

# COMPREHENSIVE PLAN TO FIGHT AGAINST TRAFFICKING IN WOMEN AND GIRLS FOR SEXUAL EXPLOITATION

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Ministry of Health, Social Services and Equality



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## I. INTRODUCTION

Trafficking in human beings **is** the slavery of our time. It is, sadly, a reality in Europe and in our country. It is a profound violation of human rights and of a person's freedom and dignity. This is a severe form of crime that in most cases involves criminal organisations that profit significantly from exploiting these people in different ways.

The **victims** of trafficking in human beings are recruited, transported or harboured through deception, taking advantage of their vulnerability or through the use of force with the purpose of profiting from their exploitation.

The **concept** of "trafficking in human beings" is wide and refers to the different purposes of exploitation of its victims. Thus, trafficking in human beings may refer to the removal of organs for financial profit, using people for labour exploitation, to carry out criminal activities or for sexual exploitation.

This attack against a person's fundamental rights has reached **huge proportions**, with sexual exploitation being one of the most cruel demeaning forms of exploitation and the largest, in size in our country. In this regard, in the 2014 report "Forced Labour, Human Trafficking and Slavery", the International Labour Organisation (ILO) estimated that the total number of people in this situation of modern slavery (among which are the victims of sexual exploitation), amounts to almost 21 million people.

Furthermore, the reports issued by different international organisations working in the fight against human trafficking (ILO, UN Office on Drugs and Crime, European Union, etc.) offer information that, as will be shown later, reveal an unquestioned reality: trafficking in human beings is a crime that **isn't gender neutral**. Human trafficking affects women in a significantly larger proportion, not only because they represent the higher number of victims but also because women are subject to more severe forms of exploitation, especially with regard to trafficking for sexual exploitation.

The Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Declaration on the Elimination of Violence Against Women of the UN General Assembly (1993) and the Beijing Action Platform (1995) recognise trafficking in human beings as a form of violence. According to these, this crime is one of the manifestations and consequences of **inequality between men and women** in both the societies at origin and at destination.

The **National Strategy to Eradicate Violence Against Women (2013-2016)**, approved by the Council of Ministers 26 July 2013, according to article 3 of the Organic Law 1/2004, of 28



December, on Integrated Protection Measures Against Gender Violence, contains a commitment by the public authorities to end violence perpetrated against women simply for being women. It also includes, for the first time, measures aimed at advancing towards eradicating all forms of violence against women, especially mentioning the trafficking in women for sexual exploitation, an even more cruel and unacceptable form of violence. The Strategy activities are based on a gender equality policy and the fight against discrimination as the only possible means that can contribute to change the cultural model, so as to eradicate any form of violence against women and to facilitate the protection of the fundamental rights to which they are entitled by the Spanish Constitution.

Even though drawing a single and global National Strategy which includes objectives aimed at eradicating different forms of violence against women is essential, the fight against the trafficking in women and children for sexual exploitation requires a **specific treatment**, as it has particular characteristics; a comprehensive approach involving administrations, institutions and bodies with responsibilities and specialization in this matter, and able to consider the special characteristics of the victims and criminals involved. As a result of the above, a **new Comprehensive Plan** to fight trafficking for sexual exploitation is presented below. The Plan is based on the Spain's commitment for the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol 2000), the first international instrument that specifically refers to "trafficking in persons".

The Palermo Protocol establishes an internationally agreed definition of trafficking in persons, highlighting the severe attack it entails on human rights and demanding that the fight against trafficking in persons becomes a part of the political agenda. Furthermore, in contrast to other approaches deployed by governments before, based on the fight against criminality and migration control, the Protocol highlights the responsibility of governments in the prevention, protection, assistance and reparation of victims.

In this regard, the strategy to fight trafficking in human beings is designed in the Council of Europe Convention on Action against Trafficking in Human Beings (Convention 197 of the Council of Europe, agreed in Warsaw on the 16th May 2005, National Official Journal No. 219 of September the 10th 2009.)

The new Plan includes **diagnostics** based on the results obtained from implementing the former Plan and includes observations and recommendations made by the administrations and institutions that participated in its execution. It also provides the contributions made by the civil society through the institutions represented in the Social Forum Against Trafficking for Sexual Exploitation. It also includes the contributions made by the Autonomous Communities, the Spanish Federation of Municipalities and Provinces (FEMP, in the Spanish abbreviation) regarding the implementation of the measures contained in the Plan in their territories, and the



Public Prosecutor Office, which have submitted observations regarding both the execution of the 2009-2012 Plan and the new challenges and issues ahead. Similarly, it includes the conclusions and recommendations carried out by different national and international organisations that monitor or assess the policies that exist in Spain in this regard. Specifically, observations and recommendations have been taken into account that were included in the report prepared by the Office of the Ombudsman: “La Trata de Seres Humanos en España: Víctimas Invisibles” [“Trafficking in Human Beings in Spain: Invisible Victims”], the Annual Reports carried out by the US State Department regarding Trafficking in Persons (TIP Report) and the Report of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) on the Implementation in Spain of the Council of Europe Convention on Action Against Trafficking in Human Beings published in September 2013.

This Plan also contains basic aspects regarding the development of an efficient policy to fight trafficking in human beings for sexual exploitation. It also includes measures that are a part of a comprehensive action which involves a multiplicity of public and private agents, guaranteeing a multidisciplinary and gender-based approach that promotes communication and coordination.

It places the **promotion of human rights and the protection of victims** as its main objective. Thus, the Plan is built according to a perspective that focuses on protection and promotion of human rights, placing the possible victim at the centre of all actions, above other interests or objectives.

In this context, it should be taken into account that the destination of victims of trafficking in human beings for sexual exploitation is the sphere of prostitution, which is associated with violence, marginalisation, economic hardship, abuse and inequality, and that is where these victims are often detected.

According to the European Union Strategy towards the Eradication of Trafficking in Human Beings (2012-2016), demand for sexual services is identified as one of the main causes of trafficking in human beings for sexual exploitation. Hence, this aspect must necessarily be tackled as part of prevention, taking into account not only the men who demand prostitution but also the society at large which, in the belief that trafficking in human beings takes place in far-off countries, has a tolerant attitude towards nearby situations which are not recognised as possible situations of slavery.

The Government Delegation against Gender-based Violence continues to be the **Plan Coordinator**, exercising the competences granted by Royal Decree 200/2012 of 23 January, which develops the basic organic structure of the Ministry of Health, Social Services and Equality and amends the Royal Decree 1887/2011 of 30 December, which establishes the basic organic structure of the Ministry offices, by virtue of which the latter, in the sphere of the



State General Administration, is granted the fostering of coordination in matters of trafficking in human beings for sexual exploitation as well as cooperation between institutions and Administrations with the responsibility to assist and protect its victims.



## II. CONCEPTUAL APPROACH: TRAFFICKING IN HUMAN BEINGS.

### II. 1. Legal definition of Trafficking in Human Beings.

According to **article 177 bis of the Criminal Code, trafficking in human beings is considered** to be *“the recruitment, transportation, harbouring or receipt of people, including the exchange or transfer of control over said person, by means of violence, intimidation or deceit or when abusing of a situation of power or necessity or a victim's vulnerability, regardless of its nationality, or of when giving or receiving payments or benefits to achieve the consent of a person having control over another person, with any of the following objectives:*

- a) *Imposing forced labour or services, slavery or practices similar to slavery, servitude or begging.*
- b) *Sexual exploitation, including pornography.*
- c) *Exploitation towards carrying out criminal activities.*
- d) *The extraction of body organs.*
- e) *Holding forced marriages.*

*A situation of need or vulnerability exists when the person in question has no real or acceptable alternative to being subjected to the abuse.*

*The consent of a victim of trafficking in human beings shall be irrelevant where any of the means set forth in the first section of this article have been used.*

*When this conduct refers to an minor person, it will be considered trafficking even if none of the means set forth has been used.*

*Any person for whom there are indications that has been the object of the conduct described in the sections above will be considered a victim of trafficking in human beings , even if exploitation hasn't been consummated and regardless of whether a claim has been issued by the potential victim.*

*A situation of vulnerability exists when the person in question has no other real or acceptable alternative but becoming the subject of abuse. Minor persons are especially vulnerable. Other factors that should be taken into account in assessing vulnerability are: gender, state of pregnancy, health and disability.”*





## II. 2. Elements of trafficking in human beings.

According to the above definition, the crime of trafficking in human beings takes place when one of the actions considered above is carried out, using one of the means pointed out which invalidates consent (except in the case of minor victims, where consent is irrelevant even if none of the means pointed out has been used), as long as this conduct is carried out with the purposes of exploitation.

These are precisely the **aspects that determine when we face a situation of trafficking inhuman beings**, especially in relation to other crimes that are not exclusively personal; in particular, the smuggling of immigrants, as specified in article 318 bis of the Criminal Code. In regard to this crime, we must always keep in mind that, unlike the smuggling of migrants, the trafficking of human beings:

- Is never consented and, whenever an initial consent has existed, this has resulted from coercion, deceit or abuse (of a situation of vulnerability). However, smuggling of migrants, even when it is carried out in degrading or dangerous conditions, it is always consented.
- Transnationality is not always involved; that is, in many times there is no illegal crossing of borders involved and the victims of trafficking in human beings aren't always foreign people in an irregular situation. Quite the opposite, the smuggling of immigrants aims exactly to illegally crossing a border.
- It always requires the intention of exploiting the victims to profit economically whereas an action of smuggling of immigrants consists of transporting migrants from one country to another, without any further intention.
- The crime of trafficking in human beings is of a strict personal nature and attacks human rights. In the case of the smuggling of migrants, the legal issue to protect is the interest of the State (protection of its borders).

Despite the above, **smuggling and trafficking in human beings** are crimes that are often connected. In this regard, it should be pointed out that approximately 40% of victims of trafficking in human beings are identified as being foreign persons in an irregular situation.

Distinguishing between both crimes is essential from the point of view of the assistance to the victims and their recovery, as well as in investigating the crime since it could be the case that the victims of trafficking in human beings could be confused with people illegally crossing a border, in which case the mechanisms to protect the human rights of victims of trafficking may not be activated.



### **II. 3. Trafficking in women for sexual exploitation: a form of violence against women.**

Three relevant conclusions may be drawn from the analysis of data regarding the state of trafficking in human beings worldwide that the UN Office on Drugs and Crime has carried out: **sexual exploitation is the most common aim of exploitation, two out of three victims of trafficking in human beings are women (of which 15%-20% are children) and the percentage of female victims rises exponentially in the case of trafficking for sexual exploitation.**

Furthermore, the Opening Statements of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and fighting trafficking in human beings and protecting its victims, recognises the specific gender bias of trafficking, pointing out that trafficking of human beings affects women and men differently.

Hence, it could be stated that trafficking of human beings affects women and girls most often and that they are usually subject to more severe forms of trafficking (trafficking for sexual exploitation), as a result of their greater vulnerability arising from the following factors, among others:

- Social organisation that perpetuates gender inequality models and allows the devaluation of women and girls in general, and especially in armed conflicts, in population displacement, or when belonging to an ethnic minority, etc.
- The feminisation of poverty.
- Inequality in education, training and employment.
- Exploiting their desire to emigrate to improve their living conditions and their relatives'.

In this way, women and children are in a clear state of vulnerability towards being recruited and subjected to this cruel form of violence against women.

This much is stated by the Declaration to Eradicate Violence Against Women approved by Resolution 48/104 of the UN General Assembly of 20 December 1993 when it defines "violence against women" as any act of violence based on belonging to the female sex and which results or could result in physical, sexual or psychological damage or suffering for a woman as well as any threats of such acts, coercion or the arbitrary deprivation of freedom, regardless of whether this takes place in public or in private life.

It also points out that violence against women is understood as covering the following incidents:



- a. Physical, sexual or psychological violence that takes place in the family, including physical abuse, sexual abuse of children in the household, violence regarding dowry, rape by a husband, female genital mutilation and other traditional practices that are harmful to women, acts of violence perpetrated by other family members and violence related to exploitation.
- b. Physical, sexual and psychological violence perpetrated within the community in general, including rape, sexual abuse, sexual harassment and intimidation in the workplace, in educational institutions and other places, the trafficking in women and forced prostitution.
- c. Physical, sexual and psychological violence perpetrated or tolerated by the State, wherever it takes place.

According to this definition and in accordance with other international texts, such as the Recommendations of the Convention to Eliminate All Forms of Discrimination Against Women (1979) or the Action Platform of Beijing (1995), violence against women is defined in a context of inequality and discrimination of women as compared to men.

These are situations of a structural nature within the existing social model, based on **inequality, discrimination and subordination of women** compared to the position of power held by men. Its disappearance requires the designing of a strategy aimed at fostering a social and cultural change in such a way that: firstly, equal opportunities between women and men is achieved, decreasing the vulnerability of women and children in regard to being recruited at the country of origin; and, secondly, reducing the demand for those services that feed the trafficking in human beings in the country of destination. .

This demand is precisely one of the key aspects pointed out in the prevention of the trafficking in human beings in the European Strategy towards the Eradication of Trafficking in Human Beings (2012-2016), specifically highlighting the need to “intensify prevention tasks according to the causes that make people vulnerable to trafficking” and stating that a priority in the prevention of trafficking should be to “understand and reduce demand”, specifically referencing sexual exploitation.

Thus, to better understand the demand, the European Commission will be starting a research in regard to reducing supply and demand of the services produced by victims, on the basis on which, legal measures may even be put forward to discourage the use of these services, as well as starting awareness campaigns aimed at consumers and users as a measure to reduce the demand.

In short, although the fight against trafficking in human beings requires the active and effective persecution of traffickers, attacking the economic profits derived from trafficking and



the deployment of actions aimed at protecting and recovering victims, fighting this form of violence against women requires the action of those institutions that promote equality and the fight against discrimination, fighting towards an equal society for men and women alike.

To this end, the demand for sexual services must be tackled, raising awareness in the population about its impact on the exploitation of women and children and, therefore, adopting measures that help reduce it.

To attain this goal, it is also necessary to promote an equal education that integrates the principle of non-discrimination against women and contributes to denying a feeling of gender superiority across all levels of education. Similarly, actions are needed that convey to teenagers a message of zero tolerance towards sexual exploitation which will lead to stop demand.

In this regard, the media, both written and audiovisual, play an essential role not only from the point of view of the information they supply but concerning the profit from classified ads that may be covering up situations of sexual exploitation or trafficking for sexual exploitation.

Consequently, coordination in matters of trafficking in human beings for sexual exploitation, at the level of the General State Administration and cooperation with institutions and administrations with competences in the assistance and protection of victims, is granted to the Government Delegation against Gender-based Violence (article 3.e, Royal Decree 200/2012 of 23 January, developing the basic organic structure of the Ministry of Health, Social Services and Equality and amending Royal Decree 1887/2011 of 30 December establishing the basic organic structure of ministerial offices.)

Although the Government Delegation against Gender-based Violence was originally born at the command of the Organic Law 1/2004 of 28 December on integrated protection against gender violence, assigning the Government Delegation the task of definition of public policies regarding gender violence, defined in accordance with said law, it has later acquired competences aimed at preventing and fighting all forms of violence against women.

Article 3 of Royal Decree 263/2011 of 28 February, which develops the basic organic structure of the Ministry of Health, Social Policy and Equality, grants the Government Delegation against Gender-based Violence competences to fight all forms of gender violence, specifically pointing out some of its functions in regard to monitoring and assessing the measures included in the 2009-2012 Comprehensive Plan to Fight Trafficking in Human Beings for sexual exploitation and fostering cooperation with non-profit organisations involved in this matter. Later, Royal Decree 200/2012 of 23 January grants the Government Delegation against Gender-based Violence further roles in regard to coordination of actions and



cooperation in matters regarding the fight of trafficking in human beings for sexual exploitation.

Furthermore, to continue moving forward towards achieving real and effective equality, which involves tackling violence against women whichever form this takes, the National Strategy to Eradicate Violence Against Women (2013-2016), approved on the 26<sup>th</sup> July 2013, containing the public authority's commitment to end violence against women just based in their condition of being women, incorporates measures aimed at advancing in the fight against all forms of violence against women, highlighting especially the trafficking in women for sexual exploitation.



### III. LEGAL FRAMEWORK

#### III. 1. International and European Scope.

Considering the transnational dimension of such a severe violation of human rights, eradicating trafficking in human beings and in particular trafficking in women and girls for sexual exploitation has been one of the objectives of international organisations for more than one hundred years.

This need has been indicated in numerous [international treaties and conventions](#) that state commitments aimed at investigating and prosecuting the trading in women and girls for the purposes of prostitution; among others, the International Agreement of 18 May 1904 for the Suppression of the Traffic in Women and the International Convention of 4 May 1910 for the Suppression of the Traffic in Women, amended by the Protocol approved by the UN General Assembly on 3 December 1948; International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children and the International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Age, amended by the Protocol approved by the UN General Assembly of 20 October 1947; or the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Lake Success, New York, 21 March 1950.)

These agreements, all of which were ratified by Spain, establish measures that aim to fight situations of exploitation and slavery of persons, especially women and children.

However, the first regulation at international level that refers specifically to trafficking in persons, regardless of the aim of exploitation, takes place in 2000 when the UN member states approve the United Nations Convention against Transnational Organised Crime through Resolution 55/25 of the General Assembly. The **Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, complementing the United National Convention against Transnational Organised Crime** is born from this Convention and was ratified by Spain on 21 February 2002 (National Official Journal BOE 11/12/2003), entering into force on 25 December 2003 (hereinafter, the Palermo Protocol).

This first international instrument in this matter, which is binding for the States party to the protocol, is a starting point to define public policy in regard to the trafficking in human beings from 2000 onwards. It establishes an internationally-agreed definition of "Trafficking in Persons": *"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or*



*benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."* Furthermore, it established that the States Parties to the Protocol must adopt "legislative and other measures as may be necessary to define this criminal offence in their domestic legal system."

Furthermore, on the basis that trafficking in persons is a human rights violation, the Palermo Protocol demands a commitment to act with a people-centred approach, prioritising victims protection and the promotion of their rights over other objectives.

Following the work started by the Palermo Protocol in 2000, the UN General Assembly approved the United Nations Global Plan of Action to Combat Trafficking in Persons 2010 (Resolution 64/293), which recognises "the need to develop a global plan of action against trafficking in persons that will:

- a. Promote universal ratification of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as other relevant international instruments that address trafficking in persons, and reinforce the implementation of existing instruments against trafficking in persons,*
- b. Help Member States to reinforce their political commitments and legal obligations to prevent and combat trafficking in persons,*
- c. Promote comprehensive, coordinated and consistent responses, at the national, regional and international levels, to counter trafficking in persons,*
- d. Promote a human rights-based, gender- and age-sensitive approach in addressing all factors that make people vulnerable to trafficking in persons and strengthening the criminal justice response, which are necessary to prevent trafficking in persons, protect its victims and prosecute its perpetrators,*
- e. Raise awareness within the United Nations system and also among States and other stakeholders, such as the private sector, civil society and the international and national mass media, and the public at large,*
- f. Foster cooperation and coordination among all relevant stakeholders, including Member States, international organizations, civil society organizations and the private sector, and within various entities of the United Nations system, taking into account existing best practices and lessons learned,*



g. .

This Plan also establishes the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children, and requests from the Secretary-General to take all necessary measures for its effective operation, and acknowledges previous and ongoing contributions to other funding sources that support efforts to combat human trafficking.

In regard to compliance with the objectives of this Global Plan of Action, the UN General Assembly on 8 November 2013, adopted Resolution 68/108 on “Improving the coordination efforts against human trafficking”, highlighting that cooperation in building a global partnership against human trafficking is essential to effectively prevent and counter the threat of human trafficking and other contemporary forms of slavery, as well as to comprehensively protect victims at the regional, national and international levels, involving the Member States, intergovernmental and non-governmental organizations.

Resolution 68/108 also points out the relevance of the UN Global Plan of Action to Combat Trafficking in Persons in raising awareness of the situation of victims of human trafficking and promoting and protecting their rights, agree to establish the 30 July (the day on which the Resolution that approves this Plan was adopted) as the World Day Against Human Trafficking in Persons, starting in 2014.

The United Nations Convention on the Rights of the Child (1989) and the Optional Protocol on the Convention on the Rights of the Child regarding the selling of children, child prostitution and the use of children in pornography (UN General Assembly Resolution A/RES/54/263 of 25 May 2000, enforced since 18 January 2002) are also relevant. They provide special protection to victims under the age of 18 by establishing, among other aspects, the irrelevance of consent when the victim is minor. Pursuant to this regulation, coercion, threat or deceit are not required to establish that the person is a victim when such person is minor.

Then, in the sphere of the Organization for Security and Co-operation in Europe (OSCE), the Council of Ministers at Maastricht approved in December 2003 the **Action Plan of the Organization for Security and Co-operation in Europe (OSCE) on “Fighting the Trafficking in Human Beings.”**

The terms of the Plan focus on incorporating to the criminal legislation of the Member States, including Spain, a criminal offence that punishes trafficking in human beings and several measures aimed at investigating the crime, the exchanging of information between competent authorities and the support and protection of victims and witnesses.

In 2005, Decision No. 685 added to the 2003 Action Plan, special protection and assistance measures for children who are victims of trafficking. Later, in 2013, on occasion of the tenth anniversary of the Plan, Decision No. 1107 was adopted. This Decision incorporates





an Annex that considers mechanisms to tackle current trends and patterns in trafficking in human beings, as well as the challenges in prosecuting the crime, as well as in its prevention and in the protection of victims.

Besides the above mentioned instruments, which are specifically referred to trafficking in human beings, other international instruments may be pointed out in the sphere of eradicating violence against women.

Thus, Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 2 September 1981, urges States Parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women, including these realities among the forms of discrimination and violence against women.

From then on, the United Nations General Assembly has issued several declarations and resolutions regarding trafficking and sexual exploitation as a form of violence against women, recognising the unquestionable relationship between the inequalities endured by women and different forms of violence against women. Among the texts that highlight this fact are, particularly, the UN General Assembly Declaration on the Elimination of Violence Against Women (1993) and the Beijing Action Platform (1995) which includes trafficking in women and forced prostitution in its definition of violence against women (as quoted in the previous section.)

Furthermore, the National Report presented by the Task Force on the Universal Periodic Review (UPR), in accordance with paragraph 5 of the Annex to Resolution 16/21 at the 21st Session (January 2015), makes observations on the advances made by Spain in matters of trafficking in persons, highlighting the recommendation regarding the drafting of a new Comprehensive Plan to Fight Against Trafficking in Persons for sexual exploitation and that special attention should be paid to minor victims.

Equally important is Resolution 1325 of the United Nations Security Council on Women, Peace and Security which, alongside Resolutions 1820, 1888 and 1960 which complement it, invites States to apply the gender criterion in situations of armed conflict and peace reconstructions, paying special attention to promoting the fight against trafficking in women and girls for sexual exploitation.

There has also been a significant evolution in the [European context](#) in regard to how trafficking in human beings has been tackled from a perspective of promoting and protecting human rights. In this sense, The Member States of the Council of Europe adopted on 16 May 2005 the **Convention 197 of the Council of Europe of 3 May 2006 on Action Against Trafficking in**



**Human Beings** (hereinafter, Warsaw Convention), ratified by Spain on 2 April 2009 (National Official Journal, BOE, 10 October 2009) which entered into force on 1 February 2008.

This Convention considers the Palermo Protocol as the starting point of action against trafficking in human beings at international level and includes basic criteria in the fight against trafficking in human beings collected in other relevant international legal instruments in this matter. Its aim is to strengthen the protection mechanisms established by such instruments. Thus, the Council of Europe Convention to Fight Trafficking in Human Beings includes the definition of "trafficking in human beings" contained by the Palermo Protocol, which was agreed internationally.

Following the Explanatory Guide of this Convention, the added value of the regulations it contains lies in the following aspects:

- It considers the trafficking in human beings as a violation of human rights that violates the dignity and integrity of the person. As a result, the rights and protection of its victims are its essential aims. This has entailed the designing of a comprehensive and multidisciplinary strategy that guarantees the efficiency in practice of measures to protect and assist women, taking into consideration their specific needs, especially in regard to the victims' gender and age.
- The objective of the Convention is to fight against trafficking in human beings in a wide sense, prosecute the crime and establish protection for its victims in every case where the action described takes place (using the means contained in Article 4), with the purpose of exploiting the victim, regardless of whether the crime is carried out at transnational (involving the legal or illegal crossing of borders), or national level and regardless of whether organized crime groups are involved. Likewise, it refers to all forms of trafficking, regardless of the type of exploitation pursued.
- Finally, the Convention highlights the significance of cooperation to effectively fight against trafficking in human beings both at international level and at national level, involving all public and private stakeholders and civil society.

Thus, based on this Convention, the European States, including Spain, have committed to fighting all forms of trafficking in human beings at national and transnational level, irrespective from whether organized crime is involved, and to foster the protection of all possible adult and minor victims, providing the protection established by the Convention regardless of the form of exploitation and, when the age of the victim is unknown and there is reason to believe they may be minor, considering them to be a child until their age is determined.



In this context, another original aspect which is a significant step forward in the fight against trafficking in human beings is the creation of an independent and unbiased mechanism to monitor the implementation of the convention, created in Chapter VII (articles 36 and following), which establishes the setting up of a Group of Experts on Action against Trafficking in Human Beings (GRETA).

At European level, trafficking in human beings and sexual exploitation are also defined as forms of violence against women in the **European Convention n. 120 on Preventing and Combating Violence against Women and Domestic Violence** signed in Istanbul on 11 May 2011 and enforced since 1 August 2014, ratified by Spain on 11 April 2014 (BOE of 6 June 2014), entering into force on 1 August 2014. This Convention defines and criminalizes several forms of violence against women, such as forced marriages, female genital mutilation, sexual harassment or physical and psychological violence against women.

This is the first binding instrument worldwide that creates a comprehensive legal framework to prevent violence exerted against women, protects the victims and guarantees that the abuse does not go unpunished.

The Convention also establishes the creation of a Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) to examine whether the countries that ratified the Convention are complying with their commitments and to issue recommendations.

The Convention fosters international cooperation, the participation of the civil society, the private sector and the media as well as measures aimed at preventing situations of violence, improving the specialisation of professionals and collecting statistical information, as well as detecting, informing, assisting and protecting their victims.

Finally, of a complementary nature, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed in Lanzarote on 25 October 2007 (BOE 274 of 12 November 2010), which, with the protection of children at its core, includes measures that aim at preventing sexual crimes against children, the criminal prosecution of the offenders and the protection of the minor victims of such crimes, among which recruitment for child prostitution is included.

The **European Union** tackles violence against women and the trafficking in human beings in different strategies and plans. The incorporation of different support mechanisms for victims in derived law may be highlighted. For instance:

- 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 those who have been



subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

- Directive 2011/92/EU of the European Parliament and of the Council, of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, establishes minimum regulations regarding the definition of criminal offences and of the punishment in the sphere of the sexual abuse and sexual exploitation of children, child pornography and the online solicitation of children for sexual purposes via social networking websites and chat rooms. It also introduces provisions to improve prevention in regard to these crimes and the protection of its 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 the victims of crimes, and replacing Council Framework Decision 2001/220/JHA. The aim of this Directive is to guarantee that the victims of these crimes receive adequate information, support and protection and that they may take part in criminal proceedings.

The European Union also counts on a specific regulation: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, which tackles the fight against trafficking in human beings based on the promotion of human rights by extending the forms of exploitation contained in the Council Framework Decision 2002/629/JHA on combating trafficking in human beings and complementing some of the provisions of the Council of Europe Convention, and highlights the importance of tackling trafficking in human beings from a gender perspective and focusing this regulation on improving protection and assistance of the victims in practice, in line with the trend set at international level by the Palermo Protocol and the Council of Europe Convention.

Besides counting on Council Framework Decision 2002/629/JHA on combating trafficking in human beings, as background to this regulation, the European Union has counted on several instruments aimed at establishing measures for combating and preventing trafficking in human beings; for instance: the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01) and the Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01) which, even if it is the instrument through which the Council of Europe establishes political priorities for the coming years, stands out containing expressly the challenge of guaranteeing that fundamental rights and freedom and the people's integrity



are respected while guaranteeing security in Europe and, specifically, mentioning trafficking in human beings as one of its priorities.

In recent years, the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM (2012) 286 final, of 19 June 2012 on **The EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016)**, is the instrument developed by the European Commission to carry out specific measures that favour the implementation of the provisions contained in Directive 2011/36/EU, adding value to the latter regulation and complementing the work carried out by governments, international organisations and civil society in the European Union and third-party countries.

The Strategy establishes five priorities on which the European Union must focus to tackle trafficking in human beings:

- A) Identifying, protecting and assisting victims of trafficking.
- B) Stepping up the prevention of trafficking in human beings.
- C) Increased prosecution of traffickers.
- D) Enhanced coordination and cooperation among key actors and policy coherence.
- E) Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

These are the five priorities that have inspired the structure which configures this new Comprehensive Plan to Fight Trafficking in Women and Girls for sexual exploitation.

In short, since 2000, several international organisations have established the fight against trafficking in human beings as one of their priorities, incorporating measures to provide greater efficiency to combat this crime and, most of all, to guarantee better assistance and protection to its victims. The following aspects stand out in this regard:

- The fight against trafficking in human beings is tackled from the perspective of promoting the rights of victims, improving their identification and access to assistance and protection resources.
- Women and children are the main victims of trafficking. Hence, special attention must be paid to the gender dimension in tackling the fight against trafficking in human beings as a vulnerability factor in recruitment, as well as age, and to assist in covering the specific needs of the victims efficiently.



- Trafficking in human beings does not necessarily involve a transnational dimension; that is, the crime may be committed in the territory of a single State with no border crossing required. Victims must be protected regardless of their regular or irregular situation in a country. Similarly, trafficking in human beings is a crime that does not require the intervention of an organised crime network for it to take place; it may be carried out by criminals that do not belong to an organised crime group.
- Policies to fight trafficking must be designed with a comprehensive and multidisciplinary perspective, based on cooperation and involving a variety of agents. The participation of the civil society, the mass media and the private sector are of special relevance.
- Demand has been identified as one of the main causes for the trafficking in human beings. As a result, different conventions establish that States should tackle this matter.

### **III. 2. National Scope.**

The setting of the international scenario and the Spain's ratification of the different international conventions and agreements have led to an amendment of the legal framework and of public policies addressed at fighting against trafficking in human beings in Spain. Thus, significant steps have been taken in the past few years towards both strengthening the prosecution and punishing the crime as well as guaranteeing the protection and assistance to victims.

From the point of view of **prosecuting the crime** of trafficking in human beings and crimes related to sexual exploitation and prostitution, several reforms have been carried out in the Spanish criminal legislation.

In this regard, it should be taken into account that the Spanish **Criminal Code** of 1995 (Organic Law 10/1995 of 23 December), entailed the decriminalisation of several activities linked to procuring that had been classified in the Criminal Code published by Decree 3096/1973 of 14 September. This resulted in the proliferation of certain high-risk conducts and environments.

Among such decriminalised conducts the following can be pointed out: whoever cooperates or protects the prostitution of one or several persons, inside or outside Spain, or recruitment to that effect (Art. 452 bis a-1st of the 1973 Criminal Code); whoever lives completely or partially of a person or more than one, whose prostitution or corruption they are exploiting (Art. 452 bis c of the 1973 Criminal Code); the owner, manager, administrator or head of premises where prostitution or other forms of corruption occur, regardless of it being open or not to the public, and any person who knowingly participates in its financing or who



knowingly served to the ends mentioned in such premises (Art. 452 bis d-1st of the 1973 Criminal Code); or those who rent or rent out a building or other premises, or part of it, for the exploitation of prostitution or corruption of others (Art. 452 bis d-2nd of the 1973 Criminal Code).

The reform of the Criminal Code set in motion by the Organic Law 11/2003 of 29 September on specific measures on matters of citizen security, domestic violence and the social integration of foreign people was unable to solve the situation. Even if amendment of article 188.1 of the Criminal Code introduced the criminal responsibility of those who profit from exploitation of the prostitution of others, even when consented by the person in a situation of prostitution, the wording of this article and the system employed has led to the Case Law of the 2<sup>nd</sup> Court of the Supreme Court to interpret this precept in a very restrictive way.

As regards the classification of the crime of trafficking in human beings in the Spanish criminal legislation, it is the Organic Law 5/2010 of 22 June which exactly incorporates the aims of the Warsaw Convention and complies with the provisions set in Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011, before this was passed: article 177 bis contains a definition of the crime of trafficking in human beings that finally overcomes the former confusion between this crime and the fostering of illegal immigration. This makes it possible to tackle the crime of trafficking in human beings and to reach legal declarations in line with the severity of this crime.

Besides a rigorous definition of the crime of trafficking in its different forms, the Criminal Code included in 2010 the aggravated modalities derived from the concurrence of a severe danger in the victim's situation, the intention of profit, the presence of children or especially vulnerable victims, the criminals belonging to criminal organisations or associations, or the criminals being authorities or agents of the authorities or civil servants. Similarly, it also reflects the principle of not prosecuting the victims of trafficking for any crimes committed in the situation of endured exploitation.

The Organic Law 1/2015 of 30 March, which amends the Organic Law 10/1995 of 23 November of the Criminal Code, adds to the advances made by the Organic Law 5/2010 of 22 June. Specifically, Article 177 bis includes among the facts that establish trafficking, the exchanging or transferring of control over people, among the forms in which the crime is committed: giving or receiving payments or benefits to obtain consent from the person controlling the victim; and, among its aims, exploitation so that the victims will carry out criminal acts for their exploiters and the holding of forced marriages. Similarly, the concept of vulnerability is limited in accordance to the European Directive.

Other amendments made by Organic Law 1/2015 of 30 March may be highlighted in regard to prosecuting the trafficking in human beings, strengthening the specific protection



that the Criminal Code currently offers to the victims of trafficking in human beings. The following stand out:

- Review of regulation regarding the confiscation of effects, goods, instruments and profits from criminal activities, extending regulation of extended confiscation for terrorist crimes and crimes committed by criminal groups or organisations (already introduced by the Organic Law 5/2010 of 22 June), to other cases for which a criminal activity is frequently sustained over time and which can result in significant economic profit and amongst which is the trafficking in human beings.

This regulation allows judges and courts of justice in the case of sentencing crimes such as trafficking in human beings, which generate a continuous source of income, to seize any goods and effects of the convicted person coming from other criminal activities as long as there is objective and well-founded evidence of the illegal origin of the effects seized.

- The amendment of Article 89.9 of the Criminal Code to add the exception of trafficking in human beings to the general rule that establishes the possibility of substituting prison verdicts of more than one year given to foreign nationals for expulsion from the national territory. In this way, foreign nationals convicted for a crime of trafficking in human beings are prevented from starting their criminal activity again in their country of origin.
- The review of Article 57 of the Criminal Code makes it possible to impose the prohibitions of Article 48 of the Criminal Code in the case of trafficking in human beings (verdicts restricting certain rights: deprivation of the right to live in certain places, order restraining coming close or communicating with the victim.)
- Trafficking in human beings has been incorporated to the crimes considered in Article 132.1, second paragraph of the Criminal Code regarding the starting point of calculating the term of the statute of limitations of crimes when the victim is a minor, so that the term starts to count once the victim is an adult.
- Incorporating gender as a reason for discrimination as an aggravating circumstance in committing the crime, regulated as the 4th circumstance in Article 22.

In regard to the aim of trafficking, there are also two novelties that have been included in the latest reform of the Criminal Code:

- The classification in Article 172 bis of the Criminal Code of a new crime: forced marriage, which Directive 2011/36/EU of 5 April, states that it may be considered as a form of human exploitation..





- The amendment of Article 187 to foster greater efficiency in prosecuting those who profit from exploiting the prostitution of others. Pursuant to the new wording, the punishment of profiting from the prostitution of others is guaranteed whenever this takes place in accordance with any of the behaviours that prove a situation of exploitation.

The Spanish legislation has also incorporated amendments in regard to the **protection of victims of trafficking in human beings**. In particular, Article 59 bis has been added to the **Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration**. This is a significant step forward in the protection of the most vulnerable victims: foreign victims in an irregular administrative situation.

This reform ensures that victims of the trafficking in human beings will access comprehensive assistance, regardless of their administrative situation, regulating the granting of a period to time for recovery and reflection. This will allow foreign victims in an irregular situation to move away from the influence of traffickers, start the recovery process and make a decision regarding their cooperation with the competent authorities in investigating the crime, as required by Article 13 of the Warsaw Convention.

Thus, from the moment that the process to identify a possible victim of human trafficking is started, the victim is protected from any punishment measures derived from their irregular situation in the country, authorising them to stay temporarily in the country if they accept the period for recovery and reflection which conveys the assurance they will access comprehensive assistance, security and protection measures.

This standard has been developed in the Regulation of the Organic Law 4/2000 of 11 January, passed by Royal Decree 557/2011 of 20 April which, in Articles 140 to 146, establishes specific provisions to develop Article 59 bis of the Organic Law 4/2000 of 11 January which guarantees that victims will access assistance and protection resources and pointing towards the authorities in charge for the identification of possible victims, the granting of a period for recovery and reflection, the exemption from liability and obtaining a residence and work permit owing to exceptional circumstances.

In any case, Article 143.1 of the Regulation of Organic Law 4/2000 of 11 January establishes the possibility for the competent Government Representative or Deputy Representative to legally determine the victim's exemption of liability given their personal situation. This allows the victim to apply for a residence and work permit owing to exceptional circumstances.

The Regulation of the Organic Law 4/2000 of 11 January has been extremely important in articulating coordination and communication mechanisms between the different agents involved in the detection and identification processes and in the assistance and protection of



victims of trafficking in human beings. Article 140 of this Regulation fosters the adoption of a Framework Protocol in the Protection of Victims of Trafficking in Human Beings to establish the foundations for coordination and action between institutions and administrations that have competences in this matter, as well as the scope and manner of participation of other organisations with proven expertise in accommodating and/or protecting victims of trafficking in human beings which develop programmes financed by the Public Administrations to assist and protect them.

Similarly, the single additional provision of Royal Decree 557/2011 of 20 April which approves Regulation of the Immigration Law, in regard to the identification and protection of victims of trafficking in human beings, extends the cases established in Article 140 to all possible victims of trafficking in human beings, both nationals from a European Union Member State and those included in the scope of implementation of the European Immigration scheme.

As a result of the regulation on the protection of victims included in the Immigration Law, in particular Article 140 of the Regulation of Organic Law 4/2000 of 11 January, the Ministry of Health, Social Services and Equality, the Ministry of Interior, the Ministry of Justice, the Ministry of Employment and Social Security, the Office of the Public Prosecutor and the General Council of the Judiciary signed a **Framework Protocol to Protect the Victims of Trafficking in Human Beings** on 28 October. This tool is of significant value as a mechanism towards cooperation between institutions, establishing for the first time formal communications between the administrations that have competences in this matter and acknowledges the work carried out by non-profit organizations that specialize in the assistance to victims.

As established by the Single Additional Provision of Royal Decree 557/2011 of 20 April which approves the Regulation of the Immigration Law, its scope of implementation extends to all victims of the crime of trafficking in human beings, without discrimination based on gender, nationality or administrative situation in the case of foreign victims.

The territorial scope of the Framework Protocol extends across the national territory, without prejudice to regional protocols being approved to guarantee its development in regard to issues that are the competence of the Autonomous Communities; in particular, in regard to the provisions established by the Framework Protocol regarding the assistance and protection of victims, inter-institutional communication and cooperation in the territory and the participation of specialized organisations, as well as the implementation of provisions regarding minor victims.

Besides the protocol that already existed in the Region of Galicia (approved before the Framework Protocol and reviewed and updated in March 2012 in accordance with the Framework Protocol), the following have been signed until now: a Regional Protocol in Catalonia (17 October 2013) and another in Extremadura, which was officially presented on 29



June 2015. Similarly, the Region of Aragon has an emergency procedure in place to guarantee that, when a possible victim of trafficking for sexual exploitation is detected and identified, they are referred to specialised services.

In regard to the procedures for coordination and communication between the administrations and institutions signing the Agreement that adopts the Framework Protocol, the fourth clause of the Agreement established the setting up of a **Committee to Monitor Implementation, established on 7 June 2012** which is made up of representatives from the undersigning administrations and institutions and chaired by the head of the Government Delegation against Gender-based Violence of the Ministry of Health, Social Services and Equality.

After signing the Agreement that adopts the Framework Protocol, inter-institutional coordination mechanisms have been strengthened by fostering different spaces for communication. The following stand out:

- Collaboration between the Autonomous Communities and the Cities of Ceuta and Melilla through the Sectoral Conference for Equality. The Regulations of this Conference were amended in May 2012 to include "assistance to victims of trafficking in human beings for sexual exploitation".
- The involvement of the Coordination and Gender Violence Units in the Government Delegations and Deputy Offices and Island Departments, by appointing specific functions regarding the trafficking in women and girls for sexual exploitation, as established by the Joint Stipulation of the Ministry of Justice, the Ministry of Interior, the Treasury, the Ministry of Public Administration, the Ministry of Employment and Social Security and the Ministry of Health, Social Services and Equality (June 2013).

Some of the provisions established in the Framework Protocol to guarantee the coordination of the different agents involved in the process to detect, identify, assist and protect suspected victims of trafficking in human beings have been developed after its approval. Thus, when there are signs of trafficking in international protection request procedures, a procedure has been established whereby the Asylum and Refuge Office notifies the General Immigration and Border Office, without prejudice to starting procedures for an international protection request.

On the other hand, the Secretary General on Immigration and Emigration (SGIE) of the Ministry of Employment and Social Security has approved a Protocol for the detection of possible cases of trafficking in human beings for sexual exploitation and the actions to be taken, aimed at the staff in migration centres that are part of SGIE, as well as the centres



managed by the NGOs it finances. Its aim is to foster the coordinated and homogenous intervention of these professionals, favouring the detection of possible victims of trafficking in human beings and their referral to suitable assistance and protection resources.

In regard to children, the Organic Law 4/2000 of 11 January, contains specific provisions regarding the assistance and protection of foreign minor victims of trafficking in human beings, which establish that any actions carried out in these cases will safeguard that the best interests of the child are preserved at all times.

Furthermore, in compliance with article 190.2 of the Regulation of Organic Law 4/2000 of 11 January, the heads of the Ministries of Justice, Employment and Social Security, Health, Social Services and Equality, the State Public Prosecutor and the Secretary of State for Security of the Ministry of Interior and the Deputy Secretary of the Foreign Office signed on 22 July 2014 the Framework Protocol regarding actions regarding Unaccompanied Foreign Children (hereinafter, the MENA Protocol, following the Spanish acronym), published in the National Official Journal of 16 October. Its aim is to coordinate the intervention of all institutions and administrations involved, from locating the child or presumed child to identifying them, stipulating their age, referring them to the public child protection office and documenting their case.

The second section of the MENA Protocol establishes that its provisions to prevent trafficking in human beings will be applicable to all foreign children regardless of their condition.

In regard to legal assistance, **Royal Decree-Law 3/2013 of 22 February amending the Fees scheme in the sphere of Legal Administration and the system for free legal assistance** has been a significant step forward in the protection and assistance to the victims of trafficking in human beings by acknowledging the right to free legal assistance to the victims of gender violence and trafficking in human beings in all legal and administrative procedures derived from their condition as victim, regardless of their resources. All victims of trafficking in human beings are entitled to this right regardless of their origin or administrative situation as established in Article 22, Organic Law 4/2000 of 11 January which acknowledged the rights of foreign persons in Spain to free legal assistance in any processes to which they are party in the same condition as Spanish citizens.

Finally, **Law 4/2015 of 17 April regarding the Statute of the Victim of a Crime** establishes a general catalogue of procedural and other rights regarding the victims of crimes, offering a legal and social response to victims and their relatives. It pays special attention to the most vulnerable victims, such as the victims of trafficking in human beings and minor victims.



Specifically, the protection needs of the victims of trafficking in human beings will be taken into account in the individual assessment made of the victims to determine any special protection needs they may have and which measures must be adopted, which translates into them accessing specific protection measures that aim at avoiding secondary victimization during legal and court proceedings.

With the aim of improving the mechanisms to protect the victims of trafficking in human beings, the **Organic Law 8/2015 of 22 July, amending the protection system for children and teens, and Law 26/2015 of 28 July, amending the protection system of children and teens** improve the assistance and protection of the children of women who are the victims of gender violence as well as other children who are the victims of other forms of violence against women.

Specifically, the protection of children against any form of violence, including the trafficking in human beings, has been included for the first time among the governing principles of the activity of public authority in regard to children.

Similarly, the actions to be carried out by public authorities in regard to different forms of violence are specified for the first time: awareness, prevention, detection, notification, assistance and protection of any form of violence against children and teenagers by means of procedures that can guarantee the coordination and collaboration between the different Administrations, and collaborating public and private institutions and services with competences in the matter to guarantee comprehensive action.

Furthermore, issues that specifically improve the protection of the minor victims of trafficking in human beings are regulated:

- The right of foreign children who are in Spain, to education, health and basic social services in the same conditions as Spanish children, establishing that the public Administrations will protect groups that are especially vulnerable, such as child victims of trafficking in human beings.
- When it cannot be established whether a person is an adult or a child, they will be considered to be children in regard to the law while their age is determined.
- In such cases where the corresponding Public Authority must take on guardianship of a child by law, the child will be considered to be in a state of neglect, when the child is identified as the victim of trafficking in human beings and there is a conflict of interest with his or her parents, guardians or keepers.
- Candidates accessing and carrying out professions, tasks and activities that involve regular contact with children, are required not to have been found guilty and



convicted for crimes that involve, among other, prostitution, sexual exploitation of children, corruption of minors or trafficking in human beings.

Furthermore, these laws improve the protection offered by the Spanish law to the victims of trafficking in human beings, regardless of their age and in regard to the following aspects:

- Extending the minimum duration of the period for recovery and reflection from 30 to 90 days, during which the victim may decide whether they wish to cooperate with the authorities in the investigation of the crime and, given the case, during criminal proceedings, as established in Section 2, Article 59 bis Organic Law 4/2000 of 11 January regarding the rights and freedom of foreigners in Spain and their social integration.
- Discount for companies that hire victims of trafficking in human beings: amendment of Law 43/2006 of 29 December for the improvement of growth and employment whereby all employers who hire identified victims who have obtained a residence and work permit owing to exceptional circumstances, receive a discount of 125 euros per month (1,500 euros per year) on Social Security contributions (or, given the case, the daily equivalent) for two years per worker hired.

In the case of hiring these people with fixed-term contracts, employers will be entitled to a discount of 50 euros per month (600 euros per year) on Social Security contributions (or, given the case, the daily equivalent), during the term of the contract.

In addition to the legal reforms mentioned in regard to prosecuting the crime and the access of all victims to assistance and protection resources, trafficking in human beings has also been incorporated into other regulations, amending the legal landscape in Spain and adapting it to the commitments taken on at international level with the aim of covering victims as much as possible. In this regard, besides regulations regarding free legal assistance, the following regulations may be highlighted:

- In regard to international protection, Law 12/2009 of 30 October regulating the right to asylum and subsidiary protection includes prosecution for reasons of gender among the criteria to obtain international protection.

Furthermore, Article 46 of this law includes trafficking in human beings among the vulnerable situations in which the people who request or benefit from international protection may find themselves, establishing the need in these cases, to grant preferential treatment to people carrying out such requests.

- In regard to health assistance, Royal Decree 576/2013 of 26 July which establishes the basic requirements of the special agreement to offer health assistance to people who



are not insured or are not beneficiaries of the National Health Service and amends the Royal Decree 1192/2012 of 3 August, that regulates the conditions of the insured and its beneficiaries in regard to health assistance in Spain, allocated to public fund through the National Health Service.

The Fifth Additional Provision thereof regulates the offering of health assistance to the victims of trafficking in human beings during the recovery and reflection period in the following terms: "health assistance to the extent established in the common basic scope of assistance services of the National Health Service as regulated in Article 8 bis, Law 16/2003 of 28 May".

Furthermore, in practice, in order to guarantee the health assistance of the victims of trafficking in human beings from the moment they are indentified, the Secretary General on Health has transferred to all Autonomous Communities a common interpretation so that "victim of trafficking in human beings" is understood as any person for whom there is reasonable evidence that has been the object of trafficking after the identification process carried out by the corresponding police authorities, using as accreditation the General Information Report for victims of trafficking in human beings.

- In the sphere of the Spanish Development Cooperation Policy, trafficking in human beings and sexual exploitation have been considered as some of the worst forms of discrimination against women and children, with gender equality and female empowerment as one of the priorities of such policy. This is contained in the 4<sup>th</sup> Guiding Plan 2013-2016 as well as in the Spanish Gender and Development Cooperation Strategy, which proposes specific measures towards its implementation.



## **IV. TRAFFICKING IN WOMEN AND CHILDREN FOR SEXUAL EXPLOITATION IN SPAIN.**

The reality of trafficking in women and children for sexual exploitation in our country requires that two key aspects are analysed:

- Existing data on the matter which highlight the dimensions of trafficking for sexual exploitation in Spain, as well as the institutional response in such cases.
- The main conclusions derived from monitoring and assessing public policies aimed at fighting trafficking for sexual exploitation and the protection and assistance to its victims.

### **IV. 1. The situation of trafficking in human beings for sexual exploitation in Spain.**

The study on trafficking in human beings faces a significant obstacle: the **obtaining of reliable data** to learn about its dimensions, the situation of its victims or other aspects regarding perpetration of the crime. This obstacle arises from the involvement of complex criminal structures in the trafficking in human beings (even if the crime isn't carried out by an organised crime network). These structures are, in most cases, located in different countries, generating situations that take place in a transnational context and in complete secrecy.

This, together with the vulnerability of the victims (who in most cases are in a complex administrative situation), their distrust of the authorities and their reluctance to report the situation or collaborate, make it difficult to obtain information about the victims and their situation.

Both international and national organisations involved in the fight against trafficking in human beings establish the collection of reliable information on the matter as one of the priorities in order to make sure that actions are planned correctly and policies efficiently to fight trafficking in human beings.

To this end, significant work has been carried out to obtain information at national and international level in the past few years. As a result, advances have been made in our understanding of trafficking in human beings, leading to shared conclusions.





In this regard, the UN Office against Drugs and Crime (UNODC) points out the following in the Global Report on Trafficking in Persons (2014), which collects data regarding more than 40,000 victims of trafficking in persons identified between 2010 and 2012:

- In regard to the forms of exploitation, trafficking for sexual exploitation is the largest form, accounting for 53% of the victims identified in this period.
- Women and girls represent a large majority of the victims detected (70%) with a considerable decrease in the number of adult victims and a significant increase in the number of child victims (49% of victims in 2011 are women compared to 74% in 2004; 21% of victims are children compared to 10% in 2004). Furthermore, they represent an overwhelming majority in the case of trafficking for sexual exploitation.
- Trafficking in persons shows a clear unequivocal flow from poor countries (origin of victims) to rich countries (destination).

In the sphere of the EU, EUROSTAT has prepared a second statistical report in regard to trafficking in human beings (2014) which collects information from 30.146 victims recorded in 28 Member States during the period 2010-2012. According to this report, the picture of trafficking in human beings in Europe is the following:

- Most of the victims recorded were the object of trafficking for sexual exploitation (69%), a figure that has increased in comparison to the previous report.
- 80% of all victims of trafficking in human beings in Europe are female. Furthermore, women are the overwhelming majority in the case of trafficking for sexual exploitation (95%).
- Most victims come from within the EU (65%), mainly Bulgaria, Romania, Netherlands, Poland and Hungary. A majority of non-EU victims come from Nigeria, Brazil, China, Vietnam and Russia.
- According to EUROPOL, trafficking in human beings is the second source of "illegal" income from criminal activity behind drug trafficking, providing traffickers 32 billion Euros annually.

In short, the main organisations involved in the fight against trafficking in human beings worldwide agree that sexual exploitation is the purpose of trafficking in the case of most victims, with women and girls being its main victims. Moreover, they reveal that trafficking in human beings is a great source of profit for crime worldwide, reaching an extraordinary size and satisfying the demand generated by the population in rich countries by seizing the most vulnerable victims in poor countries.



Special attention is also paid in Spain to obtaining information regarding the trafficking in human beings, aware that a better understanding of the characteristics and dimensions of trafficking in human beings can help establish priorities and realistic objectives in the prevention and fight against this crime.

Furthermore, taking into account the dimensions of the trafficking in women and girls for sexual exploitation in our country, these situations must be analysed in particular. To this end an understanding of the contexts in which prostitution takes place in Spain is needed, since prostitution is the main destination of victims of trafficking for sexual exploitation.

To this end, information is presented below in regard to trafficking for sexual exploitation on the following aspects:

- a. Context of trafficking in human beings for sexual exploitation: information about prostitution in Spain.
- b. Dimensions of trafficking in women and children for sexual exploitation: information about the detection and identification of possible victims.
- c. Protection of victims: assistance and specific actions with foreign victims whose situation is irregular.
- d. Investigation and prosecution of the crime: police action and criminal response.

**a. Context of trafficking in human beings for sexual exploitation: information about prostitution in Spain.**

According to the estimates carried out by EUROPOL, trafficking in human beings is one of the main forms of "illegal" income in crime, the second behind drug trafficking. The European Union Strategy to eradicate trafficking in human beings (2012-2016) contains the estimate made by the International Labour Organisation of the profit generated by trafficking in human beings: 31,6 billion euros per year.

Besides the Intelligence Centre Against Terrorism and Organised Crime (CITCO) of the Ministry of Interior in its "Report on the State of Trafficking in Human Beings for sexual exploitation in Spain" for 2012 has estimated that income related to prostitution could amount to 3 billion euros annually, though it admits that the impact of the economic volume the different activities related to the prostitution sector represent is unknown. It should be taken into account that prostitution is the main destination of victims of trafficking for sexual exploitation in our country. Thus, the contexts of prostitution and activities regarding the sexual trade are the sphere in which investigations are carried out leading to detecting situations of trafficking for sexual exploitation.



More recently, as the consequence of a request made by the European Court of Auditors of the European Commission, establishing an obligation for all Member States to incorporate the flow from illegal activities into their Gross National Income estimates before the end of September 2014, the National Statistics Institute (INE) has included estimates of the most significant illegal activities in Spain -among which is prostitution -, into the accounts of the report "National Accounting in Spain. Basis 2010".

According to the estimates carried out, illegal activities amount to 0.87% of Gross Domestic Product (GDP), where prostitution represents 0.35% of Total GDP; that is, approximately 3,7 billion euros.

To make these estimates, the INE has pointed out that it has followed the methodologies and procedures established by EUROSTAT, consulting private and public, national and international academic and scientific studies; and in the case of prostitution, the reports of the state of trafficking in human beings for sexual exploitation carried out by the Ministry of Interior, the monitoring reports to the Comprehensive Plan to Fight Trafficking in Human Beings for Sexual Exploitation carried out by the Ministry of Health, Social Services and Equality and the Sexual Habit Survey carried out by INE, National Sexual Health Survey carried out by the Ministry of Health, and contrasting information provided by qualitative surveys with the participation of experts in the Administration and in associations regarding these targets.

According to this, and as mentioned, obtaining specific information on the state of prostitution in Spain is a fundamental step towards guaranteeing a greater understanding of the dimensions of trafficking in human beings for sexual exploitation and to have a clearer picture of the benefits it generates and who it benefits.

In this regard, it should be pointed out that prostitution hasn't been considered by the Spanish legal system except in connection with several behaviours that are classified in the Criminal Code: forced prostitution, exploitation of the prostitution of others, sexual exploitation, crimes against the rights of foreign workers, trafficking in human beings, smuggling of immigrants, crimes against sexual freedom, money laundering, etc.

The relationship between prostitution and certain criminal behaviours, together with the characteristics of secrecy and its resulting invisibility, as well as stigmatisation and the social exclusion of people in prostitution, significantly hinders the obtaining of information, with no official statistics existing in this regard until now.

However, public and private institutions have carried out qualitative approximations and guidelines and methodologies to analyse and diagnose the situation. They help us obtain a picture of its dimensions although they offer varying figures, some of which have ended up being used in time as official information on prostitution.



For this reason, the decision has been made to highlight the estimate carried out by the Intelligence Centre against Terrorism and Organised Crime (CITCO) as it counts on a specific database regarding trafficking in human beings which feeds on information provided by the State Security Forces.

In this regard, the Intelligence Centre against Terrorism and Organised Crime (CITCO), based on the police information collected over the past few years and taking into account the economic income generated by the sex industry, estimated in its Report on Trafficking in Human Beings for sexual exploitation of 2012 that the number of women in a situation of prostitution in Spain is approximately 45,000.

As regards to the characteristics of people in prostitution and those who purchase sex, the Report of the Presentation on Prostitution in Spain (154/9), approved in the session of 13 March 2007, highlights that *“prostitution in our country, from the point of view of demand, is characterised by the majority of purchasers of prostitution being male and the supply being foreign women, many of them in an irregular situation.”* Similarly, it points out that *“prostitution has a strong differential component in regard to gender, with those who demand it being the majority male (a total of 99.7% according to a recent study on the “personal ads” of different national newspapers) and the people in prostitution are for the most part women in a difficult economic situation.”*

**b. Dimensions of trafficking in women and children for sexual exploitation: information about detection and identification of possible victims.**

Detecting situations of trafficking is an essential step towards identifying possible victims and fostering their access to specialised assistance and protection services, once the existence of reasonable evidence has been determined during the formal identification process carried out by law enforcement authorities.

As stated in Section V of the Framework Protocol on the Protection of Victims of Trafficking in Human Beings, the detection of a possible victim takes place, in most cases, as a result of a police investigation.

However, situations of trafficking can also be detected as a result of labour inspections, when a person enters the country or when the potential victim comes into contact with a public or private organisation as a result of accessing a health, social or educational service or after contacting an information mechanism (outreach units or phone services.)

Taking into account that prostitution is the main destination of the victims of trafficking for sexual exploitation, one of the ways to detect possible situations of trafficking is the inspection of places where prostitution is carried out. In this regard, the latest report of the state of trafficking in human beings carried out by CITCO corresponds to 2014 and highlights that



2,962 inspections were carried out, following an increasing trend in the inspection activity of the State law enforcement bodies to detect possible situations of trafficking in human beings and sexual exploitation which started in 2010 (the number of inspections in 2009 was 885.)

During the inspections carried out in 2014, a total of 13,983 people at risk of being in a situation of trafficking in human beings and/or sexual exploitation were detected (compared to 13,159 people at risk in 2013.) As in previous years, the 2014 report points out that the people at risk are mainly women with Romanian nationality (followed by Spain, Dominican Republic, Brazil, Colombia and Paraguay), legally in Spain and detected in "residential brothels."

In regard to age, a decrease in the age of women at risk can be pointed out, with most of them found in the range between 23 and 32 years old. 6 children were also detected: from Bulgaria (1), Spain (2), Paraguay (1) and Romania (2).

According to the figures provided by the annual report presented by CITCO in 2014, a total of 900 victims were identified (compared to 1,180 in 2013), of which 153 were victims of trafficking in human beings for sexual exploitation (264 in 2013) and 747 were victims of sexual exploitation. Among the victims identified, 17 of them were minor.

According to CITCO, variations in the number of victims identified in 2013 could be the result of the prevention work carried out by the law enforcement bodies which could be generating a better concealment of these criminal activities and, hence, of their victims, besides brothels.

The victims of trafficking in human beings that were identified were for the most part women from Romania and, to a lesser extent, Nigeria and Bulgaria who were in Spain legally. The decrease in the average age of the victims identified may be pointed out: most of the women were under the age of 22. Furthermore, among the victims identified in 2014, 7 were minor (4 of whom were Spanish.)

The institutions that received public grants to finance projects to assist women who were victims of trafficking in human beings for sexual exploitation and their children, which are tendered annually by the Ministry of Health, Social Services and Equality, are a valuable source of information regarding the women who may be in our country in a possible situation of trafficking for sexual exploitation.

According to the information provided by these organisations, there were signs of sexual exploitation or trafficking for sexual exploitation in 10,091 women in 2014 (3,419 victims of trafficking for sexual exploitation and 7,482 victims of sexual exploitation). These figures are very similar to those for 2013, when these organisations stated that they assisted 10,062 women (3,978 victims of trafficking for sexual exploitation and 6,084 victims of sexual exploitation.)



The ages of these possible victims of trafficking for the purposes of trafficking in human beings for sexual exploitation that were assisted by these organisations were concentrated in the 18 – 25 and 26 – 35 ranges (80%, approximately 40% in each range). These organisations point out that approximately the 1% of the victims (31 in 2014 and 54 in 2013) were minors.

As regards their nationality, like in 2013, Romanian is the nationality of the most of the potential victims (32%), followed by Nigeria (27% of women with signs of trafficking for sexual exploitation) and, to a lesser extent, Dominican Republic (5%), Brazil (5%), Bulgaria (4%) and Paraguay (4%).

### **c. Protection of victims: assistance and specific actions with victims.**

The main objective sought with the ratification of the Warsaw Convention was the improvement in protecting victims and guaranteeing their access to specialised resources and services. To this end, alongside the amendment of the Spanish legal system and the drafting of the Framework Protocol for the Protection of Victims of Trafficking in Human Beings, several activities have been started in the past few years aimed to achieving this objective and to collect information about the protection and assistance offered to victims of trafficking.

According to the information provided by specialised organisations, in 2014 they assisted 299 women who had the formal identification from the competent police authority (regardless of the year in which the identification took place).

However, the work carried out by these specialised organisations goes beyond their intervention with victims identified formally. Their work significantly fosters the detection of possible victims by coming close to them, providing a space of trust and with the resources necessary for comprehensive assistance: among others, safe accommodation, health assistance, psychological assistance, psychiatric assistance, other social, education and training resources towards their social and labour integration, legal assistance, translation services or services to facilitate their voluntary return.

Thus, in 2014, they carried out 67,736 contacts with women at risk through different mechanisms for coming closer to possible victims (outreach units, phone hotlines, visiting apartments and brothels, etc.) The high number of contacts made with women in apartments and brothels (27,266) and through the phone hotlines (8,832) may be highlighted.

Also in 2014, 33,521 actions of information and advice were carried out, providing specific assistance to 28,310 women, contacted either through the organizations own mechanisms or referred to them by law enforcement and by other institutions and services.

Specifically, these organizations offered specific assistance in the following fields:



- Accommodation for 584 users.
- Social assistance in 15,361 occasions.
- Psychological assistance in 1,504 occasions.
- 5,467 health assistance actions.
- Legal advice in 4,551 occasions.
- 1,920 translation services.
- 2,086 training actions.
- Advice and accompaniment in social and labour integration processes in 1,778 occasions.

Finally, these organisations have accompanied 289 women, 27 of whom were minor (9%), in reporting their situation of trafficking for sexual exploitation.

Besides the call for proposals specifically allocated to the specialised assistance of women who are victims of trafficking for sexual exploitation, the Ministry of Health, Social Services and Equality finances, through the amount allocated from Income Tax, programmes to assist and protect the victims of trafficking in human beings and sexual exploitation, including assistance to the minor victims of sexual exploitation, carried out by Non-Government Organisations and non-profit organisations.

Furthermore, the Ministry of Employment and Social Security has incorporated, among the Programmes co-financed by the European Asylum, Migration and Integration Fund (AMIF), the priority to carry out programmes aimed at the comprehensive welcoming of victims of trafficking in human beings, awareness, creation of support networks and other actions aimed at eradicating trafficking in human beings for the purposes of labour or sexual exploitation.

The Government Delegation against Gender-based Violence also monitors the resources available to assist victims of trafficking for sexual exploitation with the aim of preparing a Guide of the Existing Resources for victims of trafficking for sexual exploitation, that is updated every six months.

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/homel.htm>

In this regard, according to the figures collected by the Government Delegation from the different organisations and administrations with specialised attention services, the following resources are available to the potential victims of trafficking for sexual exploitation as of March 2015:



ACCOMMODATION RESOURCES	TOTAL ACCOMMODATION RESOURCES (apartments, shelters, etc.)	VACANCIES	SPECIFIC ACCOMMODATION FOR MINORS
	42	389	7
OTHER RESOURCES	DAY CARE ASSISTANCE (centre)	OUTREACH UNITS	RESOURCES WITH ACCOMMODATION THAT HAVE 24-HOUR HOTLINES
	125	75	38

Source: Government Delegation against Gender-based Violence.

When the victims voluntarily request returning to their country of origin, for them and for their children minor or disabled, management of this process and the necessary assistance for the victim are being provided by the Secretary General on Immigration and Emigration of the Ministry of Employment and Social Security by including the victims who so request it on the social assistance scheme for voluntary return offered to migrants in a situation of vulnerability, financed with the support of the Asylum, Migration and Integration fund (AMIF).

In accordance with the information provided by this institution, between 10 and 20 voluntary returns are approximately managed every year through the programmes granted by the Directorate General on Migration, generally processed by organisations specialised in the accompaniment of victims of trafficking in human beings.

These organisations have pointed out that in 2014 they referred 41 possible victims of trafficking for sexual exploitation to voluntary return (compared to 49 women in 2013). In this case, it should be taken into account that return does not necessarily take place during the year when the voluntary return is requested and, hence, the number does not always match with the number of returns that actually take place during the year.

In this regard, special mention should be made to the existence of projects for the re-integration of victims in their countries of origin and which are carried out by a number of organisations.

In accordance with the Immigration Law, since its 2009 amendment, when there is reasonable evidence to believe that a foreign person in an irregular administrative situation in the country is a victim of trafficking in human beings, they will be offered a recovery and reflection period. During this period, they will be provided with the necessary means for their physical, psychological and emotional recovery and will be separated from the influence of the traffickers, so that they can make a meditated and considered decision to collaborate or not with the authorities in the investigation and prosecution of the perpetrators of the crime.

The figures provided by the Ministry of Interior (CITCO) in regard to offering a recovery and reflection period, point to the following:





- In 2013, 91 of the 264 identified victims of trafficking in human beings for sexual exploitation were foreigners in an irregular situation (34%). All of them were offered the recovery and reflection period.
- Of the 153 identified victims of trafficking in human beings for sexual exploitation in 2014, 39 were foreigners in an irregular situation (25%). All of them were also offered the recovery and reflection period.

Finally, according to Article 59 bis of the Organic Law 4/2000 of 11 January, residence and work permits based on exceptional circumstances are being given, grounded both on the victims' cooperation with the investigation or the criminal proceedings and on the victim's personal situation. The following have been granted:

- 12 authorisations were granted in 2013 by the Secretary of State for Immigration and Emigration of the Ministry of Employment and Social Security based on the victim's personal situation (11 authorisations in 2014.)
- 20 authorisations in 2013 (20 in 2014 also), granted by the Secretary of State for Security of the Ministry of Interior, based on the victim's collaboration with the investigation or with the criminal proceedings.

#### **d. Prosecuting the crime: police action and criminal response**

Alongside the protection of victims, policies to fight trafficking for sexual exploitation seek the highest efficiency in prosecuting the crime and the punishment of criminals, setting up legislative and procedural measures to this end.

In relation to investigating the crime and police actions carried out to this end, the latest report on the state of trafficking in human beings carried out by the CITCO for 2014 establishes that 270 police statements were carried out (75 regarding trafficking for sexual exploitation and 195 for sexual exploitation), with actions being carried out against 9 criminal organisations and 36 criminal groups linked to trafficking in human beings and against 7 criminal organisations and 11 criminal groups linked to sexual exploitation.

Of the 561 persons arrested, 201 were arrested for trafficking in human beings and 360 for sexual exploitation. People arrested for human trafficking were mainly of Romanian nationality, followed by those of Spanish and Nigerian nationality.



CRIME PROSECUTION						
YEAR	VICTIMS IDENTIFIED		POLICE STATEMENTS		PEOPLE ARRESTED	
	THB SEXUAL EXPLOITATION	SEXUAL EXPLOITATION ONLY	THB SEXUAL EXPLOITATION	SEXUAL EXPLOITATION ONLY	THB SEXUAL EXPLOITATION	SEXUAL EXPLOITATION ONLY
2013	264	916	97	191	345	408
2014	153	747	75	195	201	360

Source: CITCO

Then, according to the information provided by the specialized unit for immigration and trafficking of the General Prosecutor's Office to draft this Plan, the following may be pointed out concerning exclusively to trafficking for sexual exploitation:

- During 2014, the specialized unit for immigration and trafficking of the General Prosecutor's Office has started 154 Special Monitoring Proceedings on trafficking in women and children for sexual exploitation, with 2 other reports being filed.
- 698 people have been arrested or charged, of which 482 were European (141 women and 341 men), 64 Asian (43 women and 21 men), 82 African (37 women and 45 men) and 70 American (48 women and 22 men).
- In the Reports conducted 1,548 victims of trafficking in human beings have been recorded. Of these, 509 are considered to be potential victims, 727 are considered at risk and 192 were identified as victims of trafficking in human beings since there was sufficient evidence at this initial stage.
- Out of the 192 victims identified, 133 were European, 37 African, 19 American and 2 Asian.
- The number of indictments in 2014 in regard to trafficking for sexual exploitation amounted to 28, with 98 people charged and 87 victims (all of whom were women, including 6 minor victims).
- In 2014, 15 verdicts were issued (7 of them absolving) for crimes of trafficking in human beings for sexual exploitation. 10 further verdicts have been issued (9 guilty and 3 not guilty verdicts) in cases of trafficking against human beings carried out before the new Article 177 bis of the Criminal Code entered into force. The nationality of the convicted people was mainly Nigerian, Romanian and Spanish.



EXPLOITATION				
STARTED	FILED	PERSONS INVESTIGATED	VICTIMS COUNTED BY PUBLIC PROSECUTOR'S OFFICE	CRIMINAL ORGANISATIONS
154	2	698	1,428	7

VICTIMS RECORDED								
ORIGIN	POTENTIAL		AT RISK		IDENTIFIED		TOTAL	
	2013	2014	2013	2014	2013	2014	2013	2014
AFRICA (1)	34	22	99	31	53	37	186	90
AMERICA (2)	273	245	208	212	44	19	525	476
ASIA (3)	13	49	167	134	20	2	200	185
EUROPE (4)	225	161	344	350	74	133	637	644
NO NATIONALITY DEFINED	=	32	=	0	=	1	=	33
TOTAL	545	509	818	727	185	192	1.548	1.428

Given the information available on trafficking in human beings for sexual exploitation, the **conclusion** may be reached that great efforts are being carried out at both national and international level and significant advances have been made in obtaining information.

This effort to gather statistical data has gone beyond data collection from police and legal activities, achieving a deeper understanding of the victims of trafficking profile: their origin, age and gender, and their assistance and protection needs. This improvement in the information allows a better understanding of the cases of trafficking which are so difficult to detect, in order to better identify victims and to guarantee their access to the available assistance and protection resources, as well as a greater adaptation of the resources at their disposal.

However, in the process of improving the understanding of trafficking, there are certain obstacles to be taken into account and which make it necessary to amend the strategy continuously to obtain information. The following stand out among others:

- Lack of harmonisation in definitions and regulations between different countries, as well as of indicators that determine the condition of victim, that cause difficulties in the comparison of data at international level.

This process has now been started in the sphere of the European Union but is yet to be concluded.



- The characteristics of the crime itself, which is constantly changing according to the need to obtain economic profit, adapting itself to demand and avoiding the prosecution of the crime. This makes it difficult to compare data from one year to the next.
- A lack of integration of the information arriving from different agents taking part in these situations into a single database. Coordination of the different administrations, and public and private institutions and organisations that take part at different territorial levels is fundamental in the monitoring of trafficking, as well as carrying out an in-depth analysis of the data available to them so that information isn't duplicated and is as close to reality as possible, and integrated into a single database.

In conclusion, obtaining reliable statistical information is one of the essential aspects to plan suitable, efficient strategies. This is still one of the main challenges despite the advances made.

#### **IV. 2. Conclusions and recommendations from the monitoring and evaluation of public policies to fight trafficking for sexual exploitation.**

This section is the result of a networking process in which the different Ministries with competences in the matter have taken part, alongside the Autonomous Communities, the Spanish Federation of Municipalities and Provinces (FEMP), specialised organisations through the institutions represented in the Social Forum against Trafficking for sexual exploitation and the General Prosecutor's Office. Similarly, the following evaluations and reports prepared by national and international organisations have been taken into account:

- **The Conclusions of the Monitoring of the 2009-2012 Plan.** The final monitoring report of the 2009-2012 Plan can be found in Annex I of this document. The following issues are highlighted by the report:
  - Improvement in the collaboration and communication processes between public and private institutions and the advances made towards carrying out a comprehensive action.
  - Improvement in the protection of victims and in prosecuting the crime as a result of the significant legal reforms carried out. Also, a formalisation of



procedures through the adoption of instructions and protocols, and the specialisation of professionals.

- Increase of information and data available related to trafficking in human beings, which has been essential for drafting this Plan. However, intensifying actions in this sphere is still required to guarantee the collecting of reliable statistical data.
  - The fostering of social awareness in this matter, though pointing out the need to continue advancing concerning discouraging demand and favouring prevention and early detection of situations of trafficking.
- **The observations and recommendations made by the organisations that make up the Social Forum against Trafficking for sexual exploitation and the Autonomous Communities** concerning to the requirements and challenges detected in developing activities regarding the matter, highlighting the following:
- In the sphere of raising awareness, tackling demand is necessary, together with regulating and controlling sexual trade adds that appear in the written press and the Internet.
  - The relevance of improving information by means of strengthening the mechanisms to collect statistical information and coordination to obtain information, as well as carrying out studies that make it possible to understand the dimensions of trafficking and sexual exploitation in our country.
  - The need to tackle situations of greatest vulnerability, paying special attention to the gender and age of the victims of trafficking and, in particular, highlighting the importance of establishing mechanisms and tools to detect, identify and correctly refer minor victims, as well as measures to guarantee coordination between public and private institutions at national and regional level in regard to the assistance and protection of victims to guarantee their mobility.
  - Improvement of the assistance and protection of victims through a review of procedures in such a way that the victim becomes the core element ahead of other priorities such as controlling irregular migration or prosecuting the crime.

Similarly, a recommendation is made to establish a catalogue of rights of the victims of trafficking and a better implementation of the legal instruments established to protect victims (recovery and reflection period, work and resident permits due to exceptional circumstances).



- The need to advance in the coordination with the Autonomous Communities concerning the assistance and protection of victims; in particular, of minor victims. And also, coordination with local administrations related to citizen security and coexistence bylaws that contain provisions regarding the use of public space to offer and demand sexual services.
- To study the possibility of adopting legal measures to adopt legal measures to punish as a crime the demand of sexual services when it's feeding trafficking in women and girls .
- The review of the manner in which the Social Forum against Trafficking for Sexual Exploitation acts as a mechanism of participation and cooperation between Public Administrations and specialised organisations.
- **The conclusions of the report prepared by the Office of the Ombudsman** in the monograph "Invisible Victims: trafficking in human beings in Spain", as well as the assessment made by the **Group of Experts in Trafficking in Human Beings (GRETA) of the Council of Europe** and the **TIP Report** (Trafficking in Persons Report) **of the US State Department**: Although they all highlight the progresses made concerning the fight against trafficking for sexual exploitation in Spain in a short period of time, they point out the following challenges:
  - To continue strengthening the human rights approach over other approaches focused on law enforcement or control of immigration objectives.
  - To appoint a national rapporteur or facilitator, as a key to guaranteeing comprehensive, multidisciplinary assistance as established and demanded by Article 19, Directive 2011/36/EU of 5 April.
  - To intensify actions for the prevention of trafficking; especially, starting measures to discourage demand in relation to trafficking for both sexual exploitation and other purposes (agriculture, textile industry, domestic work, construction and hotel industry).
  - To review the protection offered by the immigration system and in relation to international protection. At the same time, special attention must be paid to identification, assistance and protection when the victim is minor.
  - To continue to advance in matters of inter-institutional coordination and cooperation, especially in regard to cooperation with the Autonomous Communities as the monitoring of actions carried out in the territories is not guaranteed.



- Define procedures for the participation and collaboration of organisations specialised in intervention with victims, including their participation in identification processes and in assessing that periods of recovery and reflection are awarded.
- Integrate data from different institutions and agents. There is still a long way to go as multiple sources of information currently coexist (police, Autonomous Communities, NGO, etc.), which are not connected and offer widely varying information. As regards to the only official source (CITCO), given that the source of information is exclusively the State Security Forces, information should be collected from a variety of sources and be coalesced systematically so they can be more reliable.
- Carry out complementary investigation and research, especially in regard to minor victims.



## V. ACTION PLAN.

### V. 1. Basis of the Action Plan.

Efficacy in the fight against trafficking for sexual exploitation requires the joint action of several agents working with the victim. With this objective in mind, an Action Plan is presented below which is based on seven pillars:

- Human Rights Approach. This is the core element of the Plan since trafficking in human beings is a serious human rights violation that requires that actions are carried out with the aim of guaranteeing the protection of the victims' rights. To this end, actions that support the assistance and recovery of victims are essential. This in turn requires the implementation of suitable mechanisms to detect and refer victims. Specific protocols must be started to suitably tackle situations of greatest vulnerability.
- Gender Approach. As a complement to the above, this is another essential aspect of the Plan since the trafficking of women and children for sexual exploitation is a form of violence against women and the result of the social construct that places women in a position of inequality compared to men in both the countries of origin and destination. Hence, work must be carried out in prevention and in raising awareness to impact the causes of trafficking.

Prevention actions aimed at a shifting in the social and cultural model require information and raising awareness actions at origin to avoid the recruitment of possible victims and social awareness to prevent trafficking in the countries of destination, so that demand for services that feed on the trafficking in human beings decreases.

- Primacy consideration of the child's best interests. The situation of vulnerability of children in the case of trafficking for sexual exploitation requires that their specific needs (derived from their age and their situation in the trafficking of human beings) are considered.

Thus, minor victims require that suitable assistance, support and protection measures are taken in view of their situation, which is especially vulnerable. These will be provided taking the child victim's best interests into consideration; that is, their age, level of maturity and opinion must be taken into account. Likewise, these actions must focus on their physical and psychosocial recovery, their education and finding a long-lasting solution to their situation.

In case of doubt, they will be considered to be minor.





- Improving our understanding of the state of trafficking for sexual exploitation. Obtaining reliable information regarding situations of trafficking for sexual exploitation must be the basis to define suitable and efficient strategies to fight against trafficking in human beings.

In the sphere of the fight against trafficking for sexual exploitation, different organisations have started the gathering of information based on that obtained in their sphere of activity and which, in collaboration with the Government Delegation against Gender-based Violence, is being systematically filed with the purpose of improving our understanding on the matter.

However, coordination and collaboration to obtain reliable information from the different sources of information is a priority of this Plan. Furthermore, such information should be complemented with information obtained from institutions and administrations at regional and local level, as well as with information arising from sociological research on trafficking for sexual exploitation.

- The victims are the centre of the entire process: The planning and programming of public policies to fight against trafficking for sexual exploitation must place the victims at the centre of any action it intends to carry out. This is for actions both aimed at protecting the victims, those focusing on prevention, and those for investigating and prosecuting the crime.
- Prosecuting the crime. Investigating and prosecuting the crime of trafficking in human beings is one of the priorities of the action against trafficking. This is a very complex task as it is a crime that goes beyond borders. This is why special attention has been paid to this in the past few years; especially in Spain with criminal law amendment together with a greater specialisation of professionals in the police and the courts of justice. This is fostering advances in prosecuting the crime.

However, as pointed out by the EU Strategy against Trafficking in Human Beings (2012-2016), the number of guilty verdicts for the crime of trafficking in Europe is still low. This means that the scope of action of this Plan must also strengthen the prosecution of this crime. Hence, besides continuing to guarantee the correct implementation of criminal legislation by fostering measures for further specialisation and training of law enforcement and judiciary agents, the Plan includes other measures aimed at advancing in specific aspects that can help in the fight against this crime. Specifically, the need to improve in the investigation of assets and the seizing of goods and products resulting from the crime is introduced, not only through greater specialisation of the professionals at work but also through adapting the criminal legislation in regard



to the seizing of goods and products from trafficking (Art. 127 Criminal Code and following).

- Comprehensive Approach, cooperation and participation. The strategy to fight trafficking in human beings requires the participation of all agents that take part in these situations. Among them, the public and private institutions and specialised civil society organisations what implies that a comprehensive and multidisciplinary policy must be designed.

In accordance with this objective, this action plan considers the need to continue working in the fostering of spaces for cooperation and coordination between the different public and private agents involved, as well as establishing and formalizing coordination and referral protocols, especially as regards coordination with the organisations that provide specialised assistance services. Similarly, the searching for means of collaboration at different territorial levels is essential.

## **V. 2. Subcommittee to analyse and research trafficking in human beings for sexual exploitation.**

A Subcommittee to analyse and research trafficking in human beings for sexual exploitation was established on the 20<sup>th</sup> December 2013 from within the Parliamentary Committee for Equality. Its aim is to gather proposals for the improvement of policies aimed at fighting against trafficking in human beings and to assist and protect its victims. The Subcommittee was entrusted with the following tasks:

1. Analyse the state of trafficking in human beings for sexual exploitation.
2. Study the shortfalls found in the Spanish territory to effectively fight this regrettable and inhuman reality.
3. Analyse the level of fulfilment of the measures considered by the Comprehensive Plan to Fight against Trafficking in Human Beings for sexual exploitation (2009-2012).
4. Propose improvements to be introduced in regard to assistance towards guaranteeing the protection of victims of trafficking, as well as measures that should be implemented in Spain to end such practices, considered to be the "slavery of the 21st Century."
5. Issue a report and opinion and communicate it to the Government in order to improve policies aimed at the fight against trafficking in human beings and to assist and protect its victims.



The Subcommittee is expected to propose improvements that should be introduced in the sphere of assistance to guarantee the protection of the victims of trafficking and measures needed to end such practices in Spain, which are considered the "slavery of the 21st Century". Thus, during its annual reviews, the Plan will take into account, as far as possible, the objectives and actions derived from the proposals and recommendations resulting from the analysis carried out by the Subcommittee.

Likewise, the report issued by the Subcommittee is included as Annex II of this Plan.

### **V. 3. Objectives of the Plan:**

Following the structure established by the EU Strategy for the Eradication of Trafficking in Human Beings (2012 – 2016), which is the instrument established by the European Commission to comply with the provisions contained in Directive 2011/36/EU of 5 April, an Action Plan is presented that is structured into 10 specific objectives and 143 measures, distributed across the following priorities:

- **PRIORITY 1. Strengthening prevention and detection of trafficking.**

Establishing mechanisms for prevention of trafficking in women and children for sexual exploitation is a clear priority of this Plan since avoiding situations of trafficking decreases the number of victims and avoids having to dedicate resources to their recovery.

For this reason, without prejudice to the importance of measures aimed at fighting situations of inequality and discrimination which make people vulnerable to trafficking, this Plan has defined a series of measures aimed at fostering a greater understanding and awareness about these situations, making it possible to reduce the demand of services related to this crime with the aim of avoiding the recruitment of victims for sexual exploitation.

Similarly, the work to be carried out with the media is stressed upon, aiming to foster the elimination of stereotypes and sexist contents, raise awareness of the fact that sexual exploitation and trafficking for sexual exploitation are an attack against human rights, promote best practices in how they approach their information and incorporate contents related to trafficking.

Together with preventing situations of trafficking, the victims' access to protection and assistance to ensure they can fully enjoy their rights is a core element of the strategy to fight trafficking for sexual exploitation.

To this end, it is essential to locate and identify victims. This requires the definition of measures aimed at improving the detection of victims. It consists of measures aimed at



increasing the understanding and training of professionals who are in a position to observe evidence of trafficking in women and children for sexual exploitation, and at fostering the detection of places where the possible victims of trafficking in human beings may be found (borders, migration centres, apartments, etc.)

- **PRIORITY 2. Identification, protection and assistance to victims of trafficking in human beings.**

As explained in the previous section, the recovery of victims is the core element of the plan. This will only be possible if a suitable process is activated after detecting a possible victim, to identify them and refer them to specialised resources and services.

Guaranteeing the correct communication between all the agents involved is essential to this process, especially in regard to collaboration with the organisations specialised in the comprehensive assistance to victims so that no actions are duplicated and guaranteeing that the correct information is given to victims in regard to their rights and their access to specialised resources according to their needs.

Besides the legal reforms in place and the running of the Framework Protocol for the Protection of Victims of Trafficking in Human Beings, which are essential to guaranteeing communication and coordination between the administrations, institutions and organisations working in this field, the Plan proposes the reviewing of procedures and setting up protocols to assist especially vulnerable targets in specific situations, with the aim of strengthening the mechanisms for the assistance and protection of victims.

- **PRIORITY 3. Analysis and improvement of our understanding to respond effectively to trafficking for sexual exploitation.**

Action against the trafficking in women and children for sexual exploitation must be accompanied by actions aimed at improving our understanding of trafficking situations, aiming to foster both prevention and crime prosecution and the suitable assistance to victims. The monitoring of actions and policies on this matter and obtaining reliable information are essential to good planning and the ensuing efficacy of policies to fight trafficking in human beings.

For this reason, a number of measures aimed at tackling different aspects of trafficking in women and children for sexual exploitation in depth have been put forward. Firstly, through carrying out studies and research into the different elements of trafficking (dimensions, criminal groups, victims, etc.). Secondly, by improving statistical information, which requires the monitoring of actions and policies, and other measures regarding the collection of statistical data and the coordination of the different sources of information so that data can be



compared and contrasted to obtain a picture of the situation that is as close to reality as possible.

- **PRIORITY 4. Prosecuting traffickers more actively.**

Significant steps have been taken in prosecuting the crime of trafficking in human beings; not only concerning the amendment of the legislation to punish this serious crime but also in configuring a strategy to bring trafficking to an end based on the specialisation of the professionals in charge of investigating and prosecuting cases of trafficking.

Following this dynamic, this plan brings together measures to guarantee continuity of those aspects that are essential to effectively fighting this crime, such as the specialisation of professionals or the resources aimed at improving communication and coordination in the investigation and criminal prosecution of this crime.

Similarly, progresses regarding the asset investigation are proposed, as well as adopting measures to deprive criminals from economic profits, tied in with the strengthening of proof mechanisms in criminal processes regarding trafficking in human beings.

- **PRIORITY 5. Coordination and cooperation between institutions and the participation of civil society.**

Improvement in communication and coordination needs to be constant and continuous in the development of policies to fight trafficking for the purposes of sexual exploitation. In this regard, it could be stated that the priority referring to inter-institutional coordination and cooperation is something that crosses all other priorities since this Plan configures comprehensive and multidisciplinary action that brings together different agents with a variety of responsibilities. The greatest coherence and effectiveness of the Plan must be guaranteed, making sure that no efforts are duplicated in their activity.

Inter-institutional coordination and cooperation are further strengthened by measures aimed at consolidating the mechanisms started for communication and the exchange of information, as well as, at promoting new spaces for collaboration at different territorial levels, with special attention paid to the international and local levels.



## V. 4. Measures of the Plan:

Below are the measures of the Plan organised according to specific objectives they aim to fulfil, pointing out for each the institutions and administrative units with competences to implement them as well as other institutions that may collaborate in their implementation. All of this irrespective from the contribution of the organizations specialized in the assistance of victims for the planning and execution of such measures whenever relevant.

### **PRIORITY 1: STRENGTHENING, PREVENTION AND DETECTION OF TRAFFICKING.**

**SPECIFIC OBJECTIVE 1: Raise awareness of the reality of trafficking and promotion of a clear and forceful message to the society of zero tolerance towards trafficking in women for sexual exploitation.**

1	Disseminate the image of the "Blue Heart" Campaign by the United Nations Office Against Drugs and Crime	MSSSI - DGVG
2	Roaming of "Don't be an accomplice" exhibition which reports the situations of trafficking that exist in our country and their consequences, to raise awareness in the population.	MSSSI - DGVG MSSSI - IMIO
3	Fostering activities to celebrate the European Day Against Trafficking in Human Beings (18 October).	MSSSI - DGVG MAEC MINT - DGP MINT - DGGC
4	Promoting activities to celebrate the International Day Against Trafficking in Persons (30 July).	MSSSI - DGVG MAEC - ODH MINT - DGP MINT - DGGC
5	Fostering activities to celebrate the International Day Against Sexual Exploitation and Trafficking of Women and Children (23 September).	MSSSI - DGVG MAEC - ODH MINT - DGP MINT - DGGC
6	Promoting actions to raise awareness aiming to discourage demand for sexual services, paying special attention to the young population.	MSSSI - DGVG MINT - DGP MINT - DGGC CCAA
7	Promoting an awareness campaign aimed at raising awareness about the impact that demanding prostitution has on trafficking in women and children for purposes of sexual exploitation.	MSSSI - DGVG MINT - DGP MINT - DGGC
8	Working, through the Monitoring Centre of the Image of	MSSSI - DGVG



	Women, towards the elimination of stereotypes and sexist contents in advertising, the news and the media which justify, trivialise or encourage violence against women; especially in regard to the impact that demand for sexual services has in trafficking in women and children for sexual exploitation.	MSSSI – IMIO MINT – DGP MINT - DGGC
9	Fostering training and information in trafficking in women and children for sexual exploitation for radio and television professionals, the media groups and cinema and television producers, with the aim of promoting a suitable approach to this reality, the respect to the image of women and the dignity of its victims.	MSSSI – DGVG MSSSI - IMIO
10	Reviewing and updating the Recommendations Handbook towards a suitable treatment in the media of violence against women, including the trafficking in women and children for sexual exploitation.	MSSSI – DGVG MSSSI - IMIO
11	Collaborating in the planning, organisation and execution of awareness-raising activities that are started in radio and television.	MSSSI – DGVG MSSSI - IMIO
12	Promoting a Code of Best Practices for the media, in collaboration with the Monitoring Centre for the Image of Women, so that news regarding trafficking and sexual exploitation is framed in the sphere of violence against women and inequality in practice, making the most of the media's educational duty and making sure that the news is not treated simply as a crime report.	MSSSI – DGVG MSSSI - IMIO
13	Fostering the signing of self-regulation codes that facilitates the elimination of personal ads in the media and fostering a committee to study formulae towards their disappearance.	MSSSI - DGVG MSSSI - IMIO
14	Prevention of trafficking in women and children for purposes of sexual exploitation in the sphere of tourism by means of signing bilateral agreements and Memorandums of Understanding.	MINETUR
15	Achieving the implementation of the Global Ethics Code for Tourism for the protection of children from sexual exploitation in the tourism and travel industry.	MINETUR
16	Preventing trafficking of children and teens by means of promoting the signing of The Code of Conduct as a self-regulation tool for the Tourism Business Sector to protect children from sexual exploitation in the tourism and travel industries.	MINETUR
17	Promoting communication and collaboration with the local administration by means of sending information and	MSSSI – DGVG FEMP



	documents on the reality of trafficking in human beings.	
18	Proposal of measures at local level to encourage the elimination of sex trade advertising in printed media (leaflets, fliers, etc.) which are easily accessible by the population, paying special attention to the protection of childhood and adolescence.	MSSSI – DGVG MSSSI – DGSFI FEMP
19	Proposal for action aimed at limiting the use of Internet as an advertising platform for the sex trade, paying special attention to the protection of childhood and adolescence.	MSSSI – DGVG MSSSI – DGSFI MSSSI - IMIOP MINT – DGP MINT - DGGC
20	Prevention of the demand for sexual services during sports events, by means of information and raising awareness among the public at such events and the collaboration of the event organizers.	MECD - CSD
21	Starting awareness and information actions regarding the trafficking in human beings in the countries of origin of the victims with the involvement of the authorities through using Information and Communication Technologies (ICT).	MINT – DGP MINT - DGGC MAEC
22	Including trafficking in women and children for sexual exploitation in the website “Hay Salida” [There is a Way Out], which includes the campaigns, materials and any other information regarding this issue prepared by the administrations and institutions involved in the fight against trafficking for sexual exploitation.	MSSSI - DGVG
23	Linking the “Hay Salida” Website to the websites of the different Ministries with competences in the matter.	TODOS LOS MINISTERIOS FGE
24	Awareness-raising via social media focus on young population concerning trafficking of women and children for sexual exploitation and its links to prostitution.	MINT – DGP MINT - DGGC
25	Promoting specific awareness-raising measures about trafficking, sexual exploitation and child prostitution.	MSSSI - DGSFI CCAA FEMP





**SPECIFIC OBJECTIVE 2: Increasing information and training on trafficking for sexual exploitation among professionals from public and private institutions.**

26	Informing professionals on novelties and advances made by actions against trafficking in human beings for sexual exploitation through sending information periodically.	MSSSI - DGVG
27	Increasing awareness of the situation of women and children who are victims of trafficking for sexual exploitation by holding informative sessions in Conferences, Seminars and other events.	MSSSI - DGVG MINT - DGP MINT - DGGC
28	Specific training for the staff of the National Network of Coordination Units and Violence Against Women of the Government Delegations and Deputy Offices and in Island Departments.	MSSSI - DGVG
29	Specialised training for professionals in public administrations and other public and private institutions that are able to be in contact with possible victims of trafficking, in order to improve the detection of victims and their referral for assistance and protection.	TODOS LOS MINISTERIOS FGE CGPJ
30	Including trafficking in human beings for sexual exploitation into the training plans and programmes for law enforcement agents.	MINT - SES
31	Including trafficking in human beings for sexual exploitation in the training of staff at the services of the General State Administration abroad.	MSSSI - DGVG MINT MEYSS MAEC
32	Online training for the staff of the General State Administration abroad.	MSSSI - DGVG MINT MEYSS MAEC
33	Training activities related to trafficking in women and children for sexual exploitation aimed at the Armed Forces posted abroad on peace missions.	MDEF MINT - DGGC
34	Reviewing and extending the contents of courses on gender perspective and equality of the training programme of civil servants of the Ministry of Defence to incorporate issues and regulations regarding trafficking in women and children for sexual exploitation.	MDEF - DIGENPER
35	Promoting that equal opportunities, gender perspective and trafficking in women and children for sexual exploitation are included within the contents of further education courses in the Army.	MDEF - DIGENPER
36	Going on with the implementation of Resolution 1325 of the UN Security Council on women, peace and security and of Resolutions 1820, 1888 and 1960 which complement it, inviting States to	MDEF - DIGENPER



	implement the gender criteria in armed conflicts and peace reconstruction, paying special attention to the fight against trafficking in women and children for sexual exploitation.	
37	Promoting dissemination activities regarding the regulation of gender equality, work-life balance, gender violence and the fight against trafficking of women and children for sexual exploitation, for the military staff in the national territory or posted abroad.	MDEF - DIGENPER
38	In the sphere of training activities regarding immigration law, promoting the training of attorneys in the organisations offering legal assistance to persons requesting international protection on issues of trafficking in human beings.	MEYSS - SGIE
39	Including trafficking in women and children for sexual exploitation in the actions established by the Guiding Plan on Coexistence and Improvement of Security in Educational Centres and their Surroundings.	MSSSI – DGVG MECD – CNIIE MINT
40	Bringing teacher closer to the topic of trafficking in women and children for sexual exploitation by giving them information about existing resources and materials through the channels available to exchange information, such as the Intercambia website, and fostering training activities in this matter.	MECD – CNIIE CCAA
41	Providing specific training for the staff in charge of processing files requesting international protection, as well as the staff in charge of interviews at border posts, Alien' Detention Centres (CIE), Immigration Offices and Police stations to improve their understanding of trafficking in women and children for sexual exploitation.	MSSSI - DGVG MINT – DGPOLINT MINT – DGP MEYSS - SGIE
42	Stablishing specific training activities focus on human trafficking through the Centre for Legal Studies.	MJUS – CEJ FGE CGPJ
43	Promoting training actions about child protection against trafficking in human beings and sexual exploitation.	MJUS – CEJ CGPJ
44	Training, information and dissemination of materials in the scope of the National Health Service for health professionals to detect possible victims of human trafficking.	MSSSI - DGSPCI
45	Including trafficking in women and girls for sexual exploitation in training actions aimed at professionals at local level.	MSSSI – DGVG FEMP
46	Supporting the Security and Coexistence Committee of the Federation of Town Councils and Provinces (FEMP) in reviewing how to tackle prostitution on the street in the Security and Coexistence standard regulation.	MSSSI – DGVG FEMP
47	Starting of a work group on the online communication Platform with	MSSSI – DGVG



	the Autonomous Communities, with the aim of fostering dissemination and information exchanging related to the assistance and protection of victims of trafficking in human beings for sexual exploitation.	CCAA
48	Incorporating trafficking in human beings for sexual exploitation in call for proposals to carry out activities for dissemination, promotion, human rights defence and international development cooperation.	MAEC – ODH MAEC – SGCID MAEC - AECID

### SPECIFIC OBJECTIVE 3: Strengthening mechanisms to detect trafficking in human beings for sexual exploitation.

49	Boosting training actions and disseminating materials for improving the detection of victims of trafficking in women and children for sexual exploitation by professionals working in different areas that are able to have contact with possible victims.	TODOS LOS MINISTERIOS FGE CCAA FEMP
50	Informing, training and disseminating materials to improve the detection of situations of trafficking in women and children for sexual exploitation for professionals working in Embassies and Consulates of the countries of origin in Spain.	MSSSI – DGVG MAEC
51	Specific training for border agents on the coast and in the Cities of Ceuta and Melilla to improve the detection of victims of trafficking, as well as their referral to immediate protection and assistance.	MINT - SES
52	Specific training of professionals in the public network of migration centres (Immigration Centres for Temporary Stay and Refugee Welcoming Centres), Aliens' Detention Centres (CIE) and the volunteering staff at these centres, to enhance the detection of victims of trafficking as well as their immediate protection and assistance.	MEYSS – DGM MINT – DGP MINT - DGGC
53	Supporting projects aimed at detecting possible cases of trafficking in human beings in shelters and migrant settlements.	MEYSS - DGM
54	Supporting specialised organisations in their access to places of prostitution in order to detect possible victims of trafficking for sexual exploitation, paying special attention to possible victims of trafficking in apartments and other private places.	MSSSI – DGVG
55	Drafting a common health action protocol to detect and refer possible cases of trafficking for sexual exploitation and improve the assistance to victims.	MSSSI – DGVG MSSSI - DGSPCI CCAA
56	Improving the detection of possible victims of trafficking for sexual exploitation at borders, on the coast and in the Cities of Ceuta	MINT – DGP MINT - DGGC



	and Melilla by facilitating access to specialized organisations prior to the formal identification interview carried out by the competent authorities.	
57	Actions addressed to possible victims of trafficking for sexual exploitation so that they become aware of their situation, facilitating their self-identification as well as the report of the crime.	MSSSI - DGVG



**PRIORITY 2: IDENTIFYING, PROTECTING AND ASSISTING VICTIMS OF TRAFFICKING IN HUMAN**

**BEINGS.**

**SPECIFIC OBJECTIVE 4: Strengthen mechanisms to identify, assist and protect the victims of trafficking.**

58	Drafting the instructions for the procedure to formally identify the possible victims of trafficking for sexual exploitation, taking into account the contributions made by specialised organisations from the moment the victim is detected.	MINT - SES MSSSI - DGVG
59	Harmonizing the information sheet template used by the law enforcement to inform victims of their rights once they are formally identified, written in a simple language easy to understand.	MINT – DGP MINT - DGGC
60	Translating the information sheet template regarding the rights of victims of trafficking into different languages for information purposes.	MSSSI - DGVG
61	Adopting measures to facilitate access of specialised organisations to the women who are refused entry at the border in order to strengthen detection of possible victims of trafficking in human beings.	MINT – SES
62	Strengthening existing coordination protocols between the Directorate General for Police and the Civil Guard, as well as with regional police forces with competences in the investigation of cases of trafficking in persons.	MINT - SES CCAA
63	Creating a working group to speed up the processes to provide documents to victims of trafficking in collaboration with the countries of origin and with specialised organisations in cases of greater complexity.	MAEC MINT – DGP MINT - DGGC MEYSS - DGM
64	Adopting measures to improve the response of specialised resources when they have to assist cases of greater vulnerability (disability, child victims, victims with minor or disabled children and other similar situations.)	MSSSI - DGVG CCAA
65	Promoting training in human trafficking for professionals working at the specific services in charge of assisting people with mental disability, in order to adapt the assistance given to victims who present this type of disability.	MSSSI - DGPAD
66	Dissemination and training for a better knowledge of the Framework Protocol to Protect the Victims of Trafficking in Human Beings content.	MINT – SES MSSSI - DGVG MJUS MEYSS



FGE  
CGPJ

**SPECIFIC OBJECTIVE 5: Strengthen the information and assistance services for victims of trafficking for sexual exploitation.**

67	Periodical updating of the content of the Guide of Existing Resources to assist victims of trafficking for sexual exploitation and their children.	MSSSI – DGVG CCAA
68	Specific call for proposals to grant specialised organisations in the assistance of women and girls who are victims of trafficking for sexual exploitation and their children.	MSSSI – DGVG
69	Supporting projects that aim to assist and protect possible victims of trafficking for sexual exploitation who are migrants and, given the case, help them to return.	MEYSS - DGM
70	Monitoring actions carried out by projects to assist women and girls who are the victims of trafficking for sexual exploitation and their children, involving the Network of Coordination and Gender Violence Units of the Government Delegations and Deputy Offices and Island Departments.	MSSSI - DGVG
71	Promoting individual treatment in the assistance to the victims of trafficking for sexual exploitation through supporting mediation and translation services.	MSSSI - DGVG
72	Encourage companies to hire women victims of trafficking for sexual exploitation through establishing discounts in the employer's contributions to Social Security.	MEYSS - SEPE
73	Improving the information provided to the victims of trafficking during the identification process regarding the content and scope of their right to free legal assistance.	MSSSI - DGVG MINT – SES
74	Preparing a forensic protocol for the expert's examination in the case of victims of trafficking.	MJUS-DGRAJ
75	Preparing a coordination instrument for collaboration and coordination between the Public Prosecutor and the Offices to Assist the Victims of Crime (OAV), which depend on the Ministry of Justice, concerning trafficking in human beings.	MJUS FGE
76	Preparing a catalogue of rights and specialised services available to the victims of trafficking which includes assistance to their children, guaranteeing that homogenous information is offered to the possible victims of trafficking when they are detected and identified.	MSSSI – DGVG MJUS – DGRAJ MINT – SES MEYSS - DGM
77	Preparing a proposal of minimum standards to be followed in any intervention with victims of trafficking for sexual exploitation, including those who are accompanied by their children, based on best	MSSSI - DGVG



practices in the comprehensive assistance to victims.	
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**SPECIFIC OBJECTIVE 6: Measures aimed at assisting in situations of greater vulnerability.**

<b>FOREIGN VICTIMS IN AN IRREGULAR SITUATION</b>		
78	Preparing guidelines regarding the offering, processing and granting of the recovery and reflection period.	MINT – SES MSSSI – DGVG
79	Establishing the criteria to grant residence permits for exceptional circumstances linked to the victim's collaboration with the investigation or criminal proceedings.	MINT – SES FGE
80	Making sure there is a specialised analysis of the applications for residence and work permits based on exceptional circumstances on the grounds of the personal situation of the victim.	MEYSS - DGM
81	Improving the information provided to the foreign victims of trafficking in human beings regarding the basic content of the right to request international protection and the procedures for such request, in a language they understand and, when the victim is a child, in a suitable manner to their level of maturity.	MSSSI - DGVG MINT – SES MEYSS – SGIE
<b>INTERNATIONAL PROTECTION REQUESTS</b>		
82	Improving coordination between the Asylum and Refugee Office and Law Enforcement while the request for international protection is substantiated when reasonable evidence of trafficking in human beings is observed.	MINT – DG POLINT MINT - SES
83	Call for proposals addressed to the welcoming and integration of applicants and beneficiaries of international protection.	MEYSS - DGM
<b>CHILD VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION</b>		
84	In the framework of the Monitoring Observatory for Childhood, drafting a Protocol to improve coordination in the detection, identification and assistance to minor victims of trafficking, which establishes the mechanisms for inter-institutional communication when the suspicion arises that the possible victim is a child and includes a common catalogue of evidence for detection and identification.	MSSSI - DGSFI MSSSI - DGVG MINT - SES MJUS – DGRAJ FGE CGPJ CCAA
85	Specific training to detect minor victims of trafficking and refer them to the key person: among others, technical and educational staff from youth centres, staff in social services, the police, the courts of justice and health.	MSSSI – DGVG MSSSI - DGSFI MJUS - DGRAJ MINT - SES CCAA
86	Promoting the training of child protection services to improve detection and assistance to minor victims of trafficking for sexual exploitation.	MSSSI – DGSFI CCAA



87	Training of the staff in charge of formally identifying the victims of trafficking (Law Enforcement Agents) regarding the special needs and circumstances of minor victims of trafficking, including specific actions for their referral to specialised assistance and protection resources, as well as the participation of specialist in the matter.	MINT - SES
88	Establishing specific guidelines regarding possible minor victims in the specific health assistance protocol concerning trafficking in human beings.	MSSSI – DGSPCI MSSSI - DGVG CCAA
89	Dissemination and training in the Framework Protocol on specific actions regarding Foreign Unaccompanied Minors.	MEYSS – DGM MJUS MIR - SES MAEC FGE CGPJ
90	Monitoring of the measures started according to the Framework Protocol on specific actions regarding Foreign Unaccompanied Minors related to issues that affect these minors when they are the victims of trafficking.	MEYSS – DGM MJUS MIR - SES MAEC FGE
91	Monitoring of the measures established in the Framework Protocol on specific actions regarding Foreign Unaccompanied Minors and the Register of Foreign Unaccompanied Minors towards its consolidation as an efficient tool to protect the best interest of the foreign child as well as monitoring measures established by the Protocol in regard to inter-institutional coordination.	MEYSS - DGM MINT – SES MJUS FGE CCAA
92	Gathering best practices in regard to detecting, identifying, assisting and protecting the minor victims of trafficking through the Monitoring Observatory for Childhood.	MSSSI - DGSFI MSSSI - DGVG MINT - SES MJUS – DGRAJ FGE CCAA
93	Including a section in the catalogue of rights and specialised services available to the victims of trafficking that brings together the rights and specific rights available to minor victims.	MSSSI – DGVG MJUS – DGRAJ MINT – SES MEYSS - DGM
94	Establishing a speedy procedure that guarantees the transfer of the minor victims identified within the national territory, and when advisable for security reasons, to the specialised residential centre that is most suited to their needs.	MSSSI – DGSFI FGE CCAA
95	Monitoring the implementation of current regulations in order to consider as minors the identified victims of trafficking being when	MSSSI - DGSFI MJUS





	there are doubts regarding their age and while their age is determined.	
96	Including specialised assistance to child victims in call for proposals which grants specialised organisations to develop programmes to assist and protect the victims of trafficking and sexual exploitation.	MSSSI – DGSFI MSSSI - DGVG
97	Promoting the creation of coordination and monitoring mechanisms between the Office of the Public Prosecutor in the provinces and regional child protection institutions in those cases where the guarded minor victims of trafficking are involved in criminal proceedings as protected witnesses.	FGE CCAA

**PRIORITY 3: ANALYSIS AND IMPROVING OUR UNDERSTANDING TO PROVIDE AN EFFICIENT RESPONSE TO TRAFFICKING FOR SEXUAL EXPLOITATION.**

**SPECIFIC OBJECTIVE 7: Fostering the improvement of our understanding of situations of trafficking in women for sexual exploitation through investigating this reality**

RESEARCH AND INVESTIGATION		
98	Drafting studies and analysis of the dimensions, distribution, victim profiles, modus operandi and criminal groups related to trafficking for sexual exploitation in the Spanish territory.	MINT – CITCO MINT – DGGC MINT - DGP
99	Compiling and disseminating research and investigation aimed at understanding the dimensions of trafficking for sexual exploitation in Spain, from a qualitative and quantitative perspective.	MSSSI – DGVG MSSSI - DGSFI MEYSS - DGM MINT – CITCO MINT – DGGC MINT - DGP MJUS FGE CCAA
100	Carrying out studies, analysis and research in gender violence and in the treatment of it by the media involving other forms of violence against women, with special attention to trafficking in women and children for sexual exploitation.	MSSSI – DGVG
101	Identifying best practices in our country to reduce demand in the sphere of the EU Strategy Against Trafficking in Human Beings (2012-2016).	MINT – SES (Rapporteur)
102	Identifying and disseminating best practices towards a gradual improvement in the standards of victims assistance, in collaboration with organisations specialised in detecting and	MSSSI – DGVG



	assisting victims.	
103	Carrying out a study on the needs of the victims of trafficking for sexual exploitation which includes specific needs of the children victims.	MSSSI - DGVG
104	Updating on the study of the legal treatment of criminal proceedings related to trafficking in human beings for sexual exploitation.	FGE
105	Collaborating with the EU in improving our understanding on the gender dimension of trafficking in human beings and the specific characteristics of the most vulnerable groups, in particular in regard to child victim profile (age, sex, origin, etc.).	MINT - Rapporteur

#### DATA COLLECTION

106	Updating and improving the data bases regarding trafficking in human beings, fostering the inclusion of information from all administrations, as well as information from specialised organisations in the comprehensive assistance to victims.	MSSSI – DGVG MINT – CITCO MINT – DGP MINT - DGGC
107	Collecting data provided by organisations specialised in the assistance to women who are victims of trafficking for sexual exploitation, using common benchmarks that make it possible to harmonize the information that is requested to them in the questionnaires attached to the final expenditure of the granted projects.	MSSSI – DGVG MEYSS - DGM
108	Data collecting about criminal proceedings of trafficking for sexual exploitation.	FGE
109	Including statistical data regarding the trafficking in women and children for sexual exploitation into the Annual Statistical Report of the Government Delegation against Gender-based Violence.	MSSSI – DGVG MINT – CITCO MEYSS - DGM FGE
110	Contributing to data collection at European level.	MINT – SES

#### **PRIORITY 4: PROSECUTING THE CRIME MORE ACTIVELY.**

##### **SPECIFIC OBJECTIVE 8: Strengthening investigation of the cases of trafficking for sexual exploitation.**

111	Approving the II Police Plan Against Trafficking for Sexual Exploitation.	MINT – DGP
112	Updating the Service Directive No. 40/2009 of the Joint Operational Office of the Civil Guard, in regard to action against the trafficking in human beings.	MINT - DGGC



113	Intensifying preventive inspections in places where there is the potential risk that situations of trafficking for sexual exploitation exist.	MINT - SES
114	Strengthening investigation of the crime through improving the training and specialisation of the professionals in the State Security Forces and the regional and local police forces.	MINT - SES
115	Training in issues of asset or financial investigation as an instrument to obtain evidence and to facilitate the monitoring, freezing, seizing and confiscation of products resulting from the crime.	MINT – SES MJUS FGE CGPJ
116	Investigation of situations of trafficking carried out by specialised staff.	MINT – SES FGE
117	Strengthening of actions to investigate criminal groups.	MINT – SES FGE
118	Promoting participation in training activities on cross-border cooperation in this matter.	MJUS MINT – SES FGE CGPJ
119	Fostering coordination between National Law Enforcement and the regional police forces in charge of investigating trafficking and identifying any possible victims.	MINT CCAA
120	Intensifying international cooperation actions, especially with the countries of origin of the victims of trafficking in human beings.	MINT – SES MJUS FGE

**SPECIFIC OBJECTIVE 9: Strengthening the instruments to prosecute the trafficking in human beings:**

121	Updating legal operators knowledge concerning the new classification of the crime of trafficking in human beings in Article 177 bis of the Criminal Code; in particular, in regard to collectives who need special protection (victims who are pregnant, with a disability or children).	MJUS CGPJ
122	Promoting training related to the seizing of goods and products of the crime in accordance with Art. 127 of the Criminal Code.	MJUS CGPJ
123	Promoting training concerning the criminal classification of profit from the exploitation of the prostitution of others.	MJUS CGPJ
124	Fostering mechanisms in the National Prosecutor's Office for the suitable coordination related children victims of trafficking for sexual exploitation between public prosecutors specialized in	FGE



	immigration and public prosecutors specialized in minor,.	
125	Monitoring the implementation of Circular 2/2014 from the Secretary General of the Ministry of Justice in regard to tasks to be carried out by Court Secretaries related to situations of trafficking in human beings.	MJUS - DGRAJ
126	Strengthening the training of legal officers so that the victim's report isn't the determining element in criminal proceedings.	MJUS CGPJ
127	Promoting measures being requested in criminal proceedings to guarantee the seizing of economic profits derived from trafficking, depriving access to the criminals.	FGE
128	Fostering that victims of trafficking in human beings participate, as beneficiaries, in the products seized in relation to the criminal activity, towards their recovery, assistance and protection.	MJUS MINT MSSSI - DGVG

## **PRIORITY 5: COORDINATION AND COOPERATION BETWEEN INSTITUTIONS AND PARTICIPATION OF THE CIVIL SOCIETY.**

### **SPECIFIC OBJECTIVE 10: Fostering coordination and participation in matters of trafficking for sexual exploitation.**

		MINT - SES MJUS - DGRAJ MSSSI - DGVG MEYSS – DGM MEYSS - DIGITSS CGPJ FGE
129	Monitoring the implementation of the Framework Protocol to Protect Victims of Trafficking for Sexual Exploitation, through its Monitoring Committee.	
130	Collaborating with the Autonomous Communities in the scope of trafficking for sexual exploitation through the Sectoral Equality Conference for a better protection and assistance to victims and, in particular, to foster their mobility among their territory.	MSSSI - DGVG CCAA
131	Involving the Autonomous Communities in updating the Guide of Existing Resources for the assistance of victims of trafficking for sexual exploitation.	MSSSI - DGVG CCAA
132	Fostering the development of the Framework Protocol to Protect the Victims of Trafficking at regional level in the scope of the Sectoral Equality Conference.	MSSSI - DGVG CCAA
133	Promoting the roles of the Coordination and Gender Violence Units of the Government Delegations and Deputy Offices and Island Departments concerning the fight against trafficking for sexual exploitation.	MSSSI - DGVG



134	Collaborating with the Spanish Federation of Town Councils and Provinces (FEMP) to promote the participation of local institutions in the development of measures to prevent and detect trafficking for sexual exploitation.	MSSSI - DGVG FEMP
135	Promoting the participation of organisations specialised in the comprehensive assistance of victims of trafficking and the organisations that work with childhood in the Social Forum Against Trafficking for Sexual Exploitation.	MSSSI - DGVG
136	Review of the functioning of the Social Forum Against Trafficking for Sexual Exploitation to increase its effectiveness.	MSSSI - DGVG
137	Participation of the Social Forum Against Trafficking for Sexual Exploitation in monitoring the Comprehensive Plan Against Trafficking in Women and Children for Sexual Exploitation 2015-2018.	MSSSI – DGVG FORO
138	Promoting communication and collaboration with the countries of origin through sending information and materials to Embassies and Consulates in Spain and the drafting of action plans with the main countries of origin of the victims.	MSSSI – DGVG
139	Strengthening international cooperation through INTERPOL, EUROPOL, EUROJUST and FRONTEX with the aim of offering a coordinated operational response in the actions against sexual exploitation networks.	MINT – SES MJUS FGE
140	Optimisation of the Network of Spanish Advisers, Attachés and Liaison Officers posted abroad and their foreign counterparts.	MINT - SES
141	Fostering the participation of organisations specialised in the comprehensive assistance to victims of trafficking in human beings at the meetings of the Monitoring Committee for the Framework Protocol to Protect the Victims of Trafficking concerning the specific issues arising in view of their scope of activity.	MSSSI - DGVG
142	Collaboration of all the institutions involved to comply with the contents of Article 19, Directive 2011/36/EU of the European Parliament and of the Council of 5 April in regard to the roles of the National Rapporteur regarding the Trafficking in Human Beings.	MINT – SES MINT – CITCO MJUS MEYSS MSSSI FGE
143	Fostering coordination between the bodies in charge of fulfilling obligations to inform international bodies in matters of trafficking in human beings (UN, Council of Europe, OSCE, EU, etc.)	MAEC MINT – SES MINT – CITCO



## **VI. PERIOD OF VALIDITY, COORDINATION AND EVALUATION OF THE PLAN.**

### **VI. 1. Period of validity of the Plan**

The current Action Plan will be enforced during the period 2015-2018.

### **VI. 2. Plan Coordination.**

Article 3 of Royal Decree 200/2012 of 23 January, which develops the basic organic structure of the Ministry of Health, Social Services and Equality and which amends Royal Decree 1887/2011 of 30 December, which establishes the basic organic structure of Ministerial offices, appoints the Government Delegation against Gender-based Violence in its article 3 as the General Directorate in charge of the proposal for a Government policy against the different forms of gender violence and the promotion, coordination and advising in all measures carried out in this matter.

Article 3.e) of the Royal Decree, on the other hand, expressly mentions the competences of the Government Delegation in boosting the coordination of the State Public Administration in matters of trafficking in human beings for sexual exploitation, as well as the promotion of the cooperation with other institutions and Administrations with competences in the assistance and protection of victims.

As a result of the above, the Government Delegation against Gender-based Violence will be the body in charge of coordinating this Comprehensive Plan to Fight Trafficking in Women and girls for Purposes of Sexual Exploitation in collaboration with the administrations and institutions involved in its implementation; in particular, through the Sectoral Equality Conference and Social Forum Against Trafficking for Purposes of Sexual Exploitation.

### **VI. 3. Monitoring and Evaluation of the Plan.**

This Plan has been prepared with the participation of different institutions and organisations involved in the fight against trafficking for purposes of sexual exploitation in order to tackle all aspects regarding this matter using a comprehensive approach based on cooperation.

The same participatory spirit is considered for the Plan Assessment process since the contributions made by the different organisations and the coordination mechanisms are essential towards properly contrasting the information collected and carrying out a realistic



analysis that takes into account all aspects that influence the efficacy of the actions and objectives programmed.

For this reason, a Plan Monitoring and Evaluation system has been considered that is based on the work of two bodies: the **Sectoral Equality Conference**, body for the meeting, deliberation and cooperation between the General State Administration and Autonomous Communities on matters of equality policy, including assistance to the victims of trafficking for sexual exploitation; and the **Social Forum Against Trafficking for Sexual Exploitation** which brings together Ministries with responsibilities in executing the Plan and a representation of the regional administration, the Spanish Federation of Town Councils and Provinces (FEMP) and organisations with expertise in the assistance and protection of victims.

Given the importance of monitoring the Plan as a means to rectify any actions that are not offering the results expected, a **monitoring report** will be carried out **annually** and will collect information on the actions carried out for each of the priorities established, assessing any achievement and shortfalls with the aim of offering possible solutions to continue advancing in the abovementioned priorities.

To this end, a series of benchmarks will be established to assess the achievements made for each of the priorities contained by the Plan.

The report will be submitted to the consideration of the Social Forum against Trafficking for Purposes of Sexual Exploitation. The members of this forum will make the corresponding contributions regarding their area of expertise. Once the report has been approved, it will be taken to the Council of Ministers and sent to the Parliamentary Equality Committee to inform them of the advances made on the matter.

A **final evaluation report** will be carried out when the Plan comes to an end. It will contain information regarding the work carried out in the 4 years during which the Plan was enforced, using the same participatory methodology.



## VII. ECONOMIC REPORT.

<b>PRIORITIES</b>	<b>TOTAL MINISTRIES 2015-2018</b>
<b>PRIORITY 1: STRENGTHENING PREVENTION AND DETECTION</b>	5,727,551.48 €
<b>PRIORITY 2: IDENTIFYING, PROTECTING AND ASSISTING VICTIMS</b>	19,253,154.24 €
<b>PRIORITY 3: UNDERSTANDING AND ANALYSIS OF THB FOR PSE</b>	2,867,648.00 €
<b>PRIORITY 4: PROSECUTING THE CRIME MORE ACTIVELY</b>	55,359,804.00 €
<b>PRIORITY 5: INTER-INSTITUTIONAL COORDINATION AND CIVIL SOCIETY PARTICIPATION</b>	20,903,000.00 €

**TOTAL BUDGET 2015 - 2018: 104,111,157.72 €**

The amounts allocated are the needed to implement the measures set out by the Plan, in accordance with the estimates stated by each ministry involved in the implementation thereof.

If required, the amounts allocated will be updated, conditioned by the existence of suitable and sufficient funds and by compliance with the budget stability and financial sustainability objectives.





## **ABBREVIATIONS**

**AECID** – Spanish Agency for International Development Cooperation

**CCAA** –Autonomous Communities

**CEJ** – Centre for Legal Studies

**CGPJ** – General Council of the Judicial Authority

**CITCO** – Intelligence Centre against Terrorism and Organised Crime

**CNII** – National Centre for Educational Innovation and Research

**CSD** – High Council for Sport

**DIGENPER** – General Directorate on Staff

**DGGC** – General Directorate for the Civil Guard

**DGITSS** – General Directorate on Labour Inspection and Social Security

**DGM** – General Directorate on Migration

**DGP** – Police General Directorate

**DGPAD** – General Directorate for Disability Support Policy

**DGPOLINT** – General Directorate for Domestic Affairs

**DGRAJ** – General Directorate for Relations with the Justice Administration

**DGSFI** - General Directorate for Family and Childhood Services

**DGSPCI** - General Directorate for Public Health, Quality and Innovation

**DGVG** – Government Delegation against Gender-based Violence

**FEMP** – Spanish Federation of Town Councils and Provinces

**FGE** –Public Prosecutor State Office

**IMIO** – Institute for Women and Equal Opportunities

**MAEC** –Ministry of Foreign Affairs and Cooperation

**MDEF** – Ministry of Defence

**MECD** – Ministry of Education, Culture and Sport

**MEYSS** - Ministry of Employment and Social Security

**MINHAP** – The Treasury and Ministry of Public Administration

**MINT** – Ministry of Interior

**MINETUR** - Ministry of Industry, Trade and Tourism.

**MJUS** – Ministry of Justice

**MSSSI** - Ministry of Health, Social Services and Equality

**ODH** – Human Rights Office

**SEPE** – National Public Service for Employment

**SGCID** – Secretary General for International Cooperation and Development

**SGIE** - Secretary General for Immigration and Emigration

**SES** – Secretary of State for Security



# ANNEX I: FINAL MONITORING REPORT OF THE COMPREHENSIVE PLAN TO FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION 2009- 2012

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December 2013



**ANNEX I: FINAL MONITORING REPORT OF THE COMPREHENSIVE PLAN TO FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION 2009-2012.**

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## I. INTRODUCTION

This report is an analysis on the implementation of the Comprehensive Plan to Fight against Trafficking for Sexual Exploitation 2009-2012, a strategy aimed at combating trafficking for sexual exploitation from a comprehensive perspective, built on a process of inter-institutional and multidisciplinary cooperation.

Given that this Final Report establishes a diagnosis of the starting point on which the Comprehensive Plan to Fight against Trafficking in Women and Children for Sexual Exploitation 2015-2018 is built, it is included as an Annex to it..

The Government Delegation against Gender-based Violence, in the sphere of the General State Administration, has competences in fostering coordination in matters of trafficking in women and girls for sexual exploitation and cooperation between institutions and Administrations that have competences in the assistance and protection of victims. As such, it has been in charge of coordinating this report which brings together the contributions made by the ministerial offices responsible for executing the Comprehensive Plan 2009-2012.

Following the structure of annual reports, this document is structured into four main sections:

- Improvement in our understanding, awareness and prevention in matters of fighting trafficking for sexual exploitation.
- Protecting the victims of trafficking for sexual exploitation.
- Prosecuting the crime.
- Structures for inter-institutional cooperation and coordination.

In general, the report highlights the advances made by the Plan in terms of collaboration between institutions and administrations throughout the four years of validity; in particular, the establishing of formal communication channels with civil society organisations that assist the victims in a specialised capacity.

Despite the 2009-2012 Plan coming to an end, the report points out that every department has taken on the measures set out by the Plan within their scope, incorporating them to their everyday activity and thus continuing the process started in 2009.



## **II. IMPROVING OUR UNDERSTANDING, AWARENESS AND PREVENTION.**

### **1.1. MAIN ACHIEVEMENTS IN INVESTIGATION, AWARENESS AND PREVENTION OF TRAFFICKING FOR SEXUAL EXPLOITATION.**

One of the objectives of the Comprehensive Plan 2009-2012 was to increase our understanding of the state of trafficking in human beings for sexual exploitation in Spain, aiming to learn about its true dimensions and to develop suitable measures to fight it; especially, to foster prevention and early detection of situations of trafficking.

Similarly, the Plan points out the need to raise awareness among professionals, companies, the general public and the field of education and increase the information available to them, together with specialised training for the staff of the Law Enforcement and civil servants and other professionals in the administration and in public and private institutions involved in the trafficking in human beings.

These objectives were expressed in a number of measures that were established for the Plan: 19 measures for awareness, prevention and investigation in Area I, and 7 measures for education and training in Area II. These, in turn led to actions being carried out. The following conclusions can be reached about these actions:

- In the sphere of research, in accordance with the Plan's provisions, the following studies were carried out:
  - Study on the legal treatment of criminal proceedings regarding the trafficking in human beings for sexual exploitation, prepared by the Ministry of Justice. This study, based on the legal framework in existence before the Criminal Code amendment established by Organic Law 5/2010 of 22 June, was essential to carrying out later legal reforms, both concerning to criminal law and immigration law.
  - The study "Trade Populations: trafficking of women in Spain" refers to trafficking in women for sexual exploitation in relation with migration flows, analysing the figures regarding migration, prostitution and trafficking in women. This research was started by the Women's Institute prior to the approval of the Plan 2009-2012,



incorporating updated information in 2012 and was later published by the Government Delegation against Gender-based Violence.

- Research aimed at understanding the resources that exist in Spain to assist the victims of trafficking for sexual exploitation. This gave rise to a Resources Guide that works as a practical tool to locate existing specialised resources to assist women and children who are victims of trafficking for sexual exploitation, containing a description of the type of resources and its geographical location.

To accompany this research, the Plan planned a study on the consequences of trafficking on its victims that could help prepare methodological guidelines for intervention with these victims. The study was not carried out during the term of the Plan and has now been taken on by the Government Delegation against Gender-based Violence. Thanks to this, the expectations of the Plan regarding research have been met.

- The following objectives contained in the Plan related to awareness have been met. Specifically, the following actions have been carried out with the aim to:
  - Increase social awareness of trafficking for sexual exploitation, delivering a clear and forceful message of rejection towards this violation of fundamental rights. To this end, several awareness-raising campaigns were started, fostering the celebration of the European Day Against Trafficking in Human Beings (18 October), involving the Council of Ministers every year to approve a statement rejecting this scourge and supporting its victims. To comply with this objective, actions have also been carried out to control adverts related to the sexual trade in the media through negotiations with the media towards their self-regulation to end this type of advertising. As a result of this action, these adverts have disappeared from some written media.

Furthermore, a consultation was carried out with the State Council regarding the possibility of acting against adverts related to the sex trade given the shortfalls of self-regulation mechanisms established by the Plan in reaching their objective of ending prostitution advertising in the written press.

In their report answering the consultation, on 22 March 2011, the State Council stated the existence of legal grounds to establish measures to limit the advertising of prostitution, even its banning. However, for this to occur, the measures to be adopted would need to be implemented by means of a legislative initiative.



- Raising awareness and informing students, families and teachers about trafficking in human beings for sexual exploitation with the aim of fostering respect for human rights and equal opportunities between men and women. This has been essentially carried out by preparing specific materials: “Laia's Guide” regarding trafficking for sexual exploitation aimed at students in the 3rd and 4th year of Compulsory Secondary Education (ESO) and Higher Secondary Education, and its online dissemination in the field of education.
- Inform companies, institutions and professionals about trafficking for sexual exploitation, in particular companies of the tourism and event promotion sectors. This has essentially been carried out by incorporating this subject among the issues contained in the World Ethical Code for Tourism of the World Tourism Organisation (UNWTO) in regard to the prevention of any abuse or exploitation in vulnerable groups (women and children), in the populations of destination and, in particular, in Europe.
- Concerning the actions carried out to increase prevention in the trafficking in human beings, foster early detection and improve information regarding this crime, the following actions have been carried out:
  - Inspections carried out by the Law Enforcement have been intensified in places where there is a potential risk of trafficking for sexual exploitation. This measure has been accompanied by improved information management: the creation in 2009 of a specific database for trafficking in human beings (BDTRATA) may be highlighted. Information is periodically added to the database by the Law Enforcement, regarding the administrative inspections carried out in places where prostitution takes place (mainly brothels), and police reports from investigations carried out against the crimes of sexual exploitation and trafficking in human beings for sexual exploitation.

To complement the systematised information through the database managed by the Intelligence Centre for Organised Crime (CICO) of the Ministry of Interior, several administrations collect data regarding the development of their competences in matters of fighting against trafficking for sexual exploitation. Thus, the Government Delegation against Gender-based Violence collects information about women who are assisted by resources financed by the annual call for proposals for the development of projects for the assistance of women who are victims of trafficking for sexual exploitation and their children.



The General Prosecutors Office also includes in its annual report information regarding the prosecution of the crime of trafficking of human beings. This includes information about the persons who are being investigated and victims identified.

- o Several protocols have been prepared to foster the detection and referral of victims of trafficking in human beings by professionals in different spheres (health, migration or the coordination of police operations). The involvement of the Government Delegation against Gender-based Violence in the last year of the Plan can also be highlighted, designing common guidelines to detect possible victims of trafficking together with five other EU countries (France, Netherlands, Greece, Romania and Bulgaria). These guidelines are accompanied by the corresponding practical tools to facilitate the detection of possible victims of trafficking by professionals who are not specialised in this matter to help increase identification and referral to specialised assistance services<sup>1</sup>.
- o During the years the Plan was enforced, several training actions have been carried out to foster the skilling and specialisation of professionals in different areas that are related to trafficking in human beings. This training was specific and specialised or integrated into general training plans in different ministerial offices. The result of this training has been higher specialisation in the Law Enforcement and the creation of specific units in both the Law Enforcement and the Civil Guard to investigate this crime.

In regard to the training and specialisation of professionals in the Law Enforcement, the fostering of police specialisation in the financial investigation of crimes related to trafficking in persons may be highlighted, as well as the exchanging of information with the Executive Service of the Committee to Prevent Money Laundering.

Furthermore, the different ministerial offices involved in executing the Plan have started training activities regarding the trafficking in human beings for sexual exploitation, aimed at its staff and at professionals in its scope of competences in order to increase their understanding of these situations.

In the sphere of training, besides the measures contained in the Plan 2009-2012, the drafting of training materials aimed at professionals in different areas may be pointed out. These aim to help in the detection of possible victims of trafficking in human beings (as mentioned above). These materials have been prepared in cooperation and

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<sup>1</sup><http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/Deteccion/home.htm>





validated with different bodies and institutions specialised in this matter. In turn, they are in charge of distributing the materials and organising training activities with non-specialised professionals who may support the process to detect possible victims<sup>2</sup>.

## **1.2. CONCLUSIONS AND RECOMMENDATIONS IN THE SPHERE OF INVESTIGATING, RAISING AWARENESS AND PREVENTING TRAFFICKING FOR SEXUAL EXPLOITATION.**

As stated earlier, all the objectives contained in Areas I and II of the Plan 2009-2012 have been met. The measures contained in these Areas have been continued due to the need to continue with the work carried out in raising awareness, prevention and training.

However, certain aspects have been identified which should be reinforced:

1. In regard to increasing social awareness, the need exists to tackle activities from the point of view of demand, as this is one of the main causes of trafficking in human beings according to Article 6 of the Convention of the Council of Europe regarding the fight against trafficking and human beings and Article 18, Directive 2001/36/EU of 5 April.

Although this aspect was not a measure of the Plan 2009-2012, carrying out actions aimed at raising awareness and informing in order to discourage demand is, without a doubt, an essential aspect in preventing situations of trafficking that should be tackled when formulating a Comprehensive Plan. Similar strengthening is required concerning the work carried out towards the social perception of prostitution (main destination of the victims of trafficking) and the stigmatisation of the women who practice it.

In this regard, in its report monitoring the implementation of the Council of Europe Convention Against Trafficking in Human Beings in Spain, the Group of Experts in Trafficking in Human Beings (GRETA) presses the Spanish authorities to continue the awareness-raising work carried out and to start measures to discourage demand for services in which possible victims of trafficking in human beings are used, recommending that the possibility to implement measures to punish the use of such services is studied, taking into account that such measures cannot lead to criminalising or prosecuting the victims.

2. As regards the detection and identification of possible victims of trafficking for sexual exploitation, the comments collected by the report monitoring the implementation of the Council of Europe Convention Against Trafficking in Human Beings in Spain may be pointed out as they stress the connection between trafficking in human beings and

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<sup>2</sup> See previous footnote on early detection and prevention in trafficking in human beings and footnote 17..



prostitution. GRETA states its concern regarding the development of local regulations to discourage the demand for prostitution as the main destination of the victims of trafficking for sexual exploitation. The Group of Experts considers that such regulations carry with them in some cases the fining of women in a situation of prostitution, highlighting also that there are no figures in Spain about the impact of such measures on sexual exploitation and trafficking.

As a result, it requests that the impact of such measures on the detection and identification of victims of trafficking is studied, as well as on their protection and assistance and in the prosecution of traffickers. Similarly, it points out that this type of regulations can result in a greater dependence of women on the networks that exploit them, increasing their isolation and decreasing the possibilities of detecting possible cases of trafficking and their referral to suitable assistance services.

3. As regard the systems for data collection related to trafficking for sexual exploitation, these are constantly evolving while being affected by the incorporation of new procedures and legal amendments carried out in the past few years and still ongoing. This without prejudice to the complexity of collecting specific and reliable statistical information on the evolution of criminal behaviours. The main consequence of this situation is to hinder the comparison of data from previous years to study evolution in both the prosecuting of crimes and in the assistance and protection of victims.

Moreover, as pointed out in the assessment report of the implementation of the Council of Europe Convention Against Trafficking in Human Beings carried out by GRETA, given the complex territorial and administrative organisation present in Spain and the participation of different institutions and organisations, coordination between the different institutions and organisations involved must be strengthened from the very moment a possible victim is detected so that there is a single, reliable source of information which collects all the information provided by the different institutions and administrations, including those collected by organisations that assist the victims of trafficking, broken down by sex, age, type of exploitation, country of origin and country of destination, etc.

In this regard, in its report "Trafficking in Human Beings in Spain: Invisible Victims"<sup>3</sup> the Office of the Ombudsman highlights the extreme difficulty to obtain information due to the existence of a variety of sources and databases that cannot be compared. Similarly, it states that the lack of reliable information seriously compromises the

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<sup>3</sup>[http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Informe\\_Defensor\\_del\\_Pueblo\\_trata.pdf](http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Informe_Defensor_del_Pueblo_trata.pdf)



adoption of measures to fight against trafficking and makes it difficult to carry out a realistic evaluation of the impact of any assessment plan. Furthermore, it refers to the difficulty to compare data and records.

4. As regards the advances made in training and the specialisation of professionals, different institutions state that it is essential to strengthen the training of certain professionals; in particular, civil servants in charge of border control and the staff in charge of international protection procedures. Several institutions, among which are organisations specialised in the matter, the Office of the Ombudsman and GRETA, point out that there are significant shortfalls in the detection of possible victims in these spheres. Similarly, the need has been pointed out to establish procedures with clear instructions regarding how to act when facing possible victims (at the border or when requesting international protection) to guarantee that their rights are protected and they can access specialised assistance resources.



### **III. PROTECTING THE VICTIMS OF TRAFFICKING.**

#### **2.1. MAIN ACHIEVEMENTS IN ASSISTING AND PROTECTING THE VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION.**

The main objective of the Plan 2009-2012 is improving the assistance and protection of victims. Hence, any measure it contains must guarantee that the rights of the victims are respected over any other intention.

To guarantee compliance with this objective, the Plan established the need to start three types of measures. On the one hand, improving resources to guarantee specialised assistance to the victims; on the second hand, taking on a series of legal reforms that will guarantee greater protection to the victims; finally, preparing and developing action and coordination protocols to improve information, assistance and protection of victims and witnesses.

The main results of implementing these measures are the following:

4. Regarding the access of victims to specialised information, assistance and protection resources, improvement in the response to the needs of the victims of trafficking for sexual exploitation may be pointed out. This has been carried out through financing specialised resources in their comprehensive assistance through several call for proposals:

- ◆ Annual call for proposals of the Ministry of Health, Social Services and Equality that finances, through the Government Delegation against Gender-based Violence, the development of projects to protect and assist women who are victims of trafficking for sexual exploitation and their children, including resources aimed at the assistance of minor victims.

Since 2009, allocation of an annual budget for non-profit organisations with accredited experience in assisting the victims of trafficking for sexual exploitation has made it possible to guarantee their access to specialised information services and to social, psychological, health and legal assistance as well as translation services, training actions and social and labour integration.

- ◆ Furthermore, in the sphere of annual call for proposals appointed to Income Tax contributions from the Ministry of Health, Social Services and Equality, programmes are financed for the assistance and protection of victims of trafficking and sexual exploitation, including assistance to minor victims of sexual



exploitation, carried out by Non-Government Organisations and non-profit institutions. The Government Delegation against Gender-based Violence participates in assessing the programmes presented to such call for grants.

- ◆ Then, the Ministry of Employment and Social Security has incorporated into Programmes that are co-financed by the European Fund for the Integration of Third-Country Nationals (IF), call for proposals from the General Schemes aimed at migrants, asylum seekers and displaced population in a position of social vulnerability or at risk of social exclusion, and into Programmes co-financed by the European Refugee Fund (ERF), the priority to develop programmes aimed at the comprehensive welcoming of victims of trafficking in human beings, raising awareness, the creation of support networks and other actions aimed at eradicating trafficking for labour or sexual exploitation.

According to the economic information collected by the ministries appointed to draft the annual report on the implementation of the Plan 2009-2012, 4 and 5 million euros have been allocated per year to the assistance of victims of trafficking in human beings for sexual exploitation in the past few years.

In regard to the assistance of victims of trafficking in human beings who request to return voluntarily to their country of origin, specific aids have been started to ensure this aspect. Thus, the Ministry of Employment and Social Security implements programmes to finance organisations that specialise in handling the return and assistance of the victim.

According to the information provided by the Directorate General on Migration, specialised organisations are handling between 10 and 20 cases of voluntary return annually for victims of trafficking in human beings, through subsidised programmes.

5. In the legal sphere, the Comprehensive Plan 2009-2012 contained several measures aimed at guaranteeing immediate and suitable assistance to all victims and the protection thereof.

The objective of improving the protection of victims in the legal sphere has given rise to several years' work to review and amend those regulations that can affect victims accessing suitable protection and assistance. The following reforms stand out among those carried out to facilitate victims accessing assistance and protection resources:

- ◆ Amendment of Organic Law 4/2000 of 11 January on rights and freedom of foreign nationals and their social integration by means of Organic Law 2/2009 of



11 December, which introduces Article 59 bis, and Organic Law 10/2011 of 17 July, which amends it. These amendments establish a specific statute for foreign nationals in an irregular situation who are the victims of Trafficking in Human Beings, as contained in both the provisions of Directive 2004/81/EC of 29 April 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 irregular immigration, who cooperate with the competent authorities, and the obligations resulting from the ratifying and enforcement in our country of the Council of Europe Convention Against Trafficking in Human Beings (Convention No. 197 of the Council of Europe), signed in Warsaw on 16 May 2005.

In the process of adapting Immigration Law to the provisions of international conventions and treaties ratified by Spain, the rules contained in the Regulation of Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration are significant. This was approved by Royal Decree 557/2011 of 20 April and incorporates a chapter developing the provisions of Article 59 bis of Organic Law 4/2000 of 11 January. In particular, the mandate to draft a Framework Protocol to Protect the Victims of Trafficking in Human Beings stands out: it is applicable universally (regardless of the origin of the victims or their administrative situation, even through this much is already established in a regulation regarding the rights and freedoms of foreign nationals in Spain) and has become the National Referral Mechanism (NRM).

- ◆ Law 12/2009 of 30 October on the right to seek asylum and subsidiary protection now includes a specific mention to the victims of trafficking in human beings requesting international protection among the cases of collectives in a state of vulnerability who can, therefore, request specific assistance to their needs. This regulation refers to its development rules to adopt the measures necessary for specific treatment.
- ◆ Approval of Royal Decree Law 3/2013 of 22 February amending legal fees in the sphere of the Justice Administration and the system of free legal assistance. This has resulted in acknowledging free legal assistance to victims of violence and trafficking in any legal and administrative proceedings derived from their condition as victim, without the requirement of having to justify a lack of resources.



- ◆ In matters of health assistance, Royal Decree 1192/2012 of 3 August, regulating the status of insured and beneficiary of health assistance in Spain, charged to the public funds through the National Health Service, amended by Royal Decree 576/2013 of 26 July, extends the scope of access to the victims of trafficking in human beings to the access found in the basic common charter of assistance services of the National Health Service.

Similarly, although the fifth additional provision of Royal Decree 1192/2012 of 3 August makes a reference to the access of victims of trafficking who have been granted a recovery and reflection period to the national health service, the Government Delegation against Gender-based Violence has fostered an interpretation of this provision to guarantee equal treatment to all victims since the recovery and reflection period is only granted to victims of trafficking who are in an irregular situation. And also immediate access to suitable assistance and protection services from the moment they are identified. In this regard, the Government Delegation urged the Secretary General for Health to agree a common interpretation with the Autonomous Communities according to which "victim of trafficking in human beings" is understood to be any person for whom reasonable evidence exists that they have been the object of trafficking after the identification process carried out by the competent police authority, an issue that will be accredited with the "General Information Report for possible victims of trafficking in human beings".

- ◆ Transposition of Directive 2011/36/EU of 5 April on preventing and combating trafficking in human beings and protecting its victims has meant that new legal reforms have been set in motion:
  - The Draft Law to update legislation on child protection plans to claim state of neglect when a child is identified as victim of trafficking in human beings and there is a conflict of interest between the parents, tutor or guardians and the child.
  - Project to regulate a Legal Status as Victim that offers a legal and social response to the victims of crime and their relatives, considering special protection to the most vulnerable, among which are the victims of trafficking and minor victims, planning to include specific protection measures for victims in criminal proceedings as well as in the regulation of a "Procedural Status as Victim" (through the future amendment of the Prosecution Law).



All of the above has configured in a short space of time (barely 5 years), a legal landscape that offers greater guarantees of protection and access to available assistance resources to victims, which in turn fosters the collaboration of victims in investigating and prosecuting the crime.

6. Regarding the draft and development action and coordination protocols to improve information, assistance and protection of victims and witnesses, independent of the several assistance protocols for victims and inter-institutional coordination protocols in the Comprehensive Plan, the main institutions involved in identifying, assisting and protecting victims, drafted and signed a single Framework Protocol for Protecting the Victims of Trafficking in Human Beings<sup>4</sup>, approved in October 2011.

As pointed out earlier, this Framework Protocol was drafted in compliance with Article 140 of the Regulation of Organic Law 4/2000 of 11 January which established that the Secretaries of State for Migration, Justice, Security and Equality should foster the adopting of a Framework Protocol for Protecting the Victims of Trafficking in Human Beings.

The abovementioned Regulation also pointed out in its single Additional Provision, referring to the identification and protection of victims of trafficking in human beings, that *"Provisions established in Article 140 of the Regulation approved by this Royal Decree will be equally applicable to potential victims of trafficking in human beings who are nationals of a Member State of the European Union or who are included in the subjective scope of implementation of the European immigration scheme"*.

Thus, in October 2011, the Ministry of Health, Social Policy and Equality, the Ministry of Interior, the Ministry of Justice, the Ministry of Labour and Immigration and the Office of the Public Prosecutor and the General Council of the Judiciary, signed the Inter-Institutional Agreement approving the Framework Protocol for Protecting the Victims of Trafficking in Human Beings, which establishes the guidelines in the detection, identification, assistance and protection of victims of trafficking in human beings, as well as mechanisms for the coordination of the institutions involved in such processes. It defines the instruments for relations between the administrations with competences in the matter and the communication and cooperation processes with organisations and institutions with proven expertise in assisting the victims of trafficking, aiming to tackle the different stages comprehensively, from detection to insertion or return of the victim.

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<sup>4</sup><http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/DOC/protocoloTrata.pdf>





In compliance with the fourth clause of the abovementioned Inter-Institutional Agreement, the Monitoring Committee was established on 7 June 2012, formed by the institutions and administrations signing the agreement and called at the initiative of the Government Delegation against Gender-based Violence who chairs the Committee.

Among the different aspects aimed at facilitating communication instruments for the identification and referral of the victims of trafficking in human beings and improve their access to assistance and protection resources, the Framework Protocol refers to the importance of detecting possible victims in ways other than inspecting places where people at risk may be found or investigation of the crime by the Law Enforcement. This is an issue on which advances have been made, not only through cooperation in the identification process between different institutions and administrations and specialised organisations but also through training and distributing materials to support the detection of possible victims by professionals in different spheres (as mentioned earlier.)

7. As regards the protection of the victims of trafficking in criminal proceedings, the Plan 2009-2012 already referred to Spanish legislation that guarantees the protection of the victims of a crime; in particular, when they are witnesses in criminal proceedings, protection is established by Organic Law 19/1994 of 23 December on the protection of witnesses and experts in criminal cases, and in Law 35/1995 of 11 December on aids and assistance to the victims of violent crimes and crimes against sexual freedom which establishes a system of public aids for the direct and indirect victims of criminal acts and violent crimes that take place in Spain as well as crimes against sexual freedom, even if carried out without violence.

Similarly, besides the protection established and recognised by Articles 13, 109 and 110 of the Law on Criminal Prosecution, the victims of trafficking have access to special protection conferred by Royal Decree Law 3/2013 of 22 February which modifies the scheme of legal fees of the Justice Administration and the system of free legal assistance and a series of rights regarding the access to free legal assistance in accordance with the actions established by the Plan 2009-2012.

Concerning specific mechanisms for the protection of victims of trafficking during court proceedings and in compliance with the objective of fostering and protecting the rights of victims established by the Plan 2009-2012, information to victims and the communication process between the Office of the Public Prosecutor and the Security Forces has also been improved.



Thus, the General Prosecutor's Office, in complying with the protective role that Spanish legislation address to the victims, is obliged to keep the victims of trafficking in human beings duly informed of their rights in a manner that is clear and accessible. Besides offering the actions considered in Articles 109 and 100 of the Criminal Prosecution Law, such information includes the obligation to communicate to them any procedural reports that could affect their security (Articles 109 and 544 ter 9 of the Criminal Prosecution Law) and the provisions established in Article 59 bis of Organic Law 4/2000, as well as Articles 140 and following of its Regulation.

Furthermore, the Framework Protocol for Protecting the Victims of Trafficking in Human Beings requires that the Public Prosecutor makes sure that the statements offered by the victims during the investigation process are carried out according to the requirements necessary for them to be valid as pre-established proof at the court hearing when logical doubts exist about their appearance at the hearing in the future.

Similarly, public prosecutors are responsible for requesting, whenever necessary, that some of the measures established by Law 19/1994 on Witness Protection are adopted, or using any means that contribute to protect the victims during the court hearing (such as the use of video-conference to make their statement.)

Likewise, in accordance with the Framework Protocol for Protecting the Victims of Trafficking, forensic doctors will ensure, in carrying out their duties, that the interview and examination of the victim is carried out all at once, avoiding secondary victimisation and the repeating of interviews, complementary tests or examination.

In any case, it must be clarified that assistance and support measures established in the Spanish law are not conditioned by the processing of the criminal proceedings but by specific needs which are assessed on a case-by-case basis. In no case will the assistance measures established by the Spanish legislation be subordinated to the collaboration of the victims in the criminal investigation, in the legal inquiry or the court hearing.

Finally, when the wronged party is not party to the lawsuit, it will not be understood that they relinquish their right to restitution, reparation or compensation that may be agreed to in their favour in the final judgement. Any such relinquishment of this right should be made expressly.

8. Special mention should be made to the protection of minor victims of trafficking since no specific objectives or measures are specified in the Plan 2009-2012. However, they have been the object of endless comments and recommendations from national and



international organisations that assess public policy in matters of fighting the trafficking in human beings, and the institutions and organisations that take part in preparing such instrument, which includes the assessment of results of the Plan by submitting observation and recommendations.

In this regard, the protection of minor victims of trafficking is established in Organic Law 1/1996 of 15 January regarding the legal protection of minors, the single instrument for the protection of minors, Article 2 of which establishes that the best interests of children will take precedence over any other legitimate interest that may concur. However, the minor victims of trafficking are protected by Article 59 bis No. 5 of Organic Law 4/2000 of 11 January which establishes that *"the provisions of this article will also be applicable to minor foreign nationals, whose age and maturity must be taken into account and, in any case, with prevalence of the best interests of the child"*.

In turn, Article 146 of the Regulation on Immigration establishes that *"when it is determined that a victim of trafficking in human beings is a minor, any actions that are carried out must at every moment safeguard the best interests of the child. The public institution in charge of the legal guardianship of the minor victim or the Public Prosecutor may propose that the child is referred to specific resources for victims of trafficking in human beings for specialised protection or assistance. In any case, specific resources for victims of trafficking in human beings must guarantee separation between children and adults"*.

In its chapter dedicated to the assistance of minor victims, the Framework Protocol for the Protection of Victims in Trafficking in Human Beings makes a series of considerations concerning the special situation of vulnerability of minor victims, in line with the abovementioned legislation and in accordance with the provisions contained in Directive 2011/36/EU of 5 April.

The Immigration Law also considers the protection of people without documentation whose age is uncertain when there are reasons to believe they are minor. In such cases, this consideration will prevail as long as there is no formal statement from the Public Prosecutor that establishes their adulthood. Our criminal procedural law also establishes specific measures to protect children in criminal proceedings.

9. Finally, regarding the access of victims to their rights and in compliance with the objective set out by the Plan to improve the information provided to victims of the rights to which they are entitled, the lack of a specific catalogue of rights to which victims of trafficking in human beings are entitled at national or international level has been



observed during the course of the Plan. In this regard, a list of assistance resources needed for the recovery of the victims of trafficking could be found (i.e. Article 12, Council of Europe Convention Against Trafficking in Human Beings.)

However, Directive 2011/36/EU of 5 April, includes the need to guarantee a series of rights to the victims, referring to the defining of a statute for the victim. In this regard, the European Commission has worked to define the rights to which the victims of trafficking are entitled, listed in a publication that aims to be coherent with the approach that focuses on the victim and the protection of human rights in fighting against trafficking in human beings<sup>5</sup>.

As pointed out earlier, at the time of writing this report, the Spanish Ministry of Justice is carrying out the work necessary to draft a Legal Statute for the Victim.

## **2.2. CONCLUSIONS AND RECOMMENDATIONS IN THE SPHERE OF ASSISTANCE AND PROTECTION OF VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION.**

Most of the objectives set out by the Plan 2009-2012 have been met in regard to the assistance and protection of victims of trafficking for sexual exploitation.

In this regard, the efforts made to improve the information offered to victims and the strengthening of specialised assistance and protection services should be pointed out, together with the establishing of action guidelines and the formalization of coordination and collaboration protocols. All of these lead to more expeditious actions and the elimination of barriers to access specialised assistance resources.

However, new challenges have been identified for the improvement of the assistance and protection of victims:

1. In regard to the assisted return of the victims of trafficking in human beings, the need to increase cooperation in the countries of origin has been pointed out as a means to guarantee that return is carried out safely. In this regard, the Ministry of Interior plays an essential role in coordination with actions carried out by programmes of the Ministry of Employment and Social Security.

Specifically, the GRETA report regarding the implementation in Spain of the provisions set out by the Council of Europe Convention Against Trafficking in Human Beings,

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<sup>5</sup>[http://ec.europa.eu/anti-trafficking/download.action?nodePath=/EU+Policy/EU+rights+of+victims+of+trafficking\\_ES.pdf&fileName=EU+rights+of+victims+of+trafficking\\_ES.pdf](http://ec.europa.eu/anti-trafficking/download.action?nodePath=/EU+Policy/EU+rights+of+victims+of+trafficking_ES.pdf&fileName=EU+rights+of+victims+of+trafficking_ES.pdf)



demands that assisted return responds to the needs of the victim and is carried out in due consideration of their rights, safety and dignity. According to the recommendations made by GRETA, this entails informing victims of the programmes that exist in regard to the risks, as well as making available to them all the protection needed. Similarly, the report considers that Spanish authorities must advance in developing cooperation mechanisms with the countries of origin to ensure that the correct risk assessment is carried out and to guarantee the safe return and effective reintegration of the victim.

2. The following can be pointed out concerning the amendment of laws to strengthen the assistance and protection of victims:

- ◆ Regarding to the provisions established in the law regulating the right to asylum to ensure assistance to the specific needs of possible victims of trafficking who are in the process of requesting international protection, specialised organisations point to shortfalls in the assistance and protection of victims when they access the international protection system.

The GRETA report on this issue, stating the need to increase the efforts made to guarantee that the procedures established allow adult and child victims to access international protection and to respect the principle of non-returning contained in Article 14 of the Convention.

In their report on trafficking in human beings, the Ombudsman refers to the obstacles found by victims of trafficking for their requests for international protection to prosper. This is due to the complexity of accrediting the existence of a "founded fear of prosecution" or "belonging to a certain social group".

It also points out that current legislation in Spain guarantees the implementation of the Asylum Law to victims of trafficking in human beings compared to the situation that existed prior to 2009, although it states the need to advance in establishing mechanisms to detect situations of trafficking among people who request international protection and their concern in regard to the refusal of such requests for international protection both at the border and in following regular procedures and the resulting lack of risk assessment regarding the returning of the possible victim to their country of origin.

- ◆ The analysis of procedures for assisting and protecting victims contained in the Report on the implementation in Spain of the Council of Europe Convention Against Trafficking in Human Beings carried out by its Group of Experts in



Trafficking in Human Beings (GRETA) states that another step forward is required. In this regard, GRETA points out that, despite the regulation contained in Royal Decree Law 3/2013 of 22 February, the specialisation of professionals providing free legal assistance in this matter must be ensured in order to guarantee a greater protection to victims of trafficking in human beings.

3. In regard to preparing and developing action and coordination protocols to improve the information, assistance and protection of victims and witnesses, although approving the Framework Protocol to Protect Victims of Trafficking in Human Beings has improved and streamlined all processes from the moment a possible victim of trafficking has been detected, there is still room for improvement in the following areas:

- ◆ The GRETA report on the implementation of the Council of Europe Convention Against Trafficking in Human Beings in Spain, points out the need to strengthen detection at the border and considers that greater specialisation is required, establishing instructions when a possible victim is detected.
- ◆ Organisations specialising in the assistance to victims of trafficking demand that they are allocated a more formal role in the process of identifying possible victims, acknowledging the relevance of their participation and the information they provide in the identification process and in determining the existence of reasonable evidence, as well as in determining the needs of assistance and protection of the victim and in risk assessment.

This much has also been stated by the Ombudsman in their report on trafficking in human beings, demanding greater coordination of the specialist organisations and the authorities with competences in identification, and the formal recognitions of their participation in such processes by establishing specific conditions for their participation in the identification process and in the referral of victims. Nevertheless, the report states the acknowledgement of their work in the provisions of the Framework Protocol to Protect the Victims of Trafficking to be positive.

4. Concerning the protection of victims of trafficking in criminal proceedings, the most critical aspect is the lack of development of Law 19/1994 of 23 December on the protection of witnesses and experts in criminal proceedings, which has not taken place.
5. Finally, it should be pointed out that the Plan 2009-2012 did not establish specific provisions in regard to the minor victims of trafficking. Experience has proven the need to strengthen mechanisms for their specialised assistance.



In this regard, the report on trafficking in human beings by the Ombudsman highlights the lack of action protocols for the early detection of children at risk, as well as a lack in formal procedures to detect, identify and correctly refer possible minor victims.

GRETA also considers that it is necessary to advance in establishing practical measures that can guarantee prevention and the protection of minor victims of trafficking given their special state of vulnerability. It urges Spain to strengthen its mechanisms and procedures in this regard.



## **IV. PROSECUTING THE CRIME.**

### **3.1. MAIN ACHIEVEMENT IN CRIME PROSECUTION.**

To achieve the objective of the Plan 2009-2012 aimed at “decidedly fighting trafficking in human beings for sexual exploitation and the active intervention of traffickers and procurers”, the Plan sets forth several measures across its areas of work that focus on improving the systems to prevent and detect trafficking and the strengthening of crime investigation and prosecution.

To this end, it contains measures aimed at facilitating the specialisation of professionals (in particular, the Law Enforcement), to increase the resources allocated to investigation or to strengthen police cooperation. However, the most significant measure has undoubtedly been the amendment set in motion by Organic Law 5/2010 of 22 June which amends Organic Law 10/1995 of 23 November regarding the Criminal Code. For the first time ever, trafficking in human beings has been classified as a crime (in Article 177 bis) and it eliminates its regulation as an aggravating circumstance in the crime of smuggling of immigrants in Section 2 of Article 318 bis.

Article 177 bis was included in Heading VII bis of the Criminal Code, among crime classifications aimed at criminalising torture and other moral crimes (Heading VII) and those penalising conducts against sexual freedom and indemnity (Heading VIII), hence adapting to the very personal nature of the legal good that is protected and abandoning its former position among those crimes classified under the facilitating of irregular immigration.

This amendment included the definition given to trafficking by the Council of Europe Convention Against Trafficking and Human Beings (Warsaw, 16 May 2005), ratified by Spain in 2009. It also amended and strengthened other aspects of the Criminal Code such as the responsibility of legal entities (Article 31 bis), the seizing of goods and products from crime (Article 127 and following), or crimes related to prostitution, especially in regard to any form of sexual exploitation of children.

The transposition of Directive 2011/36/EU of 5 April has also set forth another review of the provisions aimed at prosecuting and punishing the crime of trafficking in the Criminal Code. At the moment of writing this report, the Draft Law for the Criminal Code Amendment (in processing in 2013) included the following provisions:

- Amendment of Article 177 bis of the Criminal Code, detailing the manners in which the crime is committed and expressly mentioning certain forms of exploitation (exploitation to commit criminal offences), defining the concept of vulnerability and including





special protection cases and adding the possibility of introducing probation in these crimes.

- Amendment of confiscation (Article 127, Criminal Code) by introducing legal instruments to facilitate the recovery of the goods seized from the crime (confiscation extended to the crime of trafficking, extending the cases in which the police can use such goods, cases of intervening goods in the hands of third parties and confiscation without guilty verdict.)

From the point of view of prosecuting the crime in the sphere of law, the work carried out by the State Public Prosecutor is especially interesting, drafting several instructions and notices aimed at unifying the criteria for action concerning, among others, the crime of trafficking in human beings. Notice 5/2011 on "Criteria for the Specialised Unit for Immigration and Trafficking of the General Prosecutors Office in matters of Immigration Law and Migration" stands out, analysing and explaining in Section II all the elements regarding the classification of the new crime of trafficking in human beings (legal good protected, alternative typical behaviours, alternative confiscation means, etc.)

In short, amendment of the Criminal Code by Organic Law 5/2010 is considered to be of great relevance towards improving response to the crime of trafficking in human beings and the participation of public prosecutors who specialise in the prosecuting of cases of trafficking.

### **3.2. CONCLUSIONS AND RECOMMENDATIONS RELATED TO THE PROSECUTION OF THE CRIME OF TRAFFICKING IN HUMAN BEINGS.**

Fighting the trafficking in human beings for sexual exploitation firmly and actively prosecuting traffickers and procurers is one of the objectives of the Plan. Despite requiring a review of criminal legislation (and the complexity such task entails), the balance has been positive, not only because it has advanced in establishing suitable legal mechanisms to prosecute and criminalise trafficking in human beings but because it has allowed the establishment of work dynamics in matters of investigation and prosecution that guarantee the correct implementation of these mechanisms.

In this sense, both specific and specialised and general training of professionals in the police and judiciary sphere has been essential, together with the decision to create specialised bodies for the investigation and prosecution of the crime, such as:

- Law 50/1981 of 30 December which regulates the Organic Statute of the Office of the Public Prosecutor, created the Immigration Office which has taken on specific cases regarding the prosecution of cases of trafficking in human beings.



- Service Directive No. 40/2009 of the Deputy Operational Office of the Civil Guard, regarding the activity against trafficking in human beings, Notice 2/2014 of 1 July of the Secretary General of the Justice Administration.
- Order of the Ministry of Interior 28/2013 of 18 January of the Central Brigade Against Trafficking in Human Beings.

However, certain aspects that hinder the prosecution and penalty of trafficking in human beings have also been pointed out. Among them, the relevance in the Spanish legal system of the victim's testimony in punishing the crime is a great responsibility that is burdened on the victim in the process. To this end, several national and international organisations have stressed the need to articulate alternative paths for the victims to make their statement, so that proceedings may continue in those cases in which the victim's testimony is not enough, thus complying with Articles 27.1 of the Warsaw Convention and 9.1 of Directive 36/2011/EU of 5 April, which require that the investigation and prosecution of the crime do not depend on the statement or reporting of the victim.

Similarly, the need to advance in asset investigation is highlighted, together with adopting measures to deprive criminals of their profits. No significant advances have been made in regulating aspects regarding the seizing and confiscating of goods and products resulting from crime. However, provisions included in the Draft Bill for the Organic Law to amend the Criminal Code are the first step in a process that will require that other measures are later adopted to regulate the destination of the goods and products seized by creating a fund of seized goods from the crime of trafficking in human beings, strengthening the resources of assistance to victims and guaranteeing they are compensated, given the case.

Despite all of these reforms to guarantee greater efficacy in prosecuting the crime of trafficking in human beings, from the civil society it is insisted that fighting this crime cannot be separated from the situations of prostitution and sexual exploitation, considering that actions in this matter are being insufficient and stressing the relationship that exists between the sex industry in our country and situations of trafficking and sexual exploitation.



## **V. COORDINATION AND COOPERATION STRUCTURES.**

### **4.1. MAIN ACHIEVEMENTS IN MATTERS OF COORDINATION AND COOPERATION.**

Although inter-institutional coordination and cooperation was not established as a specific objective of the Comprehensive Plan, the plan included in its content the need for creating communication structures that enabled coordination of the activities started and communication between the administrations and non-profit organisations involved in the recovering of victims.

To this end, two cooperation mechanisms were started in 2009:

- The Inter-Ministry Plan Coordination Group formed by the Ministry of Health, Social Services and Equality, the Ministry of Foreign Affairs and Cooperation, Ministry of Interior, Ministry of Justice and the Ministry of Employment and Social Security, whose work is to monitor and assess the Plan and approve the annual reports on the implementation of the Plan.
- The Social Forum against Trafficking for Sexual Exploitation, a space for participation and exchange between the administrations with responsibilities in the development of measures of the Plan and the non-profit organisations specialising in comprehensive assistance to the victims of trafficking for sexual exploitation, together with representation from two Autonomous Communities and the Spanish Federation of Town Councils and Provinces (FEMP), aiming to collect any issues and proposals that these institutions may have and advance in the commitment to collaborate in the fight against trafficking for sexual exploitation.

Furthermore, other initiatives were started in the last year of the implementation of the Plan that aimed to foster inter-institutions coordination in the fight against trafficking of human beings. Some of them culminated during 2012 or once the Plan had come to an end, creating spaces for communication and the formal acknowledgement of tasks related to trafficking in existing spaces. The following mechanisms stand out:

- The Monitoring Committee regarding the implementation of the Framework Protocol for Victims of Trafficking in Human Beings, established on 7 June 2012, whereby the institutions that signed the protocol inform of their responsibilities in implementing the Framework Protocol and, in particular, the advances made in starting cooperation processes that facilitate the detection, identification and referral of victims to the assistance and protection resources.



- Cooperation with the Autonomous Communities through the Sectoral Equality Conference. In particular, as regarding the drafting of Protocols following the Framework Protocol to Protect the Victims of Trafficking or the amendment of existing protocols, as well as their involvement in updating the Resource Guide for victims of trafficking for sexual exploitation. Such collaboration involved the amendment of the Regulation of the Sectoral Equality Conference to include “the assistance of victims of trafficking for sexual exploitation.”
- In order to guarantee coordination in the territory, the Coordination and Gender Violence Units of the Government Delegations and Deputy Offices in provinces have been involved by approving a new Instruction which regulates their roles, extending their activity to monitoring the resources and services of the General State Administration to assist situations of trafficking in women for sexual exploitation.
- Finally, the Council of Ministers approved the amendment of the Inter-Ministry Committee for Gender Equality in 2013 aiming to “serve as channel for monitoring and coordination, in the sphere of the General State Administration, cross-sectoral implementation of measures aimed at the eradication of gender violence in its different manifestations, taking into account the specific needs and demands of victims in a greater state of vulnerability.”

#### **4.2. CONCLUSIONS AND RECOMMENDATIONS IN MATTERS OF COORDINATION AND COOPERATION.**

It may be said that initial expectations regarding inter-institutional cooperation in matters of trafficking in human beings have been exceeded. Public administrations and other institutions and specialised organisations have taken on the need to tackle the work carried out on the basis of communication and the exchange of information, as an element that clearly benefits the protection of the victims.

However, with the aim to guarantee comprehensive action against trafficking, the need to further strengthen cooperation arises in the intervention with victims of trafficking for sexual exploitation:

- Firstly, several national and international organisations that have analysed the policies started in to the scope of trafficking in human beings in Spain, point out the need to establish an identification process that involves different agents, in such a way that the decision-making process guarantees the participation of specialised professionals who are allowed to be in direct contact with the possible victim.



In this regard, although there has been an evolution towards greater participation of certain agents, specifically organisations specialising in assisting victims, that already collaborate at certain moments such as in carrying out the interview, supporting the process of informing the possible victim, in defining the course of assistance that will guarantee the victim's protection and in contributing to information about their personal situation, the need arises for the role of such organisations and that of other agents or professionals to be defined formally in such a way that their collaboration supports the decision-making process in determining whether evidence exists regarding their condition as victims of trafficking and in risk assessment and the establishing of suitable assistance and protection measures.

Furthermore, when the identification process involves a child, the need arises for the process to formally involve specialist agents in these issues: professionals from the child protection services and non-profit organisations specialised in assisting children who are the victims of trafficking for sexual exploitation, as well as specialised staff from the police force and the Office of the Public Prosecutor.

- In matters of cooperation, defining intervention standards with victims of trafficking for sexual exploitation and the specific nature of assisting minor victims are another issue that requires consensus between the different agents involved, defining the role that each will play and those aspects that require coordination.
- Concerning to the complex political and administrative organisation in Spain, fostering actions to improve cooperation mechanisms is required, guaranteeing their efficacy in practice. Specifically, regarding the competences of the Autonomous Communities in establishing assistance resources, guaranteeing communication mechanisms that enable the quick and easy referral of victims between Autonomous Communities is of vital importance, prioritizing their protection and security and, in turn, ensuring their recovery. Likewise, articulating coordination and cooperation systems is essential towards guaranteeing the referral of minor victims to specialised treatment facilities.

Collaboration is also required at local level to improve the information provided to Local Institutions related to trafficking in human beings for sexual exploitation, as well as the training of professionals at local level to inform and raise awareness about these situations and the role they may play in the matter.

- Finally, despite the efforts made in coordinating the different agents involved and in establishing mechanisms to guarantee territorial collaboration, no institution or person has been appointed to take on national coordination or reporting tasks in regard to the



fight against trafficking in human beings as established by Directive 2011/36/EU of 5 April.

Quite the opposite, responsibilities concerning the fight against human trafficking are somewhat disperse, depending on the purposes of trafficking or the sphere of cooperation (national or international.)

In this regard, an essential aspect that should be tackled is the appointment of an institution to coordinate public policy in this matter and enable an assessment of ongoing processes.

- Lastly, in the international sphere, to guarantee the prevention of situations of trafficking and facilitate the safe return of victims, given the case, it is essential to further strengthen and improve institutional relationships between countries and cooperation with the embassies at the countries of origin of the victims.



## VI. RECOMMENDATIONS AND PROPOSALS FOR THE FUTURE.

The work carried out during the past five years has made it possible to open new paths for collaboration and to take the measures beyond what was initially planned in order to implement the Plan 2009-2012.

Taking into account the assessment of the shortfalls and virtues of the Plan and the contributions made by international, independent organisations (outside any intervention in our country), there are significant conclusions to be pointed, which should be taken into account when the priorities and objectives of the new Plan are defined.

Moreover, keeping in mind the observations carried out by national organisations, institutions and administrations involved in the fight against trafficking in human beings, both the positive and the most criticized aspects regarding the implementation of the plan have been compiled.

In this regard, the following positive aspects of the Plan have been pointed out:

- The Plan has made great advances in activating comprehensive and coordinated action from the point of view of assisting and protecting the victims of trafficking and in regard to investigating and prosecuting the crime.
- Positive assessment of the legal reforms carried out during the term of implementation of the Plan, both referred to the criminal prosecution of the crime and the acknowledgment of rights to the victims and their access to suitable assistance resources.
- Drafting and implementing the Framework Protocol to Protect the Victims of Trafficking in Human Beings, promoting collaboration between institutions, administrations and institutions involved in the fight against trafficking.
- Creating a monitoring and information system that refers specifically to collecting and analysing the data provided by the police authorities.
- Advances in the creation of mechanisms to detect possible victims of trafficking by non-specialised professionals, facilitating the later identification, assistance and protection of victims, as well as continuous training of all professionals involved in processes to detect victims and intervene with them.

The following aspects have been pointed out as hindering the efficacy of the measures contained by the Plan:



- The need to count on an instrument whose legal rank is more consistent has been pointed out since compliance with an Action Plan is not obligatory.
- Despite defining the objective of protecting and promoting the rights of the victims as the core objective of the plan, comprehensive action against trafficking for sexual exploitation is still considered to revolve around prosecuting the crime. Although the availability of specialised resources for victims has been guaranteed, there are still some serious shortfalls in assistance in situations of vulnerability (children, mental disability, mental health issues, etc.)
- The advances made in territorial coordination between key agents in the fight against trafficking are still insufficient. A rapporteur at national level is still required to centralize information and monitor actions at all levels.
- Despite increasing the number of actions to raise awareness on this issue, no specific campaigns have been carried out to discourage demand for prostitution services. Actions aimed at eliminating sexual trade adverts in the press are considered to be insufficient.





## **ANNEX II:**

# **SUBCOMMITTEE TO ANALYSE AND STUDY TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION CREATED WITHIN THE EQUALITY COMMITTEE OF THE PARLIAMENT**

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## **CONCLUSIONS AND RECOMMENDATIONS**

**July 2015**



## **ANNEX II: SUBCOMMITTEE TO ANALYSE AND STUDY TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION CREATED WITHIN THE EQUALITY COMMITTEE OF THE PARLIAMENT**

### **INTRODUCTION**

Based on the proposal made by the Popular Party in Parliament (Report No. 158/13), the Equality Committee of the Parliament agreed to create a Subcommittee to analyse and study trafficking in human beings for sexual exploitation with the aim of gathering proposals to improve its policy aimed at fighting against trafficking in human beings and in assisting and protecting its victims.

The Subcommittee was established on December 20, 2013 and comprises three representatives from each party with more than one hundred MPs, two representatives from each party with more than ten MPs and one representative from the remaining group in Parliament. Its main objectives are the following:

1. Analyse the situation of trafficking in human beings for sexual exploitation.
2. Study the shortfalls found across the Spanish territory to effectively fight this regrettable and inhuman crime.
3. Analyse the level of compliance with the measures considered by the Comprehensive Plan to Fight Against Trafficking in Human Beings for Sexual Exploitation (2009-2012).
4. Propose the improvements needed concerning assistance in order to guarantee the protection of the victims of trafficking, as well as measures that should be implemented to end such practices in Spain, being considered as the "slavery of the 21st Century".
5. Issue a report and statement, communicating it to the Government in order to improve its policy aimed at fighting against trafficking in human beings and assisting and protecting its victims.

Once the work of the Subcommittee was carried out, the Report approved by the Subcommittee was published on 9 July 2015, together with the individual votes presented ([http://www.congreso.es/public\\_oficiales/L10/CONG/BOCG/D/BOCG-10-D-700.PDF](http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/BOCG-10-D-700.PDF)).



The conclusions reached by the Report, which are incorporated to the Comprehensive Plan to Fight Against Trafficking in Women and Children for Sexual Exploitation 2015-2018 are transcribed below.



## CONCLUSIONS

### GENERAL BACKGROUND.

#### 1.1. Introduction.

Defined by the Protocol to Prevent, Suppress and Penalise the Trafficking in Persons, especially women and children signed in 2000 (Palermo Protocol), as the action set out to "recruit, transport, transfer, host or receive people, turning to threats or the use of force or other forms of coercion, kidnapping, fraud, deceit, the abuse of power or a situation of vulnerability, or the offering or action of payments or benefits to obtain consent from a person that has authority over others, for the purposes of exploitation. Such exploitation will include, at minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or organ extraction". This Treaty was ratified by Spain in 2003.

Specifically, trafficking in human beings for sexual exploitation isn't defined in any international legal document and is, by far, the type of exploitation that is most frequently associated with trafficking in Spain; the same may be said for Western Europe, North America and certain regions of Asia. Added to this, if two out of three victims of trafficking in human beings are women, the percentage rises disproportionately in the case of trafficking in human beings for sexual exploitation.

It may therefore be concluded that trafficking in human beings for sexual exploitation is a further manifestation of the state of inequality in which women find themselves and, as one of the most severe violations of human rights, it constitutes a form of violence against women. It reduces people, mostly women and underage girls, to the condition of simple merchandise, resulting in devastating physical and psychological consequences that are hard to overcome.

The Council of Europe Convention to Fight Against Trafficking in Human Beings was signed in 2005 (Warsaw Convention), and ratified by Spain in 2009.

Finally, to end the list of essential legal instruments in this matter, Directive 36/2011 should be mentioned, regarding the Prevention and Fight Against Trafficking in Human Beings and the Protection of its Victims.

This is the worst kind of modern slavery, mainly targeting people in a special situation of vulnerability, most of them from countries in a difficult social and economic situation. For this



reason it has been considered as being the slavery of the 21<sup>st</sup> Century, comparable to slavery taking place in past centuries with the slaves coming from Africa.

Trafficking in Persons is a violation of the highest values enshrined in Article 1 of the Spanish Constitution.

According to experts, defining what we mean by trafficking in human beings precisely is very important to differentiate it from trafficking in people and the crime of sexual exploitation. Trafficking in people is classified in Article 318 bis of our Criminal Code under the heading Crimes against the rights of foreign nationals and it protects the integrity of our borders; sexual exploitation is collected in Article 188 of the same legal text, while trafficking in human beings is found in Article 177 bis, safeguarding the dignity of the person as legal asset, eliminating any confusion with migration flows or labour rights.

This essential differentiation between trafficking in people and trafficking in human beings in Spain took place through the amendment of the Criminal Code undertaken by Organic Law 5/2010, which introduced into our legal system the crime of trafficking in human beings by means of Article 177 bis, separating irregular immigration and trafficking. Until that moment, there was no clear distinction between trafficking in people and trafficking in human beings.

The cross-border factor is relevant since approximately 40% of the victims of trafficking in human beings are foreign nationals in an irregular situation. However, this figure draws our attention to the main circumstance linked to the cooptation of people for trafficking: the lack of resources and expectations outside and within the European Union.

There are three key elements for a case to be one of trafficking in human beings: recruitment of the person, destroying their consent through conditioning and exploitation in any of its manifestations: sexual, labour, organ extraction or slavery. This is an oblique-intent crime: it suffices to find exploitation for the unlawfulness of a typical behaviour to arise; that is, for the action to be qualified as being trafficking in human beings.

The experts who reported to this Subcommittee refer to trafficking in human beings for sexual exploitation as a form of gender violence and it is identified as such in the new legal scheme. This approach is essential, according to several experts, to provide a more efficient institutional response, especially in the legal sphere.

## **1.2. Dimension of the Crime and Characterisation of the Victim.**



Despite it being indispensable to compile data to estimate the real magnitude of the crime of trafficking in human beings for sexual exploitation, this is a complex task due to the opacity in which it takes place. Besides being dark, the figures are very dynamic since organised crime finds new forms of committing the crime, which require a constant updating of the means and ways needed to fight it.

The United Nations Office has pointed out that 79% of the victims of trafficking identified are the object of sexual exploitation. In turn, in its Report for 2012, the United National Office Against Drugs and Crime mentions 43,000 victims of trafficking in human beings, mostly women and children, between 2007 and 2010. Out of these, between 57% and 62% were victims of sexual exploitation.

The International Labour Organisation estimated in 2012 that out of the 20.9 million persons in a situation of trafficking or slavery in the world, 5.5 million of them were children.

In the sphere of the European Union, EUROSTAT shows similar figures, establishing that 62% of the victims identified were victims of trafficking for sexual exploitation. Of these, 80% were women (2% of whom were children). Most of the victims (65%) came from Romania, Bulgaria, Poland and Hungary. Those who are not originally from the European Union are mainly Nigerian, Chinese, Brazilian and Russian women.

In Spain, according to the latest monitoring report of the Comprehensive Plan to Fight Against Trafficking for Sexual Exploitation, 12,305 persons at risk were detected in 2012. Most of them were women aged between 18 and 22 and 92% of them were irregularly in Spain. 21 underage victims were also recorded. The main countries of origin of the victims were Romania, Paraguay and Brazil.

According to figures from CICO, the State Security Forces identified 1,180 victims of trafficking in human beings in 2013. 34% of them were foreigners in an irregular situation. 34,688 women at risk were contacted, 30,852 advisory or information actions were carried out and accommodation was provided for 585 users. 288 police reports were started in regard to activities related to trafficking for sexual exploitation: 97 reports for trafficking and 191 for sexual exploitation; 24 criminal organisations were broken up, together with 48 criminal groups linked to this phenomenon; and also, 5 criminal organisations and 18 criminal groups related to sexual exploitation. 753 people were arrested, most of them men (345 for trafficking in human beings and 408 for sexual exploitation.) Most of those arrested for trafficking in human beings in 2013 were from Romania, followed by Spanish and Nigerian nationals. In regard to the crime of sexual exploitation, Spain heads the rank of persons arrested, followed by China and Romania. As regards the number of victims, 1,180



were identified in 2013, most of them women (253 were victims of trafficking in human beings and 916 of sexual exploitation.) The victims are mainly from Romania originally, followed by Nigeria and Paraguay to a lesser extent; as regards sexual exploitation, Romania still heads the rank, followed by China and Spain.

The average profile of the victims of trafficking in human beings in Spain in 2013 is a woman aged between 23 and 27 years old, of Romanian nationality and legally in Spain (as an EU citizen.) The most common profile of the victims of sexual exploitation coincides with the profile for the victims of trafficking in human beings, although in an older age range, between 33 and 37 years old. 16 children were identified among the victims (of trafficking and sexual exploitation): there were 12 victims of trafficking (of whom five were Romanian, four Nigerian, two Brazilian and one Italian), and 4 victims of sexual exploitation (one Romanian, one Spanish, one Bulgarian and one Moroccan.)

According to the figures provided by the Ombudsman, 736 periods for reflection were offered in 2013, of which 133 (18.07%) were accepted.

According to EUROPOL, trafficking in human beings is the second largest income from illegal crime, raising 32,000 million euros to traffickers every year. The Intelligence Centre for Organised Crime estimates that, in Spain, trafficking in human beings raises 1,800 million euros per annum: that is 4 million dollars every day from the 45,000 cases of prostitution that are estimated to exist in our country.

### **1.3. Legal Framework.**

#### **1.3.1. International and European Scope.**

First of all, and as mentioned earlier, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, signed in 2000 as the most relevant international instrument to fight trafficking in human beings, was ratified by Spain in 2003.

The proclamation of the Warsaw Convention (Council of Europe Convention No. 197), ratified by Spain in 2009, was another step forward in the fight against trafficking in human beings, by ensuring that victims were allowed periods for recovery and reflection when there are reasons to believe that the person may be the victim of trafficking, with entitlement to a work and residence permit, health assistance rights and psychological assistance.

Thirdly, the Directive of the European Parliament and the Council of 5 April 2011, regarding the prevention and fight against trafficking in human beings and the protection of victims, which substitutes Framework Decision 2002/629/JAI, has been partially transposed into the



Spanish law by means of Law 4/2015 of 27 April on the Statute of the Victims of Crime since many of the provisions established by the Directive had already been included in the Spanish law as a result of adapting the Framework Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo, 2000, ratified by Spain in 2003), and Council of Europe Convention No. 197 on the Fight Against Trafficking in Human Beings (Warsaw 2005, ratified by Spain in 2009.)

In any case, Law 4/2015 of 27 April on the Statute of the Victims of Crime has been the definitive instrument to make available to victims all the procedural and extra-procedural tools they need and demand. Most of the people participating in the Subcommittee have highlighted how the character of the Directive is substantially different, moving from a punitive perspective (prosecuting the crime), to a human rights perspective, where the women who are victims of trafficking, their dignity and recovery are at the centre of the measures it establishes.

Many of the people taking part in the Subcommittee have praised the Law on the Statute of Victims of a Crime which, based on its absolute value of human dignity, acknowledges the victims of trafficking and a high level of assistance depending on their situation of vulnerability. This support aims to avoid the so-called «double victimisation» and covers the right to receive any necessary information as well as their preferential right to recover any legal expenses that may incur or their indispensable protection both at the investigation and prosecution stages.

The individualized nature of the measures aimed at each victim and the recognition of their participation in criminal proceedings should also be pointed out. In this regard, the people taking part in the Subcommittee stressed the significant role played by the offices assisting victims, whose functioning is regulated by the aforementioned Statute.

### **1.3.2. National scope.**

Since the ratification of the Palermo Protocol in 2003, Spain has undergone a process of intense activity at different legal levels; specifically, the different participants in the Subcommittee have referred to the approval of Protocols, Notices, Ministry Orders and/or Strategies.

Organic Law 1/2004 of 28 December on Comprehensive Protection Measures Against Gender Violence entailed the creation of the Government Delegation against Gender-based Violence whose aims is to advise the Government in matters of violence. With the passing of Royal Decree 200/2012 of January 23, which develops the basic organic structure of the Ministry of Health, Social Services and Equality, the latter was appointed with





coordination duties in the sphere of the General State Administration in matters of trafficking in human beings for sexual exploitation and cooperation with institutions and Administrations with competences in the assistance and protection of victims, in as much as this is yet another manifestation of violence against women. In this line of action, it has taken on the government role against trafficking in human beings for sexual exploitation, continuing the activity started by the National Strategy to Eradicate Violence Against Women 2013-2016, which includes trafficking as another form of violence against women.

The express classification of the crime of trafficking in human beings as an autonomous class differentiated from trafficking in people took place in 2010 by introducing Article 177 bis into the Criminal Code (amendment carried out by Organic Law 5/2010.) The amendment carried out by Organic Law 1/2015 of 30 March includes the giving or receiving of payments to obtain consent from the person controlling the victims among the forms of committing the crime, classifying also forced marriages and exploitation towards the victim committing criminal acts for their exploiters, and the crime is aggravated in those cases where there is a danger of causing serious injuries.

Offices to assist victims were created following the passing of Law 35/1995 of 11 December on Help and Assistance to Victims of Violent Crimes and Against Sexual Freedom.

In 2000, Organic Law 4/2000 of 11 January regarding Rights and Freedoms of Foreign Nationals in Spain and the Social Integration thereof, acknowledged as a further form of protection for the victims of trafficking, the so-called period of recovery and reflection. The aim of this period is the victim's recovery so that they are able to decide if they wish to collaborate with the criminal investigation. During this time, they are granted a temporary authorisation to stay in the country and protection for the victim and her underage or disabled children if they are in Spain.

It should be pointed out that the reforms carried out in 2009 and 2011 in regard to Articles 59 and 59 bis, entailed that work and residence permits were granted to the victims of trafficking.

The Comprehensive Plan to Fight Against Trafficking in Human Beings for Sexual Exploitation 2009-2012 was the first comprehensive strategic instrument in regard to the criminal phenomenon of trafficking in human beings. In compliance with its provisions, the Social Forum Against Trafficking for Sexual Exploitation was created in 14 July 2009. Its aim is to improve collaboration between all the agents involved, with a view to fostering and protecting human rights. The following Comprehensive Plan 2015-2018 is currently being



drafted and will be based on the analysis made of the implementation of the previous Plan and will take into account all recommendations made by this document.

It should be pointed out that, among the actions carried out by the Plan, the Framework Protocol for the Protection of Victims of Trafficking in Human Beings (adopted through agreement of 28 October 2011), which establishes the actions to be carried out at each stage of the procedure, it identifies the public administrations that are involved and establishes the coordination mechanisms between them and their relationship with other organisations with proven expertise in assisting victims. This Protocol managed to involve the General Council of the Judiciary, the Public Prosecutor and all Ministries with competences in the matter for the first time.

In turn, Notice 2/2014 of 1 July of the Secretary General of the Justice Administration has allowed court secretaries, in compliance with the Framework Protocol, to call in the representatives of the Public Prosecutor when witnesses, victims and the accused party make their statements, in compliance with all necessary requirements for them to serve as documentary evidence. The Notice also obliges the Court Secretaries to inform victims about the existence of assistance offices.

In matters of crime prosecution, the Order from the Home Office 28/2013 which creates the Central Brigade Against Trafficking in Human Beings may be pointed out. This Brigade becomes the specialised unit in coordination with the court, public prosecutor and administrative authorities.

Law 50/1981 of 30 December, which regulates the Organic Statute of the Office of the Public Defender, led to the creation of Public Prosecutor's Immigration Offices which have proven to be especially sensitive to the problem of trafficking.

Royal Decree 1192/2012 of 3 August which regulates the conditions of the insured and beneficiaries in regard to health assistance in Spain, allocated to public funds through the National Health Service, has made it possible to recognise health services to victims in an irregular situation who accept the recovery and reflection period.

In regard to unaccompanied immigrant children, the Framework Protocol of 22 July 2014 includes measures aimed at fostering coordination between the different authorities involved at the different stages of the process. It contains aspects regarding the protection of possible victims of trafficking who are underage foreign nationals, paying special attention to prevention with the aim of verifying the parent-child relationship of the children with the people accompanying them and to guarantee their protection in a situation of risk.



In particular, this includes the duty of the police authority or the staff from the public child protection institution to inform the possible victim of the rights that can assist them in Spain and of current regulations in matters of child protection, when they are sufficiently discerning.

The Draft Laws and Organic Law that amend the Childhood and Adolescence Protection System currently being processed, shine light on the drama of trafficking in children as one of the forms of violence against children, acknowledging the state of helplessness of the child victims when there is a conflict with their parents or guardians. In short, we are witness to a new regulation that offers a rigorous legal framework to the protection of childhood.

Continuing with the topic of children, we cannot forget the significant step forward that the Statute of the Victims of Crime represents by accepting the recordings of statements made by children to avoid exposing them to the added suffering that repeating their statement during proceedings would entail.

Finally, Royal Decree Law 3/2013 of 22 February, which amends the fee scheme in the sphere of the Justice Administration and the system of free legal assistance, entitles all victims of trafficking to free legal assistance, regardless of the existence of appeals still to be litigated.

## **PROPOSALS AND RECOMMENDATIONS**

The people reporting to the Subcommittee set forth different challenges and indications to be taken into account and, possibly, assess their implementation in the future. However, all of them start by pointing out the significant work carried out until now by the competent institutions, different public and private administrations, the State Security forces, third sector institutions and civil society in a very short period of time, which has made it possible for Spain to count on a significantly developed legislative and social assistance framework in regard to both crime detection and punishing traffickers and in the assistance of victims. All of this qualified, obviously, by the extreme difficulty in identification and later proof of crime, its transnational nature, the added complexity of most victims and criminals originating from countries in the European Union (Romania, Bulgaria) and the devastating state of the victims, which makes their full recovery very difficult.

Several of the participants highlighted that the policies developed are in line with the European Strategy 2020 and that it is fair to say that our country is in the lead in regard to the advances made in this matter with an enormous body of work carried out in the period 2008-2015 and with European Directive 36/2011 having been transposed completely.



#### **4.1. Law on Trafficking.**

- There is a generalised recommendation for a specific Law on Trafficking which coordinates the activities of all the institutions involved and which brings together into a single text the legal dispersion that currently exists in this matter. This is not a demand that comes from the third sector exclusively but also from the public prosecutors, magistrates and university professors who have reported to the Subcommittee. They all consider that it would be highly valuable given its exemplary and didactic nature, regardless of the fact that the European Directive can be transposed in a disperse manner into different laws (as has been the case over the years.)
- Legislation that transposes the European Directive and the commitments made by Spain through ratifying different international instruments against trafficking must involve increased visibility of the phenomenon of trafficking in human beings and, in this way, tackle society's awareness of the matter.
- Both the agents reporting to the Subcommittee and the third sector request that any possible law, current legislation in the matter and any plans implementing specific actions by the different administrations count on a mechanism to evaluate their performance to make them accountable and to assess their level of compliance, and have suitable budget allocated to them, with comparable and reliable benchmarks.
- The law, legislation transposing the Directive and specific action plans must incorporate measures in the three priorities areas in this matter (the three "P's"): prevention, protection and prosecution.

#### **4.2. Political Sphere.**

- Implement the commitments made in the different international agreements ratified by our country more swiftly (Palermo Protocol ratified in 2003, Warsaw Convention in 2009 and amendment of the Criminal Code according to ratification in 2010.)
- Sign a larger number of bilateral agreements with the countries from which the victims of trafficking that end in our country originate and where the human rights are hardly protected, in order to favour collaboration in this matter.
- Review the formal characteristics of residence and work permits awarded by the Government Offices to victims of trafficking so that their privacy is preserved effectively and to avoid them being victimized again.



- In the sphere of administrative, town council and regional licences, review the activity carried out by brothels in towns and on the road and verify they adhere to the activity for which their licence was registered and approved.
- Value the effects that implementing the new wording of Article 177 bis of the Criminal Code has on the prosecution, punishing and prevention of crimes regarding trafficking in human beings. If such assessment should give rise to new reforms, continue improving response to crime and the health and safety of the victims of these crimes.
- Once again, review how the Criminal Code treats procuring as this is considered to be a key concept in more efficiently approaching the prevention and punishment of trafficking. The study must be aimed at the effective implementation of the criminal classification of profiting from the prostitution of others to guarantee the punishment of all cases of sexual exploitation and not only coerced prostitution.

#### **4.3. Legal sphere.**

- Give priority to the condition of victim regardless of the police and legal proceedings derived from denunciation.
- Work towards achieving that while seeing to the precision, coherence, resolve and perseverance that are required, the emotional state of the victims of trafficking and the maltreatment they have been subject to are also taken into consideration when they are giving their statements during criminal proceedings, by means of suitable training and awareness-raising among all the professionals who take part in the process, judges and other legal officers.
- Reform current structures with the aim of fostering the mobility of victims of trafficking and sexual exploitation within the national territory.
- Safeguard compliance of access to free specialised legal assistance for all victims of trafficking.
- Always investigate the assets of the accused parties during proceedings as possible evidence of the trafficking activity they may be carrying out.
- Improve the criminal treatment of procuring and coerced prostitution in our legislation taking into account the difficulty of achieving the testimony of the victim (of trafficking) against their trafficker or procurer.



- Improve security in those cases where assisted return of a victim to their country of origin takes place.
- Optimise the provisions of Organic Law 19/1994 of 23 December on the Protection of Witnesses and Experts in Criminal Proceedings with the aim of adapting its contents to the specific nature of the crime of trafficking in human beings.

#### **4.4. Prevention and detection of trafficking.**

##### Raising Awareness.

- Work towards increasing visibility of trafficking in human beings for sexual exploitation as a reality that exists in our surrounding, making it clear that it is one of the most cruel manifestations of inequality as it is a form of slavery and gender violence that, as a result, violates and infringes human rights.
- Foster awareness-raising in citizens towards condemning this form of slavery, disseminating the close connection that exists between prostitution and trafficking in persons for sexual exploitation.
- Prepare awareness and prevention campaigns that contain a message of zero tolerance and which include trafficking as a form of violence against women.
- Carry out awareness-raising and prevention campaigns specifically aimed at young people by using language that is appropriate to their age, taking into account at all times the perspective of gender and human rights.

##### The Media.

- Foster that media subscribe to self-regulation codes with the aim of promoting a language that is inclusive, egalitarian and non-sexist.
- Foster the gradual elimination of personal ads. If their elimination is not possible, assess the possibility of establishing dissuasive measures.
- Study the impact of implementing the recommendations made by the Council of State on limiting the advertising of prostitution in the written press, or part of it, and possibly in other media, promoting specific regulations that positively encourage the media to abandon this practice.
- Comply with the commitments unanimously adopted by the Equality Committee both in this and the previous term in regard to the advertising of prostitution.



- Foster that Codes of Best Practices are written so that information in matters of trafficking and sexual exploitation is linked to forms of violence against women.
- Increase the protection of children and young people by means of measures aimed at controlling and limiting the use of the Internet as a platform for sexual trade. Link this recommendation with the starting of awareness-raising campaigns targeted at childhood and adolescence specifically.

#### **4.5. Protection, assistance and damage repair.**

- Prepare a new Comprehensive Plan to Fight Against Trafficking in Women and Children for Sexual Exploitation, taking into account the conclusions obtained by successive assessments of the previous Plan and very much taking into account the conclusions approved by the Subcommittee for the Studying of Trafficking in Human Beings for Sexual Exploitation. This new Plan should work as a complementary instrument to the future Law on Trafficking.
- Implement new initiatives for the direct assistance of victims aiming to reduce the risk of double victimization.
- Introduce new social and, especially, economic support measures for victims.
- In collaboration with specialised staff in third sector institutions, foster that victims file a claim through better information, support and accompanying the victim if there is sound suspicion they are victims of trafficking.
- Take into account the gender perspective in all actions carried out in matters of prevention and assistance for victims.
- Foster the amendment of Art 127 of the Criminal Code so that any resources resulting from the crime serve to protect, assist and repair the damage done to victims by means of providing for a fund with the assets seized.
- Improve the mechanisms for collaboration between third sector institutions and the State Security Forces in the process of detecting business, since they are frequently coerced and they fear for their physical integrity, leading them to deny their situation.

#### **4.6. Training.**

- Update the programmes and mechanisms for training and specialisation of the State Security Forces and all professionals with competences in the matter.



- Establish formulae to train and raise awareness among Spanish staff working abroad so that they are better prepared for detecting possible cases of recruitment.
- Incorporate the gender perspective in all training processes regarding trafficking and sexual exploitation.

#### **4.7. Children.**

- Taking the best interests of the child as the principle for interpretation, substantive law and procedural norm, generate protocols that are common to all regions to more exactly determine the identity of children, include them in a register and establish their parentage to avoid their disappearance, without implying the child will be taken away from the mother.
- Extend the protection contained in the Framework Protocol on Unaccompanied Immigrant Minors of 22 July 2014, to children who were already born in Spain.
- Take into account the particular nature of children in order to carry out specific training in the matter, involving all the agents participating in assisting children, paying special attention to teaching staff.
- Establish efficient transfer mechanisms for children within the national territory when such transfer is advisable, through collaboration agreements between different regions and the central government.
- Given the evidence that youth care centres have proven inadequate as places for the assistance of underage victims of trafficking, support the creation of specific resources for children by the administrations or third sector institutions.

#### **4.8. Coordination.**

- Intensify the prosecution of traffickers promoting efficient participation, assistance and information exchange mechanisms between all the actors that take part in the fight against trafficking.
- Strengthen coordination of the State Security Forces by means of implementing the second stage of the National Police Plan Against Trafficking in Human Beings for Sexual Exploitation.
- Optimise the paths for inter-institutional collaboration between the policy authority, public prosecutors, court officials and third sector institutions that provide assistance and support to victims and their relatives.





- Strengthen international police actions by fostering communication and collaboration with the countries of origin to expedite the exchange of information.
- Generate common and homogenous protocols in the regions through the Sectoral Equality Conference, paying special attention to establishing simple mechanisms to facilitate the mobility of victims inside the national territory, in accordance with the competences of the different administrations involved.
- Strengthen the collaboration with embassies in the countries of origin of the victims of trafficking and traffickers, with the aim of developing programmes to work on crime prevention.
- Efficiently verify any requests for asylum and periods of recovery and reflection made by women who are victims of trafficking in Internment Centres for Foreigners or those who identify as such in order to avoid that it is actually the trafficking networks who are using this mechanism to achieve their purpose.
- Always respect the decision taken by the victim, regardless of their characteristics.

#### **4.9. Investigating and quantifying the crime.**

- Use common benchmarks to collect information that will afford greater harmonisation of the data and more efficient analysis.
- Foster that information is received from all the administrations involved in the fight against trafficking in human beings (respecting the competences of each) to optimise data collection.
- Improve the collection of information from the justice administration.
- Carry out research, studies and investigations that faithfully reflect the scope of the crime of trafficking with the objective of implementing the measures necessary to combat it.

#### **4.10. Third Sector Institutions.**

- Foster existing mechanisms so that the victims of trafficking are always assisted and across the national territory by specialised third sector institutions, preparing the corresponding agreements that will allow them to participate every time an action is carried out by the legal authorities or corresponding police forces.
- Take into account the contributions made by third sector institutions in writing protocols in any of the aspects regarding the fight against trafficking in human



beings, especially those in regard to detection, identification, legal process and recovery.

- Coordinate the intervention of third sector institutions so that their activity does not depend solely on best practices and so they are regulated through collaboration agreements with different public administrations.
- Within their competences, the central government and the corresponding regional governments should help third sector institutions so that their resources match the specific characteristics and professionals required for the activity they carry out, considering the extreme complexity regarding the state of the victims, their diverse origin, different cultural, social, religious, ethnic and linguistic characteristics and in regard to their ages (children, young women, mothers, etc.)
- Foster collaboration between third sector institutions linked to the fight against trafficking with similar institutions in the countries of origin of most of the victims of trafficking in Spain: Romania first of all but also Paraguay, Brazil, Nigeria or China.

#### **FINAL COMMENTS.**

The Subcommittee is fully aware that its work was limited, from the very start, to one of the forms of trafficking: trafficking in human beings for sexual exploitation which for many years and still now continues to be the form of trafficking that is most present in our country. However, the Subcommittee believes it would also be advisable to study other forms that are also classed as crimes in Directive 2011/36/EU: trafficking for labour exploitation, begging or committing crimes, servitude, slavery, organ trafficking, forced marriages, etc., which have not been the object of study of this Subcommittee, and the manner to incorporate into our legal system a suitable response to the increasing dimensions that such forms of trafficking are reaching in our country. The establishment of the Schengen space and the incorporation of new members of the European Union in the past few years have led to an increasing presence of these types of trafficking in our country.

Similarly, the Subcommittee wishes to state that in the period during which it carried out its work, some of the demands presented by some of the agents reporting to the Subcommittee were answered with the political and legislative work carried out. Hence, given such advances, such demands were not included in this report although they were collected in the transcriptions and summaries of their participation; especially, in regard to amendments of criminal legislation in the past three years. Many of these demands were issues calling for the complete implementation of Directive 2011/36/EU on trafficking.



Thus, the Subcommittee wishes to highlight the progress made in the past ten years approximately to fighting the networks involved in trafficking in human beings for sexual exploitation in our country, completely transforming the legal and social landscape in response to this very serious problem.

Finally, the Subcommittee would like to make a record of an issue presented by most of the experts reporting to the Subcommittee: the extreme difficulty in separating the problem of trafficking in human beings for sexual exploitation and prostitution; even, trying to limit the scope further: procuring, which for many of the participants is inadequately solved in our legislation. The disappearance of trafficking in human beings for sexual exploitation is linked directly to the eradication or limitation of the demand for prostitution services which, nonetheless, continues at the same level or has even increased over the past few years according to our reporters. In this regard, the Subcommittee wishes to point out that the European Parliament, in a study presented in February 2014 under the title «Report on sexual exploitation and prostitution and its impact on gender equality», presented by MEP Mary Honeyball advises against the legalisation of prostitution in the understanding that this is a measure that benefits procurers most of all.

Similarly, the Subcommittee wishes to highlight that most of the people reporting to it have pointed out to countries with abolitionist systems as the most effective in fighting against trafficking for sexual exploitation, by virtue of measures such as punishing procurers and users.

Furthermore, the Subcommittee also wishes to stress that procuring has been one of the issues that the reporting agents have talked about the most, in the understanding that this crime isn't yet solved or punished adequately in our legal system.