive criminal law**

20. GRETA invites the Luxembourg authorities to consider the possibility of incorporating in the Criminal Code the offence punishing the retaining, removing, altering, damaging or destroying of another person's travel or identity document intentionally with a view to facilitating trafficking.

**Non-punishment of victims of trafficking in human beings**

21. GRETA encourages the Luxembourg authorities to draw attention within THB-related training programmes, particularly for the police, prosecutors and judges, to the Criminal Code provision stipulating the non-responsibility of trafficking victims for the illegal activities in which they were forced to participate.

**Investigation, prosecution and procedural law**

22. GRETA considers that the Luxembourg authorities should ensure that offences qualified as human trafficking result in deterrent sentences proportionate to the crime and, to that end, ensure that training on THB for members of the judiciary (prosecutors and judges) is strengthened.

**Protection of victims and witnesses**

23. GRETA urges the Luxembourg authorities to take all necessary steps to provide victims and witnesses with efficient and adequate protection against possible reprisals or intimidation (including through a victim and witness protection programme and the possibility of a change of identity), in particular during and after investigations and prosecutions.

## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

- Ministry of Justice
  - General Secretariat
  - Directorate of Legal and Judicial Affairs
- Ministry of Equal Opportunities
- Ministry of the Interior
  - Senior Government Advisor on National Security
- Police force
  - Directorate General
  - Organised Crime Unit
  - Foreigners Unit
- Ministry of Foreign Affairs
  - Migration Directorate (Foreigners Department, Refugees Department, Repatriation Department, Legal Department)
- Ministry of Families and Integration
  - Family, Children and Youth Division
- Ministry of Health
  - Legal department
- Public Prosecution Service (General Prosecutors' Office, public prosecution offices of Luxembourg and Diekirch, Victims Assistance Service)
- District Court of Luxembourg, Senior investigating judge
- National Mines and Labour Inspectorate (ITM)
- Luxembourg Reception and Integration Office (Office luxembourgeois de l'accueil et de l'intégration, OLAI)
- The Ombudsperson
- The President of the Ombuds-committee for the Rights of the Child
- Advisory Committee on Human Rights
- Members of the Chamber of Deputies (Legal Committee, Committee on Family, Youth and Equal Opportunities)

### **Intergovernmental organisations**

- International Organisation for Migration (IOM)

### **Non-governmental organisations**

- Femmes en détresse asbl (FED)
- Fondation Maison de la Porte Ouverte (FMPO)
- Croix Rouge Luxembourg
- ECPAT-Luxembourg

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Luxembourg**

GRETA engaged in a dialogue with the authorities of Luxembourg on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the authorities of Luxembourg on 22 November 2013 and invited them to submit any final comments. The comments of the authorities of Luxembourg, submitted on 2 January 2014, only available in French, are reproduced hereafter (the appendices mentioned in the comments can be obtained from the Secretariat of the Convention).



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère de la Justice

Conseil de l'Europe  
Secrétariat Général  
Direction Générale Droits de l'Homme et  
Etat de Droit

Secrétaire exécutive de la Convention du  
Conseil de l'Europe sur la lutte contre la  
traite des êtres humains

F-67075 Strasbourg CEDEX

Luxembourg, le 2 janvier 2014

V.réf. : DG-I/PN/GD/mc

Madame Nestorova,

Je me réfère à votre courrier du 22 novembre 2013 valant transmission du rapport final rédigé par le Groupe d'experts sur la lutte contre la traite des êtres humains (GRETA) sur la mise en œuvre de la Convention par le Luxembourg.

Dans le prèdit courrier vous nous avez accordé un délai prolongé jusqu'au 6 janvier 2014 afin de fournir des éventuels commentaires finaux.

Je tiens à vous remercier pour ce moratoire nous accordé, délai qui nous a permis de soumettre le rapport aux membres de notre comité inter-ministériel pour avis.

C'est à ce titre donc que je vous adresse par la présente les commentaires finaux du Luxembourg à publier ensemble avec le rapport final du GRETA.

Veillez agréer, Madame Nestorova, l'assurance de mes sentiments distingués et mes meilleurs vœux pour 2014.

Pour le Ministre de la Justice

Marie-Anne KETTER

Premier Conseiller de Gouvernement

**Annexes :**

**Annexe 1 :** Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l'exploitation sexuelle des enfants et portant modification du Code pénal et du Code d'Instruction Criminelle

**Annexe 2 :** Arrêt anonymisé de la Cour d'Appel de Luxembourg du 22 octobre 2013

**Annexe 3 :** Extrait du plan d'action du nouveau gouvernement luxembourgeois décembre 2013

## Commentaires quant au rapport final concernant la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par le Luxembourg

### II. Cadre national de la lutte contre la traite des êtres humains au Luxembourg

#### 3. Aperçu du cadre institutionnel de la lutte contre la traite des êtres humains

##### a. Comité interministériel « Traite » (page 11)

En vertu du projet de règlement grand-ducal relatif à la composition, à l'organisation et au fonctionnement du Comité de suivi de la lutte contre la traite des êtres humains, le Comité susvisé sera donc remplacé par le Comité de suivi de la lutte contre la traite des êtres humains et le cercle d'acteurs sera élargi par un représentant du Ministère de la Santé, du Ministère du Travail et de l'Emploi, du Ministère des Classes moyennes, de l'Inspection du travail et des mines, de l'OLAI (Office Luxembourgeois de l'Accueil et de l'Intégration), des services d'assistance aux victimes de la traite des êtres humains et un représentant des gestionnaires de ces services.

### III. Mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par le Luxembourg

#### 1. Intégration dans le droit interne des concepts de base et des définitions figurant dans la Convention

##### a. Application à la lutte contre la traite d'une approche fondée sur les droits humains (page 15)

§32 : La jurisprudence invoquée reste une jurisprudence isolée. En effet, la cour d'appel est revenue sur cette exigence d'une privation des droits fondamentaux et a déclaré que cette exigence ne soit pas donnée pour l'application de l'article 382-1 sur la traite des êtres humains (annexe 2).

##### b. Approche globale de la lutte contre la traite, coordination de tous les acteurs et de toutes les mesures et coopération internationale (page 18)

§50 : Un nouveau plan d'action a été établi par le nouveau gouvernement luxembourgeois suite aux élections du 20 octobre 2013 et il a fixé ce qui suit (annexe 3) :

*« Toute forme de traite d'êtres humains sera combattue par les moyens appropriés : lois, campagnes d'information, aides à la victime, coopération européenne contre les réseaux de la criminalité organisée.*

*Il convient de renforcer les aides pour permettre aux concernées et concernés de sortir de la prostitution (via Streetwork, « programmes EXIT » et autres) et de soutenir la plate-forme de collaboration des différents intervenants (Ministère de l'égalité entre femmes et hommes, police, parquet, encadrement social, et autres).*

*Le Gouvernement engagera un débat de consultation sur le phénomène de la prostitution au Luxembourg sur base d'un état des lieux à réaliser.*

*Les programmes d'éducation sexuelle et affective doivent se baser sur l'égalité et le respect réciproque entre femmes et hommes.*

*Le Gouvernement élaborera un cadre légal pour la prostitution non forcée qui mettra l'accent sur l'aide aux prostitué(e)s afin de les sauvegarder de l'illégalité.*

*Le Gouvernement s'investira pour la ratification de la Convention du Conseil de l'Europe, dite Convention d'Istanbul, sur la prévention et la lutte contre la violence à l'égard des femmes (mariages forcés, les crimes d'honneur, mutilations génitales) et encouragera une politique pluridisciplinaire contre la traite des êtres humains. »*

3. Mise en œuvre par le Luxembourg des mesures visant à protéger et promouvoir les droits des victimes de la traite des êtres humains

a. Identification des victimes de la traite des êtres humains (page 25)

§91 : Les victimes potentielles n'ont pas été déplacées hors du Luxembourg. En fait elles sont retournées de plein gré en Ukraine étant donné qu'elles n'avaient plus d'habitation, ni de travail payé. Les autorités luxembourgeoises ont eu connaissance des événements quelques mois plus tard seulement, par le biais d'un avocat représentant ces victimes.

b. Assistance aux victimes (page 29)

§100 : La police oriente les victimes de manière systématique vers les ONG, sauf en cas de mise en danger de l'intégrité physique de la victime.

La police informe également systématiquement les victimes sur l'assistance à laquelle elles ont droit. Cette obligation est ancrée dans la loi du 8 mai 2009 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains.

4. Mise en œuvre par le Luxembourg des mesures concernant le droit pénal matériel, les enquêtes, les poursuites et le droit procédural

c. Enquêtes, poursuites et droit procédural (page 38)

§156 et 157 : Il y a lieu de différencier entre le réquisitoire du Parquet et le jugement qui intervient par la suite. En effet, les circonstances aggravantes sont toujours libellées par le Parquet qui par ailleurs requiert toujours des peines d'emprisonnement subséquentes.

Le Parquet reçoit des formations et est sensibilisé.

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