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GRETA(2018)3

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Reply from Germany  
to the Questionnaire for the evaluation of the implementation  
of the Council of Europe Convention on Action against  
Trafficking in Human Beings by the Parties

Second evaluation round  
(Reply submitted on 5 February 2018)

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## Introduction

In accordance with Article 38, paragraph 1, of the Convention on Action against Trafficking in Human Beings, 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 based.

GRETA has decided that the second evaluation round of the Convention will start on 15 May 2014. 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. States parties are requested to transmit to GRETA a reply to this questionnaire within five months from the date it was sent.

Following a first round of monitoring, which provided an overview of the implementation of the Convention by each state party, GRETA has decided to examine during the second 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 this new 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. GRETA has selected provisions of the Convention which are mainly related to these issues.

The reply to the questionnaire should be submitted in one of the official languages of the Council of Europe (English and French), and preferably also in the original language. The reply to the questionnaire should contain all the relevant information on the implementation of the Convention since GRETA's first evaluation report. Particular emphasis should be put on the practice and impact of legislative and other measures taken. Where appropriate, in order to avoid unnecessary repetition, the reply may refer to information contained in the report submitted by the national authorities on measures taken to comply with the Committee of the Parties' recommendation concerning the implementation of the proposals made in GRETA's first evaluation report.

States parties should provide copies or extracts of relevant legislation, regulations and case law mentioned in the reply to the questionnaire (as an appendix to the reply). These copies/extracts should be supplied in the original language and, wherever possible, also in one of the official languages of the Council of Europe.

A variety of stakeholders and civil society representatives should be effectively consulted in the preparation of the reply to the questionnaire, to ensure that the information provided is as comprehensive as possible.



Bundesministerium  
für Familie, Senioren, Frauen  
und Jugend

Bundesministerium für Familie, Senioren, Frauen und Jugend, 11018 Berlin

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Berlin, 05.02.2018

Dear Ms Nestorova,

It is my pleasure to hereby transmit the reply by the German Federal Government and the German Laender to GRETA's second round questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

Please find attached (as word- and pdf-file):

1. The reply by the German Federal Government and the German Laender in English,
2. The reply by the German Federal Government and the German Laender in German,
3. An annex with all the relevant measures taken by the Laender in detail in German.

As already indicated to Mr. Lehner by phone, to our deep regret we could not keep the deadline for the translation of the annex due to the volume of the comprehensive contributions by the 16 Laender. We are going to forward the English version of the Laender-annex as soon as it is ready. We hope for your understanding.

We are looking forward to the further cooperation, especially GRETA's visit to Germany in June.

Yours sincerely,

Antje Wunderlich (pp)

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# **GRETA- Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties**

## **Second evaluation round**

# **Reply by the German Federal Government and the German Länder**

### **Preface**

On 15 June 2017, Germany published its report on measures taken to comply with Committee of the Parties Recommendation CP(2015)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (status report). Given the short interval between the evaluation and the status report, in the answers given below and in some parts of the Länder Annex, reference is made to the status report.

With regard to the division of responsibility in Germany regarding measures taken to combat human trafficking, the following is provided as a preface to answering the questions.

The Federal Republic of Germany is a federal state with 16 Länder as constituent states. The exercise of sovereign power is divided between the Federal Government and the Länder (state) governments in accordance with the provisions of the German Basic Law (Grundgesetz).

Both the Länder as the constituent states and the Federal Republic of Germany as sovereign state possess their own governmental powers. The Länder are states with their own state constitutions, parliaments, administrative structures and responsible authorities. The exercise of government power is divided between the Federal Government and the Länder by the provisions of the German Basic Law (Grundgesetz (GG)). Under the German Basic Law, the Länder have responsibility unless otherwise specified (Article 30, 70, 83 GG). In the areas of legislation, administration and the judiciary, the Federal Government only has the power to act in cases where such power is expressly assigned under the German Basic Law. The Federal Government is also responsible in cases where interpretation of the German Constitution gives rise to unwritten Federal Government responsibility.

With regard to human trafficking, the Länder have far-reaching responsibilities. In this regard, for a concluding assessment of the situation in Germany reference is expressly made to the Länder Annex to this questionnaire and also to the Länder Annex to the status report. For example, it is noted that as a general rule (i.e. exceptions apart) the criminal prosecution authorities in the individual Länder are responsible for the investigation and prosecution of human trafficking. They are also responsible, in line with the federal structure, for providing general advice and assistance for victims.

## **A. Follow-up questions**

1. Please provide information on developments since GRETA's first evaluation report on your country in the following areas:

- *the main forms of trafficking in human beings (THB) and emerging trends observed in your country (for example, any new types or sectors of exploitation, recruitment methods, countries of origin or destination of the victims);*

Human trafficking for the purpose of sexual exploitation is still the main form of human trafficking in Germany. Human trafficking for the purpose of labour exploitation also exists, but to a lesser extent. In isolated cases, criminal proceedings have been conducted concerning human trafficking for the purpose of exploitation by means of forced criminal activity (see Question 17) and for the purpose of forced begging (see Question 16). By way of contrast, there are no known cases of human trafficking for organ removal or human trafficking in connection with forced marriage or illegal adoption.

### a) Human trafficking for the purpose of sexual exploitation

Human trafficking for the purpose of sexual exploitation affects almost exclusively young women, including many minors, who largely originate from Romania, Bulgaria, Nigeria, and Germany.

The internet plays an ever-greater role, both in the recruitment process and as a platform on which to advertise prostitution. Especially in the case of minors, this was a frequent form of contact initiation. Public prosecutors report that contact initiation to subsequent victims via the internet and through social media is becoming more and more frequent. Once contact has been made, communication continues via messenger services such as WhatsApp, ongoing surveillance of which is not technically possible at present. The internet plays an especially important role with regard to contact initiation using the so-called "loverboy" method.

The specialised counselling centres (NGOs) have reported a significant increase in victim witnesses who have been lured into prostitution through the "loverboy" method. Contact initiation largely takes place in online chatrooms.

An increase in the number of Chinese victims of sexual exploitation who seek counselling has also been reported. The victims were mostly exploited in prostitution businesses, some of which are operated by Chinese owners.

It is also reported that African, mostly Nigerian, women are also put under pressure using the so-called Juju curse. Women with the curse are monitored and managed by so-called "madams". Because of the ritual involved, witnesses are not willing to cooperate with the police, making the investigation and solving of such cases extremely difficult. The rise in the number of Nigerian victims as well as the overall increase in the share of victims from black Africa is due to the large number of Nigerian women who entered Italy during the wave of migration seen between 2014 and 2016.

The increasing relocation of prostitution seen throughout Germany to private accommodation and hotels arising from the broad-based communication opportunities offered by the internet is leading to a change in the role of the red light district and poses new challenges for the criminal prosecution authorities.

### b) Human trafficking for the purpose of labour exploitation

Human trafficking for the purpose of labour exploitation mainly involves the building and construction industry, the hospitality trade, farming and the domestic services sector. The victims usually originate from Eastern Europe, mainly Poland and Romania.

### c) Trends in human trafficking according to police statistics on criminal investigations:

The number of criminal investigations in connection with human trafficking for the purpose of sexual exploitation has remained constant compared with the previous year. In the case of labour exploitation, the number of investigations dropped to an overall low level in 2016.

The annual status report on human trafficking in Germany (Bundeslagebild Menschenhandel) for 2016 contains the country's first-ever statistics on commercial sexual exploitation of minors.

In 2016, the police conducted a total of 363 investigations into human trafficking for the purpose of sexual exploitation. This is a similar number to the investigations conducted in the previous year (364 in 2015).

The number of investigations in which exclusively German victims were involved amounted to 20 percent (24 percent in 2015). This means that the vast majority of investigations involved foreign victims. Most non-European victims were from Africa. Their numbers have risen from 20 in 2015 to 36 in 2016. With a total of 26 individuals, victims from Nigeria comprised the largest group.

In 2016, a total of 524 suspects were registered during police investigations. Once again, German suspects form the largest group (28 percent).

In the course of police investigations, a total of 488 victims of human trafficking for the purpose of sexual exploitation were identified. At 127, German victims formed the largest group in 2016. One in five victims (22 percent) was led into prostitution by means of deception. This occurred in part due to simulated love affairs in which the victim became involved in an emotionally dependent relationship in which they were forced into prostitution and exploited. The so-called "loverboy" method was mostly used with German, Romanian and Ukrainian victims, most of them aged between 19 and 26.

For 53 victims, the internet played a central role in the recruitment process. A trend can be seen away from the red-light district prostitution business and towards prostitution in private accommodation and hotels (a combined total of around 55 percent), making it difficult for the criminal investigation authorities to monitor and investigate.

In 2016, 96 under-age victims were identified in 62 police investigations (68 in 2015) involving human trafficking for the purpose of sexual exploitation.

There were 12 investigations into human trafficking for the purpose of labour exploitation in 2016 – seven fewer than in the previous year (19 in 2015).

For the first time in Germany, 145 investigations involving sexual exploitation of minors were registered in 2016. During the investigations, a total of 186 suspects were identified. Of these, 99 suspects were identified in accordance with Sections 232, 233a, 180a and 181a of the German Criminal Code (StGB).

Most of these suspects were German citizens (111 individuals or 60 percent). Their average age was 35. More than one-third of suspects (65) were under 30 and 14 were minors themselves. In the 145 investigations, a total of 214 under-age victims were identified – 180 of whom were aged between 14 and 17.

#### d) Trends in human trafficking based on criminal prosecution statistics published by the judiciary

In 2016, in 90 trials a total of 60 individuals were charged with human trafficking for the purpose of sexual exploitation under Section 232 of the German Criminal Code (StGB). Of these, six were adolescents and young adults who were convicted according to Juvenile Criminal Law (JGG). In 51 of the 90 cases, a prison sentence was given, five of them in accordance with Juvenile Criminal Law: 32 of these sentences were suspended, three of them under Juvenile Criminal Law. The forfeiture or confiscation of profits and assets arising from the offence of human trafficking for the purpose of sexual exploitation was ordered in a total of four cases.

In 2016, in 19 trials a total of 12 individuals were charged with human trafficking for the purpose of labour exploitation under Section 233 of the German Criminal Code (StGB). Of these, four were adolescents and young adults who were convicted according to Juvenile Criminal Law (JGG). In three cases, prison sentences were given, one in accordance with Juvenile Criminal Law. The three prison sentences given out under the German Criminal Code were suspended. The forfeiture or confiscation of profits or assets arising from the offence of human trafficking for the purposes of labour exploitation was ordered in one case.

In 2016, a total of 39 individuals were tried for violations of the Act to Combat Clandestine Employment (SchwarzArbG) and 31 individuals were convicted. However, in the prosecution statistics, the trials and convictions are reported together according to the offences under the Act to Combat Clandestine Employment. It is not, therefore, possible to disaggregate further according to rulings and convictions under Section 10a SchwarzArbG.

With regard to the statistics cited under d), it must be taken into account that in the criminal justice statistics individuals convicted for an offence (Section 52 StGB) or multiple offences (Section 53 StGB) who had violated several provisions of criminal law are only listed for the offence which attracts the most serious punishment under criminal law. The number of individuals actually convicted for human trafficking or violations of SchwarzArbG could thus be higher than is indicated by the statistics.

e) Trends in human trafficking as seen by the specialised counselling centres for victims of human trafficking

With regard to trends and emerging tendencies, from the perspective of practitioners in the specialised counselling centres for victims of human trafficking, no general conclusion can be drawn for Germany as a whole. The situation can vary greatly between the German Länder. The main forms of human trafficking with which the specialised counselling centres in the KOK network continue to be confronted are sexual exploitation, which makes up the largest share, and labour exploitation – for example, in the cleaning, hospitality and care sectors, in domestic services in private households, and also in other sectors.

The great increase in the number of asylum seekers seen in Germany in recent years has an impact on the number of victims receiving support in Germany's specialised counselling centres for victims of human trafficking. As the nation-wide coordinator of these centres, the KOK receives reports from staff regarding formidable or even unmanageable numbers of cases involving victims of human trafficking in connection with migration and flight. Looking at the statistics published by the specialised counselling centres for victims of human trafficking over the past few years, it can be seen that in some regions of Germany the number of cases involving victims of human trafficking in the context of migration and flight have risen significantly in line with the increase in the number of refugees in Germany overall.

Looking at the countries of origin, it can be seen that in connection with migration and flight, few individuals from Syria, Iraq and Afghanistan are identified as victims of human trafficking. It is mostly people from West African countries who seek assistance from or are referred to the specialised counselling centres.

With regard to the place of exploitation, it is evident that most victims were exploited en route and only a small minority were exploited in their home countries or in Germany. There are more and more cases being reported in which Italy is cited as the place of exploitation and human trafficking activities in that country are given as the reason why the victims decided to flee to Germany.

Recognising victims of human trafficking poses a huge challenge for authorities and non-government organisations – especially where the victims are refugees. For this reason, some specialised counselling centres have been able to launch projects and activities which target refugees who are potential victims of human trafficking.

- *any changes in your country's laws and regulations relevant to action against THB;*

With the Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code (Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches Sozialgesetzbuch), which entered into force on 15 October 2016, Germany transposed Directive 2011/36/EU into national law. In addition to a reform of penal provisions concerning human trafficking, the Act is extended to cover cases of human trafficking for the purposes of forced criminal activity, forced begging and organ removal. It also extends the definition of the offence of human trafficking to take in cases where the victim is under 18 years of age. Additionally, the offences of labour exploitation and exploitation by means of unlawful imprisonment were reinserted into the Act.

The Act on Regulating the Business of Prostitution and Protecting Persons Working in Prostitution was adopted on 27 October 2016 and entered into force on 1 July 2017. Article 1 provides the first comprehensive legal basis to allow regulation of the business of prostitution and to protect persons working in prostitution from exploitation and human trafficking.

With regard to details of the new provisions, reference is made to the recent report issued by the Federal Government to the member states concerning implementation of the GRETA recommendations dated 15 June 2017 (status report) (see in particular the contents of a. Definition of

“human trafficking” and p. Substantive criminal law, as well as h. Social, economic and other initiatives for groups of individuals at risk of human trafficking concerning the Act on Protecting Persons Working in Prostitution (ProstSchG)).

- *the institutional framework for action against THB, in particular: any changes in respect of the composition and functions of the bodies responsible for co-ordinating national action against THB, the involvement of NGOs in co-ordinating bodies, the entities specialised in the fight against THB, and the establishment of a national rapporteur or other mechanism for monitoring the implementation of anti-trafficking strategies, policies and activities;*

The Federal Government and the Länder now face the task of implementing these new legal provisions and of putting the legal possibilities into practice. Among other things, these efforts are to be supported by a reform of existing federal-level structures to combat human trafficking (see the status report – b. Integrated approach and coordination). The Länder and the specialised counselling centres also face the tremendous challenge of adapting both their structures and their expertise at all levels in line with this legislative change.

In Germany, legal prosecution of human trafficking and the provision of protection and support for victims are performed by the Länder. Due to the multitude of anti-trafficking measures taken by all 16 Länder, reference is made both to the Länder Annex contained in this report and to the status report in which the various Länder-level activities are set out in a Länder Annex (see Annex 1).

In Germany, action against human trafficking – especially to protect and support its victims – is taken in close cooperation with the specialised counselling centres and would not be possible without the work that they perform. Both the Federal Government and the Länder thus place great importance on close cooperation with the counselling centres and with the German NGO network and coordination office against trafficking in human beings. This report and also the status report thus contain examples of selected KOK activities as these make a significant contribution to the measures taken overall. KOK and its member organisations operate independently and are not an arm of any state authority.

With the ratification of the European Council Convention on Action against Trafficking in Human Beings, the Federal Government also agreed to introduce targeted coordination and cooperation measures against human trafficking in minors. Together with experts and specialist practitioners, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and ECPAT Deutschland e.V. (German Chapter of the ECPAT International Network to End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes) have developed a set of recommendations for coordinated, trust-based and child-oriented cooperation between the child welfare services, the police, specialised counselling centres and other stakeholders to identify and protect victims of human trafficking in children. The nation-wide cooperation strategy to protect and support victims of human trafficking in and exploitation of minors is addressed, among other places, under Question 7. ECPAT is a nationwide network of 29 institutions and groups. It focuses on the areas of responsibility covered by government and administration, the judiciary, business and industry, and the education sector, and works with governmental and non-governmental organisations to conduct campaigns and projects to raise public awareness, develop preventive measures and create the legal conditions needed to protect child victims.

- *an overview of the current national strategy and/or action plan to combat trafficking in human beings (duration, objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results).*

Germany has no national level action plan to combat trafficking in human beings. In combating human trafficking, the Federal Government continues with the approach reported in the first evaluation round and, as stated in Germany’s status report (see especially the report’s section b. Comprehensive approach and coordination), continues to develop its strategies as part of that approach. At Länder level, each Land has its own coordination structures and strategy planning to combat human trafficking (see the Länder Annex to this report and also the Länder Annex contained in the status report).



## **B. Cross-cutting questions**

### **Gender equality (Articles 1.1.b, 5.3 and 17)**

*2. What specific measures are taken in your country to address the gender dimension of THB and incorporate gender equality into the policies to prevent and combat THB and to protect and promote the rights of victims, including through the empowerment of women and girls?*

The Federal Government takes account of the gender dimension of human trafficking in all its activities to combat human trafficking. With regard to the special situation of women and girls who are victims of various forms of human trafficking, the Federal Government operates a policy of close links between its policy against trafficking in human beings and its strategies and measures to combat violence against women.

One group of individuals who are especially at risk of becoming victims of human trafficking and exploitation are persons who work in prostitution. Women prostitutes face a significantly greater risk of being exposed to violence than do women in the German population overall (see BMFSFJ: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland. 2004).

To improve working conditions in legal prostitution and to protect people working in that field from exploitation, forced prostitution and human trafficking, the ProstSchG entered into force on 1 July 2017. Core elements of the Act include a requirement to obtain statutory permission to operate a prostitution business and the requirement to register with the authorities as a prostitute/sex worker. The granting of a license to operate a prostitution business is linked to fulfilling certain minimum requirements regarding protecting the health and safety of prostitutes and third parties, and also to the personal reliability of the business owner. Registration as a prostitute or sex worker is valid for two years (one year for persons under 21). Personal registration involves a detailed information and consultation appointment. In addition, prior to commencing prostitution work, a health advice counselling session must be attended at the public health service and then repeated at yearly intervals (every six months for persons under 21).

A further group of individuals who are especially at risk of falling victim to human trafficking are refugees in flight. A main focus of the Federal Government thus lies in education and awareness-raising to inform women and girls in refugee accommodations about their rights and about the availability of Germany's national Violence Against Women Support Hotline (Hilfetelefon Gewalt gegen Frauen) and the nationwide offices of the Association of Women's Shelters (Frauenhauskoordinierung (FHK)), Federal Association of Women's Counselling Centres and Helplines in Germany (Bundesverband Frauenberatungsstellen und Frauennotrufe, BFF) and KOK. The BMFSFJ has also published a multilingual flyer containing information on the nationwide help and counselling services for women and for members of the LSBTIQ community.

The BMFSFJ has introduced a range of measures to assist the Länder and municipal administrations in protecting and integrating refugee women and (their) children. These measures have been consolidated into a strategy with a gender equality focus. The strategy, which is being developed as part of an ongoing process, contains measures in four action areas:

- Protection against violence, including human trafficking, and assistance for women and children and other vulnerable groups in reception centres and shared accommodations (see also the answer to Question 35).
- Informing refugee women, children and other vulnerable groups about their rights and access to available support.
- Protection and help for pregnant women refugees.
- Support for refugee women to assist their integration and help them secure an independent livelihood.

Given the known number of victims, women are mostly perceived as victims of human trafficking for the purpose of sexual exploitation and less as victims of other forms of exploitation. This strict delineation does not, however, match the experience of the specialised counselling centres. Women are also victims of human trafficking for labour exploitation and of other forms of exploitation. There are also male victims of sexual exploitation.

The KOK has looked at this topic in some depth and conducted a study in 2016 on Menschenhandel zum Zweck der Arbeitsausbeutung und schwere Arbeitsausbeutung von Frauen – ein nicht gesehenes Phänomen (Human Trafficking for Labour Exploitation and Serious Labour Exploitation of Women: An Unrecognised Phenomenon). The aim of the study was to increase public awareness to human trafficking for the purpose of labour exploitation of women and highlight the multifaceted nature of the problem.

Expert talks were also held between Brot für die Welt (Bread for the World Germany) and KOK on the topic of human trafficking for the purpose of labour exploitation and serious labour exploitation of women.

### **Non-discrimination (Article 3)**

#### *3. What measures are taken to ensure that trafficked persons who are members of ethnic minorities have access to the rights specified in the Convention?*

Under Section 26 of Germany's General Equal Treatment Act (Allgemein Gleichbehandlungsgesetz), anyone who believes they have been discriminated against on grounds of race or ethnic origin, gender, religion or world values, disability, age or sexual identity can contact the Federal Anti-Discrimination Agency. This includes victims of human trafficking in cases where the requirements set out in Section 266 AGG are met.

The provisions of Germany's Criminal Procedure Code (Strafprozessordnung) concerning protection for victims were expanded with the Third Act to Reform the Protection of Victims' Rights (Opferrechtsreformgesetz) of 21 December 2015 and apply for all victims, including victims of human trafficking who belong to ethnic minorities, according to the respective requirements. With regard to the provisions concerning protection for victims, reference is made to the Federal Government's status report and to the answer to Question 34. Reference is also made to the fact that with the Third Act to Reform the Protection of Victims' Rights, the translation requirements in relation to victims who do not speak or understand German have been expanded to take account of any language-related problems faced by victims who belong to ethnic minorities.

Compensation for victims is not linked to their belonging to any specific ethnicity, to the victim's gender or similar. However, under the provisions of the Crime Victims Compensation Act, compensation is linked to harm to personal health due to a wilful, unlawful assault or to self-defence in fending off such assault.

To ensure that such victims – and also the groups victims of human trafficking cited in Questions 3 to 5 – receive access to their right to compensation, they are informed and advised in a variety of ways: under Section 406j item 3 of the German Criminal Procedure Code (StPO) the police are required to inform victims of their possible entitlement to compensation under the OEG.

The Länder and their respective ministries of social affairs, which are responsible for the OEG process, provide information about the OEG on their websites and in dedicated brochures and flyers. The Federal Ministry of Labour and Social Affairs (BMAS) also publishes information on its website regarding victims' compensation. Victims can also access a BMAS-funded online database for crime victims (ODABS) to obtain fast and easy-to-access information about appropriate – including non-governmental – support services in their local area, and about victim compensation provisions. The information is published in German, English and Spanish.

The responsible Länder authorities also provide information about the possibility of obtaining victims' compensation and the entitlement requirements. The requirement to provide advice and information arises from Sections 14 and 15 of Book I of the German Social Code (SGB I). Interpreters may be used as needed.

In cases where victims seek medical help, if they are aware of the victims' compensation process then healthcare staff bring the victims' attention to the existence of the OEG.

The specialised counselling centres for victims of human trafficking in the KOK network structure their counselling services in such a way that they are easy to access for all victims, including those belonging to ethnic minorities. They focus on specific quality criteria which were developed within the KOK

network. One such quality criterion is low-threshold access to and reachability of the specialised counselling centres.

This approach is designed to enable all victims and potential victims access to counselling centres. Important aspects of the approach include interpreters and cultural mediators who either work in the specialised counselling centres or are brought in as needed. Flyers and informational material in various languages and/or specially designed material for illiterate persons containing pictograms and pictures are used and are, for example, handed out in outreach work.

The specialised counselling centres in the KOK network have agreed four common goals as components of their self-image and as a benchmark for their specialist work. These goals take an anti-discriminatory, anti-racist and anti-sexist approach. KOK and its member organisations also work with an intersectional approach, i.e. with the knowledge that there are many different forms of discrimination that converge and reinforce each other.

Advising and supporting members of the Roma community is a frequent component of the counselling work performed by the specialised counselling centres. Against this backdrop, the KOK invited a representative from the Association of German Sinti and Roma (Verband deutscher Sinti und Roma) to attend its annual meeting in 2016 and discuss the topic of antiziganism, particularly in connection with forced begging activities.

*4. What specific measures are taken to ensure that trafficked persons who are irregular migrants or migrant workers are identified as victims of THB and have access to the rights provided for in the Convention?*

In answer to Question 4, reference is made to the contents of the status report under j. Identifying victims of human trafficking.

The following activities are again emphasised: for many years, the BKA has worked in a close, trust-based cooperation partnership with the Federal Office for Migration and Refugees in efforts to combat human trafficking. If, when processing an asylum application, it is suspected that the applicant could be a victim of human trafficking, special decision-making experts from BAMF are called in. These experts have been specially trained to identify victims of human trafficking and handle the case accordingly. The BAMF informs the BKA regarding potential cases of suspected human trafficking. This enables the initiation of investigative procedures and the provision of adequate protection for the victim.

Some Länder have introduced measures to sensitise staff in refugee hostels to the subject of identifying victims of human trafficking (see the Länder Annex in the Status Report). Reference is also made to the answers to questions 6, 11 and 31.

To promote a pro-active approach, the BKA coordinates participation of the Länder police forces in Joint-Action Days on Human Trafficking which are held as part of the European Multidisciplinary Platform Against Criminal Threats project on trafficking in human beings. The Action Days are designed to aid identification of victims of human trafficking, are held throughout Europe within the same period of time and usually focus on a range of different themes. Monitoring and controls days are usually conducted by specialist units whose staff are able to identify potential victims of human trafficking among potential "illegal immigrants".

*5. What measures exist to ensure that male victims of trafficking are identified and provided with assistance and protection, including safe accommodation, as provided by the Convention?*

As a matter of rule, the process used in identifying victims of human trafficking does not differentiate between women and men. In cases of human trafficking for the purpose of sexual exploitation, greater focus is now being placed on male victims and, for example, more frequent police controls are being conducted in areas involving male prostitution. Given the relatively short period of time since the respective offences entered into force (15 October 2016), few criminal proceedings are known involving exploitation in connection with begging or human trafficking for the purposes of criminal activities. An increase in the number of male victims in connection with these offences is expected (see the answer to question 16).

At training events for the police and also at cross-discipline events, such as with KOK, awareness is raised for specific victim groups, including men working in prostitution.

Germany has no special measures for use in identifying male victims of human trafficking and labour exploitation. At present, union-linked organisations offer certain programmes or borrow from programmes offered by union-linked advisory centres which focus in part on traditionally male dominated sectors such as the building and construction sector or the transport and logistics sector.

Differences exist in terms of the advice, support and accommodation provided for male victims. Advice and assistance services already exist in some Länder, for example through the union-linked advisory centres. These do not, however, focus on victims of human trafficking, but on victims of labour exploitation and thus often focus on providing advice concerning labour law. These advisory services target all gender groups.

Some specialised counselling centres also target men in their counselling programmes. In some cases this is a concerted effort, while in others they advise male victims of human trafficking because there are no alternative advisory programmes available.

On 18 October 2017, the KOK published a study<sup>1</sup> on the provision of accommodation for victims of human trafficking (Unterbringung von Betroffenen von Menschenhandel). A key finding of the study is that for all groups of victims of trafficking challenges and problems continue to exist concerning adequate accommodation that are tackled and solved by the specialised counselling centres on a case-needs basis. This is especially true with regard to male victims of human trafficking for whom so far no specialized accommodation exists in none of the Länder.

### **Training of relevant professionals (Articles 10 and 29)**

*6. Please describe how the needs for training of professionals in the area of action against THB are identified and met, with an indication of the categories of staff that receive such training, whether the training is obligatory or optional, the content and focus of the training, and the funding provided for training activities. If the impact of training has been assessed, please provide details.*

In training professionals in the various forms of human trafficking and exploitation with which they will deal in their anti-trafficking work, a wide range of different and sector-specific measures are available.

To improve cooperation with the authorities responsible for combating human trafficking and following the entry into force of the Act to Improve Action against Human Trafficking, exchange between the Directorate-General Customs and the BKA is being stepped up. As part of this effort, guidelines for dealing with reports concerning human trafficking offences will be revised. This also includes the provision of general indicators for human trafficking for the purposes of labour exploitation.

### **BKA Training**

At the BKA training centre, demand for vocational and further education and training (including on human trafficking) for police officers in the national and Länder police forces is collated via the resident vocational and further education and training representatives following distribution of the BKA training catalogue for the next year. In line with the requirements reported, the BKA training manager assigns the available places to the requesting organisations. If demand is especially high, additional courses are offered. The structure, target groups for and contents of the training modules are based on the “calendar sheets” (Kalenderblätter) produced when designing the BKA specialist training programme.

The basic module on human trafficking for the purpose of labour exploitation is offered once a year, the special module on human trafficking for the purpose of sexual exploitation is usually offered twice a year. With regard to funding, the training manager produces a cost estimate based on past training seminars which is added to the training budget. The costs (including travel expenses and trainers’ fees) for the seminars described in the attachment usually amount to between €2,000 and €5,000. As of a specific cost contribution ceiling per participant of €150, the seminars are fee-based for non-BKA

<sup>1</sup> <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>

participants. This situation has not arisen in recent years, however, so that all participants have been able to attend the seminars free of charge.

The target group for the training seminars are police officers and case managers whose main responsibilities lie in specialised and final processing of offences related to human trafficking.

Training is usually voluntary and depends on the seminars on offer and places available in the various police units. In specialist units, appropriate further education and training is usually a prerequisite in fulfilling the duties performed and is thus mandatory.

The seminars are evaluated by the participants using a specially-designed evaluation questionnaire. The information contained in the questionnaires helps to further develop and improve the training content in close cooperation with the responsible BKA departments and units. There are no plans for a "transfer evaluation".

### **Other Training**

Every year, the BKA organises a specialist seminar on human trafficking for the purpose of sexual exploitation, which is attended by approximately 100 police officers from the national and regional forces to discuss current problems as well as case studies involving human trafficking. In 2016, a networking meeting was held on the topic of human trafficking for the purpose of labour exploitation and was attended by police officers from the national and regional forces, as well as by cooperation partners such as public prosecutors, union representatives, specialised counselling centres, the customs authorities, the Financial Monitoring Unit to Combat Illicit Employment (FKS), and the Church.

In 2015, the first-ever joint workshop for police officers and representatives of the judiciary was held on the topic of human trafficking. The main focus of the workshop was exchange between public prosecutors and the police in processing human trafficking cases. A similar workshop is planned for the first quarter of 2018.

The BKA has also taken measures in conjunction with the Financial Monitoring Unit to Combat Illicit Employment (FKS) to foster better exchange in combating trafficking in human beings. The two sides plan to attend each other's informational events and training programmes. In this connection, the BKA gave a presentation at the Directorate-General Customs mid-year meeting in June 2017.

The subject of human trafficking – manifestations, background, management, dealing with victims – is also an integral part of further education and training offerings and in some cases of the standard training programme for most regional (Länder) police forces.

A detailed list of the training measures and the respective target groups of training offered in the various Länder is contained in the Länder Annex and also in the Länder Annex of the status report.

### **BAMF Training**

At all offices of the Federal Office for Migration and Refugees (BAMF) in which asylum applications are processed, at least one special representative for victims of human trafficking should be available. This is currently the case at 50 BAMF locations. Prerequisites for assuming the role of special representative include personal aptitude, willingness and a minimum of one year's experience as a decision-maker. BAMF decision-makers have already completed the EASO module on interview techniques, consideration of evidence and granting of protection. The special representatives for victims of human trafficking also received training in which they complete the EASO module on interviewing vulnerable groups. In this module, external trainers or speakers from the BKA and a specialised counselling centre for victims of human trafficking along with experienced colleagues communicate the knowledge needed to identify, interview, assess and decide on human trafficking cases and the internal processing channels within the BAMF. Only decision-makers are trained to become special representatives for victims of human trafficking who volunteer for the position. Training is then mandatory for those volunteers.

### **Vocational and further education and training of other relevant professionals on the subject of trafficking in children**

The BMFSFJ promotes the vocational and further education of professionals offered by ECPAT Deutschland. ECPAT has developed a multidiscipline training programme for relevant professionals

and conducts networking workshops for the police, the judiciary, child welfare services, youth support organisations, counselling centres, and legal guardians. These regional seminars are designed to raise awareness and promote networking at local level,

Multi-profession workshops are held for professionals. A web-based training tool has also been developed. The regional networking workshops are designed for groups of between 25 to 30 participants comprising representatives from the specialised counselling centres to combat human trafficking and sexual exploitation, child care and youth support institutions, street workers, legal guardians, interpreters, police officers, judges, victims' lawyers and BAMF decision-makers. The two-day workshops address topics such as victim identification, case management and special cooperation processes in line with the Federal Cooperation Strategy on Case Management of Trafficking in Children. The workshops are presented by two police trainers, one male and one female, with experience in specialised counselling. Depending on the focus topics requested in advance of the workshops, two experts are also invited to give presentations.

As part of the ReACT – Reinforcing Assistance to Child Victims of Trafficking project to improve support for child victims of human trafficking in five EU member states (Belgium, the Netherlands, the UK, France and Germany), which is funded by the EU, co-financed by the BMFSFK and conducted by ECPAT groups, further training for professionals was given on the topic of trafficking in children and identifying potential child victims. The identification of child victims of human trafficking calls for experience and a sensitive, trust-fostering approach. The victims need special support along with appropriate attention and care.

The seminars were offered in three formats: A) two-day interdisciplinary workshops with professionals from child and youth welfare organisations, the police, the BAMF, counselling centres and the child welfare services, B) one-day specialist seminars with legal guardians, and C) one-hour webinars for victims' lawyers and webinars for practitioners from the child and youth welfare services.

#### A) Interdisciplinary workshops

In the two-day workshops, professionals are brought together who come into contact with (potential) child victims of human trafficking. Through awareness-building, training, dialogue and exchange, and networking activities, new structures are created which give the children and adolescents age-appropriate access to the help and support they need.

The interdisciplinary networking workshops target professionals from specialised counselling centres to combat human trafficking, counselling centres on sexual violence against children, youth welfare services, child-care and youth support institutions, migration authorities, street workers, legal guardians, interpreters, the police, public prosecutors, victims' lawyers and BAMF decision-makers.

The workshops are headed by a police representative and a trainer with years of experience in specialised counselling.

The events take place in cooperation with local partner organisations (such as FIZ Stuttgart, an advocacy and support group for migrant women), Dortmunder Mitternachtsmission e.V. (a counselling centre for child and adult prostitutes and victims of human trafficking), and IN VIA e.V. (an association for international and intercultural exchange), who take over some of the organisational responsibilities and support ECPAT in conducting the workshops. In close cooperation between the two sides, the thematic focus for the various networking workshops (e.g. boy victims, Roma children, refugees, working with the judiciary) are decided and regional experts are selected as guest speakers.

The interdisciplinary workshops held so far: Berlin and Dortmund (2010), Bonn, Frankfurt, Munich, Selm (2011), Brandenburg, Chemnitz, Hamburg, Stuttgart (2012), Nuremberg and Selm (2013), Schwerin (2014), Selm, Frankfurt, Germershausen (2015), Oranienburg, Gengenbach bei Offenburg (2017).

#### B) Specialist workshops

The specialist workshops focused on identifying and dealing with child and juvenile refugees (accompanied and unaccompanied) who are victims of human trafficking and were designed to give practical guidance in achieving confidence in related actions. The workshops address legal guardians.

The trainers include ECPAT trainers from a specialised counselling centre for victims of human trafficking as well as a trauma therapist in workshop 1 and a special decision-maker from BAMF in workshop 2.

The two workshops were held in cooperation with and on the premises of FBB e.V. which offers training for guardians in Nuremberg, and also in cooperation with Willkommen bei Freunden (Welcome Among Friends), a support network for young refugees.

So far, two specialist workshops have been held in 2017: in Nuremberg on 6 April and also on 3 July.

### C) One-hour webinars

The aim is to provide basic information on the topic of trafficking in children and enable direct dialogue and exchange with trainers. The webinar targets victims' lawyers and guardians, clearing centre staff, child welfare services and professionals from other childcare and youth support institutions.

The webinars for lawyers were conducted by a criminal justice lawyer and those for childcare and youth service professionals by a social worker from a specialised counselling centre for victims of human trafficking with experience in dealing with minors.

Webinars held so far: two webinars for lawyers and four webinars for guardians took place in 2017. All three training formats were organised and conducted by ECPAT Deutschland e.V.

### **The judiciary**

The Länder judiciaries report that identifying the need for training for staff of judicial authorities is based on the number of cases to be processed. Also, both the federal and Länder-specific training centres regularly survey the current training needs of all courts and authorities and the Länder justice ministries, and use the findings to develop the annual training programme for the judiciary.

As a rule, human trafficking cases are processed by public prosecutors in special public prosecutor units for organised crime. Their training needs with regard to combating human trafficking and the needs of judges are largely covered by the training offerings of the German Judicial Academy. Worthy of note are the regular events mentioned in the status report on the topic of international trafficking in human beings and smuggling of migrants, and regular seminars on the topic of organised crime. The Länder judicial academies also offer training, particularly on the topic of organised crime, whose contents are also extremely beneficial in combating human trafficking.

The training offering on the topic of human trafficking and victim protection in North Rhine-Westphalia is cited as an example for the 16 Länder (see the Länder Annex). In addition to the presence training, a range of online materials on the topics of human trafficking and victim protection can be used for self-study purposes.

With regard to the question of whether participation in training events is voluntary or mandatory, it must be noted that in Germany, judges and public prosecutors, and also civil servants, are required to keep their knowledge up-to-date. Attendance at training events is nonetheless voluntary. Selection of the seminars on offer is regularly left to the participants.

In cases where it was reported by the judicial authorities in the various Länder, the impact of vocational and further training was not assessed.

### **Specialised counselling centres**

For staff of the specialised counselling centres there is no specialist training on human trafficking. In most cases, the staff are social education specialists, social workers or psychologists. In isolated cases, topical offerings are available at technical colleges and universities – for example, the seminar on criminology and criminal law: prostitution and human trafficking<sup>2</sup> as part of the B.A. in Social Work at the Alice Salomon Hochschule (ASH) in Berlin.

Similar seminars are sometimes held at other technical colleges, but according to KOK these are not mandatory seminars on human trafficking required when training as a social worker. KOK has thus

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<sup>2</sup> <https://www.berlin.de/ba-marzahn-hellersdorf/aktuelles/pressemitteilungen/2017/pressemitteilung.592288.php>

developed a training manual which is specially designed to help new staff become acquainted with their work in the specialised counselling centres.<sup>3</sup> KOK revises the manual at regular intervals.<sup>4</sup>

Staff at the specialised counselling centres often engage in self-study to improve their knowledge and skills, for example in matters of legal and topical developments and also on methodological trends in social work. The centres' funds and the time available for staff training are extremely limited.

KOK also offers annual training and networking meetings in which its representatives receive information and training on specific topics.

The specialist counselling centres conduct regular training events for various professional groups, for example the police, facilitators, BAMF employees and special representatives for human trafficking, foreign embassy staff and others. Upon request, the centres train facilitators and other professional groups with regard to the manifestations of human trafficking and strategies to support victims of forced labour and forced prostitution. Some Länder also offer or develop training for specialists working in refugee accommodation centres.

In addition to the legal basis, practitioners see the key components of the training to include topics such as victims' cultural backgrounds, victims' rights, indicators/detecting human trafficking, existing support structures and their offerings, and the topic of trauma in victims of human trafficking.

With regard to further measures in this field, reference is made to the status report (see c. Vocational and further education of relevant professionals and also the two Länder Annexes).

### **Special measures concerning children (Articles 5, 10, 11, 12, 14, 15, 16, 28 and 30)**

*7. Please describe whether and how trafficking in children is specifically addressed in your country. If there are institutions responsible for taking the lead in combating trafficking in children and a specific national referral mechanism for child victims of trafficking, please provide details*

The BMFSFJ is currently working on the publication of the National Cooperation Strategy on Protecting and Supporting Child Victims of Trafficking and Exploitation, which was jointly developed by the BMFSFJ and ECPAT Deutschland e.V. with input from experts and practitioners.

The National Cooperation Strategy is designed as a nation-wide set of recommendations for the development of a new cooperation mechanism or for use in expanding existing Länder-level cooperation mechanisms. It provides a framework for a cooperation mechanism and enables alignment with the prevailing requirements and structures in a given Land. The cooperation strategy contains action-oriented measures and recommendations for organisational and communicative structures which enable ongoing, person-independent cooperation and collaboration at local level. It provides an insight into definition-based distinctions, legal and policy frameworks, looks at all forms of human trafficking for the purpose of exploitation, names potential cooperation partners and provides information on their responsibilities and work processes. The strategy also lists contact data and service points in the various Länder, and illustrates how identification of child victims can be promoted, including through the use of a list of child trafficking indicators.

In Federal-Länder talks held in Berlin on 20 September 2017, the National Cooperation Strategy on Protecting and Supporting Child Victims of Human Trafficking and Exploitation was presented to representatives of ministries from nine different Länder.

ECPAT Deutschland e.V. offers support measures through its multi-profession regional networking workshops for professionals from the child welfare services, specialised counselling centres, BAMF, the police and staff from other childcare organisations on the topic of trafficking in and exploitation of children (two days) and specialist training seminars on the topic of trafficking in and exploitation of children (one day). There are also plans at the beginning of 2018 to provide the Länder with a promotional package, which includes informational flyers and fact sheets, to aid implementation of the

<sup>3</sup> <https://www.kok-gegen-menschenhandel.de/publikationen/news/handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel/>

<sup>4</sup> [https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/aktualisierung-handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel-1/?tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Baction%5D=detail&cHash=4ef1fc6fb2cb1b7c24b0f978bb11f339](https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/aktualisierung-handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel-1/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=4ef1fc6fb2cb1b7c24b0f978bb11f339)



cooperation strategy. Opportunities for online learning, such as webinars and an animation video on trafficking in children, will also be provided.

From 13 to 14 March 2018, a Federal-Länder-NGO conference will be held to which cooperation partners named by the Länder will be invited. In 2018, four regional conferences will be held in four Länder to discuss planning for the implementation of the cooperation strategy in those Länder. In 2019, a Federal-Länder conference will be held to enable exchange of initial views and experience.

With regard to further measures in this field, reference is made to the status report (see b. Integrated approach and coordination).

*8. What practical measures are taken to reduce children's vulnerability to trafficking and create a protective environment<sup>1</sup> for them, including through:*

*a. ensuring registration of all children at birth, in particular from socially vulnerable groups;*

Section 18 of the German Act on Personal Status (Personenstandsgesetz) requires that the birth of a child in Germany be reported to the responsible registrar's office. Both the legal parents and all other persons to whom the birth is announced have a legal obligation to report the birth. A birth certificate is issued once the birth has been registered. The birth certificate is required when claiming social assistance or, among other things, when registering a child with a health insurance fund.

*b. raising awareness of THB through education;*

As part of the ReACT project (see Question 6), the child-friendly informational brochure and accompanying video "Ich brauche Hilfe!" (I need help!) were developed and published in 13 languages. They contain important information on issues such as access to education, medical care and accommodation. They also provide contact details for counselling centres and helplines for children and adolescents concerning topics such as guardianship, the asylum process, unaccompanied under-age refugees, human trafficking, psychosocial support in court proceedings and age definition/verification.

On 1 October 2016, the BMFSFJ began funding the three-year project for a medical child protection hotline for doctors and healthcare professionals (*Medizinische Kinderschutz-Hotline für ärztliches und heilberufliches Fachpersonal*) at the University Clinic Ulm. The project targets medical professionals. In suspected cases of maltreatment and abuse of children and adolescents involving trafficking in children, the project is designed to ensure that the respective professional groups receive fast, competent guidance regarding the legal and prevailing provisions for further action.

*c. training professionals working with children.*

Reference is made to the answers to Questions 2 and 6.

With regard to Questions 7 and 8, reference is also made to the Länder-specific measures listed in the Länder Annex.

*9. Please explain what methods are used to verify the age of a presumed victim of trafficking where the age is uncertain and there are reasons to believe that the person is a child. Would such a person be presumed to be a child until the age verification is completed?*

In cases involving the arrival of unaccompanied under-age foreigners, when taking them into (temporary) care the child welfare services are required to verify the age of the individual concerned by means of identification papers or similar documents which clearly state the person's age or to use their "experienced eye" to observe, assess and determine the person's age. As stated in Section 42 f 1 first sentence of Book VIII of the German Social Code (SGB VIII), age is determined only in the process of providing temporary care. This means that the provision of temporary care must also take place if the child welfare services have reason to doubt that the individual is a child. As long as the child welfare services have not been able to determine by the usual means that the individual is an adult, temporary care is continued. If, once the age assessment process has been

completed, doubts remain as to whether the individual is an adult, it must be assumed that they are a child (MüKoBGB/Tillmanns SGB VIII § 42f Rn. 4-6, beck-online). And if, after a medical examination – and when all other means of age determination have been exhausted by the youth welfare services – it cannot be ruled out with an adequate degree of certainty that the young person is still a child, they must in the interest of providing effective child protection be taken into (temporary) care or be kept in care until such time as they are determined to be an adult (see VwZ 2017, 1167, beck-online).

The judiciary authorities in the Länder reported that, in cases of doubt during criminal proceedings, the following methods are used to determine the age of suspected victims of human trafficking:

- Inspection of available documents
- Questioning the victim
- Matching of data with the authorities in the country of origin

In cases where doubt remains as to the person's age, the public prosecutor will request an official age appraisal from a forensic/anthropology expert. The appraisal usually involves a review of the individual's medical history and a physical examination, including a dental examination with a panoramic radiogram of their upper and lower jaw, an x-ray of their left hand, a CT scan of their breast bone and collar bone, and a concluding appraisal by the coordinating expert. The examination is based on the recommendations of the Study Group on Forensic Age Diagnostics of the German Association of Forensic Medicine for diagnosing age in living persons. In many cases, however, these appraisals allow no clear conclusion to be drawn because human development is subject to considerable physiological fluctuations. If the exact age of the victim at the time of the offence cannot be determined, the criminal proceedings must apply the principle of "in dubio pro reo" and the most favourable offence-related age for the accused must be assumed, meaning that in case of doubt, the victim must be assumed to be under 18.

*10. What steps are taken in your country to ensure that the rights of the child and his/her best interests are duly taken into consideration, in particular when it comes to:*

A child or an adolescent of foreign origin must be taken into temporary care by the child welfare services (Jugendamt) immediately their unaccompanied entry into Germany has been determined (Section 42 (1) SGB VIII). Temporary care serves assessment of the situation of an unaccompanied child of foreign origin, appraisal of his/her (health) condition and, where necessary, determination of his/her age, and investigating the potential whereabouts of family members in Germany or elsewhere. An assessment is also made as to whether the child's welfare might be at risk if a distribution process involves the unaccompanied minor being transferred into the care of the child welfare services in another location.

From the time a child or an adolescent is taken into (temporary) care, the child welfare services are both entitled and legally required to take all action allowed by law to safeguard the welfare of the child or adolescent; the child or adolescent must be involved and the presumed will of the legal guardian must be adequately considered (Section 42a (3) 3 SGB VIII and Section 42 (2) fourth sentence SGB VIII). As part of this preliminary 'emergency right of representation', both the legal representation and consideration of the interests of the unaccompanied minor of foreign origin are secured. This is not assigned to a specific person, but to the child welfare services authority. The assignment arises not through authorisation of a representative, but by law. This ensures that the victim can be represented as needed by means of an uncomplicated process and from the moment they are taken into (preliminary) care.

*a. identification of child victims of trafficking;*

The multiprofessional regional networking workshops for professionals from the child welfare services, specialised counselling centres, BAMF, the police and other child protection agencies on the topic of trafficking in and exploitation of children target precisely this issue. Input from and exchange with various stakeholders helps to improve identification of victims because the participants develop an understanding for the various responsibilities and work processes, and can thus address their enquiries

and concerns to the respective offices and contact points. Using case studies and indicator lists, participants also learn when to react to which signals and the extent to which action can and should be taken.

The webinars offered by ECPAT Deutschland e.V. are also aimed at enabling participants to identify potential child victims of human trafficking. The free webinars combine detailed information on the topic of human trafficking with direct dialogue and exchange. Participants meet online for the one-hour webinar. While watching the expert presentation, they can post questions in the live chat and contribute to the debate. After the webinar, participants receive a comprehensive information package which includes a link to an animated video clip.

Reference is made to the contents of the status report (under j. Identifying victims of human trafficking) and the two Länder Annexes.

*b. appointing a legal guardian, organisation or authority which shall act in the best interest of unaccompanied minors identified as victims of trafficking;*

A legal guardian is appointed for a minor if he or she is not cared for by a parent or if the parent is not entitled to represent the child in matters concerning their personal welfare or assets. The legal guardian has the right and the obligation to care for the welfare and assets of the person in their charge, and to represent their interests. In accordance with the personal and assets-related obligations assigned to them, the legal guardian must prevent risk and loss to both. In efforts to do so, they can make use of the child-raising and decision-making assistance offered under Sections 27 ff SGB VIII and Sections 1800, 1631 (3) of the German Civil Code (BGB).

As someone involved in a family court proceeding to determine a legal guardian, child victims of human trafficking are given access to all statutory child welfare-related procedural provisions as prescribed in the Act on Court Procedure in Family Matters and Non-litigious Matters (FamFG), such as hearing the child and the appointment of a procedural assistant to represent the child's interests.

*c. locating the child's family;*

*Section 42a (2) first sentence SGB VIII requires the child welfare services to work with the child or adolescent to arrive at an assessment of the situation cited in Items 1 to 4 of Section 42a (1) second sentence SGB VIII. This includes assessing whether a relative of the child or adolescent is resident in Germany or in another country (Section 42a (2) first sentence Item 2 SGB VIII).*

To the extent possible, the biological parents are to be identified in family court proceedings, involved in the proceedings and also heard (see Section 7 (2) Sections 26, 160 FamFG). Irrespective of this requirement, a check must be made to ascertain if other family members may be considered as legal guardians (see Section 1779 (2) second sentence of the German Civil Code (BGB)), especially as voluntary guardianship takes priority over court appointed guardianship (see Section 1791b (1) first sentence BGB).

Details of the legal representatives of child victims can be obtained from the registers and databases maintained in Germany. If they are not listed, a request is sent to the authorities in the country of origin in order to identify the legal representative. These investigations are made difficult because in some cases the victim's personal details or their country of origin cannot be clearly determined.

*d. ensuring that the identity or details allowing the identification of a child victim of trafficking are not made publicly known through the media or by any other means;*

Proceedings and hearings involving a family court proceeding are not open to the public (see Section 170 of the Courts Constitution Act (GVG)). The victim's anonymity is guaranteed by numerous data protection provisions and by Section 26 GVG (juvenile protection). Enforcement shortcomings are not known.

In accordance with No. 23 (1) third sentence of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV), the public prosecution office in its cooperation

with the press and broadcasting companies must assess on a case-by-case basis whether public interest in full reporting weighs greater than the individual rights of the accused and especially of the victim. Unnecessary exposure of these individuals must be avoided. The general public's interest in information can usually be met without naming names.

*e. access to appropriate and secure accommodation, education and health care;*

The entitlement and obligation of the child welfare services (Jugendämter) to provide (preliminary) care takes in the obligation to secure needs-based accommodation, care, support and assistance for the children and adolescents involved.

For the time a child or an adolescent spends in preliminary care or permanent care, the child welfare services must in accordance with Section 42 (2) SGB VIII ensure the welfare of the child or adolescent and secure the necessary maintenance and medical help.

Reference is made to the Länder-specific answers in the Länder Annex.

*f. issuing residence permits for child victims of trafficking;*

See the answer to Question 34.g.

*g. providing counselling and information in a language that the child can understand, legal assistance and free legal aid prior, during and after legal proceedings, including to claim compensation;*

See also the contents of the status report under n. Compensation and legal protection.

The Criminal Procedure Code ensures that children who are victims of trafficking in children receive free legal aid during criminal proceedings (Section 397a (1) no. 5 StPO), that they be able to obtain such aid prior to making an official claim (Section 406h StPO) and that the children be given advice in all legal matters. In addition, the provisions of the StPO require that children be informed in a language they understand of their options and rights during the criminal proceedings and beyond (Sections 406i, j StPO) and be given other information, such as available support and assistance (Section 406k StPO).

Children and adolescents who are victims of child trafficking or who are at risk thereof have access to the assistance and support services of the child and youth welfare services under Book VIII of the German Social Code (SGB VIII). These include the personal entitlement of children and adolescents to receive counselling from the child welfare services as provided for under Section 8 (3) SGB VIII and the socio-educational support contained in Sections 27 ff SGB VIII, which also include an entitlement to full-time care.

During (preliminary) care, the child welfare services – also in respect of Section 42a (3) SGB VIII and Section 42 (2) fourth sentence SGB VIII – must take the necessary measures. On the question of legal assistance, the Federal Supreme Court recently issued a statement (Decision of 13.9.2017, Az. XII ZB 497/16, juris): the appointment of a lawyer as co-guardian for an unaccompanied child refugee to represent the child's interests in matters of migration law, including asylum, is also prohibited if the guardian lacks (appropriate) legal expertise. The decision is based on the Federal Supreme Court's view that in addition to the child welfare services in their capacity as the official guardian there is no need to appoint a lawyer with the special responsibilities of representation in migration and asylum procedures. Rather, these responsibilities must be assumed by the child welfare services if they are appointed as legal guardian. The child welfare services may, however, appoint a lawyer to represent the child.

*h. carrying out best interests determination, including risk assessment, prior to any decision on the return of child victims to their country of origin, and ensuring the child's safe return in accordance with the best interests of the child;*

In Germany, a legal guardian is appointed for each unaccompanied minor of foreign origin to ensure that the rights of the child or adolescent are observed, especially with regard to decisions concerning residence.

If an unaccompanied minor decides to return to their country of origin, funding can be provided via the REAG and GARP programmes. The appointed guardian must give their written consent for the child's voluntary return in advance.

Where appropriate, when repatriating, unaccompanied minors can be accompanied by staff from the IOM and receive reception assistance at the arrival location or airport. This assistance includes collection from the gate, entry controls, etc. up to the point of handover to the person authorised to collect the child or adolescent.

The special protection needs of unaccompanied minors in Germany are taken into account through the measures described.

#### *i. special protection measures for children.*

Germany has ratified the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography. It entered into force in the Federal Republic of Germany on 15 July 2009.

The UNCRC entered into force for Germany in 1992 and applies as would a federal law. In accordance with Article 3 of the UNCRC, the best interests of a child shall be a primary consideration in all state activities. In 2015, a monitoring unit – known as the CRC Monitoring Mechanism – was created at the German Institute for Human Rights to oversee implementation of the UNCRC. The key task of the monitoring unit is to evaluate policy measures and legislation based on child-oriented standards. The Federal Republic of Germany fulfils its obligations arising from Article 42 of the UNCRC and the requirement to make the rights of children widely known by appropriate and active means. Among other things, the Federal Government provides information about the wording of the UN Convention on the Rights of the Child and publishes a child-oriented version of the Convention to inform children of their rights.

When involved in a family court proceeding, child victims of human trafficking are afforded all child welfare-related procedural provisions contained in the FamFG, such as hearing the child and appointing a procedural assistant to represent the child's interests where necessary.

Children who give evidence as a witness in criminal proceedings are afforded special protection by the provisions of, among others, Sections 58a, 241a, 247, 247a, 255a StPO and Sections 26, 74b, 171b, 172 of the Courts Constitution Act (GVG). Special hearing arrangements are made, such as video and sound recordings and transmissions, exclusion of the accused, exclusion of the public and assignment of responsibility to the juvenile protection courts in the case of child victims. Child victims also receive special assistance at an early stage of the investigation. The necessary measures are usually implemented by the child welfare services and the police. No. 19 and No. 135 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV) set out the respective requirements regarding the need for care when dealing with child witnesses.

With regard to the special protection measures for children, reference is made to the measures taken by the various Länder – see the Länder Annex.

Victim assistance takes in a wide range of different measures to improve both their legal and actual situation. These include special training for police officers and the appointment of victim protection representatives in police stations, the establishment of victim support units, accommodation for abused women and girls, the provision of informational material for victims of crime and also financial support. There are also a large number of non-state victim support organisations which provide support and advice for victims of crime, either on a professional or voluntary basis. These include the WEISSER RING e.V. and the Arbeitskreis der Opferhilfen in Deutschland e. V., both of which operate Germany wide. In addition to a country-wide system of contact points for victims of crime, the WEISSER Ring e.V. also offers advice vouchers for free initial advisory sessions for crime victims and a victims' helpline which is manned 24 hours a day. A country-wide overview of the assistance and

support offerings is provided by the ODABS online database for crime victims, which was created as part of the Atlas of Victims' Assistance project conducted by the Centre for Criminology (<http://www.odabs.org>). In addition to super-regional victims' support initiatives, many support organisations and authorities also operate at regional and local level. Apart from the police and the public prosecution offices, contact points include the unions, the public health authorities, the Land Office for Occupational Safety, the International Placement Services of the Federal Employment Agency, the local employment agencies and job centres, and the migration authorities.

*11. What practical measures are taken in your country to identify victims of trafficking among unaccompanied foreign minors, including asylum seekers? What measures are taken to prevent their disappearance? Have there been cases of non-voluntary return of child victims of trafficking?*

Special measures concerning children: All children who are potential victims of human trafficking have access to a wide range of stakeholders – be it the police, the child and youth welfare services and NGOs – who are specially trained on the subject of human trafficking.

In the case of *asylum-seeking* unaccompanied child victims of human trafficking, the answers given to Questions 4 and 13 apply. In such cases, the hearing must be conducted by a specially trained, special representative for unaccompanied minors. A special representative for victims of human trafficking must be involved in the decision-making process.

As soon as the hearing gives any indication that the asylum seeker is a potential victim of human trafficking or became so during migration or flight, the appropriate police investigations must be initiated.

See the Länder-specific answers in the Länder Annex.

*12. What programmes and services exist in your country for the (re)integration of child victims of trafficking? What solutions are provided if the reintegration of the child into his/her family is not in the child's best interests?*

Unless a child is handed over to a legal guardian or a person with parental authority, temporary care is followed by the child being transferred to the permanent care of the responsible child welfare service (Jugendamt) to which the child is allocated. The child welfare service can then under Section 42 (2) fourth sentence SGB VIII take all legal action necessary to ensure the child's safety and welfare. The child welfare service is however required under Section 42 (3) fourth sentence SGB VIII to appoint a legal guardian or a carer without delay. If the child cannot be raised and cared for in accordance with its best interests, the period in which it has been taken into care is followed by a subsequent entitlement to necessary and suitable case-specific child-care assistance (Section 27 ff SGB VIII), full-time care (Section 33 SGB VIII), care in the home or other forms of supervised living arrangements (Section 34 SGB VIII), or intensive, one-on-one socio-educational support (Section 35 SGB VIII) as dictated by individual needs.

Under German law, separating a child from its parents against their will is subject to strict requirements, taking account of parents' protected rights under Article 6 (22) of the German Basic Law (GG). Under Section 1666 of the German Civil Code (BGB), such separation can only be decided by a court of law and is only then permissible if the child's physical, mental or emotional welfare is at risk. Such risk must also be not capable of being mitigated by other means, including state assistance (Section 1666a (1) BGB). The law thus stresses that given the severity of its impact, separating a child from its parents should be the very last resort. It is only permissible if less invasive means, such as the child or youth welfare service, do not suffice in mitigating risk.

## **C. Questions related to specific articles**

### **Definitions (Article 4)**

*13. Have any difficulties been experienced in your country in identifying and prosecuting cases on the ground of trafficking for the purpose of forced labour or services, slavery and practices similar to slavery or servitude? If so, please provide details.*

As stated on page 13 of the status report, the work performed by the Financial Monitoring Unit to Combat Illicit Employment (FKS) assists the identification of victims of human trafficking, especially with regard to labour exploitation. The FKS activities play an extremely important role given the phenomenon involved.

Also, the criminal offences listed in Sections 232, 233 ff of the German Criminal Code (StGB), which are extremely difficult to prove in practice and largely call for the willingness of potential victims to cooperate and testify, often make it necessary to resort to other offences. Physical and psychological influences on the part of the perpetrator and/or financial incentives often stand in the way of victims' willingness (source: BKA Bundeslagebild Menschenhandel 2015).

The lack of willingness to testify can also be explained by the fact that victims often fail to see themselves as victims and refuse to testify as a result. But without their testimonies investigations cannot lead to success. In many cases, it is their different cultural mindsets – 'saving face' among Chinese victims and fear of the 'juju' curse among those from Nigeria – that stop victims from testifying.

The Länder report that it is often difficult to encourage victims to testify. They fear repercussions if they testify against the perpetrator, especially given that it can be assumed that hierarchical structures reach back to the country of origin and attempts to provide protection beyond German borders have their limitations. Victims' fear of losing their means of livelihood as a result of the investigation can also play a role. Also, the absence of witnesses (for example due to a return to their country of origin), poses a problem as does the fact that criminal charges are linked to residence applications. That victims give information to the press concerning the filing of a report prior to the necessary undercover investigations being conducted is also problematic.

With regard to the application of the newly-worded provisions on human trafficking contained in the StGB, 15 Länder reported that they experienced no difficulties in doing so.

See the Länder Annex for further details of experience gained in practice at Länder level.

*14. How does your country's law define "abuse of a position of vulnerability" and what are the criteria for evaluating the vulnerability of a person subjected to THB? Please provide any relevant examples where the means used in THB offences involved an abuse of a position of vulnerability.*

The means of committing human trafficking comprising "the abuse of power or of a position of vulnerability" as contained in the Convention is implemented by Section 232 (1) StGB through the use of the wording "exploit[ing] another person's predicament or helplessness arising from being in a foreign country".

According to the Federal Supreme Court, the means of "exploiting a person's helplessness" is deemed to exist if due to the specific difficulties arising from being in a foreign country the victim is unable or not fully able to resist demands to engage in the respective exploitative (e.g. sexual) activity. Key decision-making criteria include poor or non-existent knowledge of the German language, lack of access to cash funds, the extent to which the victim is monitored by the perpetrator, the extent of their dependency on the perpetrator and the opportunity to leave the Federal Republic of Germany, which can be limited if the perpetrator has confiscated the victim's identity documents (see BGH NStZ-RR 2007, 46-48). It is thus not a matter of foreignness in the sense of citizenship, but one of whether their foreignness in relation to the overall situation, such as the foreign language and lifestyles, unawareness of (legal) protection options or social isolation, makes it significantly difficult for the victim to fend for themselves. This can, for example, also occur in the repatriation (to their country of citizenship) of a foreign person who has grown up in Germany, and also when a German victim who has grown up in another country returns to Germany (see Schönke/Schröder-Eisele, a. a. O., § 232 Rn. 11; LK-Kudlich, a. a. O., § 232 Rn. 11).

This is why the situation of "helplessness arising from being in a foreign country" can also apply to a citizen of an EU member state. Thus, for the reasons cited above, EU citizenship does not negate the possibility of a person being unable to resist demands to engage in exploitative activity. Language barriers, a lack of cash funds, a victim's dependence on the perpetrator and the extent to which they are monitored by the perpetrator are circumstances which are linked to the prevailing situation, to the victim's ability to act and to the victim's personal abilities regardless of whether they are citizens of a

specific country or of the EU. EU citizenship arising from national citizenship only gives EU citizens additional rights, especially in other member states of which they are not a citizen. EU citizenship is thus not an expression of general personal ability which enables the victim to resist the demands of a perpetrator to engage in exploitative activity within the EU (Bundestagsdrucksache 18/9095, page 25).

The Länder reported the following examples:

- Confiscation of the victim's passport or other identification documents by the perpetrator
- Exploitation of dependency due to poor language proficiency or other shortcomings on the part of the victim
- Exploitation of the victim's knowledge that they have entered Federal territory illegally
- Exploitation of the victim's knowledge that through the organisation of their journey to and presence in Germany, they have received "advance services" and must pay/work off their "debts"
- Frequent change of location
- Exploitation of the victim's mistrust towards the police and the investigation authorities or of state institutions in general
- Cutting off or impeding the victim's communication with the outside world

See the Länder Annex for further input from the Länder.

*15. To what extent does your country's law recognise the relevance of forced marriage and illegal adoption to THB offences? Please provide any examples from case law where forced marriage and illegal adoption were considered in the context of THB.*

Both forced marriage (Section 237 StGB) and illegal adoption are cited as punishable offences in the German Criminal Code (StGB). Illegal adoption is governed by Section 236 StGB and is defined as trafficking in children. It refers in particular to the illegal procurement of an adoption of a person under 18 years of age and to engaging in procurement with the aim of a minor being taken indefinitely into the home of a third person (further details below).

With the Act to combat forced marriage and to better protect the victims of forced marriages and to amend further provisions governing residence and asylum law, the offence was added to Section 237 of the German Criminal Code (StGB) in 2011. In accordance with Section 237 (1) first sentence StGB, anyone who forces a person to enter into marriage illegally through the use of violence or the threat of serious injury can be sentenced to prison for a period ranging from six months to five years. Violence constitutes in particular physical and sexual assault and restriction of freedom by means of confinement. In accordance with Section 237 (2) StGB, behaviour is also prosecuted in which a person forces another person to commit an offence defined in Section 237 (1) StGB by means of violence or threat of serious injury or uses deception to take them to or organise their travel to or prevent them from returning from an area outside the territorial jurisdiction of the Act. Such efforts are a punishable offence under Section 237 (3) StGB.

Under Section 236 (1) first sentence StGB, a prison sentence of up to five years or a fine can be handed down to anyone who in gross neglect of his duties of care and education leaves their child, ward or foster child under eighteen years of age with another for an indefinite period for material gain or with the intent of enriching themselves or a third person.

In accordance with Section 236 (2) second sentence StGB, the illegal procurement of an adoption of a person under 18 years of age (no. 1) and engaging in procurement aimed at third-party adoption of a minor (no. 2) is a punishable offence. In both cases contained in Section 236 (1) first sentence StGB, it is necessary for the offence to be committed for material gain or the intent of enrichment. The offence is punishable with a prison sentence of up to three years or a fine. Also, anyone procuring the adoption of a minor who offers another person payment in return for the granting of the necessary approval for the adoption is also subject to prosecution (Section 236 (2) second sentence StGB). If the perpetrator in cases involving sentence 1 arranges for the procured individual to be brought into Germany or taken out of Germany to another country, the action is punishable with a prison sentence of up to five years or a fine (Section 236 (2) third sentence StGB). The attempt itself is a criminal offence (Section 236 (3) StGB). Section 236 (4) StGB contains aggravating



circumstances with the threat of a prison sentence of between six months and ten years if the perpetrator acts out of greed, for commercial reasons or as a member of a gang formed to engage in child trafficking (no. 1) or if their actions place the child or the procured individual at considerable risk of physical or emotional harm (no. 2)

A survey of public prosecution offices and courts in the various Länder has shown that there are no known cases of forced marriage or illegal adoption connected with human trafficking. Criminal justice statistics do not include statistics on this topic.

*16. Can forced begging be considered as a purpose of THB according to your country's law? Have there been any cases of child trafficking for forced begging with the involvement of the child's family or legal guardian?*

Following the reform of German criminal law in October 2016, forced begging is defined as human trafficking for the purpose of exploitation by means of begging under Section 232 StGB, as forced labour under Section 232b StGB, as labour exploitation under Section 232 StGB and as exploitation by means of unlawful imprisonment under Section 233a StGB.

The public prosecution office in Berlin conducted two investigations involving child trafficking for the purpose of forced begging with the involvement of the child's family or legal guardian – see the Länder Annex for further details.

No other cases of human trafficking for the purpose of forced begging are known. The responsible offices are, however, committed to shedding light on unreported cases in this field. For example, during the most recent EU Anti-Trafficking Day in October 2017, Germany conducted its first-ever controls in the begging scene with the specific aim of detecting human trafficking.

*17. Can the exploitation of criminal activities be considered as a purpose of THB according to your country's law? Please provide any examples from case law.*

Exploitation of criminal activities is a punishable offence under Section 232 (1) first sentence, no. 1 d (human trafficking) of the German Criminal Code (StGB).

For example, the public prosecution office in Rostock is investigating a case in connection with the operation of a cannabis plantation. Cases of tax evasion by means of cigarette smuggling are also being investigated.

### **Prevention of THB (Article 5)**

*18. Is the impact of awareness-raising campaigns and other measures to prevent THB evaluated and how are the results taken into account? Please provide copies of any impact evaluation reports.*

The national Violence Against Women Support Hotline (Hilfetelefon Gewalt gegen Frauen) plays a significant role in keeping the subject of violence against women in the public eye, informing and educating people about the subject, and provides assistance to women and young girls who are affected by violence. The helpline also provides advice to women and girls who are victims of human trafficking and, with their consent, refers them to an appropriate counselling centre. As the availability of the helpline in 16 different languages has enjoyed increasing take-up – especially among women with a migration background – the service was expanded to include Albanian and Kurdish at the start of 2017, increasing the total number of languages available to 18. The barrier-free hotline is available free of charge 24 hours a day, seven days a week.

The Federal Office of Family Affairs and Civil Society Functions (BAFzA) publishes an annual status report on use of the hotline and the types of assistance provided. The status report serves in aligning the hotline offerings to prevailing needs. In 2016, 944 calls to the hotline involved cases concerning refugees. The multi-lingual service enables many callers to receive advice in their native language and plays a significant role in referring women refugees to appropriate addresses within the existing support system (such as counselling centres for women who are victims of violence (43.3 percent) and women's refuges and shelters (31.8 percent)).

The BMFSFJ is currently conducting a legally-prescribed review of the prevailing helpline legislation (Hilfetelefongesetz). The BMFSFJ is required to conduct its first review five years after the hotline's launch. The review is to commence at the start of 2018 and will take about 18 months. The BMFSFJ is expected to present its evaluation report in 2020.

A review of the Act Protecting Persons Working in Prostitution after a period of five years from the time it enters into force is prescribed by law and will thus begin in 2022.

Various flyers, some of them produced by the BKA, on combating human trafficking (e.g. on dealing with trauma, labour exploitation and human trafficking in Nigeria) are used in training and are repeatedly in demand by professionals. The information contained in the flyers is also used for specific measures, such as in the contents of official instructions and staff regulations. These measures are not reviewed, however.

Through its public relations work, informational material and training offerings, the KOK also plays an important role in raising awareness to the topic of human trafficking. No specific review of individual measures takes place. In connection with its promotion by the BMFSFJ, the KOK reports to the BMFSFJ regarding implementation of its measures. The contents of those reports are used in the development of additional measures when devising the KOK work plan.

*19. How does your country promote and fund research on THB and use its results in the development of anti-trafficking policy? Please provide examples of recent research.*

In Germany, promotion and funding of research on human trafficking by the Federal Government and the Länder can take various forms: for example, in the promotion and co-funding of projects conducted by various organisations, funding of publications and research projects commissioned by public institutions.

The following recent German-language publications are cited by way of example:<sup>5</sup>

- Witz, Susanne: Importware Frau : Eine kriminologisch-strafrechtliche Untersuchung von Zwangsprostitution in Deutschland mit dem Fokus auf Osteuropäerinnen / Susanne Witz. – Frankfurt am Main [u.a.]: Lang, 2017. - 323 S. (Würzburger Schriften zur Kriminalwissenschaft; 37). – ISBN 978-3-631-71798-1, Zugl.: Würzburg, Univ., Diss., 2016
- Menschenhandel in Deutschland : eine Bestandsaufnahme aus Sicht der Praxis / hrsg. vom KOK, Bundesweiter Koordinierungskreis gegen Menschenhandel e.V. Mit Beiträgen von Monika Cissek-Evans - Berlin: KOK, 2015. - 256 S
- Scheer, Guntram; Dufner, Nathalie: Deutsche Opfer des Menschenhandels zur sexuellen Ausbeutung : Eine viktimologische Betrachtung. In: Kriminalistik; 69 (2015) 1, S. 17 - 25
- Hoffmann, Ulrike: Die Identifizierung von Opfern von Menschenhandel im Asylverfahren und im Fall der erzwungenen Rückkehr: Fokus-Studie der deutschen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). - Nürnberg : Bundesamt für Migration und Flüchtlinge, 2013. - 45 S. graph. Darst. (Working papers / BAMF ; 56).
- Deutsches Institut für Menschenrechte: Expertise: Konzeptentwurf für eine nationale Berichterstattterstelle Menschenhandel und eine Koordinierungsstelle Menschenhandel; im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend, 2016.

The federal-level consultation process described in the status report under b. *Integrated approach* and which is based on the above-mentioned DIMR expertise on further development of the reporting and coordination structures in connection with human trafficking also provides for the establishment of an independent, national anti-trafficking rapporteur. The nationwide collation and, where appropriate, collection and analysis of data as well as the use of research on whose basis human trafficking activities can be analysed and appropriate anti-trafficking strategies developed are seen as the core responsibilities of the rapporteur.

<sup>5</sup> See Kriminologische Literaturdokumentation [KrimLit] (criminal literature database provided by KrimZ, the Centre for Criminology in Wiesbaden): <http://allegro.wwan.de/cgi-bin/krimz/maske.pl?db=krimz&lang=de> – search term: Menschenhandel

**20. How do your country's migration legislation and policies seek to prevent THB by enabling lawful migration?**

The German Residence Act provides a wide range of ways to enable lawful migration (see only Part 3: Residence for Educational Purposes, Part 4: Residence for the Purpose of Economic Activity and Part 6: Residence for Family Reasons).

**21. Please describe the measures taken in your country to prevent THB for the purpose of the removal of organs, and in particular:**

**a. the legislation and regulations on organ transplantation and removal of organs, including requirements for the living donation procedure (information/consent, evaluation/selection, follow-up and registry) and criteria for authorising centres for living donation;**

Donation and removal of human organs or tissue for the purpose of transplantation or for the transplantation of organs or tissue, including preparation for these measures, are governed by the German Transplantation Act (TPG). The Act covers both post-mortem organ donation and living donation of organs.

**Procedural requirements for living donations**

Information/Consent:

Under Section 8 (1) TPG the living donation of organs requires that the donor be of age and able to give their consent, has been informed about the process in detail and has consented to the removal. The information is given by a doctor in a language the donor is able to understand and, as prescribed by Section 8 (2) TPG, includes:

1. The purpose and type of surgical intervention
2. The examinations involved and the right to be informed of the results of the examinations
3. The measures taken to protect the donor and the scope and potential indirect and delayed impact of the intended organ removal on their health
4. The doctor's obligation to medical confidentiality
5. The expected outlook regarding the success of the organ or tissue transplant, the effects regarding the recipient and any other circumstances which the donor deems important in connection with the donation
6. The collection and use of personal data.

The donor must also be informed of the fact that their consent is required to enable the organ or tissue to be removed. The information must be provided in the presence of a second doctor who is not involved in the removal or transplantation of the organ or tissue and, where appropriate, other persons of expertise. The contents of the information provided and the donor's declaration of consent must be documented in writing and be signed by the person providing the information, the second doctor and the donor. The written document must contain a note regarding insurance cover concerning health-related risks. The donor may withdraw their consent either verbally or in writing.

Evaluation/Selection:

Under Section 8 (1) TPG, living donation of organs also requires that:

1. A doctor declare the donor to be medically fit and suitable as a donor, not at risk other than from the operation itself and that their health will not be seriously affected beyond the direct impact of the organ removal.
2. The transplantation of the organ or tissue to the intended recipient is deemed a medically suitable means of saving the life of the recipient or of curing a serious illness suffered by the recipient, or of preventing such illness from worsening or of easing the associated symptoms.
3. A suitable organ from a deceased donor is not available at the time of the intended living organ removal.
4. The removal is performed by a doctor.

The removal of a kidney, part of a liver or other non-regenerative organs is only permissible for the purpose of transplantation in first or second-degree relatives, spouses, registered partners, fiancées or other individuals who clearly have an especially close personal relationship with the donor.

Follow up treatment: In the case of a living donation, the removal of organs may only be performed after the donor and the recipient have declared their willingness to participate in follow-up medical supervision and treatment. Such follow-up treatment is usually provided in a transplantation centre, but may also be provided by a general practitioner. The transplantation centres are required to ensure, both prior to and after a transplant, the provision of the necessary psychological support for both donor and recipient in the clinic or hospital, and to ensure that quality assurance measures regarding the follow-up treatment include organ donors.

Living Donation Commission: Another requirement for the removal of organs from a living donor is that the responsible Living Donation Commission as assigned by prevailing Land legislation has issued an expert statement regarding whether there are well-founded, factual indications that the consent given for the organ removal was not given voluntarily or that the organ was removed in the course of illegal organ trafficking. The Commission must comprise a doctor who is neither involved in the removal nor the transplantation of organs nor supervised by a doctor who is involved in such procedures, an individual with judicial authority and an individual experienced in psychological issues.

Registration: The data of the living donor and the recipient, including data collected during in-patient and out-patient treatment, are stored in the national transplantation register.

Authorisation of transplantation centres: The removal and transplantation of an organ from a living donor may only be performed in transplantation centres as defined in Section 10 TPG. Under Section 10 (1) first sentence TPG, transplantation centres are hospitals or hospital clinics which in accordance with Section 108 of Book V SGB or other legal provisions are authorised to transplant organs from deceased donors and to remove and transplant organs from living donors.

*b. the institution(s) in charge of overseeing and monitoring the medical care and recovery of donors and recipients and managing or supervising any waiting lists for organ transplantations;*

Overseeing and monitoring of the medical care and recovery of donors and recipients is the general supervisory responsibility of hospitals as assigned by the responsible healthcare authorities the various Länder. Managing and supervising waiting lists is performed by the Eurotransplant allocation unit.

*c. the guidance and training provided to relevant professionals to prevent this form of THB, to report cases and to identify and assist victims.*

See the answer to Question 6.

## **Measures to discourage the demand (Article 6)**

22. *What preventive measures to discourage demand that fosters different forms of exploitation has your country adopted, in particular in the areas of:*

- a) *educational programmes;*
- b) *information campaigns and involvement of the media;*
- c) *legislation (including in the areas of public procurement, disclosure requirements and anti-corruption);*
- d) *Involvement of private industry.*

Germany has considered and also implemented a wide range of measures to discourage demand.

With the Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code (Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches Sozialgesetzbuch) contains a provision on the prosecution of 'clients' of sexual services provided by victims of human trafficking whereby the exploitation of the victim's forced predicament in performing sexual acts is a criminal offence. In cases where the prosecutable 'client' voluntarily reports a case of human trafficking or of forced prostitution to the responsible authorities or voluntarily arranges for a report to be made, their own prosecution can be lifted (Section 232a (6) StGB). By way of contrast, under the new Section 233 StGB (labour exploitation) in addition to forced labour under Section 232b StGB, exploitation of labour is itself a criminal offence.

From a sexual crime perspective, it is also the case that under Section 177 (2) no. 2 StGB, a prison sentence of between six months and five years can be handed down to any person who performs sexual acts on another person or allows them to be performed by them or forces that person to perform or tolerate sexual acts on or by a third party if the perpetrator exploits a situation in which the victim is at risk of serious harm if they refuse or resist. Under this provision, depending on the case involved, a client may also be prosecuted who performs sexual acts with a prostitute although they are aware that the prostitute only performs the sexual act because they will otherwise be beaten by their pimp and the perpetrator exploits the situation to engage in the sexual act.

Preventing and combating corruption in all its forms is a key responsibility of the state. The Federal Republic of Germany has already introduced a range of provisions to achieve this goal. Because in today's world, corruption does not stop at national borders, greater focus is being placed on cross-border aspects of anti-corruption efforts. The international perspective is thus of considerable relevance where both corruption and human trafficking are concerned. With the Anti-Corruption Act which entered into force on 26 November 2015, Germany implemented the few still outstanding requirements of specific international anti-corruption law. With the Act, the scope of applicability of German criminal law regarding corruption offences was expanded to include bribery involving government officials committed outside Germany. Also, passive and active bribery of foreign and international officials and other civil servants, judges and members of the armed forces were also made criminal offences (Section 335a StGB), and the offences of accepting and granting competitive advantages/benefits (Sections 331, 333 StGB) was expanded to include EU officials. These legislative measures have since enabled Germany to ratify the Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 (ETS No. 173) and the Additional Protocol on the Criminal Law Convention on Corruption of 15 May 2003 (ETS No. 191).

One aspect of protecting people against human trafficking for the purpose of labour exploitation is strengthening labour laws and working conditions. Documentation and transparency help to improve enforcement of regulations to bring about improvements in these areas. For example, under Section 17 of the Minimum Wage Act (MiLoG) an employer with employees in marginal employment (mini-job) as defined under Section 8 (1) of Book IV of the German Social Code (SGB IV) must record the commencement, end and duration of the daily working time of these workers at the latest by the end of the seventh calendar day following the day on which the work was performed and to retain these records for at least two years from the effective date applicable to the record. In accordance with the Minimum Wage Recording Ordinance, the employer is exempt from the requirement to record working time in the following three cases:

- The employee receives a fixed, regular monthly wage of more than €2,958 gross
- The employee receives a fixed, regular monthly wage of more than €2,000 gross and the employer has verifiably paid this monthly wage for the past twelve months
- The employee is a close family member (spouse, registered partner, child or parent) of the employer

Also, with the Act Implementing the CSR Directive of 11 April 2017, Germany transposed CSR Directive 2014/95/EU into national law. This states that in future, certain large and especially listed companies with more than 500 employees must comply with new reporting requirements concerning the disclosure of non-financial information. Companies must use their company or group management report or a separate non-financial report to disclose key information regarding employee, social and environmental matters, respect for human rights and anti-corruption policies.

In response to the amendment to the German Criminal Code (StGB) concerning human trafficking and labour exploitation, Section 10a of the Act to Combat Clandestine Employment (SchwarzArbG) was also amended. An employer can be prosecuted for employing a third-country national without a residence permit and thereby exploit the person's predicament resulting from them having been made a victim of forced prostitution or forced labour (Section 232 (1) – (5) or Section 232b StGB).

With reference to Section 232 a (1) – (5) and Section 232b StGB, not only is labour exploitation of third-country nationals who are victims of human trafficking for sexual exploitation or labour exploitation a criminal offence, but also the exploitation of their predicament if they were brought into the country to beg (Section 232b (1) no. 3). Employers can be liable to a prison sentence of up to three years or a fine.

The ProstSchG is designed to protect women and men against human trafficking and forced prostitution.

The aim of the Act is to strengthen the sexual self-determination rights of prostitutes, create the legal conditions to ensure favourable working conditions, prevent harmful forms of prostitution and combat crime in the prostitution business, such as human trafficking, violence, exploitation of prostitutes and pimping.

Core components of the Act include the requirement to obtain statutory permission (a license) to operate a prostitution business and the requirement to register with the authorities as a prostitute or sex worker.

The granting of a license to operate a prostitution business is linked to fulfilling certain minimum requirements regarding protecting the health and safety of prostitutes and third parties, and also to the personal reliability of the business owner.

A prerequisite for obtaining a license to operate a prostitution business is the provision of a business plan which clearly indicates that all legal requirements concerning the operation of a prostitution business have been complied with. No license is granted where a business plan is such that it is incompatible with the sexual self-determination of prostitutes or clearly assists the exploitation of prostitutes. The granting of a license to operate a prostitution business also depends, among other things, on the personal reliability of the business owner, which is assessed using specific criteria (such as previous convictions). Given the sensitivity surrounding the legal right to personal freedom, sexual self-determination, physical integrity and personal safety of prostitutes and their clients, stringent requirements are applied with regard to the business owner's reliability. The exclusion of unreliable individuals from responsible positions in the prostitution business is a key instrument in achieving the legislative goal of protecting prostitutes from exploitation and combating prostitution-related crimes such as human trafficking, violence against prostitutes and pimping. Operators of prostitution businesses may only allow prostitutes to work who possess valid, official certificate of registration.

Minors and young adults aged between 18 and 21 require special protection. The owner of a prostitution business may not employ anyone under the age of 18 nor anyone they recognise as having been forced or intended to be forced by a third party to enter into or continue in prostitution. In

addition, the law also places owners of prostitution businesses under obligation to provide a range of information and documentation.

Through the creation of such legal provisions and regulatory controls, indirect action against crime is taken, especially in that it creates transparency in the red light district, and makes it difficult for criminal human traffickers to continue their activities. With the comprehensive requirement to obtain a license, it is ensured that criminal networks or individual perpetrators are unable to circumvent the legal regulations by using business practices which do not require a license and are less-well regulated.

During the registration process, the responsible authority is required to take the necessary protective measures where they see visible and obvious signs of force and exploitation. Registration as a prostitute or sex worker is valid for two years (one year for persons under 21). Personal registration involves a detailed information and consultation appointment, which must also cover the prevailing rights and obligations, available health and social advice services, and how to get help in emergency situations. In addition, prior to commencing prostitution work, a health advice counselling session must be attended at the public health service and be repeated at yearly intervals (every six months for persons under 21).

See the Länder Annex for the measures reported by the Länder.

*23. Please describe the measures taken in your country to prevent trafficking for forced labour or services, inter alia, by means of labour inspection and labour administration, monitoring of recruitment and temporary work agencies, and monitoring of supply chains.*

In addition to the key measures taken to prevent human trafficking for the purpose of forced labour or forced services (as cited in the answer to Question 22), the general protective provisions concerning temporary work and private employment agencies also apply. In Germany, the right to temporary work is regulated by the German Act on the Temporary Supply of Employees (Arbeitnehmerüberlassungsgesetz AÜG)). In particular, a license must be obtained from the Federal Employment Office (BA) (Section 1 (1) first sentence AÜG). This obligation to obtain a license applies both to suppliers domiciled in Germany and to those in the European Economic Area who supply workers to Germany (Section 3 (4) AÜG). The supply of employees to Germany from third countries/non-EU countries is prohibited. A supplier license is to be denied if the supplier does not demonstrate the necessary personal reliability, particularly where said supplier fails to comply with the regulations concerning the employment of foreigners and the provisions of labour and social security law (Section 3 (1) no. AÜG). Convictions received under criminal law can also demonstrate unreliability. In the case of private employment agencies and to the extent that German law can be applied, general trade and commercial law (Gewerbeordnung) applies as do the special protection provisions under Section 292 and Section 296 ff SGB III (requirement for a written supply contract, maximum threshold for payments to private employment agencies to protect the individual seeking work).

Third-country nationals who are employed in Germany require a residence permit which also allows them to work (Section 4 (3) AufenthG). To obtain a residence permit for the purpose of employment, approval is required from the BA. The BA checks to see that the third-country national is not employed under less-favourable conditions than those of comparable German employees and whether higher-priority domestic employees are available (priority review, Section 39 AufenthG). BA approval is to be denied if the third-country national wants to work as a temporary employee (Section 40 (1) no. 2 AufenthG).

### **Border Measures (Article 7)**

*24. Please describe the specific measures taken in your country to strengthen the capacities of border guards to prevent and combat THB, in particular as regards:*

- a. *identification of possible victims of THB in the context of border control;*
- b. *identification of possible perpetrators of THB offences;*

- c. *gathering of first-line information from victims and perpetrators;*
- d. *identification of vulnerable persons in need of international protection among possible victims of trafficking.*

Risk prevention: Preventing and averting illegal migration is a core responsibility of the Federal Criminal Police. This responsibility exists, among others, within the internal border, in an aviation facility or a commercial airport which operates international flights and also within the maritime boundary.

Border control measures: The Federal Criminal Police are authorised to perform identity checks on German territory to prevent or stop illegal migration and to combat border-related crime. This applies in particular with regard to measures concerning ferry services which cross the internal border in harbours which are less than 50 kilometres from the external border.

The border control measures are also taken for reasons other than strict border control. They take place on the basis of constantly updated status reports or (border) police experience which the Federal Criminal Police units develop using their own status information and that of other authorities. Thus, general and also specific police information about or experience with trafficking offences, such as frequently used types of border-crossing transport and routes, specific behavioural traits and the analysis of available information concerning cross-border crime arising from own sources or those of other authorities, are the basis on which police controls are performed and also determine their intensity and frequency.

The same provisions enable the police to search people's belongings, such as luggage and vehicles. This applies, for example, when it is suspected that vehicles are being used for people-smuggling.

External border controls: The controls performed on the external borders serve in identifying persons who are not authorised to cross the border, of persons or items being sought by the police, and to prevent risk. The border controls are performed according to a standard procedure (Section 8 of the SBC). When entering and leaving a country, all persons are to be subjected to a minimum control (identity check, authentication of entry documents) and to a systematic check of whether they are wanted by the police.

When entering and leaving the country, third-country nationals are subjected to detailed controls which go beyond the minimum control and include a detailed check of the respective entry requirements (Article 6 (1) SBC) and, where appropriate, of the necessary residence and work permits.

Border police controls at the Schengen maritime external border are performed as a standardised process involving a three-phase risk filter: 1) Off-shore monitoring, 2) Coastal monitoring and 3) Controls and monitoring in harbours and in areas close to the border. In all three phases, controls involve the use of tactical measures such as monitoring, wanted lists, investigation, controls, (short-term) observation and documentation. This provides effective protection against cross-border crime/smuggling in the maritime domain.

To identify relevant persons who are linked with smuggling offences, the authorities responsible for controlling cross-border traffic are specially trained and sensitised in respect of border control-related behaviour analysis, checking of identification documents (document fraud and identity theft) and potential visa falsification.

Criminal prosecution: Repressive measures taken by the Federal Criminal Police mainly involve the offences of smuggling, sometimes with accompanying and follow-on crime (such as illegal employment, benefit fraud, drugs and property-related crime). The Federal Criminal Police concentrate their investigations on smuggling gangs who under organised, structured and in some cases inhumane conditions exploit the fate of these individuals for their own commercial gain. The Federal Criminal Police use all means available to the police and the judiciary at national, EU and international level.

If information regarding human trafficking is available, it is forwarded to the responsible Länder police forces. The Federal Criminal Police have no statutory responsibility to investigate human trafficking. In assuming their border control responsibilities, the Federal Criminal Police are sensitised to the



phenomenon of trafficking in human beings (e.g. focus on combating Nigerian human trafficking and the project “ETUTU”).

Identifying persons at risk, who require international protection, from among a group of potential victims of human trafficking: Through questioning at the time of entry or departure, suspicions can arise regarding victims of human trafficking and persons at risk. To further assess and determine a need for protection, the identified persons are handed over to the responsible authorities.

In particular, during questioning at the point of entry as to the purpose of travel and intended travel plans, information can be gained which, for example, contradicts the information given when applying for a visa and indicates a potential victim of human trafficking. Other indications could arise from the type and amount of luggage being carried. Separate questioning of accompanying persons who could influence identified victims of human trafficking plays a decisive role.

Particularly worthy of note is the requirement for border control authorities to consider the welfare of minors and take measures to protect them. Minors enjoy a special status under international protection provisions (the Hague Convention on the Protection of Children, the UN Convention on the Rights of the Child, EU Charter of Fundamental Rights). The border control authorities must give priority to the welfare of children in all the measures it takes. Children have a right to special protection and support which the border control authorities must provide.

*25. What measures have been taken to ensure that the personnel employed by commercial carriers, including airline attendants and staff working on other means of transportation by land and sea, are able to detect possible victims of THB and inform relevant bodies in due course?*

In efforts to prevent illegal migration, the BKA uses document and visa advisers in selected countries of origin and transit states (third countries) which are deemed hotspots of illegal migration to Germany. These advisers are police officers who are trained to advise on the authenticity of documents (e.g. passports and residence permits) as well as other types of documents and to advise on entry requirements for foreigners. They inform the staff of the German embassies and consulates regarding current security information concerning illegal migration and support them in checking visa applications. They also advise commercial airlines concerning the illegal carriage of passengers.

The measures taken in accordance with Regulation (EC) No. 725/2004 of 31 March 2004 on enhancing ship and port security, including the contents of the ISPS, have proven to be effective.

Regular meetings also take place between the border control and police authorities, port operators and shipping companies to enable exchange of information and assess the measures taken to combat illegal migration via sea ports.

### **Identification of the victims (Article 10)**

*26. What measures have been taken to promote co-operation between border control agencies as regards the establishment and maintenance of direct channels of communication? How have these channels been used for detecting transnational THB? Please provide examples of cases in which these channels were used and any difficulties encountered by border control agencies in this context.*

In addition to crimes involving the smuggling of illegal migrants, the GASIM also considers the cross-cutting aspects of accompanying and associated crime in that information held by the participating authorities is collated and assessed. The joint analyses are then made available to all cooperation partners who distribute and implement them in their respective organisations.

The establishment of GASIM enables the fast exchange and comprehensive analysis of information needed in combating illegal migration and boosts the ability to recognise new trends in illegal migration and develop strategies for effective operations to counteract them.

The existing mutual exchange of information between the authorities involved in dealing with illegal migration and people smuggling (Federal Criminal Police, BKA, BAMF, BND and the Financial Monitoring Unit to Combat Illicit Employment (FKS), and where needed the Bundesamt für Verfassungsschutz (BfV) and the Federal Foreign Office) is not replaced but rather supplemented and consolidated by this cooperation framework. This institutionalised cooperation platform serves as an

early warning mechanism by means of fast, events-related reporting, performs the groundwork needed for future planning and provides advice for policymakers.

The cooperation and exchange of information concerning investigative procedures of the BKA and the Länder police forces with other member states occurs regularly in the form of mutual police and judicial assistance.

In addition – and especially with regard to combating internationally organised crime involving people smuggling – EUROPOL is usually involved in the exchange of information so that it can take over coordinating responsibilities. This allows for effective use of EUROPOL'S human (liaison officers of all member states, evaluators, etc.) and material resources (evaluation technology, mobile offices for Common Action Days, etc.) in the respective criminal investigations.

Alongside the regular exchange of information during investigations, subsequent event-driven parallel proceedings are opened by the cooperating countries. During these parallel investigations, investigative procedures are conducted in both countries in which knowledge is exchanged and investigative measures are aligned. At the same time, where crime involving people smuggling is concerned, in the investigations conducted by the BKA in cooperation with the criminal prosecution authorities in the Czech Republic, a JIT has been formed between a Czech and a German public prosecution office and with support from EUROPOL and EUROJUST. And where offences involving human trafficking are concerned, police stations in the Länder have been involved in several JIT activities with police stations in various EU member states. The simplified and direct exchange of usable information between the police stations during investigations is seen as effective. Mutually aligned investigative measures and the destruction of an organised criminal structure during a Common Action Day in which the member states and EUROPOL or EUROJUST participate are the ideal outcomes of close and efficient cooperation.

The EU policy cycle to combat organised and serious international crime serves as a framework for international cooperation in criminal investigations. The cycle contains, among other things, annual Operational Action Plans to disrupt organised crime groups that facilitate illegal migration. These plans are developed with the involvement of all participating member states on the basis of the current situation and need for action, and are implemented as EMPACT projects.

Cooperation of this type provides an opportunity to address specific offence phenomena and/or conduct investigative procedures together with the affected member states, initiate targeted search measures, produce strategic status reports, conduct analyses regarding unreported cases, expand crime prevention plans across national borders, exchange best practice examples and develop and implement new crime control mechanisms.

*27. Is there a national referral mechanism (NRM) or an equivalent system for identification and referral to assistance of victims of trafficking, both nationals and foreigners, for any form of exploitation? If so, please specify the bodies involved in it and their responsibilities. If an NRM existed in your country at the time of the first evaluation, please indicate any changes that have been made to it in the meantime.*

In 2007, the Federal-Länder Working Group on Human Trafficking (the then Federal-Länder Working Group on Trafficking in Women) published a new strategy for cooperation between specialised counselling centres and the police to protect victim witnesses of human trafficking for the purposes of sexual exploitation. The recommendations contained in the cooperation strategy were taken up by many of the Länder and were further developed in line with prevailing trends.

The National Cooperation Strategy on Protecting and Supporting Child Victims of Trafficking and Exploitation is designed as a nation-wide set of recommendations for the development of a new cooperation mechanism or for use in expanding existing Länder-level cooperation mechanisms. The cooperation strategy contains guidance and recommendations for organisational and communicative structures which enable ongoing, person-independent cooperation and collaboration at local level. It provides an insight into definitions, legal and policy frameworks, looks at all forms of human trafficking for the purpose of exploitation, names potential cooperation partners and provides information on their responsibilities and work processes. The strategy also lists contact data and service points in the various

Länder, and illustrates how identification of child victims can be promoted, including through the use of a list of child trafficking indicators.

Reference is also made to the contents of the status report under b. Integrated approach and coordination, and j. Identification of victims of human trafficking, as well as the two Länder Annexes.

*28. Are there any formalised indicators for the identification of victims of THB for different forms of exploitation and how is their use by different professionals ensured in practice in your country?*

Specific characteristics and indicators for use in identifying victims of human trafficking are developed by the Länder and provided to the Länder police forces together with appropriate training (see also b. Integrated approach and coordination and the Länder Annex (Annex 1) to the status report).

To provide up-to-date information and assistance to aid the investigation and identification of human trafficking victims, the BKA operates an information portal on the subject of human trafficking (Closed User Group Menschenhandel) which is accessible for all case managers in the federal and Länder police forces. The platform's content comprises information concerning current trends, guidelines, news and investigative tools in the area of human trafficking. Any member of the police force whose work focuses on human trafficking can access the site.

Reference is also made to the status report under j. Identification of victims of human trafficking and, among others, the answer to Question 27.

Indicator lists have been developed and coordinated by the specialised counselling centres and the KOK which are based on the centres' experience in practice and apply for various forms of exploitation. They are not formalised indicators lists, but nonetheless provide a range of indicators which based on experience can indicate a case of human trafficking.

The lists are part of the KOK-developed training manual entitled Menschenhandel in Deutschland – Sensibilisieren, Informieren, Schulen (Human Trafficking in Germany – Sensitise, Inform, Train). The manual is primarily designed to help practitioners (e.g. from the specialised counselling centres and KOK) in conducting training for various professional groups. They also use indicator lists which are designed to help in the identification of victims of human trafficking. KOK stresses the fact that these are not formalised or established checklists, but are merely indicators that could point to a case of human trafficking.

Cooperation partnerships and coordinated indicator lists exist with regard to exploitation of begging or of criminal activities.

Other indicator lists exist which have been developed by various specialised counselling centres and other advisory centres for use, for example, in their training programmes or which are part of the cooperation agreements entered into at Länder level.

Reference is made to the Länder-specific input in the Länder Annex.

*29. What is considered as "reasonable grounds" to believe that a person is a victim of THB and which bodies have competence to identify victims upon "reasonable grounds"? Please provide examples from practice.*

When it comes to commencing and conducting an investigation or a criminal prosecution, German criminal procedural law delineates between two degrees of suspicion. Under Section 152 (2) of the Criminal Procedure Code (StPO), the public prosecution authority starts an investigation if they have sufficient evidence that a criminal offence has been committed (initial suspicion). In cases of human trafficking, the legality principle applies without exception and the public prosecution authority must act. In the event of initial suspicion, it suffices if, based on experience with criminal investigations, factual indications give the impression that a criminal offence has been committed. In practice, when investigating a case of human trafficking, this can occur when there are indications that the work involved is not performed voluntarily or is performed under inhumane conditions.

In such cases, sufficient suspicion is the deciding factor as to whether the public prosecution authority presses charges. It is thus of relevance whether the preliminary evaluation of the overall results of the investigation indicates that a conviction by the adjudicating court is likely (see Section 170 (1) StPO).

In the first instance, the criminal prosecution authorities are responsible for investigating cases of human trafficking where there are “sufficient grounds”. Victims are, however, identified by the specialised counselling centres or the public health authorities.

Reference is made to the examples cited by the Länder in the Länder Annex.

### 30. *What measures are taken in your country to encourage self-identification of victims of THB?*

In the asylum procedure interviews conducted by specially trained and subject-specialised BAMF staff, victims often identify themselves as victims of human trafficking.

During police interviews, self-identification is encouraged through the involvement of interpreters, cultural mediators and specialised counselling centres for human trafficking.

The specialised counselling centres ensure the provision of low-threshold access for victims in order to provide opportunity for self-identification. The centres act in the interests of the victims and also communicate this fact: no action is taken without the consent of the individual concerned. This is an important aspect when it comes to self-identification because the victims are able to rely on the fact that they cannot be or rather are not forced into any kind of action if they open up and reveal their plight.

Other appropriate measures are used by the specialised counselling centres, albeit with different approaches. The most frequent methods used include:

- Distribution of multilingual informational material or material containing contact data for the specialised counselling centres (e.g. flyers, information cards and articles such as boxes of sticking plasters)
- Walk-in consultation hours at the specialised counselling centres
- Outreach work by the specialised counselling centres, especially concerning sex workers, to inform people about the existing support services on offer
- Some outreach work in deportation detention centres
- Targeted addressing of and networking with potential facilitators, such as authorities, organisations and professional groups that come into contact with potential victims
- Special focus on the “loverboy” issue: workshops in schools held by various specialised counselling centres. Production of material on this topic: for example, the Kobra specialised counselling centre in Hanover produced a DVD entitled “Was würdest du aus Liebe tun?” (What would you do for love?) and showed it in workshops given in schools
- General public relations and press relations work

Depending on the options and resources available, some specialised counselling centres run targeted informational campaigns and educational programmes in the form of projects. These include:

Ban Ying Berlin: Cooperation with migrant self-help organisations

The Ban Ying specialised counselling centre has established a platform entitled Empowerment of Migrant Women at Risk of Exploitation, Trafficking and Enslavement in an attempt to foster cooperation between migrant self-help organisations and projects that work with migrants in Berlin.<sup>6</sup>

VIJ Stuttgart: Verein für Internationale Jugendarbeit (VIJ) – known as Club International Stuttgart – is the cooperation partner in the OPEN project to advise young women from Romania and Ukraine before they act on their decision to move to Germany. The women are warned about risks such as human trafficking and forced prostitution and are informed about the legal options available for residence in Germany.<sup>7</sup>

With the introduction of a mandatory, confidential health counselling session and an information and advice session as part of the registration procedure for prostitutes as provided for under the

<sup>6</sup> Ban Ying publications: <http://www.ban-ying.de/en/node/60>

<sup>7</sup> <http://www.vij-wuerttemberg.de/unsere-angebote/fraueninformationszentrum/open-for-young-women.html>

ProstSchG, additional conditions were created in which victims of sexual exploitation are offered the opportunity to disclose an existing forced predicament and obtain assistance and support. To date, no reliable analyses of experience with these instruments are available.

*31. What measures are taken in your country to identify victims of THB during the examination of asylum applications and during return of persons whose applications are rejected? How is communication ensured between the authorities responsible for identification of victims of trafficking and immigration and asylum authorities when there are reasonable grounds to believe that a person who is irregularly staying in the country is a victim of trafficking?*

The BAMF deploys special representatives for victims of human trafficking who are specially trained as asylum process decision-makers. Where a case of human trafficking is suspected, the special representatives are involved in the decision concerning the asylum application. In addition to their own duties in processing asylum applications, the special representatives are available as points of contact for their supervisors and colleagues. See also the answer to Question 4.

Reference is also made to the contents of the status report under j. Identification of victims of human trafficking.

If a specialised counselling centre suspects a case of human trafficking, it contacts the responsible BAMF special representative for victims of human trafficking. A staff member from the centre can accompany the client to the hearing.

As an important step, the KOK together with the BAMF held a practitioners seminar on 15 November 2017. This was attended by representatives from the specialised counselling centres for victims of human trafficking and BAMF special representatives for human trafficking from various satellite offices in Berlin. The participants exchanged views and experience on their respective work processes and prevailing trends, and used sample cases to discuss the necessary cooperative steps and agree on what constitutes good cooperation. This was the first practitioner seminar of its kind in Germany and participants found it very positive and useful.

Only a limited number of places were available for the workshop. Nonetheless, it has shown that exchange between specialised counselling centres and special representatives must be intensified and further pursued to improve both the identification of and support for victims of human trafficking.

### **Protection of private life (Article 11)**

*32. What measures are taken by relevant professionals to protect the confidentiality of information and protect the personal life and identity of victims of THB, including as regards storing of their personal data? Are there any conflicts of interest between professional ethics, on the one hand, and the obligation to report an offence, on the other hand? If so, how are these conflicts resolved in practice?*

The storage of personal data is subject to strict requirements and is based on the statutory provisions of police law and the Federal Criminal Police Act (BKAG). As the categories of individuals on whom data may be stored differ in relation to perpetrator and witness, the provision of personal data is subject to strict standards.

Responsibility for checking whether data collected should be stored lies in each case with the responsible police force conducting the investigation. The length of time data may be stored depends on the purpose, type and seriousness of the situation. The officers investigating a case of human trafficking are usually specially trained, are familiar with the special role of victims in criminal proceedings and take this into account when deciding on whether data should be stored. No conflict of interest arises where the police are concerned due to the principle of legality (see Section 163 StPO).

Personal data of child and juvenile victims may not be made public and may only be stored for specific purposes. Their address may be kept secret, including in cases where criminal charges are brought. The law makes provision for another reliable address to be given (the lawyer's offices or the specialised counselling centre). In case of threats, the police take protective measures to avert risk or danger. In cases of domestic violence against under-age victims, the police may consider banning the aggressor from the family home. Family court measures (such as banning from the home or prohibiting contact) taken in connection with a court case

under Section 1666 or Section 1684 of the German Civil Code (BGB) – where the violence is not committed by a parent or custodian – a contact ban during the proceedings may be issued under the Protection Against Violence Act (Gewaltschutzgesetz).

The provisions of Sections 68 ff StPO govern witness protection in criminal prosecutions. In particular, they ensure that a witness in need of protection is not required to divulge personal information. Under the provisions contained in Annex D to the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV), a witness may also be granted the right to secrecy in their capacity as a person of trust. The police as well as non-governmental organisations also take other measures to protect a witness. There are various options available, such as placing the witness in a 'safe house', not disclosing their address and summoning the witness via the investigating police station to avoid their address being recorded in the files. Witnesses may also be provided with a lawyer to accompany them for the duration of their hearing.

Conflicts of interest in relation to professional ethics do not arise on the part of the criminal investigation authorities.

Staff of the specialised counselling centres have a duty to secrecy. They are under no obligation to report criminal offences. They do not, however, have the right to refuse to give evidence as a witness in the criminal proceedings.

The dataACT project (data protection in anti-trafficking action), which ran from 2013 to 2015, was developed by the German NGO network and coordination office against trafficking in human beings (KOK) in cooperation with La Strada International to improve data protection for victims of human trafficking. dataACT is designed to improve the rights of victims of human trafficking in respect of their privacy, autonomy and protection of their personal data, both in Germany and in other EU member states. As part of the project, standards were also developed for use by the specialised counselling centres to ensure data privacy for victims of human trafficking. The standards are used in workshops and training for centre staff, and are now applied by the centres.

### **Assistance to victims (Article 12)**

33. *When assistance to victims is provided by non-state actors, how do your country's authorities ensure compliance with the obligations under Article 12 of the Convention, in particular when it comes to:*

Reference is made to the Länder input in answer to Question 33 in the Länder Annex. See also the answer to Question 35 and the contents of the status report under k. Victim support.

#### ***a. funding;***

Funding of the specialised counselling centres for victims of human trafficking is a Länder responsibility. The BMFSFJ has funded the KOK, to which most specialised counselling centres belong, since 1999 and currently provides funding in the amount of €315,000 per year.

The specialised counselling centres use funding from the Länder and from other sources to provide counselling to victims and also in advising and accompanying victims in efforts to access financial and material assistance to secure their livelihoods, obtain medical care and obtain safe housing in line with their legal entitlements under prevailing social assistance laws (e.g. AsylbLG, SGB II, SGB XII, SGB VIII, SGB V).

#### ***b. victim's safety and protection;***

The joint cooperation agreements at Länder level also contain provisions on the protection and safety of victims. An important component of protection involves safe housing. Victims are mostly accommodated in women's refuge centres/safe houses.

KOK refers to its study on safe housing for victims of human trafficking in Germany (Unterbringung von Betroffenen des Menschenhandels in Deutschland geSICHERt?)<sup>8</sup>, in which it describes the current situation in Germany. If a victim presses criminal charges, the police assume responsibility for operative victim protection. Safe housing is usually organised by the specialised counselling centre. If the security situation dictates, the victim may also be housed in another town or another Land. The victim remains anonymous in the housing process.

The specialised counselling centres also provide for other forms of protection, such as bans on disclosing information.

*c. standards of assistance and their implementation in practice;*

The specialised counselling centres have their own support standards and (as part of their membership in the KOK network) can also apply joint standards and principles in providing support for victims. These are documented in the vocational and further training and quality assurance manual for specialised counselling centres for victims of human trafficking.<sup>9</sup>

In some cases, the specialised counselling centres' own support standards are documented in various strategies and plans, and are implemented in practice. The centres review their standards at semi-regular intervals and if they have the resources to do so. In some cases, the standards applied in supporting victims are also an integral component of Länder-level cooperation agreements.

*d. access to medical treatment, psychological assistance, counselling and information*

The specialised counselling centres arrange access to medical health counselling and offer accompaniment and information.

*e. translation and interpretation, where appropriate?*

The specialised counselling centres work with a pool of interpreters and translators, and fund those services themselves.

*34. What specific measures are taken to ensure that the provision of assistance to victims of THB who have been issued a residence permit for the purpose of their co-operation in the investigation or criminal proceedings is not made conditional on their willingness to act as a witness?*

Support provided to victims by the specialised counselling centres is given irrespective of the victim's residence status or their willingness to give evidence as a witness.

The provisions of Germany's Criminal Procedure Code (Strafprozessordnung) concerning protection for victims were expanded with the Third Act to Reform the Protection of Victims' Rights (Opferrechtsreformgesetz) of 21 December 2015 and apply for all victims, including victims of human trafficking, according to the respective requirements. The provisions are not linked to a victim's willingness to testify in court and cover, for example, victim support through the provision of a lawyer and psychosocial accompaniment during criminal proceedings. If the requirements listed under Section 397a (1) of the Criminal Procedure Code are met, the victim is entitled to have a lawyer appointed at cost to the state irrespective of their own income status. In such cases, the victim may also receive psychosocial accompaniment during criminal proceedings. The persons cited in Section 397a (1) Items 4 and 5 of the Criminal Procedure Code (StPO), meaning children and adolescents, and comparable persons in need of protection who are victims of serious offences involving violence and sex, have a legal entitlement to such accompaniment (Section 406g (3) first sentence StPO). Other victims of serious violence and sexual offences (persons cited in Section 397a (1) Items 1 to 3

<sup>8</sup> <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>

<sup>9</sup> <https://www.kok-gegen-menschenhandel.de/publikationen/news/handbuch-zur-aus-und-fortbildung-und-qualitaets-sicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel/>

StPO) must also receive free psychosocial accompaniment during criminal proceedings if the court deems it necessary in a given case (Section 406g (3) second sentence StPO).

General help and support for victims is provided independently by the Länder in line with Germany's federal structure (see the Länder Annex (Annex 1)). The victim support organisations offer their services irrespective of whether the victim is willing to act as a witness. The Länder also have the option of providing victims of human trafficking who act as witnesses in criminal proceedings reasonable and effective protection against possible revenge or intimidation by giving them access to witness protection programmes. Such access is, however, subject to the victim's willingness to testify in court. The Länder also have the option to provide operative protection for victims via their regional police.

In Germany, access for third-country nationals that have become victims of human trafficking to state-provided social assistance depends on the victim's residence status. For third-country nationals, their residence status can be linked to their willingness to give evidence in criminal proceedings (see below).

In its Section 24 (4a), the Act on the Residence, Employment and Integration of Foreigners in the Federal Territory of the Federal Republic of Germany (AufenthG) contains a special humanitarian provision on the issuance of a residence permit to, among others, a victim of human trafficking. Under Section 25 (4)a AufenthG, a permit must be granted if the individual in question declares their willingness to testify as a witness in the criminal proceedings concerning the offence committed against them.

In addition, victims of human trafficking may also receive a residence permit pursuant to other regulations regardless of whether they participate in a criminal proceeding. For underage victims of human trafficking, a residence permit may be considered, for example, under Section 23a and Section 25 (4) and (5). For the duration of a potential health impairment, where appropriate proof is provided under Section 60a AufenthG, residency termination measures may be temporarily postponed. In such cases, the individual does not receive a residence permit and is instead granted tolerated status. Section 2 (2) of the OEG provides for assistance to be refused if the victim has failed to cooperate in the investigation of the situation and to aid the prosecution of the perpetrator. This is, however, a discretionary provision. A victim's refusal to cooperate in an investigation and aid the prosecution of the perpetrator does not automatically result in support being withdrawn – rather the decision is made on an as-needed basis, taking account of and weighing the circumstances involved. Consideration must be given to the extent to which a victim can reasonably be expected to cooperate and also to the public prosecutor's interest in pursuing the case. To be effective, action to combat human trafficking requires that the perpetrator be investigated and victims can provide valuable information and the evidence they give in court can aid prosecution of the perpetrator.

*35. What accommodation is available for victims of THB (women, men and children) and how is it adapted to the victims' needs?*

Germany has no national structures or provisions for a special support system to provide accommodation for victims of human trafficking. Responsibility for the creation, financing and design of accommodation options lies with the individual Länder and municipal administrations, and differs from place to place.

In most Länder, specialised counselling centres receive funding from the Land and/or municipal administration for use in providing accommodation for victims, such as in women's refuge centres or in safe housing. Some Länder, such as North Rhine-Westphalia, Rhineland Palatinate and Baden-Württemberg provide a Land-specific fund for use in providing accommodation for victims of human trafficking and, where necessary, for a brief stay in a hotel or a bed and breakfast establishment.

To date, there are no special accommodation provisions for under-age victims of human trafficking. Their special protection status calls for a review of the existing practice of accommodating minors in women's refuge centres (there are no special hostels for boys who are victims of sexual exploitation), hotels and in cases involving foreign children, in emergency/safe housing or shared accommodation for adult asylum seekers or in refugee/asylum reception centres.



With the ratification of the Istanbul Convention, which Germany signed on 12 October 2017, the German Länder and municipal administrations are required to provide safe shelters in sufficient numbers for victims of domestic violence and victims of violence against women (see Article 23).

Refugees: In cooperation with UNICEF, the BMFSFJ has worked with additional partners on an initiative to protect women and children in refugee accommodations. Since 2016, some 25 accommodations throughout Germany have received support through the establishment of additional anti-violence coordinators. The programme will be extended this year to take in a further 75 accommodations, bringing the total number of refugee accommodations with resident anti-violence coordinators to 100 nationwide by the end of 2017. The coordinators support the accommodations in developing and implementing their anti-violence plans. The work they perform complies with the minimum standards for the protection of children, adolescents and women in refugee accommodation centres (Mindeststandards zum Schutz von Kindern, Jugendlichen und Frauen in Flüchtlingsunterkünften)<sup>10</sup>, which was published as part of the initiative in July 2016. The standards were updated and re-published in the new, extended version in June 2017.

Also, the Federal Government together with the KfW Development Bank introduced a special programme in 2016 offering interest-free loans to municipal authorities to aid the financing of constructional protective measures in refugee accommodations. Some €200 million are available for measures of this kind and can be applied for by city and municipal administrations up to 31 December 2017.

Reference is also made to the Länder-specific input in the Länder Annex.

### *36. What measures are taken to ensure that services are provided to victims on a consensual and informed basis?*

The specialised counselling centres work according to a set of guiding principles, one of which is that no action be taken without the victim's content (see also the answer to Question 33c).

The quality assurance standards applied by the centres include that the aims, working principles, the opportunities and limitations of counselling be made transparent for their clients. The available options for counselling and action must be explained to clients in an easily comprehensible way.

Providing comprehensive information to victims through the use of interpreters and translators is also a fundamental role of the specialised counselling centres.

The work performed by the specialised counselling centres focuses in the main on psychosocial counselling, whose aims and content include:

- Building a relationship of trust
- Psychological stabilisation
- Integration of traumatic experiences
- Development of perspectives for the future
- Help in managing everyday life, support in establishing social contacts
- Boosting self-esteem
- Promoting self-responsibility and the ability to act independently
- Consultations on various topics, such as the circumstances of the offence, emotional ties to persons in the milieu, personal background, family situation, fears, current problems
- Crisis intervention, e.g. regarding problems in processing experience with violence, loneliness, homesickness, fears about the future, feelings of guilt

An example of the information provided is the client consent form developed by KOK as part of its dataACT project. The form is used to obtain the victim's consent for the processing and passing on of their personal data and for information to be collected.

<sup>10</sup> <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=226884.html>

*37. Is there any follow-up provided after the termination of assistance programmes? Can victims continue to receive assistance, where necessary and taking into account their specific needs resulting from the type of exploitation (including the removal of organs), after the termination of criminal proceedings, and if so what type of assistance?*

After the criminal proceedings have ended, it is stipulated that third-country nationals with a residence permit obtained under Section 25 (4)a AufenthG (see the answer to Question 34) should have their residence permit extended if their continued presence on Federal Territory is required for humanitarian, personal or other reasons.

Psychosocial accompaniment during criminal proceedings (Section 406g StPO) can provide a range of support services as part of the follow-up process. These include assistance with processing the outcome of the proceedings and arranging additional forms of help.

Assistance provided under the OEG is not subject to any particular time limits. Depending on the degree of harm, victims who fulfil the legal requirements may also receive assistance for the rest of their lives (healthcare treatment, financial assistance).

If desired and needed, the specialised counselling centres are also available to victims after the criminal proceedings have ended and can continue providing counselling and support. They can, for example, provide a postal address if needed for security reasons and if a victim's residence permit is extended, they can help with the extension of bans on disclosing information and with crisis management.

If a victim returns to their country of origin, the centres support them in organising their return and establish contact with counselling services in the country in question. If the victim remains in Germany, the centres can, upon request, provide support in achieving independence and building a future.

### **Recovery and reflection period (Article 13)**

*38. Please specify in which cases a recovery and reflection period can be granted and who is entitled to it (nationals, foreign nationals). Please describe the procedure for granting a recovery and reflection period, the assistance and protection provided during this period, and any difficulties encountered in practice.*

Where there are concrete indications that a foreigner who is obliged to leave the country has become a victim of human trafficking, forced prostitution or forced labour, the individual concerned is afforded a period of recovery and reflection of at least three (3) months, meaning that their departure deadline is set for a date at least three months in the future (Section 59 (7) second sentence of the German Residence Act (AufenthG). The departure deadline is to be calculated such that it allows the foreigner time to decide on whether to testify as a witness.

The provision of a recovery and reflection period is thus in no way reliant on a prior declaration of willingness to testify. During this time, victims of human trafficking receive benefits under the provisions of the Asylum Seekers Benefits Act (AsylBLG). The specialist counselling centres offer counselling and support for victims during the recovery and reflection period.

All foreigners who are subject to enforceable deportation are entitled to the recovery and reflection period under Section 59 (7) second sentence AufenthG. The vast majority of victims of human trafficking who are identified in Germany are EU citizens. An instruction issued by the Federal Employment Agency on 10 August 2016 concerning Section 7 SGB II clarifies that EU citizens who have become victims of human trafficking are also entitled to benefits under SGB II in the first three months of their residence in the Federal Territory, including if they are neither employed nor self-employed in the Federal Territory.

The OEG contains no deadlines concerning applications. Victim compensation benefits can thus be applied for not only following a sufficient period of recovery and reflection, but also at a significantly later date.

Reference is made to the contents of the status report under I. Recovery and reflection period.

### **Residence permit (Article 14)**

39 *If there is a provision in your country's law that provides for the possibility of issuing a residence permit owing to the victim's personal situation, how is this interpreted in practice? Please provide examples.*

40. *When a residence permit is issued for the purpose of co-operation with the competent authorities, how is "co-operation" interpreted and what does it consist of in practice?*

41. *What measures are taken to ensure that a residence permit is provided to victims of THB in compliance with the obligation under Article 12.6, which states that the assistance to a victim of trafficking should not be made conditional on his or her willingness to act as a witness?*

In answer to Questions 39 – 41, reference is made to the contents of the status report under m. Residence permit, to the answers to Questions 34 and 35, and to the Länder-specific answers in the Länder Annex.

### **Compensation and legal redress (Article 15)**

42. *Please indicate any measures taken since the first evaluation report to promote effective compensation of victims of THB, in particular when it comes to:*

a) *access to information on the relevant judicial and administrative proceedings in a language the victim can understand;*

Under Section 406j No. 3 StPO, victims are informed about possible entitlement under the Crime Victims Compensation Act (OEG). The obligation to inform victims is regularly carried out by the police and/or the judicial authorities. For this purpose, a standardised information sheet for victims of crime is available online in 22 languages. The information sheet also refers to the Crime Victims Compensation Act.

The BMAS website also provides information concerning victims' compensation, including in English. The standardised application form, which is applicable Germany-wide, can be downloaded from the site.

The Länder authorities responsible for implementing the OEG provide advice for all victims of crime who are also victims of human trafficking (see the Länder Annex (Annex 1)). A corresponding entitlement to advice and information on existing rights and obligations is laid down in Sections 14 and 15 of the German Social Code Book I (SGB I).

In this connection, the state judicial authorities in the Länder have reported that information about possible entitlement to victim compensation is usually handed out by the investigation authorities in a language the victim can understand or is communicated by an experienced interpreter in a language the victim understands. Also, victims of human trafficking are regularly informed in detail during their initial hearing by the police or the public prosecution office about the possibility of appointing a lawyer.

The specialised counselling centres also inform victims about their rights and options, e.g. possible compensation, using interpreters/translators.

In cases involving civil law or labour law proceedings, the centres also try to arrange free legal representation for victims (for example by using the legal aid system or legal advice vouchers).

b. *access to free legal assistance and legal aid during investigations and court proceedings;*

In cases involving offences committed under Section 397a (1) no. 1 StPO, adult victims of human trafficking are entitled to free legal representation (victim lawyer), who can also represent the victim during the investigations (see Section 406h StPO). For child victims of human trafficking, an entitlement to free legal representation arises from Section 397a (1) no. 5 StPO.

c. *compensation from the perpetrator;*

If a victim suffers material loss or damage, the general principles of delictual liability (Section 823 (1) German Civil Code (BGB), Section 823 (2) BGB in connection with criminal law-related protection legislation, Section 826 BGB) require that this be compensated in full by the perpetrator; if the case of human trafficking also involves illegal imprisonment and/or bodily harm, compensation for non-material loss or damage in the form of compensation for personal suffering may be demanded (Section 253 (2) BGB). With the Gesetz zur Einführung eines Anspruchs auf Hinterbliebenengeld (German Act to Introduce an Entitlement to Survivors' Benefits), the entitlement to compensation for non-material loss or damage has been extended to cover the event of death. Compensation is paid to close dependents of the murdered victim for the emotional suffering caused by the death. This includes murders committed in connection with human trafficking. The Act entered into force on 22 July 2017.

The possibility also exists of compensation from the perpetrator being awarded during the criminal proceedings also exists (procedure for bringing a civil damages claim in criminal proceedings under Section 403ff StPO; Perpetrator-Victim Compensation). In practice, out-of-court or in-court settlements are reached between the perpetrator and the victim.

In 2017, the KOK published information concerning victims' rights (Rechte der Betroffenen im Focus?). Available in Germany only, it gives an overview of the current trends in case law concerning human trafficking and looks in particular at the issue of compensation in criminal and civil law proceedings.

#### *d. compensation from the state;*

With the OEG, Germany has a comprehensive victim compensation system. Certain benefits have been increased since the previous reporting period. Other changes which benefit victims of human trafficking are to follow with the planned reform of the Social Compensation Act. A first draft of the Act was presented in 2017.

#### *e. compensation for unpaid wages to victims of trafficking*

Entitlement to compensation for material loss or damage from the perpetrator (see above lit. c.) can also include compensation for unpaid wages.

#### *Please provide examples of compensation awarded and effectively provided to victims of THB*

In a judgement passed by the Hamburg Regional Court on 16 April 2015 (632 KLS 2/14) the procedure for bringing a civil damages claim in criminal proceedings was used to instruct the sentenced individual to a payment of €104,454.36 plus interest. In another judgement passed by the Hamburg Regional Court (628 KLS 15/15) on 12 May 2016, the sentenced individuals were instructed to pay the victims a "reasonable amount of compensation".

With its judgement of 18 August 2014 in criminal proceedings concerning human trafficking for the purpose of sexual exploitation, the Constance Regional Court (3 KLS...Js.../13) ordered the sentenced individual to pay the victims a total of €30,000 plus interest. In criminal proceedings taken before the Augsburg Regional Court involving a case of serious human trafficking for the purpose of sexual exploitation (Judgement dated 13 November 2017), an in-court settlement was reached between the accused and one of the women victims under the procedure for bringing a civil damages claim in criminal proceedings. In the settlement, the accused agreed to pay the victim compensation in the amount of €4,000 for personal suffering and damages in the amount of €3,500, making a total of €7,500. The accused had used the "loverboy" method to lead several young women into prostitution.

The Land North Rhine-Westphalia reports that as part of a settlement in one case, a car and money that had been confiscated were transferred by the accused to the victim during the main hearing. The Land Baden-Württemberg reported a case in which a human trafficker had been arrested when entering Germany. The money he was carrying and a valuable watch had been confiscated and the proceeds in the amount of €20,000 had been paid out to the three victims.

See also the Länder-specific input in the Länder Annex.

*43. What specific measures are taken to make available the assets of traffickers to provide compensation (for example, effective financial investigations resulting in seizure of assets of perpetrators with the view to their confiscation)?*

The reform of criminal prosecution law concerning recovery of assets (entry into force 1 July 2017) improves victim protection. In the future, the state will confiscate the profits from criminal acts which result in personal damages (e.g. human trafficking or exploitative prostitution). Victims will then receive compensation from the assets recovered from the perpetrator by means of a relatively simple process. The victims of criminal acts must, therefore, no longer exercise their rights in making a claim against the perpetrator, as has been the case up to now. Rather, they need only register their claim. The new compensation process under criminal prosecution law is thus both simpler and more cost-effective for victims. Where multiple victims are involved, they all receive the same compensation (up to (up to now, it has been a matter of first come, first served)). The law provides that victims be informed about their options regarding compensation.

Also, assets of uncertain origin which are secured in criminal proceedings concerning the suspicion of specific serious offences involving terrorism and organised crime, such as commercial and gang-based activities in human trafficking, may also be confiscated if the individual affected by the confiscation cannot be investigated or prosecuted for the offence and the court is convinced that the confiscated assets originated from a criminal act (Section 76a (4) StGB). The court can base its suspicion that the asset was obtained through a criminal act on a considerable disparity between the value of the asset and the lawful income of the individual concerned. Also, the other personal and financial circumstances of the individual whose assets were confiscated also play a role.

Financial investigations concerning suspects' assets or those of the individual whose assets have been confiscated are usually conducted at an early stage of the investigations in preparation for their subsequent confiscation by the respective specialist criminal police units. Where necessary, such investigations are also conducted in the countries of origin. Available assets can be confiscated by means of an attachment of assets and if the confiscation order is made final, the assets can be used to compensate the victim.

See also the Länder-specific answers in the Länder Annex.

*44. Is there a possibility for victims of THB to claim damages and compensation in the country of destination after their return to the country of origin? Please provide any relevant examples.*

Statutory victim compensation benefits under the OEG may also be applied for from the country of origin.

Germany has comprehensive legal provisions governing the claiming of damages and compensation in connection with human trafficking.

The international jurisdiction of the German courts is determined by Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels 1a), where the defendant is domiciled in an EU member state. Consequently, Germany has jurisdiction concerning claims of all applicable entitlements if the accused is domiciled in Germany (Article 4 (1) Brussels 1a). To claim compensation against the perpetrator on grounds of a criminal act, the German courts also have international jurisdiction under Article 7 no. 2 Brussels 1a when the defendant is domiciled in another EU member state and the damage occurred in Germany. This rule can be applied when the legal assets of the claimant are damaged in Germany, the country of destination. Also, under Article 7 no. 3 Brussels 1a, Germany has jurisdiction where criminal proceedings against the perpetrator are conducted and the victim makes use of the procedure for bringing a civil damages claim in criminal proceedings.

Whether an entitlement to compensation exists in a specific case depends on the prevailing applicable law. For German courts, the applicable law concerning claims from unlawful acts arises from Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). Where the person claimed to be liable and the person sustaining damage do not have their habitual residence in the same country at the time the damage occurs, the law of the country in which the damage occurred shall apply (Article 4 (1) Rome II).

### **Repatriation and return of victims (Article 16)**

*45 What steps are taken to ensure that the return of victims of THB from your country to another country is carried out preferably voluntarily and in full observance of the duty to ensure their rights, safety and dignity, including the obligation not to return a person to a country where his or her human rights are at risk of being violated (non-refoulement principle)? How is risk assessment carried out when deciding upon return and repatriation of victims of THB? What is the procedure and what are the modalities of co-operation with the authorities of the receiving state?*

The specialised counselling centres usually work with victims to prepare them for their repatriation. They help with migration law issues up to the point of repatriation, in securing a means of livelihood for the duration of their stay in Germany and in applying for a new passport if their original passport was lost.

If desired by and with the consent of the client, the centres establish contact with a counselling centre in the country of origin. This can involve services such as collection and receipt of the victim upon arrival, and counselling and support by an NGO in the country of origin. If the client does not request such support, the centres merely supply the addresses and contact details of an NGO in the country of origin.

Some practitioners report, however, that victims have a great interest in remaining anonymous, which means that the REAG/GARP repatriation programme cannot be used. In such cases, for example, the Bahnhofsmision (Railway Mission) in Munich helps the specialised counselling centres/victims to finance a rail ticket.

When counselling and accompanying victims, the specialised counselling centres work with them to assess the risk involved in repatriating and discuss the action they can take. Risk assessment in the country of origin is performed by the investigating LKA in cases where the victim has testified as a witness in the criminal proceedings.

Reference is also made to the contents of the status report under o. Repatriation and return of victims, and also to the Länder-specific input in both Länder Annexes.

*46. Has any victim of trafficking who is a citizen or permanent resident of your country been returned against their will? If yes, what steps, if any, were taken to assist them after their return?*

Neither the Federal Government nor the Länder are aware of any cases of this kind.

### **Corporate liability (Article 22)**

*47. Have there been any developments in your country's law regarding corporate liability for THB offences? Does corporate liability apply to legal persons involved in THB for the purpose of forced labour or services, including by their sub-contractors throughout the supply chain? Please provide examples of any relevant cases and the sanctions imposed.*

In cases of human trafficking, it is the individual (natural person) who is subject to criminal investigation and prosecution. Punishment of participating companies occurs by imposing fines. Under Sections 30, 130 of the Act on Regulatory Offences (OwiG), corporate liability always assumes an associated offence or a breach of supervisory duty by one or more responsible employees of the company concerned. The involvement of the company occurs via secondary participation under Section 444 StPO. This provision also allows for independent proceedings.

### **Aggravating circumstances (Article 24)**

*48. Have there been any prosecutions and convictions for THB with the aggravating circumstance of involvement of public officials in the exercise of their functions? Please provide any relevant examples.*

There are no known cases of this kind.

**Non-punishment provision (Article 26)**

*49. Is the non-punishment provision incorporated in law and/or prosecution guidelines? If so, please provide the relevant texts. Please give details, including references to case law where relevant, of cases where the non-punishment principle has been applied and the outcome of such cases.*

With regard to implementation of the non-punishment provision in German law, reference is made to the status report under q. Refraining from prosecution of victims of human trafficking.

**Ex parte and ex officio applications (Article 27 in conjunction with Article 1.1.b)**

*50 Does your country's law provide for the possibility of investigating a THB case in your country if the offence was committed on your territory, but the complaint was submitted in the country of residence of a foreign victim of THB? Please provide any relevant examples.*

German criminal law applies in such cases. Under Section 3 StGB, German criminal law applies for offences committed in Germany.

German criminal law does not provide for criminal proceedings to commence on the basis of a "complaint". In the following, it is thus assumed that use of the word "complaint" in the above question means that charges have been brought.

The German public prosecution authorities are required to take action against all prosecutable offences where there are sufficient factual indications (Section 152 (2) StPO). Charges need not have been brought. Charges brought in the country of domicile do not prevent proceedings in Germany: where appropriate, the German public prosecution authorities conduct their own investigation in addition to the investigations in the other country.

Reference is made to the answers and examples given by the Länder in the Länder Annex.

*51. Please describe the measures taken in your country to ensure compliance with the obligation of effective investigation into THB cases, in particular as regards:*

*a. setting up specialised investigation units and the number of staff involved;*

The Federal Criminal Police, most of the Länder and the public prosecution authorities all have special units or sections which investigate cases of human trafficking. These are usually staffed by specialised and experienced officers (including in Bavaria, Berlin, Hamburg, Lower Saxony, North Rhine-Westphalia, Rhineland Palatinate and Schleswig-Holstein). The number of public prosecutors and police officers deployed depends on the scope and complexity of the investigations. Reference is made to the Länder-specific input in the Länder Annex.

At the BKA, human trafficking is a separate department and as such a priority area in the serious and organised crime unit. Staffing numbers are not fixed.

*b. exchange of information with, and obtaining evidence from, other parties;*

Obtaining evidence from "other parties" in another country calls for legal/judicial assistance. Thus, the provisions of multilateral and bilateral agreements and the law on international judicial assistance in criminal proceedings, which are supplemented by guidelines, further training measures and support of/from the investigating authorities in certain cases, allows for efficient provision of evidence to foreign investigation authorities and the receipt of same from them.

Cooperation with the specialised counselling centres and the associated exchange of information still occurs on the basis of cooperation strategies.

Reference is made to the Länder-specific input in the Länder Annex.

*c. use of special investigative techniques (such as informants, cover agents, wire-tapping, controlled deliveries), with an indication of how their use is regulated and whether they can also be applied in cases not related to organised crime;*

For the use of special investigative techniques, the legal provisions of the StPO apply in Germany. The investigative options available (such as use of informants and under-cover agents) are subject to case needs. The offences contained in Sections 100a, 100c and 100g StPO were aligned in the course of the last amendment to the StPO.

Under-cover activities can be used when investigating human trafficking irrespective of whether the case involves organised crime.

Controlled deliveries are not legally possible where human trafficking is concerned.

*d. investigation of THB offences committed through the Internet, including the possibility of blocking websites which are used to facilitate the recruitment of trafficking victims or the dissemination of child pornography;*

### **Websites used to distribute child pornography**

In addition to the determined investigation and prosecution, in efforts to combat child pornography on and via the internet, the Federal Government strives to have such content deleted from the web. Close cooperation between state and non-state actors is thus a key prerequisite for success. For this reason, close cooperation between the BKA, jugendschutz.net (the cross-Länder online youth protection organisation), the hotline operated by eco e.V., the hotline run by FSM e.V. – hereafter “complaint bodies” – and the Federal Review Board for Media Harmful to Minors (BPjM). The complaints bodies are members of INHOPE, the umbrella association of globally-operating internet complaint bodies that take complaints concerning illegal content online and strive to have the content deleted as quickly as possible. Annual reports on deletion efforts in Germany and internationally have been produced since 2010. A key component of these published reports is the evaluation of measures aimed at the deletion of telemedia offerings containing child pornography as defined in Section 184b (1) no. 1 StGB.



## Websites and recruitment of trafficking victims

Because the use of the internet plays a central role in the recruitment process, the medium is included in investigations. In addition to the measures cited under c) above, the introduction of online surveillance (Section 100b StPO) provides a further opportunity by which to conduct investigations in connection with human trafficking offences online.

Websites which are used to recruit or advertise victims of human trafficking are usually legally-operated platforms for use in initiating contact with prostitutes. Because prostitution is not illegal, these platforms are not blocked. In actual cases or in suspected cases, adverts placed on these websites are deleted with the operator's prior approval. Cooperation in this area generally works very well.

Reference is made to the Länder-specific input in the Länder Annex.

### *e. financial investigations to disrupt criminal money flows and ensure asset recovery;*

A large number of the offences committed serve the achievement of unlawful financial gain. Successful action to combat crime thus calls for effective criminal law provisions on asset recovery. With the Act to Reform Asset Recovery in Criminal Law (Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung), which entered into force on 1 July 2017, the necessary legal provisions were revised to provide an effective asset recovery instrument for use in confiscating assets obtained by criminal means. The reform created all the conditions needed to intensify recovery of assets obtained illegally.

In efforts to combat human trafficking, exploitative prostitution and pimping, asset recovery is designed to ensure that the financial benefits do not remain the perpetrator's main incentive for the activities. The temporary confiscation of assets is the legal rule if there are compelling reasons to assume that the requirements for subsequent recovery exist. Temporary confiscation paves the way for mandatory recovery of profits from criminal acts.

In addition, extended asset recovery is now possible in connection with all criminal offences. When sentencing a perpetrator for a criminal offence, the courts can confiscate assets and profits obtained through or as payment for committing other criminal acts. The other offences need not be named if the court is convinced that the discovered assets stem from criminal acts.

In certain cases involving serious crime, extended asset recovery can occur in its own right if the individual affected by the confiscation is neither investigated nor prosecuted for the offence. This applies, among other things, when the proceedings which lead to recovery of assets are based on the suspicion of commercial or gang-based activities in human trafficking for the purpose of sexual exploitation or for labour exploitation under Sections 232 to 233 StGB or of commercial or gang-based promotion of human trafficking under Section 233a StGB.

Confiscation of profits gained from criminal acts is usually ordered by the judge passing the sentence. Confiscation may also occur independently and is mainly considered in cases where the perpetrators are at large. It can, however, also be considered with other constellations such as lapsed offences. Confiscation of the profits from criminal acts can also be ordered against a third party if they have gained from the offence. If the proceeds from a criminal act are no longer available for confiscation, the perpetrator, parties to the crime or third-party beneficiaries is/are ordered to pay a fine in an amount matching the value of the original proceeds. To prevent an offender being able to hide the proceeds of a criminal act before the announcement of a (final) court judgement ordering their confiscation, the public prosecution office can take preliminary custody of suspects' assets during the investigation process. If there is a strong suspicion of an offence having been committed, the public prosecutor's discretion is limited in that they "shall" only take preliminary measures to secure assets.

Financial investigations are frequently conducted in parallel with human trafficking investigations. Exchange with financial service providers works very well.

Financial investigations and recovering profits and financial assets is performed wherever possible by the Länder (see the two Länder Annexes).

### *f. use of joint investigation teams (JITs).*

JITs are deployed as needed. The advantage of this type of investigation is that it is co-financed by Europol. Colleagues in the Länder are informed of such options during practitioner seminars and specialist workshops.

The Act on International Judicial Assistance in Criminal Proceedings (IRG) enables German public prosecutors to form JITs with public prosecution authorities in other countries (Section 61b IRG in general, Section 93 concerning other EU member states). Whether the establishment of and cooperation in such JITs makes sense depends on the type, scope and circumstances of the case in question.

Reference is made to the Länder-specific input in the Länder Annex and also in the Länder Annex to the status report.

*52. Have you had any cases or suspected cases of THB for the purpose of the removal of organs? How did investigations take place in such cases and what special investigation techniques were used?*

There were no known cases of human trafficking for the purpose of organ removal in Germany at the end of 2016. No data has been collected on this phenomenon for 2017.

### **Protection of victims, witnesses and collaborators with the judicial authorities (Article 28)**

*53. What measures are taken to protect victims, witnesses and NGOs assisting victims during criminal proceedings from potential retaliation or intimidation during the investigation and during and after the criminal proceedings? In how many cases have special protection measures been used in respect of victims and witnesses of THB? Please specify any difficulties in providing victim/witness protection and creating a safe environment for their participation in investigations and court proceedings.*

With the Third Act to Reform the Protection of Victims' Rights of 21 December 2015, that entered into force on 1 January 2017 with the relevant new provisions in the StPO, important steps were taken to improve the level of protection provided for victims. Many of the changes made have a direct impact on the situation for victims of human trafficking (see also k. Victim support). With the legal provision of psychosocial accompaniment during criminal proceedings (S 406g StPO), great steps were taken to improve support provided for children and juveniles – see the status report under k. Support for victims and s. Protecting victims and witnesses. The StPO also provides a wide range of protective measures for victims during criminal proceedings against the perpetrator to protect the victims from possible revenge or intimidation (e.g. restriction on disclosure of the victim's personal details, Section 68 (2) and (3) StPO; removal of the accused while the witness is examined in criminal proceedings and during the main hearing, Section 168c (3), 168e, 247 StPO; order for audio-visual hearing of the witness, Section 247a (1) StPO).

Victim protection is provided in particular under Sections 68 ff. StPO, through the protection of trusted persons, imposition of a custody sentence due to danger of collusion and the option to exclude the public under the provisions of Section 172 no. 1a GVG.

The following difficulties in protecting victims and witnesses were reported by several Länder based on their practical experience:

- Difficulties with regard to the victim's residence status and the associated restrictions on movement /entitlement to social assistance
- Victim integration
- Difficulties in connection with obtaining a victim's willingness to testify: victims often fear for their own safety and for that of their families in their country of origin
- Victim's dependency on the perpetrator(s)
- Stressful and post-traumatic circumstances for the victim when giving evidence

The Länder have taken numerous measures to ensure comprehensive victim protection. Reference is made to the contents of the Länder Annex.

*54. What other measures are taken to promote the participation of victims and witnesses in criminal proceedings and to give testimonies which accurately reflect their experiences and assist courts in establishing the truth? Can a victim of THB be assisted by a social worker, psychologist and/or NGO representative during the investigation and court hearings?*

See the answer to Question 53 (entitlement to psychosocial process accompaniment, Section 406g StPO). In addition to the victim's lawyer, a person of trust may also be presented during the victim's hearing (Section 406f StPO).

Victims who testify as witnesses can be supported and accompanied by a member of staff from the specialised counselling centre during the investigation and court proceedings. This is one of the fundamental tasks of the counselling centres.

Depending on the centre's situation, strategy and counselling services, the counsellors accompany their clients from the initial report/testimony in the investigation and criminal proceedings up to the main hearing and also offer follow-up support.

State-regulated provision of psychosocial process accompaniment also exists. This requires special training. Some staff at the specialised counselling centres complete training in psychosocial process accompaniment. There are some who due to the scarce resources available to the centres, are unable to afford such training so that external professionals have to be brought in. The victims have a close, trust-based relationship with the staff of the specialised counselling centres and this is further strengthened by native language support.

Victims can be fully involved in criminal proceedings as joint plaintiffs. This gives them a range of important procedural rights, see Section 397 StPO (right to view files, right to be present at the main hearing, entitlement to reject a judge or expert witness, the right to ask questions, the right to object to the presiding judge's orders and to questions, the right to ask for evidence, the right to make a statement). The joint plaintiff can take advice from a lawyer or be represented by a lawyer.

To prevent repeated unpleasant examination of the victim, but still be able to submit their statement in the main hearing should the victim no longer be available to testify, the witness can be heard by the judge during the investigations.

Reference is made to the Länder-specific input in the Länder Annex.

### **Jurisdiction (Article 31)**

*55 Please outline the measures taken by your country to establish and exercise jurisdiction over the offences set out in the Convention, in particular with regard to offences committed outside the jurisdiction of the state (including in cases where your national is a victim of THB committed abroad).*

Under Section 6 no. 4 StGB, the principle of universal jurisdiction applies for human trafficking (Section 232 StGB). For criminal acts committed in other countries, German criminal law applies irrespective of the perpetrator's and victim's nationality, and irrespective of whether the act is a punishable offence in the place it was committed. This provision implements all provisions of the Convention concerning the applicability of national criminal law. With the amended Section 232 StGB, which entered into force with the Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code on 15 October 2016, the provisions of the Convention concerning the new criminal acts cited in Article 4 and under Article 18 have been implemented in full (see Bundestagsdrucksache 18/9095, p. 23 ff.). The territoriality principle is enshrined in Section 3 StGB and the law of the flag principle in Section 4 StGB, both of which also apply under Section 232 StGB.

### **International co-operation (Article 32)**

*56. Please provide examples of international co-operation initiatives with other states in preventing and combating THB, as well as an assessment of the impact of such initiatives, including any difficulties you have experienced in this area. Please also indicate any bilateral or multilateral agreements concluded by your country concerning mutual legal assistance and how such assistance is provided in the absence of an agreement.*

With regard to cooperation at multilateral level in the respective bodies of the EU, the EU Council, the UN, the IAO, the OSCE and the CBSS, as well as with regard to other initiatives and projects, reference is made to the contents of the status report (under e. International cooperation).

In Germany, international judicial assistance in criminal matters is governed by the provisions of the Federal Law on International Judicial Assistance in Criminal Matters (IRG). Under the key provision, Section 59 IRG, all countries of the world – irrespective of existing multilateral or bilateral agreements – may receive comprehensive judicial assistance. This includes all forms of investigative measures provided for national proceedings by the German Criminal Procedure Code.

Germany has also ratified a large number of bilateral and multilateral agreements and conventions which regulate judicial assistance in criminal matters and, like the IRG, also apply in matters concerning action to combat human trafficking. A list of the judicial assistance agreements signed by Germany can be provided upon request.

#### **A. International cooperation initiatives**

Germany's contribution to the Trust Fund on Contemporary Forms of Slavery is made using Federal Foreign Office funds, currently amounts to €250,000 per year and is part of the contributions to the OHCHR.

In its efforts to combat human trafficking, Germany promotes specific human rights projects which focus on combating crime and achieving stability.

#### 1. Human rights projects

<b>Timeframe/ Country</b>	<b>Project</b>	<b>Funding Amount (in EUR)</b>
<b>2008-2009</b>		
West Balkans	UNODC Project to Combat Human Trafficking	451,000

<b>2009</b>		
Ukraine	Stop Trafficking Now – an educational campaign by singer Ruslana to combat trafficking in women and forced prostitution	26,000
Thailand/ Cambodia	UNDP/UNIAP anti-trafficking project in the Mekong region	130,000
Moldavia	Project conducted by a national NGO on combating trafficking in women and forced prostitution	61,000
<b>2010</b>		
Vietnam	Policy consultations on statutory regulations to combat human trafficking	7,600
<b>2012</b>		
Ukraine	EURO 2012 – Red Card Action Against Trafficking in Women	28,940
<b>2013</b>		
Ukraine	Sensitising Juveniles to the Subject of Human Trafficking	14,250
Israel	Support for African Victims of Human Trafficking	26,000
<b>2014</b>		
Ukraine	Providing Protection and Safety for Victims of Human Trafficking	5,000
<b>2015</b>		
Thailand	Combating Trafficking in Children	70,000
Kazakhstan	Protecting the Rights of Labour Migrants	40,000
Bolivia	Human Trafficking Prevention	23,000
<b>2016</b>		
Bolivia	Human Trafficking Prevention	30,700
Thailand	Combating Trafficking in Children	60,000
Malaysia	Protecting Rohingya Refugees Against Human Trafficking	27,900
<b>2017</b>		
Cambodia	Education and Support Measures (especially for children) to Prevent Human Trafficking	40,000

## 2. Crime prevention projects

<b>Timeframe/ Country</b>	<b>Project</b>	<b>Funding Amount (in EUR)</b>
<b>2009</b>		
South-East Europe	UNODC: Capacity-building to Combat Human Trafficking	373,862
<b>2012</b>		

Thailand	NGO TRAFCORD: Prevention and Prosecution of Human Trafficking in Northern Thailand	39,500
<b>2013</b>		
Thailand	NGO TRAFCORD: Prevention and Prosecution of Human Trafficking in Northern Thailand	29,016
Morocco	IOM: Capacity-building for Authorities to Improve Identification and Protection of Victims of Human Trafficking	90,000
Sudan	IOM: Capacity-building for Authorities to Improve Identification and Protection of Victims of Human Trafficking	145,000
<b>2014</b>		
Libya	IOM: Refugee aid project	150,000
Sudan	IOM: Capacity-building in Sudan's authorities for improved border controls and identification of victims of human trafficking	112,044
Nigeria	UNODC: Study on human trafficking	53,123
<b>2014-2016</b>		
Morocco	IOM: Capacity-building for 3 NGOs and the Moroccan authorities	250,000
<b>2015</b>		
Guinea-Bissau	UNODC: Project to build national capacities and promote cross-border cooperation	90,000
Mauretania	IOM: Project to build capacities in the authorities to detect, ban and prosecute human trafficking	50,000
<b>2016</b>		
Central African Republic	IOM: Building national capacities for awareness of, attention to and measures to combat human trafficking and exploitation	500,000
Mauretania	IOM: Understanding and combating human trafficking	305,000
West Africa	UNODC: Strengthening capacities to prosecute the smuggling of migrants and cooperate to this end in West Africa	85,000
<b>2017</b>		
Mauretania	IOM: Understanding and combating human trafficking	327,307
West Africa (Benin, Burkina Faso, Mali, Niger, Senegal, Togo)	Interpol: Capacity-building in border management	527,640
Sahel (Burkina Faso, Chad, Mali, Mauretania, Niger, Senegal)	Interpol: Combating human trafficking along the Sahel migration route	504,750
Central African Republic	IOM: Preventing and combating human trafficking	500,000
Mali, Niger	UNODC: Capacity-building in training for border control and criminal investigation officers	1,000,000

### 3. Stabilisation projects

Timeframe/ Country	Project	Funding Amount (in EUR)
<b>2015-2017</b>		
Morocco	Deutsch-Moroccan Partnership for Asylum and International Refugee Protection (GIZ)	1,410,000
<b>2016</b>		
Libya	IOM: Promoting Peace and Stability for IDP, migrant and local host communities in Libya	1,704,090
<b>2017</b>		
Egypt	Consolidate Direct Assistance and Assisted Voluntary Return and Reintegration Services in Egypt (CARE) (IOM)	2,000,000
Libya	IOM: Promoting Peace and Stability for IDP, migrant and local host communities in Libya	2,370,050
West Africa /North Africa	via EUTF – IOM Regional Project EUTF for Africa and IOM initiative for Protection and Reintegration of returnees along the Central Mediterranean migration routes	48,000,000 (Germany's share of 100 million in total).

#### B. Bilateral and multilateral agreements

With regard to bilateral and multilateral agreements concerning international cooperation, reference is made to the GRETA Report 2015 – iv. International Co-operation. The underlying requirements have not changed.

The most important initiative for the BKA is its participation in EMPACT projects. As mentioned in the GRETA status report (p. 7 f), the BKA has continued its good international cooperation and has intensified EMPACT-related cooperation. Germany heads the ETUTU Networking sub-project on Nigerian human trafficking and is also an active participant in the sub-projects on Chinese human trafficking and the project on exploitation of minors. It also provides support for the other sub-projects as needed and provides information as requested.

The Joint Action Days on Human Trafficking conducted in Germany as part of the EMPACT project are coordinated by the BKA. The Action Days are designed to aid identification of victims of human trafficking, are held throughout Europe within the same period of time and usually focus on a range of different themes. As the events take place at the same time across Europe, they are to be seen as a practical component of cooperation activities at international level.

#### C. Combating human trafficking as part of Federal Government development cooperation

Measures to combat and prevent human trafficking in cooperating states are a component of various projects in Federal Government development cooperation, as are measures in BMZ-funded non-federal development cooperation. At multilateral level, the BMZ funds the ILO as the leading international organisation to implement the core labour standards and especially via the ILO's decent work country programmes.

## Selection of relevant development cooperation projects in relation to preventing and combating human trafficking

- Africa: The regional project on improved migration management is designed to improve migration management in countries of origin and transit countries in East Africa. The national governments are supported in matters concerning migration and border-control management to prevent human trafficking and people smuggling. This is done in compliance with human rights standards and principles, including training of personnel to raise awareness to the obligation to protect and to improve protection measures for victims of human trafficking (comprehensive approach).
- Bangladesh: The project on promoting social and environmental standards in industry supports the government in complying with national and international environmental and labour standards to secure the rights of workers, including integration of people with disabilities, in the textile and leather industries.
- Burkina Faso: The PRO-Enfant project aims to combat exploitative child labour, trafficking in children and gender-specific violence. It focuses on the rights of girls and young women. Protect and prevention measures are implemented in cooperation with state structures, municipal authorities, civil society and the private sector. Training and informational campaigns sensitise security personnel, social workers, community functionaries and the local population, including children, to the risks and dangers involving child labour and trafficking in children.
- Migration advice centres serve as the first point of contact in linking repatriates with the existing re-integration programmes on offer. The services offered by the centres are also available to the (as yet) non-migrant population. The basic aim is for all people in the country of origin to receive similar support services to help them make a new start. The centres also inform about the risks of irregular migration and advise on the regularly-used migration routes. Migration advice centres exist in Kosovo, Serbia, Albania, Tunisia, Morocco, Ghana and Senegal. Additional centres are being established in Nigeria, Iraq and Afghanistan, and are being considered for Egypt and Pakistan. As of November 2017, the migration advice centres had advised almost 900 repatriates and had conducted a total of 14,600 advisory sessions for the non-migrant population.

In addition, the Länder judicial administration authorities reported on the following experience gained in international cooperation activities. International cooperation is practiced in particular in connection with judiciary assistance, which mainly involves interviewing repatriated women. Reference is made to the Länder-specific input in the Länder Annex.

### **Measures related to endangered or missing persons (Article 33)**

*57. What measures are envisaged in your country to transmit information to another party concerning a victim, witness or collaborator with the judicial authorities in a THB case, who your authorities believe is in immediate danger on the territory of another party? What protection measures are envisaged for such persons, should another party to the Convention inform you about their presence on your territory? Please provide examples from practice.*

Under Section 61a IRG, information concerning persons at risk in foreign countries may be provided to other countries in the form of "spontaneous sharing of information". Section 92 IRG contains a special provision for such spontaneous sharing of information with EU member states or Schengen-associate countries.

Also, if a person is at risk, BKA or Interpol liaison officers may provide information directly to other countries in order to initiate protective measures. The good connections established with officers in countries such as Bulgaria and Romania enable the police in those countries to take timely action to address the risk.

Additionally, if they meet the necessary requirements, victims of human trafficking – and also other witnesses – can be included in witness protection programmes. In less-serious cases, the witness must be provided with support via victim protection organisations and specialist counselling centres.

No examples of such cases were reported by the Länder judiciaries.



*58. Has an early warning system for missing children been introduced in your country and is the harmonised European telephone number for missing children available? What other measures are there for early signalling to other countries about endangered and/or missing children? Has your country concluded any agreements or taken any other measures to reinforce co-operation with other countries in the search for missing people, in particular children, where your authorities have reasonable grounds to believe that missing children may be victims of trafficking or are at risk of becoming victims of trafficking?*

Germany ratified the International Convention for the Protection of All Persons from Enforced Disappearance on 24 September 2009. The Convention's Article 15 contains a provision on cooperation between the Parties and states that: "States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains." In addition, Article 25 of the Convention contains a ban on the wrongful removal of children and an obligation to have the necessary legal procedures in place at state level. In this connection, the Convention's Article 25 (3) requires that the Parties "shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 ( a ) of this article".

Mention is also made of the fact that Germany is one of more than 90 Parties to the Hague Convention on Child Abduction. The Hague Convention on Child Abduction is designed to give children cross-border protection from the harmful effects of abduction or wrongful retention by applying procedures which order the immediate return.

Although no special early warning system for missing children exists, missing person reports can be made at all police stations. Information concerning missing children can be submitted to police operations centres. Data on missing children is entered into the national database on missing persons and unidentified deceased. As it is a national database, all Federal and Länder police forces have access to the data it contains. The telephone number mentioned in the question is the Hotline 116000, which is operated by the Initiative Vermisste Kinder (Missing Children Initiative) and acts as a point of contact for all matters concerning missing children. It is not a police-run service.

### **Co-operation with civil society (Article 35)**

*59. What steps are taken by your country to encourage state authorities and public officials to co-operate with NGOs and other civil society organisations, including trade unions, so as to involve them in the elaboration and implementation of anti-trafficking policies, programmes and other initiatives to prevent THB? Please provide information on any memoranda of understanding or other agreements concluded between public bodies and NGOs in this field.*

Close cooperation between public authorities and non-government organisations in Germany in action to combat human trafficking and especially in protecting and support victims is described in the status report and the associated Länder Annex.

Awareness-raising usually occurs via joint, cross-cutting training events.

In May 2017, the BKA in cooperation with the KOK held a workshop for employees of the criminal prosecution authorities and staff of the specialised counselling centres for victims of human trafficking which focused on the new forms of exploitation and improved cooperation.

The BKA networking meetings on labour exploitation are attended by the police, public prosecutors, the Financial Monitoring Unit to Combat Illicit Employment (FKS), union representatives, the KOK, the Church, the Alliance for Jobs and the University of Halle. Reference is also made to the National Cooperation Strategy on Protecting and Supporting Child Victims of Human Trafficking and Exploitation mentioned above, and to section j. Identifying victims of human trafficking.

In asylum procedures with potential links to human trafficking, the applicants are referred to a specialised counselling centre. Contact with the centre is only made with the applicant's consent.

In the BAMF training for new special representatives for victims of human trafficking, a representative of a regional specialised counselling centre gives a presentation on their work and how they cooperate with the BAMF.

In November 2017, the KOK and the BAMF organised a joint networking meeting in which staff from the specialised counselling centres and BAMF were able to get to know each other and develop solutions for effective cooperation.

KOK, BAMF and selected regional specialised counselling centres maintain dialogue with other human trafficking stakeholders in the Federal-Länder Working Group on Human Trafficking.

Reference is made to the Länder-specific input in the Länder Annex.

### **Relationship with other international instruments (Article 40)**

*60. Please indicate any agreements concluded by your country in accordance with Article 40.2 of the Convention.*

Reference is made to the list of agreements on judicial assistance in criminal matters provided in the answer to Question 56. In the respective relationships between Germany and the other party/parties to the agreements, the agreements are used to improve the opportunities available for cooperation in criminal matters. Germany is also a party to the UN Convention of 15 November 2000 against Transnational Organized Crime and the Additional Protocols Against Human Trafficking and Against Smuggling of Migrants.

*61. Please provide details of cases where victims or possible victims of THB have been granted refugee status or subsidiary/complementary protection.*

No information can be provided on this issue because in its human trafficking statistics, the BAMF collects no data on the reasons for providing protection or the associated protection status.

### **D. Final questions**

*62. Which bodies and organisations contributed to responding to this questionnaire?*

The following were involved in answering the questionnaire:

- Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ)
- Federal Ministry of the Interior (BMI)
- Federal Ministry of Justice and Consumer Protection (BMJ)
- Federal Ministry of Labour and Social Affairs (BMAS)
- Federal Ministry for Health (BMG)
- Federal Ministry for Education and Research (BMBF)
- Federal Ministry for Economic Cooperation and Development (BMZ)
- The Judicial Administrations of the 16 German states, including the public prosecution authorities and the Länder regional courts
- The Ministries for Equality in the 16 German states, with input from other Länder-level ministries
- The German NGO network and coordination office against trafficking in human beings (KOK)

*63. Who was responsible for co-ordinating and collecting the replies to this questionnaire?*

- The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ)

## **E. Statistics on THB (per year, starting with 2010)**

*Number of victims given refugee status and subsidiary/complementary protection.*

See the answer to Question 61.

*Number of convictions for THB resulting in penalties involving deprivation of liberty, with an indication of the duration of the penalty and whether effectively enforced or suspended.*

### Note:

Those sentenced are accused for whom prison sentences, custodial sentences or fines (including by means of a court order) were handed down in accordance with general criminal law, or whose offence was punished according to juvenile criminal law with a juvenile sentence, disciplinary measures or corrective measures.

With regard to the statistics cited, it must be taken into account that in the criminal justice statistics individuals convicted for an offence (Section 52 StGB) or multiple offences (Section 53 StGB) who had violated several provisions of criminal law are only listed for the offence which attracts the most serious punishment under criminal law. The number of individuals actually convicted for human trafficking could thus be higher than is indicated by the statistics. With regard to other offences committed in connection with human trafficking no (not even approximate) information can be given regarding the extent to which the available statistics include cases of human trafficking.

Convictions for:		2010		2011		2012		2013		2014		2015		2016*	
		A	J	A	J	A	J	A	J	A	J	A	J	A	J
§ 232 StGB	i	106	9	113	4	107	8	64	13	69	10	62	10	54	6
	F/J	99	6	100	3	99	4	61	7	61	8	53	6	51	5
	B	72	4	73	2	67	4	44	6	41	4	38	4	32	3
	V/E	1		5		1		0		2		2		4	
§ 233 StGB	i	8	5	4	0	3	7	11	3	6	2	3	2	8	4
	F/J	5	1	3	0	1	2	5	0	2	0	1	0	3	1
	B	4	1	3	0	1	0	5	0	2	0	1	0	3	-
	V/E	0		0		0		0		0		0		1	
§ 233a StGB	i	2	1	0	0	3	0	1	1	2	1	0	0	0	0
	F/J	1	0	0	0	2	0	1	0	2	1	0	1	0	0
	B	1	0	0	0	2	0	1	0	1	1	0	0	0	0
	V/E	0		0		0		0		0		0		0	

Source: German Federal Statistical Office, Subject Series 10, Series 3 (Criminal Prosecution), Tables 2.3, 4.1 and 5.1  
 Legend: A = General criminal law / J = Juvenile criminal law / I = overall / F/J = of which Prison sentence or juvenile sentence / B = of which F/J on Probation / V/E = of which including Forfeiture and confiscation

*Number of convictions for THB resulting in penalties involving deprivation of liberty, with an indication of the duration of the penalty and whether effectively enforced or suspended.*

Separate illustration of the convictions under Section 10a SchwarzArbG (employment of foreigners with no residence permit who are victims of human trafficking) is not possible. Figures are only available for all sentences passed under the SchwarzArbG in its entirety. In addition, data is also collected on sentences passed under Section 10 SchwarzArbG (employment of illegal foreigners or of foreigners with no residence permit and under unfavourable working conditions) and Section 11 SchwarzArbG (mass employment of illegal foreigners or of foreigners with no residence permit or of under-age foreigners).

	2010	2011	2012	2013	2014	2015	2016
SchwarzArbG						40	31

Source: Federal Statistical Office, Subject Series 10, Series 3 (Criminal Prosecution) Table 2.1

*Number of victims identified in the sense of having been recognised by a state institution or mandated NGO as deserving any of the rights or entitlements to services provided for by the Convention (with breakdown by sex, age, nationality, form of exploitation, internal or transnational trafficking, and body which identified them).*

Source: Bundeslagebilder Menschenhandel 2010 – 2016

### **Number of Victims Identified**

#### **Victims of human trafficking by form of exploitation**

	2010	2011	2012	2013	2014	2015	2016
<b>Sexual Exploitation</b>	610	640	612	542	557	416	488
<b>Labour Exploitation</b>	41	32	14	61	26	54	48
<b>Total</b>	<b>651</b>	<b>672</b>	<b>626</b>	<b>603</b>	<b>583</b>	<b>470</b>	<b>536</b>

#### **Victims of human trafficking by gender and form of exploitation**

	2010	2011	2012	2013	2014	2015	2016
<b>Sexual Exploitation</b>	96% female	94% female	96% female	96% female	95% female	96% female	95% female
<b>Labour Exploitation</b>	76% male	75% male	unknown	unknown	unknown	81% male	71% male

**Victims of human trafficking**

#### **Victims of human trafficking for the purpose of sexual exploitation by age**

	2010	2011	2012	2013	2014	2015	2016
<b>&lt; 14</b>	8	13	12	9	5	6	23

<b>14-17</b>	79	77	88	61	52	71	12
<b>18-20</b>	254	269	223	209	209	148	84
<b>21-24</b>	127	135	123	111	115	68	118
<b>&gt; 24</b>	134	133	156	142	164	98	109
<b>Unknown</b>	8	13	10	10	12	25	142
<b>Total</b>	<b>610</b>	<b>640</b>	<b>612</b>	<b>542</b>	<b>557</b>	<b>416</b>	<b>488</b>

### **Victims of human trafficking for the purpose of sexual exploitation by nationality**

	2010	2011	2012	2013	2014	2015	2016
<b>EUROPE</b>	520	560	545	469	501	363	413
<b>of which Romania</b>	119	165	128	125	211	98	76
<b>of which Germany</b>	121	139	127	90	88	97	127
<b>of which Bulgaria</b>	115	98	155	143	89	71	92
<b>of which Hungary</b>	53	56	47	33	40	44	33
<b>AFRICA</b>	62	44	31	32	32	20	36
<b>of which Nigeria</b>	46	28	13	15	18	10	25
<b>US</b>	3	7	10	4	6	2	2
<b>ASIA</b>	6	9	12	9	7	9	13
<b>Unknown/ unsolved</b>	19	20	14	28	11	22	24
<b>Total</b>	<b>610</b>	<b>640</b>	<b>612</b>	<b>542</b>	<b>557</b>	<b>416</b>	<b>488</b>

**Note**  
:  
Due to the low number of cases, statistics in the Bundeslagebilder

reports on victims of human trafficking for the purpose of labour exploitation are not broken down in terms of age or most frequent nationality.

*Number of investigations into THB cases.*

### **Number of human trafficking cases investigated**

	2010	2011	2012	2013	2014	2015	2016
<b>Sexual Exploitation</b>	470	482	491	425	392	364	363
<b>Labour Exploitation</b>	24	13	11	53	11	19	12
<b>Total</b>	<b>494</b>	<b>495</b>	<b>502</b>	<b>478</b>	<b>403</b>	<b>383</b>	<b>375</b>