



Brussels, 2.12.2016
COM(2016) 722 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**assessing the extent to which Member States have taken the necessary measures in order
to comply with Directive 2011/36/EU on preventing and combating trafficking in human
beings and protecting its victims in accordance with Article 23 (1)**

1. INTRODUCTION

Trafficking in human beings is explicitly prohibited under Article 5(3) of the Charter of Fundamental Rights of the European Union. It is also listed in Article 83 of the Treaty on the Functioning of the European Union among those particularly serious crimes with a cross-border dimension.

A major step in the EU action to address this phenomenon was the adoption of **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims** ('the Directive'), which replaced the previous EU legal instrument on trafficking in human beings, Council Framework Decision 2002/629/JHA. The Directive applies to all Member States except for Denmark¹.

The Directive sets out **minimum standards** to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims and provides for the definition of trafficking in human beings. It is based on the human rights approach and gender perspective, to strengthen the prevention of this crime and the protection of and assistance to the victims thereof.

The Directive concerns: i) criminal measures, investigation and prosecution (Articles 2 to 10) ii) assistance, support and protection measures for victims (Article 11 to 17) iii) prevention measures enabling the reduction of demand, raising awareness, and fostering the training of persons likely to come into contact with victims (Article 18) and iv) National Rapporteurs or equivalent mechanisms (NREMs) and Coordination (Articles 19 and 20). The Directive also takes particular account of the best interests of the child and lays down provisions granting assistance, support and protection specifically tailored to children (Articles 13 to 16).

This report responds to the requirement for the Commission, as per Article 23(1) of the Directive, to report to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with the Directive, including a description of action taken under Article 18(4). A separate report assesses the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings².

The Commission had organised three meetings with representatives of Member States before the transposition date in order to assist the Member States in the transposition processes and to allow them to exchange information and best practices, as well as to discuss problems they were encountering when transposing the Directive. The Directive has also been discussed in various meetings of the Network of National Rapporteurs or equivalent mechanisms (NREMs).

This Report represents the state of play of the transposition of the Directive at the time of drafting the Report, based on the information available to the Commission, and as such is not an exhaustive analysis of existing national provisions. The existence of further legislative developments or provisions not notified to the Commission cannot be excluded. Therefore this Report does not preclude the Commission from seeking additional information from Member States through bilateral contacts, if need be.

¹In this report 'Member States' means the Member States bound by the Directive.

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

2. STATE OF TRANSPOSITION AND MEASURES TAKEN BY THE MEMBER STATES

Member States were required to complete transposition of the Directive by 6 April 2013. In May 2013, the Commission initiated infringement procedures against Member States for not having communicated the transposition measures to complete transposition of the Directive by sending 13 letters of formal notice. In 4 of these infringement procedures the Commission addressed reasoned opinions to the Member States concerned. All Member States bound by the Directive have by now communicated their transposition measures³. Due to the late notification of transposition measures by Germany, the Commission could not complete its assessment of these measures. The report therefore does not include findings based on the assessment of these measures.

Given the wide and comprehensive nature of the Directive covering different areas of national laws, most Member States have chosen to transpose it with many and diverse acts, to be found within five main areas: criminal codes; specific acts concerning the combatting of trafficking in human beings; laws safeguarding victims of crimes; acts setting measures on protection of children; and legislation regulating the entry and residence of third-country nationals. This report assesses the transposition of the Directive into national laws without addressing its implementation.

2.1. Criminal measures, investigation and prosecution (Articles 2 to 10)

2.1.1. Offences concerning trafficking in human beings (Article 2)

Article 2 sets forth a common definition of trafficking in human beings and establishes the types of intentional conducts which constitute the offence of trafficking in human beings.

All Member States have adopted provisions which criminalise the offence of trafficking in human beings. The definition of the offence set out in Article 2(1) comprises three constitutive elements (acts, means and purpose).

The **acts** of recruitment, transportation, transfer, harbouring or reception of persons are explicitly included in the definition of the offence by almost all Member States. Some Member States do not explicitly refer to the ‘exchange’ and the ‘transfer of control’ (**BG, CZ, EE, FR, IT, LV, NL, AT, PL, PT, RO, SI, SK, SE**). Those two acts are generally encompassed by other acts such as ‘recruiting a person’⁴. Concerning the **means**, the use of threat, force and other forms of coercion as well as the abuse of position of vulnerability are covered by all Member States. However certain means (abduction, fraud, deception, giving or receiving payments or benefits or abuse of power) are not explicitly included in the definition by a number of Member States⁵. Member States address in diverse ways the position of

³ On the date of closing the work on this report.

⁴ SI does not include in the definition the "recruitment" and the UK (England/Wales and Northern Ireland) refers to the ‘arranging or facilitating of the travel of another person’.

⁵ For example, CZ, EE, FR, LV, HU, FI and UK (England/Wales, Northern Ireland and Scotland) there is no explicit mention of "abduction and fraud". ES and IT do not seem to include "abduction"; LT and SI do not refer to "fraud"; AT does not refer to "deception" and "abduction"; EE, HU, SI and UK (England/Wales, Northern Ireland and Scotland) do not refer to "giving or receiving of payments or benefit" and UK (England/Wales, Northern Ireland and Scotland) does not refer to "abuse of power".

vulnerability, which the Directive defines in Article 2(2) as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

Article 2(3) stipulates that exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. Several Member States (**BG, ES, FR, CY, LT, LU, MT, NL, PT, SK, SE, and UK (Gibraltar)**) have included explicit references to those forms of exploitation, while in other Member States certain of those minimum forms are not expressly referred to⁶. In **SE**, the missing elements though are covered by the broader catch-all provision⁷. Since Member States can go beyond the minimum definition, some of them also make reference to additional forms of exploitation, such as the exploitation for adoption (**CY**), production of pornographic work (**CZ**), forced marriage (**ES, HR and SK**).

Pursuant to Article 2(4), the consent of the victim of trafficking shall be irrelevant in case that any of the means mentioned in Article 2(1) has been used. The majority of the Member States have this provision reflected in their national law; however, a number of Member States encompass it only via general law principles or case law. The information for **DE, LV and NL, AT** is not conclusive as to whether the provision of 2(4) is reflected in their national law.

Article 2(5) requires that child trafficking shall be punishable even if none of the means mentioned in Article 2(1) has been used. Almost all Member States fully reflect this requirement, in the case of **EL** and **CY** the information is not conclusive.

Article 2 (6) provides that for the purpose of the Directive, "child" shall mean any person below 18 years of age. However, some Member States do not appear to provide assistance and protection for all children up to the age of 18.⁸

2.1.2. Incitement, aiding and abetting, and attempt (Article 3)

Article 3 obliges Member States to ensure that incitement, aiding and abetting and attempt to commit trafficking in human beings are punishable. All Member States have corresponding transposition measures in their national laws.

2.1.3. Penalties (Article 4)

Article 4 lays down the minimum level of the maximum penalty that should be applicable for the offence of trafficking in human beings and provides for a number of aggravating circumstances, which carry higher maximum penalty.

⁶ Examples where some forms of exploitations are not explicitly referred to in national law: begging (**CZ, FI, HR, LV, SI and UK (England/Wales, Northern Ireland and Scotland)**); slavery and practices similar to slavery (**AT, BE, EL and IT**); exploitation for criminal activities (**EL, PL, RO, FI and UK (England/Wales, Northern Ireland and Scotland)**), the removal of organs (**AT, SE**).

⁷ In **SE** begging, slavery, practises similar to slavery, servitude, the exploitation of criminal activities and removal of organs are covered by a catch-all provision.

⁸ See 2.2.4 and 2.2.5.

Almost all Member States, in accordance with Article 4(1), have established that the offence is punishable by a maximum penalty of at least 5 years of imprisonment. **BE, HU, AT** opted for the maximum of 5 years penalty. All other Member States appear to apply stricter sanctions ranging between a maximum of 6 to 20 years.

Articles 4(2) and (3) list a number of aggravating circumstances whose application carries higher penalties of at least 10 years of imprisonment (when the offence has been committed: against a particular vulnerable victim; within the framework of a criminal organisation; while endangering the life of the victim deliberately or by gross negligence; by means of use of serious violence or by causing particular serious harm to the victim; by public officials in the performance of their duties). Most Member States transposed these provisions in their national laws. The information for **BG, DE, ES** and **HU** concerning the inclusion of the aggravating circumstances or not imposing at least a maximum of 10 years of imprisonment is not conclusive.

Article 4(4) provides that the penalty levels for the aiding, abetting, inciting or attempting of an offence concerning trafficking in human beings must be effective, proportionate and dissuasive and allow for surrender. All Member States have transposed these provisions. As regards the penalty levels, Member States punish aiders, abettors, instigators and the attempt to commit a crime either by the same term of imprisonment as the main offender allowing mitigation of penalty levels or by specific penalty level. The surrender for an offence referred to in Article 3 is possible in all Member States.

2.1.4. Liability of legal persons (Article 5)

Article 5 requires Member States to ensure that legal persons may be held liable for the offences referred to in Articles 2 and 3, and specifies the position or capacity of the perpetrator in relation to the legal person, which will lead to the legal person's liability.

All Member States have introduced criminal or administrative liability of legal persons for the different types of capacities or positions of the perpetrator that shall lead to responsibility. Some Member States ((**LT, MT** and **UK (Scotland)**) have introduced specific provisions dealing with corporate liability for the crimes of trafficking of human beings, while all others rely on general provisions on corporate liability, applicable to crimes. All Member States have introduced liability for legal persons in line with Article 5 (1)(a) to (c); **EL, CY, LT, MT, PL** and **SK** transposed it literally. Article 5(2) requires Member States to introduce liability for legal persons when a crime under Articles 2 or 3 has taken place due to the lack of control or supervision by a person holding one of the positions referred to in Article 5(1)(a) to (c). Such liability is explicit in all Member States, except for **LU** where the assessment is not conclusive. Article 5(3) requiring that the liability of a legal person may not exclude criminal proceedings against a natural person for the same crime is covered in all Member States.

Article 5(4) stipulates that the concept of 'legal person' shall exclude States or public bodies in the exercise of State authority and public international organisations. Based on the information available, none of the Member States include such public bodies or organisations

within the concept of a ‘legal person’ (or similar concepts applicable under the respective national laws).

2.1.5. Sanctions on legal persons (Article 6)

Article 6 sets out the obligation for Member States to introduce effective, proportionate and dissuasive penalties for the legal persons held liable pursuant to Article 5. Member States have introduced administrative or criminal sanctions that are explicitly applicable to legal persons. The minimum and maximum fines vary between Member States. Article 6 also provides that Member States may include other optional sanctions. Based on the information available, most Member States,⁹ with the exception of **DE, IE, and UK**, have chosen to introduce at least one other sanction.

2.1.6. Seizure and confiscation (Article 7)

Under Article 7, Member States must ensure that competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3. All Member States have in place national measures to transpose this provision. While some Member States (**BE, EL, ES, FR, CY and UK (England/Wales)**) have introduced specific provisions dealing with seizure and confiscation concerning the crime of trafficking in human beings, the rest of the Member States appear to rely on general rules on seizure and confiscation under criminal law, which apply to all crimes, including trafficking of human beings.

2.1.7. Non-prosecution or non-application of penalties to the victims (Article 8)

Article 8 requires Member States to take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to such a crime. The Directive leaves discretion to the competent authorities on how to regulate at national level the possibility not to prosecute or impose penalties.

Member States took measures of diverse nature to ensure this possibility for their national authorities. Some Member States (**BG, EL, ES, CY, LV, LT, LU, MT, NL, RO, SK and UK**) make an explicit reference to non-prosecution trafficking victims, while others foresee

⁹ : Examples, exclusion from entitlement to public benefits or aid (BE, CZ, EL, ES, HR, IT, CY, HU, MT, PL, PT); temporary or permanent disqualification from the practice of commercial activities (BE, CZ, EL, ES, FR, HR, IT, CY, HU, MT, LT, LV, AT, PL, PT, RO, SI, SE); placing under judicial supervision (CY, ES, FR, IT, MT, PT and RO); judicial winding-up (BE, EL, ES, FR, HR, CY, HU, LT, LU, MT, NL, PT, RO, SI); temporary or permanent closure of establishments which have been used for committing the offence (BE, ES, FR, LT, LU, CY, MT, PT and RO). In addition to fines and the above-mentioned optional penalties, some Member States (BE, CZ, FR, PT and RO) have chosen to introduce the additional sanction of publication or display of the decision or judgement in which the legal person has been found guilty of the crime.

the non-prosecution of a person who was compelled, threatened or coerced to commit a criminal act (**HU, IT, PL, PT, SE** and **SI**). The information for **CZ** and **HR** is not conclusive.

2.1.8. Investigation and prosecution (Article 9)

Article 9, laying down measures for the investigation and prosecution of trafficking in human beings, has been transposed by the majority of Member States.

As regards paragraph 1, all Member States provide that the submission of a complaint is not required in order to initiate the relevant investigation, and the withdrawal of a victim's statement does not have influence on the continuation of the investigation or prosecution.

Paragraph 2 requires Member States to take the necessary measures to enable the prosecution of trafficking in human beings for a sufficient period of time after the victim has reached the age of majority. Most Member States have such a provision in place, in the case of **IE** and **HR** the available information is not conclusive.

All Member States have foreseen measures for the training of persons/services responsible for investigating or prosecuting trafficking offences in accordance with Article 9(3), either in legal provisions or in soft-law measures such as national action plans, strategies or programmes.

Finally, all Member States have taken measures to ensure the availability of effective investigative tools to persons, units or services responsible for investigating or prosecuting trafficking in human beings (Article 9(4)). The investigative tools foreseen in the Member States include interception of communications (**BE, BG, DE, EE, EL, FI, HR, IT, MT, NL, AT, PL, RO, SI, SE** and **UK**¹⁰); covert surveillance (**BE, BG, CZ, EE, EL, ES, FI, FR, HR, IT, LU, HU, NL, AT, PL, PT, RO, SI, SK** and **UK**¹¹); the monitoring of bank accounts and other financial investigations (**BE, FR, HR, HU, IT, AT, PL, PT, RO, SI, FI** and **UK**); and electronic surveillance or similar measures (**BE, BG, CZ, DE, EL, FR, HR, HU, NL, AT, PL, PT, RO, SI, SE** and **UK**).

2.1.9. Jurisdiction (Article 10)

Article 10 (1) refers to the situations in which Member States must establish their jurisdiction over the offences referred to in Articles 2 and 3. Article 10 (2) sets out a number of optional jurisdictional grounds, which the Member States may *inter alia* choose to adopt. Article 10 (3) refers to the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned and stipulates that "each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions: (a) the acts are a criminal offence at the place where they were performed; or (b) the prosecution can be initiated only following a report made by the victim

¹⁰ England/Wales, Northern Ireland and Scotland

¹¹ England/Wales, Northern Ireland and Scotland

in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed".

Article 10(1)(a) obliges Member States to take the necessary measures to establish jurisdiction when the offence is committed in whole or in part within their territory. All Member States have transposed this provision; however, in **HR, CY, LV** and **SI**, it is unclear whether jurisdiction is established also when a crime has been partially committed within the territory.

Article 10(1)(b) requires Member States to take the necessary measures to establish jurisdiction when the offender is one of their nationals. All Member States took measures to transpose this provision.

Article 10(2)(a) to (c) sets out some optional jurisdictional grounds and most Member States have adopted at least one of these. For **BG, DE** and **FR** no optional jurisdictional grounds have been identified.

As regards Article 10(3)(a), most Member States transposed this provision in the national law and have not introduced such a requirement when determining jurisdiction under Article 10(1). However, in **EE, NL, PT** and **RO** jurisdiction (under Article 10(1)(b)) is only established when the offence is criminalised in the place where it is committed.

Concerning Article 10(3)(b), specifying that jurisdiction based on the principles of territoriality and active personality shall not be subject to the requirement that prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed, none of the Member States have introduced such a requirement. They thus all transposed the Directive as regards the obligatory jurisdictional grounds under Article 10(1).

2.2. Assistance, support and protection measures for victims

2.2.1 Assistance and support for victims of trafficking in human beings (Article 11)

Article 11 lays down a number of obligations related to the assistance and support for victims of trafficking in human beings, including measures on identification. The necessary measures required by this Article are often included not only in legislative acts but also in national action plans, strategies and programmes. The majority of the Member States have transposed the different provisions of the Article, although some issues concerning the transposition of paragraphs 2 and 7 require closer attention.

As regards Article 11(2), only half of the Member States clearly require that assistance and support should be provided as soon as the competent authorities have an indication or reasonable grounds to believe that the person is a victim of trafficking in human beings (**BG, EE, ES, FR, CY, IE, LT, LU, NL, RO, SK, FI** and **UK**). Some Member States have transposed Article 11(2) also by referring to a list of indicators enabling the "reasonable ground" identification of a person as a victim (**BG, LT, LU** and **RO**).

A key aspect of the Directive, as stipulated in Article 11(3), is the requirement on Member States to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. Member States took measures to transpose this provision, which is almost literally reflected in the legislation of **CY, MT and UK (Gibraltar, Scotland and Northern Ireland)**. The information available for **BE** is not conclusive as to whether unconditional provisions of assistance and support are available and applicable for all victims irrespective of nationality. In **SK** it appears that if the victim's presence is not necessary for the purposes of criminal proceedings, he/she can be discarded from the assistance programme.

In most cases, national law does not contain a condition requiring the willingness of the victim to cooperate in the criminal investigation (**AT, BG, CZ, EL, FI, HR, HU, IT, LT, LU, LV, NL, PL, PT, SE, SI and UK (England/Wales)**). Some Member States, such as **EE, ES, FR, IE, CY, MT, RO and UK (Scotland, Northern Ireland and Gibraltar)**, clearly foresee that willingness to cooperate is not necessary for the assistance to be provided to the victims. In the majority of the national measures, transposition was also illustrated by rules transposing Directive 2004/81/EC in regard to victims who are third-country nationals¹². Member States established mechanisms of diverse nature¹³ aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations under Article 11(4).

The minimum requirements of Article 11(5) on assistance and support measures to the victims are reflected in various ways, e.g. including the provision of the Directive literally in the national law (**CY, MT, UK (Gibraltar)**) or spelled out in a dispersed manner in the provisions of different acts (**BE, BG, EL, ES, FR, HU, IT, LV, LT, NL, AT, PL, PT, RO, SI and SK**) or via catch-all provisions ensuring other form of assistance (**BG, ES, HR, RO**). National approaches are diverse in ensuring that assistance and support is provided on a consensual and informed basis.

¹² Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L261, 6.8.2004, p.19.

¹³ For most Member States, concerning Article 11(4) consideration was given to the collaboration, for the purposes of identification of victims of trafficking in human beings, between governmental competent authorities, local public bodies, and private entities such as NGO's, shelters or any other associations recognised and registered by the State and who are likely to come into contact with victims. As a rule, the national transposing measures highlight the duty for the public authorities to report situations of trafficking in human beings, bearing in mind that any person can carry out such report. The strengthening of proactive and early victim identification and swift provision of information and assistance to victims constitute major objectives in the national action plans, strategies and programmes. Often, the latter provide for guidelines on the identification procedures. Habitually, the identification procedure is divided in several stages. The national instruments of **BG, FR, LU, CY, MT and SI** refer specifically to a list of indicators for the purposes of identification of victims. Some national mechanisms also include the setting up of manuals, guidelines, and recommendations for the purposes of the identification of victims (**CZ, EE, ES, LV, LT, CY, MT, SI, SE**). In **BE** law, the mechanism put in place applies only to non-Belgian victims.

Article 11(6) on information to be provided under the assistance and support is reflected in the national laws of most Member States (**BG, CY, CZ, EE, EL, ES, FR, HR, LT, LU, MT, AT, PL, PT, RO, SK, FI** and **UK**). Based on the information available, the latter do not ensure that the victims are provided with information that covers the reflection and recovery period pursuant to Directive 2004/81/EC, as well as the possibility of granting international protection and refugee status pursuant to Directive 2004/83/EC and Directive 2005/85/EC. Apart from **CY, MT** and **UK (Gibraltar)**, where this requirement is almost literally transposed, it is mainly inferred from a set of provisions on the procedures of granting of residence permits for third-country nationals. Most frequently, the national measures foresee the duty to inform foreigners in a broad manner and not specifically victims of trafficking in human beings. Based on the information submitted to the Commission, the provision of information on the reflection period is clearly foreseen in **EE, ES, FI, FR, IE, CY, LT, LU, MT, PT, SK** and **UK (Gibraltar)**.

The Directive requirement on the information on international protection and refugee status is clearly foreseen in **BG, EE, IT, CY, MT, PL, SK** and **UK (Gibraltar)**. **BG** and **SK** specifically address victims for trafficking in human beings.

The provision of information on international protection in **HU, IE, NL** and **SE**, on the reflection period in **IT**, or both types of information in **BE, LV** and **SI** might need closer examination.

Member States used legislation (**EE, EL, FI, HU, IT, CY, LV, LT, LU, MT, NL, PL, PT, RO, SK** and **SE**) or legislation with accompanying soft law measures (**BE, BG, CZ, ES, FR, IE, HR, AT, SI** and **UK**) to transpose Article 11(6). Moreover, in some Member States the Directive requirement is present in acts specifically addressing trafficking in human beings (**CY**), acts with a general scope (**EE, EL, HU, IT, AT, PL, PT, SE**) or in both (**BE, BG, CZ, ES, FR, IE, HR, LV, LT, LU, MT, NL, RO, SK, FI**).

The transposition of the provision in Article 11(7) requiring Member States to attend to victims with special needs, whether those needs derive from pregnancy, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered, requires further examination. Based on the information available divergences have been observed with regard to the transposition of this requirement.

2.2.2 Protection of victims of trafficking in human beings in criminal investigation and proceedings (Article 12)

Article 12 establishes a number of protection measures for victims of trafficking in human beings in criminal investigations and proceedings. While it has been transposed by the majority of Member States, some issues concerning the transposition mentioned below of paragraphs 2 and 4 of this Article require closer attention.

The provisions set by Article 12 have been transposed mainly in national criminal procedure laws, while some Member States have included them in specific acts addressing trafficking in

human beings (**EL, LU, CY, NL, RO, SK, FI** and **UK**) or acts on protection of victims of crimes (**CZ, ES** and **PT**).

As required by Article 12(1), all Member States¹⁴ ensure that the protection measures set out in their legislation apply in addition to the rights set out in Framework Decision 2001/220/JHA, currently Directive 2012/29/EU¹⁵.

Article 12(2), requiring Member States to provide victims of trafficking in human beings with access without delay to legal counselling and legal representation, including for the purpose of claiming compensation, and free of charge where the victim does not have sufficient financial resources, is reflected in national laws of most Member States (**BG, CZ, EE, EL, ES, FR, HR, CY, LV, LT, MT, AT, PT, SI, SK, FI, SE** and **UK**). Most Member States provide for the possibility of a legal aid free of charge in cases where a person does not have sufficient financial resources. **EL, HR, LV** and **SE** go further as such aid is granted for free regardless of the resources of the victim. Regarding the provision of legal representation and legal counselling ‘without delay’, **EE, ES, MT** and **UK (Gibraltar)** reflect this condition in an explicit manner in their respective laws. Moreover, regarding the scope of access of legal representation the information concerning **IT** and **LU** is not conclusive and might require further examination.

With regard to Article 12(3) all Member States ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, *inter alia*, by having access to witness protection programmes.

Paragraph 4 establishes a number of procedures and situations that should be avoided in criminal investigations and proceedings, such as unnecessary repetition of interviews, visual contacts between victims and defendants, giving of evidence in open court and unnecessary questioning concerning the victim's private life. Most Member States have taken measures to transpose this provision, however due to the fact that some procedures are not covered explicitly in the national legislation, the Commission might need to further examine the practical implementation of this provision

2.2.3 General provisions on assistance, support and protection measures for child victims of trafficking in human beings (Article 13)

Article 13 stipulates that child victims of trafficking shall be provided with specific assistance, support and protection measures which consider their best interests. Most of the provisions have been transposed by the majority of the Member States. An important principle set forth by the Directive is the presumption of childhood. Nevertheless, a number of issues arise for **LT, IT, BE, CZ, FI, FR, HU, IE, LV, NL, AT, PL, RO, SE** and **SI** in regard to the transposition of paragraph 2, which provides that assistance, support and

¹⁴ CZ, PT and UK (Gibraltar) which transposed Article 12(1) explicitly.

¹⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.

protection measures should be also offered to those victims whose age is unknown, but who can be presumed to be children.

2.2.4 Assistance and support to child victims (Article 14)

Article 14 requires Member States to adopt specific assistance and support measures which are tailored to children who have become victims of trafficking in human beings. Most Member States (**BG, CZ, EE, ES, FR, CY, HU, LT, PT, RO, SK** and **UK**) make a general reference to the provision of assistance and support measures, covering counselling, social support as well as access to healthcare services and an appropriate form of accommodation. Others (**HR, IT, LU, AT** and **SI**) make reference to specific psychological and medical assistance measures, the placement in the social welfare system (**HR**), the provision of a temporary residence permit (**SI**) and the setting up of child protection groups in hospitals (**AT**). These assistance and support measures should be granted to the child victim after an individual assessment. The assistance and support measures offered by some Member States (**BE, EL, LV** and **PL**) are applicable to all victims. It is difficult to assess whether the approach sufficiently addresses the specific needs of child victims, including access to education for child victims and the children of victims, and the Commission will examine this further.

Article 14(1) provides that these measures should assist and support the child "in the short and long term": only **FR** makes explicit reference to the time period of the duration of the assistance measures, while the other Member States seem to provide such measures for a "*reasonable time*" without specifying the precise time frame.

Article 14(2) establishes that a guardian or a representative should be appointed for a child victim of trafficking in human beings once the child is identified, where the holders of the parental responsibilities due to a conflict of interest cannot ensure the best interests of the child. All Member States reflect this provision: a few Member States (**CY, NL** and **UK**) adopted specific provisions to that purpose, while the others ensure the appointment through their general rules.

Article 14(3) lays down that Member States should provide assistance and support, where appropriate and possible, also to the family of the child victims that live on the territory of the Member State. Half of the Member States (**BG, ES, CY, LT, LU, MT, PL, PT, SI, SK, FI, SE**, and **UK**) have adopted specific measures for the family of the child victim¹⁶.

¹⁶ The types of measures vary from Member State to Member State. They include access to social services (**BG, LT, PL** and **SK**), assistance in regard to the upbringing of the child by means of providing families with the necessary access to services (**FI** and **UK** (England/Wales, Northern Ireland and Scotland)), the provision of information, legal representation as well as family support and, if appropriate, financial help (**PT**), access to the same type of information as the victim (**CY**), psychological, social and educational assistance (**LU** and **MT**) or support and help (**SE**).

2.2.5 Protection of child victims of trafficking in human beings in criminal investigations and proceedings (Article 15)

Article 15 lays down an obligation for Member States to establish a number of protection measures for child victims of trafficking in human beings during criminal investigations and proceedings. All national legislations appear to include provisions corresponding with Article 15(1) to ensure that in criminal investigations and proceedings, a representative is appointed for the child victim of trafficking where the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest. The right to legal counselling and legal representation for the child victim of trafficking foreseen in paragraph 2 tends to be covered by general rules of criminal and civil law applicable to everyone, including adults and children.

Member States reflect the specific protection measures listed in Article 15(3)(a) to (f) mainly through general provisions of criminal procedure laws or acts protecting victims of crimes in general. Thus while general measures and provisions in criminal procedures laws on protecting victims of crime exist, there seems to be a lack of specific measures for children victims of trafficking. Specific national measures for child victims of trafficking have been identified in **EL, CY, LV, NL, MT, RO, and UK**. This provision might require closer examination as some Member States seem to apply all or some of the protection measures only to children under 14 (**DE, EE, IE, LV, AT, RO**) or 15 years old (**PL**), while Article 2(6) of the Directive states that child shall mean any person below 18 years of age.

In compliance with Article 15(4), the majority of the Member States ensure that in criminal investigations of trafficking in human beings all interviews with a child victim or witness may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings.¹⁷ Predominantly Member States reflect this provision in their criminal procedure laws. Those cases require attention, where the provisions are limited based on the age of the minors.

Article 15(5) requiring that Member States adopt the necessary measures to ensure that in criminal court proceedings specific protection measures may be ordered is ensured mainly through general measures of criminal procedure law. Most Member States ensure that the hearing of the minor victim or witness takes place without the presence of the public, but in some Member States it is subject to specific conditions. Most Member States generally provide that the child victim can be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies, but in some MS this option is linked to the age of the minor.¹⁸

¹⁷ EE, CY, LU, MT and NL transposed Article 15(4) literally.

¹⁸ The identified national measures appear to cover minors under 14 years old (HU and LV), under 15 years old (FI and PL) or under 16 years old (MT).

2.2.6 Assistance, support and protection for unaccompanied child victims fo trafficking in human beings (Article 16)

Article 16 concerns unaccompanied child victims of trafficking and requires Member States to provide them with assistance, support and protection measures that meet their specific needs. Such measures should not only take into account the best interests of the unaccompanied children, but also provide them with a durable solution.

Specific measures in relation to the medical and psychological care, as well as the representation and the accommodation of unaccompanied child victims exist in some Member States (**HU, IE, CY, AT, SK and FI**), while in others (**BG, EE, HR, LV, PT, SI, UK**) unaccompanied child victims appear to be covered by general rules. Limited number of measures, in addition to the general rules applicable to all children, tailored specifically for unaccompanied child victims exist in **FR, LU and NL**

Most Member States ensure that unaccompanied child victims are provided with specific assistance and support measures – such as medical and psychological support and access to appropriate accommodation – in accordance with their best interests. Most of them ensure as well measures that aim at seeking long term stability and a durable solution for each individual child victim. Some requirements might need closer examination with regard to **EL, LV and SE**.¹⁹

Pursuant to Article 16(3) and (4) Member States shall ensure that a guardian and a representative responsible in criminal investigations and proceedings are appointed to unaccompanied child victims of trafficking. This obligation is reflected in national laws of all Member States..

2.2.7 Compensation to victims (Article 17)

Article 17 requires Member States to ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. All Member States provide the possibility for such compensation, available to all victims irrespective of nationality. In **SI** compensation appears to be provided to victims who are Slovenian or EU citizens.

The type of compensation provided and the procedures for awarding the compensation varies between the Member States, while generally including payment for medical and psychological treatment, loss of income, legal fees and funeral expenses. Some Member States (**AT, SK, FI, and UK**) also compensate for non-material damages, such as physical and psychological suffering.

¹⁹ Based on the available information, in Greece the national legislation does not foresee that an individual assessment shall take place upon the initial identification of the child victim; in Latvia the national measures appear to be addressed to victims in general and do not appear to specify in the law special needs and best interests of the unaccompanied child.

As for the procedures to obtain compensation, many Member States (**BG, CZ, ES, IE, LT, MT, NL, PT** and **SE**) provide for a dual system whereby the victim can bring a civil action for compensation against the perpetrator within the criminal procedure; if the victim is not fully compensated through this procedure, there is still a possibility to receive compensation from the State.

Other Member States (**EE, EL, HU, LV, PL, RO, SK** and **UK**) have special provisions governing compensation for victims of crimes (including violent crimes) or for injuries obtained through such crimes. In **BE, FR** and **HR**, a special fund for victims of violent crimes has been set up from which victims receive compensation from the State.

2.3 Prevention (Article 18)

Article 18 sets forth an obligation to Member States for taking measures to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

The necessary measures required by this Article are often included not in legislative acts but in national action plans, strategies and programmes.

Paragraph 1 provides that Member States must adopt appropriate measures, such as education and training, while paragraph 2 concerns, in particular, information and awareness-raising. Most Member States (**BE, EE, EL, ES, FR, HR, HU, IE, CY, LT, MT, NL, AT, PL, PT, RO, SI, SK, SE** and **UK**) have adopted action plans that include general training and education measures together with specific awareness-raising projects.

Pursuant to paragraph 3, Member States are obliged to promote the regular training of officials that are likely to come into contact with victims or potential victims of trafficking in human beings. All Member States have adopted measures to ensure that their officials are trained. The majority of Member States generally refer to officials that are likely to come in contact with victims of trafficking in human beings, while some others make explicit reference to the training of immigration officers (**BE, FR** and **LU**), judges (**AT, BE, BG, CZ, HU, LT, MT, PL, PT, SE** and **SI**), prosecutors (**BG, CZ, EE, ES, HU, IT, LT, MT, NL, AT, PL, SI** and **SE**), law enforcement bodies (**EE, NL** and **PL**), judicial police (**ES**), employees of different Ministries (**BE, CY, ES, MT** and **SI**), media representatives (**BG**), labour inspectors (**CZ, FR** and **SI**), army officers participating in missions abroad (**CZ**), healthcare professionals (**FR, PT** and **SK**), boarder control staff (**HU, LT** and **PT**) as well as social workers and staff of assistance services (**BG, HU, IT, LT, LU, MT, PT, SI** and **SK**).

A more detailed assessment of measures taken or considered by Member States in the context of Article 18(4) of the Directive aiming to establish as a criminal offence the use of services which are the objects of exploitation of victims of trafficking, with the knowledge that the person is such a victim, is presented as a separate report²⁰.

²⁰ See footnote 3

2.4 National Rapporteurs or Equivalent Mechanisms and Coordination of the Union strategy against trafficking in human beings (Article 19 and 20)

According to Article 19, Member States shall establish national rapporteurs or equivalent mechanisms (NREMs) with the task of carrying out assessment of trends, measuring of results of anti-trafficking actions, and gathering of statistics. Recital 27 clarifies that NREMS should be established in the way that Member States consider appropriate "*according to their internal organisation, and taking into account the need for a minimum structure with identified tasks*". Therefore, NREMs have different statuses and structures; in particular, some Member States have established NREMs which are independent from the government, whereas the vast majority have NREMs which are part of the national administration. The Directive does not refer to the concept of independence for the NREMs, but rather describes their tasks and reporting obligations.

Most Member States have appointed a national rapporteur carrying out the tasks set by this Article; some Member States²¹ have appointed a specific person, others a body²², while the rest have established equivalent mechanisms. Article 20 requires Member States to facilitate the tasks of the EU anti-trafficking coordinator (ATC) and in particular, to transmit to the ATC the information referred to in Article 19, on the basis of which the ATC will contribute to reporting carried out by the Commission every 2 years on the progress made in the fight against trafficking in human beings. All Member States have complied with this obligation by transmitting their inputs for the first Commission's report on the progress in the fight against trafficking in human beings adopted on 19 May 2016²³.

Furthermore, the transposing measures in **EL, IT, CY, LT** and **MT** foresee in an explicit manner that information on the fight against trafficking in human beings is communicated to the ATC. More particularly, while **CY** requires that the national rapporteur provides information to the ATC every 2 years, **EL** and **IT** set out the submission of an annual report and a biennial report, respectively.

Other Member States, such as **BG, ES, FR, HU** and **RO** transposed Article 20 through a general obligation of information exchange and cooperation with the competent authorities of other countries and international organisations. Transposition could also be concluded as regards the remaining Member States mainly based on the general tasks allocated to the national rapporteur.

²¹ BE, FR, HU, NL, PT and UK (Gibraltar)

²² BG, CZ, EE, EL, ES, FI, HR, IT, CY, IE, LT, LU, LV, MT, AT, PL, RO, SI, SK, SE and UK (England/Wales, Northern Ireland and Scotland).

²³ Communication from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2016) 267 final.

3. CONCLUSIONS AND NEXT STEPS

Complete and correct transposition of the Directive, followed by its meaningful implementation, is not only compulsory but also necessary in order to make a substantial progress on national level in addressing trafficking in human beings. The ultimate aim is to make a real difference in the lives of victims and step up the fight against this crime by increasing the number of prosecutions and convictions.

The Commission has proactively monitored the transposition processes of the Directive. This Report, which should be read in conjunction with the Report responding to the obligation of Article 23(2) COM(2016) 719 of the Directive, is part of the process of ensuring its correct application and implementation. This overview shows that substantial efforts have been taken by the Member States to transpose this comprehensive instrument.

Nevertheless, there still remains significant room for improvement in particular as regards: **specific child protection measures, presumption of childhood and child age assessment, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention.**

The Commission is ready to provide further support to Member States to ensure a satisfactory level of the implementation of the Directive in view of: the European Agenda on Security²⁴, which highlights trafficking in human beings as a form of serious and organised crime, the current **EU Strategy towards the eradication of trafficking in human beings 2012-2016**²⁵, which calls for ensuring full transposition and implementation of the Directive, and the new post-2016 policy framework. If necessary, guidelines on the practical implementation of the Directive could also be drawn up for specific provisions requiring it.

The Commission will continue to monitor the implementation of the Directive by Member States in accordance with its powers under the Treaties and may take the appropriate action, including, where necessary, the initiation of infringement procedures.

²⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions The European Agenda on Security, COM(2015) 185 final.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM(2012) 286 final.