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GROUP OF EXPERTS  
ON ACTION AGAINST  
TRAFFICKING IN HUMAN BEINGS

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on Action against Trafficking in Human Beings  
by Belgium

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## Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party.

GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA's country-by-country monitoring deals with all parties to the Convention on an equal footing. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to all parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental. By the beginning of 2014, most of the parties had been or were being evaluated for the first time, whilst the number of parties to the Convention continues to grow.

GRETA decided to launch the second evaluation round of the Convention on 15 May 2014. Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA has decided to examine during this new evaluation round the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. For the second evaluation round, GRETA has adopted a questionnaire to be sent to all states parties which have undergone the first round of evaluation, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to provide, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual final comments made by the national authorities, are made public and sent to the Committee of the Parties to the Convention.

## I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Belgium took place in 2012-2013. Following the receipt of Belgium's reply to GRETA's first questionnaire on 15 June 2012, a country evaluation visit was organised from 1 to 5 October 2012. The draft report on Belgium was examined at GRETA's 16<sup>th</sup> meeting (11-15 March 2013) and the final report was adopted at GRETA's 17<sup>th</sup> meeting (1-5 July 2013). Following the receipt of the Belgian authorities' comments, GRETA's final report was published on 25 September 2013.<sup>1</sup>

2. In its first evaluation report on Belgium, GRETA welcomed the establishment of a legal framework and specialised structures for combating trafficking in human beings and assisting victims, the adoption of national action plans and the periodic assessment of anti-trafficking action by an independent authority. However, GRETA stressed the need to adapt anti-trafficking policies to take account of the particular vulnerability of children to trafficking and urged the Belgian authorities to strengthen the detection and identification of child victims of trafficking, particularly for the purpose of forced begging and committing petty offences and crimes. Furthermore, GRETA considered that the Belgian authorities should pay greater attention to the identification of trafficking victims among Belgian and EU nationals. GRETA urged the Belgian authorities to ensure that the assistance offered to victims of trafficking is adapted to their needs and that victims are systematically informed of the possibility to be granted a recovery and reflection period. Further, GRETA called on the authorities to put in place repatriation arrangements which take due regard of the rights, safety and dignity of victims.

3. On the basis of GRETA's report, on 7 October 2013 the Committee of the Parties to the Convention adopted a recommendation to the Belgian authorities, requesting them to report back on measures taken to implement this recommendation by 7 October 2015.<sup>2</sup> The report submitted by the Belgian authorities was considered at the 17<sup>th</sup> meeting of the Committee of the Parties (30 November 2015). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.<sup>3</sup>

4. On 7 January 2016, GRETA launched the second round of evaluation of the Convention in respect of Belgium by sending the questionnaire for this round to the Belgian authorities. The deadline for submitting the reply to the questionnaire was 7 June 2016. The authorities submitted the reply to the questionnaire on 9 June 2016.

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Belgian authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit to Belgium took place from 12 to 16 December 2016 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of the adopted measures. The visit was carried out by a delegation composed of:

- Mr Nicolas le Coz, President of GRETA;
- Ms Vessela Banova, member of GRETA;
- Mr David Dolidze, Administrator in the Secretariat of the Convention.

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<sup>1</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, GRETA(2013)14, available at: <http://rm.coe.int/1680630d0f>

<sup>2</sup> Recommendation CP(2013)8 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, adopted at the 12<sup>th</sup> meeting of the Committee of the Parties on 7 October 2013, available at: <http://rm.coe.int/1680630cee>

<sup>3</sup> Available at: <http://rm.coe.int/1680630d0d>

6. During the visit, GRETA's delegation met members of the Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings and representatives of the Federal Migration Centre (MYRIA)<sup>4</sup>, which fulfils the role of National Rapporteur on Human Trafficking. Discussions were also held with officials from the Federal Ministry of Justice, the Federal Ministry of the Interior, the Federal Ministry of Social Affairs, the Federal Ministry of Foreign Affairs, the Office of the State Secretary for the Fight against Social Fraud, the Protection of Privacy and the North Sea (attached to the Minister for Social Affairs and Public Health), the Federal Agency for the Reception of Asylum Seekers (Fedasil), the Board of Prosecutors General, the Federal Prosecution, the Financial Intelligence Processing Unit (CTIF) and the Guardianship Service. Further, GRETA's delegation met Mr Philippe Goffin, Chair of the Belgian Parliament's Justice Committee.

7. In addition to holding meetings in Brussels, the delegation travelled to the Flemish and Walloon Regions. In Antwerp, the delegation met representatives of police, the labour inspectorates<sup>5</sup> and Antwerp municipality. In Liege, meetings were held with representatives of the police, the labour inspectorates, the public centre for social action, as well as representatives of the German-speaking Community. The GRETA delegation also met Mr Bruno Vanobbergen, Children's Rights Commissioner for the Flemish Region, and Mr Bernard De Vos, General Delegate for Children's Rights of the French-speaking Community.

8. Separate meetings were held with representatives of non-governmental organisations (NGOs), researchers, lawyers, employer associations and trade unions. The GRETA delegation also met a representative of the International Organization for Migration (IOM).

9. In the course of the visit, the GRETA delegation visited a specialised accommodation centre for child victims of trafficking run by the NGO Esperanto, and three specialised shelters for adult victims of trafficking, run by the NGO Sürya (in Liege), the NGO Pag-Asa (in Brussels) and the NGO Payoke in Antwerp. In addition, the delegation visited a reception centre for asylum seekers in Brussels, operated by Fedasil.

10. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

11. GRETA wishes to place on record the excellent co-operation provided by the Belgian authorities in the preparation of the second evaluation visit and in particular by the contact person appointed by the Belgian authorities to liaise with GRETA, Mr Jean-Francois Minet, Head of the Bureau of the Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings and Attaché at the Criminal Policy Department of the Federal Ministry of Justice, and his colleague Ms Barbara Vangierdegom, Attaché at the same department.

12. The draft version of the present report was approved by GRETA at its 28th meeting (27-31 March 2017) and was submitted to the Belgian authorities for comments on 14 April 2017. The authorities' comments were received on 15 June 2017 and were taken into account by GRETA when adopting the final report at its 29th meeting (3-7 July 2017). The report covers the situation up to 7 July 2017; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 47-51).

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<sup>4</sup> In 2014, the Centre for Equal Opportunities and Opposition to Racism was split into the Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking (MYRIA), on the one hand, and the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination, on the other hand.

<sup>5</sup> In Belgium, the function of labour inspectorates is performed by the Directorate General of Supervision of Social Legislation of the Federal Public Department of Employment, Labour and Social Dialogue and the Social Inspection Directorate General of the Federal Public Department of Social Security.

## II. Main developments in the implementation of the Convention by Belgium

### 1. Emerging trends in trafficking in human beings

13. Belgium remains primarily a country of destination for trafficked persons, but is to a certain extent also a country of origin and transit. According to statistical information collected by the Federal Migration Centre (MYRIA), the number of victims of trafficking in human beings (THB) identified by competent public authorities and specialised NGOs was 133 in 2013, 156 in 2014, 135 in 2015 and 133 in 2016. The majority of the identified victims in the period 2013-2015 were men (233), followed by women (178) and children (13, of whom eight girls and five boys).<sup>6</sup> During the period 2013-2016, most of the victims were trafficked for the purpose of economic exploitation<sup>7</sup> (328), followed by sexual exploitation (201). There were also cases of trafficking for the exploitation of begging (17 victims) and forced criminality (9). The main countries of origin of the victims were Romania (106) and Morocco (77), followed by Nigeria (47), Hungary (23) and Bulgaria (20).<sup>8</sup> During the period 2013-2016, the authorities have also identified 16 Belgian victims of trafficking.

14. In addition to the above-mentioned figures of identified victims of trafficking, 779 presumed victims of trafficking were detected by or referred to specialised NGOs in 2013, 797 in 2014 and 787 in 2015. These figures include persons who turn out not to be victims of trafficking after the initial interview (see paragraph 100).

15. The Belgian authorities have indicated that trafficking for the purpose of economic exploitation occurs mostly in the hospitality industry (hotels, restaurants, other catering facilities) and the construction sector. With the economic crisis in Europe, the number of Belgian victims of trafficking for the purpose of economic exploitation has increased. Cases of trafficking for the purpose of the exploitation of begging have also been identified. Trafficking for the purpose of sexual exploitation affects mostly nationals of Eastern European countries and involves organised networks as well as individual exploiters. Young women and girls fall prey to so-called "loverboys" who recruit them through seduction and force them into prostitution, a phenomenon which also affects Belgian victims. As regards trafficking for the purpose of domestic servitude, cases of exploitation in private households of diplomats accredited in Belgium have been brought to the attention of the authorities (see paragraph 63).

### 2. Developments in the legal framework

16. Since the first evaluation round, Article 433*quinquies* of the Criminal Code (CC) has been amended by the Law of 24 June 2013. The amendments increased the sanctions for THB for all forms of exploitation by multiplying the amount of the fine by the number of victims.

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<sup>6</sup> The figures for 2016 are broken down into male (63) and female (70) victims and do not indicate the number of children.

<sup>7</sup> This expression is used in Belgium to refer to labour exploitation in conditions that are contrary to human dignity and covers all sectors of economy where it may occur.

<sup>8</sup> Among the victims identified in 2015, there were nationals of 36 foreign countries. See the MYRIA report which is available at: <http://www.MYRIA.be/en/publications>

17. Further amendments of the criminalisation of THB were adopted on 31 May 2016 with the purpose of bringing Belgian criminal law in conformity with the relevant European Union (EU) legislation<sup>9</sup> in the area of preventing and combating trafficking in human beings and combating sexual abuse and sexual exploitation of children and child pornography. The list of means for the commission of THB, which are considered as aggravating circumstances, now includes kidnapping, deception, abuse of authority, giving or receiving of payments or benefits to allow for a person having control over another person. Further, they expand extraterritorial jurisdiction to include criminalising the attempt of committing THB without or without aggravating circumstances and introduce stronger guarantees of anonymity of victims of sexual exploitation by explicitly prohibiting the publication of any information concerning them without their prior consent.

18. Legislative amendments were also adopted on 12 May 2014 concerning the appointment of legal guardians to unaccompanied foreign children from European Union (EU) and European Economic Area (EEA) member states (see paragraph 70).

19. In addition, a new joint circular on the fight against human trafficking (COL 1/2015) from the Bench of Public Prosecutors and the Minister of Justice came into force on 15 May 2015.

20. The above-mentioned measures are discussed in greater detail in later parts of this report (see paragraphs 70, 118, 133, 154, 179 and 196).

### 3. Developments in the institutional framework

21. The Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings (hereafter "Inter-departmental Unit") continues to be the main co-ordinating body of anti-trafficking action in Belgium. This Unit operates under the authority of the Ministry of Justice. The composition of the Inter-departmental Unit and the modalities of its functioning were reviewed by a Royal Decree of 21 July 2014.<sup>10</sup> One of the main changes was the formal integration of the three NGO-run specialised centres for victims of THB<sup>11</sup> into the composition of the Inter-departmental Unit. In addition, representatives of federal entities were added to the composition of the Inter-departmental Unit, as well as of the Secretary of State for Equal Opportunities and Migration. Further, a representative of the Financial Information Processing Unit was also included as a member of the Inter-departmental Unit. GRETA welcomes the inclusion of representatives of the three specialised centres for assistance to victims of trafficking, as well as other relevant public bodies, into the composition of the Inter-departmental Unit.

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<sup>9</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse and sexual exploitation of children, and child pornography, replacing the Council Framework Decision 2004/68/JHA; 2002/946/JHA; 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; Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

<sup>10</sup> The full text of the Royal Decree is available at:

[http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=14-09-01&numac=2014009455#top](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=14-09-01&numac=2014009455#top)

<sup>11</sup> Pag-Asa in Brussels, Payoke in Antwerp and Sürya in Liège



22. The Inter-departmental Unit continues to meet twice a year, while its Bureau, which is responsible for handling the Unit's daily work, meets once a month. The Bureau is chaired by the representative of the Criminal Policy Department of the Federal Public Department (FDP) of Justice and the secretariat is provided by the Federal Migration Centre (MYRIA). Members of the Bureau include representatives of the Foreigners' Office, the Central Unit for Human Trafficking of the Federal Police, the State Security Service, the Social Inspection Department of the Federal Public Department for Social Security and the Monitoring of Social Legislation Department of the Federal Public Department for Employment, Labour and Social Dialogue and the Federal Public Department for Foreign Affairs. By virtue of the Royal Decree of 21 July 2014, the Bench of Prosecutors General, already a member of the Unit, has become an observer in the Bureau.

23. In 2014, the Centre for Equal Opportunities and Opposition to Racism was split into the Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking (named "MYRIA" since 3 September 2015), on the one hand, and the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination, on the other hand. MYRIA is a public stakeholder, but it is autonomous with regard to the government and exercises its tasks on a completely independent basis. It is managed by a Board of Directors appointed by the Federal Parliament. Half of MYRIA's funding is covered by the National Lottery and the other half by the budget under the Secretary of State for Equal Opportunities. MYRIA carries out research, produces reports, institutes civil proceedings in cases involving human trafficking and maintains relations with relevant stakeholders at international level.

24. The Royal Decree of 21 July 2014 set up a mechanism of national reporting on trafficking in human beings, which consists of two bodies.<sup>12</sup> The Inter-departmental Unit acts as a co-ordinating body and rapporteur of the State pursuant to Article 12 of the Law of 13 April 1995. Within the Inter-departmental Unit, the Criminal Policy Department of the FDP Justice is responsible for drafting biannual reports of the Government. MYRIA has been designated as an independent National Rapporteur, pursuant to Article 11 of the Royal Decree. MYRIA publishes annual reports with statistical data on human trafficking, analysis of trends and case law, as well as thematic research and analysis (e.g. on trafficking for the exploitation of begging in its 2016 annual report).<sup>13</sup> GRETA welcomes the comprehensive reports published by MYRIA. GRETA invites the Belgian authorities to ensure that the function of an independent National Rapporteur is clearly delineated from that of the National Co-ordinator.

#### 4. National Action Plan

25. The second National Action Plan against Trafficking in Human Beings ended in 2014. According to the report prepared by the Bureau of the Inter-departmental Unit, about three fourths of the measures contained in this plan were implemented.

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<sup>12</sup> More information is available at: [https://ec.europa.eu/anti-trafficking/national-rapporteurs/belgium\\_en](https://ec.europa.eu/anti-trafficking/national-rapporteurs/belgium_en)

<sup>13</sup> Available at: <http://www.MYRIA.be/en/publications>

26. The third National Action Plan against trafficking in human beings, covering the period from 2015 to 2019, was adopted on 15 July 2015.<sup>14</sup> It consists of seven operational chapters devoted, respectively, to optimising legal instruments and applying them effectively in practice; developing long-term training for relevant professionals; improving the protection of victims of THB and the services proposed by the specialised centres; sustaining international attention on THB; informing and sensitising frontline staff, civil society actors and the general public about THB and its aspects; continuing to build the co-ordination of actions and to develop knowledge about THB; and enhancing the anti-trafficking initiatives of the three Communities (Flemish, French-speaking and German-speaking) and the Brussels Region. The plan stresses the need to focus on some specific aspects of THB, such as exploitation through begging and envisages training of relevant bodies involved in combating this form of trafficking. Further, it contains measures aimed at improving access of victims to certain rights, such as the recovery of unpaid salaries in cases of economic exploitation. It also aims at providing greater continuity and stability as regards financing of specialised centres for victims of THB and improving the procedure of issuing victims of trafficking with residence permits. Finally, the plan envisages a revision of the National Referral Mechanism (NRM) with a view to better reflecting the needs of victims of internal trafficking. GRETA welcomes the timely adoption of the third National Action Plan, its comprehensive approach and the commitment to enhance the funding of specialised reception centres for victims of trafficking.

27. Federal ministries and other agencies are responsible for the implementation of specific measures falling into their competence under the plan. The Bureau of the Inter-departmental Unit supervises and co-ordinates the implementation of these measures, many of which are of a transversal nature.

28. The Bureau of the Inter-departmental Unit assesses the practical implementation of the measures under the Action Plan. The Bureau may also decide to carry out an evaluation of specific activities, as was the case with the awareness campaign among hospital staff. The Bench of Prosecutors General conducts an evaluation of the application of the criminal policy directives, including those on trafficking in human beings.<sup>15</sup>

## 5. Training of relevant professionals

29. In its first report, GRETA considered that the Belgian authorities should further increase their efforts to provide training to police officers not specialised in THB, including those responsible for receiving complaints, taking into account the turn-over of staff. GRETA further considered that training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

30. As mentioned in paragraph 26, a separate chapter of the current National Action Plan is devoted to the training of relevant professionals, which envisages periodic training of frontline actors or other actors and providing detailed information and training on THB to diplomatic staff. When preparing the National Action Plan, the public bodies concerned were consulted as regards their training needs (including the periodicity of training), which were subsequently reflected in the plan. While the plan includes the minimum training activities which will have to be organised in the period from 2015 to 2019, the intention is to carry out more training sessions.

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<sup>14</sup> Available in French at: [http://www.dsb-spc.be/doc/pdf/ACTIEPLAN\\_MH\\_2015\\_2019-FRpr%2013072015.pdf](http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf)

<sup>15</sup> These reports, which are generally prepared every two years, are not public, but they are available to all prosecutors and judges on the intranet of the Federal Public Prosecutors Office.

31. Training topics are also determined on the basis of the conclusions of MYRIA's annual reports, the evaluation of the implementation of relevant circulars (issued by Ministries and/or the Bench of Prosecutors General), and meetings of the network of expertise on trafficking in and smuggling of human beings, set up by the Bench of Prosecutors General.

32. Prosecutors are trained in the Belgian Institute for Judicial Training. The co-ordinating prosecutor of the specialised expertise network contacts the Institute for Judicial Training with proposals and needs on the issue of THB. Training is then organised according to the availability of the Institute for Judicial Training, in accordance with the programme drawn up in collaboration with the co-ordinating prosecutor. On average, such training takes place once in two years. The main target group are trainee prosecutors and trainee judges. However, sitting judges as a rule do not attend these trainings and it is more difficult for them to develop specialisation on THB cases than for prosecutors (see also paragraph 198).

33. In their reply to GRETA's questionnaire, the Belgian authorities have provided examples of training sessions related to combating THB organised during the reporting period.<sup>16</sup> By way of example, the authorities referred to a training session which was held on 25 January and 8 February 2013, with the attendance of 12 public prosecutors from the King's Prosecution Panel, nine prosecutors from the labour law auditor's office, one from the general labour law auditor, four criminal prosecutors, two sitting judges and one investigating judge. Further, basic training sessions were held on 30 April and 8 May 2015, attended by nine prosecutors from the labour law auditor's office, eight from the Public Prosecutor's Office, 12 judicial trainees, five prosecutors, three court of appeals lawyers, one investigating judge and one judge from a court.

34. As regards police officers, the Central Directorate for Combating Serious Crime of the Federal Police organises training on the subject of THB once a year. An electronic information letter is distributed to all police officers at the federal and local levels, which includes updates on legislation, trends and most recent research on THB. The Federal Department of the Police organises training sessions on THB for federal and local police officers involved in international co-operation on THB. Following the adoption of COL 01/2015, four information sessions were organised for local and federal police officers with an overall 300 participants. These sessions focused on the tools to be used during investigations, which are integrated into COL 01/2015 and are available on the intranet website of the police. Additional training was planned in the last semester of 2015 but had to be postponed due to priority being given to combating terrorism.

35. Training centres at the local police level, which provide basic training for police inspectors, operate autonomously. The aim of the training is to provide police officers with basic knowledge of THB and skills to identify possible cases of THB in the course of their duties. Training required for a promotion to chief inspector includes a thematic module on THB, with an emphasis on detecting trafficking cases on the basis of indicators, identification of possible victims and the referral of victims to specialised centres for assistance. Police officers specialising in combating THB take part in an information session and a one-day follow-up organised every year.

36. Training on THB for officers performing border control functions at airports, seaports and inland navigation is organised for inspectors and chief inspectors of the police. The training focuses on detecting and identifying possible victims of human trafficking on the basis of profiling. The training manual on trafficking in human beings developed by Frontex is used. According to the authorities, each year 60 border guards are trained on THB. They also have access to all relevant information materials on the intranet of the Federal Police, including the FRONTEx manual on profiles of THB victims.

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<sup>16</sup> See pages 11-14 of the Belgian authorities' reply to GRETA's 2nd round questionnaire.

37. GRETA was informed that the Social Inspection Service of the FDP Social Security was planning to develop a training programme for newly recruited inspectors, in addition to periodic trainings of serving inspectors. The authorities have indicated that as of 1 July 2017, the Social Inspection Service would be integrated into the National Social Security Office (ONSS). The training programme on THB will be established after the teams in the new provincial directorates are set up and a needs assessment is carried out.

38. Fedasil, the federal agency for the reception of asylum seekers, organises training on THB for its staff, including with a view to sensitising the teams dealing with unaccompanied foreign children. This training is being implemented jointly with the Foreigners' Office, the Bureau of the Inter-departmental Unit and the NGOs Pag-Asa, Surya, Payoke, Minor-Ndako and Esperanto. Training also covers the identification of victims of THB among adult asylum-seekers. Since the beginning of 2016, the Foreigners' Office has started training of staff of reception centres for asylum seekers, which provided information on the identification of victims of THB and the procedures for referral of possible victims. Some 200 staff have already received such training.

39. The guardianship service dealing with unaccompanied foreign children was provided with training in March 2015. Around 70 legal guardians participated in this one-day training, which was financed by the FDP Justice. The training was accompanied by presenting an information package about THB and the workflow of procedures applicable to victims of trafficking under the NRM.

40. In 2013 a training of trainers was organised by the FDP Defence to inform military personnel about the definition of THB and situations of trafficking and exploitation they might be confronted with.

41. GRETA welcomes the efforts taken in Belgium to provide training on THB to a wide range of stakeholders. Bearing in mind the recent amendments to the legislation and regulations relevant to combating human trafficking, GRETA considers that the Belgian authorities should continue and increase their efforts to train relevant professionals, including social inspectors and judges (see also paragraph 198). The training should aim, *inter alia*, to improve the identification of victims of THB, increase the number of prosecutions and convictions of traffickers and guarantee effective access to compensation for victims of THB.

## 6. Data collection and research

42. In its first evaluation report, GRETA considered that the Belgian authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination).

43. As was the case at the time of GRETA's first evaluation, different institutions continue gathering statistical information on THB in their fields of competence.<sup>17</sup> Statistics on human trafficking are included in the annual reports published by MYRIA, based on data collected from the Federal Police, the labour inspectorates, the Bench of Prosecutors General, the Foreigners' Office, the specialised NGOs operating reception centres for victims of THB and the Criminal Policy Department.<sup>18</sup> However, according to MYRIA, there is a lack of harmonisation of the figures received from different actors, which makes it difficult to assess the policy or support strategic analyses. According to the Belgian authorities, progress is yet to be achieved as regards the standardisation of data on THB collected by different actors. Any significant differences between databases are discussed and each actor takes steps to improve the quality of their data. A more general standardisation should take place via the CIATTEH (information processing and analysis centre on trafficking in and smuggling of human beings), which is the corollary of the Bureau of the Interdepartmental Unit regarding statistical data.

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<sup>17</sup> See paragraphs 88-90 of GRETA's first report.

44. GRETA urges the Belgian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors, including reception centres for asylum seekers, be harmonised and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

45. In its first evaluation report, GRETA invited the Belgian authorities to carry out and support research on THB-related issues and to use the findings to devise future anti-trafficking measures. Areas where more in-depth research was needed included trafficking of children from other European countries, trafficking for the purpose of the exploitation of begging, and internal trafficking within Belgium.

46. In its annual reports, MYRIA develops specific themes examining aspects of human trafficking. Thus, the 2015 annual report contains thematic chapters on early and forced marriages and their link to human trafficking, and victims of "loverboys".<sup>19</sup> The 2016 annual report focused on human trafficking for the purpose of the exploitation of begging.<sup>20</sup> These thematic chapters offer an in-depth view into the topics covered and represent a good practice as regards research.

47. In 2015 at the request of the Minister of welfare, public health and family of the Flemish Region, the NGO Child Focus carried out research into the issue of "loverboys/teenage pimps". The research demonstrated that this method often changes and is subject to continuous adaptations. A site<sup>21</sup> was launched by Child Focus including personalised messages for target groups.

48. In 2014-2016 the NGO Payoke implemented an international project entitled "Referral of and assistance for victims of human trafficking in Europe" ("RAVOT-EUR"), in co-operation with the Hungarian Ministry of the Interior and the Dutch Ministry of Security and with funding from the EU. Research, workshops and study visits were organised to learn about the operation of each country's system of referral and assistance to victims<sup>22</sup> (see also paragraph 164).

49. At the time of GRETA's second evaluation, a research on the situation of prostitution was underway in the Walloon Region, focussing primarily on the structural inequalities between women and men and seeking to identify new topics and target groups for awareness-raising. A sociological research on prostitution in the region of Brussels was carried out by the Brussels Observatory for Prevention and Security.<sup>23</sup> Further, an "exploratory survey on prostitution in the Wallonia-Brussels Federation" was carried out. Amongst its objectives was to document the aspects of this phenomenon in order to inform policy decisions in the area of equal opportunities. The report highlights that the exploitation of persons

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<sup>18</sup> By way of example, see MYRIA's 2016 annual report 2016, part 4 entitled "Key figures concerning the stakeholders in human trafficking and smuggling".

<sup>19</sup> For more information, see the annual report of MYRIA for 2015, accessible via the following link:

<http://www.MYRIA.be/en/publications/2015-annual-report-on-trafficking-and-smuggling-in-human-beings-tightening-the-links>

<sup>20</sup> For more information, see the annual report of MYRIA for 2016, accessible via the following link:

<http://www.MYRIA.be/en/publications/2016-annual-report-trafficking-and-smuggling-of-human-beings>

<sup>21</sup> [www.stoptienerpooiers.be](http://www.stoptienerpooiers.be)

<sup>22</sup> For more information, visit the website of RAVOT-EUR project: <http://www.ravot-eur.eu/en/transnational-referral-mechanism>

<sup>23</sup> For more information, see the OBPS report (available in French and Dutch only) for 2015 at : <http://be.brussels/a-propos-de-la-region/les-organismes-regionaux/bruxelles-prevention-et-securite>

engaged in prostitution is often linked to their marginalisation and that there is a need to put in place policies to address the latter.<sup>24</sup>

50. GRETA welcomes the efforts in the area of research and considers that the Belgian authorities should continue to conduct and fund research on THB-related issues as an evidence base for future policy measures, in particular as regards trafficking for the purpose of forced and early marriages, trafficking of unaccompanied children, trafficking for the purpose of economic exploitation in different sectors, and trafficking within Belgium.

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<sup>24</sup> The report (in French) is accessible at:

[http://www.egalite.cfwb.be/index.php?eID=tx\\_nawsecuredl&u=0&g=0&hash=6274196f0ccabd311731555456882b976b92c0bb&file=uploads/tx\\_cfwbitemsdec/Enquete\\_exploratoire\\_sur\\_la\\_prostitution\\_en\\_FWB\\_version\\_finale\\_.pdf](http://www.egalite.cfwb.be/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=6274196f0ccabd311731555456882b976b92c0bb&file=uploads/tx_cfwbitemsdec/Enquete_exploratoire_sur_la_prostitution_en_FWB_version_finale_.pdf)

### III. Article-by-article findings

#### 1. Prevention of trafficking in human beings

##### a. Measures to raise awareness of THB (Article 5)

51. In its first report, GRETA considered that the Belgian authorities should build greater awareness among the general public of the different types of trafficking and its victims, by organising targeted information and awareness-raising initiatives, involving civil society and making use of the findings of research and impact assessments.

52. No large-scale campaigns to raise public awareness of THB among the general public have been conducted during 2013-2016. The Belgian authorities consider that information campaigns aimed at target groups are more effective than campaigns aimed at the general public and therefore efforts have focused on informing relevant actors and civil society about the detection and referral of victims of THB. An awareness-raising campaign aimed at hospital staff, involving the distribution of a brochure on THB, was carried out in 2014 and was accompanied by an evaluation.<sup>25</sup> It reportedly led to an increase in the number of referred victims. Other initiatives have included prevention activities aimed at schools and hotels, press conferences and the publication of verdicts. The authorities have indicated that discussions are on-going with the federal entities to make the brochure available to teaching staff in nursing schools. An electronic version of the brochure has been disseminated in the French Community. In addition, representatives of reception centres continue to travel to hospitals to provide information on trafficking in human beings.

53. MYRIA organises a press conference following the publication of its annual report, which receives considerable attention. As a result, for example, of its report on the phenomenon of "loverboys", an increased number of youth institutions requested the annual report.

54. A multilingual brochure (in 27 languages) produced in 2009 in co-operation with the three specialised NGOs (Pag-Asa, Payoke and Sürya) continues to be used to inform possible victims about THB and the assistance they can receive, including the contacts of the specialised reception centres.

55. The National Action Plan for 2015-2019 contains a sub-chapter 9.3 entitled "Prevention and awareness-raising among civil society", which envisages a number of activities at the federal and regional levels, with special focus on the phenomenon of "loverboys" (see also paragraphs 15, 46, 66, 76).

56. GRETA welcomes the measures taken to increase awareness of THB among target groups and considers that the Belgian authorities should strengthen their efforts to raise awareness of THB among the general public, including through examining the possibility of launching a general campaign, focusing on new trends and needs, and in the light of impact assessment of previous measures.

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<sup>25</sup> The brochure entitled "Trafficking in human beings – what to do? Advice for hospital staff" was referred to in paragraph 103 of GRETA's first report on Belgium.

b. Measures to prevent THB for the purpose of labour exploitation (Article 5)

57. The third National Action Plan envisages measures to raise awareness of THB in sectors where economic exploitation may take place, in particular the hospitality industry (hotels, restaurants, cafes) and the construction sector, as well as agriculture, manufacturing and fishing. Priority is given to projects developed jointly with trade unions with a view to finding effective ways of transmitting information in order to prevent human trafficking, e.g. a brochure for asylum seekers (see paragraph 59) and an information file for work visa applicants (see paragraph 63) have been produced. In addition, preparatory work has been initiated to sensitise the banking sector to transactions that might conceal trafficking. The authorities also envisage providing specific information on THB to employers by drawing up and disseminating documents.

58. The former Centre for Equal Opportunities and Opposition to Racism (now MYRIA) developed information tools for enterprises working in the construction sector under a European project entitled "Corporate Social Responsibility to Prevent Human Trafficking". These tools include a brochure with examples of case-law in the area of THB for the purpose of economic exploitation and indicators for detecting such cases and preventing risks which may lead to trafficking and exploitation. The brochure is mainly addressed to the personnel of construction enterprises in charge of selecting sub-contractor firms.

59. A leaflet for asylum seekers has been prepared containing information about the right to work, the obligations of employers, the rights of employees and indicators which should assist them to avoid situations of trafficking and exploitation. This leaflet also includes contact details of relevant public bodies, trade unions, specialised NGOs and social security services.

60. As explained in GRETA's first report, in Belgium the labour inspection services include the Directorate General of Supervision of Social Legislation of the Federal Public Department of Employment, Labour and Social Dialogue and the Social Inspection Directorate General of the Federal Public Department of Social Security. While the former has the task of ensuring policy compliance in the area of collective and individual labour relations, the latter is entrusted with supervising and ensuring the correct application of laws on social security and in particular of combating tax fraud and clandestine labour.<sup>26</sup> Both labour inspection services carry out unannounced inspections in co-operation with other supervisory bodies and the police. Measures are taken against social dumping, illicit detachment of workers and other irregular situations which may result in or amount to economic exploitation. As noted previously, labour inspectors receive training and are specialised on detecting and identifying possible cases of THB for economic exploitation and prosecutors from labour law auditor's offices are also trained on detecting and identifying possible cases of THB (see paragraph 33). According to MYRIA's reports, 37 cases of economic exploitation affecting 48 people were detected by labour inspectorates in 2014 and 58 cases affecting a total of 425 people in 2015.

61. As already mentioned in paragraph 37, from 1 July 2017, the Social Inspection is integrated into the National Social Security Office (ONSS). The new structure comprises 10 provincial directorates and a central administration. Specialist missions in specific subjects will be carried out by inspectors from these provincial directorates under the supervision of a thematic director. This is particularly the case for the mission to combat THB, which is a recognised thematic issue under the responsibility of a thematic director. Various interlocutors Officials met by GRETA during the visit and representatives of MYRIA and specialised NGOs were concerned that the reform might lead to dispersing the existing anti-trafficking expertise within the social inspection. According to the Director General of the Social Inspection Department, the province-based specialised THB units will maintain their autonomy and ability to continue working directly with prosecutors on THB cases.

<sup>26</sup> See GRETA's first report, paragraphs 32 to 35.



62. GRETA was informed of cases where companies registered in other EU Member States (i.e. the Slovak Republic) recruit workers there for employment in Belgium as “posted workers”.<sup>27</sup> In some cases, such companies do not have any economic activity in the country of registration. The authorities referred to an on-going case involving a Belgian and a Slovak firm, which recruited Romanian citizens who had signed contracts with the Slovak firm and were working in Belgium. The workers’ salaries were apparently so low that the Belgian authorities had reasonable grounds to believe that this was a case of trafficking for the purpose of economic exploitation. The authorities have indicated that the investigation into this case was on-going. GRETA would like to be kept informed of the outcome of this case.

63. As noted in paragraph 15, there have been some cases of exploitation in private households of diplomats accredited in Belgium. GRETA refers to the report of the United Nations’ Special Rapporteur on contemporary forms of slavery on her mission to Belgium (published on 6 July 2015) which notes the problem of domestic servitude, including exploitation in diplomatic households.<sup>28</sup> The authorities have referred to the preventive system for employees in diplomatic representations, including domestic workers, set up by the Foreign Affairs Department and a procedure for organising the arrival of domestic workers. Prior to arrival, the work contract is examined by Department and the domestic worker is informed of his/her rights and obligations. Once in Belgium, the employee has to appear in person once a year at the Protocol for an interview at the time of the renewal of his/her special residence permit, which is also an occasion to verify the working conditions and treatment by the employer. In case of serious problems, the Commission of Good Offices established in May 2013 within the FDP Employment is in charge of resolving disagreements between the domestic personnel of embassies and their employers.<sup>29</sup> A leaflet was published for the attention of applicants for the working visa, which includes information concerning the employment standards to be abided by in Belgium and the specialised services to be contacted in case of exploitation. The FPD Employment is currently working on publishing a new information leaflet for domestic workers in diplomatic services.

64. GRETA considers that the Belgian authorities should take further steps in the area of preventing trafficking for the purpose of labour exploitation, in particular by:

- continuing to organise activities aimed at raising awareness on the risks of human trafficking for the purpose of labour exploitation, in particular among vulnerable groups;
- strengthening the monitoring of employers registered in other EU countries and recruiting “posted workers” to Belgium with a view to preventing the economic exploitation of these workers;
- ensuring that the mandate of labour inspectors enables them to contribute to preventing and detecting cases of THB for economic exploitation;
- enhancing efforts to prevent cases of domestic servitude, including in diplomatic households;
- working closely with the private sector, in line with the Guiding Principles on Business and Human Rights.<sup>30</sup>

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<sup>27</sup> As envisaged under Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).

<sup>28</sup> <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>

<sup>29</sup> The Belgian authorities have indicated that as part of the work of the Commission of the Good Offices, nine complaints were examined concerning 12 persons working on household tasks in diplomats’ private homes and holding special identity cards. The examination did not reveal trafficking in human beings, but there were violations of social laws. Other situations are signalled via specialised reception centres when potential victims contact them directly.

<sup>30</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

c. Measures to prevent trafficking in children (Article 5)

65. The issue of child trafficking received specific attention under the 2012-2014 National Action Plan to combat THB. The multidisciplinary circular of 26 September 2008 which underlined the need to systematically take account of the best interests of the child during the procedures regarding victims of trafficking has been revised with the view to better addressing the situation of Belgian and EU nationals. The revised Circular, adopted by the Federal Ministry of Justice on 23 December 2016 and published on 10 March 2017, reflects the aforementioned aspects (see also paragraph 97).

66. The third National Action Plan pays particular attention to the prevention of child trafficking through educational actions for children and young adults. The regional authorities consider organising, in consultation with the Bureau of the Inter-departmental Unit, public awareness initiatives in the education sector. Such initiatives will aim in particular at increasing awareness among girls about the phenomenon of "loverboys". Further, it is planned to provide teachers with information on child trafficking. In particular, in francophone schools it is envisaged to supplement the Guide for prevention and management of violence in schools by information on the referral and assistance of victims of trafficking. Training for youth assistance specialists in the French Community took place on 21 April 2017 with a participation of around 70 participants and a representative of the German-speaking Community.<sup>31</sup> In addition, for the next school year it is planned to publish an information sheet in the Guide for prevention and management of violence in schools. Further activities are envisaged to raise awareness of THB among school mediators and school mobile teams.<sup>32</sup>

67. The website "*stop-tienerpooiers*" ("stop pimping of adolescents")<sup>33</sup> developed by Child Focus with the support of the Flemish government addresses, *inter alia*, professionals and other actors in contact with adolescents, with the aim of informing them to take preventive action or to report potential situations of exploitation of a child. Further, the website of the Flemish expertise centre for sexual health (Sensoa) contains information on the phenomenon of "loverboys/pimps of adolescents", which can be used for awareness-raising activities in schools.

68. The Circular COL 20/2016 on policy regarding research and prosecution of exploitation of begging<sup>34</sup> (see paragraph 118) pays particular attention to children. Further, children who may be victims of trafficking are highlighted as a group with special needs in the draft *Vade-Mecum* on the multidisciplinary care of unaccompanied children which was approved by the Bench of Prosecutors General in September 2016. In addition, the authorities informed GRETA that the preparation of a comprehensive manual on issues related to unaccompanied children was being examined.

69. GRETA was informed by the Flemish Parliamentary Ombudsman for Children and the *Délégué général aux droits de l'enfant* of the French Community that at the end of 2015, the Foreigners' Office resorted to the practice of pre-registration of unaccompanied asylum seeking children who were not registered immediately upon approaching Fedasil, but were asked to return a few days later. Such children were left to their own devices, often living in the street, making them highly vulnerable to trafficking in human beings. By the time of GRETA's evaluation visit this practice had been discontinued.

<sup>31</sup> A website was also shared with the participants, containing information used during trainings: <http://www.aidealajeunesse.cfwb.be/index.php?id=7844>

<sup>32</sup> More information about mediators and school mobile teams (in French) is available at: <http://www.enseignement.be/index.php?page=23747>

<sup>33</sup> <http://stoptienerpooiers.be/>

<sup>34</sup> Confidential document adopted by the Bench of Prosecutors General on 22 September 2016.

70. As described in GRETA's first report, unaccompanied children who are third-country nationals were entitled to a guardian in Belgium, which was not the case for unaccompanied children nationals of states of the European Economic Area. Following judgment no. 106/2013 of the Belgian Constitutional Court, by law of 12 May 2014, legal guardianship has been extended to unaccompanied children from EU and EEA countries. GRETA welcomes this development which is in compliance with one of the recommendations made in its first report. However, GRETA notes that there are a number of conditions that an unaccompanied child must fulfil in order to qualify for a legal guardian, such as not being accompanied by a person exercising parental authority or legal guardianship, not being in possession of a legally certified document attesting that the person exercising parental authority or legal guardianship has given the child permission to travel to and stay in Belgium, not being recorded on the population register, having requested a temporary residence permit on grounds of trafficking in human beings and/or people smuggling or being in a situation of vulnerability. The authorities have noted that the new provisions aim to strike the right balance between the right to free movement, the respect for private life and the right to family, on the one hand, and the protection of young people in vulnerable situations, on the other. In the opinion of the authorities, the concept of a "situation of vulnerability" leaves to the Guardianship Service the margin of manoeuvre necessary for the appointment of a guardian when it is in the interest of the child. Nevertheless, GRETA remains of the view that the mere fact of unaccompanied children being present on the territory of a foreign country without an adult exercising parental authority or guardianship makes them vulnerable to trafficking.

71. According to representatives of specialised NGOs, Belgium's the capacity to accommodate unaccompanied children is insufficient. Child protection services are in a severe lack of interpreters and frontline actors, such as legal guardians, social workers, police officers and child protection specialists are still not sufficiently aware of the phenomenon of human trafficking. Further training is needed for legal guardians, lawyers and juvenile judges on preventing and combating trafficking in children.<sup>35</sup>

72. In the course of the evaluation visit, representatives of civil society informed GRETA that disappearances of unaccompanied foreign children were considered as "non-urgent" and the police was usually notified by fax 48 hours later, while disappearances of Belgian children were reported immediately by telephone. The mechanism of child alert, launched in 2011, has not been used up to now in case of disappearances of unaccompanied children. The circular for prosecutors concerning child disappearances assigns competence to a prosecutor according to the residence of the guardian, and not to the jurisdiction where the disappearance took place, which creates practical difficulties.

73. GRETA urges the Belgian authorities to enhance their efforts in the area of prevention of child trafficking, by paying increased attention to unaccompanied and separated children arriving in Belgium and ensuring that the State meets its obligation to provide a protective environment for them, including by appointing legal guardians for such children. The authorities should continue to sensitise and train frontline professionals working with children (including staff of reception centres for asylum seekers, staff of Fedasil, legal guardians and juvenile judges).

d. Social, economic and other initiatives for groups vulnerable to THB (Article 5)

74. In its first evaluation report, GRETA urged the Belgian authorities to take social, economic and other initiatives aimed at groups vulnerable to different types of trafficking, such as unlawfully present foreign children, whether accompanied by their family or not.

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<sup>35</sup> The final report of the ReACT project entitled "Better support, better protection - Steps lawyers and guardians can take to better identify and protect trafficked children" is available at: [http://ecpat.be/wp-content/uploads/2017/01/ecpat\\_react\\_final.pdf](http://ecpat.be/wp-content/uploads/2017/01/ecpat_react_final.pdf).

75. MYRIA's report for 2015 refers to cases of THB for the purpose of child, early or forced marriages, which mostly affects the Roma community.<sup>36</sup> The authorities have referred to the mediation centres and integration centres for the Roma community which work on policies concerning travellers and provide social, administrative and vocational assistance. However, the authorities have noted that integration remains a complex task.

76. The phenomenon of "loverboys" affects foreign, as well as Belgian girls and young women from diverse social backgrounds, affected by different vulnerabilities.<sup>37</sup> The authorities have indicated that family planning centres or NGOs operating subsidised programmes on sexual health can provide advice and support in this area.<sup>38</sup> Their work is not focussed on "loverboys" but rather on the issue of sexual abuse and risks associated with prostitution.

77. In addition, the National Action Plan envisages sensitising social workers involved in assisting persons involved in prostitution. The authorities intend to take further initiatives to facilitate the exit from prostitution by creating alternative income-generating activities for the people concerned.

78. GRETA considers that the Belgian authorities should strengthen the prevention of THB through social, economic and other measures for groups vulnerable to THB, by promoting gender equality, combating gender-based violence, and supporting specific policies for the empowerment of women and children as a means of addressing the root causes of THB.

e. Measures to prevent trafficking for the purpose of organ removal (Article 5)

79. GRETA notes that while trafficking in human beings for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs<sup>39</sup> are distinct crimes, they share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.<sup>40</sup> Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of THB.

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<sup>36</sup> See in particular sub-section 3 entitled "Forced and early marriage, and human trafficking page" of MYRIA's report for 2015.

<sup>37</sup> Report of MYRIA for 2015, page 27: "Several victims are seduced and begin a romantic relationship with the "loverboy" in Belgium. In general, the victims are Belgian, but the girls can also be of another nationality, staying in Belgium legally or illegally. The victims are isolated young girls, with low self-esteem who find it difficult to cope (who have difficulties dealing with it). Their social origins are diverse and they are from all levels of society. These are emotionally fragile children who risk becoming completely isolated. Sometimes, they try to forget their problems by taking various drugs. In addition, most of them have family problems." The report is available at: <http://www.MYRIA.be/en/publications>

<sup>38</sup> For instance, see <http://www.seksualiteit.be/misbruik/misbruik-herkennen/signalen-van-seksueel-misbruik-herkennen>

<sup>39</sup> Opened for signature in Santiago de Compostela on 25 March 2015.

<sup>40</sup> See Council of Europe/United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, in particular pages 55-56; OSCE, *Trafficking in human beings for the purpose of organ removal in the OSCE region*, OSCE Occasional Paper No. 6, 2013.

80. In Belgium, the Law on Organ Removal and Transplantation of 13 June 1986 sets out the conditions for becoming a living donor. The doctor removing an organ has to inform the donor clearly and fully of the physical, psychological, family and social consequences of the removal. The donor has to give his/her written consent in the presence of an adult witness. Further, an independent evaluation of the donor must be conducted by a multidisciplinary consultation involving doctors and healthcare providers (which excludes the doctors who will perform the removal and the transplantation of the organ). Specific conditions are applicable to living child donors, such as the requirement that only those organs may be removed which are able to re-generate (i.e. liver), transplantation has to be carried out to the benefit of a brother or a sister, and the child donor has to give clear and free consent.

81. The Royal Decree of 22 June 2003 sets the standards for a transplant center to be approved as a medical service within the meaning of section 44 of the Hospital Act. The conditions to be fulfilled include rules concerning medical supervision, quality and follow-up standards, detailed description of the organ and the donor, traceability, free-of-charge follow-up of living donors and protection of personal data. The Community Authorities are responsible for ensuring the observance of requirements by the transplantation centres. As regards the personal data of donors and receivers, every doctor is in charge of following up their respective patients. Waiting lists of persons in need of organ transplantation in Belgium only include persons waiting to receive an organ from a deceased donor. This waiting list is centralised by the Eurotransplant, an international organ mediation agency responsible for the allocation of organs from deceased donors in Austria, Belgium, Croatia, Germany, Hungary, Luxembourg, the Netherlands and Slovenia.

82. On 25 March 2015 Belgium signed the Council of Europe Convention against Trafficking in Human Organs. GRETA encourages Belgium to ratify the Council of Europe Convention against Trafficking in Human Organs.

83. A brochure on raising awareness of THB has been recently distributed in all the hospitals in Belgium (see paragraph 52). It focuses mainly on trafficking for the purposes of sexual and economic exploitation, but does not cover trafficking for the purpose of the removal of organs.

84. GRETA considers that the Belgian authorities should make further efforts to sensitise medical professionals involved in organ transplantations and other health-care professionals to THB for the purpose of organ removal.

f. Measures to discourage demand (Article 6)

85. In the first evaluation report, GRETA urged the Belgian authorities to increase their efforts to discourage demand for services provided by persons subjected to trafficking for the purpose of economic exploitation, including the purposes of domestic work, and sexual exploitation.

86. The Belgian authorities have referred to legal provisions adopted with a view to discouraging demand that leads to trafficking, in particular introducing the liability of contractors. The Programme Law of 29 March 2012, amended by the Law of 11 February 2013, incorporated a mechanism of joint liability for payments of salaries in the Law of 12 April 1965 on protection of workers' remuneration. Under the general regime (Chapter VI/1, Section 1, of the Law of 12 April 1965), contractors, entrepreneurs and subcontractors are now jointly liable for the payment of workers' salaries when the entrepreneurs or subcontractors acting as employers fail to honour their payment obligations within the relevant time-limits. The new legislation is not specific to trafficking in human beings, but the authorities consider that it is likely to impact the functioning of supply chains.

87. A special regime entered into force on 4 March 2013 to cover the employment of third-country nationals irregularly present on Belgian territory. This legislation transposes Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The entrepreneurs, or intermediate entrepreneurs in case of subcontractors, are liable for the payment of salaries due from the direct subcontractor, unless they are in possession of a written declaration whereby the subcontractor states that they do not and will not employ any third-country nationals with irregular presence in Belgium. However, as soon as the entrepreneur is aware that their subcontractor does actually employ such persons, they are jointly liable. The Social Inspection may take action to have the amounts of salaries due declared to the social security services.

88. The third National Action Plan envisages measures to decrease demand for sexual services by raising awareness among clients of the risks of THB. No concrete initiatives have been taken so far in this respect, but at the last meeting of the Inter-departmental Unit in 2016, it was decided to prepare a general overview of the issue of demand, not limited to sexual exploitation.

89. GRETA considers that the Belgian authorities should take practical measures to discourage demand for services provided by persons subjected to trafficking for the purpose of different forms of exploitation, in partnership with the private sector, civil society and trade unions.

g. Border measures (Article 7)

90. In its first report, GRETA considered that the Belgian authorities should increase the capacity of staff tasked with carrying out checks at borders, in ports and on motorways (particularly the customs and immigration control services) to detect victims of trafficking.

91. As noted in paragraph 36, border guards receive training on the identification of victims of THB. Basic and advanced training cover identification of THB cases and victims, investigation, as well as referral of victims for assistance. Practical information for frontline officials concerning identification of trafficking victims and their referral for assistance is also available on website of Administrative and Operational Directorate for Migration.

92. The directive on research and prosecution of THB and different tools available to the police, including the multidisciplinary circular of 23 December 2016 relating to the referral of victims of THB and/or certain aggravated forms of migrant smuggling, are also applicable to border guards. The application of the directive is primarily the task of second-line border guards and officers controlling boarding gates.

93. As noted in GRETA's first report,<sup>41</sup> staff employed by Belgium's embassies and consulates receive initial and on-going training on visas and are asked to be particularly attentive to THB issues when processing visa applications and to pay special attention to the protection of children. If a visa application gives rise to a suspicion of trafficking, the relevant consular staff are under obligation to submit the case for decision to the Foreigners' Office of the Federal Public Department of the Interior.

94. GRETA considers that the Belgian authorities should continue to improve the detection of victims of trafficking during border controls and develop awareness within transport companies of the detection of victims, using indicators of THB, and how to refer them to assistance.

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<sup>41</sup> See paragraph 117 of the first evaluation report.



## 2. Measures to protect and promote the rights of victims, guaranteeing gender equality

### a. Identification of victims of THB (Article 10)

95. In its first report, GRETA considered that the Belgian authorities should strengthen the detection and identification of victims of trafficking by ensuring that front-line actors are aware of the available tools and use them. Further, GRETA considered that the Belgian authorities should pay greater attention to the detection and identification of victims of THB among Belgian and EU citizens, including by raising awareness among front-line actors.

96. As explained in the first report, the framework for detecting, identifying and referring to assistance victims of trafficking, i.e. the National Referral Mechanism (NRM), is set out in the Circular of 26 September 2008 on implementing multidisciplinary co-operation in respect of victims of trafficking and/or certain aggravated forms of human smuggling. The circular governs the interaction between relevant bodies, such as police officers, labour inspectors, staff of the Foreigners' Office, specialised reception centres, prosecutors and the judiciary.

97. The circular was revised by the Federal Ministry of Justice and the Foreigners' Office and published on 10 March 2017 under the signature of all relevant Ministers. It sets out the NRM, explaining the role of each stakeholder and recalling certain legal obligations, describes the identification procedure, the information to be provided to victims, the assistance provided by specialised centres, and the granting of a recovery and reflection period and a residence permit. The revised circular contains sub-sections relating to the identification of possible victims of THB for the purpose of domestic servitude in diplomatic households, as well as child victims of trafficking.

98. In most cases, victims of human trafficking are detected by police officers and labour inspectors, who often work in co-operation and are guided by indicators of human trafficking set out in an annexe to Circular COL 1/2015 (see paragraph 19) The indicators have been published as a separate brochure and disseminated among relevant frontline staff.

99. Pursuant to the revised circular on multidisciplinary co-operation, when the police or labour inspectorate services detect a presumed victim of trafficking, they must inform the public prosecutor, contact one of the three specialised reception centres and, in the case of foreign nationals, inform the Foreigners' Office (by sending the administrative report on controlling foreign nationals). They must also inform the presumed victim about the relevant procedure and the available assistance and protection. This information is contained in a brochure available in 28 languages.<sup>42</sup> The detection of presumed victims is followed by formal identification, which is carried out by the competent public prosecutor. Prosecutors make identification decisions in consultation with staff of the specialised centres to which presumed victims are referred for assistance, the police and the labour inspectorate services. It is stressed in the circular that if a presumed victim contacts directly a specialised centre, the centre must inform as soon as possible the competent prosecutor, taking into account the person's wish. The centre has to inform the presumed victim that it is in his/her interest and the interest of the investigation that the prosecutor be informed without delay.

<sup>42</sup> Available at: <http://www.myria.be/fr/publications/victimes-de-la-traite-des-etres-humains-brochure-en-28-langues>

100. MYRIA's annual reports provide examples of cases of trafficking identified by the police, social inspection, labour law auditors and other actors. As explained in paragraph 14, in addition to formally identified victims of trafficking, the authorities have provided figures on possible victims of THB "signalled" by specialised NGOs (779 cases in 2013, 797 in 2014 and 787 in 2015). According to the authorities, in a large number of cases, after an initial interview with the presumed victim by staff of specialised reception centres, it becomes obvious that there is a different problem (for example, asylum, situation of irregular employment which is not trafficking, wrong referral). In such cases, the persons concerned are directed to structures adapted to their specific needs. The experience of the past few years shows that in around 35% of all referrals there are serious and explicit indicators of THB.

101. As noted in paragraph 13, in the period 2013-2015, the authorities have identified 16 Belgian victims of trafficking. As regards EU citizens, the main country of origin of the identified victims was Romania (89 persons). These figures suggest that the Belgian authorities have paid greater attention to the detection and identification of victims of THB among Belgian and EU citizens.

102. However, GRETA was informed that the identification of cases of THB had been given less priority by the police since the terrorist attacks in Paris (November 2015) and Brussels (March 2016), the human resources of the federal police being geared towards combating terrorism. Further, the reform of judicial districts<sup>43</sup> has resulted in a decrease in the number of federal police officers and specialised prosecutors working on THB cases in each district, while the territory covered by them has been enlarged. GRETA was also informed of plans to merge the specialised anti-trafficking police investigators into departments for combating economic crime. In their comments on the draft report, the authorities have noted that the police structure with regard to investigative capabilities depends on the priorities of the federal government, defined in particular through the framework note on integral security, the national security plan and the guidelines of the Federal Police Steering Committee.

103. GRETA was informed that the process of identification of a person as a victim of trafficking can be conducted in parallel with the examination of asylum applications by the Commissioner for refugees and stateless persons. Should an asylum seeker be identified as a trafficking victim, no new residence permit will be delivered if the person is already in possession of a residence permit as part of the asylum procedure. However, the victim will be referred to a specialised reception centre and assistance measures relevant for trafficking victims will be provided. Fedasil has no figures on the number of victims of trafficking identified among asylum seekers. When a social worker in a reception centre for asylum seekers detects a potential trafficking situation, the presumed victim is directed, as appropriate, to a specialised centre. So far, information about such cases has remained at the level of reception centres and Fedasil does not centralise this type of data. In this context, GRETA refers to its recommendation in paragraph 44.

104. As noted in paragraph 59, a leaflet for asylum seekers with information about the risks of THB and contact information of relevant authorities and specialised centres for victims of trafficking was produced in English and distributed (4000 copies) to reception and referral centres for asylum seekers. An Arabic version of the leaflet was being finalised. The leaflet is also available in electronic format on the website of the Foreigners' Office and Fedasil and has been distributed in the course of training provided to Fedasil staff.

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<sup>43</sup> See page 90 of MYRIA's annual report for 2015, accessible via the following link:  
<http://www.MYRIA.be/en/publications/2015-annual-report-on-trafficking-and-smuggling-in-human-beings-tightening-the-links>



105. Representatives of MYRIA informed GRETA of cases of irregular migrants not being referred by the police to specialised centres, thus missing an opportunity to identify any possible victims of trafficking among them and resulting in their deportation from Belgium. This reportedly happens in areas located at some distance from the specialised centres. In response to the draft report, the authorities acknowledged that in rural areas the problem of THB may be less encountered, which means it is not always easy to keep the same level of attention to this phenomenon. Nevertheless, the authorities have stressed that training courses are in principle addressed to all officials or entities on the federal territory. Training also takes place at the local or regional level, for example in the decentralised services of social inspectorates. In 2016, a brochure with indicators of THB was made available to the police and social inspection services. In addition, criminal policy documents are evaluated, which allows considering new ways of ensuring better knowledge of THB among the actors on the ground. An evaluation is underway for the new COL 01/2015.

106. GRETA welcomes the updating of the multi-disciplinary co-operation circular on the identification and referral of victims of trafficking and the attention paid to improving the identification of victims of trafficking among asylum seekers. GRETA considers that the Belgian authorities should strengthen the proactive and multi-disciplinary approach to victim detection and identification, by involving police officers, labour inspectors, specialised NGOs, health-care staff and social workers, continuing the training provided to front-line actors, in particular the police, labour inspectors and social workers in rural areas, and ensuring that they have adequate human and financial resources for the implementation of this task.

b. Assistance measures (Article 12)

107. In its first report, GRETA urged the Belgian authorities to ensure that the assistance offered to victims of trafficking is adapted to their needs and to allocate the necessary funding and guarantee the quality of the services provided by specialised NGOs.

108. Assistance to victims of trafficking continues to be provided by three specialised reception centres run by the NGOs Pag-Asa, Payoke and Sürya, located respectively in Brussels, Antwerp and Liège. As of 1 June 2013 these centres have been given the status of official assistance providers to victims of THB, as well as victims of aggravated forms of migrant smuggling. The assistance provided includes accommodation, psychological and medical aid, administrative and legal assistance, including representation before court. The specialised centres are also entitled to make requests to the Foreigners' Office for issuing residence permits for victims of THB. Further, the specialised centres provide necessary out-of-shelter assistance to victims not residing at their premises.

109. The Royal Decree of 18 of April 2013 sets out certain conditions which should be met by a shelter to be recognised as an official specialised reception centre for victims of trafficking. Technical standards regarding the living space, beds, kitchen and other amenities are governed by norms established by regional authorities and are regularly examined when determining budgetary allocations. The three shelters are situated in confidential locations and apply certain security measures to ensure the protection of victims.

110. The GRETA delegation visited the shelter for victims of THB run by the NGO Pag-Asa in Brussels. The shelter employed four permanent staff and 15 volunteers. It had 16 places and at the time of the visit was accommodating 10 men and four women. The average stay of victims at the shelter is six months. Pag-Asa continues to provide assistance and follow-up to victims after they have left the shelter, for periods of time which could last three or four years.

111. Even though Pag-Asa has been recognised as a specialised provider of assistance to victims of THB, the Royal Decree of 18 of April 2013 contains no provisions as regards the financing of its activities. Pag-Asa is financed partly by the National Lottery and partly by the Federal Centre for Equal Opportunities, but its budget is not fixed and financing is sometimes reduced in the course of the budgetary year. For the last five years, Pag-Asa has also received subsidies from the regional budget. As of 2015, the funding from the Fund for supporting immigration policy (*Fonds d'impulsion à la politique des immigrés*) has been discontinued, resulting in a loss of €100 000 from Pag-Asa's annual budget. As a result of the reduction of its funding since 2012, Pag-Asa has had to lay off one staff member, decrease the budget envisaged for interpretation services and remove the expenses for lawyer's fees from the budget.

112. The GRETA delegation also visited the shelter for victims of trafficking operated by the NGO Sürya in Liege. It is situated in a freshly renovated house in a residential area and is financed by the Walloon Region. The capacity of the shelter is for 16 persons (men and women). In addition to the shelter, Sürya runs five supervised apartments for victims of THB. Sürya helps victims to obtain a recovery and reflection period and a residence permit, and assists them during court proceedings by providing legal representation. It may also decide to act as civil claimant in the case. Sürya provides victims with language lessons, vocational training and assistance to find employment. To maintain the level of funding allocated by the regional budget, the shelter has to have an occupancy rate at least 70% per year. In 2015, the occupancy rate was 97% and from January to April 2016 it was 102%, which led Sürya to request an increase in the budget. In 2015, Sürya accommodated 27 victims of trafficking for the purpose of economic exploitation, seven victims for the purpose of sexual exploitation and one victim of exploitation for forced begging.

113. Representatives of the third specialised NGO, Payoke, informed GRETA of difficulties to ensure the funding of its activities linked to the functioning of the specialised reception centre run by it. As of 2016, the funding provided to Payoke from the regional budget for recruiting young unemployed persons had been discontinued, resulting in a financial cut of €45 000 and obliging Payoke to lay off one staff member. Antwerp municipality used to partly fund Payoke's activities, but this funding was stopped several years ago. Funding to the amount of €163 000 continued to be provided by the State Secretary on Equal Opportunities. GRETA was informed that alternative solutions to make up for the budgetary cuts were in the process of examination and it was planned to hold a consultation with Antwerp municipality to examine the possibility of funding from the local budget.

114. GRETA was informed that as a consequence of financial cuts for the three specialised centres, legal representation of victims of THB had become more difficult, the centres no longer being in a position to pay for such services. As a result, *pro bono* lawyers represent victims of THB at a very late stage (sometimes only when the file arrives in court). This leads to failure to sufficiently take into account the interests of the victims (for instance, not requesting the seizure of assets of suspected traffickers in criminal proceedings). According to a lawyer specialised in representing victims of trafficking, one solution could be to provide in law that legal assistance to victims of trafficking is free of charge, regardless of their income, and recover the cost of the legal assistance from the traffickers once the court decision has been rendered.

115. GRETA welcomes the official recognition of the three NGOs as specialised centres for the provision of assistance to victims of THB. However, GRETA is concerned that the financing of these centres has deteriorated, resulting in failure to cover the expenses of legal assistance to victims of trafficking and representation during judicial proceedings. GRETA recalls that, as pointed out in paragraph 149 of the Explanatory Report on the Convention, Parties remain responsible for meeting the obligations in the Convention and have to take the steps necessary to ensure that victims receive the assistance they are entitled to, in particular by making sure that reception, protection and assistance services are funded adequately and in a timely manner. GRETA urges the Belgian authorities to secure adequate funding for the specialised reception centres for victims of trafficking in order to ensure their unimpeded operation and the provision of all assistance measures envisaged in Article 12 of the Convention.

116. Further, GRETA considers that the Belgian authorities should continue their efforts to ensure that all victims of trafficking receive adequate assistance and support, according to their needs, in particular by:

- providing a sufficient number of places around the country for all victims of trafficking who need safe accommodation;
- ensuring that all services provided for in law are available in practice, including interpretation, counselling and information on legal rights.

c. Identification and assistance of child victims of THB (Articles 10 and 12)

117. In its first report, GRETA urged the Belgian authorities to strengthen the detection and identification of child victims of trafficking, particularly for the purpose of forced begging and committing petty offences and crimes and, to that end, adapt the existing tools or introduce mechanisms and a procedure tailored to their specific situation.

118. The Belgian authorities have taken several measures since the first evaluation by GRETA to improve the identification of child victims of trafficking, such as the amendment of the Guardianship Law referred to in paragraph 18 and the inclusion into Circular COL 1/2015 of a provision concerning the participation of a juvenile judge in the co-ordination meetings organised by prosecutors specialised on THB issues. The revised circular on the identification and referral of victims of trafficking contains a section dedicated to the identification of child victims of THB. An evaluation of the referral mechanism for child victims of trafficking was carried out and additional training was provided to frontline professionals in contact with possible child victims of THB. Further, as noted in paragraph 68, the Bench of Prosecutors General adopted Circular COL 20/2016 on policy regarding research and prosecution of exploitation of begging and a *Vade-mecum* on the multidisciplinary care of unaccompanied foreign children, including child victims of trafficking.

119. According to MYRIA's annual reports, during 2013-2015, a total of 13 children (five boys and eight girls) were identified as victims of trafficking. At the same time, GRETA was informed that the NGO Esperanto assisted 22 possible child victims of trafficking in 2014 and 14 in 2015 (see paragraph 125). However, not all of these children were identified as victims of trafficking. In 2016 there were three formally identified child victims of trafficking at Esperanto, four in 2015, two in 2014 and two in 2013. Another three child victims of trafficking were assisted by the NGO Minor-Ndako in 2013-2016 (two Nigerian girls and one Romanian girl).

120. MYRIA's reports for 2015<sup>44</sup> and 2016<sup>45</sup> refer to cases of children being trafficked for the purposes of forced begging, forced criminality, sexual exploitation and forced marriage.<sup>46</sup> Forced marriages have concerned girls aged 12 to 15, from long-established ethnic minorities in Belgium (e.g. Turks and Moroccans), new migrants (e.g. Chechens) and the Roma community. In 2013, out of 13 children accommodated by the NGO Esperanto, four were victims of forced marriage (see also paragraph 125). Representatives of MYRIA and civil society informed GRETA that possible cases of child trafficking in the Roma community are not identified as such by the authorities because it is difficult to access the Roma community and in some cases, children forced by traffickers to commit offences are treated as offenders.

121. The identification of child victims of trafficking depends on the involvement of the child protection services, the guardianship service, the centres for observation and referral of unaccompanied foreign children, and the reception centres for unaccompanied children. The Belgian authorities have responded to the increased arrival of unaccompanied children by increasing the number of legal guardians from 240 in 2015 to 529 by August 2016.

122. However, according to representatives of civil society, frontline actors, such as legal guardians, social workers, police officers and child protection specialists are not sufficiently aware of human trafficking and are not able to detect signs of trafficking in children. In the view of child protection experts met by GRETA, it is also important to provide training to juvenile judges on preventing and combating trafficking in children. Further, GRETA was informed that the capacity to accommodate and assist unaccompanied children remained insufficient and the child protection services lacked interpreters. Moreover, the circular for prosecutors concerning child disappearances assigns competence to a prosecutor according to the residence of the guardian and not to the jurisdiction where the disappearance took place, which creates practical difficulties.

123. GRETA refers to the findings of the ReACT project published by ECPAT in January 2017, according to which only four unaccompanied migrant children were referred for protection as trafficked children and only five were granted residence permits on this basis in 2014.<sup>47</sup> Many unaccompanied children disappear soon after arrival, before being appointed a guardian or placed in specialised accommodation. The report also highlights the lack of interpreters for certain languages, which impacts negatively the child's right to be heard and to express his/her views. Another problematic area is the absence of lawyers. Even though the Guardianship Law stipulates that the guardian should immediately appoint a lawyer for an unaccompanied child, few lawyers have sufficient understanding of child trafficking. On a positive note, lawyers provided to children by specialised reception centres appear to be well-informed about child trafficking.

124. Accommodation and assistance to child victims of THB is provided by the NGO Esperanto in the Walloon Region and the NGO Minor-Ndako in the Flemish Region. These two centres offer accommodation and different types of assistance adapted to children's needs, while the three specialised centres (Pag-Asa, Payoke and Sürya) provide legal and administrative support necessary for granting residence permits and legal representation.

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<sup>44</sup> <http://www.MYRIA.be/en/publications/2015-annual-report-on-trafficking-and-smuggling-in-human-beings-tightening-the-links>

<sup>45</sup> <http://www.MYRIA.be/en/publications/2016-annual-report-trafficking-and-smuggling-of-human-beings>

<sup>46</sup> See also the study with the participation of the University of Ghent concerning forced marriages as an entry point to human trafficking situations, available at: <http://www.matrifor.eu/sites/default/files/pdf/Matrifor.pdf>

<sup>47</sup> "Better support, better protection - Steps lawyers and guardians can take to better identify and protect trafficked children", accessible at: [http://ecpat.be/wp-content/uploads/2017/01/ecpat\\_react\\_final.pdf](http://ecpat.be/wp-content/uploads/2017/01/ecpat_react_final.pdf)

125. The GRETA delegation visited the specialised shelter for child victims of THB run by the NGO Esperanto, located at a confidential address. The shelter has 15 places, with one additional place in case of urgent need. Since its establishment in November 2002, the shelter has accommodated 252 children. In 2014 it accommodated 22 presumed victims of trafficking (17 girls and five boys) and in 2015, 15 presumed victims (11 girls and four boys). It employs 21 permanent staff, including 13 educators, a criminologist, a child psychologist and a psycho-motor therapist, as well as five trainees. The shelter consists of apartments adapted to the children's age, needs and degree of autonomy: those for older and more autonomous children are equipped with a kitchenette, while the area for younger children has bedrooms and a common kitchen with a dining area. The shelter also has a classroom and a gym. Children may stay at the shelter for as long as necessary for their recovery.

126. The Esperanto shelter has the status of a "semi-public" body and is funded jointly by the National Bureau for Social Security of the Regional and Local Administrations and the Federation of Walloon-Brussels. GRETA was informed that while having a tri-annual budget allowed Esperanto to plan ahead its activities, the funding provided by the National Bureau for Social Security was expected to decrease, which would jeopardise its capacity to assist child victims. According to Esperanto's annual reports for 2014 and 2015, the shelter had to refuse admission to child victims of trafficking due to lack of funding.

127. The NGO Minor-Ndako was established in 2002 as a centre for unaccompanied foreign children and was recognised by the Flemish Government as part of the framework of Integrated Youth Care. The accommodation facility run by Minor-Ndako in Anderlecht started with the capacity of 15 places and was later increased to 20. Another facility operated by Minor-Ndako in Brussels provides shelter for children under 12 years of age. The NGO Juna established in Aalst in 1999 as a centre for the accommodation and care of unaccompanied children provided accommodation and assistance to child victims of trafficking. In 2012, Minor-Ndako and Juna were merged. At present the NGO is capable to provide residential and non-residential assistance to over 200 children, of which 150 are reserved for unaccompanied foreign children.

128. The procedure for age determination is regulated by Article 7 of the Guardianship Law. In case of doubt as regards the age of a person, the Foreigners' Office, the General Commissioner for Refugees and Stateless Persons or the Foreign Litigation Council may request a medical test. Age verification is carried out by means of the so-called "triple test", which includes a clinical examination of the teeth, an orthopantomogram, a wrist X-Ray and a clavicle X-Ray.<sup>48</sup> In case of contradicting results, the benefit of the doubt is given to the presumption of minority of the person concerned. Article 7 (3) of the Guardianship Act provides that where there is doubt as to result of the medical tests, the lowest age is taken into consideration. The decision on age determination may be appealed against with the *Conseil d'Etat*, which has not happened so far.

129. GRETA notes that according to the final report of the ReACT project, the age of unaccompanied children is challenged routinely. Thus, in 2015, out of 5076 unaccompanied children arriving in Belgium, 2099 had their age challenged. Further, according to representatives of civil society, the results of age assessment often depend on the hospital performing the triple test. The authorities indicated that in 2016 around 1 300 age verification tests were conducted. Some 68% of tests resulted in proving the adult age of persons concerned. If a competent authority expresses doubt as regards the age of a person claiming he/she is a child, the Guardianship Service has the task of verifying the identity and age of that person. According to the Guardianship Service, there is no difference in the age verification examinations carried out by the different hospitals, all of which follow the same methodology.

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<sup>48</sup> The Belgian authorities stated that this method of age verification was supported by the Study Group of Forensic Age Estimation of the German Association for Forensic Medicine (AGFAD) in their directive on this subject, revised in 2008. The directive reflects a broad consensus on the use of the following methods: a physical examination to verify anthropometric data (height and weight, type of corpulence), signs of sexual maturation and possible developmental disturbances; an x-ray of the left hand; a clinical dental check to verify dental status and evaluate an orthopantomogram (OPG); if the radiograph reveals that the bones of the hand appear to be fully developed, it is recommended to perform an X-ray or a CT scan of the clavicles to determine if the person has reached the age of 21 years.

130. GRETA notes that the above-described method of age assessment does not take into account psychological, cognitive or behavioural factors.<sup>49</sup> GRETA invites the Belgian authorities to review the age assessment procedures with a view to ensuring that the best interests of the child are effectively protected, taking into account Article 10, paragraph 3, of the Convention, the Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child<sup>50</sup> and the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019).

131. While welcoming the measures taken to improve the identification of child victims of trafficking and provide them with specialised assistance, GRETA is concerned by the persisting gaps in the identification of child victims of trafficking. GRETA urges the Belgian authorities to take further steps to proactively identify child victims, and in particular to:

- enhance the training provided to frontline professionals, including police officers, social workers, staff of youth assistance services, legal guardians and juvenile judges;
- ensure that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to migrant children and unaccompanied foreign children;
- take steps to address the problem of unaccompanied children disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;
- ensure the timely provision of interpretation services and the appointment of lawyers to represent the interests of child victims;
- secure adequate funding for the provision of services adapted to the needs of child victims of trafficking and long-term monitoring of their recovery and reintegration.

d. Protection of private life (Article 11)

132. In Belgium, the processing and storing of personal data is governed by the Privacy Act of 8 December 1992. The Commission for the Protection of Privacy established pursuant to this Act is responsible for ensuring that personal data are used in accordance with the law, with necessary safeguards, in a way as to protect the privacy of data subjects. In addition, Article 44 of the Police Act of 5 August 1992 regulates the processing of personal data during police assignments. Further, all instructions relating to the identification of victims of trafficking contain provisions on personal data, aiming to strike the right balance between professional secrecy and identifying trafficking situations, while respecting the will of victims.

133. Pursuant to COL 1/2015, possible victims of THB for the purpose of sexual exploitation may have their personal data processed for as long as this information indicates the motives and reasons for which the authorities believe they were victims of THB. In addition, the Law of 31 May 2016 referred to in paragraph 17 introduced a ban on publishing or distributing elements revealing the identity of a victim of trafficking for the purpose of sexual exploitation.<sup>51</sup> Other relevant measures which concern witness protection are referred to in paragraphs 199-201.

<sup>49</sup> See also the statement of the ENOC Adopted at the 17<sup>th</sup> ENOC Annual General Assembly held on 27 September 2013 in Brussels, available at: <http://enoc.eu/wp-content/uploads/2015/01/ENOC-2013-Statement-on-Children-on-the-Move-EN.pdf>

<sup>50</sup> [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin](#), Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.

<sup>51</sup> See pages 76-78 of the annual report of MYRIA for 2016, accessible via the following link: <http://www.MYRIA.be/en/publications/2016-annual-report-trafficking-and-smuggling-of-human-beings>

e. Recovery and reflection period (Article 13)

134. In its first evaluation report, GRETA urged the Belgian authorities to ensure that victims and possible victims of trafficking are systematically informed of the possibility of benefiting from a recovery and reflection period and are actually granted one. Furthermore, GRETA considered that the Belgian authorities should review the reflection period, consisting of an "order to leave the territory" by a certain date, and transform it into a temporary residence permit.

135. With a view to implementing the recommendation made in GRETA's first report, the law of 30 March 2017 (which entered into force on 21 May 2017) amended Article 61/2 of the Law of 15 December 1980 on the access to territory, stay, settling in and removing of foreigners, by replacing the "order to leave the territory" by "a temporary residence document". To reflect these amendments, Royal Decree of 30 March 2017 amended Article 110bis and replaced appendix 15 of the Royal Decree of 8 October 1981 on the access, stay, settling in and removing of foreigners.

136. If a person is referred for assistance to a specialised centre and identified as a victim of THB, the centre applies to the Foreigners' Office for a temporary residence document for the duration of the recovery and reflection period. During this 45-day period, the victim receives medical, psychological, social and administrative assistance. The period is aimed at enabling the person to decide whether to file a complaint, make a statement or return to his/her country of origin. Should the victim immediately decide to file a complaint or make a statement against the perpetrators, he/she is provided with a three-month residence permit and the recovery and reflection period not considered as necessary to be applied.

137. The temporary residence document does not apply to child victims of THB who are entitled to a three-month residence permit. The Belgian authorities have specified that a child victim must either provide information or file a complaint. Applicable internal directives specify that the best interests of the child should be taken into account. The child is in principle asked if he/she can describe what he/she has experienced. This is done by specialised teams and the hearing is filmed to avoid repetition, taking into account the physical and psychic capacity and state of the child to avoid re-traumatising.

138. According to information provided by the Belgian authorities, 28 victims of trafficking were granted a recovery and reflection period in 2013, 32 in 2014, 17 in 2015 and 10 in 2016. The authorities have stated that the relatively low number of recovery and reflection periods is due to the fact that most foreign victims decide to co-operate with the law enforcement authorities and are issued with residence permits (see paragraph 144).

139. GRETA stresses once again the importance of the recovery and reflection period for the recovery of victims and their effective access to the ensuing rights; as such, it should be granted to any presumed or identified victim of trafficking in human beings, including children. Considering that after three months EU nationals can only stay legally in other EU countries provided they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), the possibility that they would be considered as being irregular cannot be excluded and they should logically be entitled to benefit from a recovery and reflection period.

140. GRETA considers that the Belgian authorities should take further steps to ensure that all presumed foreign victims of trafficking, including EU/EEA nationals, both adults and children, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Staff performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation, offering it to victims before formal statements are made to investigators and in case of children, bearing in mind the best interests of the child.

f. Residence permits (Article 14)

141. In its first report, GRETA considered that the Belgian authorities should ensure that victims of trafficking can make full use of the possibility of obtaining a temporary residence permit in Belgium, including when they are not in a position to co-operate with the authorities. GRETA also considered that the Belgian authorities should take additional steps to ensure that child victims of trafficking may be granted a residence permit on the basis of their best interests and not of their willingness or ability to co-operate with the law enforcement authorities.

142. As indicated in paragraph 135, the law of 30 March 2017 (entry into force 21 May 2017) modified Article 61/2 of the law of 15 December 1980 on the access to territory, stay, settling in and removing of foreigners. Articles 61/2 to 61/5 of the Law on Foreigners of 15 December 1980 set out the rules for granting a residence permit to foreign victims of trafficking who agree to co-operate with the authorities. Victims of trafficking may be granted a temporary residence permit of three months on the condition that they have lodged a complaint or made a statement concerning the alleged offence. Depending on how the investigation develops and subject to a number of conditions, a six-month residence permit may be issued, which can be renewed every six months until the end of the judicial procedure. Further, victims may be granted an indefinite residence permit in cases where their complaint or statement was significant in the judicial proceedings, regardless of whether the proceedings resulted in a conviction or not. The Foreigners' Office may cancel a residence permit when it is found that the person has voluntarily renewed links with the alleged perpetrators, no longer co-operates in the judicial proceedings, is considered to pose a threat to public order or national security, or the complaint is fraudulent or unfounded.

143. In their report submitted to the Committee of the Parties concerning the measures taken to implement Recommendation CP(2013)8, the Belgian authorities explained that the system of granting residence permits to victims of THB was intended to strike a balance between the need to protect victims and to ensure the smooth running of the investigation. The authorities have stated that the requirement to co-operate during the investigation was applied in a "flexible" manner and could be considered satisfied when the victim provided relevant factual information about the criminal case without necessarily making an official statement or filing a complaint.

144. According to information provided by the Belgian authorities, in 2013 three-monthly residence permits were issued to 117 victims of trafficking, six-monthly permits to 98 victims and another 456 were renewed, and 45 trafficking victims received permanent residence permits. In 2014 there were 135 victims of trafficking who were granted three-monthly residence permits, 84 received six-monthly permits, 447 received renewals, and 33 received permanent residence permits. In 2015, three-monthly permits were granted to 115 victims, six-monthly permits to 90 victims, renewals of permits to 426 victims, and 36 victims received permanent residence.

145. In addition, Article 9 of the Law on Foreigners of 15 December 1980 permits granting of residence permits on humanitarian grounds. This possibility is used in certain cases where a person has not been formally identified as a victim of trafficking. In these cases specialised reception centres apply to the Foreigners' Office for the residence permit and have to support the claim by a detailed social report about the person concerned. This possibility can also be used to allow victim's family members to benefit from family reunification or for other humanitarian reasons. As regards residence permits for humanitarian grounds, the authorities indicated that in the period 2013-2016 there were 10 new "A" permits (certificate of registration in the foreigners' register), 111 extensions of "A" permits, and 106 permits of category "B" (permanent residence permits). The authorities have no statistical information as regards victims of trafficking granted refugee status.



146. As already mentioned in paragraph 137, child victims of trafficking are entitled to a three-month residence permit. The legislation in force reiterates the principle of the supremacy of the best interests of the child in all decisions concerning children. Access to residence permits is provided to children on a flexible basis, even though the conditions for benefiting from them are similar to those applicable to adults. GRETA notes that according to the report of the ReACT project (see paragraph 123), a child has to accept support from a specialist reception centre, break all links with the traffickers and co-operate in the prosecution. Permanent residence permit is only granted if a child's testimony and statements result in a conviction or if the prosecutor continues pressing charges for the offence of trafficking in human beings. The report found that many children are afraid to make statements concerning the traffickers, may not have enough evidence or may not wish to give evidence against a family member. Guardians often conclude that it would be in the child's best interests to apply for asylum or a residence permit as an unaccompanied child. According to the authorities, the stay of children who are EU/EEA nationals will in principle be regular, allowing the application of the protection procedure without the need to take steps with regard to residence permits. However, at some point even for European children it may become necessary to apply for a residence permit. This can be done either through the THB procedure or another procedure depending on the situation of a child concerned. As regards residence issues under the THB procedure, the multidisciplinary circular of 23 December 2016 explicitly provides for these situations.

147. GRETA considers that the Belgian authorities should take additional measures to ensure that child victims of trafficking are effectively provided with residence permits, in full conformity with Article 14 (2) of the Convention.

148. Further, GRETA invites the Belgian authorities to continue their efforts to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, including owing to their personal situation.

g. Compensation and legal redress (Article 15)

149. In the first report, GRETA considered that the Belgian authorities should adopt measures to facilitate and guarantee access to compensation for victims of trafficking, including by making sure that victims of trafficking may obtain compensation after returning to their countries of origin and that victims of trafficking for the purpose of different types of exploitation have an effective access to the Fund for Financial Aid for Victims of Intentional Acts of Violence or another state compensation scheme. In this context, GRETA asked the authorities to enable victims of trafficking to uphold their rights to compensation by guaranteeing them effective access to legal assistance and reliable interpreting services.

150. The legal framework for granting compensation to victims of THB in Belgium has not changed since GRETA's first evaluation.<sup>52</sup> In the first place, the victim can institute civil proceedings before a criminal court. Alternatively, the victim may make a separate civil application, pending the final ruling of the criminal court in on-going proceedings.

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<sup>52</sup> See paragraphs 179-184 of GRETA's first report.

151. A victim of THB can also address the Fund for Financial Aid for Victims of Intentional Acts of Violence by lodging an application with the Commission for Financial Aid. To access financial aid via this mechanism, victims of trafficking must demonstrate that an intentional act of violence has been committed, that they have suffered grave physical or mental damage and that the damage was the direct consequence of the act of violence. The Commission grants three types of aid: principal aid, requiring the victim to await the completion of the investigation or criminal proceedings and then launch a civil suit; emergency aid, which may be requested as soon as the civil claim is filed; and supplementary aid, in the case of damage subsequently becoming more serious. The Belgian authorities do not consider this financial aid as a mechanism replacing compensation, as the conditions for obtaining the aid require that a person must have suffered bodily harm as a direct result of the intentional act of violence, which is not always the case when human trafficking for the purpose of economic exploitation takes place. Only one case of financial aid to a victim of trafficking was recorded in 2014 and none in 2015. According to the authorities, at least one application from a victim for the purpose of sexual exploitation was examined in 2016 and resulted in awarding a compensation of €20 000.

152. Moreover, there are mechanisms for enabling workers to recover unpaid wages from their employers in cases of economic exploitation.<sup>53</sup> An employer who gives work to third-country nationals irregularly present in Belgium under a work contract is bound to pay them salaries equivalent to the one they would have had to pay to legally employed people. If the worker's address and bank/postal data are unknown, the employer may be ordered to deposit the outstanding amount to the Deposit and Consignment Fund (*Caisse des dépôts et consignation*), which will then be reimbursed to the worker.

153. GRETA notes that according to MYRIA's reports, there has been an increase in compensation awards to victims of trafficking during criminal proceedings. By way of example, in a 2014 case concerning sexual exploitation in massage parlours, the Court of Mechelen awarded the civil parties compensation ranging from €4000 to €8000. In a 2013 case tried by the Leuven Criminal Court one of the victims of exploitation in prostitution was awarded a compensation of €5000 for moral damages and €25000 for material damages, and two other victims received €5000 for moral damages. Compensations were also awarded in cases of labour exploitation in a bakery (March 2013, Brussels Criminal Court), construction (June 2013, Charleroi Criminal Court) and an equestrian centre (April 2014, Antwerp Court of Appeal). In a trafficking case tried by the Brussels Criminal Court in 2015, the defendant charged with THB for economic exploitation was ordered to pay to the civil parties a compensation of €215 189,99. However, in this case compensation could not have been paid, as no assets were seized in the course of the investigation and the defendant had no property linked to him, which could have been confiscated.

154. The confiscation of perpetrators' assets is envisaged in the Criminal Code (Article 43) and the possibility for the prosecution to request a financial investigation into the property of the perpetrators is provided for in Article 524*bis* of the Code of Criminal Investigation. This financial investigation is important as it may allow courts to confiscate property which later on is used to compensate victims. COL 01/2015 underlines the importance of prosecutors initiating financial investigations as early as possible. However, according to lawyers representing victims of trafficking, court judgments with confiscation orders and compensation awards are almost never enforceable because property is not seized at early stages and when the time to enforce a judgment comes there is no money to be found.

155. Specialised reception centres and MYRIA may constitute civil parties during the proceedings and often do so, which improves the level of representation of victims' interests before court, including their claims for compensation from perpetrators.

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<sup>53</sup> See paragraph 185 of GRETA's first report.

156. The system of *pro deo* lawyers (free or partly free-of-charge legal aid) is applicable to victims of all offences and there is no specific regime for providing legal aid to victims of trafficking. This may result in situations when the income of a victim of trafficking (in possession of a temporary residence permits and therefore allowed to work) goes above the minimum amount established to qualify for free legal aid, resulting in a victim being obliged to pay for at least part of legal assistance provided by a lawyer. For example, GRETA was informed that victims of THB who have an income over €1200 do not qualify for free legal aid and for this reason are often discouraged from continuing their participation in judicial proceedings due to high costs of legal representation. Current legislation also takes into account the revenues of the victim's partner. As not many victims are ready to pay for lawyer's fees, they only have legal representation towards the end of the criminal procedure, when many opportunities to defend their interests are irrevocably missed. This results in failure to sufficiently take into account the interests of the victims and subsequent procedural shortcomings (such as, for instance, not requesting the seizure of assets of suspected traffickers in criminal proceedings).

157. While welcoming the fact that there has been an increase in awarding compensation to victims of trafficking through criminal proceedings, GRETA urges the Belgian authorities to ensure that victims of trafficking have access to State compensation regardless of the means used against them.

158. GRETA also considers that the Belgian authorities should take further steps to facilitate and guarantee access to compensation to victims of THB, and in particular to:

- systematically inform victims of trafficking of their right to claim compensation from traffickers and/or the State compensation fund, in a language they can understand;
- enable victims of trafficking to exercise their right to compensation by making available free legal aid to support victims to claim compensation at early stages of the procedure;
- include victim compensation in training programmes for law enforcement officials, prosecutors and judges.

159. Further, GRETA once again invites the Belgian authorities to collect court statistics on compensation claims brought by victims of trafficking and the amounts granted.

#### h. Repatriation and return of victims (Article 16)

160. In the first report, GRETA urged the Belgian authorities to ensure that there are repatriation assistance arrangements suitable for all victims of trafficking, including EU citizens, which take due regard of the rights, safety and dignity of the person concerned and the state of judicial proceedings, to carry out an assessment of the risks of re-victimisation specific to children, paying special attention to children who are EU nationals and taking due account of the best interests of the child, and to strengthen co-operation with countries to which victims of trafficking return, with a view to improving their reintegration and rehabilitation.

161. The return of victims of THB identified in Belgium to their countries of origin is organised by IOM, in co-operation with the specialised reception centres. When preparing the return of a victim, an initial assessment is carried out by the specialised centre and a subsequent one by IOM and CARITAS in the country concerned, upon request of the specialised centres.

162. The IOM Office in Belgium is implementing an assisted voluntary returns programme, which is accessible to victims of trafficking. The programme is financed by Fedasil and allows some 4000 voluntary returns per year. The number of trafficking victims choosing to return through this programme has been rather low: six victims in 2015 (two to Hungary, one to Romania, one to Morocco, one to Thailand and one to India) and six in 2016 (three to Hungary, two to Romania and one to Bulgaria). According to representatives of public bodies and IOM, the numbers are low due to the fact that many foreign victims of THB are issued with residence permits in Belgium.

163. According to the authorities, no forced or voluntary returns of child victims of trafficking have taken place in Belgium. Any decision concerning the return of child victims requires a detailed analysis of the assistance provided in the country of origin. Moreover, the Foreigners' Office closely examines the guarantees of reception.

164. GRETA was informed of several initiatives aimed at improving the return of victims through better contacts between the authorities of the countries concerned and improved protection of the victims. In 2014-2016 the NGO Payoke implemented an international project entitled "Referral of and assistance for victims of human trafficking in Europe" (RAVOT-EUR) in co-operation with the Hungarian Ministry of the Interior and the Dutch Ministry of Security. The project, funded by the European Commission, aimed at providing victims of sexual or labour exploitation with assistance in their return and social reintegration and setting up an online platform and an information manual on THB. The main outcome of the project was a transnational referral mechanism between Belgium, Hungary and the Netherlands to enable the identification, referral and assistance of Hungarian nationals, who are often trafficked to the two other countries. The transnational referral mechanism defines the roles and responsibilities of public bodies and specialised NGOs in the three countries. Three workshops were held in partner countries and study visits were organised to learn about the operation of each system of referral and assistance to victims. The FPD Justice was a member of the Steering Committee for the RAVOT-EUR project and contributed to disseminating its results in Belgium.

165. Further, the Benelux countries have finalised a brochure<sup>54</sup> on national referral mechanisms and the bodies and authorities that can be contacted in the course of specific case management. This brochure aims at facilitating transnational co-operation in the identification and referral to assistance of victims of trafficking and to assist frontline actors who may come across victims of trafficking in their daily work. It includes information concerning the elements of the trafficking offence in the legislation of the three Benelux countries, the authorities with primary responsibility for action against trafficking, and national referral mechanisms for identification and assistance to victims.

166. The Belgian authorities are not aware of any cases of return of Belgian nationals identified abroad as victims of trafficking.

167. According to the authorities, Belgium does not apply the Dublin III Regulation<sup>55</sup> while the procedure for identifying a possible victim of trafficking is in progress. The Dublin procedure will be put in place, but it will not be carried out in case of identification of a person as a victim of trafficking.

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<sup>54</sup> Entitled "Information Brochure concerning Benelux co-operation for assistance of victims of human trafficking".

<sup>55</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). The regulation, known as Dublin III, makes no reference to victims of trafficking, with the exception of Article 6 (3) (c) which refers to children who have been trafficked and to the fact that the best interests of the child must be taken into account. Articles 31 and 32 deal with the exchange of relevant information prior to the execution of a transfer, so in case of a particular vulnerability a presumed victim of trafficking may be identified.

168. GRETA considers that the Belgian authorities should continue ensuring that the return of victims of THB is voluntary and is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention) and, in the case of children, by fully respecting the principle of the best interests of the child. The Belgian authorities should give full consideration to the UNHCR's Guidelines on the application of the Refugees Convention to trafficked people and their possible entitlement to asylum when deciding upon applications for asylum of persons who are at risk of being re-trafficked or otherwise persecuted should they be obliged to return to their State of origin or residence.

### 3. Substantive criminal law

#### a. Criminalisation of THB (Article 18)

169. The definition of trafficking in human beings under Article 433*quinquies* of the Belgian Criminal Code (CC) reads as follows:

"The offence of human trafficking constitutes the recruitment, transport, transfer, housing, harbouring, taking control or transferring of the control over a person for the purposes of:

- 1° the exploitation of prostitution or other forms of sexual exploitation;
- 2° the exploitation of begging;
- 3° carrying out work or providing services in conditions contrary to human dignity;
- 4° removal of organs in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human tissue in violation of the law of 19 December 2008 on the acquisition and use of human tissue for the purposes of medical applications in humans or scientific research;
- 5° or having this person commit a crime or a misdemeanour against his or her will."

Except in the case covered in sub-paragraph 5, it is immaterial whether or not the person mentioned in sub-paragraph 1 consents to the envisaged or actual exploitation. (...)"

170. In the first report, GRETA noted that the basic offence of THB in Belgian law contained two constituent elements, the action and the purpose of exploitation, while the means were considered as aggravating circumstances.<sup>56</sup> GRETA recalls the importance of keeping under review whether this may lead to confusion with other criminal offences or to possible difficulties regarding the interpretation of Article 4(b) of the Convention concerning victim's consent. The Belgian authorities have indicated that issues related to the definition of trafficking are regularly addressed through evaluations, in particular those of the criminal policy directives (once every two years). There is no evidence at this stage as a result of these evaluations or in the reports published by MYRIA suggesting difficulties in the application of the definition of THB.

171. As already mentioned in paragraph 17, following amendments to Article 433*septies* of the CC adopted on 31 May 2016, the list of means used to commit the offence of human trafficking and considered as aggravating circumstances was expanded to include kidnapping, deception, abuse of power, giving or receiving of payments or benefits to allow for a person having control over another person.

172. The amendments adopted on 24 July 2013 have not changed the definition of THB as such, but have increased the sanctions for the commission of trafficking for all forms of exploitation by multiplying the amount of fines by the number of victims.

<sup>56</sup> See paragraph 54 of GRETA's first report.

173. Article 433*quinquies* of the CC refers to the notion of “work or services in conditions contrary to human dignity”. The Belgian authorities had stated that, according to the preparatory works on the CC, Article 433*quinquies* has a broader scope than the minimum obligation imposed by international instruments, which refer to forced labour or services, slavery or practices similar to slavery, and servitude. Appendix I of the Ministry of Justice Directive concerning investigation and prosecution in the area of trafficking in human beings, which provides background explanation of the notion of putting a person to work in conditions contrary to human dignity, points out that this notion “is a type of exploitation which must be recorded by a body of evidence demonstrating either the enslavement or the degradation of a human being by the violation of their physical and mental faculties in such a manner as to be manifestly incompatible with human dignity”. It is pointed out in this appendix that “enslavement means the act of reducing a person to servitude, slavery or extreme dependency”. The notions of slavery and debt bondage are defined with reference to the Slavery Convention of 1926 and the Supplementary Convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery of 1956.

b. Criminalisation of the use of services of a victim (Article 19)

174. In its first report, GRETA invited the Belgian authorities to consider the possibility of criminalising the use of services of a person with the knowledge that that person is a victim of trafficking in human beings, not only in cases of economic exploitation but also for the other purposes of exploitation covered by the Convention.

175. The use of services of victims of THB, with the knowledge that the person is a victim, is still not criminalised in the Belgian law. In GRETA's first evaluation report, reference was made to the on-going process of drafting legislation on joint liability under civil and criminal law for contractors.<sup>57</sup> At the present stage, no legislation has been adopted on this subject.

176. GRETA once again invites the Belgian authorities to consider criminalising the use of services of victims of trafficking, with the knowledge that the persons concerned are victims, for different types of exploitation.

c. Corporate liability (Article 22)

177. As described in the first evaluation report, Article 5 of the CC provides for the criminal liability of legal entities, including for the offence of trafficking. The punishments stipulated are fines, confiscation, dissolution, temporary or definitive ban on exercising an activity, temporary or definitive closure of one or more establishments, and publication or dissemination of the decision. MYRIA's 2015 report refers to a case in which the Court of Appeal of Liège, in a judgement of 13 January 2015, sanctioned two companies for several offences, including trafficking in human beings for the purpose of the sexual exploitation<sup>58</sup>. More convictions of legal persons are referred to in MYRIA's 2016 report, involving THB for the purpose of sexual exploitation in massage parlours and trafficking for the purpose of labour exploitation involving a transport company.

178. GRETA welcomes the application of the corporate liability provisions in THB cases and encourages the Belgian authorities to continue implementing these provisions.

<sup>57</sup> See paragraph 110 of GRETA's first report.

<sup>58</sup> For more details, see pages 109-111 of MYRIA's annual report for 2015, available at:

<http://www.MYRIA.be/en/publications/2015-annual-report-on-trafficking-and-smuggling-in-human-beings-tightening-the-links>

d. Non-punishment of victims of THB (Article 26)

179. In its first report, GRETA considered the Belgian authorities should include an express reference to Article 26 of the Convention in the new version of COL 1/2007. The revised COL 01/2015 contains a more detailed interpretation of the non-punishment provision, stating that if a victim was forced to commit offences while being trafficked, priority should be given to the person's situation as a victim.

180. Representatives of the prosecution informed GRETA of difficulties in the application of the non-punishment provision, in particular in situations where a person is a possible victim of trafficking, but has not yet been formally identified. In such cases the police are asked to note on a file that the person has committed offences and leave the decision up to the prosecutor, depending on the outcome of the identification procedure. By way of example, the authorities referred to the case of an Algerian national who had been smuggled to Belgium, deprived of identity papers and involved in selling drugs, who was prosecuted. In another case, an Albanian woman who was exploited in forced prostitution and later became part of a criminal group was also prosecuted because she remained loyal to her former exploiters and refused assistance of the specialised reception centre.

181. On 29 February 2016, the Belgian Parliament amended the Social Criminal Code (*Code pénal social*), by inserting a new Article 183/1, which makes undeclared work an administrative offence, punishable by a fine, if the person knowingly and willingly engages in such work. Representatives of MYRIA and specialised NGOs raised concerns about this provision, which puts victims of trafficking for the purpose of economic exploitation at risk as they may be punished for working illegally. Officials met by GRETA indicated that the new provision would only apply to cases where illegal work was performed knowingly and willingly, which according to the authorities' understanding would exclude cases of trafficking for economic exploitation, as such work would then not be considered as performed "willingly". The authorities informed GRETA that new guidelines for social inspectors, issued after the adoption of the amendment, state that if signs of trafficking were not detected at the time of discovering the administrative offence, the letter accompanying the fine should specify that should a person consider him/herself a victim of trafficking, he/she may contact a specialised reception centre. In such cases the latter would inform the Federal Public Department of Employment of the trafficking situation and the fine would not be applied.

182. GRETA considers that the Belgian authorities should take additional steps to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so, in accordance with Article 26 of the Convention, and to keep under review the implementation of the new legal provision on undeclared work with a view to avoiding victims of trafficking being punished for working illegally. Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>59</sup>

#### 4. Investigation, prosecution and procedural law

##### a. Measures related to ensuring effective investigations (Articles 1, 27 and 29)

183. In its first report, GRETA considered that the Belgian authorities should pursue their efforts to make trafficking in human beings a priority issue for the Federal Prosecutor's Office, given the important role it is required to play in national co-ordination and international co-operation in this area. Further, GRETA considered that the Belgian authorities should ensure that the judicial authorities are trained so that they are capable of determining which provisions should be applied in each case, in order to guarantee the effectiveness of Article 433*quinquies* of the CC and avoid confusion with other offences.

184. The reorganisation of the judiciary in Belgium, effective as of 1 April 2014, has had a certain impact on anti-trafficking action of law enforcement bodies and courts. The 27 judicial districts were reduced to 12 districts, organised in accordance with the provinces. This was accompanied by reducing the number of prosecutors, including those specialised on THB. The number of courts and labour law auditors were reduced from 27 to nine, the geographical area of their activities becoming considerably larger. The reorganisation of judicial districts has also led to a reorganisation of the federal police, which replicates the new structure of judicial districts.

185. According to several interlocutors, the reorganisation of the judiciary can have a positive impact on the fight against human trafficking by allowing this problem to be tackled by specialised prosecutors and promoting a more uniform development of jurisprudence by having trafficking cases examined by reference judges. However, GRETA is concerned that the decrease of human resources of the federal police dedicated to action against trafficking which, in conjunction with the reorganisation of judicial districts, would hamper the capacity to effectively investigate into human trafficking cases, which is declared a priority both in the National Action Plan for 2015-2019 and COL 01/2015. GRETA notes that according to MYRIA's report for 2015, the specialised anti-trafficking units risk losing their local foothold and therefore a lot of essential information, especially in cross-border regions, might be lost. Consequently, the gathering of information will depend on maintaining good relations with the local police, which does not always give priority to the fight against human trafficking.<sup>60</sup>

186. As described in GRETA's first report, investigation techniques used for detecting and investigating trafficking offences include standard measures such as searches of premises and checks on bank accounts, as well as special investigation techniques (set out in Chapter III of the Code of Criminal Instruction, entitled "special search methods") which, subject to certain conditions, may be used by a special unit within the federal criminal investigation police ("BTS officers"). These include covert surveillance, infiltration (reserved for offences committed within the framework of a criminal organisation as per Article 324*bis* of the CC) and the use of informants. Phone-tapping and recording of conversations are applicable when investigating trafficking offences with aggravating circumstances. GRETA welcomes the continued use of these techniques, which are an important element of any successful criminal policy against human trafficking.<sup>61</sup>

<sup>60</sup> See sub-section 1.1 entitled "Reform of the judicial districts" on page 90 of MYRIA's report for 2015.

<sup>61</sup> Reference is also made to Recommendation [Rec\(2005\)10](#) of the Committee of Ministers to member states on "special investigation techniques" in relation to serious crimes including acts of terrorism.



187. Specialised police units systematically use the Internet to collect additional information in the course of the investigation into THB, including Google, social networks and forums. Investigators also search for announcements, advertisements and other information containing employment offers or offers of services which could indicate possible exploitation. Pursuant to Article 46 of the Code of Criminal Procedure (CCP), the law enforcement authorities may ask Internet providers to identify users during investigations, including of THB cases. It is also possible to establish co-operation with foreign providers, such as Facebook, Google, Twitter and Microsoft, via a "single point of contact", namely the Federal Computer Crime Unit of the police. Websites can be blocked if the servers are in Belgium, on the basis of a prosecutor's warrant (Article 39*bis* of CCP). For the servers located abroad, a request to block its content is transmitted to the authorities of the country concerned via Interpol. While it might be difficult to block a website with a server located abroad, the authorities are able to make its content inaccessible in Belgium.

188. Following the inclusion of the Financial Intelligence Processing Unit (CTIF) into the Inter-departmental Unit (see paragraph 6), financial investigations relating to human trafficking have been intensified, bringing greater clarity about the financial dimension of trafficking networks. GRETA was informed that the CTIF transmitted 37 files related to THB in 2013, 29 in 2014 and 17 in 2015, the overall amount of transactions equalling approximately €65 million.

189. As indicated in the first GRETA report, the CC stipulates that the confiscation of assets used to commit trafficking offence is mandatory.<sup>62</sup> Pursuant to Article 433*novies* of the CC, confiscation is carried out even when the trafficker is not the owner of those assets, without prejudice to the rights of third parties in respect of the assets subject to confiscation. Following the first evaluation, on 27 November 2013, the Belgian Parliament adopted the law on confiscation of immovable assets, supplementing articles 43*bis*, 382*ter* and 433*novies* of the CC concerning special confiscation. The amendments, which entered into force on 1 March 2014, allow special confiscation of immovable property as a mandatory or optional measure, depending on legal grounds, to the extent that it has been ordered in writing by the prosecutor. Article 433*novies*, paragraph 3, of the CC stipulates that the confiscation of a building used for the commission of human trafficking is mandatory, regardless of whether or not it was the property of the convicted person, subject to the rights of third parties. GRETA welcomes the considerable number of court judgments accompanied by confiscations in Belgium.<sup>63</sup>

190. According to the Bench of Prosecutors General database, 378 investigations were initiated into THB offences in 2012, 434 in 2013, 259 in 2014 and 299 in 2015. Most of them concerned THB for the purposes of sexual exploitation (654), closely followed by THB for economic exploitation (584), while investigations into trafficking for forced criminality (88) and exploitation of begging (44) occurred less often.<sup>64</sup>

191. Belgian courts delivered 91 convictions for THB in 2013, 94 in 2014 and 93 in 2015. The rate of convictions equals 30-40% in cases of trafficking for the purposes of economic exploitation and 60-70% in cases of trafficking for the purpose for sexual exploitation. Convictions for trafficking for the purpose of forced begging and forced criminality are also handed down by courts, but in limited numbers as they occur less frequently and the investigation of such cases is more complex.

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<sup>62</sup> See paragraph 204 of GRETA's first report.

<sup>63</sup> See page 71 of the Belgian authorities' reply to GRETA's 2nd round questionnaire.

<sup>64</sup> For more details concerning forms of exploitation, see page 68 of the Belgian authorities' reply to GRETA's 2nd round questionnaire available via the link: <http://rm.coe.int/16806b61ef>

192. MYRIA's annual reports provide examples of trafficking cases which resulted in convictions. By way of example, in a case tried by the Ghent Criminal Court on 21 August 2014 (which concerning the sexual exploitation of Hungarian women and girls recruited by "loverboys") the defendants were charged with criminal organisation and money laundering and the court ordered the confiscation of €405 980 in Hungary which were transferred to the Belgian authorities. In another case concerning sexual exploitation of Latvian girls, which was brought before the Antwerp Criminal Court on 3 December 2012 and the Antwerp Court of Appeal on 12 September 2013, 12 defendants were prosecuted for human trafficking and several were sentenced.

193. As regards cases of THB for the purpose of economic exploitation, in a case concerning the exploitation of a Brazilian man in a horse-riding school, which was tried by the Turnhout Criminal Court on 19 November 2012 and taken to the Antwerp Court of Appeal on 23 April 2014, a Belgian businessman and his wife were convicted for human trafficking. In another case concerning Chinese workers exploited in the construction sector in Charleroi between 2008 and 2010, a Chinese national and his daughter were sentenced for trafficking of human beings and smuggling of migrants by Charleroi Criminal Court on 7 June 2013.

194. GRETA commends the Belgian authorities' efforts to achieve a consistent criminal policy response to human trafficking and ensure that THB cases are investigated proactively, including financial investigations, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions.

195. The Bench of Prosecutors General conducts evaluation of the criminal policy directives, including those on trafficking in human beings. The assessment concerns the application of relevant instructions by the prosecutors and any difficulties they encounter in this process. These reports, generally prepared every two years, are not public, but are available to all prosecutors and judges on the intranet of the Federal Public Prosecutors Office. Further, yearly meetings of the specialised network of prosecutors provide a forum for the exchange of views on important questions relating to THB.

196. An evaluation of the implementation of the multi-disciplinary circular specifically as regards the identification of child victims was carried out in 2014 by the Inter-departmental Co-ordination Unit. Following this evaluation, the circular COL 1/2015 was modified so that a juvenile judge is now systematically invited to the co-ordination meetings held by the reference prosecutors on THB. In addition, joint initiatives were started with the Guardianship Service following this evaluation (training of guardians, discussions on practical tools, preparation of a vade-mecum).

197. The reform concerning criminal law and criminal procedure, and also known as the "Potpourri Act II", introduced a plea bargaining procedure, which can also be applied to cases of human trafficking. According to the authorities, the aim of this procedure is to provide a faster and more efficient criminal justice response by relieving the criminal courts' workload and reducing the duration of the criminal proceedings. Plea bargaining may be proposed by a prosecutor and may also be requested by the suspect and his/her lawyer. GRETA notes that even though plea bargaining may apply in trafficking cases, it has been excluded for acts such as rape and the most serious forms of indecent assault (torture, illegal imprisonment, incest), as well as for the offences concerning corruption of the youth, prostitution, and gross indecency (including child pornography). The authorities have stated that the plea bargaining procedure may be used only in exceptional cases and the Public Prosecutor is the only authority to initiate or accept it. To date there is no information about the application of the plea bargaining procedure in THB cases. GRETA invites the Belgian authorities to keep under review the application of the plea bargaining procedure with a view to ensuring effective, proportionate and dissuasive sanctions in human trafficking cases.

198. As regards training on THB, GRETA notes that as it was the case during the first evaluation round, investigating and trial judges are not obliged to follow specialised training on action against human trafficking. There is a general consensus among different professionals in Belgium on the need to develop the specialisation of judges, bearing in mind the high number of cases of human trafficking detected and investigated in Belgium. With reference to the recommendation in paragraph 41, GRETA considers that the Belgian authorities should ensure regular training of trial judges, juvenile judges and investigation judges who deal with cases of human trafficking for different types of exploitation, building upon the experience accumulated by specialised law enforcement, prosecution and social inspection authorities.

b. Protection of witnesses and victims (Articles 28 and 30)

199. The legal measures for the protection of witnesses and victims of THB were described in detail in GRETA's first evaluation report.<sup>65</sup> It should be recalled that the Law of 8 April 2002 incorporated provisions in the CCP ensuring the partial or full anonymity of witnesses during criminal proceedings. Pursuant to the Law of 2 August 2002 on the taking of statements via audio-visual media, hearings via video-link are possible subject to certain conditions for witnesses under threat or witnesses living abroad. It is also possible to run video-link hearings with the blurring of images for protected witnesses. Further, the Law of 7 July 2002 sets out measures for protection of threatened witnesses and introduces a mechanism of police protection. Thus, the Witness Protection Commission may offer protection measures to threatened witnesses, members of their family and other relatives, which include, *inter alia*, protecting the witness' records held by the civil status service, setting up an alarm procedure, organising police patrols and providing close and immediate protection. In exceptional cases, the witness may be offered change of the place of residence and temporary change of identity. According to the authorities, no victim of THB has participated in the programme for the protection of threatened witnesses in 2013-2016.

200. MYRIA's report for 2013 notes that victims of THB are in principle not required to appear in court for cross-examination in the presence of the defendant. However, cross-examinations do take place upon the request of the defendant to the examining judge. MYRIA's report gives the example of Nigerian victims of trafficking for sexual exploitation who were cross-examined in the presence of the defendant, which was reportedly intimidating and traumatising for the victims.<sup>66</sup> In this respect, GRETA refers to Recommendation No. R(97) 13 of the Committee of Ministers of the Council of Europe concerning intimidation of witnesses and the rights of the defence, which establishes a set of principles as guidance for national law and provides a list of measures which could help protect the interests both of witnesses and of the criminal justice system, while guaranteeing the defence appropriate opportunities to exercise their rights in criminal proceedings. GRETA urges the Belgian authorities to discontinue the practice of face-to-face examination of victims and suspected traffickers in court and to adopt alternative procedures which avoid direct contact, such as video conferences.

<sup>65</sup> See paragraphs 229-231 of GRETA's first evaluation report.

<sup>66</sup> See page 61 of MYRIA's report for 2013, available at:

<http://www.myria.be/en/publications/2013-annual-report-on-human-trafficking-and-smuggling-building-bridges>

201. According to the CCP, a child victim or witness of a trafficking offence is entitled to be accompanied by an adult of their choice in any hearing carried out by the judicial authority, unless decided otherwise by the prosecutor or the investigating judge in the interest of the child or the disclosure of the truth. In some cases the prosecutor or investigating judge may decide to have the hearing recorded in a court room equipped for that purpose. The judge may decide to hold an *in camera* hearing, if the interests of the child so require. The application of these procedures has been confirmed by the recent report drawn up by ECPAT Belgium in the context of the project entitled ReACT.<sup>67</sup>

202. GRETA invites the Belgian authorities to continue making full use of the available measures to protect victims and witnesses of THB, including children, and to prevent intimidation during the investigation and during and after the court proceedings. In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.<sup>68</sup>

### c. Jurisdiction (Article 31)

203. Article 10<sup>ter</sup> of the Preliminary Chapter<sup>69</sup> of the Code of Criminal Procedure (CCP) regulates the application of Belgian jurisdiction to human trafficking offences committed outside Belgium. The Belgian criminal law applies when a trafficking offence is committed abroad, regardless of the nationality of the offender or the victim, if the offender is found in Belgium. Through amendments adopted on 31 May 2016, the extraterritorial jurisdiction of Belgium has been extended to cover the basic offence of THB (i.e. without aggravating circumstances) and an attempt to commit human trafficking. GRETA welcomes this development.

## 5. International co-operation and co-operation with civil society

### a. International co-operation (Articles 32 and 33)

204. The Federal Prosecutors Bench, in co-ordination avec the General Prosecutors' Offices, has concluded co-operation agreements with relevant agencies of other countries, in particular the General Prosecutor's Offices of Albania, Bulgaria, the Republic of Moldova, the Russian Federation, Serbia and Ukraine, as well as the Directorate for Investigating Organised Crime and Terrorism (DIICOT) of Romania. Further, an operative taskforce has been set up between Belgium, France, the Netherlands and the United Kingdom. On 2 December 2016, the Justice Minister of Belgium, the Justice Minister of Luxembourg, and the Alternate Ambassador of the Netherlands in Luxembourg signed a declaration of intent on co-operation in the fight against trafficking in human beings.<sup>70</sup>

205. Belgium has participated in a number of joint investigation teams (JIT). By way of example, the authorities referred to JITs set up with Bulgaria and Romania in 2015.

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<sup>67</sup> The report entitled "Better support, better protection - Steps lawyers and guardians can take to better identify and protect trafficked children" is available at: [http://ecpat.be/wp-content/uploads/2017/01/ecpat\\_react\\_final.pdf](http://ecpat.be/wp-content/uploads/2017/01/ecpat_react_final.pdf).

<sup>68</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

<sup>69</sup> For technical reasons, the Belgian Code of Criminal Procedure consists of eight parts, of which the Preliminary Chapter is the first part. The full text of the Preliminary Chapter (in French) can be consulted at:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1878041701&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1878041701&table_name=loi)

<sup>70</sup> Additional information can be found on the following website: <http://www.benelux.int/fr/nouvelles/jbs>

206. Beyond the criminal field, a programme was launched in 2006 by the King Baudouin Foundation entitled "Trafficking Victims Re/integration Programme" to enhance the scope and capacity of reintegration programmes and services for trafficking victims in countries of origin of victims of trafficking (Romania, Bulgaria and Albania) and countries where victims were increasingly being identified (Serbia, "the former Yugoslav Republic of Macedonia" and Kosovo\*). The funding was given to NGOs for providing comprehensive reintegration assistance to trafficking victims in the countries concerned. Between 2007 and 2015, more than €1,5 million were provided in grants to reintegration NGOs across the region.<sup>71</sup>

207. GRETA commends the efforts in the area of international co-operation made by Belgium and invites the Belgian authorities to continue these efforts, including by strengthening law enforcement co-operation and co-operation in the field of reintegration of victims of trafficking with countries of origin.

208. One of the objectives of the child alert mechanism in Belgium is strengthening the compatibility of alert systems for missing children in EU member States to tackle trans-border disappearances more efficiently and strengthen international co-operation.<sup>72</sup> The child alert system in Belgium, including the European hotline for missing children (116 000), is operated by the NGO "Child Focus".<sup>73</sup> This NGO participates actively in the search of missing children, as well as in the prevention of sexual exploitation of children, including via the Internet. One third of the expenses related to its activities are covered by public funds on the basis of yearly applications for specific projects. The rest of the funding is provided by private enterprises and contributions from the general public.

#### b. Co-operation with civil society (Article 35)

209. There are a number of NGOs active in the area of combating THB in Belgium engaged in preventing human trafficking, providing training of relevant professionals and carrying out research. The Belgian authorities have referred to a number of projects carried out by NGOs and in partnership with the public bodies (see, for example, paragraphs 38, 47, 48 and 123).

210. The three specialised reception centres for victims of trafficking, which are run by NGOs, are funded by the federal and local budgets. These centres have been delegated a number of functions related to enabling victims of THB to exercise their rights, e.g. to compensation. However, NGOs expressed concern about the decrease in financial resources devoted to combating THB and the difficulties in ensuring the continuous funding of specialised reception centres and assistance measures for victims (see paragraphs 111, 113, 114).

211. GRETA welcomes the close co-operation established between public bodies and non-state actors in the field of action against trafficking and considers that the Belgian authorities should ensure that adequate funding is provided to specialised NGOs providing assistance to victims of trafficking and continue building strategic partnerships with a series of civil society actors, trade unions and the private sector.

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\* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>71</sup> More information concerning the programme is available at: <https://nexusinstitute.net/past-projects/trafficking-victims-reintegration-programme-tvrp/>

<sup>72</sup> For additional information see page 62 of the reply of the Belgian authorities to GRETA's questionnaire for the second evaluation round, available at: <http://rm.coe.int/16806b61ef>

<sup>73</sup> <http://www.childfocus.be/fr>

## IV. Conclusions

212. Since the adoption of GRETA's first report on Belgium in July 2013, progress has been made in a number of areas.

213. The Belgian authorities have further developed the legal framework for combating trafficking in human beings by increasing the penalties and expanding the list of aggravating circumstances for committing human trafficking. The adoption of a new joint circular on the fight against human trafficking from the Bench of Public Prosecutors and the Minister of Justice is a welcome development.

214. Progress has also been made in developing the institutional framework, by expanding the composition of the Inter-departmental Unit for Action against Trafficking in and Smuggling of Human Beings, and including in it representatives of the three NGOs running specialised centres for victims of trafficking.

215. The new National Action Plan on combating human trafficking, adopted in July 2015, adopts a comprehensive approach and makes commitment to enhancing the funding of the specialised centres for victims of trafficking.

216. GRETA commends the detailed analytical reports published by MYRIA in its role as national rapporteur and the research on different aspects of human trafficking.

217. Efforts have continued to be made to provide training to a wide range of professionals, including staff working with unaccompanied foreign children. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

218. Another positive development is the updating of the circular on multi-disciplinary co-operation in the identification and referral of victims of trafficking and the attention paid to improving the identification of victims of trafficking among asylum seekers.

219. GRETA also commends the Belgian authorities' efforts to achieve a consistent criminal policy response to human trafficking and ensure that human trafficking cases are investigated proactively, including financial investigations, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions. The use of special investigation techniques and financial investigations has led to a considerable number of court judgments accompanied by confiscations of perpetrators' assets. Further, there have been cases of legal entities sanctioned for human trafficking offences.

220. Further, GRETA welcomes the efforts made by Belgium in the area of international co-operation and the close co-operation established between public bodies and non-state actors in the field of action against human trafficking.

221. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Belgian authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

### Issues for immediate action

- GRETA urges the Belgian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases. Statistics regarding victims should be collected from all main actors, including reception centres for asylum seekers, be harmonised and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to ensure the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database (paragraph 44);
- GRETA urges the Belgian authorities to enhance their efforts in the area of prevention of child trafficking, by paying increased attention to unaccompanied and separated children arriving in Belgium and ensuring that the State meets its obligation to provide a protective environment for them, including by appointing legal guardians for such children. The authorities should continue to sensitise and train frontline professionals working with children (including staff of reception centres for asylum seekers, staff of Fedasil, legal guardians and juvenile judges) (paragraph 73);
- GRETA urges the Belgian authorities to secure adequate funding for the specialised reception centres for victims of trafficking in order to ensure their unimpeded operation and the provision of all assistance measures envisaged in Article 12 of the Convention (paragraph 115);
- GRETA urges the Belgian authorities to take further steps to proactively identify child victims, and in particular to:
  - enhance the training provided to frontline professionals, including police officers, social workers, staff of youth assistance services, legal guardians and juvenile judges;
  - ensure that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, by paying particular attention to migrant children and unaccompanied foreign children;
  - take steps to address the problem of unaccompanied children disappearing by providing suitable safe accommodation and adequately trained supervisors or foster parents;
  - ensure the timely provision of interpretation services and the appointment of lawyers to represent the interests of child victims;
  - secure adequate funding for the provision of services adapted to the needs of child victims of trafficking and long-term monitoring of their recovery and reintegration (paragraph 131);
- GRETA urges the Belgian authorities to ensure that victims of trafficking have access to State compensation regardless of the means used against them (paragraph 157);
- GRETA urges the Belgian authorities to discontinue the practice of face-to-face examination of victims and suspected traffickers in court and to adopt alternative procedures which avoid direct contact, such as video conferences (paragraph 200).

Further conclusions:

- GRETA invites the Belgian authorities to ensure that the function of an independent National Rapporteur is clearly delineated from that of the National Co-ordinator (paragraph 24);
- GRETA considers that the Belgian authorities should continue and increase their efforts to train relevant professionals, including social inspectors and judges (see also paragraph 199). The training should aim, inter alia, to improve the identification of victims of THB, increase the number of prosecutions and convictions of traffickers and guarantee effective access to compensation for victims of THB (paragraph 41);
- GRETA considers that the Belgian authorities should continue to conduct and fund research on THB-related issues as an evidence base for future policy measures, in particular as regards trafficking for the purpose of forced and early marriages, trafficking of unaccompanied children, trafficking for the purpose of economic exploitation in different sectors, and trafficking within Belgium (paragraph 50);
- GRETA considers that the Belgian authorities should strengthen their efforts to raise awareness of THB among the general public, including through examining the possibility of launching a general campaign, focusing on new trends and needs, and in the light of impact assessment of previous measures (paragraph 56);
- GRETA considers that the Belgian authorities should take further steps in the area of preventing trafficking for the purpose of labour exploitation, in particular by:
  - continuing to organise activities aimed at raising awareness on the risks of human trafficking for the purpose of labour exploitation, in particular among vulnerable groups;
  - strengthening the monitoring of employers registered in other EU countries and recruiting “posted workers” to Belgium with a view to preventing the economic exploitation of these workers;
  - ensuring that the mandate of labour inspectors enables them to contribute to preventing and detecting cases of THB for economic exploitation;
  - enhancing efforts to prevent cases of domestic servitude, including in diplomatic households;
  - working closely with the private sector, in line with the Guiding Principles on Business and Human Rights (paragraph 64);
- GRETA considers that the Belgian authorities should strengthen the prevention of THB through social, economic and other measures for groups vulnerable to THB, by promoting gender equality, combating gender-based violence, and supporting specific policies for the empowerment of women and children as a means of addressing the root causes of THB (paragraph 78);
- GRETA encourages Belgium to ratify the Council of Europe Convention against Trafficking in Human Organs. (paragraph 82);
- GRETA considers that the Belgian authorities should make further efforts to sensitise medical professionals involved in organ transplantations and other health-care professionals to THB for the purpose of organ removal (paragraph 84);
- GRETA considers that the Belgian authorities should take practical measures to discourage demand for services provided by persons subjected to trafficking for the purpose of different forms of exploitation, in partnership with the private sector, civil society and trade unions (paragraph 89);
- GRETA considers that the Belgian authorities should continue to improve the detection of victims of trafficking during border controls and develop awareness within transport companies of the detection of victims, using indicators of THB, and how to refer them to assistance (paragraph 94);



- GRETA considers that the Belgian authorities should strengthen the proactive and multi-disciplinary approach to victim detection and identification, by involving police officers, labour inspectors, specialised NGOs, health-care staff and social workers, continuing the training provided to front-line actors, in particular the police, labour inspectors and social workers in rural areas, and ensuring that they have adequate human and financial resources for the implementation of this task (paragraph 106);
- GRETA considers that the Belgian authorities should continue their efforts to ensure that all victims of trafficking receive adequate assistance and support, according to their needs, in particular by:
  - providing a sufficient number of places around the country for all victims of trafficking who need safe accommodation;
  - ensuring that all services provided for in law are available in practice, including interpretation, counselling and information on legal rights (paragraph 116);
- GRETA invites the Belgian authorities to review the age assessment procedures with a view to ensuring that the best interests of the child are effectively protected, taking into account Article 10, paragraph 3, of the Convention, the Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child and the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) (paragraph 130);
- GRETA considers that the Belgian authorities should take further steps to ensure that all presumed foreign victims of trafficking, including EU/EEA nationals, both adults and children, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Staff performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation, offering it to victims before formal statements are made to investigators and in case of children, bearing in mind the best interests of the child (paragraph 140);
- GRETA considers that the Belgian authorities should take additional measures to ensure that child victims of trafficking are effectively provided with residence permits, in full conformity with Article 14 (2) of the Convention (paragraph 147);
- GRETA invites the Belgian authorities to continue their efforts to ensure that victims of trafficking can fully benefit from the right to obtain a residence permit, including owing to their personal situation (paragraph 148);
- GRETA considers that the Belgian authorities should take further steps to facilitate and guarantee access to compensation to victims of THB, and in particular to:
  - systematically inform victims of trafficking of their right to claim compensation from traffickers and/or the State compensation fund, in a language they can understand;
  - enable victims of trafficking to exercise their right to compensation by making available free legal aid to support victims to claim compensation at early stages of the procedure;
  - include victim compensation in training programmes for law enforcement officials, prosecutors and judges (paragraph 158);
- GRETA once again invites the Belgian authorities to collect court statistics on compensation claims brought by victims of trafficking and the amounts granted (paragraph 159);

- GRETA considers that the Belgian authorities should continue ensuring that the return of victims of THB is voluntary and is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention) and, in the case of children, by fully respecting the principle of the best interests of the child. The Belgian authorities should give full consideration to the UNHCR's Guidelines on the application of the Refugees Convention to trafficked people and their possible entitlement to asylum when deciding upon applications for asylum of persons who are at risk of being re-trafficked or otherwise persecuted should they be obliged to return to their State of origin or residence (paragraph 168);
- GRETA once again invites the Belgian authorities to consider criminalising the use of services of victims of trafficking, with the knowledge that the persons concerned are victims, for different types of exploitation (paragraph 176);
- GRETA considers that the Belgian authorities should take additional measures to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so, in accordance with Article 26 of the Convention, and to keep under review the implementation of the new legal provision on undeclared work with a view to avoiding victims of trafficking being punished for working illegally (paragraph 182);
- GRETA invites the Belgian authorities to keep under review the application of the plea bargaining procedure with a view to ensuring effective, proportionate and dissuasive sanctions in human trafficking cases (paragraph 197);
- GRETA considers that the Belgian authorities should ensure regular training of trial judges, juvenile judges and investigation judges who deal with cases of human trafficking for different types of exploitation, building upon the experience accumulated by specialised law enforcement, prosecution and social inspection authorities (paragraph 198);
- GRETA invites the Belgian authorities to continue making full use of the available measures to protect victims and witnesses of THB, including children, and to prevent intimidation during the investigation and during and after the court proceedings (paragraph 202);
- GRETA invites the Belgian authorities to continue these efforts, including by strengthening law enforcement co-operation and co-operation in the field of reintegration of victims of trafficking with countries of origin (paragraph 207);
- GRETA considers that the Belgian authorities should ensure that adequate funding is provided to specialised NGOs providing assistance to victims of trafficking and continue building strategic partnerships with a series of civil society actors, trade unions and the private sector (paragraph 211).

## Appendix

List of public bodies, intergovernmental and non-governmental organisations and other civil society actors with which GRETA held consultations

### Public bodies

- Inter-departmental Co-ordination Unit for Action against Trafficking in and Smuggling of Human Beings
- Federal Migration Centre (MYRIA)
- Federal Ministry of Justice
  - Office of the Minister of Justice
- Federal Ministry of the Interior
- Federal Ministry of Social Affairs and Public Health
  - Office of the **State Secretary for the Fight against Social Fraud, the Protection of Privacy and the North Sea**
- Federal Ministry of Foreign Affairs
- Federal Agency for the Reception of Asylum Seekers (Fedasil)
- Board of General Prosecutors
- Federal Prosecution Service
- Financial Intelligence Processing Unit (CTIF)
- Guardianship Service (MENA)
- Mr Philippe Goffin, Chair of the Belgian Parliament's Justice Committee
- Mr Bruno Vanobbergen, Children's Rights Commissioner for the Flemish Region
- Mr Bernard De Vos, General Delegate for Children's Rights of the French Community
- Representatives of the Authorities of the Flemish Region
- Representatives of the French Community
- Representatives of the Walloon Region

### Intergovernmental organisations

- International Organization for Migration (IOM)

### NGOs and other civil society actors

- Esperanto
- Sürya
- Pag-Asa
- Payoke
- Child Focus
- Mentor-Escale
- Foundation SAMILIA
- ECPAT Belgium

## Government's comments

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the authorities on 21 September 2017 and invited them to submit any final comments. The comments of the authorities, submitted on 23 October 2017 and only available in French, are reproduced hereafter.

# Cellule Interdépartementale de Coordination de la Lutte contre le Trafic et la Traite des Êtres humains



Bruxelles, le 23 octobre 2017

La Belgique souhaite d'abord remercier la délégation du GRETA pour l'excellente conduite de ses travaux et les discussions constructives qui ont pu être partagées.

Nous souhaitons également remercier le Secrétariat du Conseil de l'Europe pour l'important travail de synthèse réalisé.

Les autorités compétentes et les services impliqués dans la lutte contre la traite des êtres humains ont déjà pu prendre connaissance des conclusions et recommandations du GRETA lors d'une réunion de la Cellule Interdépartementale de coordination de la lutte contre la traite des êtres humains qui s'est tenue le 19 octobre 2017.

Nous accusons donc bonne réception de ce rapport et veillerons à intégrer ses conclusions dans le cadre de la mise en œuvre de futures initiatives ou de l'élaboration des prochains plans d'actions de lutte contre la traite des êtres humains.

Prenant connaissance du rapport nous souhaiterions attirer l'attention du GRETA sur certains points :

**§57.** Les autorités belges souhaitent informer le GRETA de quelques nouvelles initiatives prises en lien avec la prévention de l'exploitation par le travail.

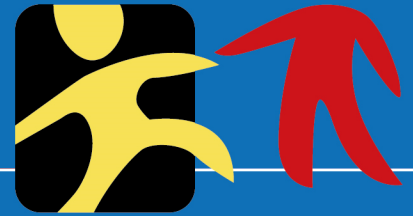
Le 17 juin 2016 une nouvelle loi relative aux marchés publics a été promulguée. Elle prévoit dans son article 67 qu'un pouvoir adjudicateur doit exclure tout candidat qui aurait été condamné pour certaines infractions dont la traite des êtres humains. Cette exclusion vaut pour 5 ans après la décision définitive.

Par ailleurs, le 3 septembre 2017 une Loi relative à la publication d'informations non financières et d'informations relatives à la diversité par certaines grandes sociétés et



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certaines groupes a été promulguée. Elle intègre les bases des principes de « due diligence » contenues dans la directive européenne EU/2013/34.

**§122.** Beaucoup d'initiatives sont prises dans ce domaine et vont continuer à être développées. Comme cela a été indiqué, il existe un groupe de travail en Région Flamande qui prépare une formation et des outils d'informations relatifs à l'exploitation sexuelle des mineurs et le phénomène des « loverboys ». Le site web « Stop tienerpooiers » (stop proxénètes d'adolescents) est par ailleurs actif.

En Communauté Française, une première formation relative à l'exploitation des mineurs en général a déjà été donnée aux acteurs du secteur de l'aide et de la protection de la jeunesse. Par ailleurs, le nouveau guide en ligne sur les violences scolaires inclut une fiche thématique sur la traite des êtres humains.

Ensuite, une nouvelle formation spécialisée a été donnée à un pool de tuteurs dans le cadre du Projet européen REACT (Reinforcing Assistance to Child Victims of Trafficking). La formation a été organisée en concertation entre le SPF Justice (tutelles) et l'ONG ECPAT. Une fiche d'information avec des indicateurs préparée au Bureau de la Cellule Interdépartementale de coordination a également été distribuée dans le cadre de cette formation.

On souhaite enfin davantage impliquer les parquets de la jeunesse dans ces discussions, l'évaluation de la circulaire multidisciplinaire de 2008 avait en effet fait apparaître la nécessité de créer de nouvelles passerelles entre certains acteurs. Les travaux vont se poursuivre en ce sens.

**§130.** Nous ne partageons pas le point de vue du GRETA à propos de la détermination de l'âge. Les tests médicaux utilisés aujourd'hui pour la détermination de l'âge en Belgique se basent, parmi les différentes techniques existantes, sur les normes scientifiques les plus strictes. Il existe un consensus significatif au sein de la communauté scientifique internationale pour considérer que la méthode d'estimation





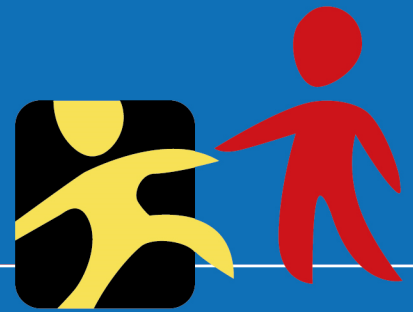
de l'âge à travers différentes disciplines (radiographie en cascade des dents, radiographie des articulations de la main et test osseux) offre les meilleures garanties. L'autre élément important du choix de ces méthodes est qu'elles prennent en compte les marges d'erreur existantes et ce à l'avantage de la personne et non l'inverse. En outre, la Belgique prend en compte d'autres éléments, tels que les documents, les rapports sociaux, ... dans la mesure où ils sont cohérents et raisonnables et ne s'écartent pas excessivement des résultats de la recherche médicale.

À notre connaissance, les techniques d'entretien psychosocial ne sont pas encore suffisamment développées pour établir une estimation fiable de l'âge. Ces méthodes ne sont pas suffisamment documentées dans la littérature scientifique et on peut se poser des questions quant à l'application objective de ces méthodes.

**§131.** Nous renvoyons à notre commentaire sur le 122.

**§138 – 140.** Nous souhaitons indiquer que la phase de rétablissement est toujours ouverte aux victimes bien entendu. Dans la pratique on constate cependant que beaucoup de celles qui se voient proposer le système font immédiatement des déclarations ce qui a pour conséquence qu'elles vont directement bénéficier d'un titre de séjour. La phase de réflexion n'est donc plus applicable (sur le plan administratif) mais la prise en charge et le suivi psychologique et médical se feront dans le cadre de la seconde phase de la procédure bien entendu.

Il est vrai toutefois qu'il faut être attentif au fait que les victimes peuvent être incitées à faire des déclarations immédiatement et qu'il faut veiller à ce que la possibilité de bénéficier d'une période de réflexion et de rétablissement leur soit correctement présentée.



Le GRETA souligne que les autorités devraient mettre à disposition des instruments clairs à ce sujet. Nous rappelons que la circulaire multidisciplinaire du 23 décembre 2016 (et son ancienne version – 2008) reprennent spécifiquement la marche à suivre. C'est surtout dans le cadre des formations que cela doit être rappelé.

Par ailleurs, les brochures/flyers édités pour les professionnels font en principe référence à l'application de la période de réflexion.

**§154.** Le problème évoqué est l'une des raisons qui ont justifiées la modification de la Col 01/2015 de manière entre autres à rappeler aux magistrats du parquet de faire procéder le plus rapidement possible à une enquête de patrimoine et ce afin de pratiquer au plus tôt des actes de saisies. Certaines décisions judiciaires ont effectivement rétrocédé partie des avoirs saisis/confisqués aux victimes à titre de réparation.

**§182.** Il pourrait être utile que le GRETA soit plus explicite sur ce qu'il entend par « mesures additionnelles » qui seraient opportunes et spécifiques à la Belgique.

**§198.** De manière générale en matière de formations données aux magistrats, il est de plus en plus envisagé de travailler dans le cadre des formations organisées pour les stagiaires judiciaires. Certaines d'entre elles peuvent être obligatoires et les magistrats stagiaires s'orientent ensuite soit vers le siège soit vers le parquet. C'est une manière assez efficace de sensibiliser à la traite des êtres humains dès le début de la carrière.

