DIRECTIVE 2004/81
VICTIMS OF TRAFFICKING
NATIONAL REPORTS

STUDY ON THE “CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION” DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007 (CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
Un Réseau coordonné par l'Institut d'Etudes européennes
of the / de l'Université Libre de Bruxelles

and composed of academics of the following institutions / et
composé de membres du corps académique des institutions suivantes:

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FIRST PART

1. NORMS OF TRANSPPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
• About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Aliens Police Act 2005  
**DATE:** 16 August 2005  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 1 January 2006  
**PROVISIONS CONCERNED:** Sect. 114 § 6; Sect. 115 § 4  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:** Federal Law Gazette I 100/2005 as amended by Federal Law Gazette I 157/2005 and I 99/2006 (these amendments do not relate to Sect.114 § 6 or Sect. 115 § 4)  
**LEGAL NATURE** (please tick the correct box):  
☒ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

### Table 2

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Settlement and Residence Act  
**DATE:** 16 August 2005  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 1 January 2006  
**PROVISIONS CONCERNED:** Sect. 20, 28, 72, 73, 75  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION**  
**LEGAL NATURE** (please tick the correct box):  
☒ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

### Table 3

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Asylum Act  
**DATE:** 16 August 2005  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 1 January 2006  
**PROVISIONS CONCERNED:** Sect. 30  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:** Federal Law Gazette I 100/2005  
**LEGAL NATURE** (please tick the correct box):  
☒ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS
Table 4

This table is about: ❑ a text already adopted ❑ a text which is still a project to be adopted

TITLE: Penal Code
DATE: 1 March 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 May 2005
PROVISIONS CONCERNED : Sect. 104a, Sect. 217
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (please tick the correct box):
❑ LEGISLATIVE
❑ REGULATION
❑ CIRCULAR OR INSTRUCTIONS

Table 5

This table is about: ❑ a text already adopted ❑ a text which is still a project to be adopted

TITLE: Agreement on temporary support for aliens in need (Basic Welfare Support Agreement) (Grundversorgungsvereinbarung)
DATE:
NUMBER:
DATE OF ENTRY INTO FORCE: 1 May 2004
PROVISIONS CONCERNED : Art. 1-16
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (please tick the correct box):
❑ LEGISLATIVE
❑ REGULATION
❑ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

**Title:** Burgenland Care Act (Burgenländisches Landesbetreuungsgesetz)

**Date:** 18 May 2006

**Number:**

**Date of Entry into Force:** 1 September 2006

**Provisions Concerned:** Sect. 4

(for example if the norm also pursues other objectives than the transposition of the directive)

**References of Publication in the Official Journal:** Law Gazette of Burgenland 42/2006

**Legal Nature** (indicate by ticking the correct box):

- [ ] Legislative
- [ ] Regulation
- [ ] Circular or Instructions

### Table 2

**Title:** Carinthia Basic Welfare Support Act (Kärntner Grundversorgungsgesetz)

**Date:** 4 April 2006

**Number:**

**Date of Entry into Force:** July 2006

**Provisions Concerned:** Sect. 3 and 4

(for example if the norm also pursues other objectives than the transposition of the directive)

**References of Publication in the Official Journal:** Law Gazette of Carinthia 43/2006

**Legal Nature** (indicate by ticking the correct box):

- [ ] Legislative
- [ ] Regulation
- [ ] Circular or Instructions

### Table 3

**Title:** Lower Austria Basic Welfare Support Act (Niederösterreichisches Grundversorgungsgesetz)

**Date:** 14 December 2006

**Number:**

**Date of Entry into Force:** 16 February 2007

**Provisions Concerned:** Sect. 5

(for example if the norm also pursues other objectives than the transposition of the directive)

**References of Publication in the Official Journal:** Law Gazette of Lower Austria 9240-0

**Legal Nature** (indicate by ticking the correct box):

- [ ] Legislative
- [ ] Regulation
- [ ] Circular or Instructions
### Table 4

**TITLE:** Salzburg Basic Welfare Support Act (Salzburger Grundversorgungsgesetz)  
**DATE:** 14 March 2007  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 1 July 2007  
**PROVISIONS CONCERNED:** Sect. 6  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Law Gazette of Salzburg 35/2007  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 5

**TITLE:** Styria Care Act  
**DATE:** 5 July 2005  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 19 October 2005  
**PROVISIONS CONCERNED:** Sect. 4  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Law Gazette of Styria 101/2005  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 6

**TITLE:** Tyrol Basic Social Welfare Act (Tiroler Grundsicherungsgesetz)  
**DATE:** 15 December 2005  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:** 1 March 2006  
**PROVISIONS CONCERNED:** Sect. 5-9  
(for example if the norm is not devoted only to the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Law Gazette of Tyrol 20/2006  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS
Table 7
TITLE: Upper Austria Basic Welfare Support Act (Oberösterreichisches Grundversorgungsgesetz)
DATE: 7 December 2006
NUMBER:
DATE OF ENTRY INTO FORCE: 1 March 2007
PROVISIONS CONCERNED: Sect. 3
(for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (indicate by ticking the correct box):
☑ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 8
TITLE: Vienna Basic Welfare Support Act (Wiener Grundversorgungsgesetz)
DATE: 30 June 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 May 2004
PROVISIONS CONCERNED: Sect. 3
(for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Law Gazette of Vienna 46/2004
LEGAL NATURE (indicate by ticking the correct box):
☑ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 9
TITLE: Vorarlberg Social Welfare Act - Amendment (Vorarlberger Sozialhilfegesetz)
DATE: 10 November 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 25 January 2006
PROVISIONS CONCERNED: Sect. 7a
(for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (indicate by ticking the correct box):
☑ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN
Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

**LEGISLATIVE RULES**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** According to Art. 10 § 1 No. 3 and 7 of the Federal Constitutional Act (B-VG), legislation in the field of aliens law is exclusively done by the federal level.

**COMPETENCES OF THE COMPONENTS:** None.

**EXPLANATIONS IF NECESSARY:**

**LEGAL RULES**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** According to the Constitution, the Länder (provinces) have the most important competences regarding access to social assistance and benefits. The federal state is authorized but not obliged to grant benefits to victims.

**COMPETENCES OF THE COMPONENTS:**

**EXPLANATIONS IF NECESSARY:**

**REGULATIONS**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** According to Art. 10 § 1 No. 3 and 7 of the Federal Constitutional Act, the adoption of regulations concerning aliens law is exclusively a federal competence. Constitutional Law requires an explicit authorization within the specific law to enact a regulation. As regards criminal law, there are no regualations.

**COMPETENCES OF THE COMPONENTS:**

**EXPLANATIONS IF NECESSARY:**

**CIRCULAR OR INSTRUCTIONS**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** As the federal level of government is also competent for the enforcement of the whole aliens law, the adoption of circulars and instructions falls into its competence. Circulars for judges in criminal procedures are uncommon.

**COMPETENCES OF THE COMPONENTS:**

**EXPLANATIONS IF NECESSARY:** Since circulars and instructions are not officially published, they are not available for the public.

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Asylum Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Section III (law) Department III/5 (asylum)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Federal Asylum Office (&quot;Bundesasylamt&quot;); Federal Independent Asylum Senate (&quot;Unabhängiger Bundesasylsenat&quot;)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Federal Asylum Office is the authority of first instance and bound by the instructions of the Ministry of the Interior. The Federal Independent Asylum Senate is the appellate body and an independent tribunal.</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>granting and renewal of residence permits (Settlement and Residence Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Section III (law), Department III/4 (residence and citizenship)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>govenor of the provinces (&quot;Landeshauptmann&quot;); district authorities (&quot;Bezirksverwaltungsbehörde&quot;) or municipal authorities (&quot;Magistrat&quot;).</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Decisions on applications for &quot;humanitarian&quot; residence permits are taken by the governors. In practice, the governors authorized the district authorities or the municipal authorities in towns with an own statute to decide. Granting a humanitarian residence permit affords the approval of the Federal Minister of the Interior.</td>
</tr>
</tbody>
</table>

Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Aliens Police Act 2005 and Penal Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Criminal courts on different levels</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY</td>
<td></td>
</tr>
</tbody>
</table>
Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES □ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

□ YES☑ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS

INDICATE HERE THE MISSING TEXTS
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA). According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [X] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

This question is not to be answered in general. Some provisions refer to trafficking exclusively, others refer to actions on humanitarian grounds and therefore include other issues as well. For example: Sect. 72 SRA states that for ensuring persecution third country nationals might receive a stay permit on humanitarian grounds. This provision refers "inter alia" to victims of trafficking. If these people meet the requirements of the Austrian integration agreement (knowledge in language, history and politics) they might receive a settlement permit on humanitarian grounds (Sect. 73 SRA). Since Sect. 73 SRA points to Sect. 72 SRA and the latter uses "inter alia", theoretically a settlement permit on humanitarian grounds might be granted to illegal immigrants as well. Other provisions refer to "aliens with a stay permit on humanitarian grounds" (e.g. the Salzburg Basic Welfare Support Act [Grundversorgungsgesetz]. Sect. 104a Penal Code only refers to victims of trafficking (see Q.5.b); Sect. 114 § 1 and 115 § 2 SRA refers to persons assisting or getting assistance in illegal immigration (see Q.5.c.).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for

instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes  ☐ No

Explanation:

Sect. 72 § 2 SRA states that victims can get a stay permit on humanitarian grounds for at least six months "to ensure criminal procedures. Since trafficking in human beings is a criminal offence (Sect. 104a Penal Code), Sect. 72 § 2 SRA is applicable. Even if the criminal procedure is finished, a victim can get a stay permit on humanitarian grounds on the basis of Sect. 72 § 1 SRA.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Yes, the definition used by Sect. 104a Penal Code is identical with the Framework Decision’s definition.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

   the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall
mean any person below 18 years of age.

**Q.5.C.** Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Yes, the definition used by Sect. 114 § 1 and Sect. 115 § 2 SRA is identical with the Directive’s definition.

**Article 1 General infringement**

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens.

   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

**Q.5.D**

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2)).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes ☐ No

**Explanation:**

Sect. 72 § 2 SRA states that victims can get a stay permit on humanitarian grounds for at least six months "to ensure criminal procedures. Since assistance in illegal immigration is a criminal offence (Sect. 114 and 115 APA), Sect. 72 § 2 SRA is applicable. Even if the criminal procedure is finished, a victim can get a stay permit on humanitarian grounds on the basis of Sect. 72 § 1 SRA."
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults

☒ Both adults and minors

Explanation:

In general, the same provisions apply. But there are some provisions focussing on minors. For example: Sect. 104a § 4 Penal Code trafficking in minors; Art. 7 Basic Welfare Support Agreement: specific support for unaccompanied minors.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:

•

•

•

•

•

Explanation:

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: Victims receive a residence permit on humanitarian grounds. These permits have to be approved by the Federal Minister of the Interior. But these victims are not the only ones receiving these permits. At the moment there is no information available about the numbers of permits for victims of trafficking. At the end of 2006, 290 stay permits on humanitarian grounds (Sect. 72 SRA) and 8 settlement permits on humanitarian grounds (Sect. 73 SRA) have been valid. In 2006 144 stay permits on
humanitarian grounds have been issued and 90 have been renewed. But as mentioned before: These permits are not exclusively for victims of trafficking.

‘An action to facilitate illegal immigration (If applicable): Theoretically these persons are able to receive a residence permit on humanitarian grounds. But there is no information available whether or not they do in practice. As regards the number of permits, the above mentioned situation applies.

**Information given to the third-country nationals concerned**

**Q.8.** According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

**Q.8.A.** Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Stay permits and settlement permits are granted by the governor of the province, but according to the Constitution and Sect. 3 SRA, the governor has the power to transfer that responsibility to the District Authorities. All governors did so; therefore residence permits on humanitarian grounds are granted by the District Authorities [Bezirkshauptmannschaften, Magistrate, Bundespolizeidirektionen]. Residence permits on humanitarian grounds afford a prior approval by the Federal Minister of the Interior. This approval is a prerequisite for granting the residence permit on humanitarian grounds.

**Q.8.B.** Is the information given orally or in writing?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] Orally
- [ ] In writing
- [ ] Both orally and in writing

Explanation:

No information available; no explicit provision.

**Q.8.C.** Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

No information available; no explicit provision.

**Q.8.D.** Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Since there is no information about the practice available, I’m not able to judge. But it would be quite easy to put information brochures on the Ministry’s website.
Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

According to an information by the Federal Ministry of the Interior, third country nationals concerned are entitled to a reflection period of at least 30 days. But there is no explicit provision about the reflection period.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

According to an information by the Federal Ministry of the Interior, third country nationals are protected and the enforcement of an expulsion order would be illegal. But there is no explicit provision about the temporary ban of expulsion orders.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

There is no Austrian provision about a reflection period at all; so there is no provision about it’s implementation. There is no information about the authorities’ practice available.
Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Since it is the District Authority which issues the residence permit on humanitarian grounds, I assume that this authority also decides about the termination of the reflection period. The factual influence by the Federal Ministry of the Interior is unknown.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

No information available.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

No information available.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

Support for aliens in need has to be granted by the provinces. The provisions differ. For example Salzburg and Upper Austria: The Basic Welfare Support Act is applicable to all persons with a stay permit on humanitarian grounds (- therefore it’s applicability depends on the issuing of the permit); for the other aliens (and citizens), support is given according to the Social Welfare Act of the province. On the other hand for example Vorarlberg: The whole issues is part of the Social Welfare Act. The concrete support differs but it is in both cases in cash as well as in kind.

After the issue of the residence permit

☑ Yes, in cash ☒ Yes, in kind ☐ No
Explanation:

See above Q.10.A.

**Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.**

Social aid is within the responsibility of the provinces. Therefore Austria has 9 Social Welfare Acts with different amounts. For asylum seekers and aliens with a stay permit on humanitarian grounds the "Basic Welfare Support Agreement" defines maximum amounts for the support. According to that agreement, aliens might receive up to 110 €/month for housing, 180 €/month for eating, 40 €/month pocket money, 150 €/year for clothing, the costs of health insurance. The minimum amount e.g. according to the Salzburg Social Welfare Act is 421 €/month and Upper Austria Social Welfare Act: 542 €/month; but this is a lump sum including eating, clothes, electricity, expenses for social contacts, etc. So it is quite hard to compare. Another problem: Some of the aliens holding a stay permit on humanitarian grounds are granted housing and eating by the state; then the get less money. But there is no information available about the number of victims concerned who get that support in kind.

**Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.**

No. You will not be able to find a flat for that money (e.g. a family receives maximum 220 €/month for housing). Therefore most aliens with a stay permit on humanitarian grounds have to be supported by NGOs or donations by neighbours. The fact of "private" support is a good indicator for insufficient support by the state.

**Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Austria has a witness protection program; but it is rarely used. I assume that it will be used only in the case of trafficking by criminal organizations. But there is no information available about the application of these programmes in the case of trafficking or assistance to illegal immigration. At least there is no specific programme which is known to the public.

After the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

See above Q.10.D.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation:
No information available about the practice. But there are no provisions by law about the right on translation before receiving a humanitarian stay permit. The Austrian provisions only refer to person who already have been granted a humanitarian stay permit.

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:
Translation is one of the issues of basic welfare support according to the Basis Welfare Support Agreement and the provinces’ Basic Welfare Support Acts.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation:
No information available about the practice. But there are no provisions by law about the right on interpreting services before receiving a humanitarian stay permit. The Austrian provisions only refer to person who already have been granted a humanitarian stay permit.

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:
Interpreting service is one of the issues of basic welfare support according to the Basis Welfare Support Agreement and the provinces’ Basic Welfare Support Acts.

**Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid?** See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☐ Yes  ☒ No

**Explanation:** (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

There is no explicit provision about legal aid for victims of trafficking.

**After** the issue of the residence permit

☐ Yes  ☒ No

**Explanation:** (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

See above Q.10.G.

**Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care?** See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☒ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Emergency medical care is granted to anybody, even if he/she is not insured. General medical care depends on a health insurance which depends on payments by the person; victims of trafficking usually will not have an Austrian/ European health insurance.

**After** the issue of the residence permit

☒ Yes  ☐ No
**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

Victims with a stay permit on humanitarian grounds are entitled to general medical care; in exceptional cases they might receive specific medical care. Emergency medical care has to be granted in any case.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable?** See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

**Before** the issue of the residence permit:

- [ ] Yes
- [x] No

**Explanation:**

Support is given to victims holding a stay permit on humanitarian grounds. Only one province (- Burgenland - ) entitles "victims of trafficking in human beings" without referring to the residence title. But there is no information available whether or not this includes "support in special needs". Usually the Basic Welfare Support Acts provide for help in a more general manner.

**After** the issue of the residence permit

- [ ] Yes
- [x] No

**Explanation:**

Support to victims is given in a general manner. It depends on the province which special support is financed. Even if special support is given, NGOs state that it is insufficient because victims have to wait for a long period before e.g. getting a date with a psychotherapist.

**Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help?** See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

- [ ] Yes
- [ ] No
Explanation:
No information available; no explicit provision.

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:
For unaccompanied minors, psychological help is explicitly mentioned as an issue of basic welfare support; for adult victims it is not.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? *See mandatory provision in Article 9(2)*

☒ Yes  ☐ No

Explanation:
Emergency medical care is granted to anybody, even if he/she is not insured. Other medical treatment depends on having a health insurance. This is given when victims are within the scope of the provinces’ Basis Welfare Support Acts or the provinces’ Social Aid Acts. But these acts mainly refer to persons already holding a residence title.

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. *See mandatory provisions in article 8:*

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)
The Austrian law stipulate specific criteria in a very vague way: Aliens in “situations worth to be considered” are “entitled”. For interpreting the term “considerable cases”, the law doesn’t give any concrete hints. But it can be interpreted in the sense of Art 8 Dir. Therefore it has to be stated that the Austrian law does not specifically and exclusively concern victims of trafficking and it gives great discretionary power. This is not an excellent transposition of Art. 8.

According to newspapers, being a victim of trafficking is a "considerable case"; but there is no information available whether or not the victim has to collaborate with the authorities to be "entitled". The Minister of the
Interior and the Governors of the Laender agreed on a strategy to define "considerable cases"; but that paper hasn’t been disclosed until now.

And there is another specific criteria for a specific humanitarian residence title: A “stay permit on humanitarian grounds” (Sect. 72 SRA) is the first permit granted. The “settlement permit on humanitarian grounds” (Sect 73 SRA) depends on meeting specific criteria: The alien has to fulfil the “integration agreement” (language, history, etc). The “stay permit” is less than the “settlement permit” but both are titles in the sense of Art. 8. Therefore you have no additional specific criteria except being a “considerable case” (for the stay permit) and you have additional criteria (“integration agreement”) for the “settlement permit”.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?  
☐ Yes  ☐ No

Explanation:

Sect. 10 SRA is the provision about invalidity and groundlessness of residence permits. Sect. 10 SRA reads as follows: "§ 1 Residence permits and documentations of the right of residence and settlement become invalid if a residence prohibition or expulsion becomes enforceable or legally effective against an alien. Such aliens loose their right of residence. ..." The provision about the residence prohibition is Sect. 60 APA, which explicitly refers to public order and security or other public interests mentioned in Art. 8 § 2 ECHR. Sect. 53 and 54 APA (expulsion) is similar. Sect. 11 SRA is the provision about the "general prerequisites for residence titles"; § 2 states that a residence title is not to be granted if the alien’s stay violates public interests (= public order and security). For victims of trafficking additional prerequisites apply: they have to show "considerable circumstances". The law doesn’t stipulate concrete provisions or procedural issues about that. The decision about granting a residence permit to victims of trafficking in human beings is within the authority’s discretionary power.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

A stay permit on humanitarian grounds is issued for the requisite time but at least for six months (Sect. 72 § 2 SRA). A settlement permit on humanitarian grounds is issued for 12 months (Sect. 20 § 1 and Sect. 73 SRA).

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Residence permits on humanitarian grounds (Sect. 72 and 73 SRA) are issued ex officio. Therefore there are no provisions about renewal, like application in time, etc. There is no limitation as regards the number of time limited residence acts on humanitarian grounds. The victim of trafficking can get stay permit after stay permit after stay permit … without being entitled to get a “better” residence title. Even it the victim fulfills the integration agreement...
and therefore meets the requirements for a settlement permit on humanitarian grounds (Sect. 73 SRA), it is up to the authority to grant or not to grant this permit. Since the permits are granted ex officio, third country nationals concerned can not apply and can not review a refusal. Third country nationals can apply for other (“regular”) residence permits; therefore they do have to go abroad. But these residence permits (e.g. for the purpose of working) are subject to quotas and specific requirements. Therefore it has to be stated that an expired stay permit on humanitarian grounds can be renewed. This is given to the discretionary power of the authorities. There are no provisions about that in the law except the fact that these permits require “considerable circumstances”.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

No specific measures.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: For how long?)

No information available. No explicit provision.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If yes, explain which measures are taken)

No information available. No explicit provision.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No
**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs?** *See mandatory provision in Article 9(2)*

- Yes
- No

**Explanation:**

There is no difference between minors and adults as regards access to assistance. So there are the same problems as mentioned above: usually they have to hold a residence title; they have to wait for special assistance, they need to have a health insurance (- which is granted if they fall within the scope of the Basis Welfare Support Act or the Social Aid Act).

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors?** *See article 10(c)* (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

No information about specific measures available.

**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A.** Do the holders of the residence permit have access to the labour market? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)  

- Yes
- No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? *See article 11*).

The criteria for an allowance to work are the development of the labour market, public interests and the fact that the alien holds a residence title which allows to work (Sect. 4 § 1 and § 3 Aliens Employment Act). The latter is given for a stay permit on humanitarian grounds (Sect. 72 SRA) and for a "settlement permit on humanitarian grounds - limited" (Sect. 73 and 44 SRA) but not for a "settlement permit on humanitarian grounds - except working" (Sect. 73 and 42 SRA). Since victims of trafficking will usually receive a stay permit, they have access to the labour market.

**Q.13.B.** Do the holders of the residence permit have access to vocational training? *See article 11.*
(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

No specific criteria.

**Q.13.C. Do the holders of the residence permit have access to education? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

No specific criteria.

**Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.**

(Provide your answer and explain your answer)

☒ Yes ☐ No

**Explanation:**

A valid residence title is prerequisite for access to work, vocational training and education. The expiring of a residence permit causes an illegal stay; this is an offence (to be charged by the aliens police authorities).

**Programmes or schemes for the third-country nationals concerned**

**Q.14.** Questions regarding programmes or schemes for the third-country nationals concerned:

**Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.**
NGOs run a few programmes. Sect. 17 SRA provides for integration support: aliens who are entitled for residence can receive this specific support (e.g. language, education, information about housing, …); these activities are offered by private, humanitarian or church-NGOs or municipalities. The personal scope of that provision is doubtful; but victims of trafficking are not entitled until they hold a residence permit on humanitarian grounds. Probably the victims are accepted if they want to participate. It is not possible to say whether or not there are specific programmes for victims of trafficking. Therefore it can’t be stated whether or not Austria stops victims from participation as long as they do not possess a residence title. But the law doesn’t ask for specific programmes for victims of trafficking.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
Neither the Federal Minister of the Interior nor newspapers ever mentioned specific programmes for victims of trafficking. There is no information available.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:
A stay permit on humanitarian grounds is to be renewed without further conditions as long as the stay of the victim is necessary. If the victim wants to receive a settlement permit on humanitarian grounds (- which gives a better position in residence and labour issues -) she/he has to fulfill the integration agreement (language, history, politics in Austria); courses about that topics are part of the integration support programmes. Therefore participating in these programmes (or showing the relevant knowledge in any other way) is condition for the settlement permit on humanitarian grounds. But these courses are no specific programmes for victims of trafficking. There is no information available whether or not specific programmes are offered. The law doesn’t ask for these specific programmes and therefore it does not connect the issuing or renewal on participation.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.
No information available. There is no explicit provision on renewal. As long as a victim is in "considerable circumstances" she/he will get another stay permit on humanitarian grounds (Sect. 72 SRA) or - if she/he meets the additional prerequisites - a settlement permit on humanitarian grounds (Sect. 73 SRA). Since the law doesn’t give concrete hints about the considerable circumstances it is to assume/hope that the authority refers to Art. 8 Directive. Then the Austrian Law is applied in accordance with the Directive. Nevertheless this is only an administrative practice, not an implementation.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(If the answer is "yes", explain under which circumstances that is possible)

Sect. 10 SRA states: Residence titles and documentations of rights of residence and settlement shall be declared invalid, if a residence ban or an expulsion order becomes enforceable or final against the alien. She/he looses the right of settlement. Other reasons for the irrelevance of a residence title are: there is an additional title with an overlapping period of validity; the alien becomes Austrian or EEA citizen; the alien receives a residence title "long-term resident’s EC residence permit" of an other Member State; the alien is in possession of a residence title "long-term resident’s EC residence permit" or "long-term residence permit - family member" and has not been settling in Austria for the last six years. Additionally the residence title can expire.


There is no specific procedure about withdrawal. The validity is lost ex lege; the authority has to mark the invalidity in the alien’s travel document. Therefore a contradiction to Art 14 Directive can be stated: The Directive refers to discretionary power, the Austrian Law doesn’t provide for that. And: Sect. 10 SRA does not refer to the reasons of Art 14 Directive but to other reasons. Most of the Directive’s reasons are not implemented in Sect. 10 SRA. Art 14 lit a-c Directive could be interpreted as « public order »-reasons justifying a residence ban or expulsion and therefore result in ex lege- withdrawal based on these acts.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No study available.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.
Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

There are no specific problems. As regards social care and support, the situation is similar to the position of asylum seekers: That is within the responsibility of the provinces. But that issue has been solved for asylum seekers; therefore there is no reason why it should not be possible to manage it for victims of trafficking. When the SRA and the APA have been issued in mid 2005, it was remarked a few times that neither the Directive nor the Convention on human trafficking was implemented sufficiently. There is only one single statement within the legislative materials: As regards Sect. 72 SRA (stay permit on humanitarian grounds) it is stated, that this provision (and Sect. 104a Penal Code) implements the Directive.
**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation before transposition</td>
<td>☐ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Status quo</td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition</td>
<td>☐ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

*When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
### Table 1

**OBJECTIVE**

(to be indicated by the national rapporteur)

**EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW**

**EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE**

<table>
<thead>
<tr>
<th>Explain the situation before transposition</th>
<th>Explain the situation after transposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
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</tr>
<tr>
<td>☐ Less favourable than previous national rules</td>
<td>☐ Less favourable than the Directive</td>
</tr>
<tr>
<td>☐ Status quo</td>
<td>☐ In line with the directive</td>
</tr>
<tr>
<td>☐ More favourable than previous national rules</td>
<td>☐ More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.31.A.** Question regarding the method of transposition: *Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.*

☐ YES ☒ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<td>DECISION OF APPEAL COURTS</td>
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<tr>
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</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

**TITLE**: Law modifying the law of 15 December 1980 on Access to the territory, residence, establishment and removal of foreigners.

**DATE**: 15 September 2006

**NUMBER**: 

**DATE OF ENTRY INTO FORCE**: at earlier on 1st November 2007

**PROVISIONS CONCERNED**: Art. 64, 65, 66, 67 and 68

(For example if the norm also pursues other objectives than the transposition of the directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**: Moniteur belge, 6 October 2006, p. 53554-53556

**LEGAL NATURE** (please tick the correct box): ☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

Table 1

**TITLE**: Law containing provisions in order to fight trafficking in human beings and child pornography

**DATE**: 13 April 1995

**NUMBER**: 

**DATE OF ENTRY INTO FORCE**: 5 May 1995

**PROVISIONS CONCERNED**: Art. 1 to 6

(For example if the norm also pursues other objectives than the transposition of the directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**: Moniteur belge, 25 April 1995

**LEGAL NATURE** (indicate by ticking the correct box): ☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS
Table 2

| TITLE: Modifications to Directives of 13 January 1997 for the Governmental Office for Alien, Offices Prosecutor, police services, social legislations inspection services and social inspection relating to assistance to victims of trafficking |
| DATE: 17 April 2003 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 27 April 2003 |
| PROVISIONS CONCERNED: All |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: Moniteur belge, 27 May 2003 |
| LEGAL NATURE (indicate by ticking the correct box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

Table 3

| TITLE: Directives for the Governmental Office for Alien, Offices Prosecutor, police services, social legislations inspection services and social inspection relating to assistance to victims of trafficking |
| DATE: 13 January 1997 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 3 March 1997 |
| PROVISIONS CONCERNED: All |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: Moniteur belge, 21 February 1997 |
| LEGAL NATURE (indicate by ticking the correct box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

| LEGISLATIVE RULES |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: yes |
| COMPETENCES OF THE COMPONENTS: no |
| EXPLANATIONS IF NECESSARY: According to art. 77 of the Belgian Constitution, fighting trafficking in human beings is a federal matters as it could lead to a criminal offence |
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Federal State</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Home Office</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Governmental Office for Alien (Office des étrangers)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>This office is totally depending of the Home Office Minister as part of the administration</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☒ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES ☒ NO
If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MISSING TEXTS</strong></td>
</tr>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
<tr>
<td>A regulation (Royal Decree) has to be adopted to explain and describe models of documents which will be issued as to specify the reasons and the conditions in which it can be put an end to the procedure</td>
</tr>
</tbody>
</table>
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^3\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^4\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The text of the law is clear on one point : third-country nationals who have been the subject of an action to facilitate illegal immigration are excluded of the application field of the law.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

\(^3\)Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629 &model=guichett

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt* to commit offences concerning trafficking in human beings?

☑ Yes ☐ No

**Explanation:**

The formal norm of transposition is the law dated 15 September 2006. Whether this law does not contain any provision aiming to prosecute a perpetrator charge for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings, general provisions of the Belgian criminal code is applicable to these perpetrators when the offence concerns trafficking in human beings.

**Q.5.B.** Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): *Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).*

Yes, provisions are identical as the law refers to article 433quinquies of the Criminal Code which is a transposition of the Council Framework Decision of 19 July 2002. However, The directive provision refers to “the third-country nationals who are, or have been victims of offences related to the trafficking in human beings". Amongst these offences, it exists, in the Belgian criminal code, offence of “sleep merchants", i.e. owners who rent furnished rooms or mattresses in overpopulated rooms or insalubrious buildings. Victims of these “sleep merchants" can be third-country nationals who are victims of offences related in the trafficking in human beings but they are not in the scope of the new law. According to me, the Belgian provision of the law is in the definition of the Framework Decision (art.1) as these third-country nationals who are victims of sleep merchants have been harbouring but not systematically for the purpose of exploitation of that person's labour or services.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
     - (a) use is made of coercion, force or threat, including abduction., or
     - (b) use is made of deceit or fraud, or
     - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
     - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.
2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Not applicable

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes  ☒ No
Explanation:
Belgium did not have recourse to the option of applying the Directive to the third-country nationals who have been subject of an action to facilitate illegal immigration.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults
☒ Both adults and minors

Explanation:
The Alien Act dated 15 December 1980 as modified by the new law refers to the concept of "non accompanied minors" as a special protection does already exist in the Belgian legislation by the Title XIII, Chapter 6 of the Programmatic Law dated 24 December 2002

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ All minors
☒ Minors, for which the following criteria are fulfilled:
  • less than 18 years old
  • non accompanied by a major person responsible of him/her
  • not taken in charge by this major person
  • or having been abandoned after entering on the territory
Explanation:

This definition is related to the definition given in the programmatic law of 24 December 2002, Title XIII, Chapter 6 (art. 479), published in the Moniteur belge on 31 December 2002

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: unknown, figures are unavailable for 2006.

‘An action to facilitate illegal immigration’ (If applicable): none

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Police services and 3 specialised centres located in Bruxelles, Antwerpen and Liège and are responsible for giving a psycho-social monitoring

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☒ Both orally and in writing

Explanation:

Directives provisions foresees that Polices services must give the multilingual information brochure written by the Centre for Equal Opportunities and Fight against Racism to all people who are supposed to be concerned as victims. These potential victims have to be oriented to on the three specialised centres.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).
Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Globally, yes but the first services which are to be aware of the importance to inform correctly the victims are Police services. It is unknown which training Police officers receive and consequently, the information they give. More awareness actions dedicated to Police services and specific training to welcome victims of trafficking should be organised.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The new law provides that a first reflection period of 45 days (art. 61/2, §2)

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

The law provides that during this first reflection period, victim does not receive a residence permit but an order to leave the territory expiring 45 days later. This first period is automatically of 3 months when concerning a minor victim. Law foresees to deliver to the alleged victim an order to leave the territory with an expiration date of 45 days. Practically, the delivery of “order to leave” does not protect the victim as it can be enforce but authority never enforces an order to leave the territory before the date of expiration. The order to leave is only a tolerance of the victim during 45 days.
Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

If the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences or for reasons relating to public policy and to the protection of national security

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period?

(Please give details on the name and function of the authority)

Home Office, Governmental Office for Alien

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

The procedure is not yet achieved as the law is not yet implemented by a Royal Decree

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

No: Indeed, because of trauma or fear from the victim, this first period can be not enough as the victim would need more time to make declarations against the perpetrators

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes, in cash  ☑ Yes, in kind  ☐ No
Explanation:

Article 7 (1) has not been implemented by the new law. This explains why "no" has been indicated. However, the current system organised by pre-existing circulars provides that the victim must be followed up and supported by one of the three specialised centres who care and provides help and support in kind. This explains why "Yes in kind" has been indicated.

After the issue of the residence permit

☒ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

Once in possession of a temporary residence permit, victim is entitled to claim for social benefit and is still followed up by one of the three specialised centres. 3 centres were created, one in Brussels (PAG-ASA), one in Flanders (PAYOKE, in Antwerp) and one in Wallonia (SURYA, in Liège). PAG-ASA has been agreed by the Belgian Government by a Royal Decree dated 9 June 1999, PAYOKE, exists since 1985 and work for 15 years in supporting victims, SURYA has been agreed by the Belgian Government by a Royal Decree dated 8 July 2001.

Each of these centres has developed a strong experience in accommodating and giving support to victims of trafficking. The missions assumed by the centre are: to welcome and accompany the victims, finding or helping to find accurate and safe accommodation, medical and psycho-social help, administrative support during the procedure, and legal assistance in Justice.

The particularity of the Belgian system of protection is that the victim has to be accompanied by a centre to receive protection and enter into the procedure. If reasons of this condition is comprehensible when victim is endangered or risk to endangered others victims, it can raise some difficulties when victim disagrees with the conditions required by the centre to accompany him/her.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

According to the family composition, the amount is 429,66 € when co-living with another beneficiary, 644,48 € when alone, and 859, 31 € when alone with children

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Yes as they are helped in their administrative and psycho-social steps with the specialised centre.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☒ No
Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The follow-up by one of the three specialised centres is deemed to protect sufficiently victims as they are out of the control of the perpetrators

After the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

idem

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

Translation services is organised by the specialised centre when meeting the victim and financing by the centre itself

After the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

idem

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No
Explanation:
Idem Q.10.E.

**After** the issue of the residence permit:

☐ Yes ❌ No

Explanation:
Idem Q.10.E.

**Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid?** See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ❌ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Free legal aid is organised by the law dated 23 November 1998. Free legal aid is given to all people who are beneficiaries of social benefits producing a single document from the social authority paying them. Before the issue of the residence permit, victims are entitled to obtain social benefit from the moment they are considered as victim by the judicial authorities. However, the legal aid system does not assure the victim to have qualified lawyers as any lawyers enrolled in the system can be designated. The costs of the lawyers is paid when the procedure is finished on basis of kind of procedure achieved (criminal procedure, social procedure, administrative procedure …) but it does not take into consideration the real time and hours spent by the lawyers during the whole procedure.

**After** the issue of the residence permit

☐ Yes ❌ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

idem
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? *See mandatory provision in article 7(1).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care during the reflection period or if care is restricted to *emergency* medical care only).

Care are restricted to emergency medical care only as the victim is not in possession of a residence permit

**After** the issue of the residence permit

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care or if care is restricted to *emergency* medical care only.

The victim is entitled to claim for social benefits and general medical care are taken in charge by the local social authority which paid the social benefits.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable?** *See mandatory provision in Article 7(1)*

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, *before* and *after* the issue of the residence permit).

**Before** the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:**

Pre-existing circular ensure psychological assistance in a specialised centre for victims

**After** the issue of the residence permit

☑ Yes  ☐ No

**Explanation:**

The same pre-existing circular ensure psychological assistance in a specialised centre for victims after the issue of the residence permit.
Q.10.1. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:
The psychological help is provided by the social workers of one of the three specialised centres

After the issue of the residence permit

☒ Yes ☐ No

Explanation:

idem

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☒ Yes ☐ No

Explanation:
The formal law of transposition does not mention pregnant women, disabled or victims of sexual violence so no specific help is provided by Member State regarding these people who have special needs. However, pre-existing law granted social benefit to victim after the issue of the residence permit and victims are accompanied by one of the three specialised centres where assistance is provided such as psychological assistance.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: (If he answer is “yes”, explain the criteria that have to be met)

Art. 61/3, §4 requires from the victim to try to prove his/her identity with passport or ID card which is not required by the directive. See Law: art. 61/3, §2, 1st indent + art. 61/3, §3 (renewal) + art. 61/3, §4

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?  
☒ Yes  ☐ No

Explanation:

According to art. 61/4 of the new formal law of transposition, the issue of the 6 months residence permit is refused when it is considered the alleged victim could compromise public order or national security. The same condition is applicable when renewing the residence permit.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Article 61/3, §1 provides a period of 3 months of validity

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Article 61/3, §2 allows the authorities to renew the residence permit, once, for a new three months period

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Article 61/2, §2, 2nd indent, provides that minors receive automatically a 3 months residence permit. The first 45 days of reflection period is not applicable to them.
Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: For how long?)

It is not clear whether the "non applicability of the reflection period" is to be considered as a cancellation of this period or not. And the same question is about its substitution into a three months residence permit: is the issue of the residence permit is to be considered as an extension of the "reflection period" or not? Anyway, the minor is protected as soon as s/he makes declaration as victim.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If yes, explain which measures are taken)

The law does not provide the possibility to extend and renew the reflection period of 3 months for minors who have to satisfy the same conditions as majors provided art.8 of the Directive. No particular measure is taken to protect them when renewing the residence permit.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

The Belgian Constitution grants the anti-discrimination treatment regarding to alien as minors will have access to educational system but it is not implemented by the new law of transposition and the ad hoc legislation on education has not been modified for including minor victims of trafficking.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☒ Yes  ☐ No
Explanation:

The Alien Act dated 15 December 1980 as modified by the new law refers to the concept of "non accompanied minors" as a special protection does already exist in the Belgian legislation by the Title XIII, Chapter 6 of the Programmatic Law dated 24 December 2002. This last law organises a specific protection for unaccompanied minors who receive the designation of a tutor.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

In Belgium, a law existed already regarding protection offered to unaccompanied minors. All the provisions are in the law dated 24 December 2002, title XIII, Chapter 6 published in the Official Journal (Moniteur belge) on 31 December 2002. A tutor is designated for each unaccompanied minor found on the Belgian territory. The tutor's mission is to find a long term and protecting solution for the minor. Amongst solution, tutor must consider the voluntary return in the country of origin as the family reunification in another country when still existing. Free legal aid is granted for each unaccompanied minor by the law dated 23 November 1998.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

The system granted by previous directives allows victims, once holder of definitive residence permit to have access to the labour market. The new law of transposition does not contain any provisions related to access to work.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: Access to the labour market is only granted once the victim is holder of a residence permit but nothing is provided for vocational training and education. Once the residence permit is withdrawn, the work permit issued is withdrawn on the same time.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Programmes and schemes aimed for victims to recover a normal life are implemented by the specialised centres which accompanied the victims. 3 centres were created, one in Brussels (PAG-ASA), one in Flanders (PAYOKE, in Antwerp) and one in Wallonia (SURYA, in Liège). The centre does not implement courses designed to improve victim's professional skills nor a preparation of their return to their country of origin.
Each of these centres has developed a strong experience in accommodating and giving support to victims of trafficking. The missions assumed by the centre are: to welcome and accompany the victims, finding or helping to find accurate and safe accommodation, medical and psychosocial help, administrative support during the procedure, and legal assistance in Justice.

**Q.14.B.** Were specific programmes or schemes created for the holders of the residence permit due to the Directive? *See article 12(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:**

**Q.14.C.** Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? *See article 12(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:**

---

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? *See article 13.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☒ Yes  ☐ No

**Explanation:**

Art. 61/4, §1st provides the possibility of renewal only when the conditions of article 8(2) are satisfied.
Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

At any moment, when conditions of article 14 are met.


The procedure is not yet fixed as a Royal Decree to implement the new law has not yet been adopted.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Since 1995, Belgian has given legal competence to a para-governmental institution to fight against trafficking in human beings: the Centre for Equal Opportunities and Strike Against Racism. Each year, since 2001, the Centre published an annual report on trafficking in human beings. This report is available on the website of the Centre at the following link: http://www.diversite.be.

One of the three specialized centres for victims (PAYOKE in Antwerp) publishes also an annual report which is available from the website of the Centre at the following link: www.payoke.be and the 2004 report is accessible in English at the following link:

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Parliamentary debates took place during the summer 2006.
All the parliamentary debates are accessible on the website of the Parliament at the following link: www.lachambre.be but the specific webpage dedicated to the historical background of the adoption of the Belgian legislation is available at the following link: http://www.lachambre.be/kvvc/index.cfm?section=flwb&language=fr&rightmenu=right&cfm=/site/wwwcfm/ flwb/flwbn.cfm?lang=F&legislat=51&dossierID=2478

The main document discussed at the Parliament is the "projet de loi" (law project) submitted for discussion by the Government and is available at the following link: http://www.lachambre.be/FLWB/PDF/51/2478/51K2478001.pdf

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

No
Q.29  Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>On 15 September 2006, a new Law has been adopted which transposed formally the 2004/81 Directive. According to me, the new law is a status quo in comparison with previous national law since the situation is not deeply modified by the new law. Nevertheless, as the new law required from the victims to prove their identity with passport or ID card, the new legislation is more restrictive than the Directive. As the new law provides to give a first residence permit of 3 months where the Directive provides a 6 months residence permit, the new legislation is also less favourable.</td>
<td>□ In line with the Directive</td>
</tr>
</tbody>
</table>

Q.30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance a free access to justice for the victims</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Free legal aid system has been entered into force through the law dated 23 November 1998 which provides conditions to be satisfied to grant free legal aid. Amongst the conditions, a document attesting that a person has social benefits allows this person the right of free legal aid and a free lawyer. Majority of the victims after achieving residence permit receive social benefits and, consequently, free legal aid.

**Table 2**

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of minors</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Circulars dated 1997 updated in 2003 did not take into consideration minors specifically. In December 2002, a law was enacted regarding protection and situation of unaccompanied minors but this law did not envisage minors "victims of trafficking" but all unaccompanied minors arrived on the territory.
### Table 3

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance access to labour market</td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>This access to labour market should be still granted as provisions regarding the conditions to obtain a work permit has not been modified. It is to be notices that conditions to obtain work permit and consequently, access to labour market is not a federal competence anymore. Only Regions can decide to modify the conditions to issue a work permit as it is a regional competence. One can be regretted that Regions were not associated in the transposition of the Directive as these specific provisions fall under their competence field.</td>
<td>□ Less favourable than previous national rules □ Status quo □ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☑ YES ☐ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☑ YES ☐ NO

Q.31.C. If yes, give some of examples:

The new legislation required document not required by the directive as the proof of identity of the victim has to be established with a passport or a ID card (art. 61/3, §4)
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

The new legislation adopted the optional provision regarding minors victims. The new legislation is nevertheless not applicable to all minors but only to minors who are:
- less than 18 years old
- non accompanied by a major responsible of him/her
- not taken in charge by this major person
- or having been abandoned after entering on the territory

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.
☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).
Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendant measures for the victims</td>
<td>Belgium has a long experience in the follow-up and the support of victims of trafficking as the regulation exists since 1994. Belgian authorities delegate competence in the care of victims to three specialised centers (one in Flanders, one in Brussels and one in Wallonia). These centres has developped a strong experience in detecting &quot;true&quot; from &quot;false&quot; victims, accompanying them during the criminal procedure, granting them psycho-social support. In 1995, trafficking in human beings becomes a criminal offence and a national Centre for Equal Opportunities and strike against Racism receive legal competence to coordinate national action in the field of trafficking. The annual report of this national Centre is important for all actors as it contains a summary of the judicial and political actions and practices taken to fight trafficking. The Centre has also legal competence to lodge a case in justice in the name of the victims. This legal competence is very important for the victims as they often need to be supported in their steps to be recognised as victims and also to guarantee them security when police declarations from the victim endanger him/her.</td>
</tr>
</tbody>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Bulgaria

By

Dimitrova-Turner, Maria Borissova

National Rapporteur, mbdimitrova@gmail.com, 12.11.2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☑ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
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<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Law on Combating Trafficking in Human Beings (abbreviated as LCTHB; it was adopted when the Directive was still a project, i.e. in 2003)</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>Promulgated in State Gazette 46/20.05.2003, last amended SG 86/28.10.2005</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>24.05.2003</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Articles 1, 2, 3, 9, 10, 11, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 (these provisions are main norms of transposition; however, please have in mind that the whole LCTHB constitutes the main act of transposition of the Directive)</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong></td>
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<td>☐ REGULATION</td>
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### Table 2

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<tr>
<td><strong>TITLE:</strong></td>
<td>Law on Foreigners in the Republic of Bulgaria (abbreviated as LFRB, last amended August 2007, promulgated in SG 63/03.08.2007)</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>Latest amendments are promulgated in SG 63/03.08.2007</td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Article 24, item 17</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<td></td>
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<td>☐ REGULATION</td>
</tr>
</tbody>
</table>
### Table 3

This table is about: [ ] a text already adopted  [x] a text which is still a project to be adopted

**TITLE:** Regulation for Implementation of Law on Foreigners in Republic of Bulgaria  
**DATE:** Last amended SG 49/19.06.2007  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:**  
**PROVISIONS CONCERNED:** 27a, 13, 12, 28  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**  
**LEGAL NATURE** (please tick the correct box):  
[ ] LEGISLATIVE  
[ ] REGULATION  
[ ] CIRCULAR OR INSTRUCTIONS

### Table 4

This table is about: [x] a text already adopted  [ ] a text which is still a project to be adopted

**TITLE:** Regulation on the Shelters for Temporary Accommodation and the Centres for Protection and Assistance of Victims of Trafficking in Human Beings (hereinafter referred to as the ‘Regulation’)  
**DATE:** Adopted 01.03.2004, promulgated in State Gazette 19/09.03.2204  
**NUMBER:** Council of Ministers Decree 49  
**DATE OF ENTRY INTO FORCE:** 13.03.2004  
**PROVISIONS CONCERNED:** 3, 4, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26 (these provisions are simply for orientation; in reality the whole text of the Regulation concerns to a high extent the implementation of the Directive)  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**  
**LEGAL NATURE** (please tick the correct box):  
[ ] LEGISLATIVE  
[ ] REGULATION  
[ ] CIRCULAR OR INSTRUCTIONS
Table 5

| This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted |
| TITLE: Criminal Procedure Code |
| DATE: Promulgated in State Gazette 86/26.10.2005 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 29.04.2006 |
| PROVISIONS CONCERNED: Articles 21, 67, 75, 123, 142 (for example if the norm also pursues other objectives than the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (please tick the correct box): ☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS |

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

| TITLE: Criminal Code |
| DATE: Promulgated in State Gazette 26/02.04.1968, last amended SG 89/06.11.2007 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: Articles 159a (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): ☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS |
### Table 2

| DATE OF ENTRY INTO FORCE: 22.10.1991 | PROVISIONS CONCERNED: Paragraph 4 of the Additional Provisions (for example if the norm is not devoted only to the transposition of the concerned directive) | REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): | | |
| ☑️ LEGISLATIVE | | |
| ☐ REGULATION | | |
| ☐ CIRCULAR OR INSTRUCTIONS | | |

### Table 3

| TITLE: Law on Child Protection (abbreviated as LCP) | DATE: Promulgated in State Gazette 48/13.06.2000, last amended SG 82/10.10.2006 | NUMBER: |
| DATE OF ENTRY INTO FORCE: 17.06.2000 | PROVISIONS CONCERNED: Article 15 (for example if the norm also pursues other objectives than the transposition of the directive) | REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): | | |
| ☑️ LEGISLATIVE | | |
| ☐ REGULATION | | |
| ☐ CIRCULAR OR INSTRUCTIONS | | |

### Table 4

| DATE OF ENTRY INTO FORCE: 02.01.2002 | PROVISIONS CONCERNED: Article 18, paragraph 3, item 1, Article 70, paragraph 3 (for example if the norm also pursues other objectives than the transposition of the directive) | REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): | | |
| ☑️ LEGISLATIVE | | |
| ☐ REGULATION | | |
| ☐ CIRCULAR OR INSTRUCTIONS | | |
### Table 5

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Law on Health Insurance</th>
</tr>
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<tbody>
<tr>
<td>DATE</td>
<td>Promulgated in State Gazette 70/19.06.1998, last amended SG 11/2.02.2007</td>
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<tr>
<td>NUMBER</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
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<tr>
<td>PROVISIONS CONCERNED</td>
<td>Article 33, paragraph 1, item 3 (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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### Table 6

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Law on Social Assistance</th>
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<tbody>
<tr>
<td>NUMBER</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
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</tr>
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<td>PROVISIONS CONCERNED</td>
<td>Article 2 (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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### Table 7

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Ordinance on the Acceptance of Bulgarian citizens who Studied in Foreign Schools and of Foreigners in the State and Municipal Schools of Republic of Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER</td>
<td>4</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>30.04.1994</td>
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<tr>
<td>PROVISIONS CONCERNED</td>
<td>Article 2 (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td>☐ REGULATION</td>
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<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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### Table 8

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Implementation Regulation of the Law on Social Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date</strong></td>
<td>5.11.1998, promulgated State Gazette 133/11.11.1998, last amended SG 93/17.11.2006</td>
</tr>
<tr>
<td><strong>Number</strong></td>
<td>Council of Ministers Decree 243</td>
</tr>
<tr>
<td><strong>Date of Entry into Force</strong></td>
<td>11.11.1998</td>
</tr>
<tr>
<td><strong>Provisions Concerned</strong></td>
<td>Article 10, paragraph 5</td>
</tr>
<tr>
<td><strong>Legal Nature</strong></td>
<td>(indicate by ticking the correct box):</td>
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<tr>
<td></td>
<td>☐ Legislative</td>
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<tr>
<td></td>
<td>☒ Regulation</td>
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<td></td>
<td>☐ Circular or instructions</td>
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### Table 9

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Ordinance on the Conditions and Procedures for Issuance, Denial and Withdrawal of Labor Permissions of Foreigners in Republic of Bulgaria</th>
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<tbody>
<tr>
<td><strong>Number</strong></td>
<td>Council Decree 77</td>
</tr>
<tr>
<td><strong>Date of Entry into Force</strong></td>
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<tr>
<td><strong>Provisions Concerned</strong></td>
<td>Article 4, paragraph 1, item 1; article 6, paragraph 3, article 8, item 5</td>
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<td><strong>Legal Nature</strong></td>
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<td>☒ Regulation</td>
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<td></td>
<td>☐ Circular or instructions</td>
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### Table 10

<table>
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<tr>
<th><strong>Title</strong></th>
<th>Ordinance on State Requirements for Acceptance of Bulgarian Citizens and Foreigners in High and Semi-high Educational Institutes of Republic of Bulgaria and for Dispatch of Bulgarian students for Educating Abroad</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date</strong></td>
<td>State Gazette 28/1.04.1994, last amended SG 49/30.05.1995</td>
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<tr>
<td><strong>Number</strong></td>
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<td><strong>Date of Entry into Force</strong></td>
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<td><strong>Provisions Concerned</strong></td>
<td>Paragraph 1 of the Additional Provisions</td>
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<td></td>
<td>☐ Circular or instructions</td>
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### Table 11

<table>
<thead>
<tr>
<th>TITLE: Ordinance on the Acceptance of Students in the State and Municipal Schools</th>
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<tbody>
<tr>
<td>NUMBER: 11</td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 9.04.2005</td>
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<tr>
<td>PROVISIONS CONCERNED: Article 39</td>
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<tr>
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### Table 12

<table>
<thead>
<tr>
<th>TITLE: Ordinance on Acquiring Specialization in the Health Care System</th>
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<tbody>
<tr>
<td>DATE: 29.12.2006</td>
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<td>NUMBER: 34</td>
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<td>DATE OF ENTRY INTO FORCE: 02.01.2007</td>
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<tr>
<td>PROVISIONS CONCERNED: Article 38, paragraph 4</td>
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<td></td>
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<tr>
<td>[X] REGULATION</td>
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<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
<td></td>
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</tbody>
</table>

### Table 13

<table>
<thead>
<tr>
<th>TITLE: Ordinance on Acceptance of Students in the Art Schools</th>
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<tbody>
<tr>
<td>DATE: 18.04.2003, promulgated in State Gazette 41/08.05.2003, last amended SG 28/6.04.2004</td>
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<td>NUMBER: 2</td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 8.05.2003</td>
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<tr>
<td>PROVISIONS CONCERNED: Article 28, paragraph 1</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
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<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<tr>
<td>[ ] LEGISLATIVE</td>
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<td>[X] REGULATION</td>
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</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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</table>
Table 14

| TITLE | Ordinance on the Acceptance of Primary and Secondary Students in the Art Schools |
| DATE | 26.03.2004, promulgated in State Gazette 28/06.04.2004 |
| NUMBER | 3 |
| DATE OF ENTRY INTO FORCE | 6.04.2004 |
| PROVISIONS CONCERNED | Article 21 |
(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate by ticking the correct box):

- [ ] LEGISLATIVE
- [x] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Table 15

| TITLE | Ordinance on the Acceptance of Students in Sport Schools |
| NUMBER | 4 |
| DATE OF ENTRY INTO FORCE | 29.04.2002 |
| PROVISIONS CONCERNED | Article 9 |
(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate by ticking the correct box):

- [ ] LEGISLATIVE
- [x] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>taking a decision on granting special protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>prosecutor</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>providing medical and social aid to victims of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>shelters and assistance and protection centres established by the National Commission on Combating Trafficking in Human Beings (NCCTHB) - an administration at the Council of Ministers. The shelters might also be established by individuals or legal entities after a procedure before the NCCTHB and registration at a register with NCCTHB. Another authority in this respect - Ministry of Labor and Social Policy</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Social Assistance Agency at the Ministry of Labor and Social Policy</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>I included the Social Assistance Agency for the following reason: Since the victims of trafficking as per the main law (Law on Combating Trafficking in Human Beings) who were granted special protection enjoy the rights and obligations of permanent residents they also have the right to apply and receive social assistance from the State. Social Assistance Agency is also the operative authority for imposing measures for child protection.</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>granting residence permit</th>
</tr>
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<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Internal Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Migration Department</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>It is in strict subordinance to the Minister of Interior</td>
</tr>
</tbody>
</table>
### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>measures for protection of children</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>State Agency on Child Protection</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>It is an agency at the Council of Ministers and it is generally responsible for exercising control on the observance of the rights of children.</td>
</tr>
</tbody>
</table>

### Table 5

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>granting access to the labor market</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labor and Social Policy</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Employment Agency</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Labor Departments</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The registration at the Labor Departments gives opportunity for participating in programmes and assists in the job search process in case of unemployment.</td>
</tr>
</tbody>
</table>

**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

- [X] YES  
- [ ] NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

- [X] YES  
- [ ] NO
If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^5\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^6\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The main act which implements the Directive is the Law on Combating Trafficking in Human Beings (LCTHB). It has no provisions with regard to ‘people who facilitate illegal immigration’. The only provision which somehow affects ‘people who facilitate illegal immigration' is in the Bulgarian Criminal Code (art. 280). It states: ‘whoever transfers through the Bulgarian border an individual or groups of individuals without the permission of the relevant authorities or with a permission but not through the determined places, shall be punished with imprisonment as from 1 to 6 years and a fine as from BGN 500 to BGN 1000.’ The next line regulates the criminal liability in grave cases. However, no provisions regulate the status of these people or the consequences of cooperating with state authorities. That is why I consider the Directive is not implemented in this respect.

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Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): **Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).**

There are two definitions of trafficking in human beings in Bulgarian legislation. The first one is in the LCTHB. Paragraph 1, item 1 of the Additional Provision states that: ‘trafficking in human beings is the recruitment, transportation, transfer, harbouring, or reception of people independently of their consent through use of force, abduction, illegal deprivation of liberty, deceit, abuse of authority or of a position of vulnerability, or through given, received, or promised benefits in order to receive the consent of a person who exercises control over another person when it is conducted with exploitation purpose.’ Further on the exploitation is explained as: ‘illegal use of people with the purpose of sexual exploitation, deprivation of parts of the body, for conducting force labor, for slavery or practices similar to slavery.’ The Additional Provision also establishes that when the recruitment, transportation, transfer, harbouring or reception of person involves a child, it shall be considered trafficking even if none of the above mentioned means have been used.

The Bulgarian Criminal Code includes the following provision (art. 159a) as to the trafficking in human beings: ‘Whoever recruits, transports, harbours or receives individuals or groups of individuals with the purpose of using them for sexual exploitation, for forced labor, for deprivation of body organs or for detention in forced obedience no matter of their will, shall be punished with imprisonment from 1 to 8 years and a fine of up to BGN 8000.’ The punishment is even higher when the act is conducted to a child, or through use of force or deceit, etc. The provision of art. 159b establishes a punishment for the cases of transferring of people with the same purpose. The above mentioned is a true evidence that Bulgarian legislation has adopted the definition of trafficking in human beings. It goes even further - the criminal liability is applicable even in cases where no force has been used.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction,, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

As it was stated above, there is a provision in the Criminal Code (cited above) which establishes criminal liability for actions which facilitate illegal immigration. However, no implementation has been made of the provisions of the Directive.

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (c) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (d) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

[ ] Adults  [x] Both adults and minors

Explanation:

The LCTHB does not make any difference between adults and minors as regards its application. It even implies that the regime of special protection applies to both categories as it states that the reflection period for children might be prolonged to 2 months.
Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- All minors

- Minors, for which the following criteria are fulfilled:
  - 
  - 
  - 
  - 

Explanation:

Since there are no provisions which introduce any criteria, I consider that the national norms of transposition are applicable to all minors.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: I do not have any information on the matter. I inquired the Migration Directorate at the Ministry of Interior since it is the authority which is responsible for the issuance of residence permits. Unfortunately, I had not received a response from it as to the day this report was sent to Odysseus. My personal opinion based on my general knowledge on the practice of the Migration Directorate is that there were no or at least very few cases of this kind. However, this is just an assumption and is not supported by any evidence at my disposal.

‘An action to facilitate illegal immigration’ (If applicable): N/A

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.
Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Pursuant to art. 26 (1) of the LCTHB the pre-trial criminal proceedings authorities (according to Bulgarian legislation - investigators and prosecutors) are obliged to inform the victims of the possibility to receive special protection immediately after the authorities have identified them as victims of trafficking.

The LCTHB foresees the establishment of a National Commission for Combating Trafficking in Human Beings (NCCTHB) as well as of local commissions. At the local commissions there must exist centres for protection and assistance of victims of trafficking. Unfortunately, neither local commissions exist, nor centres for protection and assistance. Also, there must exist shelters where the victims of trafficking can be accommodated after they express a desire for that. These shelters are supposed to offer them support in kind. The shelters might be established by the Commission or by individuals/legal entities after registration at the Commission.

Pursuant to art. 23 of the Regulation the victims of trafficking should be informed IN A LANGUAGE THEY UNDERSTAND about their rights and obligations during the stay in shelters, the right to apply for asylum as well as about the services offered by the protection and assistance centers. It is not explicitly provided who informs the victims but the systematic interpretation of the provision implies that the people in charge of managing the shelter are responsible for that.

The envisioned in LCTHB shelters do not exist either.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☐ Both orally and in writing

Explanation:

The form in which the information is given is not established in the LCTHB. But the Bulgarian Criminal Procedure Code states that victim of any crime has the right to be informed on his/her rights (article 75 of the Criminal Procedure Code). The practice is that the information is provided orally and is written down in a protocol.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

I do not have any information on the matter.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Yes, I do. As a part of the criminal trial, it is important for the prosecutor to ensure the observance of the rights of all the actors in the pre-trial criminal proceedings.

As for the information which is supposed to be delivered under art. 23 of the Regulation, I do not know how it is going to work in practice once the shelters are established.
Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

On the one hand, individuals who claim they are victims of trafficking may stay at shelters for temporary accommodation of victims of trafficking for up to 10 days. The period can be prolonged with 30 more days after a proposal by the local commissions on combating trafficking in human beings (there are no such commissions established yet), the pre-trial criminal proceedings authorities or the court after an expressed will by the victim (art.9 (3) of the LCTHB in relation to art. 21 (1) and (2) of the Regulation). In exceptional cases the period can be prolonged upon a decision of the shelters staff in cases there is free place for accommodation in the shelter (art. 21 (4) of the Regulation). On the other hand, when the victim is identified as a victim of trafficking and is informed on his/her rights under the Directive he/she has one month period to declare consent to cooperate with the pre-trial criminal proceedings authorities. Hence the victim has at least 30 days to decide. The LCTHB does not specify that this is a reflection period directed to give the victim the opportunity to take an informative decision.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

I sent an inquiry to the Migration Directorate at the Ministry of Interior in this respect because the expulsion orders are in the powers of the Director of the Migration Directorate. Unfortunately, no response had been received as to the day this report was sent to Odysseus. The LCTHB does not give any concrete information about that. However, it implies (as a consequence of the permission to stay in the shelters) that during the period the victims are protected against expulsion.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No
**Explanation:** (If the answer is “yes”, which are the criteria?)

There is no provision in this respect.

**Q.9.D.** If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

There are no provisions in this respect.

**Q.9.E.** If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

There are no provisions in this respect.

**Q.9.F.** Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

The interviews with the NGOs and with the International Organization for Migration (IOM; one of the main organizations and the one with the broadest resources in the area of trafficking problems) led to the conclusion that there is not much practice on the matter. This is due to the fact that Bulgaria is still mainly a country of origin and not a country of destination for trafficking. In my opinion, the LCTHB is too general and does not regulate precisely something as significant as the reflection period. It does not regulate basic issues and problems like the withdrawal of the reflection period, the participation of the NGOs in the process of taking an informative decision, the effect of an expulsion order, etc.

**Treatment**

**Q.10.** According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

**Q.10.A.** Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

<table>
<thead>
<tr>
<th>Before the issue of the residence permit:</th>
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<tbody>
<tr>
<td>☐ Yes, in cash</td>
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<tr>
<td>☒ Yes, in kind</td>
</tr>
<tr>
<td>☐ No</td>
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</tbody>
</table>

**Explanation:**

The LCTHB foresees the establishment of a National Commission for Combating Trafficking in Human Beings (NCCTHB) as well as of local commissions. At the local commissions there must exist centres for protection and assistance of victims of trafficking. Unfortunately, neither local commissions exist, nor centres for protection and
assistance. Also, there must exist shelters where the victims of trafficking can be accommodated after they express a desire for that. These shelters are supposed to offer them support in kind. Unfortunately, such shelters, as per the LCTHB, do not exist. According to the information provided by NGOs, as well as the information provided by the IOM there are only shelters at the IOM and only 1 (or probably 2) crisis centre (not even a real shelter) at an NGO. The shelters at IOM are established on the ground of international treaties. The crisis centre is sponsored by international donors and has the capacity for 5 people. No shelters of the kind the law foresees exist.

After the issue of the residence permit

☒ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

Pursuant to art. 29 of the LCTHB the stay in the shelters might be prolonged in accordance with the period determined in the prosecutorial order and cannot exceed the termination of the criminal proceedings. In case the victim who is granted special protection decides to stay in the shelter the support in kind that he/she receives would be the same as in the previous paragraph.

Pursuant to art. 27 (1) of the LCTHB the prosecutor may grant special protection to the victim of trafficking. On the basis of the prosecutor’s act the victim may apply for a residence permit at the competent authorities at the Ministry of Interior (art. 28 (1)). In case he/she receives a residence permit the victim acquires the status of a permanent resident and hence has a whole range of rights related to such a status. The residency in Bulgaria at this moment combines different regimes and for that reason it is quite confusing. In general, the residency divides into: a). continuous residency; and b). permanent residency (both established in the Law on Foreigners in the Republic of Bulgaria). The continuous residency is up to one year. The permanent residency is not limited by a deadline. Victims of trafficking who have been granted special protection by a prosecutor can apply for continuous residency. However, the LCTHB states that once they obtain continuous residency they have the rights of a person who has obtained permanent residency. It is obviously a mixture of two different regimes in order to ascertain better protection for the victims of trafficking.

According to the Regulation for the Implementation of the Law on Social Assistance the people with permanent residence may apply for social support. It depends on the needs whether the support will be in cash or in kind. They should go through the same procedure as Bulgarian citizens.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

I do not have information on the practice of the social support authorities. As per the Law on Social Assistance nationals and permanent residents must be treated equally with regard to the amount.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

No, it is not. Following the conversations with representatives of NGOs at the moment and in practice victims of trafficking, before the issuance of the residence permit, do not receive support by the State or in a way regulated by the State at all. Victims of trafficking with residence permit can receive support like the Bulgarian citizens. The social support for Bulgarian citizens is minimal, hence it is minimal for foreign citizens.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to the LCTHB and mainly to the Regulation victims of trafficking can file a request for accommodation in a shelter. The shelters should provide the necessary protection. Pursuant to art. 15 of the Regulation the protection in the shelters is ensured by the police authorities or by entities which received a permission for conduct of private security activity.

Practically there are several shelters at the IOM and only one or two crisis centres at Bulgarian NGOs. Unfortunately, as it was explained in Q.10.A, such shelters, as per the LCTHB, do not exist. According to the information provided by NGOs, as well as the information provided by the IOM there are only shelters at the IOM and only 1 (or probably 2) crisis centre (not even a real shelter) at an NGO. The shelters at IOM are established on the ground of international treaties. The crisis centre is sponsored by international donors and has the capacity for 5 people. No shelters of the kind the law foresees exist.

According to the information provided by NGOs these crisis centres in the form in which they exist are protected by the police authorities.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to art. 29 of the LCTHB victims of trafficking who obtained a residence permit are entitled to stay in the shelters until the end of the criminal proceedings. As it was stated in the first part of the answer the protection of the centres shall be ensured by the police/certified entities.

Although in this case the victim becomes a participant in the criminal trial his/her rights are not protected enough. According to art. 67 of the Criminal Procedure Code the victims may receive physical protection through a court imposed stay away order. The victim can also receive protection as witness - art. 123 of the CPC and the Law on Protection of Persons Who Are in Danger in Relation With the Criminal Proceedings. This type of protection is available only in cases when there is sufficient evidence of a substantial threat to life, health or property of the witness, his/her family or friends. Such protection is temporary.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No
Explanation:

There is no such requirement in the LCTHB. The Regulation includes a provision which only partially relates to the issue, namely the case when the victim is informed on their rights. As per art. 23 of the Regulation the rights should be explained in a language the victim understands. However, during the criminal proceedings the victim should have a translator in case he/she does not speak Bulgarian. Hence, the translation service is fully provided as long as the criminal proceedings are conducted.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:

As it was explained above - in the case of art. 23 of the Regulation and during the criminal proceedings in accordance with the general rules of the Criminal Procedure Code.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

The situation is the same as with the translation services although the interpretation services are provided only in the course of the criminal proceedings.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:

As it was explained above - only during the criminal proceedings.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Please, note that there is no explicit provision in this regard. However, there is a special Law on Legal Aid. The victims of trafficking may apply for free legal aid if they meet the requirements established in law, i.e. if they
cannot afford it and respond to the requirements for receiving state social aid as per the Implementation Regulation of the Law on Social Assistance. The legal aid is offered by qualified attorneys who are registered at a special National Bureau for Legal Aid.

**After** the issue of the residence permit

☒ Yes ☐ No

**Explanation:** (Please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

The regime is the same as before the issuance of the residence permit.

**Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care?** See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Pursuant to art. 22 (1), item 3 of the Regulation during their stay in the shelters the victims of trafficking are entitled to access to emergency medical and psychological care. Emergency medical care is free of charge according to art. 99 of the Health Act. Victims of trafficking are not entitled to any other form of free medical aid.

**After** the issue of the residence permit

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

There are two possible scenarios here: 1). when the victim of trafficking is granted special protection and his/her stay at the shelter is prolonged in accordance with the special protection - then art. 22 (1), item 3 of the Regulation will be applied; 2). permanent residents have access to medical care but emergency medical care is free of charge. For any other forms of medical care permanent residents should either pay or have social security insurance (in case they work, for example).
Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☐ No

Explanation:
The LCTHB contains requirements for providing psychological help in the shelters or centres where the victims are accommodates. However, as it was stated above, no such premises exist.

After the issue of the residence permit

☐ Yes ☐ No

Explanation:
According to art. 29 of LCTHB victims of trafficking who obtained a residence permit are entitled to stay in the shelters until the end of the criminal proceedings under certain conditions set out in the Regulation. In the shelters they are entitled to psychological help. However, as it was stated above, no such premises exist.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

Article 28 (1) of the LCTHB stipulates that the residence permit shall be issued under the regime of the LFRB and on the basis of the prosecutorial act. The LFRB has only one provision which concerns the victims of trafficking residence permit - art. 24, item 17. It states that continuous residence permit can be granted to foreigners who have a visa and have received a special protection status within the meaning of art. 25 (1) of the LCTHB. Article 27a of the Regulation on the Implementation of the Law on Foreigners in the Republic of Bulgaria (promulgated in June 2007) requires that the victim should submit:
1. an application;
2. a document for paid state fee;
3. a photocopy of the passport with the photo, personal data, the entrance visa and the entrance stamp;
4. evidence for ensured accommodation for the time of the stay on the territory of the country;
5. a document issued by the competent authorities authorising the special protection status (most probably this is the prosecutorial act).

Three things might create serious problems: a). the requirement for a tax fee - I presume that victims of trafficking would not have sufficient resources to afford to pay the taxes under this Regulation (i.e. BGN 500 lv = EURO 250) for the issuance of a residence permit; b). the requirement for an entrance stamp - it is not clear what will happen if the victim has entered the territory illegally; c). evidence for ensured accommodation for the time of the stay on the
territory of the country - it is not clear if the stay in the shelters would be considered as 'accommodation' within the meaning of this article. Therefore, I would consider all of the above as 'specific criteria' and hence a heavier burden for the victims of trafficking and contradiction to art. 8 of the Directive.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

The residence permit originates and depends on the special protection status. Once the criminal proceedings terminate the residence permit would be withdrawn because the ground for its issuance will no longer exist.

According to Art. 25 of the LCTHB the special protection, hence the residence permit, is valid until the end of the criminal proceedings. The LCTHB stipulates that the special protection is available by the end of criminal proceedings. Usually, the criminal proceedings last much more than 6 months. However, there might be cases when the 6-month criteria might not be met.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

No procedure of this type is established in the LCTHB. However, as it was explained in Q.10A (second part) the residency in Bulgaria divides into continuous residency and permanent residency. The continuous residency is up to 1 year. The permanent residency is not limited by a deadline. The victim can apply for a continuous residency but once he/she acquires it, the victim will have the status of a permanent resident. The idea obviously is that the residence permit needs to be limited in time but to ensure a whole range of rights for the victim. As it is a combination of two regimes, it should be assumed that as for the continuance of the permit and for its renewal the regime of continuous residency is applicable. The continuous residency permit can be renewed after its expiration when the grounds for its issuance still exist. This is the general rule. The specific procedure for the renewal in this particular scenario is not established in Bulgarian legislation. Hence, it creates prerequisites for a practical problem but this part of the Directive is formally transposed.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

A child can be accommodated in a shelter within the meaning of the LCTHB and the Regulation. As per art. 20 (2) of the Regulation the children should be accommodated separately from the adults. In any case of registration of a victim of trafficking in a shelter the shelter staff is obliged to inform the pre-trial criminal proceedings authorities about that within 24 hours. The procedure is the same when the victim is a child. The pre-trial criminal proceedings authorities are obliged to inform immediately the State Agency for Child Protection when a child - victim of trafficking - is involved. Currently, no shelters within the meaning of LCTHB exist. Nevertheless, as per the opinion of the NGOs interviewed the rights of the children are much better protected than of the adults. The child is accommodated in special premises. However, in reality the conditions at these premises are bad. The IOM and NGOs agreed that in any case a child is much more protected than an adult and the reason for that is the participation of the State Agency for Child Protection.
Bulgaria has ratified the Convention on the Rights of the Child and the Parliament has adopted Law on the Child Protection. The latter contains a general principle of considering the best interests of the child. But there is no provision in the trafficking-related legislation that states that in this specific situation the best interests of the child should be considered as a leading concept.

**Q.12.B. Has your Member State extended the reflection period for minors?**

*See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: For how long?)

Upon a request of the State Agency for Child Protection the duration might be extended to two months.

**Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor?** *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If yes, explain which measures are taken)

The answer is yes because the State Agency for Child Protection is the authority responsible for guaranteeing the protection of the rights of the children.

**Q.12.D. Do minors have access to the educational system under the same conditions as nationals?** *See article 10(b).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Pursuant to art. 23 of the LCTHB - yes. However, there are no special rules in the legislation as for the foreign children especially in such vulnerable condition.

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors?** *See article 10(c)* *(Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc)*.

The LCTHB (art. 24) stipulates that immediate steps should be taken as for the reunification with their families. No information was available about the situation in practice. As for the representation the LCTHB refers to the Law on Child Protection. According to the general procedure the minor shall be represented by a guardian who, pursuant to the Family Code, shall be appointed by the mayor of the relevant municipality where the address of the child is. In case the child has no close relatives (as it is in the cases of unaccompanied minors) a special authority - the Social
Support Directorates - conducts the representation (art. 15 (7) of the Law on Child Protection). The Social Support Directorates are the local branches of the Social Support Agency which is an agency at the Ministry of Labour and Social Policy

**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A. Do the holders of the residence permit have access to the labour market?** *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

No, there are not any criteria to be met. The holders of residence permits have the rights of permanent residents. The regime for permanent residents is applicable, i.e. access to labor market, education and vocational training as Bulgarian citizens. The status is equal as to the status of permanent residents and hence, to the status of Bulgarian citizens (certainly, excluding the jobs which require Bulgarian citizenship as, for example, state jobs). The access to labor market is free.

**Q.13.B. Do the holders of the residence permit have access to vocational training?** *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

No, there are not any criteria to be met. The status is equal as to the status of permanent residents. The access to vocational training is free.

**Q.13.C. Do the holders of the residence permit have access to education?** *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The access to education for permanent residents is free. There is a whole range of laws which regulate the access to education of permanent residents. They are mentioned in the first part of the Questionnaire.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

It is not explicitly stated in the LCTHB but the access to work, vocational training, etc. origins form the status of a permanent resident. With its termination these rights are precluded.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

From a theoretical point of view the holders of residence permit have access to such programmes since per art. 11 (2), item 1 the centres for protection and assistance at the local commissions against trafficking in human beings should assist the reintegration of the victim in the family and social environment. However and on the basis of opinions shared by NGOs which work in the field, no centres of these type are established. In practice only IOM conducts such programmes.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:
Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

There is no such requirement in the LCTHB.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

My answer here is 'no' because the authorities reconsider not only the conditions in article 8 (2) but also the specific criteria set out in the Regulation for Implementation of LFRB and explained in Q 11A.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Pursuant to art. 30 of the LCTHB the status of special protection and hence, the residence permit is withdrawn before the end of the criminal proceedings when: 1. the person has renewed his/her contacts with the perpetrators; 2. the prosecutor decides that the declared consent for cooperation is false; 3. a danger for the public order and the national security exist. The provision of Article 14, (d) of the Directive is not transposed in LCTHB.


The LCTHB does not establish any procedure.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

There are no studies, since the problem is still not as grave for Bulgaria as for other countries.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Not yet. NGOs even complain there is no political will to change the status quo and overcome the problems.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

The Directive is not fully implemented. Also, it does not regulate basic things with regard to the special status and condition of victims of trafficking - access to labor market, to social aid, the exact procedure of withdrawal and renewal of the permit.
**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td>no special protection was available</td>
<td>there is a relatively good law which however does not work in practice.</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>to establish special premises for victims of trafficking</td>
<td>Explain the situation before transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td>At least the establishment of such shelters and centres is provided by law. Unfortunately, it still does not work in practice.</td>
<td>☑ More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑ In line with the directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☑ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Most of the provisions were implemented. However, not all of the procedures required by the Directive were actually introduced.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

I have not been able to find the text of the Directive in Bulgarian.

**Explain the difficulties that this could create:**

ANY OTHER INTERESTING ELEMENT
Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

The LCTHB requires the establishment of a National Commission for Trafficking in Human Beings (the Commission). The establishment of the Commission network is still continuing although the LCTHB was adopted in 2003. The Commission has a regulative role. It should establish local commissions for trafficking in human beings and special centres for protection and assistance at the local commissions. Unfortunately, there are neither local commissions, nor centres for protection and assistance. The process of creation of a network of institutions for assistance of victims of trafficking is slow and uncertain. The Commission is also responsible for storing a special register for enrollement of NGOs with shelters for accommodation of victims of trafficking. The centres and the shelters are the sources for full guarantees of the rights of victims of trafficking. The lack of these organizations leads to insignificant and unsatisfactory protection of the rights of victims.

The LCTHB is very general. The provisions are not systematically provided and often create difficulties for interpretation as well as preconditions for practical problems.
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
</table>

**TITLE:** The Law relating to the fighting against Human Trafficking and the Exploitation of Victims of Trafficking and the Protection accorded to Victims of Trafficking of 2007

**DATE:** 13/07/2007

**NUMBER:** Law No.87(I) of 2007

**DATE OF ENTRY INTO FORCE:** 13/07/2007


(for example if the norm also pursues other objectives than the transposition of the directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Official Journal of the Republic of Cyprus, Annexed I(I), No.4133, 13/07/2007

**LEGAL NATURE (please tick the correct box):**

- ☒ LEGISLATIVE
- ☐ REGULATION
- ☐ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
Table 1

| TITLE | Law ratifying the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour |
| DATE | 27 November 2000 |
| NUMBER | Law No.31(III)/2000 |
| DATE OF ENTRY INTO FORCE | 27 November 2000 |
| PROVISIONS CONCERNED | Article 1 - Obligation on States who have ratified the Convention to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour; Article 3 - The worst forms of child labour include, inter alia, the sale and trafficking of children (Article 3(a)), the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances (Article 3(b)). |
| LEGAL NATURE (indicate by ticking the correct box): | ☒ LEGISLATIVE |

Table 2

| TITLE | Law on the Fighting against Human Trafficking and the Sexual Exploitation of Children of 2000 |
| DATE | 21 January 2000 |
| NUMBER | Law N.3(I)/2000 |
| DATE OF ENTRY INTO FORCE | 21/01/2000 |
| PROVISIONS CONCERNED | Criminalization of Human Trafficking, Child Prostitution and the sexual exploitation of persons |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | Official Journal of the Republic of Cyprus, Annexed I(I), No.3382, 21/01/2000 |
| LEGAL NATURE (indicate by ticking the correct box): | ☒ LEGISLATIVE |

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.
Please include your answer in the tables below

### LEGISLATIVE RULES
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

### REGULATIONS
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

### CIRCULAR OR INSTRUCTIONS
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

#### Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNS:</th>
<th>Information given to the third-country nationals concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Civil Registry and Migration Department</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Civil Registry and Migration Department deals mainly with the granting of Entry Permits and also Temporary and Permanent Residence Permits to European Union nationals and aliens. The Department is not independent of the competent ministry.</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted before the issue of the residence permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour and Social Insurance</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Social Welfare Services</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Social Welfare Services aim to safeguard social cohesion and social solidarity; to provide social protection, achieve social inclusion and promote equal opportunities for all citizens in the Republic of Cyprus; to combat poverty and social exclusion and to promote the interests of individuals, families and communities. The Social Welfare Services support families and individuals who are facing social problems; provide protection and care to children and other vulnerable groups of people. The Services are not independent of the competent ministry.</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Safety and protection needs of the third-country nationals concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice and Public Order</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Police</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Enquires/researches on whether the applicant is truly a victim of trafficking. The political head of the Police is the Minister of Justice and Public Order; The Police follows its own rules and procedures as those are determined by relevant legislation, circulars and instructions.</td>
</tr>
</tbody>
</table>

### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issue, renewal and withdrawal of the residence permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice and Public Order</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Aliens and Immigration Unit</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Immigration Officer</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Aliens and Immigration Unit also deals with issues of combating illegal immigration and illegal employment of aliens; detention and apprehension of illegal or wanted aliens; prevention of illegal immigration to the areas controlled by the Republic; control of aliens who are legally employed in Cyprus; combating of illegal immigration flows towards Cyprus as well as towards to other member states of the EU. In order to achieve its aims, the Unit has created the Operations Office, which holds the responsibility for supervising all operations at a National level. The Unit collects and assesses vital information from various sources (police or non), and maintains close cooperation with the Drug Law Enforcement Unit, the Crime Intelligence Office, the Port and Marine Police, the Central Information Services and the Air Wing Department of the Police.</td>
</tr>
</tbody>
</table>
Table 5

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES  ☐ NO

A National Enforcement Mechanism for the implementation of the provisions of the relevant Law (Law N.87(I)/2000) has been established and it is now functioning. It is composed of the Attorney-General of the Republic of Cyprus, the General Director of the Ministry of Justice and Public Order, the Chief of the Police, the General Director of the Ministry of Foreign Affairs, the Director of the Department of Labour of the Ministry of Labour and Social Insurance, the Director of the Social Welfare Services, the General Director of the Ministry of Health, the General Director of the Ministry of Education and Cultural Affairs, the Director of Civil Registry and Migration Department of the Ministry of Interior, the Head of the Asylum Service of the Ministry of Interior, a Representative of the National Centre for the Rights of Women and representatives of Non-Governmental Organizations chosen by the National Coordinator.

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES  ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^7\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^8\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The national norms of transposition are in line with the Directive on Trafficking and they fully apply to third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member State. The stated aim of the relevant law is to provide measures to protect and support such victims (Part I - Article 3). The relevant Law (Law N.87(I)/2007) does not apply to third-country nationals who have been the subject of an action to facilitate illegal immigration, although it considers such an action as illegal.

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\(^7\) Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The definition provided by the relevant law is IDENTICAL with the definition of trafficking in human beings in the framework Directive. It constitutes an exact translation (word by word) of the English definition into Greek. The relevant law, however, is silent on the issue of consent, as this is set out in Article 1(2) of the Framework Decision. There is no relevant and/or recent case law to suggest that the consent of a victim of trafficking in human beings to the exploitation is irrelevant or not where any of the means set forth in paragraph 1 have been used. It should be deemed to be implied, nevertheless, that such consent will be irrelevant where any of the means set forth in paragraph 1 of Article 1 of the Framework Decision have been used.

In relation to paragraph 3 of Article 1 of the Framework Decision, this is followed in the definition of the relevant law in Cyprus (Law N.87(I)/2007).

In relation to paragraph 4 of Article 1 of the Framework Decision, this is also followed in the definition of the relevant law in Cyprus (Law N.87(I)/2007).

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
     - (a) use is made of coercion, force or threat, including abduction,, or
     - (b) use is made of deceit or fraud, or
     - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
     - (d) payments or benefits are given or received to achieve the consent of a person having control over another person
   for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
   for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)
Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes ☐ No

Explanation:

The relevant norm of transposition is applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. This is so provided by Article 5 of Law No.87(1)/2007.

**Q.5.C.** Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

**Article 1 General infringement**

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

*This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).*

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

**Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?**
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults
☒ Both adults and minors

Explanation:
The national norm of transposition is both applicable to adults and minors. The Law expressly states that it applies to minors (anyone under the age of 18) who are being trafficked for the purposes of sexual exploitation, pornography and illegal immigration.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
Explanation:
The national norm of transposition applies to unaccompanied minors as well. 'Unaccompanied minors' are defined by the relevant law in Cyprus (Law N.87(I)/2007) as children who are third-country nationals and who have entered the territory controlled by the Government of the Republic of Cyprus (this means that the Law cannot be enforced in the North part of Cyprus, occupied by Turkey since 1974) without to be accompanied by an adult who has responsibility for him/her, and it also includes any child who has been found without to be accompanied by an adult in the territory controlled by the Government of the Republic of Cyprus after his/her entry into the area controlled by the Government.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’:

‘An action to facilitate illegal immigration’ (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Social Welfare Services. The services are a public authority. The Social Welfare Services provide for the relevant information and contact points to the victims of trafficking.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☒ Both orally and in writing

Explanation:
The Law does not specify precisely the means of the communication of information. The Law states that the information has to be given to the victim/s, either orally or in writing where this is possible. In practice, however, the necessary information can be readily and easily found in leaflets/pamphlets available at police stations and at the points of entry into the Republic (airports, ports).
Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

As stated above, the Law/national norm of transposition does not specify precisely in which cases the information should be provided orally and/or in writing. The Law nevertheless states that the Social Welfare Services provide in a language that the victim/s apprehend, all the relevant information clearly and in simple language in relation to the competent authority which deals with issues of permits, psychological and other support, the level of support that they are eligible to obtain, the procedures relating to submitting a complaint against the perpetrators of trafficking and the way those procedures proceed, as well as their role in those procedures; the conditions under which they could be offered protection and security of person; the conditions and the amount of free legal aid and legal support and consultation; the conditions under which they are eligible for compensation in civil and criminal proceedings against the perpetrators of trafficking; the procedures that are available in case they reside in a different country or they repatriate.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Personally, the Law is very detailed in relation to the procedures that have to be followed, and the level of information provided to victims of trafficking is sufficiently clear, precise and adequate. Non-Governmental Organizations are also involved in the procedures, and they are sufficiently active in informing and/or liaising with victims of trafficking and the relevant authorities. There are no known problems in relation to the procedures as such and/or the level of information provided as victims of trafficking are concerned, although there are problems arising out of the Government's policy to issue 'artist visas', which is a different issue however. Nevertheless, in recent statements and interviews the Minister of Public Order and Justice has stated that such visas are going to be written off.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The Law provides for a 'reflection period' for victims of trafficking who are third-country nationals. The Law provides for at least one month reflection period, which might be extended at the Migration's Officer discretion if he/she deems it relevant, looking at the best interests of the victim, especially if the victim is a minor. The reflection period begins when the victim inform the Social Welfare Services formally that he/she is a victim of trafficking. During the reflection period, the victims deliver their passports and/or travel documents with their consent to the Police, which has the responsibility to take care of them and re-deliver them back to the person/s concerned after the conclusion of the procedures set out in the relevant law (Law No.87(I)/2007).
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:
Under the reflection period, the third-country national concerned is absolutely and expressly protected by Law from enforcement of expulsion orders.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)
The reflection period might be terminated at any time for all the reasons provided in Article 6(4), i.e. when the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences, or for reasons relating to public policy and to the protection of national security.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)
The authority which is competent to take the decision in order to terminate the reflection period is the Migration Service, which is a public authority. It is a department of the Ministry of Justice and Public Order.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.
The Migration Office terminates the reflection period if he/she is informed by any of the authorities that are involved in the procedures, that the victim or the third-country national concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences, or for reasons relating to public policy and to the protection of national security. The person concerned is duly informed about his/her termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.
There are not any known problems as far as the practice of granting reflection periods is concerned. Overall, it seems to be working properly. Certain members of the civil society, have nevertheless, vowed concerns in relation to the locality of the shelters that the victims are put in, which is next to the Central Prisons in Nicosia. The Minister of Justice and Public Order, however, has expressed the view that the locality of the shelter is much safer for the victims than any other location, since the area is well protected and patrolled by police, so in case that anything happens (i.e. the perpetrators of trafficking try to threaten or take the victims away), the police can easily intervene.
**Treatment**

**Q.10.** According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

**Q.10.A.** Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

- Yes, in cash
- Yes, in kind
- No

**Explanation:**

Third-country nationals before the issue of the residence permit could be eligible for support both in cash and in kind. If the relevant authority (Social Welfare Services) determines that the applicant has no sufficient financial means to support himself/herself, then he/she can receives a public grant. He/she are also eligible for free medical service from the Ministry of Health, free psychological support, if this is deemed necessary and especially when the victim concerned is a minor, a pregrant woman, or a person with physical disabilities. Third-country nationals are also eligible to apply for free legal aid, and free translation services.

**After** the issue of the residence permit

- Yes, in cash
- Yes, in kind
- No

**Explanation:**

The same rights and support means also apply to third-country nationals who have been given a residence permit. In addition, such persons also have a right to access to employment as any other citizen of a State Member to the European Union, access to employment training and development of human resources programmes sponsored by the Human Resource Development Authority of Cyprus, and access to programmes and plans run and/or offered by the Government and/or Non-Governmental Organizations which aim to introduce victims to the local society.

**Q.10.B.** Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.
Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): *In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.*

The monetary reimbursement covers daily expenses and ensure the standards of living capable of ensuring their subsistence. The standards of psychological support and medical services are very high - they are the same standards applicable for nationals of Cyprus. Access to employment is overall an excellent idea, since victims are better integrated into the society if they have a job and can start a new life.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

- Yes
- No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Safe house, witness protection programs, personal security and support offered by the Police and other relevant services, such as the Social Welfare Services.

**After** the issue of the residence permit:

- Yes
- No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

As above.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

- Yes
- No

**Explanation:**

Free Translation services are provided to victims of trafficking during the reflection period, explaining to them their rights, obligations and in general all the information that they need in order to properly decide what they want to do.

**After** the issue of the residence permit:

- Yes
- No
Explanation:
Translation services are provided to victims of trafficking with a residence permit. Those are free.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:
- Yes
- No

Explanation:
Interpreting services are freely offered to victims of trafficking during the reflection period offered to them.

After the issue of the residence permit:
- Yes
- No

Explanation:
Interpreting services are freely offered to victims of trafficking with a residence permit.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:
- Yes
- No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Free legal aid is provided by qualified lawyers, paid by the Government.

After the issue of the residence permit
- Yes
- No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Free legal aid is provided. There is no quantitative limit on hours spent or costs accumulated. The legal aid is provided by qualified lawyers, paid by the Government.
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Medical care is provided as a right if it is emergency medical care to all the victims during the reflection period. General medical care might be provided if the victim does not have sufficient income (which is always the case, so as a matter of fact, general medical care is also provided).

After the issue of the residence permit

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

Free medical care is provided to all persons after the issue of the residence permit if it is emergency medical care. General medical care might be provided if the victim does not have sufficient income.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

The relevant law does not make any distinction in relation to the treatment offered to victims of trafficking before and after the issue of the residence permit. Both categories enjoy the same rights.

After the issue of the residence permit

☑ Yes  ☐ No
Explanation:
The relevant law does not make any distinction in relation to the treatment offered to victims of trafficking before and after the issue of the residence permit. Both categories enjoy the same rights.

Q.10.1. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:
Free psychological help is provided by competent psychologists and members of the Social Welfare Services.

After the issue of the residence permit

☐ Yes  ☐ No

Explanation:
Free psychological help is provided by competent psychologists and members of the Social Welfare Services.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☐ Yes  ☐ No

Explanation:
The relevant law provides for medical assistance to the third-country nationals concerned and who do not have sufficient resources and/or have special needs.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
The Migration Officer grants residence's permits to third-country nationals, who are victims of trafficking if he/she thinks and/or believes that it is deemed necessary to extent and/or grant a residence permit, if the concerned person has shown a clear intention to cooperate with the relevant law enforcement authorities, if the person has ceased any communication or relation with the perpetrators of trafficking and/or the suspects of such a crime.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?

☐ Yes ☐ No

Explanation:
The relevant law provides that the issue of a residence permit might be refused for reasons related to public policy and national security.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Six (6) months.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

No limitations on how many times or for how long the residence permit can be renewed. The residence permit can be renewed if the judicial proceedings or investigations are still under way.
Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Minors have full access to the educational system under the same conditions as nationals. The Social Welfare Services also provide support for the family of the child in question (if the child is not unaccompanied, in which case, there are more procedures that are stipulated by law), and, whenever this is deemed necessary, the protection and support measures are also extended to the child's family. Children are also offered special help and psychological support at school by professional educational psychologists.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

The Law specifies that the procedure should be appropriate to the age and maturity of the minor. In practice there are no examples of whether this is followed, although it should be borne in mind that the Social Welfare Services when dealing with minors follow certain procedures adopted to the age and maturity of the minor.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).
Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

The relevant law (L.N.87(I)/2007) specifically sets out a procedure that has to be followed in the case that the victim is an unaccompanied minor. All the rights conferred to adult victims and minors also apply to unaccompanied minors. All unaccompanied minors upon arrival in Cyprus are placed under the custody of the Director of the Social Welfare Services, who is representing the minor in all the procedures and/or respects. The Immigration Officer then tries to establish the identity of the unaccompanied minor as soon as possible. Unaccompanied minors have full access to the educational system of the Republic or to a special educational establishment if they have special needs. Unaccompanied minors have full access to general and emergency medical care. Unaccompanied minors can be taken back to their country of origin only if it is established that their country will accept them back for the purposes of re-unification with their families and that there is sufficient level of support in that country.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:
Medical assistance is provided to all minors, irrespective if they have sufficient resources and special needs or not.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Holders of residence permits have access to the labour market. There are no requirements or criteria to be met for the holders of the residence permit to have access to the labour market. They enjoy the same standing as other European citizens.
Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Holders of residence permits have access to vocational programmes and training. There are no criteria or requirements to be met for the holders of the residence permit to have access to vocational training. They enjoy the same standing as other European citizens.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Holders of residence permits have full access to education. There are no criteria or requirements to be met for the holders of the residence permit to have access to education. They enjoy the same status as other European citizens.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:**

Access to work, vocational training and education is generally limited to the duration of the residence permit.
Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

The Social Welfare Services offer a variety of programmes in order to help victims to recover and continue a normal life. The Human Resources Development Authority also organizes monthly special programmes for the improvement of victim's professional skills and victims can also enroll into a variety of other professional skills programmes offered by the Ministry of Education and Cultural Services at nights, in order to accommodate people who are working during daytime.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:
The relevant Law (Law N.87(I)/2007) specifically enumerates the same criteria and/or conditions of Article 8(2) of the Directive and those criteria are duly taken into account by the competent authorities in examining the renewal of a residence permit. This procedure is discretionary on the part of the Immigration Officer, who makes the final decision.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)
The residence permit might be withdrawn at any time before its expiration at the discretion of the Immigration Officer who consults the competent authorities (i.e. the Police) in relation to facts or issues that have arisen after the grant of such permit. The permit is withdrawn for all the reasons stated in the Directive, such as a renewal of the relations between the victim and the perpetrators and/or suspects of trafficking, and for public and policy reasons or reasons dealing with national security matters or when the criminal investigation and the judicial resolution of the issue have been concluded.

The Immigration Officer, having consulted the other competent authorities (i.e. the Police and the Social Welfare Services), and having been satisfied that the person/s concerned has renewed its relations with the perpetrators and/or suspects of trafficking, duly informs the person concerned that his/her residence permit is thereby withdrawn.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

There has been an examination on the implementation of the Directive in the House of Representatives (the legislative body in the Republic of Cyprus) on 26 June 2007. The Parliamentary Standing Committee on Human Rights dealt with the issues arising out of the proposed legislation at that time implementing the provisions of the Trafficking Directive and has consulted a variety of independent and governmental experts on the issues covered by the Directive. The members of the Committee have been informed about the framework and the provisions of the Directive and the need to adopt and implement the Directive into national law was emphatically noted, in order to harmonize Cypriot legislation with European Law. The committee was also informed that there is no opportunity not to implement all the provisions of the Directive into national law. In the discussion it was made clear that there was a need to reinforce the competent and relevant Departments with personnel which will be experts in their areas of competence and who will have the responsibility of ensuring that the provisions of the Directive are duly enforced and followed. All the members of the Committee have expressed the opinion that they fully agree with the proposed (at that time) legislation implementing the provisions of the Trafficking Directive and the imperative need to combat trafficking in persons by all means but at the same time providing for all the necessary support to the victims of trafficking.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?
**THIRD PART**

**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>☑ Less favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Explain the situation before transposition**

The legislation before the adoption of Law N.87(I)/2007 implementing the provisions of the Trafficking Directive into national law fail to satisfactorily protect victims of trafficking. Although in practice, such persons were provided support from the Social Welfare Services, there was no specific legal obligation to give them rights, such as free legal aid, medical care and access to the labour market. The Law was clear in effect that trafficking is a criminal offence, but made no specific provision in relation to the treatment of victims.

**Explain the situation after transposition**

Law N.87(I)/2007 changed drastically the situation as it stood before its adoption, and also the standing of victims of trafficking. Protection of particular classes of victims (such as children, unaccompanied minors) was reinforced by the detailed provisions of the new law, and also all the victims were given the right to have a reflection period of one month in order to think whether they want to cooperate with the enforcement authorities of the Republic and to leave behind their traumatizing experience as victims of trafficking. Victims of trafficking are now being given a reflection period, medical care, legal aid and access to the labour market, and overall their situation is much more favourable now than it was in the past.

☐ Less favourable than the Directive

☒ In line with the directive

☐ Status quo

☒ More favourable than previous national rules

☐ More favourable than the Directive
Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
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<tbody>
<tr>
<td>(to be indicated by the national rapporteur) Recognition of victims and reflection period</td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>Since the passing of Law N.87(I)/2007 implementing the provisions of the Trafficking Directive, victims of trafficking are now given a period of one month to reflect and to decide whether they want to cooperate with the enforcement authorities of the Republic. This has been a major change in national law and overall it is deemed a very welcoming change, thus respecting, protecting and promoting the human rights of individuals who have been the victims of trafficking.</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✔ More favourable than previous national rules</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
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</thead>
<tbody>
<tr>
<td><strong>TREATMENT OF HOLDERS OF RESIDENCE PERMITS</strong></td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td><strong>OBJECTIVE (to be indicated by the national rapporteur)</strong></td>
<td>The adoption of Law N.87(I)/2007 implementing the provisions of the Trafficking Directive has heralded a major change in the treatment of victims of trafficking giving them a variety of rights that nationals and other European citizens enjoy when they are in Cyprus.</td>
<td>□ Status quo</td>
</tr>
<tr>
<td><strong>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</strong></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IMPLEMENTING AND CONTROL OVER THE PROVISIONS OF LAW N.87(I)/2007 IMPLEMENTING THE TRAFFICKING DIRECTIVE</strong></td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td><strong>OBJECTIVE (to be indicated by the national rapporteur)</strong></td>
<td>Law N.87(I)/2007 again has drastically change the situation and brought Cypriot legislation in line with the Trafficking Directive, as well as other international conventions on trafficking in human beings. It has established a National Mechanism for the regulation of the competent authorities dealing with the competent authorities, in which the directors or heads of the authorities involved participate. The National Mechanism also overviews that the procedures are duly followed and may make recommendations to</td>
<td>□ Status quo</td>
</tr>
<tr>
<td><strong>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</strong></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Explain the situation before transposition

Victims of trafficking in the past had no rights to enter the labour market, translation and interpreting services, general medical care and educational rights or vocational training programmes and schemes.

Explain the situation after transposition

Victims of trafficking in the past had no rights to enter the labour market, translation and interpreting services, general medical care and educational rights or vocational training programmes and schemes.

Explain the situation after transposition

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Explain the situation after transposition

Victims of trafficking in the past had no rights to enter the labour market, translation and interpreting services, general medical care and educational rights or vocational training programmes and schemes.
change disfunctional provisions in order to facilitate in a better way the needs of victims of trafficking and the better protection and promotion of their human rights, as those are enshrined into Cyprus law.

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES  ❌ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES  ☐ NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

All the provisions of the Directive have been implemented into Cypriot law, but the implementation process has taken into account the mechanisms already in place under national law and the provisions of the Constitution of the Republic. There are no problems that have arisen in that respect.

**Q.32.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
**Q.33.** Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [x] There are no problems with the translation of the directive.
- [ ] There are some problems with the translation of the directive.

**Explanation:** (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

**Any other interesting elements**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consolidation of national legislation</td>
<td>Law N.87(I)/2007 has amended, repealed, replaced or reinforced previous legislative acts and in that respect it has consolidated in a favourable way the provisions relating to issues arising out of the treatment, recognition and protection of victims of trafficking. In the same law, you can now find all the offences of trafficking, sexual exploitation and pornography that are criminal, the provisions relating to the protection and treatment given and offered to victims of trafficking, and the creation of a National Mechanism (Authority), which overviews the implementation of legislation in relation to victims of trafficking.</td>
</tr>
</tbody>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>March 16, 2006</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>April 27, 2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>- Part 1 Art. 1 subsection 7 /amending Sec. 7 § 1 letter c) Alien's Act /hereinafter the 'ALA'/, - Part 1 Art. 1 subs. 42 /Sec. 42e AA/, - Part 1 Art. 1 subs. 43 /Sec. 44 AA/, - Part 1 Art. 1 subs. 44 /Sec. 44a AA/, - Part 1 Art. 1 subs. 47 /Sec. 46c AA/, - Part 1 Art. 1 subs. 49 /Sec. 48 AA/, - Part 1 Art. 1 subs. 50 /Sec. 48a AA/, - Part 1 Art. 1 subs. 84 /Sec. 119a AA/ - Part 1 Art. 1 subs. 95 and 96 /Sec. 127/1/b) and d) AA/ (for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>LEGAL NATURE</td>
<td>☒ LEGISLATIVE</td>
</tr>
<tr>
<td></td>
<td>☐ REGULATION</td>
</tr>
<tr>
<td></td>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

| DATE                 | March 16, 2006 |
| NUMBER               | Act No. 165/2006 Coll. |
| DATE OF ENTRY INTO FORCE | September 1, 2006 |
| PROVISIONS CONCERNED | - Part 3 Art. V: amendment of Alien’s Act subs. 13 /Sec. 42e/2 Alien's Act /AA/, - Part 3 Art. V: amendment of Alien’s Act subs. 14 /Sec. 42e/4 AA/ (for example if the norm also pursues other objectives than the transposition of the directive) |
Table 2

**Title**: Act No. 326/1999 Coll., Aliens Act, as amended  
**Date**: November 30, 1999  
**Number**: Act No. 326/1999 Coll.  
**Date of Entry into Force**: January 1, 2000  
**Provisions Concerned**: esp. Sec. 118, Sec. 119, Sec. 128, 180c  
(for example if the norm also pursues other objectives than the transposition of the directive)

**References of Publication**
IN THE OFFICIAL JOURNAL: Issue No. 106/1999 of the Collection of Laws of the Czech Republic (pp. 7406-7447) promulgated on December 23, 1999

**Legal Nature** (indicate by ticking the correct box):
- [ ] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Table 3

**Title**: Act No. 140/1961 Coll., Criminal Code, as amended  
**Date**: November 29, 1961  
**Number**: Act No. 140/1961 Coll.  
**Date of Entry into Force**: January 1, 1962  
**Provisions Concerned**: esp. Sec. 8, Sec., 9, Sec. 10, Sec. 171a, 232a  
(for example if the norm is not devoted only to the transposition of the concerned directive)

**References of Publication**
IN THE OFFICIAL JOURNAL: Issue No. 65/1961 of the Collection of Laws of the Czech Republic (pp. 485-511) promulgated on December 8, 1961

**Legal Nature** (indicate by ticking the correct box):
- [ ] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Table 4

**Title**: Act No. 141/1961 Coll., Criminal Proceedings Code, as amended  
**Date**: November 29, 1961  
**Number**: Act No. 141/1961 Coll.  
**Date of Entry into Force**: January 1, 1962  
**Provisions Concerned**: esp. Sec. 33/2, Sec. 350b, Sec. 55, Sec. 209.  
(for example if the norm also pursues other objectives than the transposition of the directive)
**Table 5**

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act No. 221/2003 Coll. on Temporary Protection of Aliens, as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>June 26, 2003</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 221/2003 Coll.</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>January 1, 2004</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Sec. 32</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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</table>

**REFERENCES OF PUBLICATION**


LEGAL NATURE (indicate by ticking the correct box):

☑ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS


**Table 6**

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act No. 137/2001 Coll. on Special Protection of a Witness</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>March 29, 2001</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 137/2001 Coll.</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>July 1, 2001</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Secs. 1 - 7</td>
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<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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</table>

**REFERENCES OF PUBLICATION**

IN THE OFFICIAL JOURNAL: Issue No. 137/2001 of the Collection of Laws of the Czech Republic (pp. 3386-3390) promulgated on April 24, 2001

LEGAL NATURE (indicate by ticking the correct box):

☑ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
### Table 7

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act No. 435/2004 Coll., on Employment, as amended</th>
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</thead>
<tbody>
<tr>
<td>DATE</td>
<td>May 13, 2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 435/2004 Coll.</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>October 1, 2004</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Sec. 98</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: Issue No. 143/2004 of the Collection of Laws of the Czech Republic (pp. 8270-8316) promulgated on July 23, 2004</td>
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<td>LEGAL NATURE</td>
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<td></td>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

### Table 9

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education /Act on Education/, as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>September 24, 2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 561/2004 Coll.</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>January 1, 2005</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Sec. 20</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: Issue No. 190/2004 of the Collection of Laws of the Czech Republic (pp. 10262 -10324) promulgated on November 10, 2004</td>
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<td>LEGAL NATURE</td>
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<td>☑ LEGISLATIVE</td>
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<tr>
<td></td>
<td>☐ REGULATION</td>
</tr>
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<td></td>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

### Table 10

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act No. 500/2004 Coll., Administrative Proceedings Act, as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>June 24, 2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 500/2004 Coll.</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>January 1, 2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>esp. Sec. 4, Sec. 29 par. 4</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: Issue No. 174/2004 of the Collection of Laws of the Czech Republic (pp. 9782 -9827) promulgated on September 24, 2004</td>
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<tr>
<td>LEGAL NATURE</td>
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<td>☐ REGULATION</td>
</tr>
<tr>
<td></td>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
### Table 11

| DATE | March 14, 2006 |
| NUMBER | Act No. 110/2006 Coll. |
| DATE OF ENTRY INTO FORCE | January 1, 2007 |
| PROVISIONS CONCERNED | Sec. 2, Sec. 3, Sec. 4 |
| LEGAL NATURE | LEGISLATIVE |

### Table 12

| DATE | March 7, 1997 |
| NUMBER | Act No. 48/1997 Coll. |
| DATE OF ENTRY INTO FORCE | April 1, 1997 |
| PROVISIONS CONCERNED | Sec. 2, Sec. 3, Sec. 13 – 22a. |
| LEGAL NATURE | LEGISLATIVE |

### Table 13

| DATE | |
| NUMBER | April 11, 2007 |
| DATE OF ENTRY INTO FORCE | |
| PROVISIONS CONCERNED | - Part I Art. 1 subs. 42 (Sec. 42e par. 1 Aliens Act)  
- Part I Art. 1 subs. 43 (Sec. 42e par. 2 Aliens Act)  
- Part I Art. 1 subs. 44 (Sec. 42e par. 2 Aliens Act)  
- Part I Art. 1 subs. 45 (Sec. 42e par. 3 Aliens Act)  
- Part I Art. 1 subs. 46 (Sec. 42e par. 3 Aliens Act)  
- Part I Art. 1 subs. 47 (Sec. 42e par. 4 Aliens Act)  
- Part I Art. 1 subs. 48 (Sec. 42e par. 5, 6 Aliens Act)  
- Part I Art. 1 subs. 56 (Sec. 45 par. 7 Aliens Act)  
- Part I Art. 1 subs. 61 (Sec. 46c par. 5, 6 Aliens Act)  
- Part I Art. 1 subs. 64 (Sec. 48a Aliens Act)  
- Part I Art. 1 subs. 65 (Sec. 48b Aliens Act) |
| REFERENCES OF PUBLICATION | (for example if the norm also pursues other objectives than the transposition of the directive) |
Table 14

**Title**: Act No. 112/2006 Coll. amending several other acts in connection with the adoption of the Act on Subsistence and Existential Minimum and of the Act on Assistance in Situations of Material Hardship

**Date**: March 14, 2006

**Number**: Act No. 112/2006 Coll.

**Date of Entry into Force**: January 1, 2007

**Provisions Concerned**: 
(for example if the norm also pursues other objectives than the transposition of the directive)


**Legal Nature** (indicate by ticking the correct box):
- [x] Legislative
- [ ] Regulation
- [ ] Circular or Instructions

Table 15

**Title**: Act No. 359/1999 Coll., on Social and Legal Protection of Children.

**Date**: December 9, 1999.

**Number**: Act No. 359/1999 Coll.

**Date of Entry into Force**: April 1, 2000

**Provisions Concerned**: Sec. 5, Sec. 17
(for example if the norm also pursues other objectives than the transposition of the directive)


**Legal Nature** (indicate by ticking the correct box):
- [x] Legislative
- [ ] Regulation
- [ ] Circular or Instructions

Table 16

**Title**: Act No. 94/1963 Coll., Family Act.

**Date**: December 4, 1963.

**Number**: Act No. 94/1963 Coll.

**Date of Entry into Force**: April 1, 1964

**Provisions Concerned**: Sec. 26 par. 4, Sec. 27 par. 4, Sec. 36, Sec. 45 par. 1, Sec. 62 par. 1, Sec. 83 par. 1,2
(for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION

LEGAL NATURE (indicate by ticking the correct box):
- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Table 17

| TITLE | Act No. 428/2005 Coll., amending Act No. 326/1999 Coll., Alien’s Act, and amending other laws |
| DATE | September 23, 2005 |
| NUMBER | Act No. 428/2005 Coll. |
| DATE OF ENTRY INTO FORCE | November 24, 2005 |
| PROVISIONS CONCERNED | Part 1 Art. 1. subs. 181 (Sec. 180c Aliens Act) (for example if the norm also pursues other objectives than the transposition of the directive) |

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Issue No. 147/2005 of the Collection of Laws of the Czech Republic (pp. 7954-7975) promulgated on October 25, 2005

LEGAL NATURE (indicate by ticking the correct box):
- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

| LEGISLATIVE RULES |
| Competences of the Federal/Central Level: |
| Competences of the Components: |
| Explanations if necessary: |

| REGULATIONS |
| Competences of the Federal/Central Level: |
| Competences of the Components: |
| Explanations if necessary: |

| CIRCULAR OR INSTRUCTIONS |
| Competences of the Federal/Central Level: |
| Competences of the Components: |
| Explanations if necessary: |
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Informing of the person concerned of the possibilities offered under the Directive</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Investigative, prosecuting and adjudicating bodies /Police/, Ministry of Interior</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting a reflection period</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Investigative, prosecuting and adjudicating bodies /Police/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>
Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted before the issue of the residence permit /during a reflection period/ - health care</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Health</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Local doctors /treatment granted as to foreigners with permanent residence permit/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issue/withdrawal of the residence permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Department of Asylum and Migration Policy of the Ministry of Interior /Odbor azylové a migrační politiky MV ČR/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

Table 5

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted after the issue of the residence permit - health care</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Health</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Local doctors /treatment granted as to foreigners with permanent residence permit/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT</td>
<td></td>
</tr>
<tr>
<td>THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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</tr>
<tr>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>

**Table 6**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted after the issue of the residence permit - access to the labour market /employment/</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour and Social Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Local Labour Offices /treatment granted as to foreigners with permanent residence permit/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

**Table 7**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted after the issue of the residence permit - self employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Industry and Trade</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Local Trades Licensing Offices /treatment granted as to foreigners with permanent residence permit/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
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<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
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</table>
### Table 8

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Treatment granted after the issue of the residence permit - education</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Education, Youth and Sports</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Local schools /treatment granted as to foreigners with permanent residence permit/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
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</table>

### Table 9

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting of financial benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Department of Asylum and Migration Policy of the Ministry of Interior /Odbor azylové a migrační politiky MV ČR/</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
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</table>
### Table 10

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting of free legal aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Competent court</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

### Table 11

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issue of residence permit after expiration of the residence permit issued on the basis of the Directive</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Regional Directorate of Alien’s and Border Police Service</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

- [ ] YES
- [ ] NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES
- [ ] NO
If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MISSING TEXTS</strong></td>
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<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA⁹).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC¹⁰).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The Czech law is composed of many laws divided according to the subject matter. The Directive is transposed mainly to the Aliens Act which regulates immigration/migration and also to other laws according to the subject matter of the Directive.

The Aliens Act (ALA) stipulates that the residence permit (long term residence permit for the purpose of the protection on the territory of CR, Sec. 42e par. 1 Aliens Act) will be issued to the foreigner who:
1. is a presumable victim of the crime of trafficking in human beings (Sec. 42e par. 1 lett.a) Aliens Act) or
2. is a person for whom an illegal crossing of the state border has been organized or an illegal crossing of the state border has been enabled to him/her (Sec. 42e par. 1 lett. a) Aliens Act).

The provisions of the Aliens Act do not cover the possibility to grant a residence permit to third country


nationals who have been victims of a conduct which is referred to in Art. 1 (1) lit.b. of the Directive 2002/90/EC (assisting to reside on the territory). Granting of a residence permit to victims of this conduct (conduct pursuant to Art. 1 (1) lit.b. of the Directive 2002/90/EC) is nevertheless optional.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes  ☐ No

Explanation:

Offences concerning trafficking in human beings are concerned as crimes pursuant to the provisions of the Criminal Code. Criminalization of instigation of, aiding, abetting or attempt to commit a crime pursuant to the provisions of the Criminal Code are ensured by general provisions of the Criminal Code (Secs. 8, 9, 10, 164 Criminal Code). Pursuant to these provisions, instigation (Sec. 164 Criminal Code), aiding (Sec. 10 (1) (c) Criminal Code), abetting (Sec. 10 (1) (b) Criminal Code) and attempt (Sec. 8 Criminal Code) to commit a crime are punishable under the same punishment as the respective crime. The Czech Criminal Code contains general provisions on e.g. the kinds of punishments, or the above mentioned criminalization of instigation of, aiding to crimes etc. and then the provisions on the crimes as such (enumeration).

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The definition is not identical in words, but the content is the same (Sec. 232a Criminal Code).

The crime pursuant to Sec. 232a of the Criminal Code can be translated as follows:

"Trafficking in Human Beings
1) Whoever induces, engages, hires, lures, transports, hides, detains or delivers a person under 18 years of age to be used
a) for sexual intercourse or other forms of sexual molestation or exploitation,
b) for slavery or servitude, or
c) for forced labour or other forms of exploitation, shall be punished to imprisonment for two to ten years.
2) In the same manner will be punished whoever by means of the use of force, threat of force, deception or abuse of his mistake, stress or dependence induces, engages, hires, lures, transports, hides, detains or delivers another to be used
a) for sexual intercourse or other forms of sexual molestation or exploitation,
b) for slavery or servitude, or
c) for forced labour or other forms of exploitation.
3) Offender shall be punished by imprisonment of five to twelve years,
a) if he commits the crime stated in Article 1 or 2 as a member of an organised group,
b) if he exposes another by such act to danger of an aggravated bodily harm or death,
c) if he commits such act with the intent of obtaining a substantial gain, or
d) if he commits such act with the intent of using another for prostitution.
4) Offender shall be punished by imprisonment of eight to fifteen years,"
a) if he causes by the crime stated in Article 1 or 2 an aggravated bodily harm, death or another particularly grave consequence,
b) if he commits such act with the intent of obtaining a gain of large scope, or
c) if he commits such act in connection with an organised group operating in more countries."

Criminalization of instigation, participation and attempt of crimes in general is ensured by a general provision (Secs. 8, 9, 10 Criminal Code). Pursuant to this provision, the instigation, participation and attempt to commit the crime are punishable under the same punishment as the respective crimes.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction,, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The Criminal Code contain provision on punishing of organizing of, enabling and assisting a person to the illegal crossing of the state border and organizing of, enabling and assisting a person to the transit across the territory of the [Czech] Republic (Sec. 171a par. 1 Criminal Code) by any person (= assisting person). The law refers to the 2002/90/EC Directive in this section (= transposition of the Art. 1 (1) lit. a) of the Directive). A similar crime was punishable under the previous wording of the Criminal Code.

Offences concerning trafficking in human beings are concerned as crimes pursuant to the provisions of the Criminal Code. Criminalization of instigation of, aiding, abetting or attempt to commit a crime pursuant to the provisions of the Criminal Code are ensured by general provisions of the Criminal Code (Secs. 8, 9, 10, 164 Criminal Code). Pursuant to these provisions, instigation (Sec. 164 Criminal Code), aiding (Sec. 10 (1) (c) Criminal Code), abetting
An assisting person - the person who neither organizes or/and enables or/and assists to the illegal crossing of the state border (= entry) needs to be involved in the actual act intentionally. The Criminal Code defines a crime which is committed intentionally: "a crime was committed intentionally if the offender wanted to violate or endanger an interest of the Criminal Code by the conduct pursuant to the provisions of the Criminal Code or he knew that he can commit such a violation or endangering by such a conduct and he was consentient with it (Sec. 4 Criminal Code).

The Criminal Code also punishes any person who with the intention to gain unlawful financial or other benefit assists a person to reside illegally on the territory of the [Czech] Republic (Sec. 171d Criminal Code).

The national norms do not transpose the Art. 1 (2) of the Directive, this article is not applied.

The Alien’s Act covers only the possibility to grant a residence permit to third country nationals who have been victims of a conduct which is referred to in Art. 1 (1) lit.a) of the Directive 2002/90/EC (= crime defined in Sec. 171a of the Criminal Code as Organizing and enabling of illegal crossing of the state border: "a person who organizes illegal crossing of the state border, or enables a person, or assists a person in illegal crossing of the state border, or enables, or assists a person to transit across the territory of the (Czech) republic, or organizes the transit across the territory")

**Article 1 General infringement**

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

- Yes
- No
Explanation:

See above in Q.1. The Criminal Code contains offences concerning an "action to facilitate illegal immigration". Criminalization of instigation of, aiding, abetting or attempt to commit a crime pursuant to the provisions of the Criminal Code are ensured by general provisions of the Criminal Code.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

The law does not contain specific provisions on minors, the provisions of the Aliens Act which apply on victims of trafficking can be therefore used also on minors (a third country national is a foreigner who is neither Czech nor EU/EEA citizen, Sec. 1 par. 2 Aliens Act).

However, there are many provisions in other norms applicable to minors ensuring their strengthened protection. A legal guardian is acting on behalf of the minor (Sec. 36 Family Act). There are special provisions regarding unaccompanied minors (see below).

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:

•

•
Explanation:
The law does not contain specific provisions on minors, (a third country national is a foreigner who is neither Czech nor EU/EEA citizen, Sec. 1 par. 2 Aliens Act). The provisions of the Aliens Act which apply on victims of trafficking can therefore be used also on minors. There would be a guardian acting on behalf of the minor, either his/her, legal representative, or there may be a guardian appointed by the state authorities if there is no legal representative on the territory (unaccompanied minor).

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 2 (the relevant provisions of the law are in force since September 2006)

‘An action to facilitate illegal immigration’ (If applicable): 0

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

1. Investigative, prosecuting and adjudicating bodies /Police/, it is a public authority (Sec. 42e par. 1 Aliens Act) or
2. Ministry of Interior of the Czech Republic, it is a public authority (Sec. 42e par. 1 Aliens Act).

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☐ Both orally and in writing

Explanation:
The Aliens Act (the law which contains provisions on providing the information to victims and on issue of the residence permit to them) does not contain explicit specification of the form for providing the information. The
general rules of administrative and criminal procedure are applicable (Sec. 18 par. 1 Administrative Proceedings Act, Sec. 55 par. 1 Criminal Proceedings Code).

The third country national who is a possible victim of the respective crimes shall be provided with the information of the possibilities offered under the Directive without delay (Sec. 42e par. 2 Aliens Act).

**Q.8.C.** Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

There is no leaflet available.

**Q.8.D.** Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The law which regulates the victim's protection pursuant to the provisions of the Directive is relatively new (in force since the end of June 2006), so it hard to say how it functions in practice.

The provision on providing the third country nationals with information on the possibilities offered under the Directive is not very clear. The law does not contain exact rules on the form of providing of the information in the respected procedure (whether the informing authority shall use a specific form etc.). The information routine should probably be done according to the general rules of administrative and criminal procedure (protocol), but this is rather theoretical reasoning. Especially because in practice the information is provided by individual police officers who investigate or prosecute in individual cases, rules on providing the information should be made more detailed in the future (at least in the form of a circular or an instruction). A certain form of training for police authorities involved will also be needed, NGOs also reported the necessity of training for the state authorities in detention centers.

However, it should be noted that the Police and other authorities are used to pay attention to the victims of trafficking and to work with them. There are Government Resolutions regarding this matter issued regularly since 2003 and the authorities created a network together with NGOs and try to find solutions to problems in this matter during regular meetings. The legislation on victims pursuant to the provisions of the respective Directive added another segment to the complex help to victims of trafficking. Therefore I think that the information routine functions in practice relatively well simply because the authorities are used to work with the victims even though the law is not that clear. But the special trainings and more clear law will be definitely necessary in the future.

### Reflection period

**Q.9.**

According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

**Q.9.A.** Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The period is one month, it starts on the day when the authority provides the third country national with the information about possibilities offered under the Directive (Sec. 42e par. 2 Aliens Act).

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

The law contains provisions ensuring the protection against the enforcement of expulsion orders and also ensuring the protection against any other possible ways of the termination of his/her stay on the territory (Sec. 42e par. 2 Aliens Act).

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation: (If the answer is “yes”, which are the criteria?)

The law does not provide for the possibility to terminate the reflection period for the reasons provided in Art. 6 (4) of the Directive.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

The law which regulates the victim's protection pursuant to the provisions of the Directive is relatively new (in force since the end of June 2006), so it hard to say how the practice function. I think that the granting of the reflection period functions relatively satisfactorily and that now it is the time, when problems are appearing and their solution is negotiated.

The law has been changed towards a better position of victims in the detention centers (as some of the victims may be placed in the detention centers at first, because they breached the law of the Czech Republic; detention centers
are Ministry of Interior facilities intended to detain foreigners who breached the Czech laws and wait for the expulsion. The victims used to remain in the detention center after the information was provided. The practice however showed that they could be targeted by their perpetrators there, so the law now gives a possibility to terminate the detention if there is a suspicion that the victim may be endangered in connection with his/her possible intent to cooperate with the police.

If there is no such a fear, the victims remain in the detention center. In my opinion the detention centers are not an environment suitable for the victims to consider the possibilities of cooperating with the police without stress. Their decision may be influenced by the mere fact that they are put into the detention and do not see any other possibility to get out of it than to cooperate. This may be a problem for the victims, who do not then realize the possible danger which the offenders may represent to them/their families in the country of origin in the future.

Another problem to be mentioned is the misusing of the procedure which is relatively common.

**Treatment**

**Q.10.** According to the Directive the Member State **shall**, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

**Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind?** See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before the issue of the residence permit:**

- [ ] Yes, in cash
- [ ] Yes, in kind
- [x] No

**Explanation:**

The law contains provisions on the possibility to grant the financial support. The amount of the financial support is determined according to the financial situation of the person concerned. If the person is in the detention center, no financial support can be granted (Sec. 48a par. 1 Aliens Act).

The state authority will grant accommodation to the person who cannot obtain it. (Sec. 42e par. 6 Aliens Act)

**After the issue of the residence permit**

- [ ] Yes, in cash
- [ ] Yes, in kind
- [x] No

**Explanation:**

The law contains provisions on the possibility to grant a financial support. The amount of the financial support is determined according to the financial situation of the person concerned (Sec. 48a par. 1 Aliens Act).

The treatment granted before and after the issue of residence permit is the same, there is only a difference in the possibility to provide the accommodation if the person can not obtain one.
Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The person gets 1.6 multiple of a "subsistence minimum" (which is the poverty level). The subsistence minimum is regulated by the Act on Subsistence Minimum (Secs. 2, 3, 4 Act on Subsistence Minimum). The amount is 177,7 EUR for one person (5001Kč, the equivalent in Euros in calculated on the basis of the Rate of Exchange published in the Official Journal on 4th May 2007, No. 2007/C 100/07), if only one person is considered. The amount depends on the number of persons considered (the multiple is different; Sec. 48a par. 1 Aliens Act).

The victims are entitled to the above mentioned multiple of subsistence minimum, the social aid for nationals is higher, the nationals get several types of social benefits derived from the subsistence minimum.

The victims may be entitled to the accommodation, which nationals are not.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

The financial support is relatively low. I think that the support would not be sufficient without the activities of the NGOs.

There are NGOs who help victims to find accommodation and work and there is also a Programme of Support and Protection of the Victims of Trafficking in Human Beings which funds some NGOs, so the help to victims is also financed from this Programme. The Programme and also partly the NGOs are financed by the Government, so it can be said that the system of protection functions, there is only limit in the fact, that neither the Programme nor the support for NGOs is stipulated in the law. The law only stipulates the obligation for the state to grant the accommodation to a person who cannot obtain one (before the issue of the residence permit, Sec. 42e/6 ALA) and the possibility of the state to give financial support to NGOs (Sec. 48b/1 ALA).

There is a difference between the situation before the issue of the residence permit and after the issue of the residence permit. The victim who has not been granted the residence permit yet will be granted an accommodation if he/she cannot obtain one, while the victim with the residence permit issued is not entitled to the possibility to obtain accommodation. The amount of financial aid given to the victim who has not been granted the residence permit can be then counted as satisfactory because the accommodation is the most costly expense.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The general rules of criminal proceedings which allow a person to be "a secret witness” are applicable (Sec. 55 par. 1 and Sec. 209 par. 1, par. 2 Criminal Proceedings Code). There is also a witness protection programme; this programme is limited to very serious cases. Also the Alien's Act allows for the possibility to move a victim from the detention center if there is well-founded fear that a threat from the perpetrators can appear. (Sec. 126a Aliens Act).
After the issue of the residence permit:

☑️ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The general rules of criminal proceedings which allow a person to be "a secret witness" are applicable (Secs. 55 and Sec. 209 Criminal Proceedings Code). There is also a witness protection program, this programme is limited to very serious cases.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑️ Yes ☐ No

Explanation:

The information about possibilities under the Directive is provided in a language that the person is able to communicate in (Sec. 42e par. 2 Aliens Act). The law explicitly mentions only the providing of the information itself.

For the reflection period as such the general rules of the criminal and administrative procedure are applied. The Administrative Proceedings Act states that a person who does not know the Czech language is entitled to the services of an interpreter (the applicant covers the expenses) (Sec. 16 par. 3 Administrative Proceedings Act). The Criminal Proceedings Act contains also a provision on a possibility to ask for the services of an interpreter, (Sec. 2 par. 14 Criminal Proceedings Code). According to the state authorities and NGOs, if a victim does not have means to cover the costs of the translator the expenses are covered by the Programme of Support and Protection of the Victims of Trafficking in Human Beings in practice.

The law does not differ between an interpreter and a translator.

After the issue of the residence permit:

☑️ Yes ☐ No

Explanation:

There are no specific rules in the Aliens Act governing the procedure according to the Directive. General rules of the criminal and administrative procedure will be applied, the Administrative Proceedings Act states that a person who does not know the Czech language is entitled to the services of an interpreter (the applicant covers the expenses) (Sec. 16 par. 3 Administrative Proceedings Act). The Criminal Proceedings Code contains also a provision on a possibility to ask for the services of an interpreter (Sec. 2 par. 14 Criminal Proceedings Code). According to the state authorities and the NGOs if a victim does not have means to cover the costs of the translator the expenses are covered by the Programme of Support and Protection of the Victims of Trafficking in Human Beings in practice.

The law does not differ between an interpreter and a translator.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.
Before the issue of the residence permit:

☑ Yes   ☐ No

Explanation:

The information about possibilities under the Directive is provided in a language that the person is able to communicate in (Sec. 42e par. 2 Aliens Act). The law explicitly mentions only the providing of the information itself.

For the reflection period as such the general rules of the criminal and administrative procedure will be applied. The Administrative Proceedings Act states that a person who does not know the Czech language is entitled to the services be given an interpreter (the applicant covers the expenses) (Sec. 16 par. 3 Administrative Proceedings Act). The Criminal Proceedings Act contains also a provision on a possibility to ask for the services of an interpreter (Sec. 2 par. 14 Criminal Proceedings Code). According to the state authorities and the NGOs if a victim does not have means to cover the costs of the translator the expenses are covered by the Programme of Support and Protection of the Victims of Trafficking in Human Beings in practice. The law does not differ between an interpreter and a translator.

After the issue of the residence permit:

☑ Yes   ☐ No

Explanation:

There are no specific rules in the Alien's Act given for the procedure according to the Directive. General rules of the criminal and administrative procedure will be applied, the Administrative Proceedings Act states that a person who does not know the Czech language is entitled to the services of an interpreter (the applicant covers the expenses) (Sec. 16 par. 3 Administrative Proceedings Act). The Criminal Proceedings Code contains also a provision on a possibility to ask for the services of an interpreter (Sec. 2 par. 14 Criminal Proceedings Code). According to the state authorities and the NGOs if a victim does not have means to cover the costs of the translator the expenses are covered by the Programme of Support and Protection of the Victims of Trafficking in Human Beings in practice. The law does not differ between an interpreter and a translator.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes   ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

The victims of trafficking have equal position to the Czech nationals in respect to the access to the free legal aid in the Czech Republic. The possibility to grant free legal aid is stipulated in several laws and is intended mainly for the proceedings before courts. A “means test” is done, the laws contain conditions for it. Victims of trafficking may also be granted the free legal aid from specialized NGOs. Ministry of Interior may contribute to natural or legal persons providing legal aid to the third country nationals concerned by a financial support to cover their expenses (Sec. 48b Alien's Act).
After the issue of the residence permit

☐ Yes ☐ No

**Explanation:** (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Ministry of Interior may contribute to natural or legal persons providing legal aid to the third country nationals concerned by a financial support to cover their expenses. It is not the free legal aid as such, but the persons concerned can get a legal aid through this system (Sec. 48b Alien's Act).

Free (publicly funded) legal aid is available in the criminal proceedings (Sec. 51a Criminal Code) in case that the victim (as "aggrieved person") claimed compensation for damage. A “means test” is done.

**Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care?** See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

The third country nationals concerned have for the purpose of the medical care the status of foreigners with the permanent residence permit. They have access to the general medical care (Secs. 2, 3 and 13-22a Public Medical Insurance Act).

**After** the issue of the residence permit

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

The third country nationals concerned have for the purpose of the medical care the status of foreigners with the permanent residence permit. They have access to the general medical care (Secs. 2, 3 and 13-22a Public Medical Insurance Act).

The treatment granted before and after the issue of residence permit is the same

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable?** See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).
Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

Yes, the provision was transposed through several provisions of the laws. For the purpose of the medical care the victims before the issue of the residence permit have full access to the general medical care which includes e.g. a psychological help when needed (Secs. 2, 3 and 13-22a Public Medical Insurance Act). They have equal treatment with Czech nationals. The medical care before and after the issue of residence permit is the same.

There is also the possibility to grant a financial support, the amount of the financial support is determined according to the financial situation of the person concerned. If the person is in the detention center, no financial support can be granted (Sec. 48a par. 1 Aliens Act). There is also a possibility to grant accommodation if the person cannot obtain one. (Sec. 42e par. 6 Aliens Act). The possibility to grant accommodation if the person cannot obtain one is not accessible for those, who are already granted the residence permit. The treatment granted before and after the issue of residence permit is the same with the exception that the person with the residence permit cannot be granted the accommodation.

Victims of trafficking cannot benefit from the social services scheme, neither before, nor after they are granted the residence permit.

After the issue of the residence permit

☒ Yes  ☐ No

Explanation:

Yes, the provision was transposed through several provisions of the laws. For the purpose of the medical care the victims after the issue of the residence permit have full access to the general medical care which includes a psychological help (Secs. 2, 3 and 13-22a Public Medical Insurance Act).

There is also the possibility to grant a financial support, the amount of the financial support is determined according to the financial situation of the person concerned. If the person is in the detention center, no financial support can be granted (Sec. 48a par. 1 Aliens Act). The possibility to grant accommodation if the person cannot obtain one is not accessible for those, who are granted the residence permit. The treatment granted before and after the issue of residence permit is the same with the exception that the person with the residence permit cannot be granted the accommodation.

Victims of trafficking cannot benefit from the social services scheme, neither before, nor after they are granted the residence permit.

Q.10.1. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

The third country nationals concerned have for the purpose of the medical care the status of foreigners with the permanent residence permit. They have access to the general medical care which includes a psychological help (Secs. 2, 3 and 13-22a Public Medical Insurance Act).
After the issue of the residence permit

☑ Yes ☐ No

Explanation:
The third country nationals concerned have for the purpose of the medical care the status of foreigners with the permanent residence permit. They have access to the general medical care which includes a psychological help (Secs. 2, 3 and 13-22a Public Medical Insurance Act). The treatment granted before and after the issue of residence permit is the same.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:
As was mentioned above, for the purpose of the medical care the victims after the issue of the residence permit have full access to the general medical care. They have equal treatment with Czech nationals. According to the law they get all special treatment as nationals, so they get the highest treatment possible. This general medical care also covers most of the special needs.

Victims of trafficking cannot benefit from the social services scheme (special social support for persons in need, e.g. also the assistance for disabled, the needs of victims may be then solved e.g. through the medical care), neither before, nor after they are granted the residence permit.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

The person concerned must show a clear intention to cooperate with the state authorities, his/her testimony must be significant for the detection of the perpetrator and he/she must discontinue the relations with the suspected (Sec. 42e par. 1 Aliens Act).

The person concerned must present herself with a passport (if she posses one), a document confirming accommodation and passport photographs (Sec. 42e par. 4 Aliens Act). The Czech legislation is less favourable then the Directive in this respect.
She must also lodge her application for the residence permit for the purpose of protection. This application must be
certificated by the Police (investigative, prosecuting and adjudicating bodies) as an application of a person who
fulfilled the conditions of intention to cooperate with authorities and discontinuation of relations with a suspected
(Sec. 42e par. 4 Aliens Act). If the application does not meet the criteria of relevance of his/her information for the
criminal proceedings and therefore the investigative, prosecuting and adjudicating bodies do not certify it, the
application is dismissed (Sec. 169 par. 10 Aliens Act).

This question concerns the possibility to refuse the issue of a residence permit for
reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State
for reasons related to public policy and national security (See Article 8(2))?  

☐ Yes ☒ No

Explanation:
The provision of the Aliens Act stipulates, that the Ministry of Interior withdraws the residence permit, if it is
necessary for the reasons of public policy or national security (Sec. 46b (1) (c) Aliens Act). The possibility to
refuse the issue of the residence permit itself is not stipulated in the law.

Q.11.B. For how long is the residence permit valid? According to the mandatory
provision in article 8(3), it should be valid for at least six months.

The residence permit is granted for at least six months (Sec. 44 par. 5 Aliens Act).

Q.11.C. When residence permit has expired, can it be renewed? See mandatory
provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that
have to be met, and if there are any limitations on how many times or
for how long the residence permit can be renewed).

There are no limitations on how many times or for how long the residence permit can be renewed (Secs. 44a par. 1
lett. a), 44a par. 7 Aliens Act). The person must present herself with a passport (if she posses one) and a document
confirming accommodation again (Sec. 44a par. 7 Aliens Act). The Czech legislation is less favourable than the
Directive as of the requirements.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has
decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to
ensure that ‘the best interest of the child’ is accounted for when applying the
national norms of transposition? See article 10(a).

The national law has used this term before the transposition of this Directive because of the requirements of the
Convention of the Right of a Child (Art. 3). This provision figures in different laws (Sec. 26 par. 4, Sec. 27 par. 4,
Sec. 45 par. 1, Sec. 62 par.1 Family Act, Sec. 5 Act on Social and Legal Protection of Children, overall principle in
Civil Proceedings Code), the Alien's Act does not contain an explicit provision in this respect and does not
explicitly mention specific treatment of minors in the context of this Directive. The best interest of the child is taken into account in all laws which apply to minors and also applied by courts as a general principle of law (judgements of Constitutional Court, inter alia Judgement No. II. ÜS 568/06 from February 20, 2007, Judgement No. I. ÜS 48/04, from January 27, 2005).
The laws do not contain provisions on special needs of minor victims, but their protection is covered by the general provisions.

**Q.12.B.** Has your Member State extended the reflection period for minors?  
*See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

[ ] Yes  [x] No

**Explanation:** (If the answer is “yes”: For how long?)

**Q.12.C.** Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

[ ] Yes  [ ] No

**Explanation:** (If yes, explain which measures are taken)

Many of the measures are included in the laws which regulate the family law, social protection of children etc. and are not duplicated in the Aliens Act. There is a guardian acting on behalf of a child, there are special procedures for a child witness in the criminal proceedings etc. There is a brand new programme adopted by the authorities in February 2007 called Creation of a special rooms for interrogation of children victims and witnesses. This will also ensure the appropriate procedure for minors.

**Q.12.D.** Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

[ ] Yes  [ ] No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Yes, the law provides for the access to the educational system (Sec. 20 Act on Education).

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs?** *See mandatory provision in Article 9(2)*

[ ] Yes  [ ] No
Explanation:

Yes, as was mentioned in Q.4., the victims have full access to the general medical care. They have equal treatment with Czech nationals. According to the law they get all special treatment as nationals, so they get the highest treatment possible. The treatment for persons with special needs is mostly covered by the general medical care. Unaccompanied minors they will be placed into the special center for children - foreigners.

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c)** (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Unaccompanied minors are placed into a Center for children - foreigners, where they receive special care. They are granted a guardian for the stay (Sec. 83 par. 1,2 Family Act, Sec. 17 Act on Social and Legal Protection of Children) immediately. The law does not require the state to take all the necessary steps which the state shall take in order to establish the identity, nationality and the fact that the minor is unaccompanied.

Children between 15 and 18 can be placed into a detention center if there are reasons for such a detention. The law pays a special attention to these unaccompanied minors and a guardian for the detention is appointed to them immediately (Sec. 124 par. 3 Aliens Act). The Aliens Act stipulates who is an unaccompanied minor in Sec. 180c.

**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

The persons concerned have for the purpose of the employment the status of the foreigners with the permanent residence permit granted (Sec. 48b par. 3 Aliens Act). They have full access to the labour market, there are no criteria to be met (Sec. 98 lett. a) Employment Act). They are not entitled to practise business activities (Sec. 48b par. 3 Aliens Act).

**Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

The persons concerned have for the purpose of the vocational training the status of the foreigners with the permanent residence permit granted (Sec. 20 Act on Education).
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The persons concerned have for the purpose of the access to education the status of the foreigners with the permanent residence permit granted (Sec. 20 Act on Education).

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

The law explicitly limits access to work, vocational training and education to the duration of the residence permit (Sec. 48b par. 3 Aliens Act).

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

There are programmes for unemployed persons (retraining schemes, which improve professional skills of the clients of the programmes), which are also available to the holders of the residence permit (Sec. 48b par. 3 Aliens Act in connection with Secs. 108 - 110 Employment Act).

There are also special programmes for the victims of trafficking, see below in Q.14.B.
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

In the Czech Republic authorities run two programmes which are aimed at support and care of victims of trafficking. First one is “Support and Protection Programme for Victims of Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic” and the other one "Programme for Support of Prevention of Illegal Migration". The authorities also cooperate with LA Strada (NGO), which gives support to victims of trafficking (legal, social assistance, accommodation, help with finding work etc.). The victims can also use assistance provided by other NGOs to the victims of trafficking or to migrants, e.g. assisted return to the country of origin.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation:

The law does not stipulate such a condition.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

The renewal of the residence permit is possible. The law stipulates that the person concerned must present certain documents (as were listed above, Sec. 44a par. 7 Aliens Act) when asking for the renewal of a residence permit. There is a notification duty of the police authorities towards the ministry (the authority which issues the residence permit) on the fact, that the victim cease to satisfy the conditions for granting of the residence permit (Sec. 46c par. 4 Aliens Act). The law does not mention the active reconsideration of the conditions of Art. 8(2) by the authorities explicitly when they are renewing the status, but as there is the notification duty of the police authorities, the conditions of Art. 13 (1,2) of the Directive are satisfied. The authority can also (anytime) withdraw the residence permit in case that the conditions for the issue of the permit are no longer satisfied (Sec. 46c par. 1 lett. a) Aliens Act).

Q.16. Question regarding withdrawal of the residence permit:
Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The residence permit can be withdrawn (Sec. 46c par. 1 Aliens Act)
- if the condition for the issue are no longer satisfied (the victim ceased to cooperate, he/she renewed contact with the suspected etc.),
- if it is necessary to ensure the public policy or the national security,
- or if the person asks for it.


The investigative, prosecuting and adjudicating body (Police) informs the Ministry of Interior (which issues or withdraws the residence permits = the statuses for the persons concerned) about the fact, that the person concerned no longer fulfills the provisions of the laws (or the foreigner himself/herself asks for it, or it is found out, that his/her stay is not possible due to the reasons of public policy or public order) immediately. The ministry withdraws the residence permit and notifies the foreigner about the withdrawal. The foreigner is given a term to leave the country or his expulsion (which has been interrupted by the proceedings) is finished.

The public authority issues a decision on the withdrawal of the residence permit in the standard administrative procedure. Appeal and judicial review of the decision is possible.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

The legislation is too recent, so there are no studies, reports or research on the practice available yet. There are many studies on the issue of trafficking of human beings as this issue is of concern of the state authorities for several years. I can provide them, if you are interested in them.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

Not to the knowledge of the author.
IMPECT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>Explained the situation before transposition</td>
</tr>
<tr>
<td></td>
<td>There is a legislative framework for the protection of victims of trafficking and the situation of victims is considered. This is available to all victims and the criteria are less difficult to meet then the criteria to enter the program for the protection of witnesses.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
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<td></td>
<td></td>
<td>☒ More favourable than previous national rules</td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>☒ In line with the directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☒ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<p>| Table 1 |</p>
<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>□ Status quo</td>
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</tr>
<tr>
<td></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

- [ ] YES
- [x] NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

- [ ] YES
- [ ] NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

**Q.32.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to
that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [x] There are no problems with the translation of the directive.
- [ ] There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State
When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

There are several interesting elements in the national laws. The Alien's Act contains a possibility to change the purpose of the stay of the person who was given a residence permit according to the Directive. The opportunity to change the residence permit and regulate his/her stay on the territory with another residence permit (not dependent on their cooperation with police authorities) is limited only to the cases of persons
- a) whose purpose of the stay (cooperation with police authorities) has been fulfilled, or
- b) who stayed on the territory on the respective residence permit at least for one year.

Another interesting element is that the family members (spouse and children) can ask for the residence permit for the same purpose (if the reason of the request is family reunification), this possibility is however limited to the family members who have been residing on the territory already at the time when the victim has presented his/her request for the status pursuant to the provisions of the Directive.

There are documents on the issue of fight against trafficking in human beings available, but not exactly on the matter of the Directive as it is very recent. There is a the Government Resolution No. 957 containing the National Strategy of the Fight against Trafficking in Human Beings (for the period of 2005 - 2007) available at http://www.mvcr.cz/rs_atlantic/project/article.php?id=9492 and many researches on the issue of fight against trafficking in human beings (available at www.mvcr.cz). Documents on the issue of the Directive will be available in the future.

I count the respective Directive as a good instrument for the state authorities to combat organized crime, but I am not so sure about its positive impact on the victims. I consider the possibility to change the residence permit which is given to the victims under fulfilment of certain criteria in the Czech national law a good step forward in implementing the Directive. It puts victims at first place, while I am not very much convinced about the position of the victims in the respective Directive. Although the Directive had been – no doubt – created with the intention to help victims it may not function that way in practise.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Denmark

By

Honoré. Mette Marie

Lawyer, Senior Legal Adviser, mette.honore@drc.dk

Date of Finalization: 21st. May 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
• About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☑ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong> Penal Code</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong> 6. June 2002</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong> 1000</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> 6. June 2002</td>
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</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong> §§ 262 a - Trafficking/Human smuggling and 125 a - penalty provision</td>
<td></td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong> LT</td>
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<tr>
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<td></td>
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<tr>
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<tr>
<td><strong>DATE:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong> L 1961 no. 163 and L1999 no. 141</td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
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<tr>
<td><strong>PROVISIONS CONCERNED:</strong> 228 and 229 - Procuring in general</td>
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Table 3

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<tr>
<td>TITLE:</td>
<td>Aliens Act</td>
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<tr>
<td>DATE:</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>945</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>59, section 5 - penalty provision illegal employment - other provisions of Aliens act also relevant</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
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<td>LEGAL NATURE (please tick the correct box):</td>
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Table 4

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<td>PROVISIONS CONCERNED:</td>
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<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
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<td>LEGAL NATURE (please tick the correct box):</td>
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<tr>
<td><strong>TITLE:</strong></td>
<td>Action Plan 2007-2010</td>
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<td><strong>DATE:</strong></td>
<td>8. March 2007</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>8. March 2007</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Comprehensive strategy for combating human trafficking</td>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<td>☒ REGULATION</td>
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<th>☒ a text which is still a project to be adopted</th>
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<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Proposal - Amendment of Aliens' Act and Marriage Act</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>2. March 2007</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
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<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
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</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Several provisions</td>
<td></td>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<tr>
<td><strong>TITLE:</strong></td>
<td>National Police's Strategy</td>
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<tr>
<td><strong>DATE:</strong></td>
<td>29. September 2006</td>
<td></td>
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<td><strong>NUMBER:</strong></td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>29. September 2006</td>
<td></td>
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<td><strong>PROVISIONS CONCERNED:</strong></td>
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</tr>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<tr>
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<td>☒ REGULATION</td>
</tr>
</tbody>
</table>
Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
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<th></th>
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<td>PROVISIONS CONCERNED:</td>
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<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
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<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<td></td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>CENTRAL MINISTRY OF:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES  ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:
If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MISSING TEXTS</strong></td>
</tr>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^1\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^2\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [X] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The first encounter between the trafficking victim and the Danish state structures typically is due to investigation of illegal stay in Denmark.

The new Action Plan to Combat Trafficking of Human Beings 2007-2010 of 8. March 2007 has four objectives:
1. Strengthening the Investigation in order to identify and punish the criminal network behind trafficking
2. Supporting the victims by strengthening the social offer of assistance in Denmark
3. Preventing trafficking of human beings by limiting the demand and increasing the knowledge of the population
4. Preventing trafficking of human beings by improving the international cooperation, including improving the preventive work in the dispatching countries.

This plan clearly targets both the trafficking of human beings and the facilitation of illegal immigration.

\(^1\) Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629
The Danish National Police has published a Strategy for an Enhanced Police Intervention against the Criminal Network behind Prostitution of 29. September 2006 and this strategy includes close international cooperation and the possibility of utilising the Schengen Information System (SIS) to control and unveil relevant individuals' travel activities and patterns.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Penal code § 262 a (1) Any person who recruits, transports, transfers, houses or subsequently receives a person, using or following the use of
1) unlawful coercion pursuant to Section 260 of this act;
2) deprivation of liberty pursuant to section 261 of this act;
3) threats pursuant to Section 266 of this act;
4) unlawful induction, corroboration or exploitation of a delusion; or
5) other unseemly conduct;
for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs, shall be guilty of trading in human beings and liable to imprisonment for any term not exceeding eight years.

(2) The same penalty shall apply to any person who, for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs, recruits, transports, transfer, houses or subsequently receives a person under the age of 18 years, or renders a payment or other favour to obtain consent to the exploitation from an individual who has guardianship over the victim, and any person who receives such payment or other favour.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction,, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The Aliens act § 59, subsection 7 states a similar substance as the wording below (2002/90/EC), but with some variations as to be noted from the inserted text quoting § 59, subsection 7:

§ 59 (7) “Any person is liable to a fine or imprisonment for up to 2 years, if he:
(i) intentionally assists an alien in unlawfully entering or transiting Denmark;
(ii) intentionally assists an alien in unlawfully staying in Denmark;
(iii) intentionally assists an alien in entering Denmark for the purpose of entering another country unlawfully from Denmark;
(iv) intentionally assists an alien in unlawfully entering or unlawfully transiting another country;
(v) for the purpose of financial gain assists an alien in staying unlawfully in another country; or
(vi) by making shelter or means of transport available to an alien, intentionally assists the alien in working in Denmark without requisite permit.”

§ 59 (9) “In determination of the sentence under subsection (7)(ii), it is considered a particularly aggravating circumstance if the assistance was given for the purpose of financial gain, or repeatedly, or if the same sentence covers several offences of intentional assistance for an unlawful stay in Denmark.”

§ 59 (10) “In determination of the sentence under subsection (7)(vi), it is considered a particularly aggravating circumstance if the assistance was given for the purpose of financial gain, or repeatedly, or if the same sentence covers several offences of intentional assistance for an unlawful work in Denmark.”

§ 59 a (1) “Any person that brings to Denmark an alien who upon his entry or in transit in a Danish airport is not in possession of the requisite travel document and visa, cf. section 39, is liable to a fine.
(2) The provision of subsection (1) does not apply on entry from a Schengen country.”

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.
Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults
☒ Both adults and minors

Explanation:

In Penal Code § 262 a, subsection 2, no. 1 specifically mentions minors under 18 years. In addition to Action Plan 2002-2006, an Action Plan against trafficking of children was adopted in 2005. This plan expired in 2006. In the new Action Plan 2007-2010 and in the new law proposal of 2. March 2007 it is stressed that the scope is all human beings, women, men and children. Children are even being paid special attention re. legal guardian, personal representative etc. See www.lige.dk - trafficking of human beings.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors
☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •

Explanation:

It is clearly defined that minors are all children under 18 years of age.

The Danish asylum procedure operates with specific maturity assessments of children (Aliens' act § 9 c, subsection 3, number 1). Upon receipt of an asylum application from a minor the Immigration Service will conduct an assessment of the child's understanding of the procedural context and ability to explain the asylum background/motive, and if the child is considered too immature to undergo the asylum procedure the child will obtain a temporary residence permit on humanitarian grounds. In spite of the maturity assessment all children under 18 years of age have a personal representative. The Danish asylum procedure operates with specific maturity...
assessments of children (Aliens' act § 9 c, subsection 3, number 1). Upon receipt of an asylum application from a minor the Immigration Service will conduct an assessment of the child's understanding of the procedural context and ability to explain the asylum background/motive, and if the child is considered too immature to undergo the asylum procedure the child will obtain a temporary residence permit on humanitarian grounds.

In spite of the maturity assessment all children under 18 years of age have a personal representative.

**Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?**

‘**Trafficking in human beings**:’ 0 - Danish Immigration Service has informed the rapporteur that there is no collection of information on the number of suspended departure orders for 2006.

‘**An action to facilitate illegal immigration** (If applicable):’ 0 - see above information.

**Information given to the third-country nationals concerned**

**Q.8.** According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

**Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive?** (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The Ministry of Social Affairs has the main responsibility for providing information to the victims of trafficking. This is in practice done by the 3 Danish organisations Reden/Stop Kvindehandel, Pro Vest and Prostitution and Kvindehandel in Aarhus.

**Q.8.B. Is the information given orally or in writing?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Orally
- [ ] In writing
- [x] Both orally and in writing

**Explanation:**

The organisations mentioned above cooperate with the Police and are called upon by the Police whenever a victim of trafficking is brought to the police station. The organisations meet the victim in question at the police station and provided that the victim is interested in assistance from the organisations, they have a personal talk about the situation. The organisations provide both written (leaflet sent by post in English, but is produced in several language) and oral information on the special needs assistance, witness-protection programme, possibility for suspension of deportation order etc. The organisations also assess the situation of the person in question and together with the victim they draw up a plan for the assistance to the victim and the prepared return to the country of origin. The organisations are also responsible for the establishing of contact between the victim and relevant social authorities.
Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The leaflet handed out by the organisations to the persons who are suspected of being trafficked has 2 parts and includes the following content:
1) Information on rights - anonymity, protection in safe house, treatment, translation
2) Information on care - need for condoms, information on HIV/AIDS, rape and on pregnancy, contact number to police etc.
Leaflet in hard copy to be forwarded by post.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Talking to the police and the organisation Reden/Stop Kvindehandel I was left with the impression that the information routines work satisfactorily, but it is still a challenge to get in touch with the persons in question as this mainly happens in connection with apprehension by the police.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The existing provision in the Danish Aliens' act § 33, subsection 1 (and § 25) provides the victim of trafficking with an immediate time-limit for departure, which means no reflection period based on legal foundation. However, a practice has developed since the first Action Plan 2002-2006 was adopted and the victims of trafficking have been offered a time-limit for departure of up to 30 days, which in practice is a suspension of the immediate order to leave Denmark.

In the new Action Plan of 8 March 2007 and in the new law proposal L 197 of 2 March 2007 this period, which is now called a reflection period has been suggested extended up to 100 days, but still this is considered a suspension of the departure order and is not regarded as a proper residence permit.

In order to obtain this suspension of the departure order the victim is obliged to cooperate on the planning of the 'prepared' return to country of origin. 'Prepared return' to country of origin covers includes psychological, legal and social and health related assistance in view of reducing the victim's vulnerability in regard to renewed risk of trafficking.
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

As described above there is no reflection period and thus, the victims of trafficking are not protected from expulsion:
The victims often have a criminal record in Denmark, but in most cases this relates to the situation of being trafficked, e.g. forgery of documents, illegal stay. The existing law Aliens’ act § 33 provides an expulsion order and an entry prohibition. In the new law proposal of 2. March 2007 it is suggested that the expulsion order no longer is combined with an entry prohibition if the crime relates to the trafficking situation.

In cases where the criminal activities, (e.g. theft, possession of drugs etc.) do not relate to the situation of being trafficked an expulsion order will be issued in spite of the person being trafficked. In cases of considerations of public order/state security the alien will be provided with an immediate expulsion order in spite of the trafficking situation.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

N/A

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period?

(Please give details on the name and function of the authority)

N/A

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

N/A

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

N7A as there is no granting of reflection period yet in Denmark.
TREATMENT

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

As already stated above re. reflection period Denmark does not have this at the moment and therefore there is no distinction between before and after issuance of residence permit.

Victims of trafficking are, as other aliens without a legal permission to stay in Denmark, under the responsibility of the Danish Immigration Service (DIS) cf. Aliens act § 42 a-h:

Many aspects influence the support to the alien, i.e. has the alien applied for asylum and if so, which phase of the procedure is she/he currently going through; is the case being considered in the manifestly unfounded procedure (accelerated procedure cf. Aliens act § 53 a); has the alien already received a final negative decision on the asylum application etc.. The system operates with two kinds of support:

1) support in cash (approximately 100 Euros every 14 days) to pay for all necessities, including food
2) support in kind, which means food is provided and no pocket money except if the alien has children, since this situation releases little pocket money - approximately 15 Euros every 14 days.

Housing: In general such aliens are housed in the so-called asylum centres mainly run by the Danish Red Cross, but in case of special circumstances victims can be transferred to a different kinds of housing (e.g. safe houses etc.)

Necessary medical assistance: offered to all aliens under the responsibility of DIS.

After the issue of the residence permit

☐ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

N/A- see above explanation.
Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

As mentioned above certain conditions affect the support to the aliens under the responsibility of the DIS, but the amount vary between DKK approximately 690,- and 930,- (in Euros 92,- and 124,-) per 14 days. This money is to cover food costs and pocket money. Comparison with minimum social aid for nationals is difficult as the rates given to nationals are total and have to cover all costs, including housing, insurances, etc. The rates are: singles (no children) over 25 years of age: monthly DKK 8.959,- (in Euros 1.195) and under 25 years (no children) monthly DKK 5.773,- (in Euros 770).

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

The support from DIS to aliens living in asylum centres is very scarce. The aliens do have means to buy the necessary food and requirements, but they do not have means to travel with public transportation, engage in ordinary activities as going to the cinema, buying occasional ice creams etc. In case the alien is provided with in kind support the alien has no cash money to spend.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

No distinction before/after residence permit as no reflection period permit is obtained, only suspension of deportation order. After the first contact with the Danish authorities, which typically will be contact with the Police after apprehension in relation to crime, the Police will provide for the safety and protection of the victim (see Strategy of National Police of 29. September 2006, section 4.7). The Police cooperates with at least three organisations (Reden/Stop Kvindehandel, Pro Vest and Prostitution og Kvindehandel in Aarhus) supplying special needs interventions and the Police and/or the organisations arrange contact with relevant social and asylum authorities. The Police also provides witness-protection programmes and the social authorities provide safe houses or arrange stays in crisis centres if necessary.

After the issue of the residence permit:

☐ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

N/A - Same as above.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

No distinction before/after residence permit as no reflection period permit is obtained, only suspension of deportation order.

The aliens are provided with translation services when needed according to Administration of Justice act § 149 and Administration of Civil Services act § 7, subsection 1.

The various formal foundations are mentioned in "Report on enhancement of the quality of interpreters and ensuring the quality of interpretation contributions within the structures of the Danish State" by Ministry of Refugees, Immigrants and Integration, April 2004. The report states that the standard of interpretation in Denmark is in accordance with international standards, e. g. UN Convention on Civil and Political rights, art. 14 (3), UNHCR Excomm Conclusion no. 8/1977, ECHR art. 6 (3), litra e and EU Council’s Resolution on Minimum Standards of 20. June 1995.

**After** the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

N/A - Same as above

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Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

No distinction between before/after residence permit as no reflection period permit is obtained, only suspension of deportation order.

Yes, the service is provided in terms of interpretation of relevant and necessary documents. See explanation above under translation services.

**After** the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

N/A - Same as above
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

No distinction between before/after residence permit as no reflection period permit is obtained, only suspension of deportation order.

If the victim is charged by the prosecutor for a criminal act in Denmark the victim has the right to legal representation by a lawyer with no quantitative time limit.

In terms of a legal representation in regard to the case concerning the residence permit the victim does not have the right of free legal aid. Only if the case is an asylum case and it has been appealed to the second instance (Refugee Board), the victim will have free assistance from a lawyer. The quantitative limit is flexible, but the lawyers are instructed to spend a maximum of 6 hours for preparation of the appeals case plus time for participation in the relevant board meetings.

Children, who have been trafficked have a right to a legal guardian and a representative.

After the issue of the residence permit

☐ Yes  ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

N/A - Same as above.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

No distinction between before/after residence permit as no reflection period permit is obtained, only suspension of deportation order.
All persons under the responsibility of the Immigration Service (Aliens' act § 42 a-h) have access to emergency medical care. Victims of trafficking will be entitled to special needs treatment according to the new law proposal of 2. March 2007.

After the issue of the residence permit

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

N/A - Same as above

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

All persons under the responsibility of the Immigration Service (Aliens' act § 42 a-h) have access to emergency psychological care. Victims of trafficking will be entitled to special needs treatment according to the new law proposal of 2. March 2007.

After the issue of the residence permit

☐ Yes  ☐ No

Explanation:

N/A - Same as above

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

No distinction between before/after residence permit as no reflection period permit is obtained, only suspension of deportation order.

As mentioned earlier no provisions exist ensuring the victim with a reflection period permit, but an informal practice has developed with reference to the previous Action Plan 2002-2006. The 'permit' is more correctly a suspension of the deportation order for up to 30 days.
Specific criterion for having the deportation suspended is: Cooperation with the authorities/the Police on 'prepared return' to country of origin. The period can be extended if necessary for the police investigation of the trafficking/illegal immigration criminal acts.

**Q.11.B.** For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

According to the present practice the suspension of the deportation order is up to 30 days. In specific situations relating to the investigations of the criminal acts the suspension can be extended. No information on the length of this extension.

The new law proposal of 2. March 2007 suggests suspension of deportation order for up to 100 days.

**Q.11.C.** When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

See above explanation.

**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Accommodation: Trafficked children (and unaccompanied minor asylum seekers) are accommodated in special Red Cross houses with extra staff.

Prepared return to country of origin: in the new Action Plan 2007-2010 of 8. March 2007 and in the new law proposal of 2. March 2007 special attention is given to preparation of the children's prepared return. In each case it must be investigated if family or an organisation can take the responsibility of the child on arrival to home country.

**Q.12.B.** Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: For how long?)

Minors have access to same 'reflection period' conditions as adult, who have been victims of trafficking.

Minors have additional access to residence permit on humanitarian grounds in case the asylum system estimates the minor to be too immature to undergo the ordinary asylum procedure (Aliens' act § 9 c, subsection 3, number 1).
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

In case the trafficked minor lodges an asylum application the Danish asylum procedure operates with specific maturity assessments of children. Upon receipt of an asylum application from an unaccompanied minor the Immigration Service will conduct an assessment of the child's understanding of the procedural context and ability to explain the asylum background/motive, and if the child is considered too immature to undergo the asylum procedure the child will obtain a temporary residence permit on humanitarian grounds (Aliens' act § 9 c, subsection 3, number 1). In spite of the maturity assessment all trafficked children under 18 years of age have a personal representative.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

All minors under the responsibility of the Danish Immigration Service (DIS)(Aliens act § 42 a-h) and accomodated under the Danish Red Cross are entitled to access to the same educational system as national children. The children are often initially taught at schools run by the Red Cross until their language level is sufficient to start in the ordinary local school. RedCross schools are placed under the same educational regulations and standards as public schools, but have additional staff to meet the special needs of foreign children.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Personal representative: According to the Action Plan of 2005 re. trafficked children a personal representative (social worker or person with relevant education) is appointed for all children, about whom there is a supposition that they have been victims of trafficking. It is not a precondition that these children have lodged an asylum application. The tasks of the personal representative will typically involve support in relation to the child's asylum application and support in relation to personal matters, e. g. special needs for care or treatment. The Minister of Integration has approved Danish Red Cross to recommend the representatives, who are finally appointed by the public administration.

Tracing of relatives: Danish Red Cross cooperates with International Committee of Red Cross on tracing activities in order to locate family members of the minor asylum applicants. In the new law proposal of 2. March 2007 this arrangement will be expanded to involved tracing of family of all minors regardless of an asylum application from the minor. The proposal also suggests that no consent is needed from the minor as now, as long as the social authorities consider the finding of the family is in the best interest of the child. In case the child's family has been involved in the trafficking of the child, the child and the family will not be reunited. Instead the Danish Police will contact the local Police in the country of origin in view of initiating investigation of the crime of the family.
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

In general the trafficked victims do not obtain a residence permit, but a suspension of deportation order. This suspension is not followed by a permit to work in Denmark.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

The victims of trafficking do not have access to vocational training, but to a limited extent they have a possibility to become a trainee at a Danish place of work as this is offered via the Red Cross system.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The adult victims of trafficking have access to limited education (about 5-10 hours per week) at the Red Cross centres, mainly language lessons and classes about the Danish culture and society.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation:

N/A - see explanation 13.A and 13.B.
Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

According to the Action Plan 2007-2010 a new Knowledge- and Coordination Centre for Human Trafficking (Videns- og Koordinationcenter for Menneskehandel) will be established in 2007. This center will ensure the victims with an improved and coordinated treatment whilst they are in Denmark. The Centre shall coordinate the social interventions all over the country. In cooperation with the Danish Immigration Service the Centre shall ensure the victims are offered health related treatment, psychologist assistance, legal assistance and social pedagogical assistance.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: The activities to combat trafficking and hit down on illegal immigration were pre-existing to the Directive 2004/81/EC.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

As mentioned earlier no provisions exist ensuring the victim with a reflection period permit, but an informal practice has developed with reference to the previous Action Plan 2002-2006. The 'permit' is more correctly a suspension of the deportation order for up to 30 days.
The victims are mostly housed by Danish Red Cross and have access to the schemes offered to all residents at the Red Cross centres. If the 'reflection period' is over and the victim is ordered to leave Denmark the Red Cross centre will still provide the victim with access to the said centre's activities until actual departure of Denmark. In few instances the victim of trafficking is detained in one of the prisons under the Danish Prison and Probation Service (due to criminal offence or if the alien does not cooperate with the police on depature related efforts) and thus, the person is under the programmes of the said prison system.
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:
N/A

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Recalling, the reflection period is not based upon an ordinary residence permit, it is still possible to change or ‘withdraw’ the given suspension of the deportation order in case the alien does no longer cooperate with the authorities on her/his prepared return to country of origin.


The Danish Immigration Service is the competent authority to decide on time-limits on departure, cf. Aliens Act § 33. Where expulsion has been decided by judgment the police determines the time-limit for departure, cf. Aliens Act § 33, subsection 9.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No, but in case I do I can forward this information to the coordinator Markus Gunneflo. A Danish consultancy firm COWI has evaluated the Action Plan 2002-2006 and this report can be obtained from www.cowi.com.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No, the Directive has not created visible or to my knowledge known debate in Denmark.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

No
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td>N/A - with reference to Denmark's reservation.</td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.31. A.  Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES  ☒ NO

Q.31.B.  If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES  ☐ NO

Q.31.C.  If yes, give some of examples:

Q.31.D.  If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
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<tbody>
<tr>
<td>OBJECTIVE OF THE PRACTICE</td>
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<tr>
<td>---------</td>
</tr>
</tbody>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Estonia

By

Adamson, Anne

LL.M, MBA, Associate, Sorainen Law Offices

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone:  +46 46 2221037 / +46 31 16 38 89
E-mail:  markus.gunneflo@jur.lu.se

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
• About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

| This table is about: | ☒ a text already adopted | ☐ a text which is still a project to be adopted |

**TITLE:** Act Amending the Aliens Act and the Obligation to Leave and Prohibition on Entry Act  
**DATE:** 18.01.2007  
**NUMBER:** N/A  
**DATE OF ENTRY INTO FORCE:** 01.02.2007  
**PROVISIONS CONCERNED:** the directive  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** RT I 2007, 9, 44  
**LEGAL NATURE (please tick the correct box):**  
☑ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

**Q.1.B.** Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Q.2.** This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>REGULATIONS</th>
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<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Table 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COMPETENCE CONCERNED:</strong> Granting, extending and withdrawing residence permit</td>
<td>Notify of this option and make a proposal to the CMB</td>
</tr>
<tr>
<td><strong>CENTRAL MINISTRY OF:</strong> Ministry of Internal Affairs</td>
<td><strong>MINISTRY OF:</strong> Ministry of Justice</td>
</tr>
<tr>
<td><strong>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</strong></td>
<td><strong>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</strong> Prosecutor's Office</td>
</tr>
<tr>
<td><strong>OTHER LEVEL OF ADMINISTRATION:</strong> Citizenship and Migration Board (CMB)</td>
<td><strong>OTHER LEVEL OF ADMINISTRATION:</strong></td>
</tr>
<tr>
<td><strong>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</strong></td>
<td><strong>IF NECESSARY, COMMENT ABOUT</strong></td>
</tr>
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</tbody>
</table>

NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING
**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

- [ ] YES  
- [ ] NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES  
- [ ] NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

> When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
<th>MISSING TEXTS</th>
<th>INDICATE HERE THE MISSING TEXTS</th>
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</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^\text{13}\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^\text{14}\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

Reference to the Framework Decision 2002/629/JHA is provided in defining the subjects who are eligible to receive the residence permit. It is categorized as a residence permit for special circumstance, and subcategorized as a residence permit for a substantial public interest. As section 14 suprascript 15 of the Aliens Act states that the both victims and witnesses are eligible then its scope includes individuals who also participate in actions to facilitate the illegal immigration.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning

\(^{13}\)Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629 &model=guichett

trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes  ☐ No

Explanation:
Under section 22 (4) of the Penal Code a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

In the national law (section 14 with superscript 15, subsection 1 of the Alien's Act), a reference to Framework Decision definition is made, in defining the subject who benefit from the residence permit. The national law entitles the victims and witnesses of the criminal procedure, the object of which is a crime related to human trafficking in the meaning of the Framework Decision 2002/629/JHA who have:
1. assisted in establishing the circumstances of the crime or have consented to do so; and
2. have cut all relations with the individuals suspected or accused of the crime;

to receive the residence permit on the ground of a substantial public interest.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☒ Yes ☐ No

Explanation:

Under section 22 (4) of the Penal Code a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

Section 14 with suprascript 17, subsection (3) indicates that the residence permit may be issued to minors and to persons with limited legal capacity, in case the application is within the interest of his or her rights and interests.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18 (According to section 8(2) of the General Part of the Civil Code Act).

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ All minors  ☒ Minors, for which the following criteria are fulfilled:

- The same criteria as for the adult regarding cooperation to establish the circumstances of the crime and that relations with the criminals have to be cut off;
- The application of the stipulations has to be within the interest and for the benefit of the rights of the minor.
- 
- 
- 

Explanation:
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: Zero, as the ground became into force only on 01.02.2007.

‘An action to facilitate illegal immigration (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Prosecuting authority or investigative body - both are public authorities involved in the criminal procedure.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☐ Both orally and in writing

Explanation:

The Aliens’ Act does not stipulate whether the information is given in writing or orally. As there have been no practical use of the stipulations, we cannot refer also to any practise. It is unclear from the law whether the alien is entitled to receive translation or any materials or consultation in order to investigate what is the residence permit about and what are the grounds for it. As soon as he or she is already treated as an applicant for the residence permit, the reception centre, which is obliged to house him/her is obliged to also provide vitally necessary translations (section 12 (2) 4) of the Act on Granting International Protection). There is no regulation on the issue whether and who will inform of the right to a reflection period other than the prosecutor, however, my doubt is that the prosecutor shall inform the individual only in case it is in the interest of the case. Nevertheless, in every criminal case the person charged has the right to receive free of charge legal aid, and hopefully the lawyer involved will inform at least the accused of his/her rights.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

None available.
Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

I think the information about the right to receive the residence permit on this ground shall be inconsistently, incompletely and rarely made available to the victims and witnesses of the respecting acts, as the circumstances of the participants of this dialogue are contradictory and the prosecutors and investigative officers will most likely treat the victims in a hostile manner and shall not be considered as credible sources of information by the subjects. I think the information should be available also from impartial source and also contact with UNHCR and NGOs should be made available to all aliens in order to establish their grounds of protection. During the timeperiod of application for the residence permit, the prosecutors office may continue the collection of data on the individual from various sources (including the country of origin, various other institutions, groups, sources, etc.) meaning that the individual may be targeted by hostile traffickers or persecutors from whom he/she wanted to escape.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The reflection period is from 30 up to 60 days from the moment the person was informed of the availability and conditions of the residence permit (section 14 with suprascrip 15, subsection 6 of the Aliens Act).

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

Under the Obligation to Leave and the Prohibition on Entry Act section 14 (5) point 3 the expulsion will be suspended during the reflection period upon the proposal of the prosecutor.
Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

The reflection period may be terminated in case the alien gets in contact with the person suspected or accused for the crimes of human trafficking or if it is in the interest of public order or state security.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period?

(Please give details on the name and function of the authority)

The prosecutors office (section 14 with suprascript 15 (7) of the Aliens Act).

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

No procedure is described under law. It is stated, however, that there is no need to provide reasons for the termination (section 14 with suprascript 15 subsection 8 of the Aliens Act).

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

There is no practice.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third-country nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☒ Yes, in kind ☐ No
Explanation:

The law states (section 14 with superscript 18 subsections 1-4) stipulate that the third-country national shall be placed at the Reception Centre for Asylum seekers or to the Ministry of Social Affairs or to a place indicated by a department of the Ministry of Social Affairs. The third-country national shall receive upon need all the support that is provided for an asylum seeker, incl. housing, food, clothes, hygiene products, emergency help and medical checkup, emergency translation and Estonian language study, information about his/her rights, transportation for the actions required under law, other emergency services. The third country national shall also upon need receive EK 900 (EUR 57.5) (and additional EK 720 (EUR 46) per each additional member of the family) of case for other expenses per month.

Unaccompanied minors who apply for this kind of residence permit shall be housed at a foster care, orphanage or with a relative.

After the issue of the residence permit

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

The same privileges apply.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The third country nationals receive in case only EUR 57.5, but the assistance in kind is not comparable to any particular sum, as it provided on case by case basis and only upon need. If the person has clothes, no clothes are provided, if the persons health is fine, no medical aid is provided. The sum EUR 57.5 is the support given by the state also to nationals who need assistance as the minimum amount of social assistance.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Given the Estonian social welfare system, this assistance provided is proportionate to the overall assistance provided to people in need.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

No such concept is introduced in the laws under review. However, there exist general criteria under Witness Protection Act (entry into force only on 16.07.2006 and therefore has probably very limited if any implementation in practise) to receive protection as a witness. The said criteria also may include victims of trafficking under the acts under review.
After the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

No additional provisions.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

Only emergency translation services (Act Granting International Protection, section 12, subsection (2), point 4.).

After the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

No additional provisions.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

There is no distinction in Estonian language between translation and interpreting. Therefore, the provision of emergency translation services also includes interpreting services. Nevertheless, during the procedure of establishing the circumstances of the crime, the prosecutor may use the help of an interpreter (section 14 with suprascript 16 (3) of the Aliens Act).
After the issue of the residence permit:

☑ Yes ☐ No

Explanation:
No additional provisions.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

There is no special regulation for the provision of legal aid to the victims of trafficking. However, there are the general clauses of receiving state legal aid in case of financial difficulties, this is unfortunately restricted to residents of the country or the EU member state. Therefore, I believe the third-country national would not fall under this criteria in order to be eligible for state legal aid prior to the issue of the residence permit. According to the information available to us the state does not subsidize any other form of legal aid to be provided to that specific target group. There is one NGO (Legal Information Centre for Human Rights) who might be able to assist this group and which assists asylum seekers and mostly the Russian-speaking minority in Estonia.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

The people who have a residence permit are eligible to legal aid under the State Legal Aid Act, in force since 01.01.2006. The legal aid is provided by attorneys at law - mostly attorneys who have just become a member of the Bar Association.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:
Yes ☒ No ☐

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Section 12 (2) point 3 of the Act Granting International Protection stipulates that the emergency assistance and medical check-up is provided.

After the issue of the residence permit

Yes ☒ No ☐

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.)

No additional provisions.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1) (When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

Yes ☒ No ☐

Explanation:

Only on the basis of the pre-existing norms. No special norms were adopted to transpose the Directive.

After the issue of the residence permit

Yes ☒ No ☐

Explanation:

Only on the basis of the pre-existing norms. No special norms were adopted to transpose the Directive.
Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:**

During the procedure of establishing the circumstances of the crime, the prosecutor may use the help of a psychologist, general and specialist medical personnel and a translator (section 14 with suprascript 16 (3) of the Aliens Act). Additionally, according to the Victims Assistance Act (pre-existing legislation) section 12 that 10 hours of psychological counseling and 15 sessions of psychotherapy are compensated by the state in case the victim was a victim of a violence crime which resulted in death, grave bodily injury and a health problem that lasts longer than six months and the person has to be either a recipient of international protection or EU citizen or a residence permit (or a right to stay) in Estonia or a member state of the European convention on compensating the victims violent crimes. Considering that this is difficult for the victim of trafficking to pay for this counseling, apply for the compensation (submitting application and supporting documents including ID and decision to initiate the criminal proceedings or similar) and that the Social Insurance Board shall evaluate whether the person is eligible and was in need to receive the counseling. Therefore, I still think there is at least a legal problem with the transposition.

**After** the issue of the residence permit:

☐ Yes  ☑ No

**Explanation:**

No additional stipulations apply.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

**Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)**

☑ Yes  ☐ No

**Explanation:**

Pregnant women get social security as of the start of their pregnancy free of charge. Medical assistance is granted to all people upon the territory of Estonia in need of emergency medical care.
**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [ ] No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

There are number of criteria provided for in sections 14 with superscript 15 and 17 of the Aliens Act, including the following three:

1) the person is a victim or a witness in criminal procedure the object of which is the crime of human of trafficking according to the definition provided in Frame Decision 2002/629/JHA;
2) the person has assisted in collecting evidence in the criminal case or has agreed to do so;
3) the person has severed all relations with the persons suspected or accused of committing the crimes.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

**Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?**

- [ ] Yes
- [ ] No

**Explanation:**

Section 12 subsection 10 point 2 of Alien's Act the CMB may (not must) refuse to renew or grant residence permit in case there is reason to believe that the aliens' stay in Estonia may jeopardize public order, public safety, public morals or the rights or interests of other people.

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

There is no minimum timelimit. According to section 14 with suprascript 17 (1) of the Aliens Act the residence permit on this ground is issued for the time indicated in the application by the prosecutor, but not for longer than one year.
Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes □ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

According to section 14 with suprascript 20 the residence permit can be renewed if the circumstances remain the same on the basis of the application of the prosecutor and the consent of the person. There is again no minimum timelimit for renewal, it is stated, however, that the renewed residence permit cannot be for more than one year at a time.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

According to the section 14 with suprascript 19 (2) of the Aliens Act in establishing the place of stay of the unaccompanied minor the interests and rights of the minor shall be considered. Unaccompanied minors will be placed in orphanages, foster families' or with an adult family member. No other provisions special to minors exist regarding this special ground of residence permit.

According to sections 35 and 67 of the Child Protection Act, entry into force on 01.01.1993, the child is entitled to protection and care, to help in finding his/her parents. In case a child participates in court proceedings a psychologist or a teacher and a doctor must be consulted to obtain an opinion on the welfare of the child and the appropriate means to take to impact the child. The general requirements to see to that that the best interests of the child are protected stem from section 3 of the Child Protection Act.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If yes, explain which measures are taken)

In relation to this particular procedure there is no explicit rule saying that "due account will be given to the best interests of the child", neither is there any reflection in the rules transposing the directive that the "age and maturity of the child has to be taken into consideration in this particular and special procedure. Another matter is what can be considered as "appropriate" in this context and whether this term is similarly understood by all MSs as the minors are also treated differently in different MSs on the basis of their "age and maturity". There are general rules in the Criminal Procedure Code section 290 which provide exceptional rules in relation to the treatment of minors in criminal procedure. However, this does not provide much guidance to how the practitioner is supposed to act in this specific procedure in order to ensure that this is "appropriate to the age and maturity of the child". These guidelines should be implemented and available and not arbitrary and up to the prosecutor concerned.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Under section 8 (6) of the Education Act entry into force of the amended version 01.01.2003 all children including the children of foreign countries or stateless children residing in Estonia are obliged to abide by the education obligation as stated in the Education Act. This might of course raise the question whether the minors who still have not received the residence permit can be considered as "residing" in Estonia.

This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☒ Yes ☐ No

Explanation:

As explained above. Any unaccompanied minor who is placed in social care unit will receive appropriate medical care. Other minors will get emergency medical care.
Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Under section 67 (2) of the Child Protection Act the social services must initiate a search for the parents of the unaccompanied minor and explain to the minor the ways to return to his/her country of origin. Under section 58-59 of the Child Protection Act, any child needing assistance and help must be helped and assisted by every individual who discovers such a child and police, social services or any other assisting institution. Any child who is placed at the care of a social services is already represented by the responsible social services unit. Legal representation is ensured to unaccompanied minors under the AGIPA during the procedure of asylum or international protection application. No special provisions have adopted for the transposition of the Directive. If possible brothers and sisters are not separated (section 14 siths suprascript 19 (2) of Aliens Act).

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

The third-country national who has received a residence permit on this special ground has the right to work in Estonia without a work permit under section 14 with suprascript 22 of the Aliens Act.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Unders section 3 subsections (2) and (3) of the Employment Market Services and Subsidies Act also the persons with temporary residence permit are entitled to employment market services, including vocational training.
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Under section 4 (7) of the Education Act the obtaining of secondary education in Estonian language is free of charge in public schools to everybody. Otherwise the holders of the residence permits may apply for higher education like any other resident in Estonia.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

If a person cannot reside in Estonia on legal basis then also no work permit exists, if no work permit exists also no vocational training is available and the same pre-requisite is for obtaining education. Of course the third-country national may apply for residence permit on the ground of work or education under the Aliens Act.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

There are no specific programmes. However, there are no obstacles to obtain language training or any assistance
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

According to section 14 suprascript 20 subsections (1)-(3) the residence permit may be renewed in case the basis for the residence permit have remained the same. The decision shall be passed by the CMB upon the proposal of the prosecutors office with the consent of the alien. The renewal may be up to one year.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)
Under section 14 with superscript 21 subsection (1) the residence permit may be withdrawn:
1) if the criminal procedure ends;
2) the person has reconnected with the persons suspected or accused of criminal acts or has failed to cooperate with the purpose of collecting evidence;
3) the person is a threat to public policy and state security.


Under section 14 with superscript 21 the residence permit is withdrawn on the basis of the first two points upon the proposal of the prosecutor. No procedure is indicated for the withdrawal of the residence permit on the third ground.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

As there is no practice available, there are no subjects or object to write the study of.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No debate other than between two ministries (Justice and Social Affairs). The NGO we did approach in this matter - the Legal Information Centre for Human Rights (LICHR)- stated that the Directive was merely copied to the national laws with extremely tight schedule, with no consultations with the third sector, with no legal analyse of its implications or the apprpriateness. The entire procedure of adopting the law from the moment it was proposed was extremely expedited and according to LICHR merely motivated to meet a deadline set.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

As said the stipulations became in force only on 01.02.2007, therefore, we are unable to provide any examples from practise or problems with the legislation, as the practise has been inexistent.
### IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>☐ Less favourable than previous national rules</td>
</tr>
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<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>☐ Status quo</td>
</tr>
<tr>
<td></td>
<td>Prior to the transposition the victims of trafficking did not enjoy any such privilege under law nor in practise.</td>
<td>☒ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

*When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
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<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
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<td></td>
<td></td>
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</tbody>
</table>

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

- ☒ YES
- ☐ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

- ☒ YES
- ☐ NO

**Q.31.C.** If yes, give some of examples:

It is difficult to apply in case the grounds for its adoption was not based on practise and the need to resolve a problem at hand, and the procurators who are granted the right to offer this permit - are very little aware of this option. Therefore, my assumption is that this option shall remain in the dark for quite some time.

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

**Q.32.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many
decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

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<th>REFERENCE OF PUBLICATIONS:</th>
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<td>DECISION OF APPEAL COURTS</td>
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<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
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</table>

**ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:**

**Q.33.** Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explain the difficulties that this could create:

**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

The regulation came in force only on 01.02.2007, therefore not interesting element is yet to be noted or experienced.
There is a need to provide training to prosecutors in this area and to provide the persons who should be sensitive to when to implement this option in practise.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Finland
(Finalised on 16 May 2007)

By
Roth, Venla

LL.M, researcher
venla.roth@helsinki.fi

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

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<tr>
<td>DATE</td>
<td>21.7.2006</td>
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<tr>
<td>NUMBER</td>
<td>619/2006</td>
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<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
<td></td>
</tr>
<tr>
<td>☐ LEGISLATIVE</td>
<td></td>
</tr>
<tr>
<td>☒ REGULATION</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

**Table 4**

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE</strong>:</td>
<td>Valtioneuvoston päätös pakolaisista ja eräistä muista maahanmuuttajista sekä turvapaikanhakijoiden vastaanoton järjestämisestä aiheutuvien kustannusten korvaamisesta 21.4.1999/512 (Regulation on Covering the Costs Resulting from Reception of Asylum Seekers and Some Other Immigrants), as amended</td>
</tr>
<tr>
<td><strong>DATE</strong>:</td>
<td>28.12.2006</td>
</tr>
<tr>
<td><strong>NUMBER</strong>:</td>
<td>1458/2006</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>:</td>
<td>1.1.2007</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong>:</td>
<td>Amended a new Chapter 3a.</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION</strong>:</td>
<td></td>
</tr>
<tr>
<td>IN THE OFFICIAL JOURNAL:</td>
<td>28.12.2006/1458</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
<td></td>
</tr>
<tr>
<td>☐ LEGISLATIVE</td>
<td></td>
</tr>
<tr>
<td>☒ REGULATION</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>
Table 5

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Lastensuojelulaki 5.8.1983/683 (Law on Child Protection), as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>29.6.2006</td>
</tr>
<tr>
<td>NUMBER</td>
<td>583/2006</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1.11.2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>23 a §, 24 §, 25 §, 25 a §, 26 §, 26 §, 30 a §, 31 §, 31 a §, 31 b §, 31 c §, 32 §, 32 a §, 32 b §, 32 c §, 32, d §, 32 e §, 32 f §, 35 a §, 37 §, 38 §</td>
</tr>
</tbody>
</table>

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: 29.6.2006/583

LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Q.1.B

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law).

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Rikoslaki 19.12.1889/39 (Penal Code), as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>9.7.2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>650/2004</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1.8.2004</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>25 Chapter 3 §, 3a § (function as a definition for trafficking in human beings/aggravated trafficking in human beings)</td>
</tr>
</tbody>
</table>

(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: 9.7.2004/650

LEGAL NATURE (indicate by ticking the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
### Table 2

| TITLE: Hallintolaki 6.6.2003/434 (Administration Act), as amended |
| DATE: 6.6.2003 |
| NUMBER: 434 |
| DATE OF ENTRY INTO FORCE: 1.1.2004 |
| PROVISIONS CONCERNED: 8 § |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 6.6.2003/434 |
| LEGAL NATURE (indicate by ticking the correct box): | ![LEGISLATIVE] |

### Table 3

| TITLE: Oikeusapulaki 5.4.2002/257 (Legal Aid Act), as amended |
| DATE: 5.4.2002 |
| NUMBER: 257 |
| DATE OF ENTRY INTO FORCE: 1.6.2002 |
| PROVISIONS CONCERNED: The entire law is applicable to the aliens in need of legal aid during the legal process in Finland. |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 5.4.2002/257 |
| LEGAL NATURE (indicate by ticking the correct box): | ![LEGISLATIVE] |

### Table 4

| TITLE: |
| DATE: |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): | ![LEGISLATIVE] |
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: Åland has as an autonomous region legislative power in matters defined by Section 18 of the Act on the Autonomy of the Åland Islands. (16.8.1991/1144). However, within the field of the Directive, the norms of transposition are in force also in the Åland Islands.</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

### Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issuing of the first residence permit for the victims of trafficking.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Directorate of Immigration (DOI)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Directorate of Immigration that is subordinated to the Ministry of Interior is entrusted with the competence to take decisions concerning applications for residence permit. The Ministry of Interior may guide the work of the Directorate at general level but may not interfere in decision-making in individual cases.</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Services and assistance for the victims of trafficking.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Refugee reception centres in Joutseno and Oulu (minors).</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Refugee reception centres are subordinated to the Ministry of Labour. Entrusted with the competence to accommodate and to offer services for the victims of trafficking.</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issuing and suspending of the reflection period for the victim of trafficking.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Boarder control authority</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The border guard is subordinated to the Ministry of the Interior.</td>
</tr>
</tbody>
</table>

### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issuing and suspending of the reflection period for the victim of trafficking as well as renewing of the residence permit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>District Police</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The district police is subordinated to the Ministry of the Interior.</td>
</tr>
</tbody>
</table>

### Table 5

| COMPETENCE CONCERNED: | |
|----------------------| |
| CENTRAL MINISTRY OF: | |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | |
| OTHER LEVEL OF ADMINISTRATION: | |
| IF NECESSARY, | |
COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
<tr>
<td>The Aliens Act contains obligation to trace the parents or some other person responsible for the actual guardianship of the unaccompanied minor asylum seeker (Modification of the Aliens Act 1158/2006, 105b §). It seems, however, that this provision/obligation does not cover all the cases as minor victims of trafficking are not always asylum seekers. Thus, article 10c of the Directive (part relating to the location of family) has not been fully implemented. The Ministry is of the opinion that the norm is transposed through the general rules of the Aliens Act and the Administrative Law. See also Q.12.E.</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
<tr>
<td>Only victims who hold permanent residence permit have access to the educational system under the same conditions as nationals. If the residence permit is temporary, neither state nor municipalities have responsibility for ensuring victims of trafficking access to education. It is thus questionable whether the Article 10c is fully implemented. See more Q.12.D.</td>
</tr>
</tbody>
</table>
SECOND PART

**Scope**

**Q.5.** According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^{15}\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^{16}\)).

**Q.5.A.** Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

**Explanation:**

During the process of legislation, it was discussed whether the scope of the residence permit and the reflection period should cover also facilitation of illegal immigration. One rationale for the suggested extension was the fact that Finland is largely a transit country; during the phase of border crossing both victims and authorities are often unaware of the end purpose of the travel, although there might be reasonable grounds to believe trafficking. Furthermore, the penal provision on trafficking in human beings requires evidence on exploitation, which might be impossible to obtain while the potential victims are still travelling from the country of origin to the country of destination. Nevertheless, the scope of application was limited to the victims of trafficking.

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Subsequently, it has been noticed that the scope is too narrow to adequately respond to the problem of trafficking or other kind of exploitation of aliens. Therefore, the Bureau of Investigation has introduced to the crime investigation a term "trafficking-kind of crimes", which includes extortion-kind of work discrimination (Penal Code 47:3a §), aggravated pandering (Penal Code 20:9a §) and aggravated facilitation of illegal immigration (Penal Code 17:8a §).

In February 2007, the Kouvola Court of Appeal pronounced a conviction for aggravated facilitation of illegal immigration. The Court held that trafficking in human beings and facilitation of illegal immigration may be interrelated as facilitation of illegal immigration may end up in exploitative conditions in the country of destination due to the debt relationship and vulnerable position of smuggled migrants (lack of language skills, formal travel documents and money).

The problem is that the victims of trafficking-kind of crimes are not entitled to the reflection period or the residence permit. If the term is used in a flexible way, they might nevertheless have access to the system of victim assistance if there are grounds to believe trafficking (crime of trafficking among the investigated crimes) as long as criminal investigation/court procedure is incomplete.

With regard to the trafficking-kind of crimes, persons having faced exploitation at work are directed to the system of victim assistance easier than procured prostitutes. This is worrying especially because large numbers of Russian and Baltic women are known to migrate for prostitution to Finland and work under pressure of organised criminal groups. Therefore, it is of primary importance whether a person will be identified as a victim of trafficking, prostitute or smuggled migrant.

With regard to the system of victim assistance, all presumed victims of trafficking should be directed to services. This is an important principle adopted in the National Plan of Action against Trafficking in Human Beings (Publication of the Ministry for Foreign Affairs 5/2006, p. 35-39). There are, however, serious problems in implementation as identification of victims of trafficking is believed to be defective and might even be impaired by the risk of possible entry refusal issued to foreign prostitutes (Aliens Act 148 §). See more on Q.9 and 19.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes ☐ No

Explanation:

Finland has criminalised instigation of, aiding, abetting and attempt to commit the offence of trafficking in human beings. With regard to the system of victim assistance, it bears no relevance which one of the above mentioned ways of carry put the offence of trafficking is in question in the case.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

When the directive 2004/81/EC was transposed into Finnish legislation, the transposition concerned mainly the Finnish Aliens Act. As trafficking in human beings and aggravated trafficking in human beings had been defined in the Finnish Penal Code, it was decided that instead of defining the crime of trafficking in human beings yet another time in the Aliens Act, there would be a reference to the definition in the Penal Code.

Please find below the relevant sections in the Penal Code of Finland (Chapter 25, Sections 3 and 3a).

Section 3 - Trafficking in human beings (650/2004)
A person who
(1) by abusing the dependent status or insecure state of another person,
(2) by deceiving another person or by abusing the mistake made by that person,
(3) by paying remuneration to a person who has control over another person or
(4) by accepting such remuneration
takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20(9)(1)(1) or comparable sexual abuse, force labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.
A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentione in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 –4) have been used.
An attempt shall be punished.

Section 3a - Aggravated trafficking in human beings (650/2004)
If, in trafficking in human beings,
(1) violence, threats or deceitfulness is use instead of or in addition to the means referred to in section 3,
(2) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person,
(3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself/herself has been substantially diminished or
(4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17(1a)(4) and the offence is aggravated also when considered as whole, the offencer shall be sentenced for aggravated trafficking in human beings to imprisonment for a minimum of two years an a maximum of ten years.
A person who enslaves or keeps another person in servitude, transports or trades in slaves shall also be sentenced for aggravated trafficking in human beings if the act is aggravatde when assessed as whole.
An attempt shall be punished.

The Aliens Act of Finland has been supplemented by new provisions adding the status of a victim of trafficking in human beings among the grounds on which a residence permit may be issued. The definitions in the Aliens Act refer to the Penal Code. According to section 3 of the Aliens Act:
"trafficking in human beings" means the trafficking and aggravated trafficking in human beings referred to in chapter 25, section 3 and 3a of the Penal Code (39/1889);
"victim of trafficking in human beings" means an alien who, on reasonable grounds, can be suspected of having become a victim of trafficking in human beings.

The Act on the Integration of Immigrants and Reception of Asylum Seekers does not include a separate definition of trafficking but relies on the definition of the Penal Code. More specifically, the provisions concerning victim assistance and support services are applied in cases where the person has been issued with a reflection period or residence permit or who in the view of circumstances can be assessed to be a victim of trafficking or in special need of assistance while a crime of trafficking is being investigated (section 3). In accordance with the current application, the latter group of persons might cover also witnesses of the crime of trafficking.

Evaluation:
Even though the wording in the Finnish Penal Code is not exactly the same as in the UN Trafficking Protocol or the Framework Decision, the content and meaning are similar. Nevertheless, it can be argued that the interpretation of the Penal Code differs from the definitions of the UN Protocol and the Framework Decision. The interpretation is
neither consistent with the Finnish Government Bill (34/2004) involving grounds for criminalisation. Based on the first court case (Helsinki District Court July 2006 and Helsinki Court of Appeal March 2007), the interpretation seems to develop strict and narrow as the fulfilment of trafficking requires deception, coercion or incapability to give consent (the litigant was a disabled woman). The interpretation thus deems that, for example, use (of threat) of violence carries out (aggravated) pandering rather than trafficking in human beings.

Interestingly, the court did not consider that the use of threat of violence directed not only to the some other litigants but also to their relatives, debt relationship or heavy restrictions to freedom of movement would carry out trafficking. The interpretation might have negative consequences to counter trafficking efforts, including identification of victims of trafficking, system of victim assistance as well as application of the reflection period and the residence permit. See more Q.19.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
     - (a) use is made of coercion, force or threat, including abduction,, or
     - (b) use is made of deceit or fraud, or
     - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
     - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

**Q.5.C.** Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).
(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes    ☐ No

Explanation:

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults    ☒ Both adults and minors
Explanation:

Minors were automatically included in the scope of application.

**Q.6.B.** Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

**The age of majority is:** 18 (see, section 6 of the Aliens Act)

**Q.6.C.** Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

**The national norms of transposition are applicable to:**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] All minors

- [ ] Minors, for which the following criteria are fulfilled:
  

  -
  

  -
  

  -
  

  -
  

  -

**Explanation:**

As above.

**Q.7.** How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 1 (+ 1 reflection period in 2007)

This far (April 2007), the police has investigated more than 10 cases as trafficking but only one case has been convicted as trafficking. In 2006, the police investigated more than 50 cases as “trafficking-kind of crime”, including aggravated pandering (5), aggravated facilitation of illegal immigration (30) and extortion-kind of work discrimination (16). See more on Q.19.

‘An action to facilitate illegal immigration (If applicable): -
Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

In accordance with section 8 of the Administration Act, all relevant public authorities have a general obligation to provide information of the possibilities offered. The general clauses concerning the duty of the authority to provide customers with advice apply when dealing with the cases where trafficking in human beings is suspected. According to the Act "an authority shall provide to its customers the necessary advice, within its competence, for taking care of administrative matters; as well as respond to the questions and queries on its service. Advice shall be provided free of charge". Furthermore, it is stated that "if the matter does not fall within the competence of an authority, it should direct the customer to the competent authority."

With regard to the reflection period and the residence permit, competent authorities are District Police, Border control authority and Directorate of Immigration. Certain state-run refugee reception centres in Oulu (minors) and Joutseno under the Ministry of Labour are responsible for providing information on the rights of victims as well as possibilities to receive assistance and different services.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Orally
☐ In writing
☐ Both orally and in writing

Explanation:

See below.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

A working group has been established in order to produce information material on trafficking in human beings. There will be material targeted at different groups, one of which being the victims. One aim of the working group is to provide the victims with the kind of material that includes in a nutshell, in different languages, the possibilities they have according to the Finnish legislation. The material should be ready to be distributed by the end of 2007. There is also basic information on the web-sites of the Directorate of Immigration.

The DOI (Directorate of Immigration) has a telephone service line and customer service point for personal contacts. The information would be given orally for example during the asylum process/asylum interrogation. General information is available among other things on the internet in Finnish, Swedish and English.
Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

As it can be observed, access to information relies heavily on the authorities and especially on their ability to identify victims of trafficking. It thus depends on the authorities how well victims of trafficking are informed on their rights and duties. The situation might be proved problematic because victims do not often trust authorities and might therefore prefer to remain outside assistance and support systems.

In order to improve the situation, two NGOs (Pro-Support Centre and Refugee Advice Centre) have recently launched a project, which purpose is to provide (potential) victims of trafficking and victim assistance workers with impartial legal advice on the system of victim assistance, the reflection period and residence permit as well as other related questions/options. The project is focused on providing advice for (potential) victims of trafficking when he or she has not yet made a decision whether he or she is willing to cooperate with the authorities. The project is funded by Finland’s Slot Machine Association (RAY), although state should take responsibility for the funding of this kind of counter trafficking efforts. (RAY was established to raise funds through gaming operations to support Finnish health and welfare organizations. RAY has an exclusive right in Finland to operate slot machines and casino table games, and to run a casino.)

Victim Support Finland, member of the European Forum for Victim Services (EFVS), has founded a project to provide information and advice on the possible services for foreign victims of crime, including victims of trafficking in human beings. The purpose of the project is to create a channel through which the foreign victims of crime being often reluctant to contact authorities are enabled to seek help and directed to assistance and support services. In more concrete terms, the project establishes a toll-free help-line and provides personal support if needed. The project is funded by Finland’s Slot Machine Association (RAY).

The programme of the new Government of Finland (April 2007) has promised that funding of those NGOs, which work for victim identification and consultation, will be taken care of by the Government. No concrete decisions are made, however.

It seems that the identified victims of trafficking usually receive information on their rights and duties; the situation is more problematic when victims are not yet identified, contacted authorities and referred to the system of victim assistance. As victims of trafficking might often be reluctant to contact authorities, the NGOs have a central role in providing potential victims with impartial information on the possibilities they have according to the Finnish legislation. It seems that currently a large number of (potential) victims remain in the "grey-zone" without being identified and referred to the system of victim assistance and other services or support. See more on Q.19.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?)

According to section 52b § of the Aliens Act, before issuing a residence permit laid down in provision 52a § a reflection period of at least thirty days and a maximum of six months may be granted. According to section 52c §, the victim of trafficking in human beings is notified of the reflection period in writing and the notification must give the start date and duration of the reflection period. It can be assumed that the start date would be the date in which the decision on reflection period is made.

During the reflection period a victim of trafficking in human beings must decide whether he or she will cooperate with the authorities so that those suspected of trafficking in human beings can be caught. What "cooperation" means in practice has not been defined in the law: what kind of cooperation is required and with which authorities?

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

According to section 40 (Right of residence), under this Act, legal residence means among other things residence of a victim of trafficking in human beings during the reflection period referred to in section 52b (619/2006). The third-country national residing legally is protected from enforcement of expulsion orders.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

According to section 52b of the Aliens Act, the reflection period may be suspended if the victim of trafficking in human beings has voluntarily and on his or her own initiative re-established relations with those suspected of trafficking in human beings or if this is necessary on the grounds mentioned in section 36(1) (section 36(1) meaning the situations in which the alien is considered a danger to public order, security or health or Finland’s international relations).

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

According to section 52c of the Aliens Act, the District Police or a border control authority shall decide on granting and suspending the reflection period.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

The victim is notified of the suspension in writing. The notification must give the grounds for suspending the reflection period. According to section 191 if the Aliens Act, the decision on suspension is not subject to appeal.
However, in case the alien in question has to be removed from the country (forced removal), a written decision shall be made and such a decision is subject to appeal (section 190 of the Aliens Act).

**Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.**

This far (April 2007), only one reflection period has been granted for one presumed male victim of trafficking exploited in an ethnic restaurant. One reason for the limited number might be that the law is rather new and it takes time to attach it to the practices in police and at borders.

On the other hand, the issuance of a reflection period is not always necessary. According to the Aliens Act, an alien may reside legally in the country while his or her application is being processed until there is a final decision on the matter or an enforceable decision on his or her removal from the country. In many cases known to the DOI an asylum application has been filed or the potential victim has resided legally in Finland/has already had a residence permit issued on other grounds (such as employment). Therefore, the issuance of reflection period has not been considered necessary.

Nevertheless, there are reasons to suspect that the possibility to issue reflection period is underused. As attitudes towards foreign prostitutes have for long been rather negative and suspicious, authorities might be unable to identify victims of trafficking in prostitution. Additionally, the recent court case on trafficking places the threshold for the crime of trafficking high. This might influence on the images of a "real" or "proper" victim while authorities encounter potential victims of trafficking.

For a victim it is of great importance whether she or he will be issued with a reflection period of 30 days or of few months. Currently, there seems to be no information on how the duration of the reflection period is determined. There is either no information on what kind of potential victims of trafficking the reflection period is grantable. Furthermore, it has been brought out that the reflection period might be used to serve authorities rather than victims; authorities seem to use the reflection period for their purposes to investigate the crime of trafficking, although reflection period should be preserved for victim's personal decision-making process and empowerment.

The possible suspending of the reflection period has been criticised because it is rather common that in the beginning of disengagement victims of trafficking return to traffickers on their own initiative. With regard to their life experiences and future expectations, victims of trafficking might often rely on the traffickers more than authorities, especially if the residence permit system is unpredictable and uncertain in conditions or practices of issuance. In that sense trafficking can be compared to domestic violence; both victims of domestic violence and victims of trafficking have often created an emotional relationship with their violators that might be difficult to break instantly. Therefore, victims of trafficking need time, desirably at least 3 months, to gradually release from violent and exploitative relationships and to empower themselves in a safe environment. The requirement of disengaged relations should be applied in a flexible way taking into account the dynamics of victimisation as well as the personal circumstances and needs of the victim.

Although reflection period is issued by District Police or Border control authority, NGOs have an important role as they could be able to direct victims to the competent authorities. As it is still unclear on what conditions and for what kind of persons the reflection period is grantable, potential victims of trafficking and victims assistance workers are rather hesitant and cautious to propose the reflection period to their customers. Some NGOs are, in fact, of the opinion that the reflection period should be abolished because it lays too much emphasis on the decision-making to cooperate with the authorities. It seems important to increase confidence between NGOs and authorities as well as to strengthen human rights based approach to trafficking in order to entice victims out of their exploitative environment.

According to section 148(1)(6) of the Aliens Act, an alien may be refused to enter into the country if there are reasonable grounds to suspect that he or she may sell sexual services. After the law entered into force in 1999, the position of foreign prostitutes has weakened as in their fear of immediate deportation they are unwilling or unable to turn to authorities for help. Once refused prostitute is not able to return to Finland without resorting to criminal organisations, which arrange false documents, travels, accommodation and customers. Based on the information received from the NGOs, authorities resort to the entry refusal more often than before 1999 also on other grounds, such as exceeding of visa. As a result, it seems that foreign prostitution has gone underground and prostitutes have become more vulnerable to violence, exploitation and even to trafficking (see more for example Martti Lehti - Kauko Aromaa: Trafficking in human beings, illegal immigration and Finland. Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations HEUNI, 2002)
The United Sex Professionals in Finland has complained about one entry refusal case to Parliamentary Ombudsman. The United Sex Professionals suspected that authorities had not sufficiently taken into account the possibility that prostitutes might have been victims of trafficking and in need of special assistance. Although the Ombudsman did not consider that authorities had violated the law, she paid attention to the importance to identify victims of trafficking and to distinguish them from prostitutes while applying the law.

As the issuance of reflection period and the entry refusal might become simultaneously applicable, there is a danger that victims of trafficking are left unidentified and become subjects of entry refusal. As a result, they might not have access to the reflection period/residence permit and the system of victim assistance and other support. In 2006, more than 3000 persons were refused to enter Finland on various grounds.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

Explanation:

According to the section 22 of the Act on the Integration of Immigrants and Reception of Asylum Seekers, victims of trafficking are entitled to the maintenance grant and possibly in kind support from the reception centres if necessary. Reception centres are responsible for providing or otherwise arranging accommodation for the victims of trafficking. Victims' safety will be taken into consideration in deciding on the most appropriate mean of housing (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a). See Q.10.D and Q.34.

After the issue of the residence permit

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

Explanation:

As above.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Victims of trafficking are entitled to 12-13 e/day or 370-390 e/month, respectively.
Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Yes it is.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Safe houses, police supervision, security guards and other means can be used if needed (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a).

After the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

As above.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

Professional translators are arranged and paid by the reception centres (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a). According to section 10 of the Aliens Act, aliens may also use an interpreter or translator at their own expense in an administrative matter of an appeal.

After the issue of the residence permit:

☑ Yes ☐ No
Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☐ No

Explanation:

It is on the responsibility of reception centres to arrange and pay for interpretation (also regulated in the Administration Law section 26). Specifically regulated with regard to victims of trafficking in the Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a. According to section 10 of the Aliens Act, aliens have the right to use an interpreter when an administrative matter or an appeal is being handled. The authorities shall ensure interpretation as provided in section 203 of the Aliens Act.

After the issue of the residence permit:

☐ Yes ☐ No

Explanation:

As above.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Legal aid is offered by qualified lawyers/attorneys. It is not limited on hours or costs accumulated (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a). Also regulated in the Legal Aid Act. See also Q.8.D.
After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

As above.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

In addition to emergency medical care, victims of trafficking have access to general medical care (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a).

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

As above.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1) (When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☑ Yes ☐ No
Explanation:

Special needs are taken into account; relevant services are arranged and paid/reimbursed by the refugee reception centres.

After the issue of the residence permit

☑ Yes   ☐ No

Explanation:

See above.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes   ☐ No

Explanation:

Arranged by the reception centres (Act on the Integration of Immigrants and Reception of Asylum Seekers, section 25a).

After the issue of the residence permit

☑ Yes   ☐ No

Explanation:

As above.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes   ☐ No

Explanation:

Special needs are taken into account and relevant services are arranged; relevant services are arranged and paid/reimbursed by the refugee reception centres.
Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

According to section 52a of the Aliens Act, a victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:
1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings;
2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught; and
3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.

If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met. According to the Government proposal (32/2006), a person is in a vulnerable position if the authorities in the country of origin are unable or unwilling to protect a trafficked women from the serious threats imposed by a criminal organisation. Continuous residence permit might be grantable also if issuance of a asylum or international protection cannot come into question. Furthermore, victim of organ trafficking can be issued with a continuous residence permit, if she or he is unable to receive necessary treatment in the country of origin. See also Q.12.C about minors.

The usual requirements for issuing residence permit do not concern victims of trafficking. Issuing the residence permit is thus not conditional on the alien having secure means of support. Furthermore, a residence permit under section 52a may be issued even if the alien does not have a valid travel document.

If a victim of trafficking in human beings is issued with a temporary residence permit, his or her family members staying abroad are not issued with a residence permit on the basis of family ties. If he or she is issued with a continuous residence permit, family members are issued with a continuous residence permit.

Evaluation:

With regard to the system of victim assistance, it makes a difference whether the victim has received temporary or continuous residence permit. Especially in the beginning it might be proved difficult to plan services for the individual victim and their implementation if there is no certainty about the duration of the permit.

Victims holding only temporary residence permit might also become blackmailed; they might be unwilling to cooperate with the authorities if they cannot be sure about the safety of their family members at home. The situation of victims might also be proved difficult if they are returned to the country of origin after legal proceedings. Especially when there has not yet been established a programme for safe return, victims of trafficking might become re-victimised or retaliated on the side of traffickers. Therefore, continuous residence permit should be a starting point.

Furthermore, it has been stated by various victim assistance workers that the requirement of cooperation might drive potential victims of trafficking away from the system of victim assistance, which means that they might remain in the circle of exploitation and violence.
It is to be seen how new provisions will be applied in practice. The only residence permit granted this far was continuous. Nevertheless, it is still unclear how the Programme of the new Government will influence on the legislation and practices of issuance of residence permit for the victims of trafficking. According to the Programme, migrants having been victimised of crimes against humanity and fundamental rights are to be issued with a continuous residence permit.

Finally, it is to be noted that the (potential) victims of trafficking are not necessarily in need of residence permit under section 52a. The victims are not always residing illegally in Finland and have not entered Finland illegally (a victim might i.e. be a holder of a residence permit for employed person). In individual case a residence permit under section 52a is not always the best and most favourable solution from the victim's point of view (he/she might be entitled to a residence permit on other grounds). In individual case a victim of trafficking may have grounds for receiving international protection as well. Furthermore, EU/EEA and Swiss nationals may also fall victim to trafficking (whereas the Directive shall be applied to the third-country nationals).

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?  

☐ Yes ☐ No

Explanation:

According to the section 36 of the Aliens Act on the general requirements for issuing residence permits (1) a residence permit may be refused if the alien is considered a danger to public order, security or health or Finland’s international relations. Endangering international relations does not, however, prevent the issuing of a residence permit on the basis of family ties.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

According to section 53 of the Aliens Act, a victim of trafficking in human beings is issued with a residence permit for at least six months and for a maximum of one year.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

According to section 54 of the Aliens Act, a new fixed-term residence permit is issued if the requirements under which the alien was issued with his or her previous fixed-term residence permit are still met.

A victim of trafficking in human beings who has been issued with a temporary residence permit is issued with a continuous residence permit after a continuous residence of two years in the country if the circumstances on the basis of which the alien was issued with the previous fixed-term permit are still valid.

Furthermore, a new fixed-term residence permit is issued on new grounds if such grounds would qualify the alien for the first residence permit. Thus, a new permit could be issued i.e. on the grounds of employment.
Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

According to section 6 of the Aliens Act (Applying the Act to minors), in any decisions issued under this Act that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child’s development and health. Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child’s views shall be taken into account in accordance with the child’s age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account. Matters concerning minors shall be processed with urgency.

There has been unofficially adopted a view that minors can be taken to the system of victim assistance even without their consent. Minors holding either temporary or permanent residence permit are provided housing, medical care, legal aid, financial assistance and other social services as well as integration services that are appropriate to their age and maturity. In accordance with section 26 of the Act on the Integration of Immigrants and Reception of Asylum Seekers, all minors shall be appointed a guardian who accompany the child throughout the entire process. See also Q.12.C.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

According to section 25e, there is to be established a multidisciplinary team to assist the director of the reception centre and assess the needs of the victim of trafficking. Among others, the team shall hear child protection specialists in order to make decisions on appropriate services and other measures.

The age and maturity of the minor is taken into consideration when deciding on whether or not the victim is in a particularly vulnerable position deserving permanent residence permit. Minors are thus not categorically issued with a permanent residence permit or freed from the requirement to cooperate with the authorities. (Rapporteur: It can be maintained that the requirement to cooperate with the authorities violates the United Nations Child Convention.) According to DOI, the requirement of cooperation with the authorities might, however, be - depending on the age and maturity of the minor - unreasonable.
In accordance with the Government proposal (32/2006) unaccompanied minor might be in a particularly vulnerable position if his or her guardians (parents) can not be located or traced or if the guardians themselves are involved in trafficking of the minor. It has been suggested that conditions in the country of origin should be taken into consideration while deciding between temporary and permanent residence permit. As the situation is unclear, the first two minors were recommended to seek asylum instead of applying for a residence permit. See also Q.12.A.

**Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [x] No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Only victims who hold permanent residence permit have access to the educational system under the same conditions as nationals. If the residence permit is temporary, neither state nor municipalities have responsibility for ensuring victims of trafficking access to education. In practice, the municipalities have taken measures to ensure that all minors holding temporary residence permit have access to primary education. It depends on the result of negotiations carried out with the institutions in question whether the minor is allowed to pursue vocational education. Furthermore, minors holding only temporary residence permit are not entitled to a special educational assistance to cover extra costs resulting from the secondary education (books etc.).

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)**

- [x] Yes
- [ ] No

**Explanation:**

Special needs are taken into account and relevant services are arranged; relevant services are arranged and paid/reimbursed by the refugee reception centres. See Q.12.

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).**

Legal representatives are appointed to all unaccompanied minors.

The Aliens Act of Finland contains obligation to trace the parents or some other person responsible for the actual guardianship of the unaccompanied minor asylum seeker. Unaccompanied minor victims of trafficking are, however, not always asylum seekers. The Ministry is of the opinion that the norm is transposed through the general rules of the Aliens Act and the Administrative Law. See also Q.4.B.
Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Yes ☒ No ☐

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

According to section 79 of the Aliens Act, aliens who have been issued with a temporary residence permit under section 52a have a right to gainful employment. Furthermore, aliens who have been issued with a permanent or continuous residence permit on grounds other than employment or self-employment have the right to gainful employment. Thus, all holders of residence permit (temporary or continuous) issued under section 52a have access to the labour market and there is no additional criteria.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Yes ☒ No ☐

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Only victims holding a permanent residence permit have a guaranteed access to the employment services, vocational education, language courses etc. provided by state or municipalities. The limitation significantly hampers recovery and empowerment of victims holding only temporary residence permit. See Q.12.D. with regard to minors and their access to education.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Yes ☐ No ☒

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

As above. See also Q.12.D.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes    ☐ No

Explanation:
Theoretically, the access to work/the right to gainful employment is limited to the duration of the residence permit. However, in case the victim would file an application for renewal (before the expiration of the current residence permit) he/she would be (in practice) allowed to continue working while his/her application is being processed until there is a final decision on the matter (meaning that he/she could in practice continue working during the appeal process as well in case a negative decision was made on renewal).

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes    ☒ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

There did not exist such programme before.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes    ☒ No

Explanation:
There exists (since January 2007) a special system of victim assistance and some of the services aim at helping victims in their recovery of a normal social life and, thus, preventing re-victimisation and re-trafficking. System of victim assistance and recovery is incorporated in the Act of the Integration of Immigrants and Reception Asylum Seekers, meaning that reception centres take care of the administrative responsibility for the assistance of the victims. See also Q.34.

However, there are no special courses designed to improve victims' professional skills. Victims holding only temporary residence permit are not entitled to vocational training. Only victims who hold permanent residence...
permit have access to the educational system under the same conditions as nationals. There is no programme for safe return in place yet, although it has been under consideration in the inter-ministerial working group convening under the Ministry of Labour. According to the section 8a of the Act of the Integration of Immigrants and Reception Asylum Seekers, the victims of trafficking returning to their countries of origin are, however, entitled to a certain amount of money to cover, for example, their travel expenses. See also Q.13.B and Q.34.

**Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes  
- [ ] No

**Explanation:** There are no such programmes yet.

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

**In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes  
- [ ] No

**Explanation:**

The District Police has the authority to issue a new temporary residence permit. A victim of trafficking in human beings, who has been issued with a temporary residence permit, is issued with a new temporary residence permit if the requirements under which the alien was issued with his or her previous temporary residence permit are still met.

According to section 54 of the Aliens Act, a victim of trafficking who has been issued with a temporary residence permit is issued with a permanent residence permit after a continuous residence of two years in the country if the circumstances on the basis of which the alien was issued with the previous temporary permit are still met.

Furthermore, the possible existence of new grounds for residence, such as employment, are taken into consideration and a new residence permit can be issued on new grounds.

**Q.16.** Question regarding withdrawal of the residence permit:

**Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes  
- [ ] No
Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The general provisions in the Aliens Act concerning cancellation of residence permits apply to victims of trafficking (section 58). A fixed-term or permanent residence permit may be cancelled if false information on the alien’s identity or other matters relevant to the decision was knowingly given when the permit was applied for, or if information that might have prevented the issue of the residence permit was concealed. This rule seems to be more extensive than article 14 of the Directive and therefore problematic. A fixed-term residence permit may be cancelled if the grounds on which the permit was issued no longer exist.


Either the Directorate of Immigration or the District Police has the authority to withdraw the residence permit depending on which authority has issued the permit in question. According to sections 67, 68 and 210 of the Aliens Act, the Directorate of Immigration also has the right to decide on matters falling under the jurisdiction of the District Police. The victim would be given an opportunity to be heard in a matter relating to the withdrawal of his or her residence permit before making such a decision. A decision cancelling a residence permit can be appealed against.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

Finnish counter trafficking policies and activities have significantly improved in the last two years. In fact, trafficking in human beings was officially recognised as a problem only in March 2005, although new penal provisions on trafficking had entered into force in August 2004. International and European Union obligations to criminalise trafficking in human beings served as a primary rationale for the new penal provisions on trafficking; trafficking situation was considered only little and even today there is very limited knowledge on the factual trafficking situation in Finland. Limited knowledge on trafficking significantly hampers counter trafficking efforts. The National Plan of Action published in 2005 estimates that Finland is the country of destination or transit for hundreds of trafficking victims each year. More than three years after the penal provisions have entered into force only two one cases have been taken to the court. In the first case, only one of the fourteen plaintiffs was considered to be a victim of trafficking, other women were procured prostitutes. In the second case, the accused was regarded as guilty of facilitation of illegal immigration. The charge for trafficking in human beings was dismissed as there was no enough evidence on forced labour.

One of the greatest challenges for the Finnish counter trafficking activities and policies is the victim identification; it might be that a large number of victims do not contact authorities and remain therefore outside of legal and other protection systems/mechanisms. Although issue of trafficking has been amended into education programmes of many authorities, incl. border control authority and police, it seems that proper identification is still lacking. One reason for this might be negative and suspicious attitudes especially towards foreign prostitutes. Especially questionable in this regard is the section 148(1)(6) of the Aliens Act, under which an alien may be refused to enter the country if there are reasonable grounds to suspect that he or she may sell sexual services. Based on the information received from the NGOs, authorities refuse entry of foreign prostitutes also on other grounds, such as exceeding of visas, more often than before 1999 when the law was amended. In practice, the provisions of entry refusal might come into conflict with the provision on the reflection period if the authorities are not careful enough.
Indeed, according to the Government proposal it is essential that through issuing a residence permit the authority noted that the legislation on residence permit emphasises the priorities of law enforcement over those of victims; the system of victim assistance is constrained by the residence permit that victim has been issued with. It is to be authorities, programme will be developed in the near future. Furthermore, there is a need to create a programme for safe return. Based on the information received from the authorities, programme will be developed in the near future.

Therefore, it is needed to clarify policies and practices in this regard: when the situation/person in question should raise a doubt of trafficking? At this stage, the threshold should be low; it should be possible to grant services and reflection period also to the borderline cases (trafficking vs. "trafficking-kind of crime"). The reflection period can be used for purposes to carry out the necessary identification of the victims of trafficking. With regard to the residence permit, the threshold can and should be higher.

Another reason is certainly the fact that trafficking in human beings is closely connected with pandering, smuggling of migrants (criminalised as arrangement of illegal immigration) and extortion-kind work discrimination. It is difficult to distinguish between these crimes and acquire sufficient evidence on crime of trafficking. In practice, it has been and will be difficult to identify victims of trafficking as it is difficult to estimate which crimes constitute an offence of “trafficking in human beings” according to the Penal Code. It is probable that few cases will be investigated as trafficking and even fewer will be charged as trafficking. Furthermore, Finland is a transit country; at this stage it is often very difficult to obtain evidence on the purpose of exploitation in the country of destination. Based on the first trafficking court case, it seems that the new provisions on trafficking in the Penal Code are interpreted in a narrow and restricted way; trafficking seems to become fulfilled only in very stereotyped cases. As a result, there might not be much use for the new provisions of the Aliens Act or Act on the Integration of Immigrants and Reception of Asylum Seekers.

Currently, the system of victim assistance is directed only to the victims of trafficking of trafficking. As also presumed victims of trafficking are entitled to services, it should be of no importance whether there is positive proof on trafficking in the beginning of crime investigation. It is still unclear how authorities will proceed if suspected trafficking case turns to be smuggling or pandering case in the course of crime investigation; when and how these persons will be removed from the assistance system and especially how it will be prevented that these persons do not end up in exploitative conditions afterwards?

In addition, it is clear that victims of certain other serious crimes might be in need of assistance and services as well (e.g. smuggled migrants or prostitutes having faced violence or threat of violence). Therefore, it might be appropriate to consider whether the system of victim assistance should be reformulated in order to cover wider group of foreign crime victims. Enlargement of the system of victim assistance would, however, require more funds, which is difficult as there is no specifically defined funding for the system; services are covered from the general budget of the reception centres, and if the victim is issued with a continuous residence permit, costs resulting from the services are on the responsibility of municipalities. With regard to costs arising from the services, victims of trafficking holding a continuous residence permit are equated with refugees (Aliens Act 52a(2) and 54(5)). Furthermore, in case of possible enlargement it may turn out to be even more questionable that the system of victim assistance is administered by the refugee reception centres; asylum seekers and victims of serious crimes are two different groups of people requiring often different kind of treatment. As regards serious crimes, security of personnel in the refugee reception centres may also become a question that needs more attention than before.

The residence permit under section 52a of the Aliens Act is only granted for the victims of trafficking in human beings. Residence permit is thus not grantable for the witnesses of trafficking crime or for the victims of other serious crimes even though those witnesses and victims might be in need of protection as well. These issues and the improvement of witness protection in general has, recently, attracted more attention. Currently, in trafficking cases the system of victim assistance can be and has been used as a kind of "witness protection system" but it seems that a separate protection system for witnesses of some serious crimes may be useful. With regard to the residence permit, it seems that the new Government of Finland has adopted a quite liberal view on foreign crime victims and their residence in the country.

Furthermore, there is a need to create a programme for safe return. Based on the information received from the authorities, programme will be developed in the near future.

The system of victim assistance is constrained by the residence permit that victim has been issued with. It is to be noted that the legislation on residence permit emphasises the priorities of law enforcement over those of victims; indeed, according to the Government proposal it is essential that through issuing a residence permit the authority will receive significant information on the crime. This emphasis might seriously hamper the assistance of victims and questions also the starting point on the human rights based approach to trafficking adopted in the National Plan on Action in 2005. This far all victims of trafficking who have been assisted have consented to cooperate with the authorities. The assisted victims have already had some kind of a permit. Nevertheless, it might be that a large number of victims of trafficking who are afraid of reprisals or who are for some other reason unwilling/unable to cooperate with the authorities remain outside the system of victim assistance and other support. In other words, there exists a more or less appropriate assistance system for the victims of trafficking but only few of them are able or willing to take advantage of the provided services and support.

NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING 246
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New special provisions adding the status of a victim of trafficking in human beings among the grounds on which a residence permit may be issued is hoped to promote the protection of the victims and increase the awareness of the phenomenon.</td>
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<tr>
<td>It seems, however, that application of the new provisions will remain rather exceptional. Reasons for this have been dealt with in earlier Parts of the Questionnaire. All in all, it seems reasonable to suspect that trafficking in human beings will be a rare indictment if the threshold for its fulfilment will be as high as the first court case suggests.</td>
<td></td>
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</tr>
<tr>
<td>It has been argued that without the Directive Finland might had adopted more favourable system for victims; indeed, during the legislative process authorities resorted to the Directive if they wished to make legislation stricter.</td>
<td></td>
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</tr>
</tbody>
</table>

Explain the situation before transposition

Although the Aliens Act in its previous form did not contain special provisions for the protection of victims of trafficking, a residence permit could have been issued for such a victim, if the person in question was in need of international protection, or on compassionate grounds. These options were not used, however.
Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation after transposition</td>
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<tr>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
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<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
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</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31. B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO
Q.31.C.  If yes, give some of examples:

- 

Q.31.D.  If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

- 

Q.32  Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION OF APPEAL COURTS</th>
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<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOI has issued a victim of trafficking with one continuous residence permit in 2006. As the decision is confidential, no other information can be given (Act on Aliens Register section 11 and Act on the Openness of Government Activities section 24(1)(24)).</td>
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</table>

Table 2

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Border control authority has issued a presumed victim of trafficking with one reflection period of two months in 2007. As the decision is confidential, no other information can be given (Act on Aliens Register section 11).</td>
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</tbody>
</table>
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

- 

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment of the needs of starting and ending of assistance as well as screening of needed services and means of providing assistance.</td>
<td>Decisions concerning safety arrangements (incl. risk assessments), accommodation and provided services are made by a multidisciplinary team, consisting of at least representatives from police, border control authority as well as experts in social welfare and health care. If needed the team will hear also experts in issues such as child protection, health and safety at work and mental health. In addition, the team can hear other relevant actors in the field of anti-trafficking, such as municipalities and trade organisations. Directors of the reception centres gather the multidisciplinary team for a meeting when needed. The multidisciplinary team enables flexible flow of information and communication between authorities.</td>
</tr>
<tr>
<td></td>
<td>It is somewhat strange that individual cases are dealt with in Oulu and Joutseno without almost any link to the inter-ministerial steering group convening under the Ministry of Labour. It has been brought out that the link should be created for example by establishing an operational working group under the steering group so that the steering group would be able to monitor</td>
</tr>
</tbody>
</table>
and influence on the decision-making in the multidisciplinary teams.

It is also worrying that there is uncertainty whether the decisions made by the directors of the reception centres in Oulu and Joutseno are subjects of appeal. However, this to be clarified in the near future.

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
1. NORMS OF TRANSPARATION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☑ a text already adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE:</td>
<td>18 mars 2003</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>Loi n° 2003-239 (NOR : INTX0200145L)</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>20 mars 2003</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>articles L.316-1 et L.316-2 du CESEDA</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>JORF du 19 mars 2003 page 4761</td>
</tr>
<tr>
<td>LEGAL NATURE:</td>
<td>X LEGISLATIVE</td>
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</table>

Table 2

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<td>DATE:</td>
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</tr>
<tr>
<td>NUMBER:</td>
<td>2006-911 (NOR: INTX0600037L)</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>25 juillet 2006</td>
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<tr>
<td>PROVISIONS CONCERNED :</td>
<td>article L.316-1 et L.316-2 du CESEDA</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>JORF, 25 juillet 2006 p. 11047</td>
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<tr>
<td>LEGAL NATURE:</td>
<td>X LEGISLATIVE</td>
</tr>
</tbody>
</table>
Table 3

This table is about: a text already adopted

**TITLE:** Décret relatif à l'admission au séjour, à la protection, à l'accueil et à l'hébergement des étrangers victimes de la traite des êtres humains et du proxénétisme et modifiant le CESEDA

**DATE:** 13 septembre 2007

**NUMBER:** Décret n° 2007-1352

**DATE OF ENTRY INTO FORCE:** 15 septembre 2007

**PROVISIONS CONCERNED:** Article R 316-1 à R 316-10 du CESEDA

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** JORF 15 septembre 2007

**LEGAL NATURE:**

REGULATION

Table 4

Q.1.B Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

Table 1

This table is about: a text already adopted

**TITLE:** Circulaire du ministre de l'Intérieur sur les conditions d'examen des demandes d'admission au séjour déposées par des ressortissants étrangers en situation irrégulière dans le cadre des dispositions du code de l'entrée et du séjour des étrangers et du droit d'asile.

**DATE:** 31 octobre 2005

**NUMBER:** NOR/INT/05/00097/C

**DATE OF ENTRY INTO FORCE:** 31 octobre 2005

**PROVISIONS CONCERNED:**

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE:**

CIRCULAR OR INSTRUCTIONS
Table 2

This table is about: ☑ a text already adopted
TITLE: décret fixant le montant de l'allocation temporaire d'attente

DATE: 13 novembre 2006
NUMBER: n° 2006-1381
DATE OF ENTRY INTO FORCE: 15 novembre 2006

PROVISIONS CONCERNED:
(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: JORF du 15 novembre 2006

LEGAL NATURE (please tick the correct box):

☑ REGULATION

Table 3

This table is about: ☑ a text already adopted
TITLE: Code de l'Action sociale et des familles

DATE: 31 octobre 2005
NUMBER: NOR/INT/05/00097/C
DATE OF ENTRY INTO FORCE: 31 octobre 2005

PROVISIONS CONCERNED:
(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL:

LEGAL NATURE:
☑ CIRCULAR OR INSTRUCTIONS

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
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<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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<table>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Autorité informant l'étranger de la possibilité d'être admis au séjour</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministère de l'Intérieur / Ministère de la défense</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Police nationale / Gendarmerie</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

**Table 2**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Délivrance de la carte de séjour</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministère de l'Immigration, de l'intégration, de l'identité nationale et du co-développement</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Direction des Libertés publiques et des Affaires juridiques Sous direction des Etrangers et de la circulation transfrontière</td>
</tr>
<tr>
<td>OTHER LEVEL OF</td>
<td>Préfet</td>
</tr>
</tbody>
</table>
ADMINISTRATION:  
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)  

Le Préfet est le représentant de l'Etat au niveau du département et, à ce titre, il est en charge de l'application du droit des étrangers

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States *shall* apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA17).

According to the optional provision in article 3(2) the Member States *may also* apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC18).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [x] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

Le droit français a précédé l'adoption de la directive 2004/81 en mettant en place en 2003 un dispositif spécifique visant à protéger de l'éloignement les étrangers victimes de la traite des êtres humains à la condition qu'ils témoignent contre les auteurs de ces infractions.

La loi du 18 mars 2003 relative à la sécurité intérieure a donc anticipé les dispositions de la directive 2004/81 en introduisant le principe de l'octroi d'une autorisation de séjour temporaire dont bénéficierait l'étranger victime de la traite d'êtres humains. La loi française restreint son champ d'application à l'hypothèse de la traite des êtres humains et n'utilise pas l'hypothèse optionnelle de l'article 3 §2 de la directive 2004/81.

17 Read the Framework decision 2002/629/JHA at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629 &model=guichett
18 Read the Directive 2002/90/EC at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0090 &model=guichett
Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

La définition de la traite des êtres humains en droit français est fixée par l'article L.225-4-1 du Code pénal tel qu'il résulte de l'article 32 de la loi 2003-239 du 18 mars 2003. Cet article indique que "la traite des êtres humains est le fait, en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage, de recruter une personne, de la transporter, de la transférer, de l'héberger ou de l'accueillir, pour la mettre à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre cette personne des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre cette personne à commettre tout crime ou délit".

La traite des êtres humains est punie de sept ans d'emprisonnement et de 150 000 Euros d'amende.

La transposition de la décision-cadre a été opérée en droit français par la loi 2003-239 qui donne de la traite des êtres humains une définition conforme à la décision.
cadre dans la mesure où elle s'inspire de l'article 3 du protocole additionnel à la convention des Nations-Unies contre le crime transnational organisé, ratifiée en vertu la loi 2002-1041 du 6 août 2002. La définition française a simplement écarté la mention du "consentement" qui n'a pas vocation à jouer en droit français.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of "an action to facilitate illegal immigration":

Is the definition of "an action to facilitate illegal immigration" by national norms of transposition in your Member State identical with the definition of "an action to facilitate illegal immigration" in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Cet article n'est pas transposé en droit français.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

L'article L.316-1 du CESEDA mentionne "l'étranger" sans aucune restriction qui soit liée à l'âge ou au sexe de la victime concernée.
De plus, l'article R 316-10 du CESEDA qui a été introduit par le décret n° 2007-1352 prévoit les situations impliquant des mineurs. Cet article indique que "lorsque la victime des infractions mentionnées à l'article L 316-1 est mineure, le service de police ou de gendarmerie informe le procureur de la République qui détermine les mesures de protection appropriées à la situation de ce mineur".

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:
Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑️ All minors

☐ Minors, for which the following criteria are fulfilled:

Explanation:

L'article R 316-10 mentionne le "mineur" sans faire référence à un quelconque critère.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’:

La publication et l'entrée en vigueur récentes du décret ne permettent pas de disposer de cette information.

‘An action to facilitate illegal immigration’ (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

L'article R 316-1 du CESEDA tel que fixé par le décret n° 2007-1352 prévoit que cette information est fournie par la police nationale ou la gendarmerie.
Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☒ Both orally and in writing

Explanation:

L'article R 316-1, 3°), 3ème et 4ème alinéas indiquent :
"ces informations sont données dans une langue que l'étranger comprend et dans des conditions de confidentialité permettant de le mettre en confiance et d'assurer sa protection.
Ces informations peuvent être fournies, complétées ou développées auprès des personnes intéressées par des organismes de droit privé à but non lucratif, spécialisés dans le soutien aux personnes prostituées ou victimes de la traite des êtres humains, dans l'aide aux migrants ou dans l'action sociale, désignés à cet effet par le ministre chargé de l'action sociale".

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Voir supra

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

En raison de l'adoption récente du décret (septembre 2007), l'évaluation de l'application de ces règles est difficile. Voir supra

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.
Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?)

L'article R 316-1, 3°) du CESEDA prévoit que le service de police ou de gendarmerie informe également l'étranger qu'il peut bénéficier d'un délai de réflexion de trente jours, dans les conditions prévues à l'article R. 316-2 du présent code, pour choisir de bénéficier ou non de la possibilité d'admission au séjour (…)

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:**

L'article R 316-2, 1er alinéa, dernière phrase, précise que pendant le délai de réflexion, aucune mesure d'éloignement ne peut être prise à l'encontre de l'étranger, ni exécutée.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, which are the criteria?)

L'article R 316-2, 2ème alinéa, prévoit que " le délai de réflexion peut, à tout moment, être interrompu et le récépissé retiré par le préfet territorialement compétent, si l'étranger a, de sa propre initiative, renoué un lien avec les auteurs des infractions mentionnées au premier alinéa de l'article R. 361-1 du présent code, ou si sa présence constitue une menace grave pour l'ordre public"

Le décret 2007-352 ne transpose pas l'ensemble des conditions requises par la directive. En effet, le droit français prévoit seulement l'initiative soit personnelle sans préciser que le caractère actif et volontaire de l'action de l'étranger comme le précise l'article 6, paragraphe 4.
Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

L'autorité compétente est le préfet territorialement compétent.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period. Le décret n'établit pas de procédure particulière. Il ndique qimplemment que le préfet peut retirer le récépissé.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Concernant le délai de réflexion, une période de trente jours apparaît raisonnable.

La nouveauté du dispositif en droit français ne permet pas de porter une évaluation sur la pratique.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>Yes, in cash  ☒</td>
</tr>
</tbody>
</table>

Explanation:

Conformément à l'article R 316-6 du CESEDA l'étranger bénéficie pendant le délai de réflexion :
- du droit à l'exercice d'une activité professionnelle et à la formation professionnelle ;
- de l'allocation temporaire d'attente
- d'un accompagnement social destiné à l'aider à accéder aux droits et à retrouver son autonomie
- en cas de danger, d'une protection policière pendant la durée de la procédure pénale.
After the issue of the residence permit

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

Explanation:

Cette situation est régulée par l'article R 316-7 du CESEDA qui indique que :
"la carte de séjour temporaire "vie privée et familiale" délivrée dans les conditions prévues à l'article R. 316-3 ouvre droit à l'exercice d'une activité professionnelle et à la formation professionnelle, en application des dispositions de l'article L. 316-1.

L'étranger détenteur de cette carte de séjour temporaire peut également bénéficier :
1° De l'ouverture des droits à une protection sociale, dans les conditions mentionnées à l'article L. 380-1 du code de la sécurité sociale ; si l'étranger ne remplit pas les conditions prévues par cet article, les soins qui lui sont délivrés sont pris en charge dans les conditions prévues au deuxième alinéa de l'article L. 251-1 du code de l'action sociale et des familles ;
2° De l'allocation temporaire d'attente mentionnée au II de l'article L. 351-9 du code du travail ;
3° D'un accompagnement social destiné à l'aider à accéder aux droits et à retrouver son autonomie, assuré par un des organismes mentionnés au dernier alinéa de l'article R. 316-1 du présent code ;
4° En cas de danger, d'une protection policière pendant la durée de la procédure pénale".

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Si l'étranger n'exerce pas une activité professionnelle comme la réglementation l'y autorise, une allocation temporaire d'attente lui est versée. En application du décret n° 2006-1381 du 13 novembre 2006, le montant journalier de l'allocation temporaire d'attente est fixé à 10,04 euros.

Les français qui n'exercent pas d'activité professionnelle peuvent bénéficier du revenu minimum d'insertion dont le montant s'élève à 440,86 euros pour une personne seule.

L'allocation temporaire d'attente est inférieure l'aide minimale garantie pour les français.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Cela est le cas dans la mesure où les personnes concernées perçoivent une aide financière et bénéficient en application de l'article R 316-8 du CESEDA de l'accès aux dispositifs d'accueil, d'hébergement et de logement temporaire.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

L'article R 316-6 prévoit que pendant le délai de réflexion, l'étranger bénéficie en cas de danger d'une protection policière, sans aller plus loin dans la précision.

After the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

L'article R 316-7 du CESEDA indique que pendant la durée de la procédure pénale, l'étranger bénéficie en cas de danger d'une protection policière, sans aller plus loin dans la précision.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

Pendant le délai de réflexion, et conformément à l'article R 316-1, 3°), du CESEDA les informations sont données dans une langue que l'étranger comprend et dans des conditions de confidentialité permettant de le mettre en confiance et d'assurer sa protection.
After the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

disposition n'a pas été explicitement transposée. Néanmoins, au cours de l'accompagnement social dont l'étranger peut bénéficier au titre de l'article R 316-7 du CESEDA, une assistance linguistique doit pouvoir être délivrée.

En outre, les dispositions communes applicables aux établissements d'action sociale et médico-sociale prévoient, au titre de l'article D.311-32 du Code de l'action sociale et de la famille, que " les représentants des personnes accueillies peuvent en tant que de besoin se faire assister d'une tierce personne ou d'un organisme aidant à la traduction afin de permettre la compréhension de leurs interventions".

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

Explanation:

Pendant le délai de réflexion, et conformément à l'article R 316-1, 3°), du CESEDA les informations sont données dans une langue que l'étranger comprend et dans des conditions de confidentialité permettant de le mettre en confiance et d'assurer sa protection.

Néanmoins, les dispositions communes applicables aux établissements d'action sociale et médico-sociale prévoient, au titre de l'article D.311-32 du Code de l'action sociale et de la famille que " les représentants des personnes accueillies peuvent en tant que de besoin se faire assister d'une tierce personne ou d'un organisme aidant à la traduction afin de permettre la compréhension de leurs interventions".

After the issue of the residence permit:

☐ Yes  ☒ No
Explanation:

Cette disposition n'a pas été explicitement transposée. Néanmoins, au cours de l'accompagnement social dont l'étranger peut bénéficier au titre de l'article R 316-7 du CESEDA, une assistance linguistique doit pouvoir être délivrée. Outre, les dispositions communes applicables aux établissements d'action sociale et médico-sociale prévoient, au titre de l'article D.311-32 du Code de l'action sociale et de la famille que "les représentants des personnes accueillies peuvent en tant que de besoin se faire assister d'une tierce personne ou d'un organisme aidant à la traduction afin de permettre la compréhension de leurs interventions".

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

L'article R 316-1 du CESEDA indique qu'au moment où les informations sont délivrées aux étrangers concernés, les autorités les informent de la possibilité d'obtenir une aide juridique pour faire valoir leur droit conformément à l'article 53-1 du Code de procédure pénale.

After the issue of the residence permit

☒ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Une loi du 13 juillet 1991 fixe les modalités de délivrance de l'aide juridictionnelle. L'aide juridictionnelle est attribuée aux personnes physiques dont les ressources sont insuffisantes pour faire valoir leurs droits en justice. Cette aide est totale ou partielle. L'article 3 de la même loi prévoit "Les personnes de nationalité étrangère résidant habituellement et régulièrement en France sont également admises au bénéfice de l'aide juridictionnelle"
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

L'article R 316-6 du CESEDA prévoit que pendant le délai de protection, les soins qui sont délivrés à l'étranger sont pris en charge au titre de l'aide médicale d'Etat conformément à l'article L 251-1 du Code de l'action sociale et des famille. Ce dernier prévoit que toute personne qui, ne résidant pas en France, est présente sur le territoire français, et dont l'état de santé le justifie, peut, par décision individuelle prise par le ministre chargé de l'action sociale, bénéficier de l'aide médicale de l'Etat.

After the issue of the residence permit

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

Cette situation est régie par l'article R 316-7, 1°) du CESEDA. Ainsi, l'étranger mis en possession d'une carte de séjour "vie privée et familiale" bénéficie de l'ouverture des droits à une protection sociale et s'il ne remplit pas les conditions requises de l'aide médicale d'Etat.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

La prise en charge sous couvert de l'aide médicale d'Etat comprend la couverture pour ce type de soutien.
After the issue of the residence permit

☑ Yes ☐ No

Explanation:

Lorsque les personnes sont mis en possession d'une carte de séjour temporaire portant la mention vie privée ou familiale elles peuvent être accueillies dans des dispositifs d'accueil, d'hébergement, de logement temporaire et de veille sociale pour les personnes défavorisées mentionnées dans le code de l'action sociale et des familles. Ces dispositifs prodiguent les soins appropriés aux personnes y accédant. Parmi ces dispositifs figurent :
- les établissements ou services comportant ou non un hébergement, assurant l'accueil, notamment dans les situations d'urgence, le soutien ou l'accompagnement social, l'adaptation à la vie active ou l'insertion sociale et professionnelle des personnes ou des familles en difficulté ou en situation de détresse (article L 312-1 du code de l'action sociale et des familles)
- les dispositifs de veille sociale chargés d'informer et d'orienter les personnes en difficulté. Ces dispositifs, établis dans chaque département, fonctionnent en permanence tous les jours de l'année et peuvent être saisis par toute personne, organisme ou collectivité. Ils ont notamment pour mission d'évaluer l'urgence de la situation de la personne ou de la famille en difficulté et de proposer une réponse immédiate en indiquant notamment l'établissement ou le service dans lequel la personne ou la famille intéressée peut être accueillie, et d'organiser sans délai une mise en œuvre effective de cette réponse, notamment avec le concours des services publics (article L 345-1 du code de l'action sociale et des familles)

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

☑ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

L'article L.316-1 du CESDA conditionne l'obtention d'un titre séjour par l'étranger au dépôt d'une plainte pénale contre une personne qu'il accuse d'avoir commis à son encontre les infractions visées aux articles 225-4-1 à 225-4-6 et 225-5 à 225-10 du code pénal ou à son témoignage dans une procédure pénale concernant une personne poursuivie pour ces mêmes infractions
L'article R 316-3 du CESEDA précise que "une carte de séjour temporaire portant la mention "vie privée et familiale" d'une durée minimale de six mois est délivrée par le préfet territorialement compétent à l'étranger qui satisfait aux conditions définies à l'article L. 316-1 et qui a rompu tout lien avec les auteurs présumés des infractions mentionnées à cet article".

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

En application de l'article R 316-3 du CESEDA la durée de validité de la carte de séjour temporaire portant la mention "vie privée et familiale" est d'une durée minimale de six mois.

**Q.11.C. When residence permit has expired, can it be renewed?** See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes

☐ No

**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

L'article R 316-3 indique que la carte de séjour temporaire est renouvelable pendant toute la durée de la procédure pénale, sous réserve que les conditions prévues pour sa délivrance continuent d'être satisfaites.

Les conditions du droit commun applicable au titre "vie privée et familiale" ont vocation à s'appliquer, sous réserve des conditions prévues par le décret à adopter sur le fondement de l'article L 316-2 du CESEDA.

**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Il n'y a pas de normes de transposition à ce sujet.
Q.12.B. Has your Member State extended the reflection period for minors?  
*See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: For how long?)

Il n'y a pas de normes de transposition à ce sujet.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:** (If yes, explain which measures are taken)

Cela ressort du nouvel article R 316-10 du CESEDA qui prévoit que lorsque la victime des infractions mentionnées à l'article L. 316-1 est mineure, le service de police ou de gendarmerie informe le procureur de la République qui détermine les mesures de protection appropriées à la situation de ce mineur.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Cela ressort de l'article L 131-1, premier alinéa, du Code de l'éducation au terme duquel "L'instruction est obligatoire pour les enfants des deux sexes, français et étrangers, entre six ans et seize ans".
Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Cela découle du nouvel article R 316-10 du CESEDA qui prévoit que lorsque la victime des infractions mentionnées à l'article L. 316-1 est mineur, le service de police ou de gendarmerie informe le procureur de la République qui détermine les mesures de protection appropriées à la situation de ce mineur.

**Work, vocational training and education**

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

L'article L 316-1 du CESEDA prévoit la délivrance d'une carte de séjour "vie privée et familiale" à la victime. L'article L.316-1 spécifie que la carte de séjour temporaire "vie privée et familiale" donne droit à l'exercice d'une activité professionnelle. Cela est confirmée par l'article R 316-1 du CESEDA. Au terme de l'article L 313-12, alinéa 1er, du CESEDA, la carte vie privée et familiale "donne droit à l'exercice d'une activité professionnelle".

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Le décret n° 2007-1352 introduisant les articles R 316-1 à R 316-10 dans le CESEDA prévoit cette possibilité mais seulement pour les mineurs âgés de moins de 16 ans (article R 316-3, 2ème alinéa). Ces derniers peuvent demander la
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes   ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Cela correspond aux missions dédiées aux centres d'hébergements et de réinsertion sociales au titre de l'article L 311-1 du Code de l'action social et des familles qui fixe les missions attribuées aux établissements sociaux et médicaux – sociaux. L'action de ces derniers couvre en particulier des :
- Actions éducatives, médico - éducatives, médicales, thérapeutiques, pédagogiques et de formation adaptées aux besoins de la personne, à son niveau de développement, à ses potentialités, à l'évolution de son état ainsi qu'à son âge ;
- Actions d'intégration scolaire, d'adaptation, de réadaptation, d'insertion, de réinsertion sociales et professionnelles, d'aide à la vie active, d'information et de conseil sur les aides techniques ainsi que d'aide au travail ;
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

L'article L 316-1 du CESEDA prévoit la carte délivrée au ressortissant de pays tiers lui ouvre droit à l'exercice d'une activité professionnelle. A contrario, en l'absence de "cette carte de séjour temporaire", il ne peut exercer une activité professionnelle. Parallèlement, le séjour dans le centre d'hébergement et de réinsertion sociale est conditionné par le statut de "victime de la traite" et la carte délivrée à cet effet. La perte du statut entraîne la perte du droit à être hébergé dans cette structure et par conséquent le bénéfice de la formation professionnelle qui y est dispensée.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Lorsque le ressortissant de pays tiers intègre un centre d'hébergement et de réinsertion sociale, conformément à l'article L 345-1 du Code de l'action sociale et des familles, il bénéficie de programmes de ce type. Cela relève des missions affectées à ces centres, telles que définies par l'article L 311-1 du même Code. Cet article indique :
"L'action sociale et médico-sociale, au sens du présent code, s'inscrit dans les missions d'intérêt général et d'utilité sociale suivantes :
1° Evaluation et prévention des risques sociaux et médico-sociaux, information, investigation, conseil, orientation, formation, médiation et réparation ;
2° Protection administrative ou judiciaire de l'enfance et de la famille, de la jeunesse, des personnes handicapées, des personnes âgées ou en difficulté ;
3° Actions éducatives, médico-éducatives, médicales, thérapeutiques, pédagogiques et de formation adaptées aux besoins de la personne, à son niveau de développement, à ses potentialités, à l'évolution de son état ainsi qu'à son âge ;
4° Actions d'intégration scolaire, d'adaptation, de réadaptation, d'insertion, de réinsertion sociales et professionnelles, d'aide à la vie active, d'information et de conseil sur les aides techniques ainsi que d'aide au travail ;
5° Actions d'assistance dans les divers actes de la vie, de soutien, de soins et d'accompagnement, y compris à titre palliatif ;
6° Actions contribuant au développement social et culturel, et à l'insertion par l'activité économique.
Ces missions sont accomplies par des personnes physiques ou des institutions sociales et médico-sociales.
Sont des institutions sociales et médico-sociales au sens du présent code les personnes morales de droit public ou privé gestionnaires d'une manière permanente des établissements et services sociaux et médico-sociaux mentionnés à l'article L. 312-1”.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: Le décret d'application ne spécifie pas cette condition.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

Cela découle de l'article R 316-3 du CESEDA qui prévoit que la carte de séjour temporaire est renouvelable pendant toute la durée de la procédure pénale mentionnée à l'alinéa précédent, sous réserve que les conditions prévues pour sa délivrance continuent d'être satisfaites.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Cette question est réglée par l'article R 316-4 du CESEDA qui indique :
La carte de séjour temporaire "vie privée et familiale délivrée dans les conditions prévues à l'article R. 316-3 peut faire l'objet d'une décision de retrait dans les cas suivants :
1° Si son titulaire a, de sa propre initiative, renoué un lien avec les auteurs des infractions mentionnées au premier alinéa de l'article R. 361-1 ;
2° Si le dépôt de plainte ou le témoignage de l'étranger est mensonger ou non fondé ;
3° Si la présence de son titulaire constitue une menace pour l'ordre public.


Le retrait de la carte de séjour temporaire est opéré par l'autorité préfectorale.
**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Non

**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

La transposition de la directive n'a donné lieu à aucun débat public particulier dans la mesure où sa philosophie était déjà entrée en droit positif.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>La transposition tardive de la directive par le décret n° 2007-1352 offre un dispositif complet de protection des victimes de la traite</td>
<td>☑ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>☑ Less favourable than the Directive</td>
</tr>
<tr>
<td>(To evaluate the impact of the directive, please</td>
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</table>
consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)

<table>
<thead>
<tr>
<th>previous national rules</th>
<th>In line with the directive</th>
</tr>
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<tbody>
<tr>
<td>Status quo</td>
<td>More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32 Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.
When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE: 2 février 2007</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>2 février 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>Tribunal correctionnel de Bobigny</td>
<td>2 février 2007</td>
<td>En condamnant les organisateurs ou les intermédiaires d'un trafic de bébés bulgares ainsi que la quarantaine de parents acheteurs, le tribunal a rappelé que &quot;la personne humaine ne peut faire l'objet d'un commerce&quot; et consacre l'entrée dans la jurisprudence du délit de &quot;traite d'être humain&quot;, introduit dans le code pénal par la loi du 18 mars 2003</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

**Explanation:** (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

**Explain the difficulties that this could create:**
Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

Le tribunal correctionnel de Bobigny a rendu un jugement, le 2 février 2007, consacrant l'entrée dans la jurisprudence française du délit de "traite d'être humain" introduit par la loi du 18 mars 2003.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Germany

by

Kay Hailbronner
Professor, Dr. jur., Director of the Center for International and European Law on Immigration and Asylum

and

Simone Alt, Ass.iur.19
Researcher
Simone.Alt@uni-konstanz.de
May 22, 2007
Date of the latest change: 12 November, 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se

19 This report has been elaborated and drafted by the aforementioned member of the German research group and Prof. Dr. Kay Hailbronner. Please contact the indicated researcher who has worked on this report in case of any requests during the study.
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

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<th>a text which is still a project to be adopted</th>
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<tbody>
<tr>
<td><strong>TITLE</strong>: Residence Act as amended by &quot;Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union&quot; (Act on Transposition of EU-Directives on Issues of Residence and Asylum)</td>
<td></td>
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<tr>
<td><strong>DATE</strong>: 19 August 2007</td>
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<tr>
<td><strong>NUMBER</strong>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 28 August 2007</td>
<td></td>
<td></td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong>: Section 25 paragraph 4a (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL</strong>: BGBl. I 2007 S. 1970</td>
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<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
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<td>REGULATION</td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 28 August 2007</td>
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</tbody>
</table>
PROVISIONS CONCERNED: Section 26 paragraph 1 sentence 3
(for example if the norm also pursues other objectives than the
transposition of the concerned directive)

REFERENCES OF PUBLICATION

LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: Residence Act as amended by "Gesetz zur Umsetzung aufenthalts- und
asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives
on Issues of Residence and Asylum)

DATE: 19 August 2007

NUMBER:

DATE OF ENTRY INTO FORCE: 28 August 2007

PROVISIONS CONCERNED: Section 50 paragraph 2a
(for example if the norm also pursues other objectives than the
transposition of the concerned directive)

REFERENCES OF PUBLICATION

LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 4

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: Residence Act as amended by "Gesetz zur Umsetzung aufenthalts- und
asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives
on Issues of Residence and Asylum)

DATE: 19 August 2007

NUMBER:

DATE OF ENTRY INTO FORCE: 28 August 2007

PROVISIONS CONCERNED: Section 52 paragraph 5
(for example if the norm also pursues other objectives than the
transposition of the concerned directive)

REFERENCES OF PUBLICATION

LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
**Table 5**

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<td><strong>TITLE</strong>: Asylum Seekers Benefits Act as amended by &quot;Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union&quot; (Act on Transposition of EU-Directives on Issues of Residence and Asylum)</td>
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<td><strong>NUMBER</strong>:</td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 28 August 2007</td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong></td>
<td>Section 1 paragraph 1 number 3</td>
<td></td>
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<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION</strong></td>
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<tr>
<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
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<tr>
<td>☒ LEGISLATIVE</td>
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<tr>
<td>☐ REGULATION</td>
<td></td>
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</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Q.1.B.**

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

| **TITLE**: Residence Act as amended by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) |
| **DATE**: 19 August 2007 |
| **NUMBER**: |
| **DATE OF ENTRY INTO FORCE**: 28 August 2007 |
| **PROVISIONS CONCERNED** | Section 72 paragraph 6 |
| (for example if the norm also pursues other objectives than the transposition of the directive) |
| **REFERENCES OF PUBLICATION** | |
| **LEGAL NATURE** (indicate by ticking the correct box): |
| ☒ LEGISLATIVE |
| ☐ REGULATION |
| ☐ CIRCULAR OR INSTRUCTIONS |
Table 2

| TITLE | Residence Act as amended by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) |
| DATE | 19 August 2007 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE | 28 August 2007 |
| PROVISIONS CONCERNED | Section 87 paragraph 5 (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | BGBl. I 2007 S. 1970 |
| LEGAL NATURE (indicate by ticking the correct box): | ☑️ LEGISLATIVE |
| | ☐ REGULATION |
| | ☐ CIRCULAR OR INSTRUCTIONS |

Table 3

| TITLE | Residence Act as amended by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) |
| DATE | 19 August 2007 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE | 28 August 2007 |
| PROVISIONS CONCERNED | Section 90 paragraph 4 (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | BGBl. I 2007 S. 1970 |
| LEGAL NATURE (indicate by ticking the correct box): | ☑️ LEGISLATIVE |
| | ☐ REGULATION |
| | ☐ CIRCULAR OR INSTRUCTIONS |

Table 4

| TITLE | Employment Procedure Regulation as amended by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) |
| DATE | 19 August 2007 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE | 28 August 2007 |
| PROVISIONS CONCERNED | Section 6a (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | BGBl. I 2007 S. 1970 |
| LEGAL NATURE (indicate by ticking the correct box): | ☑️ LEGISLATIVE |
| | ☐ REGULATION |
| | ☐ CIRCULAR OR INSTRUCTIONS |
| TITLE: Code of Criminal Procedure | DATE: April 7, 1987; last amendment relating to the provisions concerned: February 11, 2005 |
| PROVISIONS CONCERNED: Section 68b n°2 and Section 397a para. 1 (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 1987 S. 1074, S. 1319; BGBl. 2005 I S. 239 |
| LEGAL NATURE (indicate by ticking the correct box):  |
| [ ] LEGISLATIVE  |
| [x] REGULATION  |
| [ ] CIRCULAR OR INSTRUCTIONS  |

| TITLE: Asylum Seekers Benefits Act | DATE: August 5, 1997; amendment of Sec. 6: March 14, 2005 |
| PROVISIONS CONCERNED: Section 1, 3, 4 and 6 (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. 1997 I S. 2022; amendment of Sec. 6: BGBl. 2005 I S. 721 |
| LEGAL NATURE (indicate by ticking the correct box):  |
| [ ] LEGISLATIVE  |
| [x] REGULATION  |
| [ ] CIRCULAR OR INSTRUCTIONS  |

| PROVISIONS CONCERNED: Section 42, 50, 52, 55-58 (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. 1990 I S. 1163 |
| LEGAL NATURE (indicate by ticking the correct box):  |
| [ ] LEGISLATIVE  |
| [x] REGULATION  |
| [ ] CIRCULAR OR INSTRUCTIONS  |
Table 5

| TITLE: Preliminary Guidelines of the Federal Ministry of the Interior concerning the Residence Act and the Freedom of Movement Act/EU, para. 60.7.1 referring to the version of the Residence Act before the entry into force of the amendments to the Residence Act by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) on August 28, 2007 |
| Please note that the guidelines are not legally binding as they have been adopted without the consent of the Bundesrat (Legislative representation of the Länder (Components) at federal level). The components are responsible for the organisation of the administration and thus for implementing federal laws. Consequently, they may adopt administrative instructions. However, Art. 84 (2) of the Federal Constitution gives an additional and superior competence to the federal government to adopt general administrative instructions for the implementation of federal laws. These general administrative instructions must not be adopted without the consent of the Bundesrat (Legislative representation of the Länder (Components) at federal level) |
| DATE: December 22, 2004 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

To our knowledge at least the following Länder have issued instructions which are legally binding: (1) Instructions of Saxony-Anhalt- 42/24-12231 of August 3, 2006 (Instructions Saxony-Anhalt), (2) Indices of Bremen on the provisional implementation of the directive 2004/81/EC of August 14, 2006 (Instructions Bremen), (3) Instructions of Saxony of September 29, 2006 (Instructions Saxony). These instructions prevent the administrative bodies from infringing Directive 2004/81/EC until the entry into force of the amendments to the Residence Act by "Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" (Act on Transposition of EU-Directives on Issues of Residence and Asylum) (28 August 2007).
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: yes</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS: no</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY: Art. 74 Nr. 4 of the Constitution confers the legislative competence to the federal level.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: yes</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS: no</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY: Section 42 paragraph 2 Residence Act authorises the Federal Ministry of Labour and Social Affairs to adopt regulations providing the requirements and procedures in relation to an approval of the Federal Employment Agency in cases such an approval is necessary to grant a residence permit allowing employment.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: yes</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS: yes</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY: Components are responsible for the organisation of the administration and thus for implementing federal laws. Consequently, they may adopt administrative instructions. However, Art. 84 (2) of the Federal Constitution gives an additional and superior competence to the federal government to adopt general administrative instructions for the implementation of federal laws. These general administrative instructions must not be adopted without the consent of the Bundesrat (Legislative representation of the German Bundesländer (Components) at federal level).</td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>The Components (Bundesländer) are responsible for the practical implementation (Art. 83 of the Constitution). The Aliens Authorities of the Components are competent for the granting and the withdrawal of the residence permit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Aliens Authorities of the Components (district where the third-county national took up usual residence), Section 71 paragraph 1 Residence Act</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting of standards of living capable of ensuring the subsistence of the concerned third-country nationals</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Government of the Components (Bundesländer) determines the competent authority</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
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</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting of a residence permit to take up employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Aliens Authority needs approval of the Federal Employment Agency (regional office responsible for the district where employment shall be carried out) to grant a residence permit to take up employment (Section 39 paragraph 1 Residence Act)</td>
</tr>
</tbody>
</table>

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NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING

290
Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
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<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
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<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
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<tr>
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Table 5

<table>
<thead>
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<th>COMPETENCE CONCERNED:</th>
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<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
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<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>Table 1</th>
<th>MISSING TEXTS</th>
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<th>Table 4</th>
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<th>Table 5</th>
<th>MISSING TEXTS</th>
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<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5

According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the 'trafficking in human beings' (referring to Framework Decision 2002/629/JHA). According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of 'an action to facilitate illegal immigration' (referring to articles 1 and 2 of Directive 2002/90/EC).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

Section 25 paragraph 4a Residence Act only refers to third-country nationals who have been victims of a crime pursuant to Sections 232-233a Criminal Code. Sections 232-233a Criminal Code transpose the Council Framework decision 2002/629/JHA and thus include only offences related to "trafficking in human beings". There is no reference in Sec. 25 para. 4a Residence Act to Sections 95, 96 and 97 Residence Act which constitute the transposition of directive 2002/90 (28 November 2002) defining an action to facilitate illegal immigration.

---

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The wording of the definition of “trafficking in human beings” by the above mentioned national norms Sec. 232-233a Criminal Code is not identical with the definition of “trafficking in human beings” in the Framework Decision. The wording "payments or benefits are given or received to achieve the consent of a person having control over another person" is not included in Sec. 232-233a Criminal Code.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of "an action to facilitate illegal immigration":

Is the definition of "an action to facilitate illegal immigration" by national norms of transposition in your Member State identical with the definition of "an action to facilitate illegal immigration" in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The national norms of transposition are not applicable in cases of "an action to facilitate illegal immigration".

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults ☒ Both adults and minors

Explanation:

Pursuant to Sec. 25 para. 4a Residence Act, a residence permit is granted to a foreigner who is a victim of a crime pursuant to Sec. 232-233a Criminal Code. The term "foreigner" is defined in Sec. 2 para. 1 Residence Act as anyone who is not German within the meaning of Article 116 (1) of the German Constitution. Thus, a foreigner is every natural person who is no German national. Natural persons are persons who have the legal capacity by the completion of birth pursuant to Sec. 1 Civil Code. The term therefore includes adults as well as minors.
**Q.6.B.** Answer this question if the national norms of transposition are applicable only to adults: **What is the age of majority according to the national law of your Member State?**

The age of majority is:

**Q.6.C.** Answer this question if the national norms of transposition are applicable to minors as well: **Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?**

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [x] All minors

- [ ] Minors, for which the following criteria are fulfilled:
  - 
  - 
  - 
  - 
  - 

Explanation:

There is no limitation concerning Sec. 25 para. 4a Residence Act; Sec. 25 para. 4a Residence Act refers to foreigners pursuant to Sec. 2 para. 1 Residence Act and thus includes every natural person (see above Q.6.A).

**Q.7.** How many persons received residence permits under the national norms of transposition in your Member State in 2006?

**‘Trafficking in human beings’:** not available; entry into force of Sec. 25 para. 4a Residence Act only on August 28th 2007; however, pursuant to the Preliminary Guidelines of the Federal Ministry of the Interior concerning the Residence Act and the Freedom of Movement Act/EU, para. 60.7.1 (of December 22, 2004), Sec. 60 para. 7 Residence Act could be applied in case of victims of trafficking in human beings (thus a residence permit could be granted pursuant to Sec. 25 para. 3 Residence Act). The Instructions of Bremen on the provisional transposition of the directive 2004/81 of August 14th 2006 as well as the Instructions of Saxony and the Instructions of Saxony-Anhalt state the conditions which have to be met to grant a residence permit similar to those determined in the draft bill of the Federal Ministry of the Interior.

**‘An action to facilitate illegal immigration** (If applicable):

**Information given to the third-country nationals concerned**

**Q.8.** According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.
Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Pursuant to Sec. 50 para. 2a Residence Act, the Aliens Authority (public authority) is responsible for providing the information; the Aliens Authority can charge a NGO or other qualified associations to provide the relevant information; the responsibility stays with the Aliens Authority (cf. preamble of the Federal Ministry of the Interior, p.72).

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☒ Both orally and in writing

Explanation:

Sec. 50 para. 2a Residence Act only recently entered into force (28 August 2007); however, the Guidelines of the Länder like Bremen (on the provisional transposition of the directive 2004/81 of August 14th 2006) already state the duty to inform the persons concerned. There are many different institutions providing the relevant information so that it can only be assumed that the information is given both orally and in writing as it is not possible to ask each institution.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The relevant provisions have only been recently transposed (28 August 2007); thus, brochures etc. on these provisions are not yet available.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The relevant provisions have only been recently transposed (28 August 2007); thus, brochures etc. on these provisions are not yet available.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.
Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?)

The duration of the reflection period is at least one month pursuant to Sec. 50 para. 2a Residence Act. The Aliens Authority will set a time limit for the third-country national to leave the Federal territory when the Aliens Authority has notice of facts indicating that the third-country national could be a victim of trafficking in human beings. This time limit has to be fixed in a way that the third-country national can take an informed decision as to whether to cooperate with the competent authorities. Thus, the reflection period is linked to the time limit for the foreigner to leave the Federal territory. It is at the discretion of the Aliens Authority to fix a time limit for the third-country national to leave the Federal territory exceeding one month and thus to entitle the third-country national to a reflection period exceeding one month (see “at least one month”). NGOs like KOK (Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.) and Amnesty International argue that a general reflection period of one month would be too short and could not fulfill the needs of traumatised persons and recommend a reflection period of three months. They refer to the Report of the Experts Group on Trafficking in Human Beings (December 22, 2004, para. 5.3).

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

The reflection period is linked to the time limit for the third-country national to leave the Federal territory (Sec. 50 para. 2a Residence Act). Thus, the enforcement of expulsion orders is not possible until the time limit for the foreigner to leave the Federal territory and at the same time the reflection period has ended.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

Sec. 50 para. 2a Residence Act states that the time limit for the foreigner to leave the Federal territory (and thus the reflection period) can be terminated, shortened or not set at all n° 1 if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany or...
Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Pursuant to Sec. 50 para. 2a Residence Act, Section 71 paragraph 1 Residence Act the Aliens Authority is competent to take the decision to terminate the reflection period. Pursuant to Art. 84 para. 1 of the German Constitution, the Components (Bundesländer) determine the competent Aliens Authority (in general, the Aliens Authority of the district where the third-country national took up usual residence is competent).

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Pursuant to Sec. 72 para. 6 Residence Act, the Aliens Authority - before taking the decision whether to terminate or not the reflection period - has to involve the competent public prosecutor's office or the competent criminal court or in case the Aliens Authority has no information about the competent public prosecutor’s office the police office being competent for the district the third country national took his or her residence. Pursuant to Sec. 87 para. 5 nº 1 Residence Act, the competent public prosecutor’s office, the competent criminal court and the competent police office have to inform the Aliens Authority ex officio of the circumstances justifying a termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

As the above mentioned norms have only been recently transposed in domestic law (28 August 2007), it is not yet possible to examine the practice and indicate any known problems.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes, in cash  ☒ Yes, in kind  ☐ No
Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 5 Asylum Seekers Benefits Act in case the obligation to leave the Federal territory is unappealable, i.e. if the foreigner has entered the Federal territory unlawfully (Sec. 58 para. 2 Residence Act). Pursuant to Sec. 3 Asylum Seekers Benefits Act beneficiaries receive the necessary benefits for accommodation, heating, food, clothing, hygiene needs, medical care and personal needs in kind. In addition, they receive a limited support in cash (pocket money).

After the issue of the residence permit

☒ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 3 Asylum Seekers Benefits Act to persons who have been granted a residence title pursuant to Sec. 25 para. 4a Residence Act. Pursuant to Sec. 3 Asylum Seekers Benefits Act beneficiaries receive the necessary benefits for accommodation, heating, food, clothing, hygiene needs, medical care and personal needs in kind. In addition, they receive a limited support in cash (pocket money).

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The amount differs depending whether the beneficiary is accommodated in a reception center or not. In case the beneficiary is accommodated in a reception center, he or she receives support in cash until the age of fourteen 20,45 EUR, since the age of fifteen 40,9 EUR per month. In case the beneficiary is not accommodated in a reception center, 224,97 EUR for the head of the household, for other persons of the household until the age of seven 132,94 EUR, since the age of eight 178,95 EUR until the age of fourteen and since the age of fifteen 199,4 EUR each per month and plus necessary charges for accommodation, heating and household effects. In relation to the minimum amount of social aid there is a difference of 33%.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Yes, even if the amount is not the same as in cases of social aid, this is justified by the temporary nature of the residence.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No
Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Available are witness-protection programs, linked with the work of advisory centers for victims of trafficking. Pursuant to sec. 15a para. 1 sentence 6 Residence Act relating to the allocation to the reception centers of the Länder of foreigners who have entered the Federal territory unlawfully, if the foreigner furnishes evidence prior to allocation [that a household community exists between spouses or parents and their minor children or] that other compelling reasons exist which conflict with allocation to a certain place, this shall receive due consideration in the allocation process. Pursuant to the Preliminary Guidelines of the Federal Ministry of the Interior concerning the Residence Act and the Freedom of Movement Act/EU, para. 15a.1.5 (of December 22, 2004), the protection of victims of trafficking in human beings can also be considered as compelling reasons.

NGOs like KOBRA argue that the requirement in Sec. 15a para. 1 sentence 6 AufenthG to furnish evidence prior to allocation to reception centres that compelling reasons exists which conflict with allocation to a certain place is a high burden for the persons concerned. It would be more favourable if victims of trafficking were automatically allocated to a safe place. Besides, reception centres would accommodate female and male persons which could cause problems in relation to psychological protection needs.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 5 Asylum Seekers Benefits Act in case the obligation to leave the Federal territory is unappealable, i.e. if the foreigner has entered the Federal territory unlawfully (Sec. 58 para. 2 Residence Act). Pursuant to Sec. 6 para. 1 Asylum Seekers Benefits Act the third-country nationals can also
be provided with benefits necessary to comply with a duty to cooperate with administrative authorities, thus including translation services.

After the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 3 Asylum Seekers Benefits Act to persons who have been granted a residence title pursuant to Sec. 25 para. 4a Residence Act. Pursuant to Sec. 6 para. 1 Asylum Seekers Benefits Act the third-country nationals can also be provided with benefits necessary to comply with a duty to cooperate with administrative authorities, thus including translation services.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 5 Asylum Seekers Benefits Act in case the obligation to leave the Federal territory is unappealable, i.e. if the foreigner has entered the Federal territory unlawfully (Sec. 58 para. 2 Residence Act). Pursuant to Sec. 6 para. 1 Asylum Seekers Benefits Act the third-country nationals can also be provided with benefits necessary to comply with a duty to cooperate with administrative authorities, thus including interpreting services.

After the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

Social assistance is granted pursuant to Sec. 1 para. 1 n° 3 Asylum Seekers Benefits Act to persons who have been granted a residence title pursuant to Sec. 25 para. 4a Residence Act. Pursuant to Sec. 6 para. 1 Asylum Seekers Benefits Act the third-country nationals can also be provided with benefits necessary to comply with a duty to cooperate with administrative authorities, thus including interpretation services.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No
Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Pursuant to Sec. 68b n°2 Code of Criminal Procedure, persons who have been victims of a crime pursuant to Sections 232-233a Criminal Code can demand legal aid by lawyers in case they are heard as witness in a criminal procedure. There is no limit on time or costs; the costs are covered by the German state. The same applies pursuant to Sec. 397a para. 1 Code of Criminal Procedure in case of incidental action. Free legal aid is granted only with respect to the criminal proceedings in which the victim is involved.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Pursuant to Sec. 68b n°2 Code of Criminal Procedure, persons who have been victims of a crime pursuant to Sections 232-233a Criminal Code can demand legal aid by lawyers in case they are heard as witness in a criminal procedure. There is no limit on time or costs; the costs are covered by the German state. The same applies pursuant to Sec. 397a para. 1 Code of Criminal Procedure in case of incidental action. Free legal aid is granted only with respect to the criminal proceedings in which the victim is involved.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Social assistance is granted pursuant to Sec. 1 para. 1 n° 5 Asylum Seekers Benefits Act in case the obligation to leave the Federal territory is unappealable, i.e. if the foreigner has entered the Federal territory unlawfully (Sec. 58 para. 2 Residence Act). Pursuant to sec. 4 para. 1 Asylum Seekers Benefits Act, emergency medical care is granted. General medical care is only granted in relation to preventive medical checkups (Sec. 4 para. 3 Asylum Seekers Benefits Act).

After the issue of the residence permit

☑ Yes ☐ No
Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.)

Social assistance is granted pursuant to Sec. 1 para. 1 n° 3 Asylum Seekers Benefits Act to persons who have been granted a residence title pursuant to Sec. 25 para. 4a Residence Act. Pursuant to sec. 4 para. 1 Asylum Seekers Benefits Act, emergency medical care is granted. General medical care is only granted in relation to preventive medical checkups (Sec. 4 para. 3 Asylum Seekers Benefits Act).

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

Pursuant to sec. 6 para. 1 Asylum Seekers Benefits Act, other benefits can be granted in particular if the benefits are necessary in individual cases for the maintenance of health. This may include - according to jurisdiction and only under restrictive conditions - psychological help. Thus considering its wording, the provision is not generally applied to victims of trafficking because the provision only refers to "individual cases". Benefits are granted on a discretionary basis. The practice of granting or rejecting applications for additional social benefits is thus formed to a large extent by the courts. Sec. 6 para. 2 Asylum Seekers Benefits Act mentions persons with special needs, e.g. unaccompanied minors and persons who have suffered torture, rape or other forms of serious psychological, physical or sexual violence, however, this provision does not apply to victims of trafficking but only to persons enjoying temporary protection according to Directive 2001/55/EC. This wording is problematic as it may lead to a restrictive interpretation of Sec. 6 para. 1 Asylum Seekers Benefits Act by interpreting para. 2 as an exclusive entitlement of persons under temporary protection whereas victims of violence and other persons with special needs are not entitled to specific treatment or aid.

However, the provision of Sec. 6 must be interpreted as a whole in the light of Directive 2004/81/EC. The correct interpretation of para. 1 leads therefore to the conclusion that persons who have special needs (e.g. because of suffered torture, rape or other kinds of serious violence, or because of their age) have to be granted adequate treatment or aid, which is equivalent to the treatment provided for in para. 2. This interpretation is, however, controversial. As yet no court decisions are known on the interpretation of this provision. Therefore, it remains to be seen if the practical implementation will meet the directive’s requirements.

After the issue of the residence permit

☑ Yes  ☐ No

Explanation:

Pursuant to sec. 6 para. 1 Asylum Seekers Benefits Act, other benefits can be granted in particular if the benefits are necessary in individual cases for the maintenance of health. This may include - according to jurisdiction and only under restrictive conditions - psychological help. Thus considering its wording, the provision is not generally applied to victims of trafficking because the provision only refers to "individual cases". Benefits are granted on a discretionary basis. The practice of granting or rejecting applications for additional social benefits is thus formed to a large extent by the courts. Sec. 6 para. 2 Asylum Seekers Benefits Act mentions persons with special needs, e.g. unaccompanied minors and persons who have suffered torture, rape or other forms of serious psychological, physical or sexual violence, however, this provision does not apply to victims of trafficking but only to persons enjoying temporary protection according to Directive 2001/55/EC. This wording is problematic as it may lead to a restrictive interpretation of Sec. 6 para. 1 Asylum Seekers Benefits Act by interpreting para. 2 as an exclusive
entitlement of persons under temporary protection whereas victims of violence and other persons with special needs are not entitled to specific treatment or aid. However, the provision of Sec. 6 must be interpreted as a whole in the light of Directive 2004/81/EC. The correct interpretation of para. 1 leads therefore to the conclusion that persons who have special needs (e.g. because of suffered torture, rape or other kinds of serious violence, or because of their age) have to be granted adequate treatment or aid, which is equivalent to the treatment provided for in para. 2. This interpretation is, however, controversial. As yet no court decisions are known on the interpretation of this provision. Therefore, it remains to be seen if the practical implementation will meet the directive’s requirements.

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- ☒ Yes
- ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

A residence permit may be granted pursuant to Section 25 paragraph 4a Residence Act. This provision refers to third-country nationals who have been victims of a crime pursuant to Sections 232-233a Criminal Code. Sections 232-233a Criminal Code transpose the Council Framework decision 2002/629/JHA and thus include offences related to “trafficking in human beings”. Further criteria that have to be met are: n°1 the temporary residence of the third-country national has to be considered necessary in connection with a criminal procedure concerning the above mentioned crimes because the investigation of the crime would be more difficult without the temporary presence of the third-country national in the Federal territory and n°2 he/she has severed all relations with those suspected of acts that might be included among the offences referred to above and n°3 he/she has shown a clear intention to cooperate in the criminal procedure and to be heard as a witness.

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

It is valid for at least six months pursuant to Sec. 26 para. 1 sentence 3 Residence Act. The grant of a longer period of validity is possible in individual cases.

**Q.11.C. When residence permit has expired, can it be renewed?** See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- ☒ Yes
- ☐ No
Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Pursuant to Sec. 26 para. 1 sentence 3 Residence Act, the residence permit can be renewed for a period of six months. A longer period of validity is permissible in substantiated cases. For renewal, the same conditions apply as for the issue of the residence permit (Sec. 8 para. 1 Residence Act).

**Minors**

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

There are no particular norms of transposition. It is assumed that in the application of the provisions of the Residence Act and the Asylum Seekers Benefits Act the best interest of the child is taken into consideration as a general public interest obligatory due to the Federal Republic of Germany’s ratification of the UN Convention on Children.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [x] No

Explanation: (If the answer is “yes”: For how long?)

The general reflection period pursuant to Sec. 50 para. 2a Residence Act is applied.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes
- [ ] No

Explanation: (If yes, explain which measures are taken)

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes
- [ ] No
Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Unaccompanied minors under the age of sixteen are accommodated separately in institutions of youth care. In relation to unaccompanied minors from the age of sixteen on, the youth welfare office examines if an accommodation in an institution of youth care is necessary or if other accommodations are appropriate. The youth welfare office legally represents the minors. The youth welfare office is also responsible for the location of family members and therefore cooperates with NGOs.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Sec. 6a Employment Procedure Regulation reads as follows:
In case a residence permit is granted to third-country nationals who cooperate in the fight against trafficking in human beings, the Federal Employment Agency may approve the granting of a residence permit to take up employment without considering if the employment of foreigners does result in any adverse consequences for the labour market, and without considering if German workers, foreigners who possess the same legal status as German workers with regard to the right to take up employment or other foreigners who are entitled to preferential access to the labour market under the law of the European Union are available for the type of employment concerned.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

The provisions on vocational training of employed persons in order to improve possibilities of employment are applicable to all employed persons irrespective of nationality and residence status (Sec. 48 et seqq. Social Code, vol. 3).

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes
☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Adults as well as minors are entitled to access to education irrespective of nationality and residence status. The Acts on the Educational System of the Länder do apply as the Länder are competent for the educational system pursuant to the German Constitution.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes
☒ No

Explanation:

Sec. 6a Employment Procedure Regulation about the granting of a residence permit to take up employment is linked to the duration of the residence permit. However, with regard to education, access is not limited to the duration of the residence permit as the entitlement to access to education is irrespective of nationality and residence status.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.
In addition to the general rules on improvement of professional skills the Federation as well as the Länder may enact such programmes or schemes. As an example, it can be referred to the Land Baden-Württemberg where a cooperation programme exists ("Kooperationskonzept Menschenhandel") aimed at the recovery of a normal social life.

Besides, there exist two repatriation programmes REAG (Reintegration and Emigration Programme for Asylum-Seekers in Germany) and GARP (Government Assisted Repatriation Programme) which are implemented by IOM in the order of the Federal Ministry of the Interior and the competent ministries of the Länder and in cooperation with NGOs and UNHCR. The programmes provide for assistance to travel expenses and re-integration in the country of origin (amount differing from each country of origin) not only for Asylum-Seekers but also for victims of trafficking. The Federal Office for Migration and Refugees has installed an information centre for the promotion of assisted repatriation (Zentralstelle für Informationsvermittlung zur Rückkehrförderung (ZIRF).

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation:
It seems that the programmes already existed before.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation:
This condition is not mentioned in the law (Sec. 25 para. 4a Residence Act) and thus does not apply.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
Explanation:
The same conditions apply as for the issue of the residence permit (Sec. 8 para. 1 Residence Act). As Sec. 25 para. 4a Residence Act only entered into force on 28 August 2007, it is not yet possible to give informations about the practice of renewal.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Pursuant to Sec. 52 para. 5 Residence Act, the residence title should be withdrawn if the third-country national has no intention or has no intention anymore to cooperate in criminal proceedings or if there is a preponderant probability that the information given by the third-country national are wrong or the third-country national has voluntarily renewed contacts with those suspected of acts that might be included among the offences referred to in Sec. 25 para. 4a Residence Act or the competent authority decides to discontinue the proceedings or if there are other reasons why the third-country national does not meet the conditions for the grant of a residence permit pursuant to Sec. 25 para. 4a Residence Act.


Pursuant to Sec. 72 para. 6 Residence Act, the Aliens Authority - before taking the decision whether or not to withdraw the residence permit - has to involve the competent public prosecutor's office or the competent criminal court or in case the Aliens Authority has no information about the competent public prosecutor’s office the police office being competent for the district where the third country national took his or her residence. Pursuant to Sec. 87 para. 5 n° 1 Residence Act, the competent public prosecutor’s office, the competent criminal court and the competent police office have to inform the Aliens Authority ex officio of the circumstances justifying a withdrawal of the residence permit.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive? 

no

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

NGOs like KOK (Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.) and Amnesty International argue that a general reflection period of one month would be too short and could not fulfill the needs of traumatised persons. They recommend a reflection period of three months referring to the Report of the Experts Group on Trafficking in Human Beings (December 22, 2004, para. 5.3).

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions? 

no
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>The possibility of granting a residence permit for victims of trafficking in human beings is now explicitly fixed by law.</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td>☒ More favourable than previous national rules</td>
<td></td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

| Table 1 |
|------------------|------------------|------------------|
| **OBJECTIVE**    | **EVALUATION**   | **EVALUATION IN** |
| (to be indicated by the national | REGARDING THE | COMPARISON WITH THE |
| rapporteur)      | EVOLUTION OF | STANDARD OF |
|                  | NATIONAL LAW | THE DIRECTIVE    |
| Explain the situation | Explain the situation | □ Less       |
| before transposition | after transposition | favourable than |
|                    |                 | previous national | □ Status quo |
|                    |                 | rules            | □ More |
|                    |                 |                  | favourable than |
|                    |                 |                  | previous national |
|                    |                 |                  | rules         |
| □ Less favourable than | □ In line with | □ More |
| previous national | the directive  | favourable than |
| rules             |                  | the directive   |

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redraft billing or adaptation to national circumstances.

□ YES  ☒ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

□ YES  □ NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Greece

By

Stavropoulou, Maria
16 May 2007

Independent consultant, maria.stavropoulou@gmail.com

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law).
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Entry, residence and social integration of third-country nationals in the Hellenic Territory</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>23 August 2005</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>3386/2005</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1.1.2006</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>This is the central law on migration and aliens, containing provisions on their entry, residence, removal, integration, rights and obligations. (for example if the norm also pursues other objectives than the transposition of the directive)</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Official Journal of the Hellenic Republic 212 part A)</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>☒ LEGISLATIVE</td>
<td>☐ REGULATION</td>
</tr>
</tbody>
</table>

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law).
When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

**Table 1**

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Penal code, as amended several times.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>17 August 1950</td>
</tr>
<tr>
<td>NUMBER</td>
<td>1492/1950</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED :</td>
<td>This law is the Penal Code of Greece. It defines all crimes and sentences applicable in Greece. The Penal Code was most crucially amended with law 3064/2002 (see below)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
<td></td>
</tr>
<tr>
<td>✔ LEGISLATIVE</td>
<td></td>
</tr>
<tr>
<td>✗ REGULATION</td>
<td></td>
</tr>
<tr>
<td>✗ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

**Table 2**

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Fight against the trafficking in human beings, crimes of gender-based violence, pornography of minors and generally the financial exploitation for sexual purposes, and assistance to the victims of these acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>15.10.2002</td>
</tr>
<tr>
<td>NUMBER</td>
<td>3064/2002</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>15.10.2002</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED :</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Official Journal of the Hellenic Republic 248 part A</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
<td></td>
</tr>
<tr>
<td>✔ LEGISLATIVE</td>
<td></td>
</tr>
<tr>
<td>✗ REGULATION</td>
<td></td>
</tr>
<tr>
<td>✗ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>
### Table 3

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Special arrangements on issues of migration policy and other issues of the competence of the Ministry of Interior, Public Administration and Decentralisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>23.2.2007</td>
</tr>
<tr>
<td>NUMBER</td>
<td>3536/2007</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>23.2.2007</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>amendments introduced to the general migration law 3386/2005, creation of an interministerial committee on migration issues and other matters (for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: Journal of the Government</td>
</tr>
</tbody>
</table>
| LEGAL NATURE | (indicate by ticking the correct box):  
- LEGISLATIVE  
- REGULATION  
- CIRCULAR OR INSTRUCTIONS |

### Table 4

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Presidential decree</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>28.8.2003</td>
</tr>
<tr>
<td>NUMBER</td>
<td>233/2003</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>28.8.2003</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>provision of protection and assistance to victims of trafficking, victims of sexual exploitation (for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: Official Journal of the Hellenic Republic 204 part A</td>
</tr>
</tbody>
</table>
| LEGAL NATURE | (indicate by ticking the correct box):  
- LEGISLATIVE  
- REGULATION  
- CIRCULAR OR INSTRUCTIONS |

### Table 5

<table>
<thead>
<tr>
<th>TITLE</th>
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</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td></td>
</tr>
<tr>
<td>NUMBER</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL:</td>
</tr>
</tbody>
</table>
| LEGAL NATURE | (indicate by ticking the correct box):  
- LEGISLATIVE  
- REGULATION  
- CIRCULAR OR INSTRUCTIONS |
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Minister of Interior: Issuance of residence permits to victims of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Directorate of Aliens and Migration</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The issuance of the residence permit is done following an examination of the applicant's application by the prosecutor (see below)</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Secretary-General of the Region: Issuance of residence permit to victims of trafficking once the judicial process in a trafficking case has been completed and the third country national concerned applies for a residence permit, for any other purpose, in order to reside in Greece</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior, Regional government</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Regional government</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Prosecutor: Determination of a person as victim of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>(Ministry of Justice)</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Prosecutor, as member of the judicial corps, is independent of the public administration.</td>
</tr>
</tbody>
</table>

Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Prosecutor: Decision to stay the deportation of a victim of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>(Ministry of Justice)</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Prosecutor, as member of the judicial corps, is independent of the public administration.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES ☐ NO
Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES  ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MISSING TEXTS</strong></td>
</tr>
<tr>
<td><em>INDICATE HERE THE MISSING TEXTS</em></td>
</tr>
</tbody>
</table>
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA).22

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC).23

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The relevant chapter of the Aliens Law which includes the central norm of transposition refers only to victims of trafficking in human beings (article 46 of law number 3386/2005).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

---

22 Read the Framework decision 2002/629/JHA at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett

23 Read the Directive 2002/90/EC at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0090&model=guichett
Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes ☐ No

**Explanation:**

Since a victim of trafficking is defined as a victim of a number of criminal offences which are in turn defined in the Penal Code, and since the Penal Code includes general provisions in terms of instigation to, aiding or abetting in, or attempting to commit any crime, I would answer this in the positive.

**Q.5.B.** Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’(which is mandatory): **Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).**

No, it is not identical. A variety of provisions of the penal code describe acts to which the definition of trafficking, as defined in the main transposition norm (law number 3386/2005), refers. To be more precise:

Article 1(i) of law 3386/2005, which includes all the definitions applicable for this particular law (known as aliens law or migration law), defines as victims of trafficking in human beings ‘any natural person who becomes victim’ of a number of crimes provided for in five different provisions of the Greek Penal Code. The Penal Code was amended by presidential decree 3064/2002, specifically in order to enhance protection for victims of trafficking and contemporary forms of slavery. These five provisions are the following:

- Article 323A of the Greek Penal Code provides that the crime of trafficking in human beings (‘εμπορία ανθρώπων’) is committed by whoever, by using violence, threats or any other forcible means or the abuse of power, recruits, transports, transfers within or outside the country, holds, harbours or offers with or without a fee (or other means of exchange) to a third person, or receives from another a person, in order to remove body parts, or exploit his or her work, or have some someone else exploit it (paragraph 3). The same holds in the case of use of fraud, abuse of a position of vulnerability by offering payments, benefits or presents (paragraph 2). Whoever uses the work of the person while aware of the conditions set out above is also punishable (paragraph 3). The forced recruitment of minors by using the means mentioned in paragraph one (use of violence, threats, force) is also punishable under this article.
- The three other articles of the Penal Code, as amended partly by the above mentioned presidential decree, which are pertinent, are the following:
  - Article 349, on the sexual exploitation of minors and women
  - Article 351 (‘σωματεμπορία’), on trafficking in human beings for the purpose of sexual exploitation
  - Article 351A, on performing sexual acts with a minor against a fee
  - Article 323 of the Penal Code, which remained unamended, and which is entitled ‘trade in slaves’.

There are two issues which are not directly and explicitly transposed in Greek law, namely, paragraphs 2 (consent of the victim being irrelevant) and 3 (if a child is involved the use of coercion etc being irrelevant) of article 1 of the Framework decision.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of
control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for
instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes  ☐ No

Explanation:

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

Article 47 paragraph 2 of law 3386/2005, in conjunction with article 46 paragraph 1, provides that in the case of unaccompanied minors the state services will take the necessary measures to determine their identity and nationality. In addition, articles 323A, 349, 351 and 351A of the Penal Code (as mentioned above) all constituting crimes that comprise the definition of trafficking included in the main norm of transposition, refer to victims of these acts who are minors.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:
Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •

Explanation:
According to law number 3386 (article 47, paragraph 2), the state has additional obligations towards third country nationals who are victims of trafficking and who are unaccompanied minors, in particular as regards establishing their identity and nationality, and locating their family, and providing for legal representation in criminal proceedings. As described above, the main norm of transposition, law number 3386, refers to provisions in the Penal Code to define what acts constitute trafficking. These provisions generally provide that when such acts are committed against minors, they are generally more severely punishable. These provisions make no exceptions.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 24 new, 27 renewals. None for minors

‘An action to facilitate illegal immigration’ (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

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24 Oral information provided by the Ministry of Interior at a meeting of the National Committee for Human Rights.
Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The police or prosecution authorities who believe that a person may be a victim of trafficking are supposed to provide said information. Also, a number of state agencies providing social support, which are specified in the Annex to presidential decree 233/2003, can provide this information. These agencies, as well as all other competent state agencies (ministries, local administration authorities etc.), may enter into agreements with NGOs in order to provide protection and assistance to victims of trafficking. As a result, by reference, such NGOs can also provide this information.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☒ Both orally and in writing

Explanation:

The main norm of transposition does not specify whether this information is oral or written. IOM has developed brochures and other materials in various languages which can be disseminated among potential victims of trafficking and people of concern. The Greek police also provides an information leaflet in seventeen languages. NGOs working on trafficking issues provide also information, both orally and in writing.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The IOM leaflets mentioned above explain in simple terms who are victims of trafficking provides a list of police services that can be contacted (leaflets will be sent to the thematic coordinator).

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

According to some NGOs, information leaflets are not always provided, and the police officers themselves are frequently inadequately informed, hence cannot provide quality information to the victims. The situation has improved in the last several years, yet remains problematic especially outside the main urban centres. Most quality information and counseling are provided by specialized NGOs.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.
Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

According to the main norm of transposition, article 48, paragraph 1 of law 3386, the duration of the reflection period is one month, beginning from the date of the relevant act (read decision) of the relevant prosecutor. In the case of minors (according to paragraph 2 of the same article), this period can be extended for one more month.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? *See mandatory provision in article 6(2).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:**

Article 48, paragraph 3 specifies that during the reflection period the protected persons will not be deported, and that any administrative decision to expel them is stayed according to the provisions of article 12 of law number 3064/2002. This latter reference, added recently by law 3536/2007, article 12, specifies that the deportation is to be postponed until the issuance of a final decision against the perpetrator of the crimes (of trafficking). The prosecutor of the first instance court, with the approval of his superior, the prosecutor of the appeals court, is the competent authority to take the decision staying the deportation.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”, which are the criteria?)

Article 48, paragraph 4 (a) contains verbatim the reasons provided for in article 6, paragraph 4 of the directive, referring to the occasion when the victim has renewed contact with the traffickers. As concerns the second instance, (‘public policy or the protection of national security’), article 48 paragraph 4 (b) specifies those reasons as following: ‘for reasons of public order and national security’. In my opinion, the difference in the phrasing is insignificant.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period?

(Please give details on the name and function of the authority)

The prosecutorial authority (presumably in charge of the case).
Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not specified.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Opinions among practitioners in Greece differ on this. Some believe that the reflection period is sufficient, others that it is insufficient, especially for the unaccompanied minors. Given the relatively weak supporting environment for a victim in the country, it is indeed possible that longer reflection periods would allow victims to examine their options, and decide whether they can trust the authorities and NGOs for their protection or not.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

During the reflection period and before the issuance of the residence permit, according to article 49, paragraph 1 of law 3386, victims of trafficking will have access to the welfare provided for in presidential decree 233/2003, article 7. This article provides that victims with no social security have access to immediate and free medical, pharmaceutical and hospital care by the national health system, for as long as the protection and assistance measures are in force. In addition, paragraph 2 of article 39 of law 3386 provides that sufficient means of living are provided, if the persons concerned do not have sufficient means, without, however, further specifying how this is to be done in practice. Further to the main norm of transposition, law 3064/2002, in article 12, entitled assistance to victims (of trafficking), provides in its second sentence that assistance for finding shelter, food, living, welfare and psychological support is provided, for as long as necessary.

After the issue of the residence permit

☐ Yes, in cash ☒ Yes, in kind ☐ No
Explanation:

According to article 50 paragraph 3 of law 3386, after the end of the period of reflection, and if a residence permit is granted, victims of trafficking have the same access to welfare services as mentioned above. They also, however, have the rights to work, as well as access to vocational training and education, as per article 6 of presidential decree 233/2003.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Not specified

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

For those victims hosted in special shelters, the general evaluation is that the standard of living is adequate. The problem, however, is that the shelters available are for women, and no facilities exist for children, men or families.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

During the reflection period the competent police and prosecutorial services must take steps, as a matter of priority, to ensure the protection and security of the persons concerned. This is provided for in article 49 paragraph 3 of law 3386, article 12 of law 3064 (which, in more detail, mentions that this protection relates to protection of the life, physical integrity and personal end sexual freedom, if these are at risk), and presidential decree 233/2003 (article 1 paragraph 1). Few detailed provisions specify, however, how this protection is ensured. Only article 4 of presidential decree 233 provides that the services and state agencies which are mentioned in its annex (also entitled protection and assistance units), will take the necessary measures for the security of the victims, as well as the security of the places where they reside, and the assistance of the police can also be sought either to transfer the victim to another place or to provide protection. A number of “safe houses” and shelters exist, run primarily by NGOs, where victims of trafficking are accommodated.

After the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The same as above, according to article 50 paragraph 2.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

According to article 49, paragraph 3, second sentence, of law 3386, victims are provided with translation services during the period of reflection.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:

Same as above, by virtue of article 50 paragraph 2 of law 3386.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

According to article 49, paragraph 3, second sentence, of law 3386, victims are provided with interpretation services during the period of reflection. Interpretation services must also be provided according to article 12, paragraph 1, second sentence of law 3064 and article 8 of presidential decree 233/2003. In practice, the state avails of few interpreters, and these have usually no specialization. The same is true for the NGOs providing assistance and protection to victims of trafficking.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:

Same as above virtue of article 50 paragraph 2 of law 3386. In practice, the state avails of few interpreters, and these have usually no specialization. The same is true for the NGOs providing assistance and protection to victims of trafficking.
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

According to article 49, paragraph 3, second sentence, of law 3386, victims are provided with ‘necessary legal aid’ during the period of reflection. Legal aid and support must also be provided according to article 12, paragraph 1, second sentence of law 3064 and article 8 of presidential decree 233/2003. These laws do not make any further provisions as to how legal aid, support and counseling are to be provided in practice. The Ministry of Foreign Affairs has on occasion provided funds to the Athens Bar Association and a number of NGOs. A number of NGOs, which consider themselves specialized, receive funds for legal counseling and support to victims of trafficking. Effectively, victims of trafficking need to approach one of these NGOs to seek free legal aid. There is no explicit right of victims to claim free legal aid.

After the issue of the residence permit

☒ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Same as above, virtue of article 50 paragraph 2 of law 3386. These laws do not make any further provisions as to how legal aid, support and counseling are to be provided in practice.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

During the reflection period and before the issuance of the residence permit, according to article 49, paragraph 1 of law 3386, victims of trafficking will have access to the welfare provided for in presidential decree 233/2003, article 7. This article provides that victims with no social security have access to immediate and free medical, pharmaceutical and hospital care by the national health system, for as long as the protection and assistance measures are in force. Medical care is hence not restricted to emergency medical care only.
After the issue of the residence permit

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only. Same as above, by virtue of article 50 paragraph 2 of law 3386.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article (1)

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

However, the transposing norm makes no differentiation among the 'most vulnerable' and all other victims when it comes to the services to be provided, which includes psychological support, welfare, legal and interpretation services.

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:

Same as above

Q.10.1. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

Psychological assistance is to be provided by virtue of article 12 of law 3064/2002 (although no further details are given as to who should provide this assistance and how. In practice neither the state nor specialized NGOs employ specialized psychologists, and this is particularly serious in the case of unaccompanied minors. NGOs believe that the presence of specialized psychologists is crucial for the decision of the victim to cooperate with the authorities and name the trafficker.
After the issue of the residence permit

☒ Yes ☐ No

Explanation:

Same as above.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☒ Yes ☐ No

Explanation:

However, the transposing norm (article 12 of law 3064) makes no differentiation among victims of trafficking on the basis of their vulnerability or resources that the victim has available.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

The criteria or conditions are the following, according to article 50, paragraph 1: either that it is opportune to prolong the residence of the person for the judicial proceedings, or that the victim has shown a clear intention to cooperate, or that the victims has severed all relations with the traffickers (these are the same conditions as those found in the Directive, article 8).

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☐ Yes ☒ No
Explanation:
This condition has not been transposed in Greek law.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

The residence permit is valid for twelve months.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The residence permit can be renewed, upon expiration, for twelve months each time, as long as one of the conditions and criteria mentioned above under Q.11 A continue to apply.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

The first two sentences of article 10(a) of the directive (reference to taking account of the best interests of the child when applying the directive, and ensuring that the procedure be appropriate to the age and maturity of the child) have not been transposed. Reference to serving the best interests of the child is made only with regard to extending the reflection period by an additional month for unaccompanied minors who are victims of trafficking.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: For how long?)

The reflection period for unaccompanied minors is initially one month, as for all other third country nationals who are victims of trafficking. In the case of unaccompanied minors, however, the reflection period can be extended by an additional month, if this is determined to be necessary for serving the best interest of the child.
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If yes, explain which measures are taken)

Neither the main norm of transposition nor any of the other applicable and relevant laws and regulations make any reference to the appropriateness of the procedure as to the age and maturity of the minors concerned, or how this is to be secured.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

According to article 5 of presidential decree 233/2003, victims of trafficking who are minors have access to public schools, which operate reception or support classes or inter-cultural educational programmes.

This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☒ Yes  ☐ No

Explanation:

The transposing norm (article 12 of law 3064) makes no differentiation among victims of trafficking.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Article 47 paragraph 2 of law 3386, repeats verbatim article 10(c) of the directive without any further details. It is not clear how the prosecutorial and police services proceed in practical terms with determining the identity, and nationality of the minor, or the location of the family. The same provision also states that necessary steps are to be taken immediately to ensure legal representation, including in the context of the criminal proceedings.
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

The residence permit, once issued and as long as it is valid, allows unrestricted access to the labour market without any further conditions or criteria.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Special vocational training courses are to be set up by a specified vocational training agency, according to article 6 of presidential decree 233, for victims of trafficking who are over 15 years old. Victims of trafficking who are no older than 23 years old can participate in public vocational training programmes, by exception to regular admission rules (i.e., even if they do not comply with admission criteria, and even in excess of the number of students to be admitted).

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Victims of trafficking under the age of 18 have unrestricted access to the education system, by virtue of article 5 of presidential decree 233/2003.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
Article 50 of law 3386 paragraph 3 provides that access to work, vocational training and education is valid only for the duration of the residence permit. However, third country national minors in general have access to public schools, by virtue of article 72 of law 3386.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them.

Victims have access to psychological support and access to education and vocational training, by virtue of articles 50 paragraph 3 of law number 3386, article 12 of law 3064, and articles 1 to 3 of presidential decree 233. These services are to be provided primarily by state welfare agencies, which are coordinated by the Ministry of Health and Social Solidarity. These agencies may also outsource work, or cooperate with, specialist NGOs. The main transposition norm and the other related legal texts do not mention specifically the aim of these services, and the second part of the first paragraph of article 12 of the Directive (“aimed at…origin”) has not been transposed.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: Neither the main norm of transposition nor any of the other related legal texts provide for the creation of specific programmes. However, in the last several years a number of language induction and vocational training programmes have been created, which include victims of trafficking (but are not geared exclusively towards them), funded by the Ministry of Foreign Affairs and through the EQUAL programme.
Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

No link is made between the residence permit (issuance and renewal) and the possible participation in programmes or schemes.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation:

According to article 51 of law no. 3386, a residence permit cannot be renewed or can be withdrawn if any of a number of conditions are fulfilled. These are similar to the conditions set out in article 14 of the Directive, with the exception of sub-paragraph (c) referring to reasons relating to public order and national security. The little experience accumulated on the basis individual cases handled so far does not allow for an evaluation.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The residence permit may be withdrawn or its renewal may be refused, if any of the five conditions provided for in article 51 of law 3386 are met. These conditions are to a large extent the same with the ones listed in article 14 of the Directive:

1. if the holder has actively and voluntarily renewed contacts with those suspected of committing the offences he or she has brought complaints against
2. if the competent authority believes that the victim’s cooperation or complaint is fraudulent or abusive or
3. if the victim ceases to cooperate
4. if the proceedings have been discontinued at the initiative of the competent police or prosecutorial authority
5. when a final decision has been taken terminating the proceedings.
Clause (c) is not explicitly mentioned in article 51 of law 3386 (reasons of national security and public order), although it is provided for in article 50 paragraph 2, second sentence of the same law, as a general condition for issuing and renewing residence permits.


This procedure is not explicitly provided for by the main norm of transposition. However, general administrative rules would require that the residence permit be withdrawn by the authority which issued it (Minister of Interior).

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

None conducted.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Various conferences and public awareness initiatives take place, in none of which, however, has the Directive as such been discussed.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

The debate on victims of trafficking in Greece, the sensitization activities and the orientation of the state services continue to be strongly oriented towards the paradigm of women victims of sexual exploitation, while trafficking for the purpose of work or body transplants, as well as the trafficking of men, receives much less attention. There are no shelters for men victims, no specialized centers for children victims, and no shelters that can accommodate families.

Another issue is that the family reunification of victims of trafficking who have residence permits is under the current legal regime impossible. As a result, a woman victim of trafficking who has obtained a residence permit on the basis of the victim protection scheme is unable to bring to Greece the child she has left in the country of origin with relatives, in full knowledge often that the child may be in threat of revenge by the traffickers.

The legal aid system is also not working very effectively, as cases are tried on the part of the victims of trafficking by dedicated, yet relatively inexpeience lawyers, while on the part of the traffickers by top shot criminal lawyers, who often end up winning the case for their clients.

Finally, it has been pointed out that if a victim voluntarily repatriates, yet decides that for fear of being again trafficked returns to Greece, it is impossible for the victim to avail itself again of the same protection regime.
Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

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<tr>
<td></td>
<td>With the transposition of the directive by law 3386 in 2005, the main additions introduced relate to the period of reflection, the provision of information to victims, the issuance of the residence permit following the period of reflection, as well as the reasons for withdrawal or non-renewal, and the additional responsibilities the authorities have in case the victims are unaccompanied minors. Law 3386 left a few issues unregulated, in particular the best interests of the child in applying the directive in its totality, and the aim of support measures, which is the recovery of a normal life. The provisions of law 3386 are more favourable than the minimum standard provided for in the directive on a few issues, in particular:</td>
<td>☑ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>☑ Status quo</td>
<td></td>
</tr>
<tr>
<td></td>
<td>☑ More favourable than previous national rules</td>
<td></td>
</tr>
</tbody>
</table>

Until 2002, the year in which law number 30064 was adopted, there existed practically no laws on trafficking in human beings. This law, however, introduced the definition of the crime of trafficking and described all acts that constitute this crime, and also provided that victims are to be offered protection, welfare support, legal aid and interpretation, as well as protection from deportation in case they are third country nationals. A year later presidential decree 233 was issued, which also provided in more detail the assistance, welfare, education and vocational training that must be secured, and defined the agencies responsible. It also provided for cooperation with NGOs.
that the directive will apply to unaccompanied minors
- that there are practically no restrictions to access to employment and education, and very few placed on access to vocational training programmes

Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection specifically of unaccompanied minors who are victims of trafficking</td>
<td>Explain the situation after transposition Following transposition the main norm of transposition included specific provisions for unaccompanied minors, in particular the possibility for a longer period of reflection, the emphasis on identifying the nationality and age of the minor, and of locating his or her family, and the extra emphasis on securing legal representation.</td>
<td>☐ Less favourable than previous national rules ☐ Status quo ☒ More favourable than previous national rules</td>
</tr>
<tr>
<td>Explain the situation before transposition Prior to transposition of the directive the legal regime did not contain any specific provisions for unaccompanied minors</td>
<td>☐ Less favourable than the Directive ☒ In line with the directive ☐ More favourable than the directive</td>
<td></td>
</tr>
</tbody>
</table>
Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☒ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Some provisions are copied more or less verbatim, without providing further details as to their implementation. The most problematic ones are those relating to protection, provision of information (oral or written), housing, interpretation and translation services and legal aid, and, in the case of unaccompanied minors, the determination of the age and nationality and the location of the family of the victim.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

None of the provisions of the preamble of the directive have been transposed, or are even referred to in the main norm of transposition nor any of the other related laws. This is particularly problematic, in my view, for the references of the Directive to refugee protection (preambular paragraph 4), the protection of victims, witnesses and vulnerable persons (preambular paragraph 5) and human rights and the EU Charter of Fundamental Rights (preambular paragraph 6).
FIRST PART

1. NORMS OF TRANSPOSITION AND JURESPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law).
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities.

Please duplicate the table below if there is more than one MAIN norm of transposition.

This table is about:

- a text already adopted
- a text which is still a project to be adopted

TITLE: Modification of the Act CXXXV of 2005 on assistance for victims of offences and compensation providing by the state

DATE: 5th January 2007
NUMBER: II of 2007
DATE OF ENTRY INTO FORCE: 1st July 2007 (amended provisions)
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Art 119 [modified Art 9/A, 43(3) and 47(3)]

REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/1

LEGAL NATURE (indicate a cross in the correct box):

- LEGISLATIVE: Act
- REGULATION:
- CIRCULAR or INSTRUCTIONS:
This table is about: a text already adopted

TITLE: Act on entry and residence of third country nationals
DATE: 5 January 2007
NUMBER: II of 2007
DATE OF ENTRY INTO FORCE: 1st July 2007
PROVISIONS CONCERNED: Art 20 (2), 29 (1)e, (2)b, 29 (3), (7), 30 (1)e, (2)c, (4)-(5), 45 (4), 62 (1)e, 64, 98, 111(1)a, l, (2)a, 120(1)e
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/1

LEGAL NATURE: LEGISLATIVE: Act

Q.1.B. List the other norms of transposition by order of importance of their legal nature (first laws, secondary regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law).

Please use one table per norm and duplicate as much as necessary

This table is about: a text already adopted

TITLE: Entry and residence of aliens
DATE: 2001, June 22
NUMBER: XXXIX of 2001
DATE OF ENTRY INTO FORCE: 1st January 2002 – and it is applicable until 1st July 2007 replacing by the Act II of 2007
PROVISIONS CONCERNED: Art 15 (1)c, 56(1), 56 (4)
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2001/70

LEGAL NATURE: LEGISLATIVE: Act

This table is about: a text which is still a project to be adopted

TITLE: Act on entry and residence of third country nationals
DATE: 5 January 2007
NUMBER: II of 2007
DATE OF ENTRY INTO FORCE: 1st July 2007
PROVISIONS CONCERNED: Art 20 (2), 29 (1)e, (2)b, 29 (3), (7), 30 (1)e, (2)c, (4)-(5), 45 (4), 62 (1)e, 64, 98, 111(1)a, l, (2)a, 120(1)e
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/1

LEGAL NATURE: LEGISLATIVE: Act

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TITLE: Entry and residence of aliens
DATE: 2001, June 22
NUMBER: XXXIX of 2001
DATE OF ENTRY INTO FORCE: 1st January 2002 – and it is applicable until 1st July 2007 replacing by the Act II of 2007
PROVISIONS CONCERNED: Art 15 (1)c, 56(1), 56 (4)
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2001/70

LEGAL NATURE: LEGISLATIVE: Act
<table>
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</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Implementation rules of Act on entry and residence of aliens</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>2001, September 26</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>170 of 2001</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1st January 2002 --- and it is applicable until 1st July 2007 replacing by the Government Decree No.114 of 2007, 24 May</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Sec 25</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: 2001/105</td>
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<tr>
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<td>(indicate a cross in the correct box):</td>
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<tr>
<td>☐ LEGISLATIVE:</td>
<td>☒ REGULATION: Government Decree</td>
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<td>TITLE:</td>
<td>Implementation rules of Act on entry and residence of third country nationals</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>2007, 24 May</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>114 of 2007</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1st July 2007 (with exceptions of the rules coming from the Schengen acquis implementation date)</td>
<td></td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Sec 73-86, 89 (1)d, 138</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: 2007/65</td>
<td></td>
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<tr>
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<td>☒ REGULATION: Government Decree</td>
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</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Executive provisions and criteria of protection providing for participants in criminal proceedings and members of proceeding authority in criminal matters</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>1999, 26 February</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>34 of 1999</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1st January 2000</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Sec 1-4, 8, 11, 18</td>
<td></td>
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<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL: 1999/15</td>
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<td>LEGAL NATURE</td>
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<tr>
<td>☐ LEGISLATIVE:</td>
<td>☒ REGULATION: Government Decree</td>
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<tr>
<td>☐ CIRCULAR or INSTRUCTIONS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TITLE</td>
<td>DATE</td>
<td>NUMBER</td>
</tr>
<tr>
<td>------------------</td>
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</tr>
<tr>
<td>Legal aid</td>
<td>2003, 6 November</td>
<td>LXXX of 2003</td>
</tr>
<tr>
<td>Public education</td>
<td>1993, 3 August</td>
<td>LXXIX of 1993</td>
</tr>
<tr>
<td>Higher education</td>
<td>2005, 14 December</td>
<td>CXXXIX of 2005</td>
</tr>
<tr>
<td>This table is about:</td>
<td>a text already adopted</td>
<td>a text which is still a project to be adopted</td>
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<td>---------------------</td>
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<td>-----------------------------------------------</td>
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<tr>
<td><strong>TITLE:</strong> Penal Code modified by the Act CXXI of 2001 and CXXX of 2003</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong> 2003, 29 December and 2001, December 28</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong> CXXX of 2003 and CXXI of 2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> 1st April 2002, 1st May 2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong> Art 214/A, 175/B (for example if the norm is not devoted only to the transposition of the concerned directive)</td>
<td></td>
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</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong> 2001/157, 2003/158</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>X LEGISLATIVE: Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ REGULATION:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ CIRCULAR or INSTRUCTIONS:</td>
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</tr>
</tbody>
</table>

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<tr>
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<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong> Ministerial executive provisions to Act I and Act II of 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong> 2007, 31 May</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong> 25 of 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> 1st July 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong> Sec 19 and Appendix no.19 (for example if the norm is not devoted only to the transposition of the concerned directive)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong> 2007/</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>□ LEGISLATIVE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X REGULATION: Decree of the Minister of Justice and Law Enforcement</td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ CIRCULAR or INSTRUCTIONS:</td>
<td></td>
</tr>
</tbody>
</table>

**Q.2.** THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Upon request of the investigation authority: issuing residence permit on humanitarian ground for aliens who co-operated in fact finding of criminal procedure with investigation authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>(regional) unit of the Immigration Authority (OIN)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>OIN is subordinated by the Ministry of the Interior and since July 2006 by the Ministry of Justice and Law Enforcement</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Upon request of authority responsible for assistance of victims of offences issuing temporary residence certificate to the victim of trafficking (on reflection period)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>OIN (regional unit)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Immigration authority is subordinated by the Ministry of Justice and Law Enforcement</td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Upon request the authority responsible for assistance and investigation authority: issuing the temporary residence certificate (in reflection period) and residence permit during the period of criminal proceedings (after 1st July 2007)</td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>OIN (regional unit)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Immigration authority is subordinated by the Ministry of Justice and Law Enforcement</td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Allowances and supports to the victim (in cash and in kind)</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Regional unit of the OIN (next to the community shelter/dormitory)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Immigration authority is subordinated by the Ministry of Justice and Law Enforcement</td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Legal aid freely for the victim</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Office for Justice – county unit of the office – section of victim protection and section of legal aid</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Office for Justice is subordinated by the Ministry of Justice and Law Enforcement</td>
</tr>
</tbody>
</table>

Q.4.A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [X] YES
- [X] NO

Q.4.B. If the main norm(s) of transposition foreseen the adoption of one or several regulations, indicate if they have all been adopted:

- [□] YES
- [X] NO

If NO, please indicate the missing text(s) in the table below

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decisions 2002/629/JHA).

According to the optional provisions in article 3(2) the member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:
(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X ‘Trafficking in human beings’ only
☐ ‘An action to facilitate illegal immigration only
☐ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:
The transposition was delayed and intended only to reach the minimal level of applicability. Perhaps diminishing the attractive power of the country for illegal migratory movement would be the major reason of this “minimalism”.

Q.5.B. Answer the question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please, explain any deviation in details, if necessary, by quoting national
norms of transposition (in translation).

The trafficking in human beings as determined in the Penal Code is more restrictive than the offence in the Framework Decision due to existence of more aggravation conditions. Thus the most organised, business form of trafficking, offence against minor, the sexual exploitation and pornography and unlawful use of human body is punished by a more severe way. However, the consent of full aged victim is relevant in his/her illegal entry and residence in Hungary, and I cannot see exception from penal accountability of the victim. The co-operation with investigation authority is the basis for the bargain in legal accountability: victim committees a minor offence (facilitated entry) but undertakes co-operation in fact finding with the investigation authority may obtain a non-accountability status. If victim committed a crime (e.g. s/he was a member of the gang) the bargain of non-accountability is excluded by law. In this case, the victim’s standing is not applicable, and the penal proceedings against him/her may be initiated.

Art.1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take necessary measures to ensure that the following acts are punishable:
   the recruitment, transposition, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years old age.

Q.5.C. Answer the question if the national norms of transposition are applicable in cases of an ‘action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in details, if necessary, by quoting national norms of transposition (in translation).
Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6.A. According to the mandatory provisions in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article (3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Adults

□ Both adults an minors

Explanation: There are specific (an competing rules) on accompanied minors. Further on, victims in full age are supposed to are able to assist the criminal proceedings giving proper information on smugglers, operation of the network while minors only exceptional can be involved into the criminal proceedings by law. However, there are special rules on social, schooling allowances provided for minors or children of victims. The clarity of regulation is missing.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18
**Q.6.C.** Answer the question if the national norms of transposition are applicable to minors as well: *Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?*

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] All minors
- [ ] Minors, for which the following criteria are fulfilled:
  - ..
  - ..
  - ..
  - ..
  - ..

Explanation:

**Q.7.** How many persons received residence permits under the national norms of transposition in your Member State in 2006?

- *Trafficking in human beings*: there is no data (transposition in full extent was not ready in 2006 but migration statistics is not sophisticated enough)

- *An action to facilitate illegal immigration* (if applicable):

**Information given to the third-country nationals concerned**

**Q.8.** According to the mandatory provisions in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

**Q.8.A.** Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it is a public authority, NGO etc.)

Authority responsible for assistance of victims of crime (Office for Administration of Justice and its local unit)
Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
X Both orally and in writing

Explanation: Information giving and contact with the authority has to be documented by the authority responsible for assistance of victims of crime. Without it there is no base of proposal for issuing a temporary residence certificate in reflection period (by the OIN regional unit) and for co-operation in the penal proceedings with the investigation authority. Further on, the authority responsible for assistance of victim of crime shall inform on contact with the victim the responsible public prosecutor or judge sending a note. However, there is no format of information giving.

Q.8.C. Please provide details ion the content of oral/written information (feel free to endorse relevant leaflets, brochures etc).

The minimal content of the information means (a) general rights of victim of offence in Hungary; (b) specific information on victims of trafficking in human beings: if s/he assists criminal investigation authority providing relevant information on the clandestine network, s/he can obtain residence permit in Hungary; the one months reflection period; what supports and assistance are available in reflection period and during the time of criminal proceedings. There are leaflets only on general information.

Q.8.D. Do you think that information routines functions satisfactory in practice? Please provide us with your personal judgement, and indicate any known problems.

Language knowledge of authority members and absence of leaflets in shelters, refugee centres means the utmost shortages. Further on, how the authority responsible for assistance of victims of crime can enter into contact with the border-zone, the apprehended or clandestine migrants? I am afraid there is no explained information on exceptions from protection of removal in reflection period (endangering national security, public order or public interest). However, the OIN would contract with NGOs, churches, local self-government on providing supports, information and assistance for tolerated migrants and victims of trafficking in human beings. This new legal entitlement entering into force on 1st July 2007 can cover on information giving for victims of trafficking in human beings, too.
Reflection period

**Q.9.** According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take and informed decision as to whether to co-operate with the competent authorities.

The duration and the starting point of the period shall be determined according to national law.

**Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?**

Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- X Yes
- □ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

It takes maximum 1 month, and it starts from issuing of temporary residence certificate by the regional unit of the OIN upon request of the authority responsible for assistance of victims of crime.

**Q.9.B. Under the reflection period, it the third-country national concerned protected from enforcement of expulsion orders?** See mandatory provisions in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- X YES
- □ No

**Explanation:** Victim in reflection period is protected against removal, and s/he is removable if s/he violates the national security, public order or public interest (Art 45 (4) in ThirdA). There is no examples determined in the law what is the threshold of violation of these categories.

**Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6 (4)?**

- X Yes
- □ No

**Explanation:** Termination of the reflection period is manifested in possible withdrawal of temporary residence certificate or passing an expulsion order (putting his/her name of the list of entry and residence ban due to violation of national security, public order or public interest). Withdrawal shall be decided if “conditions for issuing the temporary residence certificate are ceasing”. Literally the renewed contact with perpetrators is not determined but it may endanger the promised co-operation with
investigating authority’s work. Briefing, the public order closure directly (through removal order) and renewed contact with perpetrators indirectly (through endangering co-operation in criminal proceedings) can be found in provisions in Hungary.

**Q.9.D.** if the answer on Q.9.C is “yes”: Which authority is your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority).

The competent authority is the regional unit of the OIN (immigration authority – next to the accommodation place of the victim).

**Q.9.E.** If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Due to the fact that reflection period is short (maximum 1 month) there is no specific provisions on withdrawal of the issuing temporary residence certificate as basis of his/her legal status and co-operation with investigating authority. The general rules shall be applicable: withdrawing decision shall be contains in written the reasons, legal sources and facts, interpreter shall be provided by the authority, and appeal to the OIN is also provided. If removal order is decided against the victim, a judicial review is applicable instead of appeal.

**Q.9.F.** Do you think that the practice of granting reflection periods functions satisfactory in practice? Please provide us with your personal judgement, and indicate any known problems.

The question is academic: there is no practice of the Directive and transposition rules.

**Treatment**

**Q.10.** According to the Directive the Member State shall, both before (article 6 (2)) and after (article 9 (1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10. A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit.)

**Q.10.A.** Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

- X Yes, in cash
- X Yes, in kind
- □ No

**Explanation:** Before issue of the residence permit victim of trafficking in human being is in a one-month reflection period furnished with a temporary residence
certificate. During this period s/he is treated as other victims of offence entering into contact with the responsible authority for assistance of victims. If s/he is in need of cash or/and other assistance in kind (including legal advocacy, information) is provided on the base of discretion power taking into account the individual circumstances (Act CXXXV of 2005). Urgent medical care is provided for all in need by law (Act CLIV of 1997). In brief, there is no specific provision on victims of trafficking in this phase.

I add that immediate cash support for cover of accommodation, personal belongings or nutrition is given by the discretion power of the authority responsible for victims of offences: its amount was the same for all kind of victims (105 € in 2006).

After the issue of the residence permit

| X Yes, in cash | X Yes, in kind | □ No |

Explanation: Victim of trafficking in need, upon his/her request can be ensured with supports and allowances in kind (accommodation in dormitory or community shelter, medical care, nutrition at public school), in cash (pocket money, housing and schooling allowance, home travelling support, contribution to labour medical checking and translation fee of official documents).

Q.10.B. Please specify how much the person concerned receives in € and relate that minimum amount of social aid guaranteed for nationals in your Member State.

In Hungary social transfers are connected to lawful minimal salary or pension per month that means a really solid and low level social aid system. The principle of non-discrimination is applicable also for third country nationals, including the rate of supports in cash for them. The pocket money per month is 25% of the lowest monthly pension by law (~25 €/month/person), the support to establish own household out of the dormitory/shelter means 170-600% of the amount of the lowest monthly pension by law (150-600 €), support the schooling per school-year means 50% of the amount of the lowest monthly pension by law (50 €). There is no analogy to social transfers for nationals with exception of the monthly contribution to housing: it means 50% of housing cost but no more than 200% of the amount of the lowest monthly pension by law (200 €).

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Living in dormitory/community shelter a solid level of life is provided but this maximal period (18 months free of charge) would cause a hospitalisation (dependency). Living alone, out this dormitory/shelter, housing payment (e.g. rental cost of an apartment together with operation costs) cannot be financed from the upper mentioned supports and monthly contribution. If s/he is employed, the financial allowances are excluded over the really low threshold of monthly income. This mechanism has been known among refugees and tolerated migrants – and it will repeat among victims of trafficking: they have to face the missing chance of integration and self-subsistence, and they can live as vegetation in dormitories or homeless persons’ shelters.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See the article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  X No

Explanation: In absence of specific provisions only the general rules on assistance of victims of offence are applicable (reflection period) that are not appropriate for a migrant in a totally unknown environment. However, the authority responsible for assistance of victims would provide immediate support but the most urgent aid such as accommodation, psychiatric care or translation services are not manageable by the authority responsible for victims of offences. I guess clients in pending situation would be passed to refugee centres or NGOs.

After the issue of the residence permit:

X Yes in part  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Safety and protection needs of the third-country nationals are provided in part due to the Government Decree on protection of all kind of participants in criminal proceedings. Upon request or ex officio it is ordered by the investigation authority or the judge’s decision providing a police-protection until threat is valid, for instance for witness. It covers on personal security, while other rules if Criminal Procedure Code secures the proceeding and storage the personal data of witness. Victim of trafficking is treated as a person giving testimony in penal procedure, thus interpretation of safety means protection of his/her physical integrity and personality. Social security and protection are rather supported by aids than safeguarded or guaranteed.

I add that instead of termination the reflection period, a withdrawal of personal protection may be ordered if the victim has trespassed the rules on conduct determined by the police or/and investigation authority (e.g. contacting with perpetrators).

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

Before the issue of the residence permit:

X Yes in part  ☐ No

Explanation: During the official communication the authority responsible for assistance of victims of offence has to provide translation or interpretation (Art 17 of Act CXXV of 2005). Beyond this information giving and advocacy contacts foreign language communication is not available.
After the issue of the residence permit:

X Yes in part □ No

Explanation: During the official communication at OIN regional authority translation is ensured according to the Act II of 2007 and its implementation rules. Beyond this residence permit authorisation, a contribution can be provided to translation fee of qualification (occupation) documents of victim. Contacts with investigation authority in foreign language are also ensured in criminal proceedings.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

Before the issue of the residence permit:

X Yes in part □ No

Explanation: During the official communication the authority responsible for assistance of victims of offence has to provide translation or interpretation (Art 17 of Act CXXV of 2005). Beyond this information giving and advocacy contacts foreign language communication is not available.

After the issue of the residence permit:

X Yes in part □ No

Explanation: During the official communication at OIN regional authority the translation is ensured according to the Act II of 2007 and its implementation rules. Beyond this residence permit authorisation contacts in foreign language is also ensured in criminal proceedings in but otherwise communication is not available.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

X Yes in part □ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a qualitative on hours spent or costs accumulated?) Free legal aid (information giving) is provided for victim of trafficking by the Act CXXXV of 2005 (VicA). Free legal representation at criminal proceedings or at residence permit authorisation is not provided, and advocacy is available if foreigner is in need. His/her needs are evaluated by the authority responsible for assistance of victim of offence and upon its request s/he can obtain temporary residence certificate at OIN regional authority. Thus the most basic legal aid is ensured by law.
After the issue of the residence permit:

X Yes in part ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a qualitative on hours spent or costs accumulated?)
Victim can enjoy the free legal aid if his/her monthly salary does not exceed 510 €. Legal aid is provided by law firm, public notary office or an NGO selected by the client from the registry at Office for Justice. Tariff and working hours (legal representation, notice writing) are maximised by law. Information giving at Office for Justice (responsible authority for assistance of victims) is not limited.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provisions in article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

X Yes in part ☐ No

Explanation: (if answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency care only)

According to the Act on health care (1997) lifesaving emergency medical care and ambulance shall be provided for all persons residing in the territory of the country regardless legal status and its cost shall be covered by the state budget if there is no other source of insurance or commitment.

After the issue of the residence permit:

X Yes in part ☐ No

Explanation: (if answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency care only)

If victim is accommodated in a migration/refugee centre run by the OIN as a person in need, medicine, panel doctor, specialized treatment and hospital healing is provided by the centre and its cost is covered by the OIN unless s/he has other legal basis for covering (e.g. alimony, private insurance or social insurance). Age-depending vaccination is free and obligatory. Inmate is furnished with a certificate that contains his/her data on and reference to obtained medical care.
Q.10.1 Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes X No

Explanation: Beyond the neck-of-the-bottle effect that appears in psychiatric care nowadays, the emergency medical treatment contains no psychiatric care.

After the issue of the residence permit:

☐ Yes X No

Explanation: Emergency, lifesaving and ambulance medical care contains only a minimal, acute psychiatric care. Inmate accommodated in migration/refugee centre would enjoy specialized treatment but these centres are located far from psychiatric centres. Further on, there is only one medical team (Cordelia Foundation supported by the ERF and trained by the International Rehabilitation Council for Torture Victims) that can communicate foreign language and prepared to care post-traumatic stress syndrome (PTS). Thus psychiatric care is not really available.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes ☐ No

Explanation: (If answer is “yes”, explain the criteria that have to be met)

- S/he undertakes to co-operate with investigating authority in criminal proceedings giving testimony, information on clandestine network. His/her acceptance shall be based on the evaluation of public prosecutor, justice or intelligence service or police whether s/he is able to contribute to the success of the investigation or proceedings.
- s/he does not violate national security, public order or public interest (as an indirect precondition determined among reasons of withdrawal). Inherently it means that s/he has proper proof of personal identification (e.g. passport or other valid document) that is not so frequent however his/her
personal data shall be processed and stored (Art 89 of Act II of 2007).
- Consequently s/he is obliged to give valid reasons and personal data for clarification of the circumstances. (Art 29 (3) of Art II of 2007).

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

It is valid for six months that is renewed for further six months occasionally (upon request of the investigation authority or authority in penal proceedings).

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes  □ No

Explanation: (If answer is “yes” please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed.)

Prolongation of residence permit for further six months occasionally is possible upon request of the investigation authority or authority in penal proceedings. Number of prolongation is not limited (it depends on length of criminal proceedings.) Criteria are the same as in case of issuing.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

The national transposition norms treat this optional article in a vague way: (a) there are some rules in protection of unaccompanied minors – so I give answer to the question relating to it. (b) However, there is a competing system: age of victim in trafficking in Penal Code is an aggravating condition, abused minor may be a testimony giver by the Criminal Procedural Code and Act on Third-country nationals’ entry and residence (ThirdA) directly does not clearly exclude minors from provisions protecting victims of trafficking.

Q.12. A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a)

There are specific measures for unaccompanied minors. However, the Act of Child’s Protection (1997) covers on all children (aged below 18) in need of protection residing in the territory of the country regardless his/her nationality or legal standing. Emergency measure without competence of guardian authority shall be taken (e.g. accommodation, medical care, contact with family members, etc.) without delay.
Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes       X No

Explanation: Child of victim of trafficking is represented by the parent and unaccompanied child as victim is protected on another way without involvement into the criminal proceedings.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes       X No

Explanation: Child of victim of trafficking is represented by the parent and unaccompanied child as victim is protected on another way without involvement into the criminal proceedings.

Q.12.D. Do minor have access to the educational system under the same conditions as nationals? See article 10(b)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes       ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have to access to the educational system).
All residence permit holder foreigner residing less than one year in the country, upon request of parent (guardian), the other residence permit holder residing more than one year in the country by law are obliged to attend public school financed by the state budget (Act LXXIX of 1993, Art 6 and 110). This provision means equal treatment with nationals in public education. But in absence of specific provisions (e.g. interpretation, missing schooling documents, pedagogical programme) the equality is rather formal.
However there is a provision that is speaking on “victim of trafficking” in the context of public education including nursery. Accordingly his/her cost of nutrition attending public education is reimbursed by the immigration authority to the public education institution upon request of parent or guardian. Further on, a schooling allowance may be provided for victim accessing to the public education, also upon request of his/her parent or guardian. (Government Decree, Sec. 80, 83)
Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc.)

The migration authority (OIN and regional units) shall scrutinize whether foreigner is an unaccompanied minor and specific rules on unaccompanied minors are relevant in the given case, taking into account in particular (a) the age of foreigner, (b) s/he is under parental or family member custody. In dubio the immigration authority shall launch a procedure to provide a guardian (legal representative) in order of his/her protection of interest without delay. It means that immigration authority enters into contact with the next competent child care authority to manage accommodation, guardianship, and with the consular office of the minor’s citizenship. Naturally, it requires clarification personal data or identity of the (possible) foreign minor.

Moreover, split family members are seeking abroad by the Red Cross Tracking Service. Unaccompanied minor is protected against expulsion, and s/he is furnished with residence permit on humanitarian base ex officio involving the child protection authority.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes □ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Victim of trafficking in possession of residence permit issued on the base of cooperation with the proceeding authority in criminal procedure is entitled to enter the labour market as employed or self-employed person. Before 1st July 2007 a labour permit was also required upon request of the immigration authority. The Act II of 2007 – without modification of the Act IV of 1991 on Employment – provides entry the labour market without reference on labour authorisation in case of person who is furnished with residence permit issued on the base of specific (exceptional) rule. This solution proves the strong critic of existing labour authorisation that must be reformed soon.

The only common precondition for employment is the valid residence permit of the victim, but document of qualification or occupation and health checking is also required. For these payments a financial contribution from the immigration authority may be available (see upper).
Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes in part ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the vocational training? See article 11)

All residence permit holder foreigner residing less than one year in the country, upon request of parent (guardian), the other residence permit holder residing more than one year in the country by law are obliged to attend public school financed by the state budget under the age 18 (Act LXXIX of 1993, Art 6 and 110). This provision means equal treatment with nationals in public education. Vocational training is partly inserted into public education but a growing part of it belongs to training courses for adults, re-training courses and specific courses. These are available for residence permit holders for fee while nationals, EU citizens and family members, settled migrants or refugees free in case of first vocational training. The language barrier means the other reason of conditionality.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11)

All residence permit holder foreigner residing less than one year in the country, upon request of parent (guardian), the other residence permit holder residing more than one year in the country by law are obliged to attend public school financed by the state budget under the age 18 (Act LXXIX of 1993, Art 6 and 110). This provision means equal treatment with nationals in public education. The Act CXXXIX of 2005 on higher education (Art 119) also provides entry in possession of successful maturity exam, entry screening, valid residence permit and paid fee. Before entry screening a preparatory whole-year course is available for foreign students for fee. Further conditions (e.g. of scholarship) are determined in the Government Decree yearly. Practically the higher education as a longer process is out of a length of a victim’s residence permit unless s/he can provide from own resources the self-subsistence in Hungary.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes □ No

Explanation: According to all of cited provisions on third country nationals shall be in possession of valid residence permit.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes on scheme for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designated to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes in part □ No

Explanation: (If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Allowance and supports may be given by the regional unit of the immigration authority (OIN) for victim if s/he intends to establish own household and rent a room or apartment leaving the dormitory/community shelter. Contribution to rental and housing cost may be paid up to 18 months. Support to home travelling cost may be also available – as the Government Decree defined at a solid level but these do not form a coherent scheme. A chance for managing tailor-made programmes can be encapsulated into the contracts between the OIN and NGO, local self-government, foundation or church on various services for victims, tolerated migrants (e.g. psychiatric and psychological advocacy, legal information, social integration or language training). Victims are treated together not all third-country national but only with tolerated migrants in allowances and supports.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

□ Yes X No

Explanation: The Government Decree (ImplD) means “special programmes” which are beyond the regulated in the Government Decree and not as programmes differing from other, regularly available services, allowances for third-country nationals. A chance for managing tailor-made programmes can be encapsulated into the contracts between the OIN and NGO, local self-government,
foundation or church on various services for victims, tolerated migrants (e.g. psychiatric and psychological advocacy, legal information, social integration or language training). The Government Decree on implementation rules to the Act II of 2007 (ImplD) contains this entitlement but it has been empty in practice.

**Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes?** *See article 12(2).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes

X No

**Explanation:** Due to absent of specific programmes or schemes participation on those would be unfair. Further on, there is no similar pattern in migration legal practice and rules.

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

_in cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? *See article 13.*_

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes

☐ No

**Explanation:** Residence permit issued for the victim of trafficking (on the base of humanitarian reason) shall not be renewed if conditions laid down have ceased or s/he has used false data in order to obtain residence permit or upon request of investigation authority for another reason [it looks like to stretch over the Directive]. Renewal shall be approved by the initiating authority. I add that temporary residence certificate (for the reflection period) cannot be renewed.

**Q.16.** Question regarding withdrawal of the residence permit:

**Q.16.A. Is it possible to withdraw the residence permit issued in your member states for a person falling under the Directive?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

X Yes

☐ No

**Explanation:** (if the answer is “yes”, explain under which circumstances that is possible)

Residence permit issued for the victim of trafficking (on the base of humanitarian reason) shall be withdrawn if issuing conditions laid down have ceased or s/he has used false data in order to obtain residence permit or upon request of investigation authority for another reason [it looks like to stretch over the Directive]. Withdrawal shall be approved by the initiating authority.

Investigation authority has to initiate of withdrawal at migration (regional) authority of OIN on the base of finished criminal procedure, abusive behaviour of the victim (s/he used false or incorrect data in order to obtain this residence entitlement) or “for other reasons” (perhaps it refers on the evaluation in the Art 14 of the Directive). Withdrawal is issued in a formal decision and within 5 days an appeal to the OIN is possible that makes the final decision.

Final questions

Q. 17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Practice and data on trafficking in human beings are almost unknown due to absent of regular monitoring, research or analysis of law enforcement actions. However, we can mention information campaign and actions managed by the IOM that are based on certain field research in co-operation with Institute of Criminology Studies, Hungarian Association for Migrants or academics. (e.g. FEHÉR Lenke: Towards a comprehensive European policy against trafficking in human beings. In: Harmonised criminal law in the EU. 2004. 91-106.). Further on, some legal practitioners at ministries, law enforcement or public prosecutor office time to time summarise own experiences or concerns in general. (Gyulavári Tamás – Lukács Éva: A legális és az illegális bevándorlók jogai az Európai Unióban [Rights of illegal and lawful migrants int he EU]. Európai Tükör 4/2005:47-75. Dobák Imre: Illegális migráció Európa keleti felén - a Kárpátok Eurorégió területének érintettsége [Illegal migration in esatern part of Europe – Experiences in the Kárpátok Eurorregion] Magyar Rendészett 2/2006:39-51. Kovács Attila: Az emberkereskedelem elleni hatékony küzdelem Magyarországon az Európai Unióhoz való csatlakozás fényében [Combating trafficking of human being sin Hungary in accession period] Ügyészek Lapja 5/2004:17-26. )

Q. 18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Not at all. Similarly to this silence, there has not been public discourse on ratification of the Convention against trans-national organised crime (UN) and its Protocols on combating illegal migration, facilitated entry and trafficking, smuggling in human beings.

Q. 19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

Infrastructure and information on assistance for victims is weak, thus longer time is necessary to develop a sophisticated practice in Hungary.
**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please, make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>☐ Less favourable than previous national rules</td>
<td>☐ Less favourable than the Directive</td>
</tr>
<tr>
<td>Explain the situation before transposition: Relation of trafficking in human beings as victim of a crime was not openly determined, thus exception from criminal proceedings and allowances providing for victim were not regulated.</td>
<td>☐ Status quo</td>
<td>X In line with the directive</td>
</tr>
<tr>
<td>Explain the situation after transposition: Exception from criminal proceedings and allowances providing for victim are regulated (but not practiced). The date of change 1st May 2004 in the first wave of regulation appearing the term (victim of trafficking) in law without details and 1st July 2007 will provisions on procedure and allowances enter into force.</td>
<td>X More favourable than previous national rules</td>
<td>☐ More favourable than the directive</td>
</tr>
</tbody>
</table>

(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in...
cases of member States having amended their national legislation in advance in accordance with the directive. Please, indicate the precise data of adoption of the change.

Q.30. From you point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

When answering this question use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
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Table 2

<table>
<thead>
<tr>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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</tr>
<tr>
<td>Table 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td></td>
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</tr>
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<td>□ Less favourable than previous national rules □ Status quo □ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Q.31.A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ Yes X No

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ Yes X No

**Q.31.C.** If yes, give some examples:
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please, quote and explain the problem.
I guess the unapplied provisions are coming from the poor technique of transposition: certain provisions are interpreted and regulated as optional although those are mandatory. For instance, psychiatric care [Article 7(1) and 12 (1)] or translation and interpretation service [Article 7(3)] is not provided fairly, on a transparent and clear way for victims.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If one table is not enough please duplicate it (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

In absence of data base of judgements (that shall be set up on 1st July 2007 by law) I can obtain some published summary of penal case indirectly related to trafficking in human beings only in the context of offence without reference to victim and his/her position (for instance, taking a testimony). These cases reflects divergent interpretation of “organised crime”, “crime committed in a structured group or in an organised group” intentionally and participation in a single offence made by an internationally organised network. In case of illegal migration from India to Germany via Hungary (EBH 2006/1385) the Supreme Court explained why assistance to illegal entry and residence is a sui generis offence and not a conduct of abettor or accessory before the fact; why the participation even in a single offence related to facilitated entry for a gain means an involvement of an organised group due to trans-border trafficking or smuggling must be per se a structured, conspired action (BH 2005/311). For this reason a unity of legal interpretation at court had to be supported: the Supreme Court issued the obligatory guidance on the meaning of crime committed in conspiracy (No.4 of 2005, 15 December). Accordingly, facilitated illegal entry including
stopover of smuggled, trafficked migrants taking a rest at a clandestine meeting point, management of travelling across borders shall be based on shared roles (escorts, house keepers, drivers etc.) regardless each participant being in awareness of internal structure, methods or leaders of the network. Occasional assistance may be considered as participation in an organised, conspired group of perpetrators.

Q.33. Are there any problems with translation of the text of the directive, in the official language of your Member States and give in case a list of the worst examples of provisions which have been hardly translated.

☐ There are no problems with translation of the directive.
☐ There are some problems with translation of the directive

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the table is not enough duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

Hungary ratified the UN Convention against trans-national organised crime (Palermo, 14 December 200) and its Protocols on combating illegal migration, facilitated entry and trafficking, smuggling in human beings. These were promulgated and published by the Act CI, CII and CIII of 2007. Minister of Justice, Chief Public Prosecutor and Minister of Finance is responsible for those implementation including necessary measures. Despite of numerous overlapping or similar rules in directive, provisions of transposition refer to UN Convention and its Protocol not at all. Not surprisingly, UN Convention’s Protocols are not fully transposed into the national law.
1. § (1) A törvény hatálya a Magyar Köztársaság területén elkövetett bűncselekmény sértettjére, valamint arra a természetes személyre terjed ki, aki a bűncselekmény közvetlen következményeként sérelmet, így különösen testi vagy lelki sérülést, érzelmi megrázkódtatást, illetve vagyoni kárt szenvedett el (a továbbiakban együtt: áldozat), ha

e) emberkereskedési áldozata,

(3) Az e törvény szerinti áldozatségítő szolgáltatás és állami kárenyhítés (a továbbiakban együtt: támogatás) az áldozatot akkor is megilleti, ha

a) a feljelentés elutasítására, a nyomozás megszüntetésére, az eljárás megszüntetésére, illetőleg a vádlott felmentésére gyermekkor, kóros elméállapot, kényszter vagy fenyegetés, tévedés, jogos védelem, végzás és elöljáró parancs,

b) a feljelentés elutasítására, illetve az eljárás megszüntetésére a Büntető Törvénykönyvről szóló 1978. évi IV. törvény (a továbbiakban: Btk.) 32. §-ában meghatározott büntethetőséget megszüntető ok

A szolgáltatások fajtái

4. § (1) Az állam áldozatségítő szolgáltatásként elősegíti az áldozat érdekeinek érvényesítését, azonnali pénzügyi segélyt ad, illetve szakjogászi segítségnyújtást biztosít.

(2) Az érdekkérvényesítés elősegítése keretében az áldozatségítő szolgálat az áldozatot a szükségletének megfelelő módon és mértékben hozzászegít alapvető jogai érvényesítéséhez, az egészségügyi, egészségbiztosítási ellátások és a szociális ellátások igénybevételéhez.

(3) Azonnali pénzügyi segélyként az áldozatségítő szolgálat fedezi az áldozat lakhatással, ruházódással, élelmiszéssel és utazással kapcsolatos, valamint a gyógyászati és kegyeleti jellegű rendkívüli kiadásaik akkor, ha a bűncselekmény következtében az áldozat ezen kiadások megfizetésére nem képes. A segély legmagasabb összege az alapösszeggel egyezik meg. Az alapösszeg mértéke a tárgyévet megelőző második év - a Központi Statisztikai Hivatal által közöttetett nemzetgazdasági bruttó havi átlagkeresetének 43 százaléka.


(4) A szakjogászi segítségnyújtás keretében az állam az áldozatok részére a jogi segítségnyújtásról szóló 2003. évi LXXV. törvényben (a továbbiakban: Jst.) meghatározott támogatásokat biztosítja.

(5) Az érdekkérvényesítés elősegítésé és az azonnali pénzügyi segély a rászorultság vizsgálata nélkül térítésmentesen jár az áldozatnak. A szakjogászi segítségnyújtásra a Jst.-ben meghatározott feltételek esetén jogosult az áldozat.
9/A. § Amennyiben az áldozatsegítő hatóság megállapíta, hogy a hozzá forduló harmadik országbeli állampolgár emberkereskedelem áldozata, - a 9. § (1) bekezdésében foglaltakon túl - tájékoztatja arról is, hogy

a) egy hónap gondolkodási idő áll rendelkezésére annak eldöntésére, hogy a bűncselekmény felderítésében a hatóságokkal együttműködik-e;

b) a gondolkodási idő tartamára ideiglenes tartózkodásra jogosító igazolásra, a hatóságokkal való együttműködés időtartamára pedig tartózkodási engedélyre jogosult.”

17. § Az áldozatsegítő eljárások illeték- és díjmentesek. A magyar nyelvet nem ismerő ügyfél helyett a fordítás és tolmaçosolás költségét a célelőirányzat terhére az áldozatsegítő szolgálat viseli.

43. § (3) Az áldozatsegítő hatóság a 9/A. § szerinti tájékoztatás megtörténtét követően - a büntetőeljárás adott szakaszában eljáró nyomozó hatóság, ügyész vagy bíróság egyidejű értesítése mellett - haladéktalanul kezdeményezi az idegenrendészeti hatóságnál a harmadik országbeli állampolgár ideiglenes tartózkodására jogosító igazolással történő ellátását.


[ThirdA]
2007. évi II. törvény

a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról

[Act II of 2007 on entry and residence of third country nationals]

20.§ (1) Keresőtevékenység folytatása céljából tartózkodási vízumot, illetve tartózkodási engedélyt az a harmadik országbeli állampolgár kaphat, akinek tartózkodási célja, hogy a) jogszabályban meghatározott foglalkoztatási jogviszonya alapján, ellenérték fejében, más részére és vele alá-fölérendeltségi kapcsolatban munkát végezzen,
b) jogszabály szerint önállóan, ellenérték fejében végezhető tevékenységet folytasson,
c) a b) pont hatálya alá nem tartozó esetben, gazdasági társaság, szövetkezet vagy egyéb – jövedelemszerzési céljára létrejött – jogi személy tulajdonosaként, vezető tisztsgéviselőjeként, vezetői, képviselői vagy felügyeleti szerve tagjaként végezze tevékenységét.
(2) Az (1) bekezdés szerinti keresőtevékenységet – ha e törvény másképpen nem rendelkezik – az a harmadik országbeli állampolgár folytathat, aki
a) szezonális munkavállalási vízummal,
b) humanitárius célból kiadott tartózkodási engedéllyel rendelkezik, továbbá az, aki
c) keresőtevékenység folytatása céljából,
d) tanulmányi célból kiadott
tartózkodási vízummal vagy tartózkodási engedéllyel rendelkezik.

29.§ (1) Az e törvényben foglalt tartózkodási feltételek hiányában humanitárius célból tartózkodási engedéllyel kell ellátni
e) jelentős bűnüldözési vagy nemzetbiztonsági érdekből az ügyész, a bíróság, illetve a
nemzetbiztonsági szerv indítványára azt a harmadik országbeli állampolgárt, illetve rá tekintettel más harmadik országbeli állampolgárt, aki bűncselekmény felderítése érdekében a
hatóságokkal – a bizonyítást jelentősen elősegítő módon – együttműködik.

(2) A humanitárius célból kiadott tartózkodási engedély érvényességi ideje
b) az (1) bekezdés e) pontjában foglalt esetben hat hónap, amely alkalmanként legfeljebb hat
hónappal meghosszabbítható.

(3) A humanitárius célból kiadott tartózkodási engedély – a 18.§ (1) bekezdésében
foglaltaktól eltérően – nem hosszabbítható meg, illetve azt vissza kell vonni, ha
a) a kiadásra okot adó körülmény már nem áll fenn,
b) a harmadik országbeli állampolgár tartózkodási jogosultság megszerzése érdekében az
eljáró hatóság fennmaradó adatot, valóban tárgyát közelítő,
c) a visszavonást a kiadást indítványozó hatóság vagy szerv az a) pontban meghatározott vagy
más okból kezdeményezet.

(7) A befogadott, illetve az (1) bekezdés e) pontja alapján tartózkodási engedéllyel ellátott
harmadik országbeli állampolgár, aki emberkereskedelemben állozta, külön
jogszabályban meghatározott ellátásra és támogatásra jogosult.

30.§ (1) Ideiglenes tartózkodásra jogosító igazolással kell ellátni azt a
harmadik országbeli állampolgárt,
e) aki emberkereskedelemben állozta, az áldozatsegítő hatóság indítványára, a gondolkodási idő
tartamára;
(2) Az ideiglenes tartózkodásra jogosító igazolás érvényességi ideje
c) az (1) bekezdés e) pontjában foglalt esetben egy hónap, amely nem hosszabbítható meg;
(4) Az ideiglenes tartózkodásra jogosító igazolás nem hosszabbítható meg, illetve vissza kell
vonni, ha a kiállításra okot adó körülmény már nem áll fenn.
(5) Az ideiglenes tartózkodásra jogosító igazolás kizárólag a Magyar Köztársaság területén
történő tartózkodásra jogosít, ki-és visszautazást nem tesz lehetővé, a harmadik országbeli
állampolgár kiutazásakor érvényét veszti, és azt kilépéskor a harmadik országbeli
állampolgárnak le kell adnia. A leadott igazolást meg kell küldeni a kiállító hatóságnak.

45.§ (4) Az emberkereskedelemben állozatává vált harmadik országbeli
állampolgárt a számára biztosított gondolkodási idő alatt csak akkor lehet
kiutasítani, ha a Magyar Köztársaság területén történő tartózkodása a
nemzetbiztonságot, a közbiztonságot vagy a közérdeket sérti.

62.§ (1) Az idegenrendészeti hatóság a harmadik országbeli állampolgár
kijelölt helyen való tartózkodását rendelheti el, ha
e) a harmadik országbeli állampolgár humanitárius célú tartózkodási engedéllyel rendelkezik;

64. § Az a harmadik országbeli állampolgár, akinek kijelölt helyen való tartózkodását az idegenrendészeti hatóság elrendelte, az elrendelő idegenrendészeti hatóság hozzájárulásával – érvényes munkavállalási engedéllyel – jogosult arra, hogy kereső tevékenységet folytasson.

98. § (1) Az idegenrendészeti hatóság az ideiglenes tartózkodásra jogosító igazolás alapján a harmadik országbeli állampolgár következő adatait kezeli:

a) a természetes személyazonosító adatok;

b) az arcképmás;

c) az úti okmány azonosító adatok;

d) az ideiglenes tartózkodásra jogosító igazolás kiállításának indoka;

e) az ideiglenes tartózkodásra jogosító igazolás meghosszabítása, valamint a visszavonásának tényleg, azok indoka;

f) a kiadott (meghosszabbított) ideiglenes tartózkodásra jogosító igazolás száma, sorozatszáma, érvényességi ideje;

g) a szálláshely címe.

(2) Az (1) bekezdésben meghatározott adatokat az idegenrendészeti hatóság a kiadott (meghosszabbított) ideiglenes tartózkodásra jogosító igazolás érvényességi idejének lejáratát, illetve visszavonását követő öt évig kezeli.

111. § (1) Felhatalmazást kap a Kormány, hogy rendeletben szabályozza

a) az idegenrendészeti eljárás során, valamint a szálláshely, illetve a lakóhely bejelentésével, továbbá a harmadik országbeli állampolgárok e törvény alapján kezelt adataival kapcsolatban eljáró hatóságokat, ezek illetékességét, valamint az eljárás részletes rendjét;

l) a befogadottaknak, a közösségi szállásnak, illetve befogadó állomáson tartózkodók és az emberkereskedelem áldozatává vált harmadik országbeli állampolgárok ellátásának, támogatásának szabályait;

(2) Felhatalmazást kap az idegenrendészeti törvény alapján e törvény szerinti formanyomtatványok, okmányok tartalmi előírásait és mellékleteit;

120. § (1) E törvény a következő közösségi jogi aktusoknak történő részleges megfelelést szolgálja:

e) a Tanács 2004/81/EK irányelve (2004. április 29.) a harmadik országok emberkereskedelelem áldozatává vált, vagy az illegális bevándorlás megkönnyítésére irányuló cselekményekkel érintett, a hatáskörrel rendelkező hatóságokkal együttműködő állampolgárai részére kiállított tartózkodási engedélyről;
72.§ (1) Az idegenrendészeti eljárásban az idegenrendészeti hatóság köteles vizsgálni, hogy a kiskorú harmadik országbeli állampolgárra a Tv-ben és e rendeletben meghatározott, kísérő nélküli kiskorúakra vonatkozó szabályok alkalmazásának van-e helye. Ennek keretében különön azt kell megállapítani, hogy
a) a harmadik országbeli állampolgár kiskorú-e,
b) van-e olyan személy, aki jogszabály vagy szokás alapján a kiskorú harmadik országbeli állampolgár felügyeletére köteles.

(2) A kísérő nélküli kiskorú érdekeinek védelmében az idegenrendészeti hatóság köteles ügygondnok kirendelése iránt az eljárás megindításakor haladéktalanul intézkedni.

(3) A kísérő nélküli kiskorú elhelyezése érdekében az idegenrendészeti hatóság megkeresi az eljárás lefolytatására illetékes gyámhatóságot, valamint a kiskorú állampolgársága szerinti állammak a Magyar Köztársaság területén működő konzuli képviseletét.

A befogadott és az emberkereskedelem áldozatává vált harmadik országbeli állampolgár ellátása, támogatása

73.§ A befogadott, valamint az emberkereskedelem áldozatává vált, tartózkodási engedélytel ellátott harmadik országbeli állampolgár (a továbbiakban: az emberkereskedelem áldozatává vált harmadik országbeli állampolgár) alapvető létfenntartási feltételeinek megteremtésében a Hivatal ellátásokkal és támogatásokkal járul hozzá.

74.§ (1) A befogadott és az emberkereskedelem áldozatává vált harmadik országbeli állampolgárt személyes gondoskodás körébe tartozó ellátások, pénzbeli ellátások és pénzbeli támogatások illetik meg.

(2) A személyes gondoskodás körébe tartozó ellátások:
a) közösségi vagy annak megfelelő szálláson való elhelyezés és ellátás,
b) egészségügyi ellátás,
c) oktatási intézményben való étkezés.

(3) A pénzbeli ellátások:
a) egyszeri kiköltözési segély,
b) beiskolázási támogatás.

(4) A pénzbeli támogatások:
a) lakhatási támogatás,
b) az ország végleges elhanyagásának támogatása,
c) a munkavállaláshoz szükséges munka-alkalmassági egészségügyi vizsgálat költségeinek, valamint a szakmai képesítést igazoló dokumentumok fordítása költségeinek megterítése.

75.§ (1) A 74.§-ban foglalt ellátások és támogatások biztosításának, folyósításának feltétele, hogy a befogadott, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár ne rendelkezzen vagyonnal, valamint jövedelme – a vele közös háztartásban élő házastársa, élettársa, testvére és egyenes ági rokona összes jövedelme szerint számított egy főre jutó jövedelem esetén – ne haladja meg az öregségi nyugdíj mindenkor legkisebb összegét.

(2) E rendelet alkalmazásában jövedelemnek, illetve vagyonnak minősül a szociális igazgatásról és szociális ellátásokról szóló 1993.évi III.törvény 4.§ (1) bekezdés a) illetve b) pontjában meghatározott jövedelem, illetve vagyon.

76.§ (1) A befogadott, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár a 74.§-ban foglalt ellátások, támogatások kérelmezése esetén – írásbeli kérelme
(2) A befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár az ellátásra, illetve támogatásra irányuló kérelmét a szálláshelye szerint illetékes regionális igazgatóság bírálja el.

(3) Az ellátásra, támogatásra jogosult személy a regionális igazgatóság által kiállított, e rendelet VII. Mellékletében foglalt ellátási okmányval igazolja jogosultságát. Az ellátási okmány csak a befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgárt tartózkodási engedélyének egyidejű felmutatásával együtt érvényes.

77.§ (1) A befogadottat közösségi szálláson vagy a menekülteket befogadó állomán, az emberkereskedelemben áldozatává vált harmadik országbeli állampolgárt az emberkereskedelmben áldozatává vált harmadik országbeli állampolgárok elkülönített elhelyezését szolgáló befogadó állomáson, vagy szerződés alapján fenntartott más szálláshelyen (a továbbiakban ezen cím alkalmazásában együtt: közösségi szállás) lehet elhelyezni.

(2) A befogadottnak, valamint az emberkereskedelemben áldozatává vált harmadik országbeli állampolgárnak közösségi szálláson történő elhelyezése esetén, a közösségi szálláson történő kötelező tartózkodás elrendelésétől számított tíznapig nem kell térítési díjat fizetnie, amennyiben jövedelme a 75.§ (1) bekezdésében meghatározott mértéket nem haladja meg.

(3) A befogadottra, valamint az emberkereskedelemben áldozatává vált harmadik országbeli állampolgárra a közösségi szálláson történő tartózkodási engedélyt a 130-133.§-ban foglalt rendelkezéseket kell alkalmazni. [A kijelölt helyen való tartózkodás elrendelése, a közösségi szállás]

(4) A 14.életévét betöltött befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár a (3) bekezdésben foglalt ellátáson túl a közösségi szálláson való térítésmentes tartózkodás harmadik hónapjától szabad felhasználást havi költöpénzből részesílni, amelynek összege az öreges személyi nyugdíj mindenkori legkisebb összegének 25%-a. Ha a költöpénzből részesül a közösségi szállás házirendjét ismételten vagy súlyosan megszegi, a költöpénzt a közösségi szállás vezetője határozott időtartamra megvonja. A költöpénz megvásárlásának időtartamát az elkövetett cselekmény jellege és súlya alapján kell meghatározni.

(5) Ha a befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár jövedelméhez a 75.§ (1) bekezdésében foglalt mérték meghaladja, köteles az által igénybe vett szolgáltatások önköltségét utólag, minden hónap 5. napjáig megtéríteni. A megtérítés összegét a közösségi szállás vezetője állapítja meg.

78.§ (1) A befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár a közösségi szállást a kiköltözés szándékával a regionális igazgatóság engedélyével hagyhatja el. E szándékot a kiköltözést megelőzően köteles nyilatkozni (A továbbiakban: kiköltözési nyilatkozat).

(2) Attól a befogadotttól, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgártól, aki a kiköltözési nyilatkozat nélkül 48 órát meghaladóan hagyja el a közösségi szállást – és a távolmaradását később sem tudja hitelt érdemlően igazolni – a közösségi szállás vezetője határozott időtartamra megszólaltatja. [a további ottani lakhatást]

(3) Amennyiben a befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár magánszállásra költözik, a regionális igazgatóság engedélyével visszatérhet a közösségi szállásra, ha vagyonjá és jövedelmi viszonyai alapján a közösségi szállás igénybevételére jogosult.
(4) A befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár tizennyolc hónapon túli közösségi szálláson tartózkodását – ha vagyoni és jövedelmi viszonya alapján indokolt – a regionális igazgatóság kivételes méltányosságból engedélyezheti.

79.§ Ha a befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár nem áll társadalombiztosítási jogviszonyban, betegsége esetén a 138.§-ban meghatározott egészségügyi szolgáltatásokat jogosult térítésmentesen igénybe venni.
(2) A közösségi szálláson tartózkodó befogadott, valamint az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár háziórorvi ellátása a közösségi szálláson történik.
(3) A közösségi szálláson kívül lakó befogadott, valamint az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár a szálláshelye szerinti – területi ellátási kötelezettséggel egészségügyi szolgáltatás nyújtó – háziórorvsnál jogosult ellátásra.
(4) Az egészségügyi szakellátást a területi ellátási kötelezettséggel működő egészségügyi szolgáltatónál lehet igénybe venni.

80.§ A befogadott, valamint az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár óvodai nevelésével, általános iskolával, középiskolával, kollégiumi és gyermekvédelemi intézményben történő elhelyezésével kapcsolatos étkezési költségeket a befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár törvényes képviselője kérelmére a Hivatal – a regionális igazgatóság javaslatára – az ellátást biztosító intézménynek közvetlenül megtéríti.

81.§ A befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár, aki a tartózkodási engedély első alkalommal történő kiállítását követő fél éven belül magánszállásra költözik ki, a regionális igazgatósághoz egyszeri kiköltöztetési segély íránti kérelmet nyújthat be. A kérelmekhez csatolni kell a kiköltöztetési nyilatkozatot, egy ismételtten kitöltött vagyon-és jövedelem nyilatkozatot, valamint a lakásbérlési szerződést vagy a magánszállás tulajdonosának a kiköltözéshez való hozzájáruló nyilatkozatát, és igazolni kell a kérelmező szálláshelyének bejelentését.

82.§ (1) Az egyszeri kiköltöztetési segély íránti kérelméről a kérelmező szociális helyzetét mértékelve, a regionális igazgatóság dönt. A kiköltöztetési segély csak egy alkalommal nyújtható.
(2) A segély összege felnőtt személy részére az öregségi nyugdíj mindenkor legkisebb összegének 300%-a, 18.életévét be nem töltött kiskorú részére 170%-a, azonban egy család esetében sem haladhatja meg az öregségi nyugdíj mindenkor legkisebb összegének a hatszorosát.
(3) A segélyt a Hivatal a kérelmemben megadott, igazolt bejelentett szálláshely szerinti címre a kérelmező személynek postai úton utalja át.
(4) Az egyszeri kiköltöztetési segélyt igénybe vevők közösségi szálláson történő elhelyezésére és ellátására csak a 78.§ (4) bekezdésében tarthatnak igényt. [kivételes méltányosság]

83.§ (1) Az általános iskolás, valamint a középiskolai tanulmányokat folytató befogadott, illetve az emberkereskedelemben áldozatává vált harmadik országbeli állampolgár törvényes képviselője az oktatási intézménybe való beiratkozásakor beiskolázási támogatás iránti kérelmet nyújthat be a regionális igazgatósághoz. A Hivatal – a regionális igazgatóság javaslatára – szociális alapon való rászorultság megállapítása esetén egyszeri beiskolázási támogatást folyósíthat.
(2) A beiskolázási támogatás összege az öregségi nyugdíj mindenkori legkisebb összegének 50%-a.

84.§ (1) A településen elismert minimális lakásnagyságot és minőséget meg nem haladó lakásban, szálláson lakó befogadott, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár kérelmére lakbérének, albérleti díjának, szállásköltségének megfizetéséhez a regionális igazgatóság támogatást nyújthat. A támogatás csak az érvényes bérleti, albérleti szerződés vagy befogadó nyilatkozat alapján, előzetes környezettanulmány után folyósítható. Az előzetes környezettanulmányt a kérelmező szálláshelye szerint illetékes regionális igazgatóság folytatta le.

(2) Lakhatási támogatást a tartózkodási engedély első alkalommal történő kijállításától számított legfeljebb tízévenkét hónapig folyósítható.

(3) A támogatás összege a bérbeadó által igazolt lakbér, albérleti díj, szállásköltség 50%-a, de legfeljebb az öregségi nyugdíj mindenkori legkisebb összege egy fő esetén, egy család esetében legfeljebb az öregségi nyugdíj mindenkori legkisebb összegének a kétszerese. Ugyanabban a lakásban együtt élő, családtagnak nem minősül befogadottakra, illetve az embkerkereskedelem áldozatává vált harmadik országbeli állampolgárokra a családra vonatkozó szabályok az irányadóak.

85.§ A regionális igazgatóság a befogadott, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár kérelmére, végleges hazatartásától vagy harmadik országba történő végleges távozása esetén a célállomásig érvényes menetjegyé árának és a kiutazással összefüggő egyéb költségeinek részben vagy egészben történő megtérítéséről dönthet. A regionális igazgatóság által megállapított összeget a Hivatal folyósítja.

86.§ A regionális igazgatóság a befogadott, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár kérelmére, egy alkalommal, átvállalhatja a munkavállaláshoz szükséges munkaalkalmassági egészségügyi vizsgálat költségeinek, valamint a szakmai képesítést igazoló dokumentumok fordítása költségeinek megtérítését. Az átvállalt összeget a Hivatal folyósítja.

87.§ (1) A Hivatal társadalmi szervezettel, helyi ön-kormányzattal, egyházzal, jogi személyek, egyesülettel, alapítvánnyal, ezek intézményeivel, gazdasági társasággal (a továbbiakban: szolgáltató) szerződést köthet:

a) a befogadottak, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgárok elszállásolására,

b) az ellátások teljesítésére,

c) a befogadottak, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgár szociális és mentálhigiénés gondozására,

d) a befogadottak, illetve az emberkereskedelem áldozatává vált harmadik országbeli állampolgárok jogaira és kötelezettségeire irányuló tájékoztatásra.

Ideiglenes tartózkodásra jogosító igazolás

89.§ (1) Az ideiglenes tartózkodásra jogosító igazolás kiállítására

d) a Tv.30.§ (1) bekezdése e.) pontjában meghatározott esetben az emberkereskedelem áldozatává vált harmadik országbeli állampolgár szálláshelye szerint illetékes regionális igazgatóság, hatáskörébe tartozik.
§ (1) Ha az őrizetbe vett vagy a közösségi szálláson elhelyezett harmadik országbeli állampolgár nem áll társadalombiztosítási jogviszonyban, betegsége esetén térítésmentesen jogosult az egészségügyről szóló 1997.évi CLIV. törvény 142.§ (2) bekezdésében és (3) bekezdés e) és i) pontjában meghatározott ellátásokra.

(2) Az elhelyezett harmadik országbeli állampolgár jogosult a külön jogszabályban meghatározott kötelező védőoltásra.

[ExD]

34/1999. (II.26.) Kormány rendelet
A büntetőeljárásban résztvevők, valamint az eljárást folytató hatóság tagjai személyi védelme elrendelésének feltételeiről és a végrehajtásának szabályairól

[Government Decree on executive provisions and criteria of protection providing for participants in criminal proceedings and members of proceeding authority in criminal matters – consolidated text]

1. § E rendelet alkalmazásában
1. büntetőeljárásban résztvevő: a terhelt, a védő, a sértett, az egyéb érdekelt, a sértett és az egyéb érdekelt képviselői, a tanú, a szakértő, szaktanácsadó, a tolmács, a hatósági tanú;
4. személyi védelem: a rendőrségnél, a határőrségnél, a vám- és pénzügyőrségnél, a honvédségnél, valamint a büntetés-végrehajtási szerveznél az e rendeletben folytalt intézkedések;
5. fenyegetett helyzetben lévő személy: a személy, aki - a büntetőeljárásban való részvétele, illetve a büntetőeljárás során jogai érvényesítésének, kötelezettségei teljesítésének akadályozása, illetve meghűsítésára végzett elkövetett vagy kilátásba helyezett személy elleni erőszakos avagy közvetlen vagy közvetített bűncselekmény miatt - a személyi védelme indokoltan látszik, valamint - a rendeletben meghatározott esetekben - a büntetőeljárás résztvevőjére, valamint a hatóság tagjára tekintettel az a személy is, akivel szemben ilyen bűncselekményt kötettek el, illetve valószínűsíthető, hogy ilyen bűncselekményt követhet és védelme ugyancsak indokoltan látszik;
8. Védelmi Program: a büntetőeljárásban részt vevő tanú, sértett, terhelt, illetve ezen személyek hozzátartozója, továbbá az érintettre tekintettel fenyegetett helyzetben lévő más személy védelmének a személyi védelem keretében nem biztosítható a büntetőeljárásban résztvevők, az igazságzolgáltatást segítők Védelmi Programjáról szóló 2001. évi LXXXV. törvényben (a továbbiakban: Tvdt.) meghatározott, szervezett formája;

2. § (1) Személyi védelemben részesíthető:
   a) a büntetőeljárásban résztvevő;
   (2) A személyi védelem a büntetőeljárás tartama alatt, illetve a büntetőeljárás befejezését követően alkalmazható.

3. § A személyi védelemmel kapcsolatos nyilatkozatokat írásba kell foglalni.

NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING 388
4. § (1) A 2. § (1) bekezdés a) pontjában meghatározott, illetve - a személyükre tekintettel - a c) pontban felsoroltak személyi védelmének elrendelését a büntetőeljárást tartama alatt, illetve azt követően az a nyomozó szerv, ügyész vagy bíróság kezdeményezheti, amely előtt a büntetőeljárást folyik vagy folyt.

(3) A személyi védelem a fenyegetett helyzetben lévő személy kérelmére vagy hivatalból kezdeményezhető. A fenyegetett helyzetben lévő személy a személyi védelem iránti kérelmet a büntetőeljárást alatt a védelem kezdeményezésére jogosultnál, a büntetőeljárás befejezése után a személyi védelem elrendelésére jogosultnál terjesztheti elő. A személyi védelem hivatalból akkor kezdeményezhető, ha az érintett - a személyi védelem körében - a személyes adatok kezeléséhez hozzájárul.

(5) A Tanúvédelmi Szolgálat vezetője kezdeményezheti az olyan érintett személyi védelmét, akivel szemben a Védelmi Program hatálya megszűnik, de a személyi védelem feltételei még fennállnak.


(2) A határozatot a személyi védelem iránti kérelem előterjesztésétől, illetve - a hivatalból indult eljárás esetén - a kezdeményezéstől számított három munkanapon belül kell meghozni.

11. § (1) A személyi védelmet - a (3)-(4) bekezdésben foglalt kivétellel - az azt elrendelő szerv a reá irányadó jogszabályok keretei között látja el (a továbbiakban: személyi védelem ellátó).

(2) Különösen indokolt esetben a személyi védelem ellátó a személyi védelem ellátására jogosult más szerv közreműködését is igénybe veheti.

(3) Az ügyészség által elrendelt személyi védelmet a rendőrség látja el.

18. § (1) A személyi védelem haladéktalanul meg kell szüntetni, ha a) az elrendelés feltételei már nem állnak fenn;

b) az érintett a személyi védelemről írásban lemond;

c) - kiskorú, illetve korlátozottan cselekvőképes vagy cselekvőképtelen érintett esetében - a törvényes képviselő, a gondnok, illetve a gyám a személyi védelemről írásban lemond.

(2) A személyi védelem megszüntethető, ha a) a védelem kezdeményező ezt javasolja;

b) a védelem tartama alatt az érintett szándékos bűncselekményt követ el;

c) az érintett a követendő magatartásra vonatkozó ajánlásoktól indokolatlanul eltért, vagy tájékoztatási kötelezettségét a védelem további fenntartását súlyosan veszélyeztető vagy azt lehetetlenné tevő módon önhibájából megszegi;

d) a tanú vagy terhelt nem tesz vallomást vagy korábbi vallomását visszavonja;

e) a szakértő, a szaktanácsadó a szakvélemény adását a személyi védelem elrendelésének alapjául szolgáló ügyben megalkapott indok nélkül megtagadta, vagy a büntetőeljárást alapjául szolgáló ügyben hamis szakvélemény, felvilágosítás adása miatt vele szemben büntetőeljárást indult;
(3) A tanú, a terhelt, a szakértő, illetve a szaktanácsadó védelmének a (2) bekezdés c) vagy d) pontjában foglalt okból történő megszüntetése esetén a személyükre tekintettel más személyt érintő személyi védelmet is meg kell szüntetni.

[LegA]
Act LXXX of 2003 on Legal Aid
[Unofficial translation]

Forms of Aid

Article 1

(1) The State shall, within the framework of providing legal aid, provide assisted persons (hereinafter referred to as the "party") extrajudicially with the right to have recourse to legal aid as provided for herein (for the purposes of this Chapter, hereinafter referred to as "aid").

(2) Legal aid providers shall give the Parties legal advice or prepare submissions or other papers for them (hereinafter referred to as "providing legal services"), and the State shall pay or advance the legal aid providers in lieu of the Parties for the pertinent costs and fees in the amounts specified by law (hereinafter referred to jointly as the "legal services fee").

(3) The hourly fees of legal aid providers shall be established by Parliament in the Central Budget Act in such a manner that the amount will be the same or higher than the fee established for the previous year.

Article 2

(1) If, owing to their income and financial situation, a party becomes entitled to have the State assume payment of the legal services fee (Section 5), the party shall have recourse to legal services without cost.

(2) If, owing to their income and financial situation, a party becomes entitled to have the State assume advance payment of the legal services fee (Section 6), the party shall repay the State the advanced fee within the period stipulated in the resolution authorizing the aid. A period of not more than one year may be granted for repayment, and repayment in installments within this term may also be authorized.

Personal Scope

Article 4

(1) Aid may be granted to a party if
a) the party is a Hungarian citizen;

b) the party is requesting legal aid in connection with obtaining a visa, obtaining authority to reside or permanent resident status, or in a naturalization
case, if the party’s ascendant is or has previously been a Hungarian citizen, furthermore, if the party is engaged in repatriation or an asylum procedure,

c) the party is not a Hungarian citizen and their state has concluded an international agreement to this effect with the Republic of Hungary or reciprocity exists between their state and the Republic of Hungary;

d) the party has the right of free movement and residence in accordance with the Act on Admission and Residence of Persons with the Right of Free Movement and Residence;

e) the party falls under the scope of the Act on the Admission and Residence of Third-Country Nationals who is domiciled or has a habitual and legal residence in the territory of the Republic of Hungary, in any Member State of the European Union, or in any State that is a party to the Agreement on the European Economic Area, furthermore, in any other country whose citizens are enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area;

f) the party has been granted residence permit on humanitarian grounds.

(2) The statement of the minister in charge of the judicial system (hereinafter referred to as “minister”) shall be authoritative in regard to the existence of reciprocity.

(3) The provisions of this Act pertaining to the Member States of the European Union shall not apply to Denmark.

Article 9/A

If a party presenting a request for aid under Paragraph g) of Subsection (1) of Section 3 has been declared a crime victim upon the proceedings governed in specific other legislation, and that he/she is therefore eligible for victim protection services, the provisions on need for aid as set out in Sections 5-9 shall apply subject to the exception that the Government shall cover the costs of legal services instead of the party if the available net monthly income of the party does not exceed 86 per cent of the national average of the gross monthly wage published by the Central Statistical Office for the second year prior.

Article 39

(1) In matters not regulated herein, the provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as “APA”) shall apply to proceedings conducted by the legal assistance service.

(2) In accordance with Subsection (1) of Section 10 of the APA, the application of a client shall be construed as a request for urgent legal aid, if it shows that if the legal aid is not provided immediately, or at most within 8 days the client is likely to miss a certain specific deadline prescribed for a legal statement, or if urgent need for the aid is justified by the nature of the case.

(3) In the proceedings under this Act the client’s right shall not apply to a court or an authority in whose proceedings or in connection with which the aid is provided.

(4) In aid related proceedings no legal succession is allowed, with the exception where repayment of the aid is demanded.
(5) In connection with the proceedings conducted under this Act, unless otherwise prescribed in an international agreement, documents made out in a language other than Hungarian shall be accepted in a translation, whether or not certified, and no certified translation is required of Hungarian documents destined to be sent abroad. If in a proceeding a document has to be translated, it may be suspended - *ex officio* or otherwise - until it is done.

(6) The documents of a case may be reviewed, apart from the party and his representative, by the persons and authorities referred to in Subsection (2) of Section 35.

(7)

(8) A resolution may not be annulled if the case was heard by the legal assistance service without proper jurisdiction.

(9) No duty or fee shall be required for submitting an application for proceedings under this Act; however, the party is required to cover the costs of interpretation and translation services as they may be necessary in the course of the proceeding, except:

a) in the cases defined in Subsection (3) of Section 9 and Subsection (1) of Section 10 of the APA;

b) if the client was informed according to Subsection (2) of Section 28;

c) if the client has been granted aid, or if application for aid was rejected for reasons other the lack of need;

d) if expressly prescribed in this Act.

(10) The provisions on the repayment of aid shall duly apply to the payment of interpretation and translation charges as well.

[PubA]

1993.évi LXXIX. törvény
a közoktatásról

[Consolidated Act on public education]

A tankötelezettség

6. § (1) A Magyar Köztársaságban - az e törvényben meghatározottak szerint - minden gyermek tanköteles.

110. § (1) A nem magyar állampolgár kiskorú akkor tanköteles Magyarországon, ha

a) menedékjogot kérő, menekült, menedékes,

b) a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló törvény szerint a szabad mozgás és tartózkodás jogát Magyarországon gyakorolja,

c) a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló törvény hatálya alá tartozik, és bevándorolt vagy lételepedett jogállású, illetve a Magyar Köztársaság területén való tartózkodásra jogosító engedélyel rendelkezik.

(2) A feltételek meglétét a tanuló nevelési-oktatási intézménybe történő felvételénél igazolni kell.
(3) Ha a Magyar Köztársaság területén való tartózkodás ideje

a) az egy évet nem haladja meg, a szülő kérésére,

b) az egy évet meghaladja, e törvény erejénél fogva vállik a gyermekek tankötelessé.

(4) A nem magyar állampolgár mindaddig, ameddig megfelel az (1) bekezdésben meghatározott feltételeknek, az óvodai nevelést, az iskolai nevelést és oktatást, a kollégiumi nevelést, a pedagógiai szakszolgálatokat a tankötelhetettség fennállása, továbbá a tankötelezettség ideje alatt megkezdett és a tankötelezettség megszűnése után folytatott tanulmányok alatt a magyar állampolgárok és azonos feltételekkel veheti igénybe.

(5) Az a nem magyar állampolgár, aki az oktatásért felelős miniszter meghívásánál rendelkezik, a meghívásánál meghatározott ellátást a magyar állampolgároknak azonos feltételek szerint veheti igénybe.

(6) A Magyarországon működő diplomáciai vagy konzuli képviselet tagjának gyermeké - ha nem tartozik az (1)-(2) bekezdés hatálya alá - viszontosság alapján mentesül az e törvényben meghatározott térítési díj és tanári megítélése alól. A viszontosság kérdéseiben a küllpolitikáért felelős miniszter foglalt állást.

(7) Az a nem magyar állampolgár, aki nem tartozik az (1)-(4) bekezdésben foglaltak hatálya alá - ha nemzetközi szerződés vagy jogszabály másképpen nem rendelkezik, illetve az ingyenesességet biztosító viszontosság hiányával -, az óvodai, iskolai és kollégiumi ellátásért, továbbá a pedagógiai szakszolgálat igénybevételéért díjat fizet. A díj nem haladhatja meg a szakmai feladatra jutó folyó kiadások egy tanulóra jutó hányadát. A közoktatási intézmény vezetője a díjat a fenntartó által meghatározott szabályok alapján csökkentheti, illetve elengedheti.

(8) Az (1) és (7) bekezdésben meghatározottak óvodai neveléséhez, iskolai neveléséhez és oktatásához az oktatásért felelős miniszter pedagógiai rendszerek (oktatási programokat) ad ki.

[HighA]

2005.évi CXXXIX. törvény
a felsőoktatásról

[Consolidated Act CXXXIX of 2005 on higher education]

119. § (1) A külföldön vagy Magyarországon működési engedélyvel rendelkező külföldi oktatási intézményben szerzett oklevelek és középiskolai tanulmányokat igazoló bizonyítvények elismerésére az elismerési törvény rendelkezéseit kell alkalmazni.

(2) Nem magyar állampolgárok magyarországi tanulmányaira e törvény rendelkezéseit kell alkalmazni, a következő eltérésekkel:

a) ha nem rendelkezik az ország területén lakóhellyel, a hallgatói jogviszony létesítése előtt be kell szereznie a külön jogszabályban meghatározott beutazásra és tartózkodásra jogosító engedélyt,

b) ha a 39. § (1) bekezdésében felsorolt hallgató - a 39. § (1) bekezdés b)-c) pontjában felsoroltak kivételével - államilag támogatott képzésben vesz részt, csak nemzetközi szerződés, jogszabály, munkaterv vagy viszontosság alapján
jogosult szociális vagy más ösztöndíjra, szociális támogatásra, tankönyvr-, jegyzettámogatásra, lakhatási támogatásra,
c) a költségvetés pályázati üton elnyerhető ösztöndíj folyósításával nyújthat segítséget a tanulmányok folytatásához,
d) a határon túli magyarok a szomszédos államokban élő magyarokról szóló 2001. évi LXII. törvényben (a továbbiakban: kedvezménytörvény) foglalt feltételek szerint jogosultak részt venni az államilag támogatott képzésben,
e) a felsőfokú tanulmányok megkezdése előtt legfeljebb két féléven keresztül - hallgatói jogviszony keretében - előkészítő tanulmányokat folytathatnak.

(3) A külföldi állampolgárok magyarországi, a magyar állampolgárok külföldi tanulmányai támogatásának rendjét a Kormány határozza meg, ennek során a kedvezménytörvény hatálya alá tartozók tekintetében az e törvényben meghatározott támogatási időt meghosszabbíthatja.

[PenA]

Act IV of 1978 on the Penal Code
(unofficial translation)

Trafficking in Human Beings

Article 175/B

(1) Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, also the person who recruits, transports, houses, hides or appropriates people for such purposes for another party, is guilty of a felony punishable by imprisonment for up to three years.

(2) The punishment shall be imprisonment between one to five years if the criminal act is committed:
   a) to the detriment of a person under eighteen years of age;
   b) to the detriment of a person kept in captivity;
   c) to subject the victim to forced labour;
   d) for the purpose of sexual intercourse;
   e) for the unlawful use of the human body;
   f) in criminal conspiracy; or
   g) in a pattern of business operation.

(3) The punishment shall be imprisonment between two to eight years, if the act of crime is committed:
   a) to the detriment of a person who is in the care, custody, supervision or treatment of the perpetrator; or
   b) for the purposes specified in Paragraphs c)-e) of Subsection (2):
      1) by force or by threat of force;
      2) by deception;
      3) by tormenting the injured person.

(4) The punishment shall be imprisonment between five to ten years if the criminal act is committed:
   a) to the detriment of a person referred to in Paragraphs a)-b) of Subsection (2) and in Paragraph a) of Subsection (3), for any of the purposes defined under Paragraphs c)-e) of Subsection (2), and/or in the manner defined under Points 1-3 of Paragraph b) of Subsection (3); or
b) for the purpose of making illegal pornographic material.

(5) The punishment shall be imprisonment between five to fifteen years or life imprisonment if the criminal act is committed to the detriment of a person under twelve years of age:
   a) for any of the purposes defined under Paragraphs c)-e) of Subsection (2);
   b) in the manner defined under Points 1-3 of Paragraph b) of Subsection (3);
   or
   c) for the purpose of making illegal pornographic material.

(6) Any person who engages in preparations for trafficking in human beings is guilty of misdemeanour punishable by imprisonment for up to two years.

Aiding in Illegal Residence

Article 214/A

(1) Any person who provides aid to a foreign national who is not a citizen of any Member State of the European Union to stay in the territory of any Member State of the European Union for financial gain is guilty of misdemeanour punishable by imprisonment for up to two years, community service or a fine, if such act does not result in a criminal act of greater gravity.

(2) Any person who provides aid, above and beyond what is contained in Subsection (1), to a foreign national to stay in the territory of the Republic of Hungary for financial gain shall be punishable in accordance with Subsection (1), if such act does not result in a criminal act of greater gravity.

[AlienA]

2001. évi XXXIX. törvény
A külföldiek beutazásáról és tartózkodásáról

[Act XXXIX of 2001 on entry and residence of aliens]

15. § (1) A Hivatal és a területi idegenrendészeti hatóság a törvényben foglalt tartózkodási feltételek hiányában is - humanitárius megfontolásból - tartózkodási engedélyvel látja el:
   c) jelentős nemzetbiztonsági vagy bűnüldöző érdekől a nemzetbiztonsági, illetőleg a bűnüldöző szerv indítványára azt a külföldit, illetve rá tekintettel más külföldi személyt, aki bűncselekmény felderítése érdekében a hatóságokkal - a bizonyítást jelentősen elősegítő módon - együttműködött;

56. § (1) A területi idegenrendészeti hatóság - határozattal - Őrizetnek nem minősülő, személyes szabadságot korlátzó intézkedésként a külföldi kijelölt helyen való tartózkodását rendelheti el, ha
   a) a külföldi visszairányítását, visszutasítását vagy kiutasítását a Magyar Köztársaság nemzetközi egyezményben vállalt kötelezettsége miatt nem lehet elrendelni, illetőleg végrehajtani;
   b) az Őrizet határideje letelt, de az Őrizet elrendelésére alapul szolgáló ok továbbra is fennáll;
   c) a külföldi humanitárius célú tartózkodási engedélyel rendelkezik.
(4) A kötelező tartózkodási helyet közösségi szálláson lehet kijelölni, ha a külföldi magát eltartani nem képes, megfelelő lakással, anyagi fedezettel vagy jövedelemmel, eltartásra köteles meghívóval, eltartásra kötelezhető hozzáértővel nem rendelkezik.

[ImpD]  
170/2001. (IX. 26.) Korm. rendelet  
a külföldiek beutazásáról és tartózkodásáról szóló 2001. évi XXXIX. törvény végrehajtásáról

[Government Decree No.170 of 2001, 26 September on implementation rules of the Act XXXIX of 2001 on entry and residence of aliens]

25. § (1) A tartózkodási engedély humanitárius megfontolásból történő kiadásának indokoltságát - a hontalan kivételével - a menekültügyi hatóság, illetve a nemzetbiztonsági vagy a bűnüldöző szerv írásban igazolja.
(2) A Tv. 15. §-a (1) bekezdés e) pontjának hatálya alá tartozó kiskorú humanitárius célú tartózkodási engedélyének kiadását a gyámhatóság kezdeményezheti.
(3) A humanitárius megfontolásból kiadott tartózkodási engedély meghosszabbítása során a hosszabbítás indokoltságát az (1) bekezdésben meghatározott szerveknek, illetve a gyámhatóságnak írásban ismételten igazolni kell.
N.B. IRELAND IS NOT BOUND BY THIS DIRECTIVE

Last amendments made on 11 November 2007.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Ireland

By

SMYTH, Ciara

Ms.

Lecturer in Law, National University of Ireland, Galway

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The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not take part in the adoption of this Directive and is not bound by it or subject to its application. There is currently no legislation, regulation or circular or instruction in Ireland dealing with a residence permit for the victims of trafficking. The second part of this questionnaire will outline actual and proposed legislation which criminalises trafficking, although the current and proposed legislation deal principally with the offender and not the victim. Because a) Ireland is not bound by the Directive and b) Ireland has no legislation etc. dealing with victims of trafficking, the tables and questions under this First Part of the questionnaire are irrelevant.

Table 1

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Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

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<th>PROVISIONS CONCERNED: (for example if the norm also pursues other objectives than the transposition of the directive)</th>
<th>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL</th>
<th>LEGAL NATURE (indicate by ticking the correct box):</th>
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<td>LEGISLATIVE</td>
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<td>CIRCULAR OR INSTRUCTIONS</td>
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Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
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<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
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<tr>
<td>CENTRAL MINISTRY OF:</td>
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<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
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<td>OTHER LEVEL OF ADMINISTRATION:</td>
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<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☐ NO
Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES    ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

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<th>Table 1</th>
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<td>MISSING TEXTS</td>
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<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA25).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC26).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ ‘Trafficking in human beings’ only
☐ ‘An action to facilitate illegal immigration’ only
☐ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

None of the above

From the outset it is important to note that Ireland has not transposed Directive 2004/81/EC and there is no current legislative provision which grants residence permits to the victims of trafficking or victims of smuggling. It is theoretically possible for a victim of trafficking to make an application for refugee status under the Refugee Act 1996, as amended. However, there are no publicly available guidelines on how the trafficking issue fits within

the refugee definition. Moreover, refugee decisions are not routinely published in Ireland and this makes it almost impossible to ascertain whether and on what grounds a victim of trafficking might be recognized as a refugee.

It is theoretically possible for a victim of trafficking to apply to the Irish Naturalization and Immigration Service (henceforth INIS) for permission to reside in the State. INIS is an executive office of the Department of Justice, Equality and Law Reform dealing with issues of asylum, immigration and citizenship. This procedure would, however, be outside any legal framework and the victim would have to rely on the inherent executive discretion of the Minister for Justice, Equality and Law Reform. An application made in this way could prompt the Minister to initiate deportation proceedings pursuant to Section 3 of the Immigration Act 1999, but in the event of this happening, a victim could then apply for leave to remain on humanitarian grounds. Section 3(6) of the same Act sets out the matters to which the Minister must have regard when making a deportation order, such as the age of the applicant, humanitarian considerations, the conduct of the applicant both within and outside the State, the common good and national security and public policy. It should be noted that there is no timeframe within which applications for leave to remain must be considered and so it is possible that a victim's application could remain pending for months or even years.

The following paragraphs will describe separately Ireland's existing and proposed legislation in the area of trafficking and smuggling.

Trafficking in Human Beings

Ireland has limited legislation relating to trafficking in human beings and it is imperative to note that, rather than providing for the protection of victims of trafficking, such legislation as exists is directed at the criminalization of activities related to trafficking and the prosecution of the perpetrators of these acts. Of note are the following:

- Section 3 of the Child Trafficking and Pornography Act 1998, as amended, is the only provision under the current legislative scheme that deals specifically with trafficking and it should be noted that there is no comparable provision relating to trafficking in adults. Section 3 states that it is an offence to knowingly facilitate 'the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation'. It is also an offence to provide accommodation 'for a child for such a purpose while in the State'. There have been no convictions for trafficking in humans under this piece of legislation.

- Section 8 of the Refugee Act 1996, as amended, states that when an immigration officer discovers a minor under the age of 18 who has arrived in the state independently of an adult custodian, he/she must immediately inform the relevant health board (since renamed 'health authority'). Hereafter the child is subject to the provisions of the Child Care Act 1991.

- Section 2 of the Employment Permits Act 2006 is relevant with regard to victims of trafficking for forced labour. It outlines that employers may only employ foreign nationals (read 'third country nationals') in accordance with an employment permit granted by the Minister for Enterprise, Trade and Employment. To do otherwise constitutes an offence.
It should be noted that on 13th April 2007 Ireland signed (but has yet to ratify) the Council of Europe Convention on Actions against Trafficking in Human Beings which notably makes provision for periods of reflection and recovery for victims of trafficking and for residence permits for those who cooperate with criminal investigations into trafficking. The stated intention of the government is to incorporate the Convention's provisions into Irish law by way of two separate pieces of legislation - one dealing with the criminal justice/law enforcement aspects of the Convention and the other dealing with the victim/protection-relation aspects. The Criminal Law (Human Trafficking) Bill 2007 deals with the former, while the Immigration, Residence and Protection Bill 2007 is supposed to deal with the latter. These two bills will now be outlined.

On 11th October 2007 the Criminal Law (Human Trafficking) Bill 2007 was published. According to the Department of Justice, Equality and Law Reform website, the ‘enactment of this legislation will bring Ireland into compliance with the criminal law/law enforcement elements of various EU, Council of Europe and UN human trafficking instruments and for this purpose the Bill also proposes to amend the Sex Offenders Act 2001 and to provide legislation for related matters.’

The Criminal Law (Human Trafficking) Bill 2007 proposes to create a number of new offences under Irish criminal law in relation to adults and children specifically but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website of the Department of Justice, Equality and Law Reform, the ‘necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.’ It is said that this framework will include provision for an ‘immediate period of recovery and reflection’ but it is important to note that there is no guarantee that such measures will materialise. The Minister for Justice also announced plans to initiate a number of strategies in relation to trafficking in Ireland. For example a High Level Group on Combating Trafficking in Human Beings is to be established which would have responsibility for, inter alia drafting a National Action Plan to Combat Trafficking in Human Beings focusing, in part, on victim protection issues.

Summarized below are the most significant provisions of the Criminal Law (Human Trafficking) Bill 2007, including those which create new trafficking offences under Irish criminal law:

Section 3 criminalizes trafficking of children (persons aged below 18 years) into, through or out of the State for the purposes of labour exploitation or removal of body organs and any acts of causing the trafficking or attempting to commit or cause it. Section 3 also creates the offences of selling and purchasing of children.

Section 4 amends Section 3 of the Child Trafficking and Pornography Act 1998 as amended, stating that ‘a person who trafficks a child for the purposes of the sexual exploitation of the child’ or who 'sexually exploits a child or takes, detains or restricts the personal liberty of a child for the purpose of his or her sexual exploitation', shall be guilty of an offence.’ ‘Sexual exploitation’ is defined specifically in relation to children. The offence includes for example prostituting the child or using the child for the production of child pornography, inviting, inducing or
coercing the child to engage in these acts, inviting, inducing or coercing the child to engage or participate in 'any sexual, indecent or obscene act' or to force the child, by these means, to 'observe any sexual, indecent or obscene act for the purpose of corrupting or depraving the child.' ‘Trafficking’ under Section 4 is defined in similar terms to the definition of trafficking in persons including children which appears in Section 2 of the Bill, however, it specifically references children. For example, the acts of procuring, recruiting, transporting or harbouring of the child, causing 'the child to enter or leave the State or to travel within the State’, taking or taking custody of the child or providing the child with 'accommodation or employment' are all encompassed within this definition. The acts of causing another person to commit the offence of trafficking or taking of children for the purpose of sexual exploitation or attempting to commit or cause it are also criminalized.

Section 5 creates an offence of trafficking in persons other than children (persons aged 18 years or over) for the purposes of sexual or labour exploitation or the removal of organs. A trafficker will be guilty of this offence for example where he/she has ‘coerced, threatened, abducted or otherwise used force against the trafficked person’, 'deceived' the trafficked person or 'made any payment' to another person under whose charge the trafficked person was 'in exchange for that person to permitting the trafficker to traffick the trafficked person.' It is also an offence to sell or purchase the persons to whom this section applies or to traffick a person who is mentally impaired for the purposes of that person’s exploitation. Finally, the acts of causing the offence of trafficking in persons other than children or to attempting to commit or cause it to be committed are also criminalized.

The definitions included in the provisions outlined above are intended to bring Ireland’s legislation in this area into line with the requirement of international instruments. It should also be noted that the maximum penalty for the offences under Sections 3, 4 and 5 is a sentence to life imprisonment.

Other provisions more specifically related to protection of alleged victims of trafficking in the context of criminal proceedings are as follows:

Section 10 enables the judge to exclude members of the public from proceedings for trafficking and selling/purchasing offences when he/she sees fit. The aim is to reduce publicity where it would put victims or their families at risk.

Section 11 guarantees that, unless the judge directs that it is in the interests of justice to publish or broadcast particular information relating to the proceedings for certain offences, the anonymity of the alleged victims of trafficking will be protected. A person committing a violation under this section is liable upon conviction on indictment to be punished by way of a fine or maximum prison sentence of ten years.

In April 2007, just days before a General Election, the government published an Immigration, Residence and Protection Bill 2007, which aimed to overhaul (consolidate, update and/or repeal) most existing legislation on the Statute Book dealing with immigration and asylum. It is important to note that this bill as published lapsed with the dissolution of the houses of parliament prior to the General Election. However, it is the stated intention of the new government to produce a substantially similar new bill in the near future. The new government has announced that the new bill will deal with protection for victims of trafficking.
However, there is nothing in the original bill to this effect. It does empower the Minister for Justice, Equality and Law Reform to make 'immigration policy statements' from time to time, setting out detailed immigration rules. The precise content and legal status of these statements is unknown at the present time. It may well be that the intention is to formulate policy regarding victims of trafficking in the form of an immigration policy statement.

The other provision of the original bill that is of relevance to trafficking is section 23. This section proposes that in appropriate cases an immigration officer may ask an adult who arrives in Ireland in the company of a foreign national under the age of 18 years to verify that he or she is the proper custodian of that minor. Where it appears to the immigration officer that this is not the case, he or she is to inform the Health Service Executive - an agency of the Department of Health and Children, which is responsible for providing health and personal social services to everyone living in Ireland. Thereafter the Child Care Act 1991 and other enactments 'relating to the care and welfare of persons under the age of 18 years' apply. The Health Service Executive is empowered under section 58(4) to make an asylum application on behalf of the child, if appropriate and in the child's best interests.

Facilitation of Illegal Immigration

Irish legislation on facilitation of illegal immigration is more substantial than the law relating to 'trafficking in human beings'. Of note are the following:

- Section 2 of the Illegal Immigrants Trafficking Act 2000. The title of this act is something of a misnomer since the act actually criminalizes smuggling and not trafficking in human beings. It provides that it is an offence for any person to organize or knowingly facilitate 'the entry into the State' of another person who is known or reasonably believed to be 'an illegal immigrant or a person who intends to seek asylum'. There have been no convictions for 'trafficking' in human beings under this legislation.

- Section 2 of the Immigration Act 2003 requires a carrier to ensure that all those arriving from outside the Common Travel Area (Great Britain, Northern Ireland, the Channel Isles or the Isle of Man): 'disembark in compliance with any directions given by immigration officers', present to an immigration officer for examination in respect of 'leave to land' and be in possession of a 'valid passport or other equivalent document which establishes his or her identity and nationality and, if required by law, a valid Irish transit visa'. The carrier may also be required to furnish the immigration officer with a list of the names and nationalities of all persons on board, including details relating to all crew members. It is an offence to contravene any of the requirements of this section. A person charged will have a defence if they can prove that they took all reasonable steps to ensure compliance with this provision of the Act. They will also have a defence if they can show that the non-national in question had the required documentation when they embarked on the vehicle or that the carrier had no reason to suspect the document was invalid.

- Section 6 of the Immigration Act 2004 requires that all non-nationals seeking to land in or pass through Ireland
must do so at an approved port. Section 7 of the 2004 Act states that, a carrier may detain on board any national arriving at such a port from outside the State and must, on the request of an immigration officer, detain any foreign national who has been refused permission to enter the State. Failure to comply with this requirement constitutes an offence.

Although no specific reference is made to trafficking in human beings, other pieces of legislation including the Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act 1996 may also be relevant with regard to preservation, recovery and where appropriate the disposal of the proceeds of criminal activity.

According to the report of the Department of Justice, Equality and Law Reform, and the Garda Síochána (police) Working Group on Trafficking in Human Beings (See Question 17 for details), the Garda (police) National Immigration Bureau (hereinafter GNIB) heads a task force of specialist Garda departments to enforce the afore-mentioned laws. Members of the GNIB are provided with specific training on how to identify victims of trafficking in the course of their duty and on understanding the issue of trafficking in order to ensure that victims receive appropriate assistance.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Not relevant - directive not transposed.

Note however:
Section 3 of the Child Trafficking and Pornography Act 1998, which represents the clearest current piece of legislation on trafficking in Ireland, deviates from the definition in Framework Decision 2002/629/JHA in a number of ways. Significantly, for the purpose of the Framework Decision, a child is under the age of 18 years. However, Section 2(1)(b) of the Child Trafficking and Pornography Act 1998 states that a child is under the age of 17 years.

Whereas the Framework Decision criminalizes sexual and labour exploitation, the Child Trafficking and Pornography Act 1998 only refers to sexual exploitation as an offence. It should be noted that the Irish provision includes the coercion or inducement of the child to participate in any illegal sexual activity as part of the definition of the offence. However the Framework Decision states in Article 1 that when the conduct in question involves a child, the employment of means such as inducement or coercion is irrelevant. It should also be noted that the Irish provision makes no reference to the irrelevance of the victim's consent as does the Framework Decision.

Head 3 of the proposed Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006, defines trafficking in almost identical terms to the Framework decision. However, it is worth noting that the Irish
provision omits to mention that if any means, for example, coercion, deception or abuse of authority are used, the consent of the victim will be irrelevant.

Section 2 of the Criminal Law (Human Trafficking) Bill 2007 (See Question 5 for a thorough discussion of the Bill) defines trafficking in relation to “a person including a child” in very similar terms to the Framework Decision. The Bill also differentiates between trafficking of a child who, for the purposes of the Bill is ‘a person under the age of 18 years’ and trafficking in relation to persons other than children and criminalizes trafficking for labour and sexual exploitation and removal of body organs in relation to both groups.

Section 3 is similar to the Framework Decision in that it criminalizes trafficking of children (persons aged below 18 years) into, through or out of the State for the purposes of labour exploitation or removal of body organs and any acts of causing the trafficking or attempting to commit or cause it. Section 3 also creates the offences of selling and purchasing of children.

Section 4 of the Bill which proposes to amend Section 3 of the Child Trafficking and Pornography Act 1998, defines trafficking or taking of children for the purpose of their sexual exploitation. There is no requirement under this provision that the child must have been for example ‘coerced’, ‘deceived’ or put in a position where they had ‘no real and acceptable alternative but to submit to being trafficked’. This is of course very similar to the terms of the Framework Decision.

In relation to trafficking of persons other than children or mentally impaired persons, the Section 2 definition of trafficking is applied but Section 5 adds the additional criteria stating that a trafficker will be guilty of the offence if he/she has, for example, ‘coerced’, ‘threatened’ or ‘deceived’ the trafficked person or conferred benefits on a third party to ensure their acquiescence in the commission of the offence.

There is no mention of the issue of consent in relation to the commission of the above offences in the main text of the Bill, however, the explanatory memorandum attached to the Bill explains, that in relation to children and mentally impaired persons, there is no need to show that either consented to the trafficking. The situation with regard to the consent or lack thereof of adults does not appear to be referred to.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
for the purpose of the exploitation of the prostitution of others
or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to
the exploitation, intended or actual, shall be irrelevant where
any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a
child, it shall be a punishable trafficking offence even if none of
the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall
mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable
in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national
norms of transposition in your Member State identical with the definition
of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC
(quoted below). Please explain any deviations in detail, if necessary, by
quoting national norms of transposition (in translation).

Not relevant - directive not transposed

Note: However, Section 2 of the Illegal Immigrant Trafficking Act 2000, which represents
Ireland's clearest piece of anti-smuggling legislation, contains a similar definition of 'an action
to facilitate illegal immigration' to the one in Directive 2002/90/EC. It does however deviate
from it in a number of significant ways:

- The Directive sets out the requirement that a person being assisted illegally must be a non-
national of the Member State entering or transiting across the State illegally. The Irish
provision, however, is less stringent in that it requires the smuggler to have actual knowledge
or reasonable cause to believe that the person in question is an 'illegal immigrant or a person
who intends to seek asylum'.

- The Irish provision does not apply to someone who facilitates the entry of another person
for reasons other than gain. This is in contrast with the Directive which appears to
differentiate between intentionally assisting a person's illegal entry into the territory of the
Member State and intentionally assisting their illegal residence in the State. Only in reference
to the latter, does the Directive refer to 'financial gain'.

- In the directive it is specified that a Member State 'may not decide to impose sanctions'
where the aim of the actions in question was to provide humanitarian assistance. By contrast
the Irish provision more decisively excludes criminalization of an act where it was performed
to 'assist a person seeking asylum by a person in the course of his or her employment by a
bona fide organisation if the purposes of that organisation include giving assistance to persons
seeking asylum.'
Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults ☐ Both adults and minors

Explanation:

Neither of the above

Note: There is no current Irish law which provides for residence permits for victims of trafficking. However, it should be noted that on 13th April 2007, Ireland signed the Council of Europe Convention on Actions against Trafficking in Human Beings which notably makes provision for periods for reflection and recovery for victims of trafficking and for residence permits for those who cooperate with criminal investigations into trafficking. Although the Convention has been neither ratified nor incorporated into domestic law, the Minister for Justice, Equality and Law Reform announced that the government intended that the Criminal Law ((Human Trafficking) Bill 2007 would ensure that Ireland's legislation is fully in compliance with criminal elements of the Convention. It was also announced that the needs of
victims would be addressed in the Immigration, Residence and Protection Bill 2007. However from a reading of the latter bill, which was published on 26th April 2007, it appears that there is no specific provision relating to protection of victims of trafficking. However, the Bill does empower the Minister for Justice, Equality and Law Reform to make 'immigration policy statements' from time to time, setting out detailed immigration rules. The precise content and legal status of these statements is unknown at the present time. It may well be that the intention is to formulate policy regarding victims of trafficking in the form of an immigration policy statement. Note that this bill lapsed in April 2007. (See answer to Q.5.A for further details on both of these bills).

The Criminal Law (Human Trafficking) Bill 2007 (See Question 5 for a thorough discussion of the Bill) proposes to create a number of new offences under Irish criminal law specifically in relation to both adults and children but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website for the Department of Justice, Equality and Law Reform the 'necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.' It is said that this framework will include provision for an 'immediate period of recovery and reflection' but it is important to note that there is no guarantee that such measures will ever materialise in reality. The Minister for Justice, Mr Brian Lenihan T.D also announced plans to initiate a number of strategies in relation to trafficking in Ireland. For example a High Level Group on Combating Trafficking in Human Beings is to be established which would have responsibility for, inter alia drafting a National Action Plan to Combat Trafficking in Human Beings, focusing, in part, on victim protection issues.

**Q.6.B.** Answer this question if the national norms of transposition are applicable only to adults: **What is the age of majority according to the national law of your Member State?**

The age of majority is: 18 unless the person in question is or has been married (See Section 2(1) of the Child Care Act 1991)

**Q.6.C.** Answer this question if the national norms of transposition are applicable to minors as well: **Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?**

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] All minors
- [ ] Minors, for which the following criteria are fulfilled:
  - 
  - 
  - 
  - 
Explanation:

Not relevant - directive not transposed.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’:

‘An action to facilitate illegal immigration (If applicable):

Not relevant - directive not transposed

Note: As mentioned previously, residence permits are not available to anyone on merit of their status as a victim of trafficking and although it may be theoretically possible for these victims to obtain residence permits on the basis of being granted refugee status or granted leave to remain on humanitarian grounds, a breakdown of figures in relation to this are not published.

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Not relevant - directive not transposed.

Note: If the directive were transposed, provision of information would be the responsibility of the Minister for Justice, Equality and Law Reform. At present there is no centralized Government authority which deals with victims of trafficking and it should be noted that information and support are principally provided by NGOs.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
In writing

Both orally and in writing

Explanation:

Not relevant- directive not transposed

**Q.8.C.** Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Not relevant- directive not transposed

**Q.8.D.** Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Not relevant- directive not transposed

**Reflection period**

**Q.9.** According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

**Q.9.A.** Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Not relevant- directive not transposed

Note: Neither of the above

Note: There is no current Irish law which provides for residence permits for victims of trafficking. However, it should be noted that on 13th April 2007, Ireland signed the Council of Europe Convention on Actions against Trafficking in Human Beings which notably makes provision for periods for reflection and recovery for victims of trafficking and for residence permits for those who cooperate with criminal investigations into trafficking. Although the
Convention has been neither ratified nor incorporated into domestic law, the Minister for Justice, Equality and Law Reform announced that the government intended that the Criminal Law (Human Trafficking) Bill 2007 would ensure that Ireland's legislation is fully in compliance with criminal elements of the Convention. It was also announced that the needs of victims would be addressed in the Immigration, Residence and Protection Bill 2007. However from a reading of the latter bill, which was published on 26th April 2007, it appears that there is no specific provision relating to protection of victims of trafficking. However, the Bill does empower the Minister for Justice, Equality and Law Reform to make 'immigration policy statements' from time to time, setting out detailed immigration rules. The precise content and legal status of these statements is unknown at the present time. It may well be that the intention is to formulate policy regarding victims of trafficking in the form of an immigration policy statement. Note that this bill lapsed in April 2007. (See answer to Q.5.A for further details on both of these bills).

The Criminal Law (Human Trafficking) Bill 2007 (See Question 5 for a thorough discussion of the Bill) proposes to create a number of new offences under Irish criminal law specifically in relation to both adults and children but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website for the Department of Justice, Equality and Law Reform the 'necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.' It is said that this framework will include provision for an 'immediate period of recovery and reflection' but it is important to note that there is no guarantee that such measures will ever materialise in reality. The Minister for Justice, Mr Brian Lenihan T.D also announced plans to initiate a number of strategies in relation to trafficking in Ireland. For example a High Level Group on Combating Trafficking in Human Beings is to be established which would have responsibility for, inter alia drafting a National Action Plan to Combat Trafficking in Human Beings, focusing, in part, on victim protection issues.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes    ☐ No

Explanation:

Not relevant- directive not transposed

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes    ☐ No
Explanation: (If the answer is “yes”, which are the criteria?)

Not relevant- directive not transposed

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Not relevant- directive not transposed

Note: If the directive were transposed, it would be the Minister for Justice, Equality and Law Reform who would have the competence to take the decision to terminate the reflection period.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not relevant- directive not transposed

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Not relevant- directive not transposed

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☐ Yes, in kind ☐ No
Not relevant- directive not transposed

Note: From the outset it is important to comment that for the most part the needs of victims of trafficking are addressed by NGOs or service providers on an informal basis. The most important of these are the NGOs Ruhama and the Immigrant Council of Ireland, the Irish branch of the intergovernmental organisation IOM (hereinafter IOM Dublin) and the Women's Health Project which is a division of the HSE dealing with sexual health issues in relation to prostitutes in Dublin. (See Question 18 for a precise definition of the remit of these organizations).

The Criminal Law (Human Trafficking) Bill 2007 (See Question 5 for a thorough discussion) proposes to create a number of new offences under Irish criminal law specifically in relation to both adults and children but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website for the Department of Justice, Equality and Law Reform the 'necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.' It is said that this framework will include provision for an 'immediate period of recovery and reflection' but it is important to note that there is no guarantee that such measures will materialise. The Minister for Justice, Mr Brian Lenihan T.D also announced plans to initiate a number of strategies in relation to trafficking in Ireland. For example a High Level Group on Combating Trafficking in Human Beings is to be established which would have responsibility for, inter alia drafting a National Action Plan to Combat Trafficking in Human Beings, focusing, in part, on victim protection issues.

With regard to financial or other support given to victims of trafficking, NGOs working in the area note that the approach taken is ad hoc and it is often at the discretion of a Community Welfare Officer, who works for the Department of Social Welfare and is responsible for administration of welfare services in the community. While the Garda (police) National Immigration Bureau, are willing to cooperate with NGOs in this regard, there are no official guidelines to regulate procedures.

IOM Dublin works with other NGOs in order to help provide accommodation for victims of trafficking pending an assessment of their options regarding repatriation. There is no dedicated shelter and accommodation is said to be very basic and does not necessarily provide adequately for the protection needs of victims. In relation specifically to female victims of trafficking, IOM Dublin and other NGOs work together to enable victims to access shelters for women who have experienced domestic violence. It should be noted that there is no official funding for this procedure and, aside from community welfare grants, all such assistance is provided on a pro-bono basis.

**After the issue of the residence permit**

- [ ] Yes, in cash
- [ ] Yes, in kind
- [ ] No

Explanation:

Not relevant- directive not transposed
Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Not relevant - directive not transposed

See Question 10 A

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Not relevant - directive not transposed
See Question 10 A

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Not relevant - directive not transposed

Note: It is the NGO sector which principally provides for the protection needs of victims of trafficking in Ireland. The NGO Ruhama has received two payments from the Commission for the Support of Victims of Crime which was established under the auspices of the Department of Justice, Equality and Law Reform to devise funding programmes to facilitate supporting the victims of crime. This money has been dedicated to the protection of victims but it should be noted that the payments were made on a ’one-off’ basis.

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)
Q.10 E Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

Not relevant- directive not transposed

Note: There is no provision of translation or interpretation services at a State level. However, the NGO Ruhama uses both volunteer translators and those from translation companies to ensure that these facilities are offered to victims of trafficking. IOM Dublin also provides these services through their own organization or by means of employing translators from other programmes. These IOM initiatives receive general funds from the government and victims of trafficking are classified as a group to which funds may be dedicated under the organization's Assisted Voluntary Return programme.

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

Not relevant- directive not transposed
Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:
Not relevant- directive not transposed

See Question 10 E

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation:
Not relevant- directive not transposed

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Not relevant- directive not transposed

Note: No free legal aid is granted to victims of trafficking as a matter of course at State level. According to the NGO Ruhama, aside from the pro-bono work of some legal professionals, legal aid is only available to victims who have entered the asylum process. The NGO, Migrant Rights Centre Ireland, concur that there is very limited free legal assistance available and in any event it does not extend to victims of trafficking for labour exploitation. This organization is responsible for coordinating a voluntary legal panel to make submissions to tribunals on labour relations, employment and equality.
In cases when a victim of trafficking urgently seeks legal assistance, IOM Dublin employs different strategies depending on the status of the victim in question. Although most victims of trafficking for labour exploitation do not have an Employment Permit, regarding those who do, IOM may approach the Migrant Rights Centre Ireland for help in accessing a Free Legal Aid Centre. In cases where a victim has no permit, IOM may refer a case to the Immigrant Council of Ireland who provide legal representation or, in appropriate cases, make a referral to a private practitioner on a pro-bono basis.

After the issue of the residence permit

☐ Yes  ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Not relevant - directive not transposed

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Not relevant - directive not transposed.

Note: According to the Public Service Information provided by the Citizens Information Board - a government-sponsored agency which gives information on social services - non-EU/EEA nationals who are in the State on a temporary visit must pay for the cost of attendance at Accident and Emergency. However, according to various NGOs, in practice undocumented workers may use Accident and Emergency without being asked to produce a residence permit. Anecdotal evidence suggests that whereas in other jurisdictions, there is a duty on the part of medical professionals to inform the immigration services if they are attending to an undocumented worker, Ireland imposes no such duty. Public Service Information also states, though not with specific reference to third country nationals, that in cases of 'excessive hardship' the HSE may provide this service free of charge.
IOM Dublin refers female victims of trafficking to the Women's Health Project which forms a division of the HSE and which deals with sexual health issues relating to prostitutes working in Dublin. As a result of this arrangement, the fee for the provision of the service is waived. According to the IOM, however, a similar service is not available in relation to male victims of trafficking for labour exploitation.

**After** the issue of the residence permit

☐ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care or if care is restricted to *emergency* medical care only.

Not relevant - directive not transposed.

**Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☐ Yes  ☐ No

**Explanation:**

Not relevant- directive not transposed

Note: Although the NGO Ruhama has found that a very small percentage of victims of trafficking for sexual exploitation wish to avail of counseling services at an early stage of their recovery, they do provide counselors for victims who wish to seek psychological help.

**After** the issue of the residence permit

☐ Yes  ☐ No

**Explanation:**

Not relevant- directive not transposed

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:
Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

Not relevant- directive not transposed

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Not relevant- directive not transposed
Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Not relevant- directive not transposed

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: For how long?)

Not relevant- directive not transposed

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If yes, explain which measures are taken) Not relevant-directive not transposed
Note: If the minor is brought within the remit of the asylum process, he or she will be guided through by officials from the Office of the Refugee Applications Commissioner who will have received specific training from UNHCR on how to deal appropriately with children according to their levels of maturity.

The Criminal Law (Human Trafficking) Bill 2007 (See Question 5 for a thorough discussion of the Bill) proposes to create a number of new offences under Irish criminal law specifically in relation to both adults and children but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website for the Department of Justice, Equality and Law Reform the 'necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.' It is said that this framework will include provision for an 'immediate period of recovery and reflection' but it is important to note that there is no guarantee that such measures will ever materialise in reality. The Minister for Justice, Mr Brian Lenihan T.D also announced plans to initiate a number of strategies in relation to trafficking in Ireland. For example a High Level Group on Combating Trafficking in Human Beings is to be established which would have responsibility for, inter alia drafting a National Action Plan to Combat Trafficking in Human Beings, focusing, in part, on victim protection issues.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Not relevant- directive not transposed

Note: Cases of minor victims of trafficking seeking to access education has rarely, if ever, arisen in Ireland. There are conflicting opinions about whether or not this would theoretically be possible.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Note: Children who arrive in Ireland independently of the rest of their families are dealt with pursuant to Section 8 of the Refugee Act 1996, as amended, regardless of whether either the children or their families are refugees or asylum seekers. The act refers to 'a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State [and] is not in the custody of any person'. Therefore, only children who are totally alone are
identified as unaccompanied; children who arrive with other adults are unlikely to be identified as arriving independently from the rest of their families.

Once a child is identified as being unaccompanied by an immigration officer at a port or by an asylum officer, the child is referred to the HSE. In practice, the HSE attempts to reunite the child with a family member in the State, if there is one. This is an informal reunification process: the child and supposed family member are interviewed separately about the family relationship and if their testimonies coincide, reunification proceeds. This process has been criticized as lacking in safeguards for the child.

If there is no family member in the State, or the child is not reunited with a supposed family member because of doubts about the relationship, then the child remains in the care of the HSE, and the provisions of the Child Care Act 1991 apply. The HSE is empowered under the Refugee Act 1996, as amended, to make an asylum application on behalf of the child where appropriate. Unaccompanied minors are housed either in adult reception centres or in hostels for homeless children which are run by management companies. In the case of the latter, there are no care staff on site and children effectively look after themselves, with the exception of a weekly visit from a social worker. There are a small number of specialized group homes which provide 24 hour care for vulnerable minors, such as pregnant girls.

Section 23 of the Immigration, Residence and Protection Bill 2007, proposes that in appropriate cases an immigration officer may ask an adult who arrives in Ireland in the company of a foreign national under the age of 18 years to verify that he or she is the proper custodian of that minor. Where it appears to the immigration officer that this is not the case, he or she is to inform the HSE and thereafter the Child Care Act 1991 and other enactments relating to the care and welfare of children apply. The HSE is empowered under section 58 (4) to make an asylum application on behalf of the child, if appropriate and in the child's best interests. Note that this bill lapsed in April 2007. (See answer to Q.5.A for more detail on the bill).

In December 2006 the Irish Times reported on the 'disappearance of more than 300 children from State care over the past five years'. Organizations such the Irish Society for the Protection of Cruelty to Children and the Irish Refugee Council have released statements condemning the high rate of disappearances, citing, as contributory causal factors, a shortage of safe accommodation and trained staff capable of providing protection for vulnerable unaccompanied minors. Various organizations have claimed that despite the lack of conclusive evidence, it is feared that a large number of these minors fall into the hands of traffickers. In August 2006 the Child Rights Alliance made recommendations that more stringent checks be made in relation to adults claiming to be family members of separated minors. It was also recommended that follow-up checks be made on children who have left HSE care.

A research report prepared for IOM Dublin by Dr Pauline Conroy, entitled 'Trafficking in Unaccompanied Minors in European Union Member States- Ireland', made some key recommendations including that the Government should increase the number of social workers available to help child victims of trafficking, should provide 'secure legal status for child victims for whom no claim of refugee status has been made' and that victims of child trafficking should no longer be housed in 'adult hostels or dormitory accommodation in reception centres.'
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Not relevant- directive not transposed

Note: According to NGOs working in the area, undocumented workers coming from outside the EU have officially no access to the labour market in Ireland. EU nationals, however, can use the Local Employment Service and FAS, the Irish training and employment authority. In the past the NGO Migrant Rights Centre Ireland has referred cases of people who have become undocumented through no fault of their own to the Department of Justice, Equality and Law Reform for consideration with respect to permission to remain on humanitarian grounds, and to the Employment Permit Section of the Department of Enterprise, Trade and Employment which has subsequently responded on humanitarian grounds. It should be noted, however, that this process has not been formalized.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Not relevant- directive not transposed

Situation on the ground unclear.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Not relevant – directive not transposed.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Not relevant- directive not transposed

In practice NGOs engage in at least some activities which aid the recovery of a normal social life for victims, for example through programmes of assisted return.
**Q.14.B.** Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

**Explanation:**
Not relevant - directive not transposed

**Q.14.C.** Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

**Explanation:**
Not relevant - directive not transposed

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

**Explanation:**
Not relevant - directive not transposed

**Q.16.** Question regarding withdrawal of the residence permit:

**Q.16.A.** Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No
Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Not relevant- directive not transposed


Not relevant- directive not transposed

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Not relevant- directive not transposed.

Note: Ireland's legislation is at a much earlier stage of development than this question presumes. There is no provision in national law for either a reflection period or a residence permit for victims of trafficking or other persons falling under the directive. It should be noted, however, that Ireland signed the Council of Europe Convention on Actions against Trafficking in Human Beings on 13th of April 2007 and considering the information released by the Department of Justice Equality and Law Reform (See Question 9A) it seems that the introduction of such schemes is more likely than it was prior to this date. Of note are the following pieces of research in the area of trafficking in human beings in Ireland:


- Report from the EU AGIS Conference held in Dublin from 17th-18th November 2005 entitled 'An Examination of Best Practice in Fighting & Preventing the Corruption of Public Figures involved in the Administration of Immigration Regulations.' Available at: http://www.garda.ie/angarda/pub/AGIS%20Corruption%20report.doc


Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Not relevant- directive not transposed

Note: There are, however, a number of organizations lobbying for reform of the Irish approach to tackling the problem of trafficking in human beings. Ireland En Route is a network of governmental and non-governmental organizations that work in this area. The members of the network share information, work to raise awareness and aim to establish and develop best practice in relation to dealing with the problem of trafficking in women and children for exploitation. Of note are the following members of the umbrella organization:

Ruhama is an NGO which works directly with women involved in Ireland's growing sex industry. In recent years the agency, which receives a certain amount of government funding, has begun lobbying on behalf of these women and has made a number of recommendations for reform. Some of the key recommendations, expressed in a submission to the Minister for Justice, Equality and Law Reform (available at: http://www.ruhamai.ie/) may be summarized as follows:

- Ireland has signed both the Palermo Protocol and the Council of Europe Convention on Actions against Trafficking in Human Beings. It should now ratify both instruments and opt in to Council Directive 2004/81/EC.

- Law-making should have the assistance of victims as its central aim and all legislation relating to trafficking in human beings should comply with international best practice. This is not the current legislative approach in Ireland which focuses on trafficking as a criminal justice issue and neglects the needs of victims. Specific suggestions for reform in this area include the introduction of a reflection period and the provision of temporary residence permits for victims of trafficking.

- Prevention of trafficking, protection of victims and prosecution of traffickers are seen as three essential and inter-related facets of immigration law and policy. The key elements of each were summarized in a recent presentation made by Ruhama to the Irish Women Lawyers Association on 25th November 2006 (available at: http://www.iwla.ie/docs/seminar_human_trafficking/Kathleen%20Fahy,%20Director%20Ruhama.pdf). Prevention must include addressing root causes of trafficking, initiating public awareness campaigns and providing support for victims. Protection for victims should be provided for in a variety of ways which include attending to their physical, social and legal needs. Finally, in order to effectively deter the phenomenon of trafficking in persons, strong penalties should be imposed for those who exploit women victims of trafficking and the traffickers themselves. Furthermore the proceeds generated from trafficking should be confiscated.
The International Organization for Migration (IOM Dublin) is involved in several key areas relating to trafficking in human beings. The organization has received general funding from the government and victims of trafficking are classified as a group to which funds may be dedicated under the organization's Assisted Voluntary Return programme. With regard to prevention, the organization promotes awareness-raising campaigns and conducts research and collection of data. Protection of victims is paramount and so the IOM work with various other organizations such as Ruhama and the Immigrant Council of Ireland to provide assistance and support to trafficked persons in need of, for example accommodation, medical care and legal assistance. The organization have also been responsible for training members of the An Garda Síochána, the national police force, including members of the Garda National Investigation Bureau on issues such as identifying victims of trafficking.

The Migrant Rights Centre Ireland (MRCI) provides support and information for migrant workers and their families in Ireland. The organization also works to achieve changes in governmental policy for this group and conducts research into the area of migrant workers rights. In conjunction with Dublin City University, the MRCI has published a document entitled 'No Way Forward No Going Back: Identifying the Problem of Trafficking for Forced Labour in Ireland'. This document makes a number of important recommendations may be summarized as follows:

- The Migrant Rights Centre advocates an approach to dealing with trafficking in humans which focuses on protection. This includes provision of residence permits which are not dependent on the victim's cooperation with criminal proceedings and aiding the physical and psychological recovery of victims through provision of housing and information on legal rights, training and employment opportunities.

- Awareness raising campaigns and training of, for example, labour inspectors and members of the police force are seen as important ways of generating an understanding and effective response to the problem of trafficking in human beings. The organization also recommend that more research be done in this area, particularly with regard to the issue of trafficking for purposes of labour exploitation.

- Finally the Migrant Rights Centre advocates procedures which will support the objective of preventing trafficking. Such procedures include increased cooperation with countries of origin and empowering migrant communities.

The Inter-congregational ad hoc Working Group against Human Trafficking represents a number of religious organizations and operates under the umbrella of the Conference of Religious of Ireland and the Irish Missionary Union. In addition to supporting the signing and ratification of international conventions such as the Palermo Protocol, the group initiated an effort to lobby for change particularly with respect to the Criminal Law (Trafficking in Persons and Sexual Offences) Bill, 2006. Of note are the following recommendations:

- A reflection and recovery period, of at least six months, should be introduced.

- A victim should be provided with comprehensive legal advice, in a language they understand and should be informed of their right to claim asylum in Ireland.

- Protection is fundamentally important and victims should be provided with the housing and medical and psychological care they need to recover. Training should also be provided to
those who are dealing with victims of trafficking to ensure that their needs are met and that they are treated with appropriate care and sensitivity.

- Prevention of trafficking requires the initiation of, for example, research and awareness-raising campaigns which educate the public as the demand for sex workers leads to exploitation.

- The Working Group state that legislation should criminalize and penalize traffickers, providing appropriate and dissuasive sanctions.
- 'Stop the Traffic' is a campaign group based in Cork, Ireland's second largest city, which lobbied for changes to draft anti-trafficking legislation in Ireland. The organization also aims to raise public awareness of the problems of sex trafficking and forced prostitution throughout Ireland. 'Stop the Traffic Campaign' has made a number of recommendations in their Submission on Criminal Justice (Trafficking in Persons and Sexual Offences) Bill, 2006, available at: http://www.ucc.ie/law/docs/Trafficking%20Submission.doc Some of these recommendations may be summarized as follows:

- There is a need to define 'trafficking in human beings' in accordance with international standards.

- A stronger response by the legal system is needed and law enforcement bodies must have effective tools in order to combat the problem of trafficking effectively.

- Preventative policies and effective protection and support measures for victims and witnesses of trafficking must be established.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

No
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation before transposition</td>
<td>Status quo</td>
</tr>
<tr>
<td>Not relevant - Directive not transposed.</td>
<td>Explain the situation after transposition</td>
<td>Less favourable than the Directive</td>
</tr>
<tr>
<td>Note: There is no provision for residence permits for victims of trafficking or for those who are the subject of actions to facilitate illegal immigration. Irish legislation is framed in terms of criminalizing trafficking in children and smuggling of persons and prosecuting the perpetrators of such acts.</td>
<td>Not relevant - Directive not transposed.</td>
<td></td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applying pressure to conform to international standards</td>
<td>Explain the situation before transposition</td>
<td></td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td></td>
<td>☒ Status quo</td>
</tr>
<tr>
<td>Not relevant - Directive not transposed.</td>
<td></td>
<td>☒ Less favourable than the Directive</td>
</tr>
</tbody>
</table>

Note: The Trafficking Protocol of the UN Convention against Transnational Organised Crime and the Council of Europe Convention on Action against Trafficking in Human Beings have both been signed but neither has been ratified nor incorporated into Ireland's domestic law. The Criminal Law (Human Trafficking) Bill 2007 proposes to bring Ireland's legislation into compliance with International requirements in relation to trafficking. This Bill, however, contains very limited provisions in relation to the protection of victims and although the Government has stated that it plans to include provisions on the treatment of victims in the (new) Immigration, Residence and Protection Bill, which is in the process of being drafted, there is no guarantee that these provisions will ever materialise in reality.
Table 2

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Table 3

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
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<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
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<td></td>
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<td>□ Less favourable than the Directive</td>
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<tr>
<td></td>
<td></td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>
Q.31.A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☐ NO

Not relevant - Directive not transposed

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

Not relevant - Directive not transposed

Q.31.C. If yes, give some of examples:

Not relevant - Directive not transposed

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Not relevant - Directive not transposed

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td>09/12/2005</td>
<td>Imafu -v- Minister for Justice Equality &amp; Law Reform &amp; Ors[2005] IEHC 416</td>
<td>Nigerian applicant granted leave to apply for court order of Certiorari to quash decision of the Refugee Appeals Tribunal to reject her appeal against the refusal of a declaration of refugee status. Leave was allowed by Clarke J June 10th 2005 on the grounds that, inter alia, the Tribunal Member erred in law by considering credibility of applicant in isolation from fact that human trafficking and forced prostitution were known to be practised in Nigeria. At the hearing of the substantive issue in December 2005, however, the applicant was refused the relief sought.</td>
</tr>
<tr>
<td></td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td>19/03/04</td>
<td>GS v Minister for Justice Equality and Law Reform [2004] IEHC 59</td>
<td>The applicant applied for the discovery of certain documents which were necessary for the purpose of seeking leave to apply for an order of Certiorari to quash the decision to revoke his refugee status. His refugee status has been revoked, pursuant to section 21(1)(9) of the Refugee Act, 1996 on the basis that he posed a threat to public policy because he had been convicted of trafficking in human beings in Belgium. The High Court Judge granted the discovery of some but not all the documents requested.</td>
</tr>
<tr>
<td></td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Not relevant - directive not transposed

Explain the difficulties that this could create:

Not relevant - directive not transposed

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of unaccompanied third country national minors</td>
<td>Pursuant to Section 8 of the Refugee Act 1996, as amended, when an unaccompanied minor under 18 years arrives in Ireland he or she is referred to the Health Service Executive (HSE) which is responsible for providing health and personal social services for everyone living in Ireland. In practice, the HSE attempts to reunite the child with a family member in the State but if there is no family member in the State, or the child is not reunited with a supposed family member because of doubts about the relationship, then the provisions of the Child Care Act 1991 apply and the child remains in the custody of the HSE. Under the Refugee Act 1996, as amended, the HSE may make an asylum application on behalf of the child. (See Question 12E for proposals for new safeguards under the Immigration, Residence and Protection Bill 2007)</td>
</tr>
</tbody>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

Not relevant
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Italy

By

Alessia Di Pascale

Dr., Researcher at the University of Milan, alessia.dipascale@unimi.it

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: Single Text on immigration and the status of aliens (Testo unico del disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero)

DATE: 25 July 1998

NUMBER: 286

DATE OF ENTRY INTO FORCE: 1998

PROVISIONS CONCERNED: 18

(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL: Official Journal dated 18 August 1998 no.191 - Ordinary Supplement. no. 139

LEGAL NATURE (please tick the correct box):

☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
**Table 2**

This table is about: ☒ a text already adopted  ☐ a text which is still a project to be adopted  
**TITLE:** Enactment regulation of the Single Text on immigration and the status of aliens  
(Regolamento di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero)  
**DATE:** 31.8.1999  
**NUMBER:** 394  
**DATE OF ENTRY INTO FORCE:** 1999  
**PROVISIONS CONCERNED:** 25-27  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Official Journal no. 258 dated 3 November 1999  
**LEGAL NATURE** (please tick the correct box):  
☐ LEGISLATIVE  
☒ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS  

---

**Table 3**

This table is about: ☒ a text already adopted  ☐ a text which is still a project to be adopted  
**TITLE:** Explanatory circular of D.P.R. 31 August 1999, no. 394 - Enactment regulation of the Single Text on Immigration  
**DATE:** 23 December 1999  
**NUMBER:** 300/C/227729/12/207/1° Div.  
**DATE OF ENTRY INTO FORCE:**  
**PROVISIONS CONCERNED:**  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:**  
**LEGAL NATURE** (please tick the correct box):  
☐ LEGISLATIVE  
☐ REGULATION  
☒ CIRCULAR OR INSTRUCTIONS  

---

**Table 4**

This table is about: ☒ a text already adopted  ☐ a text which is still a project to be adopted  
**TITLE:** Permit of stay for social protection reasons  
**DATE:** 25/10/1999  
**NUMBER:** 300.c/1999/13/P/12/214/18/1°div  
**DATE OF ENTRY INTO FORCE:**  
**PROVISIONS CONCERNED:**  
(for example if the norm also pursues other objectives than the transposition of the concerned directive)  
**REFERENCES OF PUBLICATION**
| Table 5 | This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted |
| Title: Permit of stay for social protection reasons |
| Date: 17 April 2000 |
| Number: N.300/C/2000/276/P/12.214.18/1 DIV. |
| Date of Entry into Force: |
| Provisions Concerned: (for example if the norm also pursues other objectives than the transposition of the concerned directive) |
| References of Publication |

| Table 6 | This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted |
| Title: Permit of stay for social protection reasons |
| Date: 22.5.2000 |
| Number: 300.C/2000/334/P/12214/18/1*DIV. |
| Date of Entry into Force: |
| Provisions Concerned: (for example if the norm also pursues other objectives than the transposition of the concerned directive) |
| References of Publication |

| Table 7 | This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted |
| Title: Art. 18 of Legislative Decree 25 1998, no. 286 and art. 27 of Decree of the President of the Republic 31 August 1999, no. 394 |
| Date: 4. 8.2000 |
| Number: 300.C/2000/526/P/112214.18/1*DIV. |
| Date of Entry into Force: |
| Provisions Concerned: |
Table 8
This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

TITLE: Permit of stay for social protection reasons
DATE: 22.5.2000
NUMBER: 300.C/2000/334/P/12214/18/1*DIV.

Table 9
This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

TITLE: Initiatives against trafficking of human beings
DATE: 2.1.2006
NUMBER: 1025/M/24UFF.VI

Table 10
This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

TITLE: Art. 18 of the Single Text on Immigration. Permit for social protection reasons
DATE: 28 May 2007
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED:
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box):
☐ LEGISLATIVE
☐ REGULATION
☒ CIRCULAR OR INSTRUCTIONS

**Q.1.B.**

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
**Table 1**

**TITLE:** Measures against trafficking of human beings (Misure contro la tratta di persone)

**DATE:** 11 August 2003

**NUMBER:** 228

**DATE OF ENTRY INTO FORCE:** 7 September 2003

**PROVISIONS CONCERNED:** The whole Law is consacrated to the fight against human trafficking

(for example if the norm also pursues other objectives than the transposition of the directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Official Journal of 23 August 2003, no. 195

**LEGAL NATURE** (indicate by ticking the correct box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

---

**Table 2**

**TITLE:**

**DATE:**

**NUMBER:**

**DATE OF ENTRY INTO FORCE:**

**PROVISIONS CONCERNED:**

(for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate by ticking the correct box):
- [ ] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

**LEGISLATIVE RULES**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** Pursuant to section 117, para. 2, points a) and b) of the Italian Constitution, the competence to adopt legal norms on the foreigners’ status, asylum and immigration is granted to the central Government. Regional authorities have no competence on these issues, in particular they are not entitled to regulate matters such as expulsion.

**COMPETENCES OF THE COMPONENTS:** Regions are only entitled to adopt norms on reception and social services, such as mediation, housing and integration. At the moment, this regards mainly the services organisation although there is a wide difference among regions in the standard of social services. Pursuant to the Constitution, it is in any event the Government that must fix the essential levels of social protection.

**EXPLANATIONS IF NECESSARY:**

**REGULATIONS**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** Pursuant to section 10, para. 2, of the Italian Constitution, the foreigners’ status must be regulated by a law, passed by the Parliament. As a consequence, regulations and administrative acts may be adopted only in order to regulate the enforcement of the legal provisions. It must be highlighted that any regulation that may be adopted with regard to immigration and the status of aliens must be issued by the central Government.

**COMPETENCES OF THE COMPONENTS:** Regions are only entitled to adopt regulations on reception and social services, such as mediation, housing, integration etc.

**EXPLANATIONS IF NECESSARY:**

**CIRCULAR OR INSTRUCTIONS**

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** Central level

**COMPETENCES OF THE COMPONENTS:** Circulars are always issued by single ministers or general directors, that forward them to the local offices, e.g. police offices. The competence is always upon the central Government

**EXPLANATIONS IF NECESSARY:**

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
Table 1

COMPETENCE CONCERNED:
Local police authority ("Questura"). The proposal is made either by the judicial authority or by qualified social associations

CENTRAL MINISTRY OF:
Home affairs

DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:
Department for civil rights at the Ministry of Home affairs

OTHER LEVEL OF ADMINISTRATION:
The permit of stay for social protection is issued by the Questura, which is a territorial articulation depending directly on the Home Office

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES ☐ NO

Q.4.B. If the central norm(s) of transpositio n foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS

INDICATE HERE THE MISSING TEXTS
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^{27}\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^{28}\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- ☒ ‘Trafficking in human beings’ only
- ☐ ‘An action to facilitate illegal immigration’ only
- ☐ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

Article 18 of the Single text on Immigration sets forth a system for the protection of the persons who were victims of trafficking. It has to be noted that such purpose is not stated in the norm which is formulated in broad terms so that it allows the protections of several situations provided that they fall under specific circumstances.

Art. 18, para. 1, states the following:

"If, during police operations, investigations or proceedings for any of the offences referred to in section 3 of Statute no. 75 of 20 February 1958 or in section 380 of the Criminal Procedure Code, or during assistance operations performed by the social services departments of local agencies, a foreigner is found to be suffering


violence or serious exploitation, and to be at risk of real danger if he/she attempts to escape the influence of an organisation whose purpose is to commit one of the said offences, or he/she makes statements during the preliminary investigations or at the hearing, the Police Authority, on the basis of a proposal made or favourable opinion given by the Public Prosecutor, will issue a special residence permit to enable the foreigner to escape the violence and influence of the criminal organisation and to participate in a social integration and welfare programme”.

In order to benefit from social protection under art. 18, the foreigner must be: 1) suffering violence or serious exploitation; 2) be at risk of real danger since either he/she has attempted to escape the influence of an organisation whose purpose is to commit one of the crimes set in the norm, or has made statements during the preliminary investigations or at the hearing.

The norm has therefore a broad scope of application since it applies both to violence or serious exploitation It is not limited to serious exploitation and includes also situations where the victim is in a position of subjection for his/her status of inferiority, such as debt bondage.

The essential requirement to issue the permit of stay for humanitarian reasons is the danger in which the foreigner is. Sexual exploitation or violence must therefore be associated to danger. The evaluation performed by the Police Authority shall therefore take into consideration the real existence of such danger for one of the reasons mentioned above.

Such situations may be assessed either during: 1) police operations, investigations or proceedings; or 2) assistance operations performed by the social services departments of local agencies.

The proposal for the permit of stay addressed to the Police Authority is then issued either by: 1) social services departments of local agencies that have identified situations of violence or serious exploitation (the Police Authority shall evaluate the seriousness and subsistence of the danger on the basis of the elements set forth therein); or 2) by the Public Prosecutor in the event that a criminal proceedings has been initiated in relation to a situation of violence or serious exploitation concerning the foreigner (if such a proceedings was initiated and the Public Prosecutor has not submitted a proposal for a permit of stay under art. 18, or the information provided with the proposal do not mention danger and serious exploitation, the police authority shall request a favourable advice to the Public Prosecutor).
Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

As mentioned above the scope of application of article 18 of the Single Text on immigration is defined in broad terms whose essential requirements are the danger in which the foreigner his, sufferance of a situation of violence or serious exploitation.

Art. 18 of the Testo Unico does not contain a definition of human trafficking.

Further to the adoption of the UN Convention against Organised Crime and the relevant protocol on human trafficking, Law 11 August 2003, no. 228 was adopted that has established "Measures against human trafficking" has amended the relevant provisions contained in the criminal code (reduction or maintenance into slavery, human trafficking, purchase and sell of slaves). This law is aimed at making more efficient the fight against criminal organisations that carry out human trafficking. A new fund for the assistance and protection of the victims of trafficking has also been created.

Pursuant to article 13 of Law 11 August 2003, no. 228, article 18 of the Single Text on Immigration shall be applied to the victims of the above mentioned crimes, when they are foreigners.

The wording of art. 600 c.p. (reduction into and keeping in slavery or servitude) and 601 (trafficking of human beings) as amended by Law 228/2003 are in line with the Framework decision.

Art. 600 of the Criminal Code says: "Anyone who exercises on a person powers corresponding to those of property right or who reduces into or keeps him/her in a state of continuous subjection, obliging him/her to carry out a work or sexual activity or to begging or to carry out any activity that results in his/her exploitation, is punished with imprisonment from 8 to 20 years.

Reduction into and keeping in a state of subjection occurs when the conduct is carried out with violence, threat, deception, abuse of authority or taking advantage of a situation of physical or psychological inferiority or of a situation of need, or by promising or giving money or other benefits to the person who exercise authority on him/her.

Punishment is increased from a third to the double in the event that the facts have occurred against a person below 18 years or are directed to exploit prostitution or to collects his/her organs".

Art. 601 of the Criminal Code says: "Anyone who commits trafficking of a person who falls under the situation mentioned in art. 600 (above) or, for the purpose of committing the crimes set forth under art. 600, para. 1, induces him/her through deception or obliges him/her through violence, threat, abuse of authority or exploitation of a situation of physical or psychological inferiority or of a situation of need, or by promising or giving money or other benefits to the person who exercises authority on him/her, to enter the territory of the State or to move internally, is punished with imprisonment from 8 to 20 years.

Punishment is increased from a third to double if such crimes are committed against a person below 18 years or are directed to exploitation of prostitution or to the purpose to collect his/her organs".

In accordance with art. 1, para. 1, of the Framework Decision, the new provisions introduced in the Criminal Code take into consideration the use of coercion of the victim's will, such as violence and threat, as well as deception and fraud and the abuse of the position of power of the agent or of the vulnerable status of the victim. Giving or promising payments and benefits is also taken into consideration. Some authors consider that although not specifically indicated, the consent of the victim obtained though the means mentioned in art. 600 and 601 of the criminal Code must be considered as spoiled and therefore irrelevant form a legal standpoint.
A difference may be found in the fact that minor age of the victim is an aggravating circumstance implying an increase in the applicable punishment, but does not imply the irrelevance of the consent as stated in the framework decision.

Finally, the fact that the victim is exploited for pornography is not taken into consideration. As a consequence the case that the victim is trafficked for pornography exploitation should not give rise to the crime of human trafficking pursuant to art. 601 of the Criminal Code.

For a more detailed analysis, please see L. Picotti, I delitti di tratta e schiavitù - Novità e limiti della Legislazione Italiana, in Diritto, Immigrazione e Cittadinanza, I, 2007, pp. 41-61.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:
   (c) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
   (d) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- Adults
- Both adults and minors

Explanation:

Article 18 of the Single Text on immigration is drafted in general terms (not limiting its scope to adults only). It is therefore also applied to minors.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:
Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •
  •

Explanation:

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 927

Source Italian Government (Dipartimento per i diritti e le Pari Opportunità, Presidenza del Consiglio). For the full report with statistical data updated as of March 2008 please see: www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/Relazione_ex_Art18.pdf

‘An action to facilitate illegal immigration’ (If applicable):
Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Article 18 of the Single Text on Immigration provides for two possible paths. In fact upon occurrence of the circumstances mentioned in this provisions (please refer to answer 5 B above), the following alternatives paths are applicable:

1) Judicial path. In the event that a criminal proceedings concerning situations of violence or serious exploitation is initiated and the concerned foreigner has rendered declarations, the Public prosecutor may propose the issuance of the permit of stay for social protection reasons. Under these circumstances, information on the possibilities of such type of protections are provided by the judicial authority.

2) Social path. The proposal of the issuance of the permit of stay for social protection may also be issued by the social services and acknowledged associations, NGOs etc. that have assessed situations of violence or serious exploitation vis-à-vis the foreigner. In this event the information are provided by the concerned social assistance entity.

Please also take into consideration the best practices applied in Italy and mentioned under Q. 34

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑️ Orally

☐ In writing

☐ Both orally and in writing

Explanation:

The relevant legal provisions do not specify how these information must be provided. According to the information received from NGO's and expert working in the field of the fight against human trafficking, in most cases the information are given orally.

Q.8.C. Please provide details on the content of oral/ written information (feel free to enclose relevant leaflets, brochures etc).

The victims receive information on the possibility of being issued a permit pursuant to art. 18 and being included in a program of social assistance. They are explained the content and the nature of the permit of stay for social protection and the rights associated with this as well as the kind of assistance they could receive.
Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Favourable advice is expressed by public institutions and NGO's that work in this field. What NGOs point out is that more attention and a better knowledge of the permit of stay pursuant to art. 18 by police and administrative authorities would be appreciated. The problem in fact is not really in the provision of adequate information, but in the capacity of the competent authority (police, administrative etc.) to really identify the victims. Often victims of trafficking do not receive information on this opportunity because they have not been identified by police authorities as such.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Articled 18 of the Single Text on immigration, nor the relevant enactment regulation, provide specifically for a reflection period.

From a formally legal standpoint the provision is not compliant with the directive. It must, however, be underlined that NGOs point out that although not specifically regulated by the law, a reflection period is usually granted in the practice.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:
An explanatory circular issued on 23 December 1999 by the Ministry of Interior has stated that in the event that the permit of stay concerns a foreigner against whom an expulsion order has been issued, a specific request of suspension or revocation of the expulsion shall be submitted to the competent authority.

However such explanation does not clarify whether the request may be filed also during the reflection period which is usually granted in practice or if it is subject upon the application for the permit of stay. It appears that the practice is very differentiated in Italy, but in general suspension or revocation measures are issued either upon application or even only upon actual issuance of the permit of stay for social protection.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

Not applicable since the reflection period is not provided for by the law

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Not applicable

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not applicable

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Although not provided for by the law, NGOs point out that the system is well functioning. It must neverthelss be pointed out that failing a specific legal provision, such situation is subject to wide discretionary power and differs from case to case.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).
Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash    ☒ Yes, in kind    ☐ No

Explanation:
Pending the exam of the application for a residence permit for social protection reasons, the concerned foreigner is granted accommodation and assistance in a structure managed by social services or NGOs involved in the program of social assistance.

After the issue of the residence permit

☐ Yes, in cash    ☒ Yes, in kind    ☐ No

Explanation:
The concerned foreigner is inserted in a program of social assistance and integration within an appropriate structure set up by a public social service or an acknowledged NGO.

Art. 18 does not specify the kind of support that the persons benefiting from these programs must receive, but it is important to take into consideration that pursuant to art. 18, para. 5, the permit of stay for social protection allows to carry out a work activity.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Not applicable

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence”? See article 7(1) which is a mandatory provision.

Although the law does not provide that the concerned persons receive economic support, they often receive a minimum financial contribution by the NGO's carrying out the program of social assistance in which they are involved. As a general remark, NGO's point out that the system is very efficient and the concerned person receives an adequate support sufficient to ensure standards of living capable of ensuring their subsistence.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
Before the issue of the residence permit:

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The third-country national may be accommodated in safe houses, but no specific provisions have been adopted in relation to safety and protection.

After the issue of the residence permit:

☒ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

As mentioned above, persons benefiting from programs of social assistance receive accommodation. No provisions on safety and protection are contained in art. 18 of the Testo Unico.

A relevant amendment has been brought by Law 228/2003 that, as mentioned above, has amended the criminal Code and introduced the crime of trafficking of human beings. The reform has extended the application of the system applicable to justice collaborators for the crimes of mafia. It is important to note that this special regime applies only in the event that the concerned person has rendered a certain type of declarations and is in a special situation of danger. The ordinary measures of protection must not be considered sufficient and the person must have rendered a witness in a criminal proceeding that must be considered reliable, news and complete or have a substantial importance for the investigation or the proceedings itself (Please refer to art. 9, of the Law Decree 15 January 1991, no. 8 converted into law no. 82/1991).

For ordinary cases, the persons falling within the scope of application of art. 13 of the Law 228/03 (i.e. who are considered victims of trafficking pursuant to art. 601 of the Criminal Code) receive accommodation in a safe house with a secret address.

**Q.10.E. Does your Member State provide the third-country nationals concerned with translation services?** See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

**Explanation:**

Translation services are usually provided for by NGOs involved in the programme, but they are not specifically set forth by art. 18.
After the issue of the residence permit:

☑ Yes ☐ No

Explanation:
Translation services are usually provided for by NGOs involved in the programme but they are not specifically set forth by art. 18

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:
Although not specifically provided for by art. 18, foreigners are usually assisted by an interpret. Please note that the decision issued by the Consitutional Court no. 254 of 6.7.07 has broadened the scope of legal aid stating that in order to ensure the respect of immigrants lacking adequate resources, that are involved in a criminal proceedings, they must be entitled to be assisted by a translator.
After the issue of the residence permit:

☒ Yes ☐ No

Explanation:

Although not specifically provided for by art. 18, foreigners are usually assisted by an interpret. Please note that the decision issued by the Constitutional Court no. 254 of 6.7.07 has broadened the scope of legal aid stating that in order to ensure the respect of immigrants lacking adequate resources, that are involved in a criminal proceedings, they must be entitled to be assisted by a translator.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision. (Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Free legal aid is ensured to every person (national or foreigner) in criminal proceedings. Only national and foreigners legally staying on the Italian territory are entitled to free legal aid in all other types of procedures (i.e. administrative, civil etc.) There are not specific rules in relation to the victims of trafficking and ordinary rules on free legal aid apply (lawyers' qualification, type of assistance, application for free legal aid).

As a general remark, most NGOs that take part to programs of assistance and integration provide legal consultancy to the victims of trafficking. In most cases, the NGOs collaborate with lawyers that help the victims both in the preliminary phase (drafting of the plaint) and in the criminal proceedings, where the concerned person is often required to witness.

After the issue of the residence permit

☒ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Free legal aid is ensured to every person (national or foreigner) in criminal proceedings. Only national and foreigners legally staying on the Italian territory are entitled to free legal aid in all other types of procedures (i.e. administrative, civil etc.) There are not specific rules in relation to the victims of trafficking and ordinary rules on free legal aid apply (lawyers' qualification, type of assistance, application for free legal aid).

As a general remark, most NGOs that take part to programs of assistance and integration provide legal consultancy to the victims of trafficking.
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

- [X] Yes
- [ ] No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Pursuant to Italian law, all persons are admitted to emergency medical care, irrespective of their nationality.

- [ ] Yes
- [X] No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

Pursuant to art. 18, para. 5, persons admitted to a program of social assistance and receiving a permit of stay pursuant to art. 18 are entitled to receive health assistance service. The foreigner is registered in the National public health system and he/she has therefore access to general medical care as provided to citizens.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

- [X] Yes
- [ ] No

**Explanation:**

No specific provision have been provided in this respect under art. 18. In the practice they receive psycological help if they are asssited by an NGO that has this service.

- [X] Yes
- [ ] No

**Explanation:**
As a general remark, persons registered in the General Health System are entitled to receive psychological support, not only care for physical illness. However it must be underlined that no specific provision state that the programmes of assistance must provide psychological support to the victims of trafficking. It is clear that the victims of trafficking require a special psychological support by trained personnel in relation to their traumatic experience and their special needs.

Despite the absence of a specific legal provision, most assistance programs managed by NGOs actually provide for psychological support to the victims.

It has also to be noted that pursuant to art. 53, para. 6, of the Enactment Regulation to the Testo Unico, the NGOs that wish to be take part to a programme of social assistance must comply with some specific requirements. These include the availability, under any title, of skilled operators in the psychological, health, educational, and social assistance area, such as to ensure their activity on a continuous basis, also on a free basis.

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes ☐ No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

Pursuant to art. 18 para.1, the residence permit for humanitarian reasons is issued in order to escape the violence and influence of the criminal organisation and to participate in a social integration and assistance programme. As mentioned above, the elements showing the existence of the conditions required by the law and concerning the seriousness and effectiveness of the danger since either he/she has attempted to escape the influence of an organisation or she/he has made statements during the preliminary investigations or at the hearing, shall be clearly indicated. The situation of violence or serious exploitation shall also be taken into consideration.

Art. 18.2, states the following: "Together with the proposal or opinion referred to in para. 1, the Police Authority shall receive evidence of the existence of the conditions indicated therein, with special reference to the seriousness and imminence of the danger and the significance of the contribution offered by the foreigner to combating the criminal organisation or identifying or arresting the persons who have committed the offences referred to in said paragraph…"

The scope of this last provision is controversial since it seems to require that the foreigner has rendered a relevant contribution in a criminal proceedings to ground the issuance of a permit of stay and has therefore often been interpreted in this way.

The competent police authority shall therefore assess whether such requirements subsist. Moreover the concerned foreigner shall also adhere to the program of social assistance and integration and undertake to comply with the obligations arising from such program.

This may be considered a more favourable provision in comparison with the directive, since a clear willingness to collaborate is required only in judicial path, but not in the social path (i.e. if the danger and situation of serious
exploitation and violence is assessed by social services). The concerned person is not required to witness in a criminal proceedings.

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

6 months

**Q.11.C. When residence permit has expired, can it be renewed?** See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The permit of stay is renewable for another six months up to 18 months or for the longer time that may be required in relation to reasons of justice.

**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

No specific measures have been taken in relation to the application of article 18 of the Single Text on Immigration to minors.

Specific provisions aimed at ensuring the best interest of the child exist in relation to unaccompanied minors.

**Q.12.B.** Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: For how long?)

The reflection period is not specifically regulated by the law, although NGOs point out that in the practice it exists. Please also note that minors are protected against expulsion since there is a specific prohibition in this respect under Italian law.
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If yes, explain which measures are taken)

No specific provisions have been introduced in relation to the application of article 18 to minors.

The procedural rules applying in this case differ since a tutor shall be appointed and the decision must be issued by the Juvenile Court (ordinary rules on the minors apply). [Some projects have however pointed out that the procedure before the Juvenile Court and the appointment of a legal representative may require too long time.] Specific rules on the participation of minors in a criminal proceedings are contained in the criminal proceedings Code and in specific laws, such as D.P.R. no. 448/1988 and Legislative Decree no. 272./1989

The most relevant issue concerns the setting up of specific programmes addressed to minors. In fact, failing a specific provision in this respect only some social services have set up appropriate programs of social assistance and integration addressed to minors (i.e. the municipalities of Torino and Rome).

The research carried out on the practice of art. 18 (Please refer to Q. 17), has highlighted that many minors do not benefit from the protection of art. 18, since social services and police authorities send the concerned minors to a general structure for the assistance of minors., without applying art. 18, that would provide a broader protection. It has in particular been pointed out that this approach may be dangerous since it facilitates repatriation or return to the family of origin without prior assessment on whether the minor was a victim of trafficking.

The scope of art. 10, letter a), should be clarified: if the procedure is referred to the insertion in a programme of social assistance, art. 18 does not provide that specific measures are taken to protect minors.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Pursuant to article 38 of the Single Text on Immigration, foreign minors are subject to the education obligation. All legal provisions in force in relation to education, access to educational services, participation to the life of the school community are applicable to them.

Moreover pursuant to article 45 of the enactment regulation to the Single Text on Immigration, foreign minors present on the national territory are entitled to education, regardless to their regular or irregular status, under the same conditions as italian minos.
**Q.12.E.** What measures has your Member State taken regarding *unaccompanied minors*? *See article 10(c)* (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

The position of unaccompanied minors is partly regulated in the Single Text on Immigration and in the Law on minors. All public officials and social entities, in particular those that carry out health and assistance activities, that become aware of the presence of an unaccompanied minor must promptly inform the Committee for foreign minors (i.e. a Committee established at the Presidency of the Council of Ministers and composed of 9 representatives from ministries, local authorities and NGOs). The identity of the minor and the unaccompanied status are assessed by the police authority that shall carry out investigations, where necessary, in collaboration with the consular and diplomatic representation of the country of origin. The police authority shall then inform the Committee though a specific schedule to be filled in with ID information, nationality, physical conditions, accommodation and adopted measures, information on the family, life conditions, studies and training carried out in Italy.

At the same time the presence of the unaccompanied minor must be reported to the Juvenile Court that shall appoint a legal representative. The Committee for foreign minors will promote the research of the family of unaccompanied minors (in collaboration with public administrations and national and international organisations). After receiving the results on the investigation in relation to the family, the insertion of the minor in Italy, and the requests made by the minor, the Committee for foreign minors will decide whether the minor must be repatriated or must remain in Italy. Pending the decision, the minor receives a permit of stay. Please note that pursuant to article 19 of the Single Text on Immigration the minor can not be expelled, unless for reasons of public order and safety of the State.

If after the first contacts and discussions with the minor it results that he/she is a victim of trafficking, the Committee should be promptly and adequately informed so that it can activate an urgent procedure that will bring together and involve all the concerned entities (Juvenile Court, police authorities, social services) in order to provide rapid and adequate assistance.

### Work, vocational training and education

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A.** Do the holders of the residence permit have access to the labour market? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes

☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Pursuant to art. 18, para. 5, the permit os stay for humanitarian reasons entitles the holder to register in the employment lists and to carry out employed activities, provided that minimum age legal requirements are complied with. No specific criteria have to be met to have access to the labour market.
Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes    ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

The holder of the permit of stay for social protection reasons is entitled to have access to vocational training. No specific criteria have been established. Vocational training is in most cases provided by the entity that carries out the program of social assistance and integration in which the foreigner is involved.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes    ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Art. 18, para. 5, expressly states that the holder of the permit of stay for social protection reasons is entitled to have access to education. It is important to note that upon expiration the permit of stay for social protection reasons may also be converted into a permit of stay for study reasons provided that the holder is actually registered in a regular study course.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes    ☐ No

Explanation:

If upon expiration of the permit of stay, the concerned person has a regular employment, the permit of stay may be extended or renewed for the duration of the employment or, in case of work activity for an undetermined period of time, in accordance with applicable provisions established for such type of stay. The permit of stay may also be converted into a permit of stay for study reasons.

This provision must therefore be considered more favourable than the directive.
The research conducted on the practice of police authorities (please refer to Q. 17) has highlighted that most police authorities consider that upon expiration of the permit of stay for humanitarian reasons, this latter must be converted into a permit of stay for work or study reasons. This may give rise to problems in the event that the person does not attend a study course or does not have a work.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

The permit of stay for humanitarian reasons is intended to help the concerned person to escape violence and subjection to a criminal organization as well as to take part to a program of social assistance and integration. The programme allows the concerned person to benefit of concrete opportunities of integration since he/she receives accommodation, support, training opportunities and insertion in the work environment.

Such programs may be managed either by social services of public entities or by NGOs. The enactment regulation to the Single Text on Immigration has identified the entities' requirements which are considered suitable to ensure competency and capacity to promote integration and assistance, as well as the availability of appropriate organizational structures.

The report issued by the Government (please refer to Q. 7) mentions that out of 13,517 persons who have benefited from a program of social assistance since 2000, 9,663 have been provided with a professional training, education and study grants or stages. 6,435 have been inserted in the work environment.

Although the exact description of the content of such programs has not been defined by the law, the advices issued by the Competent Ministry set the guidelines for the grants in relation to creation of programmes of social assistance. As a general remark, such schemes include psychological support, language courses, access to education and vocational training and assistance to the insertion in the work environment.

The program may not be freely created and implemented by the proposing private or public entity, but must comply with such requirements in order to be approved and financed.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
Art. 18 of the Testo Unico provides for the creation of programs of assistance and social integration addressed to the holders of the residence permit for humanitarian reasons. The structure and the modalities of evaluation of the programs are specified under art. 25 of D.P.R. 394/1999 (enactment regulation of the Testo Unico).

Such programs may be carried out by local entities or acknowledged private entities, and are financed by the State up to 70%. A specific agreement must be executed between the local entity and the NGO involved. The contribution is issued by the Ministry of equality (Pari Opportunità), subject to positive evaluation of an established interministerial Commission, of the programs proposed.

Almost every year the Ministry of Equality publishes a tender notice which indicates more in details the programs' requirements for the purpose of applying for a grant.

From 2000 to 2008, 9 tender notices have been published and 490 projects have been co-financed.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- Yes
- No

Explanation:

Issuing and renewal of residence permit is conditional on participation in the program of social assistance and integration and acceptance of the undertakings related to this latter.

This requirement is expressly set under art. 27, para. 2, c), of D.P.R. 394/1999 (Enactment Regulation of the Testo Unico) which states that the competent police authority issues the permit of stay for humanitarian reasons provided that (among other things) the concerned person has agreed to comply with the program's requirements, being aware of the consequences on withdrawal in case of breach of this undertaking and conduct not compliant with the program.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- Yes
- No
Explanation:

The relevant provision (art. 18, para. 4) is drafted in very general terms stating that the permit of stay may be renewed for one year, or for the longer period necessary for reasons of justice. It is not specified which considerations must be carried out before renewing the permit of stay. It may however be recalled that the permit of stay may be revoked in case of interruption of the program or of conduct not compliant with its purposes, or in the event that the other requirements that had grounded the issuance of the permit of stay do not subsist anymore.

It must also be underlined that based upon a research carried out on the practice on art. 18 of the Testo Unico (please refer to Q. 17), it appears that there is a remarkable difference of practice between the different police authorities, both in relation to modalities and requirements of renewal. It is in particular pointed out that the general terms of this provision leave broad discretionary powers to the public administration in evaluating the opportunity of renewing the permit of stay.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Pursuant to art. 18, para. 4, the residence permit is withdrawn in case of interruption of the program of social assistance and integration or in the event of conduct not complying with the aims of such residence permit or in event that the other conditions that had grounded the issuance do not subsist anymore.


Occurrence of the abovementioned circumstances may be reported by the Public prosecutor or by the social services to the competent police authority. This latter may also become aware of the relevant facts autonomously. The permit of stay is revoked by the same authority (police authority) that had issued it.

It is interesting to note that the cases of revocations appear rather limited in the practice (from 1% to 10%) and are grounded on all the three circumstances (interruption of the program, conduct not complying with the aims of the programme and in the event that the other circumstances do not subsist anymore). (Please refer to the research on the practical application of art. 18 mentioned under Q. 17)

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

A survey recently carried out within the framework of the project Equal nazionale “Osservatorio Tratta” by the Italian NGO On the Road in partnership with ten entities (University, Research centres, Non Profit networks, Public Entities).

2) A detailed analysis and assessment of the Italian system has been recently published by the Italian Government (Dipartimento dei Diritti e per le Pari Opportunità - Presidenza del Consiglio dei Ministri), "Verso la costruzione di un Piano Nazionale Anti-tratta", March 2008,


4) Diritti Umani e Tratta di Donne e Giovani in Europa, Progetto Daphne, Università degli Studi di Padova, available on the website: www.centrodirittiumani.unipd.it/a_attivita/daphne/overview_it.pdf


Q.18. **Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.**

There has not been a public debate on the implementation. The Ministry of the Interior has set up a roundtable to discuss about the features of the law transposing the directive that has also included NGOs' specialised in the assistance to the victims of trafficking.

Q.19. **Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?**

One of the main concerns about the application of art. 18 concern the practice, which appears rather differentiated in Italy. Although it is inserted in the Single Text on Immigration, this norm sets forth a regime which is very different from the ordinary immigration rules. It appears that despite the attempts made by the Ministry of Interior to provide a uniform interpretation of this provision, it has been interpreted in different ways by the competent authorities.

A problem of application of art. 18 has arisen further to the amendments that were brought to the Single Text on Immigration by the Law 189/2002 and that provide for the immediate enforcement of the expulsion measure (Pursuant to art. 13, para. 3, "Expulsion will be ordered in every case by decree stating the grounds therefor which shall be immediately enforceable, even if an appeal is filed against the order by the party concerned…"). Immediate enforcement of the expulsion measure, without giving the concerned person the possibility to appeal based upon occurrence of requirements mentioned under art. 18, may reduce the value of this provision.
**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Status quo</td>
</tr>
<tr>
<td>A very advanced system of protection for the victims of trafficking already existed in Italy before the adoption of the Directive and was based upon article 18 of the Single Text on Immigration</td>
<td>No change has been brought to the Italian system further to the implementation of the Directive</td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below
Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(to be indicated by the national rapporteur)</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
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</tr>
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<td></td>
<td>No change has been brought to the Italian system further to the implementation of the Directive</td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

□ YES  □ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

□ YES  □ NO

Q.31.C. If yes, give some of examples:
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Date</th>
<th>Reference of Publications</th>
<th>Summary of Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.10.2006</td>
<td>Decision no. 6023</td>
<td>The decision has been issued by the Supreme administrative Court. It is a very important decision since it has clearly affirmed the nature of the permit of stay issued pursuant to article 18 of the Single Text on Immigration. It has affirmed that such permit of stay does not have to be considered as a &quot;prize&quot; to the contribution offered by the concerned person to a criminal proceedings.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>A recourse had been lodged before the administrative regional Court of Tuscany against the refusal to issue a permit of stay for social protection reasons pursuant to article 18 of the Single Text on immigration. The refusal was grounded on the circumstance that no criminal proceedings had been started further to the complaint lodged by the concerned foreigner. The Court had rejected the recourse.</td>
</tr>
</tbody>
</table>

Any supplementary comment about the trend of the jurisprudence:
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision of information - Free telephone number</td>
<td>The project intends to help victims of trafficking and sexual exploitation, by providing information on the possibilities offered by article 18 of the Single Text on immigration. The Free Number was activated on 26 July 2000 and is based in Rome with 14 local offices located all over the Italian territory. The calls are redirected to such local offices located closed to the area from where they have been effected.</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Provision of information - social desk</td>
<td>Since September 2001 a social desk has been set up at the Questura (police authority) in Rome. This structure is managed by NGOs specialised in the assistance to the victims of human trafficking. The objective of the social desk is to provide information to the victims who come to the Questura in relation to the possibilities offered by article 18 of the Single Text on Immigration</td>
</tr>
</tbody>
</table>
Table 3

**OBJECTIVE OF THE PRACTICE**
Specialised street-units

**EXPLANATION**
Such streets-units are composed of social operators, cultural mediators and volunteers. They were originally created in order to provide health assistance and moral support to prostitutes. Today they play an important role in identifying the victims of trafficking.

Table 4

**OBJECTIVE OF THE PRACTICE**
Drop in centers

**EXPLANATION**
They are information and consulting desks for the prostitutes and are carried out by social operators, cultural mediators, psychologists and lawyers. They provide health, social and legal information, psychological support and orientation towards specialised programs of social assistance and integration.

Table 5

**OBJECTIVE OF THE PRACTICE**
Financial grants - paid internships

**EXPLANATION**
The Diocese of Torino has created several grants for 3 or 6-months paid internships to be carried out within local enterprises.

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

It is important to note that a very advanced system of protection for the victims of trafficking already existed in Italy before the adoption of the Directive and was based upon article 18 of the Single Text on Immigration.

It must also be noted that article 18 does not only protect the victims of trafficking or people who are forced or kept into slavery, but provides a broader assistance to all foreigners who are victims of violence or serious exploitation. (This broad protection system not only applies to third-country nationals but also to EU citizens).

This system is very much appreciated and considered as very efficient by NGOs that work in the field of assistance to immigrants and victims of trafficking. (It has been calculated that during the period 2000-2006 more than 11,000 people have received assistance based upon article 18). On the one hand it intends to provide assistance to the concerned persons but also as a consequent effect to help the fight against criminal entities that carry out human trafficking and exploitation.

The most remarkable feature of the system is the fact that it is intended to provide assistance to the victim as such, without requiring that the concerned person gives a contribution in a proceedings against the criminal organization that has carried out the trafficking. In fact, the idea underlying the system of article 18 is that of supporting the persons who are victims of exploitation and human trafficking, giving them the opportunity to escape from a criminal organization and then to become autonomous through a permit of stay allowing them to carry out a professional or study activity that will facilitate their social inclusion. It must be said that the practice over the years has not always been fully consistent and on many occasions police and judicial authorities have refused the permit of stay because the foreigner's contribution to a criminal proceedings was not considered sufficient. However, the social protection ground has been confirmed by the Circular of the Ministry of Interior issued on 2.1.2006 that has stated that for the purpose of issuing a permit of stay for social protection reasons, the person is not required to file a complaint nor to collaborate anyway with police or judicial authority. This has also be reaffirmed by the Consiglio di Stato (Supreme Administrative Court) on 10.10.2006.

These may be considered as the basic issues of the system:
- a double path for the issuance of the permit of stay and access to the program: the judiciary path and the social path (this latter does not imply any collaboration of the victim);
- the issuance of a permit of stay for 6 months, that may be renewed for an additional year and may also be converted into a permit of stay for study or work;
- access to a program of social assistance and integration.

The Ministry of Interior has clarified that, as far as the initiative is concerned, the proposal for the issuance of the relevant permit of stay shall be issued by the Public prosecutor only in the event that a criminal proceedings in relation to circumstances of violence and serious exploitation has been initiated and the concerned person has witnessed in it. This implies that if the initiative is taken by social services or NGOs a complaint has not to be filed in order to put the mechanism into effect. The competent police authority may issue the residence permit after assessing the seriousness and effectiveness of the danger, as indicated in the report filed by the concerned social service or NGO, without necessarily requesting the advice of the Public prosecutor. Such assessment shall also take into account possible risks that may be incurred by the foreigners and the members of their family in the country of origin, in case of repatriation

* * *

Within the Department for equal opportunities an interministerial Commision has been created in relation to the application of article 18 of the Single Text on immigration. This commision is composed of representatives form the Ministers of Equal opportunities, Social inclusion, Home affairs and Justice. The Commission carries out functions of address, control and programmation.

A coordination Committee for Government actions against human trafficking has also been set up. Its mains functions consist in the collection of data on the phenomenon and the definition of strategies for Government action. It also intends to promote actions to favour a better knowledge and understanding of human trafficking with mass media and public opinion.

An observatory on the victims of trafficking for the purpose of monitoring the situation and the functioning of the system was set up in 2007 by the Ministry for Equal Opportunities (Ministero delle Pari Opportunità).
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

THE REPUBLIC OF LATVIA

By

Gromovs Juris

Mag.iur., dr.cand.iur, Lecturer of the University of Latvia,
jurisgromovs@yahoo.com

01 June 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

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<tr>
<td><strong>DATE:</strong></td>
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<tr>
<td><strong>NUMBER:</strong></td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
</tr>
<tr>
<td><strong>LEGAL NATURE (please tick the correct box):</strong></td>
</tr>
</tbody>
</table>
Table 2  
This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
TITLE: The Immigration Law  
DATE: 31 October 2002  
NUMBER: no number  
DATE OF ENTRY INTO FORCE: 1 May 2003  
PROVISIONS CONCERNED: Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia that the stay of a victim of trafficking in human beings, as well as a minor accompanying him or her in the Republic of Latvia starting from a moment of issuance of a temporary residence permit shall be determined in accordance with the Immigration Law. Specific amendments to the Immigration Law were made in order to implement the provisions on the stay of the victims of trafficking—please see the table nr.3. (for example if the norm also pursues other objectives than the transposition of the concerned directive)  
REFERENCES OF PUBLICATION  
LEGAL NATURE (please tick the correct box):  
☒ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

Table 3  
This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
TITLE: Amendments to the Immigration Law  
DATE: 25.01.2007.  
NUMBER: no number  
DATE OF ENTRY INTO FORCE: 22.02.2007  
PROVISIONS CONCERNED: An alien who is not a citizen of the European Union and has been recognised as a victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to reside in the Republic of Latvia without a visa or residence permit until expiry or discontinuation of a fixed reflexion period or until a decision about issuance of temporary residence permit has entered into force. (for example if the norm also pursues other objectives than the transposition of the concerned directive)  
REFERENCES OF PUBLICATION  
LEGAL NATURE (please tick the correct box):  
☒ LEGISLATIVE  
☐ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS
Table 4
This table is about: [ ] a text already adopted [ ] a text which is still a project to be adopted
TITLE: Regulations on the Residence Permits
DATE: 3 October 2006
NUMBER: 813
DATE OF ENTRY INTO FORCE: 27 October 2006
PROVISIONS CONCERNED: Issued on the basis of the Immigration law they regulates practical aspects of the issuance of the residence permits to any group of the foreigners, including the victims of the trafficking in human beings.
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (please tick the correct box):
[ ] LEGISLATIVE
[ ] REGULATION
[ ] CIRCULAR OR INSTRUCTIONS

Table 5
This table is about: [ ] a text already adopted [ ] a text which is still a project to be adopted
TITLE: Law “Amendments to the Law On Social Services and Social Assistance “
DATE: 24 May 2007
NUMBER: no number
DATE OF ENTRY INTO FORCE: 7 June 2007
PROVISIONS CONCERNED: These Amendments shall ensure that the social rehabilitation services for the State budget funds shal be received not only by victims -by Latvian citizens and non-citizens, aliens and stateless persons who have been granted a personal identity number, but also by the victims - third country nationals, who are staying in Latvia on the basis of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia.
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box):
[ ] LEGISLATIVE
[ ] REGULATION
[ ] CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1
TITLE: Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings
DATE: 31 October 2006
NUMBER: 889
DATE OF ENTRY INTO FORCE: 1 January 2007
PROVISIONS CONCERNED: Issued pursuant to the Social Services and Social Assistance Law, these Regulations shall regulate procedures, by which a person who has been recognised a victim of the traffic in human beings shall receive social rehabilitation services for the State budget funds, and the criteria for the recognition of a person as a victim of the traffic in human beings. Since 7 June 2007 they are applied to the victims - third country nationals due to changes provided by the Law "the Amendments to the Law On Social Services and Social Assistance “. The text of these regulations itself was not amended in order to provide any new provisions in this regard.

(for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: The Official Journal, 176 (3544) 03.11.2006
LEGAL NATURE (indicate by ticking the correct box):
☐ LEGISLATIVE ☒ REGULATION ☐ CIRCULAR OR INSTRUCTIONS

Table 2
TITLE: the Regulations of the Cabinet of Ministers of 20 January 2004 No 44 “Regulations on the work permits for the foreigners
DATE: 20 January 2004
NUMBER: 44
DATE OF ENTRY INTO FORCE: 21.01.2004
PROVISIONS CONCERNED:
(for example if the norm is not devoted only to the transposition of the concerned directive)
LEGAL NATURE (indicate by ticking the correct box):
☐ LEGISLATIVE ☒ REGULATION ☐ CIRCULAR OR INSTRUCTIONS
### Table 3

**TITLE:** The Draft Amendments to the Education Law  
**DATE:**  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:**  
**PROVISIONS CONCERNED:** Article 3 related to the right of a foreigner with a valid residence permit to receive an education in Latvia.  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:**  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [x] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 4

**TITLE:** Law On Orphan’s Courts  
**DATE:** 22 June 2006  
**NUMBER:** no number  
**DATE OF ENTRY INTO FORCE:** 1 January 2007  
**PROVISIONS CONCERNED:** Issues of the representation of the unaccompanied minors.  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:** The Official Journal, 107 (3475) 07.07.2006.  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [x] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 5

**TITLE:** Law “Amendments to the Support for Unemployed Persons and Persons Seeking Employment Law”  
**DATE:** 21 June 2007  
**NUMBER:** no number  
**DATE OF ENTRY INTO FORCE:** 19 July 2007  
**PROVISIONS CONCERNED:** Implements Art.11 of the Directive.  
(for example if the norm also pursues other objectives than the transposition of the directive)  
**REFERENCES OF PUBLICATION**  
**IN THE OFFICIAL JOURNAL:** The Official Journal, 107 (3683), 05.07.2007.  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [x] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1
COMPETENCE CONCERNED: decision-making on the victim's residence at the pre-trial stage
CENTRAL MINISTRY OF: Ministry of Interior
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: State Police (Central Criminal Police Department, Organised Crime Enforcement Department, Drug Fighting Bureau, 2nd Division of Fighting Trafficking in Human Beings)
the State Police is the public body under the supervision of the Ministry of Interior.

Section 7 of the State Administration Structure Law provides for that the Government shall implement subordination in the organisation of state administration (institutional subordination) and in the performance of the functions of state administration (functional subordination). The Government shall implement subordination through the intermediation of an particular Minister. The Ministers shall implement subordination directly or through the intermediation of an institution of direct administration, its unit or official. Subordination shall be implemented in the form of control or supervision. The Ministry of Interior exercises the control over the State Police in the form of the supervision. The supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act.

Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Welfare</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
</tbody>
</table>

the Ministry of Welfare is responsible for the legal regulation of procedures, by which the victims of the traffic in human beings receive the social rehabilitation services and the relevant financing of these social rehabilitation services.

Ministry of Welfare
### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>issuance of a temporary residency permit to the victim of the traffic in human beings</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>the Office of Citizenship and Migration Affairs - the public body under the supervision of the Ministry of Interior</td>
</tr>
</tbody>
</table>

Section 7 of the State Administration Structure Law provides for that the Government shall implement subordination in the organisation of state administration (institutional subordination) and in the performance of the functions of state administration (functional subordination). The Government shall implement subordination through the intermediation of an particular Minister. The Ministers shall implement subordination directly or through the intermediation of an institution of direct administration, its unit or official. Subordination shall be implemented in the form of control or supervision. The Ministry of Interior exercises the control over the Office of Citizenship and Migration Affairs in the form of the supervision. The supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act.

### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>decision-making on the victim's residence at the stage of the criminal prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
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<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

Prosecutor’s Office

independent authority
Table 5

COMPETENCE CONCERNED:
decision-making on the victim's residence at preparing a case for trial, as well as from the moment when a adjudication is announced with which legal proceedings are completed in the court of the relevant instance, until the transferral of the case to the next court instance or until the fulfilment of the adjudication, as well as during a trial

CENTRAL MINISTRY OF:
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:
OTHER LEVEL OF ADMINISTRATION:
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)

the court (judge who leads the adjudication or, during the trial- group of judges)
independent judicial authority

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☒ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☒ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS

INDICATE HERE THE MISSING TEXTS
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA29).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC30).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ ‘Trafficking in human beings’ only

☐ ‘An action to facilitate illegal immigration’ only

☐ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia, which transposed the norms of Directive, is applicable only to a victim of the trafficking in human beings, as well as a minor accompanying him or her.


Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Yes, the definition is identical. Please see below the related Sections of the Criminal Law of Latvia:

Section 154.1  Human Trafficking

(1) For a person who commits human trafficking, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding eight years, with or without confiscation of property.
(2) For a person who commits the same acts if commission thereof is with respect to a minor, or by a group of persons pursuant to prior agreement, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding twelve years, with confiscation of property.
(3) For a person who commits the same acts, if serious consequences are caused thereby or commission thereof is with respect to a juvenile, or by an organised group of persons, the applicable sentence is deprivation of liberty for a term of not less than ten years and not exceeding fifteen years, with confiscation of property.
[25 April 2002; 16 December 2004]

Section 154.2  Meaning of Human Trafficking

(1) Human trafficking is the recruitment, conveyance, transfer, concealment or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.
(2) The recruitment, conveyance, transfer, concealment or reception of minor persons for the purpose of exploitation shall be recognised as human trafficking also in such cases, if it is not connected with the utilisation of any of the means referred to in the Paragraph one of this Section.
(3) Within the meaning of this Section, exploitation is the involvement of a person in prostitution or in other kinds of sexual exploitation, the compulsion of a person to perform activities or to provide services, the holding of a person in slavery or other similar forms thereof (debt slavery, serfdom or the compulsory transfer of a person into dependence upon another person), and the holding a person in servitude or also the unlawful removal of a person’s tissues or organs.
[25 April 2002]

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction., or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes □ No

Explanation:

Section 3 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for that „In case, if an alien who is not a national of the European Union provides information, which possibly can assist in detection or prevention of event of trafficking in human beings, however such information is insufficient to decide on initiation of criminal procedure or to decide, within the framework of initiated criminal procedure, about recognition of such an alien as a victim of criminal offence related to trafficking in human beings, the State Border Guard, the investigating body, the person directing the proceedings or a provider of social rehabilitation services shall inform the alien in writing about the opportunity and rights to receive the reflection period and rights he or she would acquire accordingly.”

There are no any other references to the type of offence, except indication on the possibility of "detection or prevention of event of trafficking in human beings". There is no administrative or judicial case law related to the application of the Law so far, but on my opinion, norms of the transposition will be applicable to the perpetrators charged for the instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes  ☐ No

Explanation:

Latvia did not choose the option related to the illegal immigration issues.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out
by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia, which transposed the norms of Directive, is applicable only to a victim of the trafficking in human beings, as well as a minor accompanying him or her (Para. 8, Section 4 of the Law). Currently there is no administrative or judicial law related to the interpretation of this Article, however on the basis of the history of the drafting of this law and of the wording of the above-mentioned Article, the following can be indicated:

1) Both an adult and a minor can be recognized as the victim, because the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not indicate any reference to the age of the person concerned. Since the victim could be also minor, which arrived to Latvia unaccompanied, the guardian to him/her shall be appointed as to any other category of unaccompanied minor (e.g. asylum seekers) in accordance with the Law On Orphan’s Courts

2) A minor accompanying the victim is not himself/herself a victim, but can be victim’s own child, relative, foster-child or child under his de facto or de jure guardianship – the wording allows a very broad interpretation, of the “accompanying minor”. He/she covered by the same set of guarantees which are provided to the victim, which he/she accompanies.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18 years

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:

•

•
Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not provide for any additional criteria to be fulfilled.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 0 persons (none), because the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia was adopted on 25 January 2007 and entered into force on 22 February, 2007. No cases of the application existed by 17 September 2007.

‘An action to facilitate illegal immigration (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Section 3 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following responsible authorities - the State Border Guard, the investigating body, the person directing the proceedings or a provider of social rehabilitation services.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☑ In writing
☐ Both orally and in writing
Explanation:

Section 3 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the writing procedure:
"In case, if an alien, who is not a national of the European Union, provides information, which possibly can assist in detection or prevention of event of trafficking in human beings, however such information is insufficient to decide on initiation of criminal procedure or to decide, within the framework of initiated criminal procedure, about recognition of such an alien as a victim of criminal offence related to trafficking in human beings, the State Border Guard, the investigating body, the person directing the proceedings or a provider of social rehabilitation services shall inform the alien in writing about the opportunity and rights to receive the reflection period and rights he or she would acquire accordingly."
However this means that in practice the person will be explained also in oral form as well.

**Q.8.C. Please provide details on the content of oral/written information**
(feel free to enclose relevant leaflets, brochures etc).

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not specify, what kind of format the written information shall have. No details can be provided at this point, since no judicial or administrative practice exist so far.

**Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.**

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia is in force for 4 months therefore no practical information is available at this point yet.

**Reflection period**

**Q.9.** According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

**Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Para. 6-7, Section 4 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provide for the following:
"(6) The reflection period shall be calculated starting from a day when the investigation authority or person, directing the proceedings has made a decision about granting a waiting period.
(7) The reflection period shall be 30 days."
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

Second sentence of Para. 4, Section 4 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"The decision granting the reflection period adopted by the investigation authority or person, directing the proceedings, shall entitle the victim of trafficking in human beings to stay in the Republic of Latvia in the related period [of time]."

Section 5, Paragraph four of the Immigration Law provides for the following:
"(4) An alien who is not a citizen of the European Union and has been recognised as a victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to reside in the Republic of Latvia without a visa or residence permit until expiry or discontinuation of a fixed reflection period or until a decision about issuance of temporary residence permit has entered into force."

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

Section 5 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"(1) Investigation authority or person, directing the proceedings, shall be entitled to make a decision about discontinuation of a reflection period at any time, at least in one of the following cases:
1) it has been established that the victim of trafficking in human beings maintains, actively, voluntarily and on his or her own initiative, the contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on the penalty for a criminal offence related to trafficking in human beings has entered into force;
2) there are grounds to deem that the victim of trafficking in human beings causes threat to the State security or the public order and safety.
(2) Decision made by the investigation authority or the person, directing the proceedings on discontinuation of a reflection period cannot be appealed.
(3) The investigation authority or the person, directing the proceedings shall inform the Office [the Office of Citizenship and Migration Affairs], the State Border Guard and a provider of social rehabilitation services on discontinuation of the reflection period."
**Q.9.D.** If the answer on Q.9.C is “yes”: **Which authority in your Member State has the competence to take the decision to terminate the reflection period?** (Please give details on the name and function of the authority)

As mentioned above, Para1, Section 5 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"(1) Investigation authority or person, directing the proceedings, shall be entitled to make a decision about discontinuation of a reflection period at any time."

The Criminal Procedure Law of Latvia provides for that, depending on the stage of the criminal proceedings, the persons directing the proceedings shall be an investigator, a prosecutor, a judges who leads the adjudication or, during the trial- group of judges.

**Q.9.E.** If the answer on Q.9.C is “yes”: **Please describe the procedure for termination of the reflection period.**

Section 5 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"(1) Investigation authority or person, directing the proceedings, shall be entitled to make a decision about discontinuation of a reflection period at any time, at least in one of the following cases:
1) it has been established that the victim of trafficking in human beings maintains, actively, voluntarily and on his or her own initiative, the contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on the penalty for a criminal offence related to trafficking in human beings has entered into force;
2) there are grounds to deem that the victim of trafficking in human beings causes threat to the State security or the public order and safety.
(2) Decision made by the investigation authority or the person, directing the proceedings on discontinuation of a reflection period cannot be appealed.
(3) The investigation authority or the person, directing the proceedings shall inform the Office [the Office of Citizenship and Migration Affairs], the State Border Guard and a provider of social rehabilitation services on discontinuation of the reflection period."

This Law or any other legal acts do not provide for any additional procedures on that matter.

**Q.9.F.** Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

No administrative or judicial case law or practice exist yet, since the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia is in force for only 3 months.

**Treatment**

**Q.10.** According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).
**Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before the issue of the residence permit:**

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

**Explanation:**

Para 8, Section 4 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

"(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs (hereinafter – the Office)."

In its turn Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

"Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with a safe asylum and accommodation, first aid, consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid, as well as an opportunity to get involved in the training and educational programmes."

That means that no support in case shall be provided to a victim both before and after the issuance of the residence permit.

**After the issue of the residence permit**

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

**Explanation:**

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

"A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings."

**Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.**

As mentioned above, the persons under protection are not supposed to receive the money in cash and therefore a uniform amount has not been specified by the current legislation. The situation changed upon the entry into force of the Law “Amendments to the Law On Social Services and Social Assistance “. This Law entered into force on 7 June 2007

The Amendments to the Law On Social Services and Social Assistance will provide for the opportunity to apply the Regulations of the Cabinet of Ministers No 889 of 31 October 2006 “Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for..."
the Recognition of a Person as a Victim of the Traffic in Human Beings” to be applied to the victims-third
country nationals. Currently they are not applied to the victims – third country due to the need to change the Law
On Social Services and Social Assistance.

The Regulations do not indicate the exact amount to be spent. However the annotation (explanatory
memorandum) to the Regulations indicated that the amount of money that shall be spent for the rehabilitation of
one person per month shall be EUR 357.14 (LVL 250) and a course of services for a person shall not be longer
than 6 months

As to the other categories of Latvian nationals and the foreign nationals - the current Law on State Social
Allowances and the relevant governmental Regulations of Latvia provide for, that the following persons are
entitled to receive state social benefits – the citizens of Latvia, non-citizens, foreign citizens and stateless
persons, who have received personal ID number and who are permanent residents of Latvia. The state social
benefits are not granted to persons who have received a temporary residence permit. The state social benefit is
not granted to persons who are completely state supported.

Persons are entitled to receive the state social security benefit:

• In case of disability or statutory age – those above-mentioned persons who have continuously lived in
Latvia for the last 12 months before claiming the benefit, but in total – no less than 60 months;
• In case of a loss of supporter – those above-mentioned persons who have lost supporter, if their former
supporter has lived in Latvia for at least 60 months before the day of claiming the benefit in total and for last 12
months - continuously.

The state social security benefit is granted to a person who is not entitled to receive state pension (except pension
for a disabled person in case of losing supporter) or insurance compensation in connection with accident at work
or occupational disease, if this person:

• is not employed or self-employed (not regarded as employee or self-employed person according to the
Law on State Social Insurance) and has exceeded the old age pension age by 5 years that is defined by Law on
State Pensions to person in order to get rights to old-age pension;
• has obtained the status of a disabled person and has exceeded 18 years of age. These persons are entitled
to receive the state social security benefit for determined disability period;
• is still under age but has lost one or both parents and has not entered into marriage. Joint state social
security benefit is granted to these persons if it is granted for three or more children that can not be less than 50%
of state social security benefit amount per each child in accordance with procedures specified by the Cabinet of
Ministers. State social security benefits for these persons are granted for the period until they come of age. The
benefit will continue to be paid if the person after coming of age continues studies in a comprehensive or
vocational education institution and is not older than 20 years of age, or is a student of the day department of a
higher education institution (full-time day department) and is not older than 24 years of age.

If a person receives pension from other state that does not reach an amount of state social security benefit then
the granted state social security benefit is reduced to the sum that corresponds to amount of granted pension by
other state. A person who receives pension from other state that is equal to amount of state social security benefit
or exceeds it, the state social security benefit shall not be granted. If a benefit receiver leaves Republic of Latvia
in order to reside in a foreign country, the state social security benefit shall be terminated paying a benefit for the
next two months before leave.

An amount of the state social security benefit:
• in general case – 45 LVL (64.28 EUR) per month;
• for disabled since childhood – 50 LVL (71.42 EUR) per month.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in
kind): In your opinion, is the support given sufficient to ensure ‘standards
of living capable of ensuring their subsistence’? See article 7(1) which is a
mandatory provision.

Since the Law “Amendments to the Law On Social Services and Social Assistance “ came into force only on 7
June 2007, it is impossible to evaluate the sufficiency of it in accordance with the standards of living in
practice.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with a safe asylum and accommodation...".

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings."

After the issue of the residence permit:

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

So far no additional detailed legislation, except the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia, or any judicial and administrative case law exist on the issue of the safety and the protection needs.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No
Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not have a direct provision on the translation and interpreting services for a victim. However, without any further details, it indicates the opportunity to receive the consultations of “other specialists”. In this regard Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
The Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para. 8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... consultations of other specialists”. The term “other specialists” is very broad and may include both an interpreter and a translator. The Law does not contain any definition of the “other specialists” or the exhaustive or non-exhaustive list of the titles/professions of these specialists. Since up to 18 September 2007 there has been no administrative or judicial case law related to the third country nationals-victims, it is not possible to argue by means of the case law whether Section 7 would be applied by the provider of rehabilitation services in case if an interpreter or translator would be needed.

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings."

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not have a direct provision on the translation and interpreting services for a victim. However, without any further details, it indicates the opportunity to receive the consultations of “other specialists”. In this regard Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"The Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para. 8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... consultations of other specialists”. The term “other specialists” is very broad and may include both an interpreter and a translator. The Law does not contain any definition of the “other specialists” or the exhaustive or non-exhaustive list of the titles/professions of these specialists. Since up to 18 September 2007 there has been no administrative or judicial case law related to the third country nationals-victims, it is not possible to argue by means of the case law whether Section 7 would be applied by the provider of rehabilitation services in case if an interpreter or translator would be needed.

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings."

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:
Please see above the answer on the question 10 E.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:
Please see above the answer on the question 10 E.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with consultations of … lawyer".

For the moment no additional detailed legislation or judicial and administrative case law exist on the issue of this type of the state ensured legal aid.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

For the moment no additional detailed legislation or judicial and administrative case law exist on the issue of this type of the state ensured legal aid.
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 7 of the mentioned Law:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid...”
Para.8, Section 4 of this Law
(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.

After the issue of the residence permit

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only).

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 7 of the mentioned Law:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid...”
Para.8, Section 4 of this Law
(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.
Section 8 of this Law
„A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings.”

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)**

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation:

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for ANY victim and a minor accompanying him or her, with „a safe asylum and accommodation, first aid, consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid”. The law does not distinguish victims with the special needs from the rest of the victims-it shall be done by the provider of the rehabilitation services upon the reception of a victim.

Para. 8, Section 4 of Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
“Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.”

Section 7 of the same Law provides for, that “Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with a safe asylum and accommodation, first aid, consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid, as well as an opportunity to get involved in the training and educational programmes.”

Section 8 of the same Law provides for that „A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings.”

After the issue of the residence permit

☐ Yes ☐ No

Explanation:

Please see the previous explanation to Q.3 above.

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Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

- [X] Yes
- [ ] No

**Explanation:**

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 7 of the mentioned Law:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with consultations of psychologist...”

Para.8, Section 4 of this Law:
(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.

Section 8 of this Law:
„A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings.”

**After** the issue of the residence permit

- [X] Yes
- [ ] No

**Explanation:**

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 7 of the mentioned Law:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with consultations of psychologist...”

Para.8, Section 4 of this Law:
(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.

Section 8 of this Law:
This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

**Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence?** See mandatory provision in Article 9(2)

☐ Yes ☒ No

**Explanation:**

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for ANY person (thus covering also people without sufficient resources and special needs), who is „A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings.”

Section 7 of the same Law provides for, that “Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with a safe asylum and accommodation, first aid, consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid, as well as an opportunity to get involved in the training and educational programmes.”

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

**Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

Section 6 of The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

“(1) In case, if a victim of trafficking in human beings provides information in writing which can assist in detection or prevention of an event of trafficking in human beings, or he or she has been recognised as a victim...”
This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?  

☐ Yes  ☒ No

Explanation:

No, the wording of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not provide for the possibility to refuse the issue of a residence permit on the basis of reasons of the public policy and the protection of national security.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Para. 2-3, Section 6 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

"(2) A person, directing the proceedings shall request the Office to issue a temporary residence permit for a victim of trafficking in human beings, as well as a minor accompanying him or her, a person, by the submitting a proposal to the Office containing an opinion about eligibility of the victim of trafficking in human beings to the conditions stated in Paragraph one of this Section.

(3) By requesting the Office to issue a temporary residence permit for a period of at least six months, a person, directing the proceedings shall take into account a period within which the pre-trial criminal proceedings or trial could be finalised, as well as the nature and intensity of threat (if any) to the victim of trafficking in human beings."

in a criminal offence related to trafficking in human beings, a person, directing the proceedings shall, during a reflection period or on the next working day after expiry of the reflection period within three working days:

1) evaluate suitableness of future stay of the victim of trafficking in human beings in the Republic of Latvia (whether it facilitates the process of investigation or legal proceedings);
2) examine if a victim of trafficking in human beings does not maintain contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on penalty for a criminal offence related to trafficking in human begins has entered into force.

(2) In order to request the Office issuance a temporary residence permit for a victim of trafficking in human beings, as well as a minor accompanying him or her, a person, directing the proceedings shall submit a proposal to the Office containing a conclusion about eligibility of the victim of trafficking in human beings to the conditions stated in Paragraph one of this Section.

(3) By requesting the Office to issue a temporary residence permit for a period of at least six month, a person, directing the proceedings shall take into account a period within which the pre-trial criminal procedure or trial could be finalised, as well as the nature and intensity of threat (if any) to the victim of trafficking in human beings.

(4) Person, directing the proceedings may request the Office to prolong a temporary residence permit if the conditions stated in the first Paragraph of this Section continue."
Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Para 4, Section 6 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"(4) Person, directing the proceedings may request the Office to prolong a temporary residence permit if the conditions stated in the first Paragraph of this Section continue." Therefore no limitations to the number of the prolongation times exist.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

The general legislation norms provide for the best interest of the child to be taken into account. Para. 2, Section 3 of the Law on the Protection of the Rights of the Child provides for that “The State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.”, as well as in the Section 18: “Guarantees for the rights of the child shall be as determined by the Constitution, this Law and other laws and regulatory enactments, as well as international agreements binding on Latvia.” In case of complaints the minors or their parents and the representatives may also complain to the State Inspection for Protection of Children’s Rights, which main tasks will be to supervise and control implementation of the legal standards of child protection.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If yes, explain which measures are taken)

No such special measures can be identified from the analysis of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... an opportunity to get involved in the training and educational programmes.”

However Section 3 of the Education Law in force provides only for the access to education of the persons in possession of the permanent residence permit:

“Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by the Republic of Latvia, every person who has received a permanent residence permit, as well as citizens from European Union States who have been issued a temporary residence permit, and their children, have equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence.”

Therefore a person with the temporary residence permit - victim, is not a subject of the current Education Law. The Ministry of Education and Science in its letter of 9 May 2007 indicated that it has drafted Amendments to the Education Law, which will replace the current Section 3 . The Draft new Section 3 of the Education Law will be read as follows:

“The equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence shall belong to:
1) citizen of Latvia,
2) non-citizen of Latvia,
3) citizen of the European Union Member States, State of European Economic Area or Swiss Confederation, who resides in the Republic of Latvia,
4) citizen of the third country, who has a valid residence permit,
5) minor child of the asylum seeker, the refugee or the person, who was granted the alternative status,
6) minor asylum seeker, refugee or person, who was granted the alternative status.”

Therefore upon the reception of the residence permit the minor will have the access to the educational system on the same conditions, as the nationals of Latvia.
This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs?**

See mandatory provision in Article 9(2)

☐ Yes  ☒ No

**Explanation:**

Section 8 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for ANY person (similarly as in reply to Question 5 - therefore covering also minors without the sufficient resources and special needs), who is „A victim of trafficking in human beings, as well as a minor accompanying him or her shall be entitled to receive the services provided for in Section 7 of this Law in case, if the Office has issued him or her a temporary residence permit on the basis of a request of a person, directing the proceedings.”

Section 7 of the same Law provides for, that “Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with a safe asylum and accommodation, first aid, consultations of psychologist, lawyer, medical staff and other specialists, a possibility to receive emergency medical aid, as well as an opportunity to get involved in the training and educational programmes.”

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

In principle the current legislation does not provide for the provisions for the trace of the parents of unaccompanied minors -victims of the trafficking in human beings.

The whole procedure of the appointment of a guardian for an unaccompanied minor is regulated in accordance with the Law On Orphan’s Courts. Section 27 of this Law provides for the following:

“(1) If an Orphan's court detects that an orphan or a child who is left without parental care, or another person lacking capacity to act who is not a citizen of Latvia or a non-citizen of Latvia, lives or resides in the territory of the operation thereof, such Orphan’s court shall inform a competent guardianship or trusteeship authority of the State, in which the child or another person lacking capacity to act is a citizen, or a guardianship or trusteeship authority of the previous country of domicile without delay and shall request to evaluate the necessity to establish guardianship or trusteeship and to appoint a guardian or a trustee.

(2) An Orphan's court shall take a decision regarding the taking over of a foreign guardianship or trusteeship case, if a competent foreign guardianship or trusteeship authority has appointed a guardian or a trustee and has requested to take over the guardianship or trusteeship case.

(3) An Orphan’s court shall inform the guardianship or trusteeship authority of the citizenship state or the previous country of domicile of a child or another person lacking capacity to act regarding the taking over of a guardianship or trusteeship case.

(4) If an Orphan's court detects faults, deficiencies, abuse in the behaviour of a guardian or threatens to life or health of a child, it shall take a decision regarding the suspension of the guardian from the fulfillment of the duties of a guardian and the appointment of an interim guardian or the placement of the child into a foster family or an institution of long-term social care and social rehabilitation and inform the foreign guardianship authority thereof without delay.
(5) If an Orphan's court detects faults, deficiencies, abuse or actions that harm the interests of a person lacking capacity to act, it shall take a decision regarding the suspension of the trustee from the fulfillment of the duties of a trustee and the appointment of an interim trustee and inform the foreign trusteeship authority thereof without delay.”

**Work, vocational training and education**

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

The issue is regulated by the by-law - the Regulations of the Cabinet of Ministers of 20 January 2004 No 44 “Regulations on the work permits for the foreigners”. This legal act does not distinguish between different types of the foreigners, e.g. victims of trafficking and refugees (the asylum seekers’ simplified access to the labour market is the only specific exception). Therefore the requirements to met are the same as for any foreigner, who was granted the temporary residence permit.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... an opportunity to get involved in the training and educational programmes.”
Q.13.C. Do the holders of the residence permit have access to education?
See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... an opportunity to get involved in the training and educational programmes.”

However Section 3 of the Education Law in force provides only for the access to education of the persons in possession of the permanent residence permit:
“Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by the Republic of Latvia, every person who has received a permanent residence permit, as well as citizens from European Union States who have been issued a temporary residence permit, and their children, have equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence.”

Therefore a person with the temporary residence permit - victim, is not a subject of the current Education Law.
The Ministry of Education and Science in its letter of 9 May 2007 indicated that it has drafted Amendments to the Education Law, which will replace the current Article 3.
The Draft new Section 3 of the Education Law will be read as follows:
“The equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence shall belong to:
1) citizen of Latvia,
2) non-citizen of Latvia,
3) citizen of the European Union Member States, State of European Economic Area or Swiss Confederation, who resides in the Republic of Latvia,
4) citizen of the third country, who has a valid residence permit,
5) minor child of the asylum seeker, the refugee or the person, who was granted the alternative status,
6) minor asylum seeker, refugee or person, who was granted the alternative status.”

On June 26, 2007 the Government of Latvia approved the above-mentioned Draft Amendments to the Education Law and on September 6, 2007 the Draft was given to the Parliament for the examination and adoption.

It can be concluded that based on the wording of paragraph 3, Section 3 of Draft Amendments to the Education Law, a person, recognized as a victim of trafficking, which stays in Latvia on the basis of valid residence permit, will be entitled to acquire the education in Latvia.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
1. The access to the labour market for victims is limited by the validity of the residence permit.
2. Law “Support for Unemployed Persons and Persons Seeking Employment Law” after its latest amendments of 21 June 2007 provides for that the support provided for unemployed persons and persons seeking employment
will be provided to the persons, which received the residence permit due to their status of the victims of the trafficking in human beings.

3. The opportunity to access vocational training and educational programmes is ensured to a person during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit.

That means that the access vocational training and educational programmes are even broader than the Directive requires. The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 7 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for:

“Provider of social rehabilitation services shall, in accordance with the regulations on provision of social rehabilitation services within the duration provided for in Para.8, Section 4, Paragraph and Section 8 of this Law ensure a victim of trafficking in human beings, as well as a minor accompanying him or her, with ... a possibility to receive emergency medical aid, as well as an opportunity to get involved in the training and educational programmes.”

Para.8, Section 4 of this Law:

“(8) Victim of trafficking in human beings, as well as a minor accompanying him or her shall have the right to receive the services provided for in Section 7 of this Law during examination of his or her application on granting the reflection period, during the reflection period and until the decision on the issuance of a temporary residency permit is adopted by the Office of Citizenship and Migration Affairs.”

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Until 7 June 2007 there were no such schemes for the third country nationals in Latvia. On 7 June 2007 since the relevant Amendments to the Law on Social Services and Social Assistance entered into force New Para.4. Section 3 of the Amendments to the Law on Social Services and Social Assistance provides for the following:

“The right to receive social rehabilitation shall be enjoyed by a victim of trafficking in human beings and a minor, accompanying him or her in the cases provided for in the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia”.

Therefore since 7 June 2007 the current Governmental Regulation No 889 of 31 October 2006 “Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings” provides for the certain rehabilitation system for the victims – to be applied to the victims- third country nationals. The provision of the services shall be provided by the a provider of services who is registered with the register of social service providers and complies with the requirements specified in the regulatory enactments regarding providers of social services. So far Latvia has only one such provider - "Resursu centrs sievietēm „Marta”".

No other schemes exist for e.g. approval of the professional skills.
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:
Please see the answer above to Q.14.A.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:
The Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia does not provide for the participation as the condition for the issuing or renewing of a residence permit.
Section 6 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"(1) In case, if a victim of trafficking in human beings provides information in writing which can assist in detection or prevention of the cases of trafficking in human beings, or he or she has been recognised as a victim in a criminal offence related to trafficking in human beings, a person, directing the proceedings shall, during a reflection period or on the next working day after expiry of the reflection period within three working days:
1) evaluate suitableness of future stay of the victim of trafficking in human beings in the Republic of Latvia (whether it facilitates the process of investigation or legal proceedings);
2) examine if a victim of trafficking in human beings does not maintain contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on penalty for a criminal offence related to trafficking in human beings has entered into force. 
(2) A person, directing the proceedings shall request the Office to issue a temporary residence permit for a victim of trafficking in human beings, as well as a minor accompanying him or her, a person, by the submitting a proposal to the Office containing an opinion about eligibility of the victim of trafficking in human beings in the Republic of Latvia (whether it facilitates the process of investigation or legal proceedings);
(3) By requesting the Office to issue a temporary residence permit for a period of at least six months, a person, directing the proceedings shall take into account a period within which the pre-trial criminal proceedings or trial could be finalised, as well as the nature and intensity of threat (if any) to the victim of trafficking in human beings.
(4) Person, directing the proceedings may request the Office to prolong a temporary residence permit if the conditions stated in the first Paragraph of this Section continue."
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

Para. 1 and 4, Section 6 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

Section 6. "(1) In case, if a victim of trafficking in human beings provides information in writing which can assist in detection or prevention of the cases of trafficking in human beings, or he or she has been recognized as a victim in a criminal offence related to trafficking in human beings, a person, directing the proceedings shall, during a reflection period or on the next working day after expiry of the reflection period within three working days:
1) evaluate suitableness of future stay of the victim of trafficking in human beings in the Republic of Latvia (whether it facilitates the process of investigation or legal proceedings);
2) examine if a victim of trafficking in human beings does not maintain contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on penalty for a criminal offence related to trafficking in human beings has entered into force."

"(4) Person, directing the proceedings may request the Office to prolong a temporary residence permit if the conditions stated in the first Paragraph of this Section continue."

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Section 9 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:
"Person, directing the proceedings may request the Office to cancel a temporary residence permit, which has been issued to a victim of trafficking in human beings at least in one of the following cases:
1) it has been established that the victim of trafficking in human beings maintains, actively, voluntarily and on his or her own initiative, contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on penalty for a criminal offence related to trafficking in human beings has entered into force;
2) it has been established that the victim of trafficking in human beings has intentionally provided untruthful information in criminal procedure;
3) person, directing the proceedings has made a decision about termination of criminal proceedings."

Section 9 of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia provides for the following:

"Person, directing the proceedings may request the Office to cancel a temporary residence permit, which has been issued to a victim of trafficking in human beings at least in one of the following cases:
1) it has been established that the victim of trafficking in human beings maintains, actively, voluntarily and on his or her own initiative, contacts with persons who are under suspicion for, are accused or against whom a verdict of guilty entered into force or an order of prosecutor on penalty for a criminal offence related to trafficking in human beings has entered into force;
2) it has been established that the victim of trafficking in human beings has intentionally provided untruthful information in criminal procedure;
3) person, directing the proceedings has made a decision about termination of criminal proceedings."

After the decision is taken, the provisions of the Immigration Law shall apply.

Para.6., Section 23 of the Amendments to the Immigration Law provides for the following:

“...the person, directing the criminal proceedings, is entitled to request the temporary residence permit to a foreigner, who is not EU citizen and who is recognized as the victim of the trafficking in human beings, as well as to a minor accompanying him or her for the duration of time not less than 6 months.”

Clause 22, Para.1, Section 35 of the Amendments to the Immigration Law provides for the following:

“...the person, directing the criminal proceedings, shall inform in written the institution [Office of the Citizenship and Migration Affairs], which issued the temporary residence permit, that a foreigner, who is not EU citizen, as well as a minor accompanying him or her, who have resided in the Republic of Latvia in accordance with Section Para.6., Section 23 of this Law, does not need to stay in the Republic of Latvia in the status of the victim of trafficking of human beings any longer.” Based on the information (decision) provided by a person, directing the criminal proceedings the Office of the Citizenship and Migration Affairs shall cancel (withdraw) the residence permit. Any further regulation of the stay of such person in the Republic of Latvia shall be in compliance with the general provisions of the Immigration Law on the persons, whose residence permits were cancelled.

There are no more detailed legal provisions and/or administrative and judicial case-law on the issue of the withdrawal.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No such studies were conducted in Latvia due to the fact that the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia and the Amendments to the Immigration Law were be adopted on 25 January 2007, and the Amendments to the Law On Social Services and Social Assistance were adopted on 3 May. Therefore on 1 May 2007 there were no administrative and judicial case law to refer to as the practice of Latvian authorities.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

The records of the Parliament’s sessions of 11 January and 25 January 2007 does not show any significant political debates on the contents of the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia and the Amendments to the Immigration Law. Only one parliamentarian proposal was submitted to the existing text. Both laws were adopted in the so-called accelerated (urgent) procedure. The Amendments to the Law On Social Services and Social Assistance were adopted in the usual procedure (3 readings), but did not cause any significant debates either.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

No, there are no such additional problems.
THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29

Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable? Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
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</tbody>
</table>

Explain the situation before transposition

Before the transposition of Directive the procedures, by which a person who has been recognised a victim of the traffic in human beings shall receive social rehabilitation services for the State budget funds, and the criteria for the recognition of a person as a victim of the traffic in human beings, existed in the national legislation. However they should apply only to the nationals of Latvia, not to the third country nationals. Apart of the general Criminal Procedure Law there was no such specific legislation with the goal to tackle specifically the investigation of the cases of the trafficking in human beings.

Explain the situation after transposition

1 completely new law was adopted - the Law on Residence of Victim of Trafficking in Human Beings in the Republic of Latvia. The amendments to 2 laws were developed - the Amendments to the Immigration Law and Amendments to the Law On Social Services and Social Assistance.

☐ Less favourable than previous national rules
☐ Less favourable than the Directive
☐ Status quo
☐ In line with the directive
☐ More favourable than previous national rules
☐ More favourable than the directive

Q. 30.

From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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</thead>
<tbody>
<tr>
<td>(to be indicated by the national rapporteur)</td>
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<tr>
<td>No, I think that the only major change was the introduction of the whole system described and mentioned above in the answer to Q.29 above.</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
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<tr>
<td></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
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</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES  ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES  ☐ NO

Q.31.C. If yes, give some of examples:
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

No problems have been identified so far in relation to the method of the transposition by the copying of some provisions of Directive since no administrative and judicial case law existed by 1 June 2007.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

| Table 1 |
| DECISION OF SUPREME COURTS | DATE: | REFERENCE OF PUBLICATIONS: | SUMMARY OF CONTENT: |
| No administrative and judicial case law existed on the application of these provisions by 1 June 2007. |

| DECISION OF APPEAL COURTS | DATE: | REFERENCE OF PUBLICATIONS: | SUMMARY OF CONTENT: |

| DECISION(S) IN FIRST RESORT | DATE: | REFERENCE OF PUBLICATIONS: | SUMMARY OF CONTENT: |

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [x] There are no problems with the translation of the directive.
- [ ] There are some problems with the translation of the directive.
Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
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<tbody>
<tr>
<td>No such practice can be reported due to the total lack of the administrative and judicial case law by now.</td>
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</tbody>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

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QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

LITHUANIA

By

Biekša Laurynas

Lecturer, Mykolas Romeris University
laurynas@redcross.lt

May 1st, 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
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<tr>
<td>TITLE: Law on Legal Status of Aliens of the Republic of Lithuania (further – Aliens Law)</td>
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<td>DATE: 29 April 2004, as amended on 28 November 2006</td>
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<td>NUMBER: IX-2206</td>
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<td>DATE OF ENTRY INTO FORCE: 30 April 2004</td>
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<td>PROVISIONS CONCERNED: Articles: 2, 26, 40, 49(1), 50, 130 of the Law. (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td>REFERENCES OF PUBLICATION</td>
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<td>IN THE OFFICIAL JOURNAL: „State News“ No. 73-2539, 2004</td>
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<td>TITLE: Order of the Minister of Interior on Approval of the rules for issuance of temporary residence permits to foreigners and assessment of the marriages of convenience (further – Order on Temporary Residence Permits)</td>
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<td>Regulation of the Government on Approval of the the 2005-2008 Program for the Prevention and Control of Trafficking in Human Beings (further – the 2005-2008 Program for the Prevention and Control of Trafficking in Human Beings)</td>
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<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Para. 6.6, Measures 11-15. (for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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<td></td>
<td>REGULATION</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

**Q.1.B.**

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**A.1.B.**

No other norms that would be directly applicable.

**Table 1**

| TITLE: |                        |                                             |
| DATE: |                        |                                             |
| NUMBER: |                      |                                             |
| DATE OF ENTRY INTO FORCE: |                    |                                             |
| PROVISIONS CONCERNED : |                      | (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION |                    | IN THE OFFICIAL JOURNAL:                   |
| LEGAL NATURE (indicate by ticking the correct box): |          | LEGISLATIVE                                 |
|                                    |                        | REGULATION                                  |
|                                    |                        | CIRCULAR OR INSTRUCTIONS                    |
Table 2

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>DATE:</th>
<th>NUMBER:</th>
<th>DATE OF ENTRY INTO FORCE:</th>
<th>PROVISIONS CONCERNED:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
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<td></td>
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<td></td>
<td>REFERENCES OF PUBLICATION</td>
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<td>IN THE OFFICIAL JOURNAL:</td>
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<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<td>LEGISLATIVE</td>
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<td>REGULATION</td>
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<td></td>
<td>CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

A.2. Not applicable for Lithuania.

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
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</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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</tbody>
</table>

<table>
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<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
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<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Examination of applications and first instance decisions on issuance of temporary residence permits for victims of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Migration Department to the Ministry</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>-</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The authority is a body attached to the Ministry, but not falling under the structure of the Ministry</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☒ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
<tr>
<td>Order on Temporary Residence Permits needs to be updated in view of the recent amendments to the Aliens Law in November 2006.</td>
</tr>
</tbody>
</table>
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\textsuperscript{31}).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\textsuperscript{32}).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

All provisions of the Aliens Law refer just to victims of trafficking. Meanwhile, Art. 147 of the Criminal Code provides the definition of "trafficking in human beings", which does not cover "an action to facilitate illegal immigration".

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for

\textsuperscript{31}Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichet

instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes ☐ No

Explanation:
Art. 21, 22, 24 of the Lithuanian Criminal Code criminalize instigation of, aiding, abetting and attempt to commit crimes.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Art. 147 of the Criminal Code provides the definition of "trafficking in human beings", which is not identical to the Framework Decision. The definition of "trafficking in human beings"Art. 147 in the Criminal Code basically is the same as in Art. 1(1) of the Framework Decision, but Art. 1(2-4) of the Framework Decision are not taken into account.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Not applicable.

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (e) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (f) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes  ☐ No

Explanation:

Not applicable.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Adults
- [ ] Both adults and minors

**Explanation:**

Art. 40(1)(12) of the Aliens Law limits the application only to adults.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18.

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] All minors
- [ ] Minors, for which the following criteria are fulfilled:
  -
  -
  -
  -
  -

**Explanation:**

Not applicable.
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 0.

‘An action to facilitate illegal immigration’ (If applicable): Not applicable.

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

No such authority is foreseen in the domestic legislation.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☐ Both orally and in writing

Explanation:

Not applicable.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Not applicable.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

To my knowledge, no such information is available in practice.
**Reflection period**

**Q.9.** According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

**Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Art. 130(4) of the Aliens Law just mentions that during the reflection period the person can not be deported. But the beginning, duration or grounds for termination of the reflection period are not defined anywhere.

**Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders?** See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:**

Art. 130(4) of the Aliens Law states that during the reflection period the person can not be deported.

**Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

**Explanation:** (If the answer is “yes”, which are the criteria?)

Not applicable. There is no procedure regulating how the reflection period should be granted or terminated.
Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Not applicable.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not applicable.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

No such practice exists.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

( Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

Explanation:

No special rights are foreseen but before the issue of the residence permit the foreigner have the same status as other illegal foreigners: they are provided with necessary medical assistance (in emergency cases) (Art. 49 of the Law on Health System); with translation in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure); with free legal assistance in criminal, asylum or detention cases (Art. 71, 116 of the Aliens Law, Art. 10 of the Code on Criminal Procedure); if they do not have their place of residence they are detained in the Foreigners Registration Center, where they are provided with food and accommodation (Art. 113, 115 of the Aliens Law).
After the issue of the residence permit

☐ Yes, in cash  ☒ Yes, in kind  ☐ No

**Explanation:**

No special rights are foreseen but after the issue of residence permit the foreigner have the same status as other foreigners with temporary residence permits: they are provided with necessary medical assistance (in emergency cases) (Art. 49 of the Law on Health System) or complete medical assistance if they work in Lithuania (Art. 6 of the Law on Health Insurance); with translation in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure); with free legal assistance (Art. 11 of the Law of Legal Assistance Guaranteed by the State); if they do not have their place of residence they can be accommodated in common lodging houses, where they can be also provided with food (Art. 5 of the Law on Social Services).

**Q.10.B.** Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

No support in cash. Support in kind is less than for national as nationals with social needs can receive complete medical assistance (Art. 6 of the Law on Health Insurance) and social payments in cash (Art. 1 of the Law on Social Support to Families and Single Persons with a Low Income).

**Q.10.C.** Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

No, because neither detention in the Foreigner Registration Center, nor accommodation in common lodging houses meet the standards of living capable of ensuring their subsistence. Moreover, necessary medical assistance covers only emergency cases and usually in would not meet the needs of vulnerable groups, e.g. ensure the right to psychological assistance.

**Q.10.D.** Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to the Law on Protection from Criminal Influence of Participants in Criminal Process, Operational Activity and Officials of Justice and Law Protection, victims of trafficking have the same rights as all participants in criminal process and operational activity.
After the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to the Law on Protection from Criminal Influence of Participants in Criminal Process, Operational Activity and Officials of Justice and Law Protection, victims of trafficking have the same rights as all participants in criminal process and operational activity.

**Q.10.E.** Does your Member State provide the third-country nationals concerned with translation services? *See article 7(3) which is a mandatory provision.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:**

Translation is provided in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure).

After the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:**

Translation is provided in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure).

**Q.10.F.** Does your Member State provide the third-country nationals concerned with interpreting services? *See article 7(3) which is a mandatory provision.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☑ Yes  ☐ No
Explanation:
Translation is provided in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure).

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:
Translation is provided in court proceedings and during the examination of criminal or asylum cases (Art. 71 of the Aliens Law, Art. 9 of the Law on Administrative Procedure, Art. 11 of the Code on Civil Procedure, Art. 8 of the Code on Criminal Procedure).

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Victims of trafficking have the same rights to free legal assistance as all persons without residence permits. Free legal assistance is provided in criminal, asylum or detention cases. It is provided by qualified lawyers and without quantitative limits. (Art. 71, 116 of the Aliens Law, Art. 10 of the Code on Criminal Procedure)

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Victims of trafficking have the same rights to free legal assistance as all persons with residence permits. Primary and secondary free legal assistance is provided in all cases. Primary legal assistance is limited to one hour legal consultation. Secondary legal assistance (in courts) is provided by qualified lawyers and without quantitative limits. (Art. 11 of the Law of Legal Assistance Guaranteed by the State)
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

Medical assistance is limited only to emergency cases (Art. 49 of the Law on Health System).

After the issue of the residence permit

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only. Medical assistance is limited only to emergency cases (Art. 49 of the Law on Health System) unless the foreigner works and has a right to a complete medical assistance (Art. 6 of the Law on Health Insurance).

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

No special rights are foreseen but before the issue of the residence permit the foreigner have the same status as other illegal foreigners: they are provided with necessary medical assistance (in emergency cases) (Art. 49 of the Law on Health System); if they do not have their place of residence they are detained in the Foreigners...
Registration Center, where they are provided with food and accommodation (Art. 113, 115 of the Aliens Law). To conclude, the detention in the Foreigner Registration Center does not meet the standards of living capable of ensuring their subsistence and the necessary medical assistance covers only emergency cases and usually it would not meet the needs of vulnerable groups, e.g. ensure the right to psychological assistance.

**After** the issue of the residence permit

☐ Yes  ☒ No

**Explanation:**

No special rights are foreseen but after the issue of residence permit the foreigner have the same status as other foreigners with temporary residence permits: they are provided with necessary medical assistance (in emergency cases) (Art. 49 of the Law on Health System) or complete medical assistance if they work in Lithuania (Art. 6 of the Law on Health Insurance); if they do not have their place of residence they can be accomodated in common lodging houses, where they can be also provided with food (Art. 5 of the Law on Social Services). To conclude, the accomodation in common lodging houses does not meet the standards of living capable of ensuring their subsistence and the necessary medical assistance covers only emergency cases and usually it would not meet the needs of vulnerable groups, e.g. ensure the right to psychological assistance.

**Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☐ Yes  ☒ No

**Explanation:**

Usually necessary medical assistance does not cover the right to psychological assistance (Art. 49 of the Law on Health System).

**After** the issue of the residence permit

☐ Yes  ☒ No

**Explanation:**

Ususally necessary medical assistance does not cover the right to psychological assistance (Art. 49 of the Law on Health System). But if the foreigner works and has a right to a complete medical assistance, it covers the right to psychological assistance as well (Art. 6 of the Law on Health Insurance).

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).
Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☐ Yes  ☒ No

Explanation:
Medical assistance is limited only to emergency cases (Art. 49 of the Law on Health System) unless the foreigner works and has a right to a complete medical assistance (Art. 6 of the Law on Health Insurance).

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)
There is the requirement to cooperate with authorities during the examination of the trafficking case (Art.49-1(1) of the Aliens Law). There are also requirements not to be in the list of persons prohibited to enter Lithuania and not to be dangerous to state security, public order or public health (Art. 7(1)(4-5), Art.26 of the Aliens Law).

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?

☒ Yes  ☐ No

Explanation:
In order to receive a residence permit there are requirements not to be in the list of persons prohibited to enter Lithuania and not to be dangerous to state security, public order or public health (Art. 7(1)(4-5), Art.26 of the Aliens Law).
**Q.11.B.** For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

6 months (Art.49-1(2) of the Aliens Law).

**Q.11.C.** When residence permit has expired, can it be renewed? *See mandatory provision in article 8(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

There are no limitations on the number of times or duration, but it can be prolonged only with recommendation of the authorities examining the trafficking case (Art.49-1(3), Art.50 (1)(16) of the Aliens Law).

---

**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. *See article 10*):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? *See article 10(a).*

**Q.12.B.** Has your Member State extended the reflection period for minors? *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☐ No

**Explanation:** (If the answer is “yes”: For how long?)
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? *See article 10(a).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? *See mandatory provision in Article 9(2)*

☑ Yes ☐ No

Explanation:

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? *See article 10(c)* (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

There is the requirement to receive a labour permit (Art. 50(6), Art. 58 of the Aliens Law). The rules for issue of a labour permit are defined in the Order of Social Security and Labour Minister and they are very restrictive basically allowing to issue a labour permit for the vacant work place only if it can not be filled by nationals.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

Foreigners having temporary residence permit in Lithuania have access to vocational training on equal basis with nationals (Art. 1 of the Law on Support for Employment).

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Foreigners having temporary residence permit in Lithuania have access to education on equal basis with nationals (Art. 25 of the Law on Education).
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:
Art. 50(6) of the Aliens Law, Art. 1 of the Law on Support for Employment, and Art. 25 of the Law on Education guarantee access to work, vocational training and education only to foreigners with residence permits in Lithuania.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Para. 6.6 of the 2005-2008 Program for the Prevention and Control of Trafficking in Human Beings states that the measures of the Program inter alia implement the Directive 2004/81/EC. Therefore, the measures of the Program are applicable to the victims of trafficking as defined in the Directive. The Program foresees different measures, i.e., preparation of their assisted return to their country of origin, services and centers providing social, legal, psychological, medical and other rehabilitation counseling. Different Ministries, Municipalities, IOM and NGOs are responsible for the implementation of those measures. In addition according to Art. 26 of the Law on Support for Employment, it is possible to provide subsidies for employers who employ vulnerable groups including victims of trafficking.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No
Explanation:
The 2005-2008 Program for the Prevention and Control of Trafficking in Human Beings foresees general measures for all victims of trafficking, including the holders of the residence permit due to the Directive. But as there are no holders of the residence permit due to the Directive yet, they have not participated in general measures, and special measures for them have not been created yet. The same situation regarding Art. 26 of the Law on Support for Employment.

**Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:
No such condition is foreseen in the Aliens Law (Art. 7, Art. 26, Art.49-1 of the Aliens Law).

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:
A residence permit can be prolonged only with recommendation of the authorities examining the trafficking case (Art.49-1(3), Art.50 (1)(16) of the Aliens Law). There is the requirement to cooperate with authorities during the examination of the trafficking case (Art.49-1(1) of the Aliens Law). There are also requirements not to be in the list of persons prohibited to enter Lithuania and not to be dangerous to state security, public order or public health (Art. 7(1)(4-5), Art.26 of the Aliens Law).

**Q.16.** Question regarding withdrawal of the residence permit:

**Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
**Explanation:** (if the answer is “yes”, explain under which circumstances that is possible)

The requirements not to be in the list of persons prohibited to enter Lithuania and not to be dangerous to state security, public order or public health (Art. 7(1)(4-5), Art.26 of the Aliens Law) are broader than state security and public order requirements in the Directive.

**Q.16.B. Explain the procedure for withdrawal of the residence permit.**

Migration department may withdraw a residence permit on its own initiative if requirements not to be in the list of persons prohibited to enter Lithuania and not to be dangerous to state security, public order or public health (Art. 7(1)(4-5), Art.26, Art. 50 of the Aliens Law) are not fulfilled; or on the initiative of the authorities examining the trafficking case if the requirement to cooperate with authorities during the examination of the trafficking case (Art.49-1(1), Art. 50 of the Aliens Law) is not fulfilled.

**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No.

**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

The main problem which has been partly addressed in the preceding answers is that the Aliens Law foresees the right to a residence permit, but there are no legal norms regulating how to implement this right. It is not clear how victims of trafficking should submit their applications for a residence permit, how the authorities examining the trafficking case should make their recommendations to issue a residence permit, and how the Migration department should issue their decisions in such cases. The same problem is with a reflection period. Art. 130(4) of the Aliens Law just mentions that during the reflection period the person can not be deported. But the beginning, duration or grounds for termination of the reflection period are not defined anywhere. The compatibility of the present system with the provisions of the directive is further examined in the table of correspondence.
### IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable.** Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>☐ Less favourable than previous national rules</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>After the transposition there were only formal rights to a reflection period or a residence permit foreseen in the Aliens Law (the Amendment of 28 November 2006), but there are no legal norms regulating their implementation in practice.</td>
<td>☐ Status quo</td>
</tr>
<tr>
<td></td>
<td>☑ More favourable than previous national rules</td>
<td>☑ More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>right to be informed (Art.5 of the Directive)</td>
<td>Box Less favourable than previous national rules</td>
<td>☑ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>☑ Status quo</td>
<td>☐ In line with the directive</td>
</tr>
<tr>
<td></td>
<td>☐ More favourable than previous national rules</td>
<td>☑ More favourable than the directive</td>
</tr>
</tbody>
</table>

Explain the situation before transposition
No such right.
Explain the situation after transposition
No such right.

### Table 2

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>right to the standards of living capable of ensuring their subsistence (Art.7, Art.9 of the Directive)</td>
<td>☑ Less favourable than previous national rules</td>
<td>☑ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>☑ Status quo</td>
<td>☐ In line with the directive</td>
</tr>
<tr>
<td></td>
<td>☐ More favourable than previous national rules</td>
<td>☑ More favourable than the directive</td>
</tr>
</tbody>
</table>

Explain the situation before transposition
No such right.
Explain the situation after transposition
The Aliens Law does not foresee special social rights, therefore, victims of trafficking would have only general social rights of foreigners which might not meet the standards of living capable of ensuring their subsistence.
<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>right to general and special programs (Art. 12 of the Directive)</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Para. 6.6 of the 2005-2008 Program for the Prevention and Control of Trafficking in Human Beings (19 May 2005) states that the measures of the Program inter alia implement the Directive 2004/81/EC. Therefore, the measures of the Program are applicable to the victims of trafficking as defined in the Directive. But in practice there are no holders of the residence permit due to the Directive yet, thus they have not participated in general measures, and special measures for them have not been created yet. This is less favourable, because there are only general measures, but no special measures.</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
<td>□ More favourable than previous national rules</td>
</tr>
<tr>
<td>No such right.</td>
<td></td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

□ YES  ☒ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

□ YES  □ NO

**Q.31.C.** If yes, give some of examples:
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Not applicable.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>No jurisprudence.</td>
<td></td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any supplementary comment about the trend of the jurisprudence:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive.

☒ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).
Art. 12(2) of the Directive is translated as mandatory, not optional provision. The phrase "the State may make" is translated as "the State makes".

**Explain the difficulties that this could create:**

If there were special programs created in Lithuania, according to the translated Directive the State would have to make the participation in such programs as a necessary condition for granting a residence permit.

**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>No other elements.</td>
<td></td>
</tr>
</tbody>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

No other elements.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

GRAND-DUCHY OF LUXEMBOURG

By

Audrey Bertolotti

Avocat
audrey.bertolotti@barreau.lu

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone:  +46 46 2221037 / +46 31 16 38 89
E-mail:  markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A

Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Loi sur la libre circulation des personnes et l’immigration</td>
</tr>
<tr>
<td>DATE:</td>
<td>Déposé le 7 novembre 2007</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>5802</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED :</td>
<td>articles 92 à 98</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL:</td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Asile et immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministère des Affaires étrangères et de l’Immigration</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Direction de l’Immigration, Service des Etrangers</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Le Service des Etrangers de la Direction de l’Immigration dépend du ministère des Affaires étrangères et de l’Immigration.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☒ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

### Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
<tr>
<td>Loi sur les mesures de protection et d'assistance. Cette loi assurera notamment la transposition des articles 7, 9, 10 et 12 de la Directive. C'est le ministre ayant l'Egalité des chances dans ses attributions qui est en charge de l'élaboration du projet de loi. Il est fait mention de ce projet dans les commentaires du Projet de loi ainsi que dans le Projet de loi lui-même mais à l'heure actuelle, un tel projet n'a pas encore été déposé à la Chambre des Députés en vue d'être discuté et adopté. Apparemment, un avant-projet de loi devrait être disponible avant la fin de l'année.</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
<tr>
<td>Règlement grand-ducal déterminant les conditions dans lesquelles la présumé victime bénéficiant d'un titre de séjour provisoire a accès à la formation professionnelle, aux cours de formation professionnelle et aux cours conçus pour améliorer ses compétences professionnelles ou la préparation de son retour assisté dans son pays d'origine. Un tel projet n'a pas encore été déposé à la Chambre des Députés et nous ignorons si ce projet est effectivement en préparation.</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
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<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
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<td>Loi portant modification de certaines dispositions du Code pénal.</td>
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SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\textsuperscript{33}).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\textsuperscript{34}).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

L'article 92 du projet de loi ("le Projet") vise les ressortissants de pays tiers victimes des infractions visées aux articles (…) du Code pénal. On ignore donc pour le moment de quelles infractions il s'agit. Il ressort cependant des commentaires de cet article qu'il s'agit de "victime de la traite des êtres humains ou de l'immigration clandestine".

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your

\textsuperscript{33}Read the Framework decision 2002/629/JHA at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett

\textsuperscript{34}Read the Directive 2002/90/EC at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0090&model=guichett
L'article 2, et notamment 2 b) de la Directive n'a pas été transposé par le Projet. D'après le libellé du Projet tel qu'il est aujourd'hui, on comprend que la notion de "traite des êtres humains" sera définie dans le Code pénal luxembourgeois. Nous n'avons cependant pas encore connaissance de la teneur de ces nouvelles dispositions. Les infractions relatives à la traite telle qu'elles sont définies actuellement par le Code pénal répondent en partie à la définition donnée par la décision-cadre. Les situations décrites par le Code pénal sont en effet plus restrictives en ce qu'elles ne visent que les cas d'exploitation sexuelle et non d'exploitation dans le cadre du travail.

A l'heure actuelle, la traite est abordée aux articles 379 et 379bis du Code pénal dont la teneur est la suivante :

Article 379 : "Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 251 euros à 50.000 euros :
1. Quiconque aura attenté aux mœurs en excitant, facilitant ou favorisant, pour satisfaire les passions d'autrui, la débauche, la corruption ou la prostitution d'un mineur âgé de moins de 18 ans.
2. Quiconque aura exploité un mineur âgé de moins de 18 ans à des fins de prostitution ou aux fins de la production de spectacles ou de matériel à caractère pornographique.
3. Quiconque aura facilité l'entrée, le transit, le séjour ou la sortie du territoire d'un mineur âgé de moins de 18 ans visées aux points 1. et 2. […]"

Article 379bis : "Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 251 euros à 50.000 euros :
1. Quiconque, pour satisfaire les passions d'autrui, aura embauché, entraîné ou détourné, même avec son consentement une autre personne en vue de la prostitution ou de la débauche, soit sur le territoire du Grand-Duché, soit dans un pays étranger.
Si la victime a été embauchée, entraînée ou détournée par fraude ou à l'aide de violences, menaces, abus d'autorité ou tout autre moyen de contrainte, si elle a été effectivement livrée à la prostitution ou à la débauche, ou si l'auteur a abusé de la situation particulièrement vulnérable d'une personne, notamment en raison de sa situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale, l'emprisonnement sera d'un an à cinq ans.
Le fait sera puni de la réclusion de cinq à dix ans s'il a été commis avec deux des circonstances prémentionnées.
2. Quiconque aura facilité l'entrée, le transit, le séjour ou la sortie du territoire, aux fins visées au point 1. […]
3. Quiconque détient, directement ou par personne interposée, qui gère, dirige ou fait fonctionner une maison de débauche ou de prostitution.
4. Tout propriétaire, hôtelier, locuteur, cabaretier, en général toute personne qui cède, loue ou met à la disposition d'autrui ou tolère l'utilisation de tout ou partie d'un immeuble, sachant que les lieux cédés, loués ou mis à la disposition servent à l'exploitation de la prostitution d'autrui.
5. Le proxénète.
Est proxénète celui ou celle
a) qui d'une manière quelconque aide, assiste ou protège sciemment la prostitution d'autrui ou le racolage en vue de la prostitution ;
b) qui, sous forme quelconque, partage les produits de la prostitution d'autrui ou reçoit des subsides d'une personne se livrant à la prostitution ;
c) qui embauche, entraîne ou entretient, même avec son consentement, une personne même majeure en vue de la prostitution ou la livre à la prostitution ou à la débauche ;
d) qui fait office d'intermédiaire, à un titre quelconque, entre les personnes se livrant à la prostitution ou à la débauche d'autrui ;
e) qui, par menace, pression, manœuvre ou par tout moyen entrave l'action de prévention, de contrôle, d'assistance, ou de rééducation entreprise par les organismes qualifiés en faveur de personnes se livrant à la prostitution […]"

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent
reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction,, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes  ☐ No

Explanation:

A l'heure actuelle, la notion de traite telle qu'entendue dans la Directive n'a pas encore été transposée en droit luxembourgeois. Nous comprenons de la rédaction des articles du Projet que cette notion, et par conséquent la description des infractions y relatives, devraient être ajoutées dans le Code pénal.

A titre informatif, les articles 379 et 379bis du Code pénal qui abordent la traite dans leur version d'aujourd'hui visent également les cas de "instigation, aiding, abetting and attempt."

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC
(quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

L'article 2, et notamment 2 c) de la Directive n'a pas été transposé par le Projet. D'après le libellé du Projet tel qu'il est aujourd'hui, on comprend que la notion d'"immigration illégale" telle qu'entendue par la Directive sera définie dans le Code pénal luxembourgeois. Nous n'avons cependant pas encore connaissance de la teneur de ces nouvelles dispositions.

À l'heure actuelle, les seules mentions concernant l'immigration illégale figurent aux articles 379-3 et 379bis-2 du Code pénal et concernant des situations bien plus restrictives que celles mentionnées à l'article 1 reproduit ci-dessous dans la mesure ou ces situations ne concernent que des cas d'exploitation sexuelle.

**Article 1 General infringement**

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes ☐ No

Explanation:

A l'heure actuelle, la notion d'immigration illégale telle que définie dans la Directive n'a pas encore été transposée en droit luxembourgeois. Nous comprenons de la rédaction des articles du Projet que cette notion, et par conséquent la description des infractions y relatives, devraient être ajoutées dans le Code pénal. A titre informatif, les articles 379 et 379bis du Code pénal qui abordent dans une certaine mesure l'immigration illégale dans leur version d'aujourd'hui (article 379 : "quiconque aura facilité l'entrée, le transit, le séjour ou la sortie du territoire d'un mineur âgé de moins de 18 aux fins visées aux points 1. et 2." et article 379bis "quiconque aura facilité l'entrée, le transit, le séjour ou la sortie du territoire, aux fins visées au point 1.") visent également les cas de "instigation, aiding, abetting and attempt."
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults
☒ Both adults and minors

Explanation:

Le gouvernement a décidé de faire usage de la faculté prévue par la Directive (article 92 (2)). Ainsi, les dispositions du Projet s'appliquent tant aux majeurs qu'aux mineurs

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •
Explanation:

La norme de transposition vise les victimes âgées de dix-huit ans, sans autre précision. Les commentaires du projet de loi nous indique que "les dispositions de la présente sous-section s'appliquent également aux mineurs d'âge." On en conclut que la disposition s'applique à tous les mineurs, sans autre critère restrictif.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: N/A, la directive n'ayant pas encore été transposée à l'époque

‘An action to facilitate illegal immigration’ (If applicable): N/A, la directive n'ayant pas encore été transposée à l'époque

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Les membres de la police grand-ducale (article 92 du Projet)

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☐ Both orally and in writing

Explanation:

Aucune précision à ce sujet : l'article 92 du Projet indique uniquement que les services de police "informent la présumée victime de la possibilité de se voir accorder un délai de réflexion", sans autre précision. Selon les commentaires du Projet, la victime doit être informée "de manière correcte", sans autre explication quant à ce qu'il faut entendre par "de manière correcte".
Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Aucune brochure ou autre documentation n'existe pour l'instant, la transposition de la directive n'étant qu'au stade du projet de loi à l'heure actuelle.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Nous n'avons pas encore de recul à ce sujet, la directive n'ayant pas encore été transposée.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Le délai de réflexion est de quatre-vingt-dix jours, il commence à courir à partir du moment où la présumée victime est signalée au ministre par les services de police (article 93).

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation:

L'article 93 (2) précise que "durant le délai de reflexion, […] aucune décision d'éloignement du territoire ne peut être exécutée à l'égard de la personne concernée." Pendant le délai de réflexion, la présumée victime se voit délivrer une attestation qui lui permet de rester sur le territoire Luxembourg, sans que celle-ci ne vale pour autant
Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

Les hypothèses sont celles listées à l'article 6(4) de la Directive. Ainsi, le ministre pourra mettre fin au délai de réflexion lorsque "la personne concernée a activement, volontairement et de sa propre initiative renoué un lien avec les auteurs présumés […] ou si elle est considérée comme pouvant être un danger pour l'ordre public ou la sécurité nationale."

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)


Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Les modalités d'une telle procédure ne sont pas prévues par le Projet.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Nous n'avons pas encore de recul à ce sujet. Cependant, d'après l'expérience des professionnels du secteur social qui prennent en charge les victimes de la traite, ce délai de 3 mois est jugé trop court pour permettre à la victime de se remettre des atteintes subies et retrouver un minimum de stabilité psychologique. Ainsi, alors que selon l'article 93 du Projet, à l'expiration de ce délai, la victime devrait être rétablie et devrait pouvoir décider en connaissance de cause d'introduire une plainte ou de faire des déclarations concernant les auteurs présumés, on constate que ce n'est pas du tout le cas en pratique, les victimes étant encore traumatisées et ayant du mal à accorder leur confiance aux gens les entourant (agents de police, services sociaux, etc.)

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted 'standards of living capable of ensuring their subsistence and access to emergency medical treatment' etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).
Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

ATTENTION : CETTE REPONSE VAUT POUR TOUTES LES QUESTIONS DE LA SECTION 10. L'article 94 du Projet prévoit que "durant le délai de reflexion, la personne visée à l'article 92 a accès aux mesures de sécurité, de protection et d'assistance prévues à l'article (...) de la loi (...)." Ceci est l'unique mention dans le projet concernant le traitement accordé aux victimes de la traite. Il est prévu de transposer la teneur des articles 7 et 9 de la Directive dans une autre loi qui s'intitulera "Loi sur les mesures de protection et d'assistance". Selon les commentaires de l'article 94, le ministre de l'Egalité des chances est en charge de l'élaboration du projet de loi dont la teneur vise "à créer un cadre complet de protection et d'assistance aux victimes." Ce projet n'a pas encore été publié à l'heure où nous rédigons ce rapport et nous en ignorons par conséquent le contenu. Nous ne serons en mesure de répondre aux questions de la section 10 qu'une fois le projet de loi sur les mesures de protection et d'assistance publié.

After the issue of the residence permit

☐ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
**Q.10.E.** Does your Member State provide the third-country nationals concerned with translation services? *See article 7(3) which is a mandatory provision.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

- [ ] Yes
- [ ] No

**Explanation:**

**After** the issue of the residence permit:

- [ ] Yes
- [ ] No

**Explanation:**
Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☐ No

Explanation:

After the issue of the residence permit:

☐ Yes ☐ No

Explanation:

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

After the issue of the residence permit:

☐ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

After the issue of the residence permit

☐ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.)

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☑ Yes ☒ No

Explanation:

Cet article n'a pas été transposé par le Projet de loi. Il est prévu que ces dispositions soient transposées dans une autre loi : la loi sur les mesures d'assistance et de protection. Nous ignorons à l'heure actuelle le contenu et la date de dépôt du projet de loi.
After the issue of the residence permit

☐ Yes  ☒ No

Explanation:

Cet article n'a pas été transposé par le Projet de loi. Il est prévu que ces dispositions soient transposées dans une autre loi : la loi sur les mesures d'assistance et de protection. Nous ignorons à l'heure actuelle le contenu et la date de dépôt du projet de loi.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☐ Yes  ☒ No
Explanation:

Cet article n'a pas été transposé par le Projet de loi. Il est prévu que ces dispositions soient transposées dans une autre loi : la loi sur les mesures d'assistance et de protection. Nous ignorons à l'heure actuelle le contenu et la date de dépôt du projet de loi.

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. *See mandatory provisions in article 8:*

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes

☐ No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

Selon l'article 95 du Projet, La victime se verra délivrée un titre de séjour provisoire si les conditions suivantes sont remplies :
- elle a porté plainte ou a fait des déclarations concernant les personnes ou les réseaux présumés coupables […] ,
ou
- sa présence sur le territoire est nécessaire aux fins de l'enquête ou de la procédure ou en raison de sa situation personnelle,
- elle a rompu tout lien avec les auteurs présumés des infractions visées ci-dessus,
- elle n'est pas considérée comme un danger pour l'ordre public ou la sécurité nationale.

A noter qu'alors qu'il est expressément prévu à l'article 8 de la Directive que les conditions y listées sont cumulatives, cela ne ressort pas clairement du libellé de l'article 95 du Projet. Les commentaires nous indiquent quant à eux que "la délivrance d'un titre de séjour à la victime dépend de sa coopération avec les autorités compétentes ou, le cas échéant, de sa situation personnelle. Impérativement, la victime doit avoir rompu avec les auteurs présumés et elle ne doit pas représenter elle-même un danger pour l'ordre public ou la sécurité nationale." Aux termes des commentaires, on comprend que ces critères sont également cumulatifs en droit luxembourgeois.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

**Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?**

☑ Yes

☐ No

**Explanation:**

L'article 95 (1) 4. du Projet prévoit que le titre de séjour ne sera pas délivré si la personne constitue un danger pour l'ordre public ou la sécurité nationale.
Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Article 95 (1) : 6 mois maximum

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Selon l'article 95 (2), il est renouvelable pour une nouvelle durée de six mois tant que les conditions mentionnées à la question 11A restent remplies. Ce libellé n'indique pas clairement s'il est possible de le renouveler aussi longtemps que les conditions sont remplies (ie. plus d'une fois) ou seulement une fois pour six mois. Les commentaires précisent quant à eux que "en principe, le titre de séjour de courte durée est renouvelé en fonction des besoins de la procédure et il n'est pas renouvelé lorsque la procédure est terminée.[…] A la différence du non-renouvellement qui intervient par définition au terme des six mois de la première délivrance ou d'un renouvellement, le retrait peut intervenir à tout moment." Le renouvellement semble donc pouvoir être accordé plusieurs fois au vu de ce qui précède.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Cette disposition n'a pas été reprise par le Projet. De même que pour l'article 7, il est prévu de transposer le contenu de l'article 10 dans la loi sur les mesures de protection et d'assistance.
A noter que la Convention relative aux droits de l'enfant du 20 novembre 1989 et notamment l'article 3 a été ratifiée par le Grand-Duché dans une loi du 20 décembre 1993. En théorie, cet instrument permet donc déjà de prendre en compte l'intérêt supérieur de l'enfant.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)

NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING

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Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If yes, explain which measures are taken)

Réserve : la loi sur les mesures de protection et d'assistance prévoira peut-être des mesures plus spécifiques concernant les mineurs mais rien ne nous ait indiqué en ce sens pour le moment. Les commentaires de l'article 97 précisent simplement que "L'ampleur des mesures de protection et d'assistance, y compris les soins de santé auxquels la victime a accès, sera définie par une spécifique élaborée par le ministre ayant l'Egalité des chances dans ses attributions."

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Selon les commentaires du Projet, il est prévu que les mineurs aient accès au système éducatif. De par les termes très généraux employés et sur base de dispositions similaires prises pour d'autres directives, cet accès devrait être régi de la même manière que pour les nationaux. La loi sur les mesures de protection et d'assistance qui transposera l'article 10 de la Directive indiquera peut-être plus clairement les modalités d'accès au système éducatif.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☐ Yes  ☒ No

Explanation:

Cet article n'a pas été transposé par le Projet de loi. Il est prévu que ces dispositions soient transposées dans une autre loi : la loi sur les mesures d'assistance et de protection. Nous ignorons à l'heure actuelle le contenu et la date de dépôt du projet de loi.
Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

L'article 92 (2) prévoit uniquement la représentation juridique du mineur. Ainsi, un tuteur sera désigné dès que possible pour assister le mineur non accompagné dans le cadre de la procédure, et y compris de la procédure pénale. Rien n'est précisé quant aux moyens mis en œuvre pour établir son identité, sa nationalité, etc.
Les autres mesures d'assistance telles qu'une aide pour retrouver sa famille ne sont pas reprises par le Projet. La loi sur les mesures de protection et d'assistance prévoira inclura peut-être de telles dispositions.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Selon l'article 97 (1) du Projet, une activité salariée pourra être exercée si les conditions suivantes sont remplies :
- le ressortissant de pays tiers dispose des qualifications professionnelles requises pour l'exercice de l'activité visée,
- il est en possession d'un contrat de travail conclu pour un poste déclaré vacant auprès de l'Administration de l'Emploi et par la commission créée à l'article 153 (commission consultative pour travailleurs salariés) dans les conditions et suivants les modalités prévues par règlement grand-ducal.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

L'article 97 (2) du Projet prévoit l'accès à la formation des adultes et aux cours de formation professionnelle. Cet article précise que les modalités d'accès sont fixées par règlement grand-ducal. Au jour de la rédaction du présent rapport, un tel règlement grand-ducal n'est pas encore intervenu.
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Concernant les adultes, l'article 97 (2) prévoit que les adultes ont accès à un certain type d'enseignement : la formation des adultes et aux cours de formation professionnelle. Il est prévu que les modalités d'accès soient fixées par règlement grand-ducal. Cependant, au jour de la rédaction du présent rapport, un tel règlement grand-ducal n'est pas encore intervenu.
L'article 97 (3) prévoit que les mineurs ont accès au système éducatif. Aucune précision quant aux modalités d'accès.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
L'article 11 alinéa 2 n'a pas été transposé littéralement par la Directive. Cependant, au vu du libellé de l'article 97, on peut penser que cet accès n'est permis qu'en vertu du titre de séjour. Ainsi, lorsque celui-ci cesse d'exister, l'accès au marché du travail, à la formation professionnelle et à l'enseignement cesse également.
Art. 97 : " (1) Le titre de séjour visé à l'article 95 donne droit aux mesures de protection et d'assistance telles que définies par la loi (...). Il permet l'exercice d'une activité salariée si la personne concernée remplit les conditions fixées à l'article 42, paragraphe (1), points 3 et 4. 
(2) Un règlement grand-ducal détermine les conditions dans lesquelles le bénéficiaire du titre de séjour visé à l'article 95 a accès à la formation des adultes, aux cours de formation professionnelle et aux cours conçus pour améliorer ses compétences professionnelles ou la préparation de son retour assisté dans son pays d'origine.
(3) Le bénéficiaire du titre de séjour visé à l'article 95 qui est âgé de moins de dix-huit ans a accès au système éducatif."
Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation:
N/A puisque la Directive est seulement en passe d'être transposée en droit luxembourgeois.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation:
Une telle condition n'apparaît pas dans le projet.
Réserve cependant : l'article 12 sera transposé dans la loi sur les mesures de protection et d'assistance. Une telle condition pourrait éventuellement être prévue lors de l'élaboration de ladite loi.
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes    ☐ No

Explanation:

L'article 95 (2) dispose que le titre de séjour est renouvelable tant que les conditions de l'article 95 (1) (article 8 (2) de la Directive) sont remplies. Sur le principe, elles sont donc examinées au moment du renouvellement. En pratique, la directive n'ayant pas encore été transposée, nous ignorons si ces conditions sont "activement" réexaminées.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes    ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

L'article 14 de la Directive est transposé par l'article 96 du Projet, qui reprend les mêmes hypothèses. Art. 96 : 

(1) Le titre de séjour peut être retiré et une décision d’éloignement du territoire peut être prise par le ministre lorsqu’il constate que la personne concernée ne remplit plus les conditions de délivrance et plus particulièrement :

1. si elle a activement, volontairement et de sa propre initiative renoué un lien avec les auteurs présumés des infractions visées à l'article (…) du Code pénal ;
2. si elle cesse de coopérer avec les autorités compétentes ;
3. si les autorités judiciaires décident d'interrompre la procédure.

(2) Le titre de séjour peut également être retiré et une décision d’éloignement du territoire peut être prise par le ministre lorsqu’il constate que la coopération de la personne concernée est frauduleuse ou que sa plainte est frauduleuse ou non fondée, ou si des raisons liées à l'ordre public ou à sécurité nationale sont en jeu.


La procédure n'est pas décrite dans le Projet. Les commentaires précisent simplement que le retrait peut avoir lieu à tout moment.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

L' Association de Soutien aux Travailleurs Immigrés (ASTI) et l' UNHCR ont rendu des avis publics à ce sujet lorsque l'avant-projet de loi leur avait été soumis pour avis.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Dans le cadre de l'avant-projet de loi, une première phase de consultation d'organes divers avait été menée. Le Projet de loi a été déposé à la Chambre des Députés le 7 novembre dernier. Il va maintenant être soumis à divers organes pour avis tels le Conseil d'Etat, la Commission consultative des Droits de l'Homme, l' ASTI.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

A noter que l'article 4 de la Directive concernant des dispositions plus favorables n'a pas été repris par le Projet dans le cadre de la transposition de la directive sur la traite.
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td>Explain the situation before transposition</td>
<td>□ More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Il n'existait aucune disposition auparavant qui visait à assurer la protection des victimes de la traite.</td>
<td>□ More favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>La Directive est en passe d'être transposée. Le projet a été déposé à la Chambre des Députés le 7 novembre 2007. La transposition n'est cependant pas encore complète car les mesures d'assistance et de protection prévues par la Directive feront l'objet d'une transposition dans une autre loi dont nous ignorons le contenu à l'heure actuelle, aucun projet n'ayant encore été déposé.</td>
<td></td>
</tr>
</tbody>
</table>
Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
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<tbody>
<tr>
<td>Explain the situation after transposition</td>
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<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Less favourable than previous national rules</td>
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</tr>
<tr>
<td></td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q. 31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES  ☐ NO

Q. 31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES  ☐ NO
Q.31.C. If yes, give some of examples:

Article 92 (1) du Projet transpose l'article 5 de la Directive. Il est prévu que les services de police informent la présumée victime de la procédure établie par la Directive et le Projet. Or les modalités relatives à la manière d'informer les personnes concernées n'ont pas été prévues par le Projet ni aucun autre texte.

Article 96 du Projet transpose l'article 14 de la Directive. Il s'agit d'une transposition littérale et rien n'est prévu concernant les détails de la procédure en elle-même (comment sont appréciées les conditions, recours, etc.)

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explaination: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

MALTA

By

PACE Gabriella (Dr)
Advocate, gpace01@um.edu.mt

BRINCAT Caroline (Dr)
Advocate, carolinebrincat@mail.global.net.mt

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

| This table is about: | ☒ a text already adopted ☐ a text which is still a project to be adopted |
| Title: Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 |
| Date: 6 July 2007 |
| Number: L.N. 175 of 2007 |
| Date of Entry into Force: |
| Provisions Concerned: all (for example if the norm also pursues other objectives than the transposition of the directive) |
| References of Publication in the Official Journal: Government Gazette of Malta No. 18,097 |
| Legal Nature (please tick the correct box): |
| ☒ Legislative |
| ☑ Regulation |
| ☐ Circular or Instructions |

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):
This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).

Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>TITLE: Immigration Act</th>
<th>DATE: 21 September 1970</th>
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<tbody>
<tr>
<td>NUMBER: Chapter 217 of Laws of Malta</td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 21 September 1970</td>
<td></td>
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<tr>
<td>PROVISIONS CONCERNED : section 32</td>
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<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<tr>
<td>☑️ LEGISLATIVE</td>
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<tr>
<td>☐️ REGULATION</td>
<td></td>
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<tr>
<td>☐️ CIRCULAR OR INSTRUCTIONS</td>
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</table>

Table 2

<table>
<thead>
<tr>
<th>TITLE: AN ACT entitled the Criminal Code (Amendment) Act, 2002</th>
<th>DATE: 9th April, 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: Act No. III of 2002</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 9 April 2002</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED : Sections 248A to 248E of the Criminal Code (consolidated text) – Chapter 9 of Laws of Malta</td>
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<tr>
<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
<td></td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Government Gazette of Malta No. 17,226</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<td></td>
</tr>
<tr>
<td>☐️ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

Q2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN
Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Cooperation and reflection period</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice and Home Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Principal Immigration Officer</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Assistance to Minors</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry for the Family and Social Solidarity</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Department of Social Welfare</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
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</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issue and withdrawal or non-renewal of residence permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry for Justice and Home Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Citizenship and Expatriate AffairsDepartment</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA35).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC36).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ ‘Trafficking in human beings’ only

☐ ‘An action to facilitate illegal immigration’ only

☒ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

By virtue of section 1(5) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007:

“These Regulations, shall apply without prejudice to the provisions relating to the protection of witnesses under the Police Act, and to the protection granted under the Refugees Act, and shall define the conditions for granting residence permits of limited duration to third country nationals who co-operate with the Principal Immigration Officer in the fight against trafficking of human beings or against action to facilitate illegal immigration.”

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)


Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The contents of article 1(1)a to d are reflected in section 248E(1), 248D, 248B and 248A of the Criminal Code. Section 248C also provides for the punishment for the trafficking of a person of age for the purpose of exploitation in the removal of organs; there appears to be no analogous provision in the EC legislation.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

No analogous provisions identified

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

The contents of article 1(3) are reflected in section 248D of the Criminal Code.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

With regard to minors, section 4 of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 refers to the Children and Young Persons (Care Orders) Act. Section 2 of this latter Act defines a child or young person as “a person who is under the age of 16 years”

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)
Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes  ☐ No

Explanation:

Section 2. of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations,2007, refers to section 32 of the Maltese Immigration Act. The contents of section 32 appear to be much more detailed than those of the analogous EU provisions and contemplate a number of circumstances not foreseen by the latter. Section 32 of the Immigration Act provides as follows:

“32. (1) Any person who -
(a) aids or assists any person to land or attempt to land in Malta, or to reside in Malta, contrary to the provisions of this Act, or any person to land or attempt to land, or to reside in, or to leave any other State contrary to the law on entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable ground for believing, to be in Malta contrary to the provisions of this Act; or
(b) takes in his employment, or gives work to, any person who is not an exempt person and is not in possession of a licence granted to him for the purpose of such employment or work under the provisions of this Act, or otherwise aids or assists any person who is not an exempt person in the commission of an offence contemplated in article 23; or (c) in relation to any information to be given under or for purposes of this Act, makes or causes to be made any false return, false statement or false representation; or
(d) forges any document or true copy of a document or an entry made in pursuance of this Act; or
(e) obstructs or impedes any person in the lawful exercise of his powers or duties under this Act; or
(f) without lawful authority uses or has in his possession any document required for the purposes of this Act which is forged; or
(g) contravenes any provision of this Act in respect of which an offence is not established under any other article of this Act,
shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates, to a fine (multa) not exceeding five thousand liri or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless a greater punishment is established for such offence by another law.

(2) The provisions of the last preceding sub-article shall not apply to a person who conceals or harbours a person who is that person’s descendant, ascendant, spouse, brother or sister, for a period not in excess of seven days.
(3) Where the competent authority in Malta is requested by another State to prosecute for an offence under subarticle (1)(a), the competent authority shall first request the competent authority of the State making the request for prosecution to specify, by means of an official denunciation or a certificate, the provisions of law which the latter State considers to have been infringed.”

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).
Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Section 2, of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007, refers to section 32 of the Maltese Immigration Act with regard to the definition of “action to facilitate illegal immigration”. The contents of section 32 appear to be much more detailed than those of the analogous EU provisions and contemplate a number of circumstances not foreseen by the latter. Section 32 of the Immigration Act provides as follows:

“32. (1) Any person who -
(a) aids or assists any person to land or attempt to land in Malta, or to reside in Malta, contrary to the provisions of this Act, or any person to land or attempt to land, or to reside in, or to leave any other State contrary to the law on entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable ground for believing, to be in Malta contrary to the provisions of this Act; or
(b) takes in his employment, or gives work to, any person who is not an exempt person and is not in possession of a licence granted to him for the purpose of such employment or work under the provisions of this Act, or otherwise aids or assists any person who is not an exempt person in the commission of an offence contemplated in article 23; or
(c) in relation to any information to be given under or for purposes of this Act, makes or causes to be made any false return, false statement or false representation; or
(d) forges any document or true copy of a document or an entry made in pursuance of this Act; or
(e) obstructs or impedes any person in the lawful exercise of his powers or duties under this Act; or
(f) without lawful authority uses or has in his possession any document required for the purposes of this Act which is forged; or
(g) contravenes any provision of this Act in respect of which an offence is not established under any other article of this Act,
shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates, to a fine (multa) not exceeding five thousand liri or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless a greater punishment is established for such offence by another law.

(2) The provisions of the last preceding sub-article shall not apply to a person who conceals or harbours a person who is that person’s descendant, ascendant, spouse, brother or sister, for a period not in excess of seven days.

(3) Where the competent authority in Malta is requested by another State to prosecute for an offence under subarticle (1)(a), the competent authority shall first request the competent authority of the State making the request for prosecution to specify, by means of an official denunciation or a certificate, the provisions of law which the latter State considers to have been infringed."

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for
**instigation of, accomplice in, or attempt to commit** offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

**Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit** offences concerning an ‘action to facilitate illegal immigration’?

☑ Yes ☐ No

**Explanation:**

Article 1(2) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 states that 'These Regulations transpose Council Directive 2004/81 EC on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities'.

Moreover Article 1(4) states the the Principal Immigration Officer may, when he considers it necessary, apply the provisions of these Regulations to third country nationals who have been the subject of an action to facilitate illegal immigration'.

**Q.6.** According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

**Q.6.A. Are the national norms of transposition applicable to adults as well as minors?**

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Adults ☑ Both adults and minors

**Explanation:**

Section 4 and the proviso to section 5(1) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 both refer to the type of assistance to be afforded to minors.
Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: n/a

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ All minors

☐ Minors, for which the following criteria are fulfilled:
  

Explanation:
By virtue of section 4 of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007, a third country national who is a child or young person in need of care, and a victim of trafficking of human beings or is the subject of an action to facilitate illegal immigration, shall be assisted in terms of the Children and Young Persons (Care Orders) Act. This Act applies to persons who are under the age of 16.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006? None. Regulations were issued in July 2007

‘Trafficking in human beings’:

‘An action to facilitate illegal immigration (If applicable):
Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned. Section 3(1) of Regulations

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)
The Principal Immigration Officer – a public officer

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☐ Both orally and in writing

Explanation:
Not clear from the provisions of the Legal Notice. No reference included therein

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.
Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

A reflection period is provided for by section 3(3) of the Regulations. The reflection period is one not exceeding two months’ duration, with effect from the day when the information regarding the possibilities available to the third country national, has been provided by the Principal Immigration Officer.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

By virtue of section 3(4), during the reflection period the third country national shall not be removed from Malta, provided that the reflection period does not create any entitlement to residence.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

This is catered for by section 3(6) of the Regulations. The period of reflection shall be terminated at any time by the Principal Immigration Officer for reasons relating to public policy or the protection of national security or if he establishes that the third country national concerned has actively, voluntarily and on his own initiative renewed contact with the perpetrators of the offences of trafficking of persons or facilitating illegal immigration.
Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

The Principal Immigration Officer. According to section 2 of the Immigration Act, the Principal Immigration Officer is the person appointed to such office by the Prime Minister and includes, within the limits of any authority granted by the Principal Immigration Officer, any public officer acting under such authority;

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Since Regulations were issued in July 2007, far too early to determine

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash
☒ Yes, in kind
☐ No

Explanation:

Section 3(5) of the Regulations provide that during the period of reflection, while due regard is had to his safety and protection needs, the third country national who does not have sufficient resources shall be provided with: (i) the standards of living capable of ensuring his subsistence; (ii) access to emergency medical care; and, where applicable (iii) attention to the needs of the most vulnerable; (iv) psychological assistance; (v) translation and interpreting services; (vi) free legal aid. Where the third country national is a minor, he shall have access to the public education system under the same conditions as Maltese nationals.
After the issue of the residence permit

☐ Yes, in cash    ☑ Yes, in kind    ☐ No

Explanation:
Section 5(3) provides that the provisions of section 3(5) shall apply to the third country national after the issue of the residence permit, for the duration of such permit, where he does not have the necessary resources.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes    ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

No Details provided

After the issue of the residence permit:

☑ Yes    ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:
By virtue of section 3(5)v of Regulations

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:
By virtue of section 5(3) of Regulations which states that the contents of Section 3(5) shall apply to third country nationals, where he does not have the necessary resources, after the issue of the residence permit

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:
By virtue of section 3(5)v of Regulations

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:
By virtue of section 5(3) of Regulations which states that the contents of Section 3(5) shall apply to third country nationals, where he does not have the necessary resources, after the issue of the residence permit

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
Before the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

By virtue of section 3(5)vi of Regulations. No details in this regard are provided by Regulations.

After the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

By virtue of section 5(3) of Regulations which states that the contents of Section 3(5) shall apply to third country nationals, where he does not have the necessary resources, after the issue of the residence permit.

**Q.10.H.** Does your Member State provide the third-country nationals concerned with emergency medical care? *See mandatory provision in article 7(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care during the reflection period or if care is restricted to *emergency* medical care only).

By virtue of section 3(5)ii of Regulations. Care is restricted to emergency medical care.

After the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care or if care is restricted to *emergency* medical care only).

By virtue of section 5(3) of Regulations which states that the contents of Section 3(5) shall apply to third country nationals, where he does not have the necessary resources, after the issue of the residence permit.
This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

Article 3 (5) During the period of reflection, while due regard is had to his safety and protection needs, the third country national who does not have sufficient resources shall be provided with:

(i) the standards of living capable of ensuring his subsistence;
(ii) access to emergency medical care; and, where applicable:
(iii) attention to the needs of the most vulnerable;
(iv) psychological assistance;
(v) translation and interpreting services;
(vi) free legal aid:

Provided that in the case where the third country national is a minor, he shall have access to the public education system under the same conditions as Maltese nationals.

After the issue of the residence permit

☒ Yes ☐ No

Explanation:

Article 5 (3) The provisions of regulation 3(5) shall apply to the third country national concerned, when he does not have the necessary resources, after the issue of the residence permit and for the duration of such permit:

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No
By virtue of section 3(5)ii of Regulations

**After** the issue of the residence permit

☑ Yes ☐ No

By virtue of section 5(3) of the Regulations which states that the contents of Section 3(5) shall apply to third country nationals, where he does not have the necessary resources, after the issue of the residence permit

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

**Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)**

☑ Yes ☐ No

Article 5 (3) The provisions of regulation 3(5) shall apply to the third country national concerned, when he does not have the necessary resources, after the issue of the residence permit and for the duration of such permit:

Provided that the third country national shall be provided with the necessary medical care or other assistance, when he does not have sufficient resources, and has special needs such as in the case of pregnant women, disabled persons, victims of sexual or other forms of violence, and minors.

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

By virtue of section 5 (1) a to c of the Regulations, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that:

(a) the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings;
(b) the third country national intends to co-operate with the Principal Immigration Officer;
(c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration.

When the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

**Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?**

☑ Yes    ☐ No

**Explanation:**

Article 5. (1) Without prejudice to any restrictions arising from public policy or public security, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that:

The most logical interpretation of this clause would suggest that it is possible to refuse the issue of a residence permit for reasons related to public policy and national security, however these reasons can be superceded by the fulfilment of other conditions. It ultimately depends on the Principal Immigration Officers' discretion.

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

Six months – section 5(2)

**Q.11.C. When residence permit has expired, can it be renewed?** See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
Minors

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. *See article 10*):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? *See article 10(a).*

Section 5(5) of Regulations – Access to education and vocational training under the same conditions as Maltese nationals

By virtue of section 5 (1) a to c of the Regulations, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that:
(a) the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings;
(b) the third country national intends to co-operate with the Principal Immigration Officer;
(c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration.

When the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity

By virtue of section 5(2) of the Regulations, the residence permit shall be valid for a period of six months which shall be renewable if the conditions continue to subsist and, in particular, taking into account the best interests of the child in cases where the third country national is a minor.

**Q.12.B.** Has your Member State extended the reflection period for minors? *See article 10(a).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

**Explanation:** (If the answer is “yes”: For how long?)
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

The proviso to section 5(1) of the Regulations provides as follows:

“Provided that, when the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity].

By virtue of section 5(1) a to c of the Regulations, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that:

(a) the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings;
(b) the third country national intends to co-operate with the Principal Immigration Officer;
(c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration.

When the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity

By virtue of section 5(2) of the Regulations, the residence permit shall be valid for a period of six months which shall be renewable if the conditions continue to subsist and, in particular, taking into account the best interests of the child in cases where the third country national is a minor.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

By virtue of section 5(2) of the Regulations, the residence permit shall be valid for a period of six months which shall be renewable if the conditions continue to subsist and, in particular, taking into account the best interests of the child in cases where the third country national is a minor.

This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.
Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☒ Yes ☐ No

Explanation:

Article 3 (5) During the period of reflection, while due regard is had to his safety and protection needs, the third country national who does not have sufficient resources shall be provided with:
(i) the standards of living capable of ensuring his subsistence;
(ii) access to emergency medical care; and, where applicable:
(iii) attention to the needs of the most vulnerable;
(iv) psychological assistance;
(v) translation and interpreting services;
(vi) free legal aid:

Provided that in the case where the third country national is a minor, he shall have access to the public education system under the same conditions as Maltese nationals.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Section 2 of the Regulations does provide a definition of unaccompanied minor however no provision analogous to article 10(c) of the Directive is included
**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A.** Do the holders of the residence permit have access to the labour market? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? *See article 11*).

By virtue of section 11 of the Immigration Act

It shall be an implied condition of a residence permit issued to any person that such person shall not, in Malta, exercise any profession or occupation or hold any appointment or be employed by any other person or engage in business without a licence from the Minister for Justice and Home Affairs.

**Q.13.B.** Do the holders of the residence permit have access to vocational training? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? *See article 11*).

Section 5(4) of Regulations provides that, especially when the third country national is a minor, he may be granted access to vocational training and education.

**Q.13.C.** Do the holders of the residence permit have access to education? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? *See article 11*).

Section 5(4) of Regulations provides that, especially when the third country national is a minor, he may be granted access to vocational training and education.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

Section 5(4)

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Section 5(5) provides that “Where applicable, the third country national concerned shall be granted access to programmes or schemes, provided by Government, non-governmental organisations or associations having a specific agreement with Government, aimed at the recovery of a normal social life including, where appropriate, courses designed to improve professional skills or preparation of his assisted return to the country of origin.”

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

Regulations were only published in July 2007
Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

Section 6(1) of Regulations

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Section 6(2) of Regulations

By virtue of section 6(2) of the Regulations, “Upon the recommendation of the Principal Immigration Officer, the Director shall withdraw the residence permit if the conditions set out in regulation 5(1) no longer subsist and, in particular:
(a) if the holder has actively, voluntarily and on his own initiative renewed contacts with those suspected of perpetrating the offences referred to in regulation 3(6); or
(b) if the Principal Immigration Officer believes that the co-operation by the third country national concerned is fraudulent or that his complaint is fraudulent or wrongful; or
(c) for reasons relating to public policy and to the protection of national security; or
(d) when the third country national ceases to cooperate; or
(e) when the Principal Immigration Officer decides to discontinue the proceedings.”

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive? None exist so far.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions? No.
Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td>unregulated</td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a system generally in line with the provisions of the Directive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVALUATION EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>Less favourable than previous national rules</td>
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<tr>
<td></td>
<td></td>
<td>More favourable than previous national rules</td>
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<td></td>
<td>In line with the directive</td>
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<tr>
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<td></td>
<td>More favourable than the Directive</td>
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<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☑ YES ☐ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<table>
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<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Any supplementary comment about the trend of the jurisprudence:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE :

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Netherlands

By

Marjan Wijers

LLM, MA
Independent researcher
Email:m.wijers@hetnet.nl

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone:  +46 46 2221037 / +46 31 16 38 89
E-mail:  markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: ☑ a text already adopted ☐ a text which is still a project to be adopted

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Aliens Circular (Vreemdelingencirculaire = Vc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>1988</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Chapter B9 - Victims and witnesses of trafficking in human beings</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1988 (first version: introduction of a temporary residence permit for victims of trafficking in human beings)</td>
</tr>
</tbody>
</table>

PROVISIONS CONCERNED:
The special chapter on victims and witnesses of trafficking was inserted in the Aliens Circular in 1988 and has been amended a number of times since then, among others in 2005 to adapt it to the EU Directive (see next boxes).

The Chapter provides for:

- a reflection period of maximum 3 months (since 1991; only applicable to victim-witnesses) [Vc B9/3.2; Art. 8 sub k Vw];

- a temporary residence permit for the duration of the criminal proceedings including appeal, on the condition that the victim presses charges. If the victim presses charges s/he is entitled to a temporary residence permit (since 1988) [Vc B9/2; Art. 8 sub a, juncto Art. 14 Vw, juncto Art. 3.4 para 1, sub s Vb, juncto Art. 3.48, para 1, sub a Vb]. If the victim does not press charges s/he is obliged to leave the Netherlands [Art. 61 and 62 Vw]

- the possibility of a temporary residence permit for non-victim witnesses for a period as long as the prosecutor judges the presence of the non-victim witness necessary for the criminal case (since 1993) [ Vc B9/5; Art. 8 sub a Vw, juncto Art. 14 Vw, juncto Art. 3.4 para 1, sub s Vb juncto Art. 3.48, para 1, sub b Vb]
- if the criminal case is dismissed and the victim has appealed against this decision ex Art. 12 Criminal Procedural Code, the temporary residence permit shall be renewed as long as no decision by the Appeal Court has been taken [Vc B9/10; Art. 3.88 Vb]

- access to social benefits, assistance & shelter, medical aid and legal aid during the reflection period [Vc B9/3.2.1 and 3.2.9; Art. 11, para 2, sub c Vw; Art. 3 juncto 2 Regulation Provisions Certain Categories of Foreigners], before the issue of the residence permit [Vc B9/4.2.1; Art. 11, para 2, sub b Vw; Art. 2 Regulation Provisions Certain Categories of Foreigners] and after the issue of the temporary residence permit [Vc B9/4.2; Art. 11, para 2, sub a Vw; Art. 11 Social Benefits and Work Act]. Applicable to both victim witnesses (since 1988) and non-victim witnesses (since 1993).

- access to the labour market after the issue of the temporary residence permit, applicable to both victim witnesses and non-victim witnesses (since 13 April 2005 - transposition of the EU Directive - see boxes below) [Vc B9/7.2; Art. 1, para 1, sub m Wav]

- the possibility to apply for a permanent residence permit on humanitarian grounds after completion of the criminal procedure, applicable to both victim-witnesses (since 1988) and non-victim witnesses (since 1993) [Vc B16/7; Art. 3.52 Vb].

In 2006 an adaptation of the criteria for permanent residence took place but this has been unrelated to the Directive (WBV 2006/36A, Staatscourant 17 November 2006, nr. 225 and WBV 2006/36B, Staatscourant 20 November 2006, nr. 226).

- the possibility of a temporary residence permit for children of victims or non-victim-witnesses [Vc B9/12; Vc B2; Art. 16 Vw; Art. 3.5, para 2, introduction and sub a and o Vb]

- the application for a temporary residence permit shall not be rejected on the ground that the victim or non-victim witness has no entry visa [Vc B9/2 resp. 5; Art. 17, para 1, sub d Vw; Art. 3.48 para 2 Vb], on the grounds of a violation of public order if such violation is directly related to the person being victim of trafficking, or if the victim does not have basic knowledge of the Dutch language and culture [Vc B9/2 resp. 5; Art. 16, para 1, sub h Vw, juncto Art. 17, para 1 Vw], or if the victim has no valid passport.

- the application for renewal of the temporary residence permit shall not be rejected on the ground that the victim or the non-victim witness has no sufficient means of subsistence [Vc B9/9.4]

- victim witnesses, non-victim witnesses and their possible children do not have to pay leges for the application for a temporary residence permit [Vc B9/2 resp. 5; Art. 3.34b, para 1, sub a and b VV, and 3.34e, introduction and sub b and c VV] or an application to renew the temporary residence permit [Vc B9/9.5; Art. 3.34e, sub c VV].

- if there is the slightest indication that a person is a victim of trafficking, s/he shall be informed about the above provisions (Vc B9/3.1; Instruction Trafficking in Human Beings of the Procurators General, 6 March 2006, nr. 2006A002)

(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION


LEGAL NATURE (please tick the correct box):

☐ LEGISLATIVE
☐ REGULATION
☒ CIRCULAR OR INSTRUCTIONS
**Table 2**

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Decree of the Minister of Migration Affairs and Integration to amend Aliens Circular Chapter B9  
**DATE:** 9 March 2005  
**NUMBER:** WBV 2005/9  
**DATE OF ENTRY INTO FORCE:** 13 April 2005  
**PROVISIONS CONCERNED:**  
Free access to the labour market for victims and witnesses of trafficking in human beings who are in possession of a temporary residence permit ex Chapter B9 Aliens Circular  
*(for example if the norm also pursues other objectives than the transposition of the concerned directive)*  
**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Staatscourant 16 March 2005, nr. 53  
**LEGAL NATURE** (please tick the correct box):  
☐ LEGISLATIVE  
☒ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

**Table 3**

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Decree to amend the Decree on the Implementation of the Foreign Nationals Employment Act (Besluit Uitvoering Wet Arbeid Vreemdelingen)  
(Foreign Nationals Employment Act = Wet Arbeid Vreemdelingen = Wav)  
**DATE:** 17 March 2005  
**NUMBER:** Art. 1, para 1, sub m Wav  
**DATE OF ENTRY INTO FORCE:** 13 April 2005  
**PROVISIONS CONCERNED:**  
Abolition of the requirement of a working permit for victims and witnesses of trafficking in human beings who are in possession of a temporary residence permit ex Chapter B9 Aliens Circular  
*(for example if the norm also pursues other objectives than the transposition of the concerned directive)*  
**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Staatsblad 12 April 2005, nr. 187  
**LEGAL NATURE** (please tick the correct box):  
☐ LEGISLATIVE  
☒ REGULATION  
☐ CIRCULAR OR INSTRUCTIONS

**Table 4**

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted  
**TITLE:** Aliens Act 2000 (Vreemdelingenwet = Vw)  
**DATE:** 23 November 2000  
**NUMBER:** Art. 8 sub a; Art. 8 sub f, Art. 8 sub k  
**DATE OF ENTRY INTO FORCE:** 1 April 2001
PROVISIONS CONCERNED:
Art. 8 provides for legal residence status during the reflection period [Art. 8 sub k Vw], the period before issue of the temporary residence permit [Art. 8 sub f Vw] and the temporary staying permit (Art. 8 sub a juncto Art. 14 Vw)
(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Staatsblad 2000, nr. 495; Staatsblad 2001, nr. 141, Staatsblad 2001, nr. 142; Staatsblad 2001, nr. 144
LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 5
This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted
TITLE: Aliens Decree (Vreemdelingenbesluit = Vb)
DATE: 23 November 2000
NUMBER: Art. 3.4 and Art. 3.48
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED:
Art. 3.4, para 1 sub s Vb states that a temporary residence permit can be issued under the restriction 'prosecution of trafficking in human beings'.
Art. 3.48 para 1 states that a temporary residence permit ex art. 14 Aliens Act can be issued to a. victim witnesses of trafficking in human beings for the duration of the criminal proceedings b. non-victim witnesses of trafficking in human beings if there is a criminal investigation and if the minister of Justice considers the presence of the witness necessary in the interest of the prosecution.
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Staatsblad 2000, nr. 497
LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 5
TITLE: Aliens Act 2000 (Vreemdelingenwet = Vw)
DATE: 23 November 2000
NUMBER: Art. 14
DATE OF ENTRY INTO FORCE: 1 April 2001
PROVISIONS CONCERNED:
Art. 14 defines the authority of the Minister with regard to the issuing of residence permits
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Staatsblad 2000, nr. 495; Staatsblad 2001, nr. 141, Staatsblad 2001, nr. 142; Staatsblad 2001, nr. 144
Table 6
TITLE: Aliens Act 2000 (Vreemdelingenwet = Vw)
DATE: 23 November 2000
NUMBER: Art. 11
DATE OF ENTRY INTO FORCE: 1 April 2001
PROVISIONS CONCERNED:
Art. 11, para 2, defines the entitlement of foreigners to social benefits and other provisions.
Art. 11, para 2, sub a: victims and non-victim witnesses in possession of a temporary residence permit
Art. 11, para 2, sub b: victims and non-victim witnesses before the issue of a temporary residence permit
Art. 11, para 2, sub c: victims in the reflection period
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Staatsblad 2000, nr. 495; Staatsblad 2001, nr. 141, Staatsblad 2001, nr. 142; Staatsblad 2001, nr. 144
LEGAL NATURE (indicate by ticking the correct box):
☐ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

**TITLE:** Aliens Decree (Vb)  
**DATE:** 23 November 2000  
**NUMBER:** Art. 3.5  
**DATE OF ENTRY INTO FORCE:** 1 April 2001  
**PROVISIONS CONCERNED:**  
Art. 3.5 para 2 states that a residence permit is temporary when issued under the restriction of prosecution of trafficking in human beings (sub o)  
*(for example if the norm also pursues other objectives than the transposition of the directive)*

**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Staatsblad 2000, nr. 497  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [x] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 2

**TITLE:** Instruction Trafficking in Human Beings of the Procurators General (Aanwijzing Mensenhandel, College van Procureurs Generaal)  
**DATE:** 6 March 2006 (latest version)  
**NUMBER:** 20006A02  
**DATE OF ENTRY INTO FORCE:** 1 April 2006  
**PROVISIONS CONCERNED:**  
The Instruction contains inter alia the obligation for the police and the prosecutors to inform the victim on the available provisions (reflection period, temporary residence permit et cetera)  
*(for example if the norm is not devoted only to the transposition of the concerned directive)*

**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Staatscourant 22 March 2006, nr. 58  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [x] CIRCULAR OR INSTRUCTIONS

### Table 3

**TITLE:** Regulation provisions certain categories of foreigners (Regeling verstrekkingen bepaalde categorien opvang vreemdelingen = Rvb)  
**DATE:** 27 March 2001  
**NUMBER:** Art. 2 and Art. 3  
**DATE OF ENTRY INTO FORCE:** 1 April 2001  
**PROVISIONS CONCERNED:**  
The Rvb provides for living costs and medical insurance during the reflection period  
*(for example if the norm also pursues other objectives than the transposition of the directive)*

**REFERENCES OF PUBLICATION**  
IN THE OFFICIAL JOURNAL: Staatscourant 8 December 1998, nr. 235; Staatscourant 29 maart 2001, nr. 63  
**LEGAL NATURE** (indicate by ticking the correct box):  
- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [ ] CIRCULAR OR INSTRUCTIONS
### Table 4

**TITLE**: Subsidised Legal Aid Act (Wet op de Rechtbijstand)

**DATE**: 23 December 1993

**NUMBER**: -

**DATE OF ENTRY INTO FORCE**: 1994

**PROVISIONS CONCERNED**: The Act provides for subsidised legal aid depending on the income of the person concerned. This applies also to victims and witnesses of trafficking during the reflection period and the temporary residence permit.

*(for example if the norm also pursues other objectives than the transposition of the directive)*


**LEGAL NATURE** *(indicate by ticking the correct box)*:
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

### Table 5

**TITLE**: Social benefits and work Act (Wet werk en bijstand)

**DATE**: 2003

**NUMBER**: Art. 11

**DATE OF ENTRY INTO FORCE**: 2003

**PROVISIONS CONCERNED**: On ground of the this Act foreigners with a residence permit and Dutch nationals have the same entitlement to social benefits. This also applies to victims and witnesses of trafficking in human beings with a temporary staying permit.

*(for example if the norm also pursues other objectives than the transposition of the directive)*


**LEGAL NATURE** *(indicate by ticking the correct box)*:
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
<td></td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
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<tbody>
<tr>
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<td></td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
<td></td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Authority to grant the reflection period</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>IND (Immigration and Naturalisation Service)</td>
</tr>
</tbody>
</table>
According to Chapter B9 of the Aliens Circular, the police has the authority to grant a reflection period of (maximum) 3 months if there is the slightest indication that the person might be a victim of trafficking in human beings. If the police grants a reflection period, they have to immediately inform the contact person at the IND.

Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Authority to grant (and/or renew) a temporary residence permit for the duration of the criminal proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>IND (Immigration and Naturalisation Service)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The IND decides about the granting of a temporary residence permit, as well as the renewal of such residence permit, according to the rules laid down in Chapter B9 of the Aliens Circular.</td>
</tr>
</tbody>
</table>

Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Authority to grant a long term residence permit on humanitarian or other grounds</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>IND (Immigration and Naturalisation Service)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The IND decides about the granting of a long term residence permit on humanitarian or other grounds, according to the rules laid down in the Aliens Circular and other applicable legislation.</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☒ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☒ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA37).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC38).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- ‘Trafficking in human beings’ only
- ‘An action to facilitate illegal immigration’ only
- Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The Dutch government decided not to implement the optional norm.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes ☐ No

Explanation:

The criterion for applicability of the B9-regulation is whether or not the victim has pressed charges of trafficking in human beings. This includes instigation, abetting etc.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The national definition covers the definition of the Framework Decision. It is based on the Palermo Protocol and includes - different from the EU Framework Decision definition - also trafficking in organs. The text of the article is quoted below.

According to jurisprudence 'abuse of authority' (in the national definition) covers the situation as described under para. 1c of Directive definition.

Since 1 January 2005 article 273f Criminal Code prohibits (non-official English translation):

1. Any person who:
   (a) by force, violence or another act, by threat of violence or another act, by extortion, fraud, deception or abuse of authority arising from the actual state of affairs, by abuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person, recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
   (b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
   (c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
   (d) forces or induces another person by the means listed under (a) to make himself/herself available for performing labour or services or making his/her organs available;
   (e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
   (f) wilfully profits from the exploitation of another person;
   (g) wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
   (h) wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person’s organs for remuneration, when this other person has not yet reached the age of eighteen years;
(i) forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person’s sexual acts with or for a third party or of the removal of that person’s organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.

3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine*, or either of these penalties:
(a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
(b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine*, or either of these penalties.

5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine*, or either of these penalties.

6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine*, or either of these penalties.

7. Article 251 is applicable mutatis mutandis.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction., or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Not applicable

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes    ☐ No

Explanation:

Not applicable.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

Adults and minors have the same rights under Chapter B9 Aliens Circular. There are no specific policies towards minors (except for the need to arrange for parental authority in case of unaccompanied minors and the use of specialised organisations and shelters to take care of minors).

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: **What is the age of majority according to the national law of your Member State?**

The age of majority is: 18

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: **Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?**

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:

Explanation:
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’:

In 2006 150 victims were accorded a temporary residence permit under Vc B9.

‘An action to facilitate illegal immigration’ (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The police and for this purpose financed national NGOs.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Orally
☐ In writing
☐ Both orally and in writing

Explanation:

The police gives the information orally.
The Foundation Against Trafficking and other NGOs which provide assistance to victims, have also written information materials.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

If there is an indication that the person might be a victim of trafficking in human beings, according to Chapter B9 Aliens Circular (Vc B9) and the Instruction Trafficking in Human Beings of the Procurators General, the police has to inform the victim about her or his rights under Chapter B9 Aliens Circular. These include (among others):
- the possibility to press charges;
- the right to a reflection period of maximum 3 months to decide whether or not the person wants to press charges;
- the right to a temporary residence permit for the time of the criminal proceedings if the person presses charges;
- possibilities for assistance and support: access to social benefits, a (safe) shelter, medical and legal aid both during the reflection period and during the temporary residence permit;
- the possibility to apply for permanent residence on humanitarian grounds after completion of the criminal procedure.

In addition, the police has to inform the Foundation Against Trafficking in Women (NGO), so that they can arrange for a shelter and other assistance that the victim may need. The police is also obliged to inform the Foundation Against Trafficking in Women for registration purposes (they are the central registration point with regard to victims of trafficking).

**Q.8.D.** Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The impression is that information routines with the police are improving over the last years, but there are still problems:
- The police sometimes fails to inform the (possible) victim about the reflection period. In some cases the (possible) victim is put under pressure to immediately press charges, in the interest of the prosecution (information from NGOs and lawyers).
- There are cases known, in which the (possible) victim was first taken into custody as illegal alien - even when there were clear indications of trafficking -, before she/he was informed about the possibility of the reflection period and her/ his other rights under Vc B9 (information based on jurisprudence, see also Q. 32). This is against the official policy which holds that at the slightest indication of trafficking, the person should be informed about the possibility to press charges and the reflection time. If the person makes use of this possibility, there is no ground for aliens detention.
- Victims are not always adequately identified. This is especially the case with regard to asylum seekers, unaccompanied minors and migrants in aliens detention. Once people are taken into custody as illegal alien, (possible) victims are rarely identified, and consequently not informed about the reflection period and the possibility to press charges. In case the police does identify a possible victim in aliens’ detention, she/he sometimes is offered the possibility of pressing charges, but without offering the reflection period. If she/he is not willing to immediately press charges, s/he will be deported.

**Reflection period**

**Q.9.**

According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

**Q.9.A.** Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes  ☐ No
Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

At the slightest indication that the person might be a victim of trafficking, the police should inform the person about the possibility of a reflection period. The reflection period is given for (maximum) 3 months and starts the moment the victim indicates that she or he wants to make use of it. It (automatically) ends after 3 months or any time earlier that the person decides to press charges. That is, if the person decides to press charges before the period of 3 months expires, the reflection period will end the moment he or she does so. From that moment on s/he is entitled to a temporary residence permit for the duration of the criminal proceedings (this is allowed under art. 8 (1) Directive). The statement is automatically handled as an application for a temporary residence permit, on which a decision has to be made within 24 hours. If the person decides not to press charges and/or to return to her/his home country before the reflection period expires, the reflection period will also end.

The reflection period does not apply to persons who have not yet entered the Netherlands but might be victims of trafficking, for example asylum seekers who at their arrival at the Dutch border indicate they are victim of trafficking or about whom the border authorities have the suspicion that he or she might be victim of trafficking. They have to immediately press charges in order to be admitted to the Netherlands and to be entitled to the specific provisions for victims of trafficking, including a temporary residence permit and the attached rights.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes □ No

Explanation:

During the reflection period there is a stay of deportation. During this period the person remains legally in the Netherlands.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

□ Yes ☒ No

Explanation: (If the answer is “yes”, which are the criteria?)

The reflection period is awarded for (a maximum of) 3 months. Within this period the victim has to decide whether or not she or he want to press charges. If the victim decides to press charges before this period of 3 months has expired, the statement of the victim will automatically be handled as an application for a temporary residence permit, on which (officially) a decision needs be taken within one working day. When the temporary residence permit is granted, the reflection period will end. If the victim decides he or she wants to return to his or her home country before the reflection period expires, she or he is of course free to do so. Also in that case the reflection period will end at the moment the victim leaves the Netherlands. If the victim makes the decision not to press charges before the reflection period expires, the reflection period will also end. In practice this seldom happens, as far as I know.
Q.9.D. If the answer on Q.9.C is “yes”: **Which authority in your Member State has the competence to take the decision to terminate the reflection period?** (Please give details on the name and function of the authority)

Q.9.E. If the answer on Q.9.C is “yes”: **Please describe the procedure for termination of the reflection period.**

Q.9.F. **Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.**

In principle the practice of the reflection time functions more or less satisfactorily. However, problems include:

- Although information routines improve, the police (still) does not always inform the victim properly about the possibility of the reflection period;
- In some cases the police only informs the victim of the possibility of a reflection period after taking the person in alien's detention. This is against the official policy as laid down in the Aliens Circular and the Instruction on trafficking in human beings of the Prosecutors General;
- Victims are not always adequately identified and thus not offered the reflection period and the other provisions under Vc B9. This is especially the case with (possible) victims in the asylum procedure, including unaccompanied minors, and in alien's detention;
- The reflection period does not apply to (possible) victims who have not yet entered the Netherlands, e.g. asylum seekers who on their arrival at the Dutch border indicate that they are victims of trafficking or about whom the border authorities have a suspicion that they might be victim of trafficking. Also this group might be in need of a reflection period, as they too may be threatened and also for them pressing charges may have far reaching consequences;
- In principle the police is entitled to grant a reflection period in case of indications of trafficking, also when the (possible) victim denies being a victim of trafficking. This would offer a possibility to gain the trust of the victim. In practice this seldom happens.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)
Before the issue of the residence permit:

☑ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

During the reflection period the (possible) victim is entitled to an allowance on the basis of the Regulation provisions certain categories of foreigners (Rvb=Regeling verstrekkingen bepaalde categorien vreemdelingen). This includes medical insurance.

After the issue of the residence permit

☑ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

After the issue of the temporary residence permit the victim is entitled to a social security benefit on the same footing as Dutch nationals (Art. 11, Social Benefits and Work Act).

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

During the reflection period:
The allowance on the basis of the Regulation provisions certain categories of foreigners is 70 % of the minimum amount of social aid for Dutch nationals (Social Security Act), that is € 412,00 for a single person and € 577,00 for a single parent.

After the issue of the temporary residence permit:
After the issue of the temporary residence permit the victim is entitled to social aid on the same footing as Dutch nationals. The current minimum amount of social aid is €588,00 for a single person and € 824,00 for a single parent (April 2007). In case of children the parent is also entitled to child benefit.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Yes, though especially during the reflection period it is a very small amount. However, medical insurance is included. In principle it is sufficient if the victim stays in a shelter.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No
Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The victim can make use of a safe shelter and if necessary ask for police protection. She can also request the local authorities to shield her personal data in their administration. Vc B9/1 states that guaranteeing the safety of the victim makes part of the provision of adequate assistance and protection.

After the issue of the residence permit:

☐ Yes
☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Victim can make use of safe, if necessary secret, shelters and, if necessary, ask for police protection. She can also request the local authorities to shield her personal data in their administration.

Under certain conditions, victims who have children in their home country can get a temporary residence for the children, for the same duration as the residence permit of the victim her or himself.

In the criminal case it is possible under certain conditions to shield the identity (name and address) of the victim-witness. In exceptional cases it is possible to completely shield the identity of the victim-witness (anonymous witness). In that case the defence has no possibility to directly interrogate the witness (art. 226a Code of Criminal Procedure). This is rarely applied because of the right to a fair trial (Art. 6 ECHR). In theory there is also the possibility of a complete change of identity and relocation of the victim-witness (Witness Protection Program). However, this is seldom used, as it means that the victim in question has to break all ties with her or his family, friends etc.

After completion of the criminal case the victim can apply for a permanent resident permit on humanitarian grounds (Vc B9/11 and Vc B16/7). If the victim has pressed charges and the criminal case has led to a conviction for trafficking, the permit is granted. If the victim has pressed charges and the criminal case has not led to a conviction, but the victim has been in the possession of a temporary B9-residence permit for three years or more on the date of the ruling, s/he will also be granted a permanent residence permit. In all other cases, the application will be judged on the basis of the following humanitarian grounds:
- the risk of reprisals from the side of the traffickers and the degree of protection the authorities in the homeland are willing and able to offer
- the risk of prosecution for prostitution in the country of origin, e.g. for prostitution
- the possibilities for social reintegration, taking into account the cultural background and, where applicable, the fact that the victim has worked in prostitution, possible disruption of family ties, the social views on prostitution and the government policies on prostitution

Also non-victim witnesses can apply for a residence permit on humanitarian grounds after being granted a temporary B9-residence permit.

However, up till recently in practice, victims were seldom granted permanent residence permit. This is a big gap in the protection of the victim. The victim can be protected during her/his stay in the Netherlands, but if the criminal proceedings are concluded and the victim has no use anymore as witness, in most cases she/he has to return to her/his home country, not withstanding the fact that most countries of origin are not able or willing to offer adequate protection to victims of trafficking and their families. In 2006 the rules were changed, it is expected that more victims now will qualify for a permanent residence permit, but no figures are available yet.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

The police make use of interpreters/translators who work for the police (Ve B9/3.1: "At the slightest indication that a person might be victim of trafficking, the police has to inform the victim of the possibility to press charges. If necessary the police makes use of interpreters employed by the police"). In that case the police will decide whether or not translation services are necessary.

Assistance organisations (including shelters) and lawyers can make use of the services of state subsidised translators and interpreters. If the victim needs such services they will arrange for it.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:

The police make use of interpreters/translators who work for the police. In that case the police will decide whether or not translation services are necessary.

Assistance organisations (including shelters) and lawyers can make use of the services of state subsidised translators and interpreters. If the victim needs such services they will arrange for it.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

The police make use of interpreters/translators who work for the police. In that case the police will decide whether or not interpreting services are necessary.

Assistance organisations (including shelters) and lawyers can make use of the services of state subsidised interpreters. If the victim needs such services they will arrange for it.
After the issue of the residence permit:

☑ Yes
☐ No

Explanation:

The police make use of interpreters/translators who work for the police. In that case the police will decide whether or not interpreting services are necessary.

Assistance organisations (including shelters) and lawyers can make use of the services of state subsidised interpreters. If the victim needs such services they will arrange for it.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes
☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

Victims of trafficking in human beings, both during the reflection period and after the issue of a temporary residence permit, are entitled to subsidised legal aid by qualified lawyers/attorneys, but they have to pay an own contribution depending on their income. The same rules apply to them as to Dutch nationals (Art. 12 Subsidised Legal Aid Act). Lawyers get a fixed amount of money from the state for every subsidised legal aid client, depending on the individual case.

General rules for legal aid:
According to the system of subsidised legal aid, citizens are entitled to subsidised legal aid if they have an income below a certain level. This applies to civil, administrative (which includes immigration law) as well as criminal cases. The height of the contribution one has to pay her/himself depends on the (family) income. The own contribution can run up to maximum €690.

Legal aid for victims
Victims are generally entitled to subsidised legal aid and, under certain conditions, to free legal aid, notably:
- Victims who claim compensation within the criminal case and are entitled to subsidised legal aid (that is, have an income below a certain level), do not have to pay the own contribution for the lawyer in relation to (and only in relation to) this claim;
- Victims of serious assault and sexual offences are entitled to free legal aid (independent of their income), on the conditions that they suffered severe physical or psychological damage, and that the case is brought before criminal court. If the case is not (yet) brought before criminal court, the general rules apply (since April 2006).

After the issue of the residence permit

☑ Yes
☐ No
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Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

- Yes
- No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

During the reflection time victims are medically insured through the Rvb-allowance (Regulation provisions certain categories of foreigners). On this basis they have access to general medical care.

According to Vc B9, the case manager (which can be an officer from a shelter or from another organisation that provides assistance to victims and is usually arranged for by the Foundation Against Trafficking in Women) is responsible for the adequate assistance of the victim during the reflection period. The case manager takes care that the victim can get a medical examination and, if necessary, medical treatment (including a medical check on STDs and pregnancy, if indicated). With an eye to the possible issue of a temporary residence permit in a later phase, the medical examination should include a check on tuberculosis.

After the issue of the residence permit:

- Yes
- No
**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care or if care is restricted to *emergency* medical care only.

After the issue of the temporary residence permit, victims have to provide for medical insurance themselves on the same footing as Dutch nationals. When insured they have access to general medical care on the same footing as Dutch nationals.

The case manager (which can be an officer from a shelter or from another organisation that provides assistance to victims and is usually arranged for by the Foundation Against Trafficking in Women) takes care of the arrangement of a medical examination (including STD's and, if indicated, a check on pregnancy). If the victim has not yet been examined for tuberculosis, this should make part of the examination.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)**

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

**Before** the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:**

During the reflection period, before and after the issue of the temporary residence permit victims have access to psychological, medical etc. assistance on the same footing as nationals. During the reflection period and before the issue of the residence permit they are medically insured on the basis of the Rvb. During the reflection period and before the issue of the temporary residence permit they stay legally in the Netherlands and therefore have access to psychological and other assistance on the same footing as nationals.

**After** the issue of the residence permit

☑ Yes  ☐ No

**Explanation:**

After the issue of the temporary residence permit, victims are entitled to social security benefits and can insure themselves against medical expenses on the same footing as nationals. On the basis of the temporary residence permit victims have access to psychological and other assistance on the same footing as nationals.
Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

Victims of trafficking can make use of the provisions for (free) psychological help on the same footing as Dutch nationals.

After the issue of the residence permit

☑ Yes ☐ No

Explanation:

Victims of trafficking can make use of the provisions for (free) psychological help on the same footing as Dutch nationals.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:

After the issue of the temporary residence permit victims are entitled to social security benefits and can insure themselves against medical expenses on the same footing as nationals. The insurance covers the costs of pregnancy care, medical provisions for the disabled or any other medical care needed. On the basis of the temporary residence permit victims have access to general provisions for the disabled, victims of (sexual) violence etc. on the same footing as nationals.
Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

The victim must have pressed charges, that is, made an official report. There is confusion whether or not the victim qualifies for a temporary residence permit if s/he does not want or does not dare to officially press charges ("aangifte doen"), but merely makes a "statement" (in Dutch law there is a difference between "filing an official report" and "making a statement"). According to information of the Ministry of Justice, in the future this problem will hopefully be solved, as the Aliens Circular will be amended to state that also a "statement" of the victim must be considered as a clear intention to cooperate and should treated as if it were an official report/complaint.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☒ Yes ☐ No

Explanation:

In principle there is a possibility to refuse the issue of a residence permit for reasons related to public policy and the protection of national security (art. 16, para 1, sub d Vw 2000). However, according to Vc B9/2 the application for the temporary residence permit will not be rejected on grounds of violation of public order if such violation is directly related to the person being victim of trafficking (art. 16 Vw; Vc B9/2).

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

The residence permit is issued for one year and can be renewed as long as the criminal proceedings (criminal investigations, court case in first resort and appeal) are not completed. If the criminal proceedings are completed, the residence permit will not be renewed.

If the case is dismissed, the residence permit can be withdrawn (art. 14(e) Directive). In practice this can mean that, if the case is dismissed immediately or within a short period of time, the victim will only get a residence permit for a short period. However, the victim has the possibility to file a complaint against the decision not to prosecute the suspect. If the victim does so, the temporary residence permit will be renewed till the completion of the complaint procedure.
Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The residence permit is issued for one year and can be annually renewed as long as the investigation and prosecution has not been halted or completed. If the criminal proceedings are completed (either because the trial - including a possible appeal with a higher court - is finished or because the case is dismissed), the residence permit will be cancelled or the application for renewal will be rejected.

After completion of the criminal proceedings and following the possession of a temporary residence permit, the victim has the possibility to apply for permanent residence on humanitarian grounds.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

The Dutch government decided not to implement optional article 3(3), so it did not ‘take recourse’ to art. 3(3). However, the current Dutch policy does not make a distinction between adults and minors. Minors thus have the same rights to a reflection period, temporary residence permit, assistance etc. However, they are not allowed to work.

The reception and assistance of minors is done by special organisations. According to the law every minor must have a guardian (or legal representative) who takes care of the interests of the child. In case of an unaccompanied minor, the judge will appoint a specialised organisation (NIDOS) as guardian, who acts as legal representative (including in criminal procedures) and is responsible that the interests of the minor are taken care off. NIDOS is appointed by the Ministry of Justice as specialised organisation for (among other groups) unaccompanied (minor) asylumseekers [Art. 1, sub f, Wet op de Jeugdzorg (Act on the Care for Children and Youth), Art. 1:302 Burgerlijk Wetboek (Civil Code)].

According to the Instruction Trafficking in Human Beings of the Procurators-General, the interrogation of minors must be done by specially trained and certified police officers.

The reflection period has not been extended for minors.

With regard to the criminal case, the general rules with regard to minors apply.

Like adults, minors/minor asylumseekers who press charges have the choice to stay in the asylum procedure or to make use of the B9-regulation.

The general position of unaccompanied minor asylumseekers is regulated in the Vw 2000 (Aliens Act 2000), the Rva (Regulation on Provisions for asylumseekers and other categories of aliens) and the Wet centraal orgaan opvang asielzoekers (Act on the central body for the reception of asylumseekers).
Q.12.B. Has your Member State extended the reflection period for minors?
See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: For how long?)

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If yes, explain which measures are taken)

With regard to the criminal case, the general rules with regard to minors (that is persons under the age of 18) apply.

According to the Instruction Trafficking in Human Beings of the Procurators-General, the interrogation of minors must be done by specially trained and certified police officers.

In case of an unaccompanied minor, the judge will appoint a specialised organisation (NIDOS) as guardian, who acts as legal representative and is responsible that the interests of the minor are taken care of. NIDOS is appointed by the Ministry of Justice as specialised organisation for (among other groups) unaccompanied minors/ minor asylumseekers [Art. 1, sub f, Wet op de Jeugdzorg (Act on Children and Youth), Art. 1 :302 Burgerlijk Wetboek (Civil Code)].

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Minor victims of trafficking who make use of the B9-regulation have access to the educational system on the same footing as nationals.

Minor victims of trafficking who have applied for asylum and do not make use of the B9-regulation, fall under the asylum law.
This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)**

☑ Yes ☐ No

**Explanation:**

The Dutch government decided not to implement art. 3(3). However, the B9 regulation and the laws and decrees on which it rests, apply to both adults and minors. Minors with special needs have access to medical and other assistance on the same footing as nationals.

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).**

In case of an unaccompanied minor, the judge will appoint a specialised organisation (NIDOS) as guardian, who acts as legal representative (including in the criminal case) and is responsible that the interests of the minor are taken care of. NIDOS is appointed by the Ministry of Justice as specialised organisation for (among other groups) unaccompanied minors/ minor asylumseekers [Art. 1, sub f, Wet op de Jeugdzorg (Act on Children and Youth), Art. 1 :302 Burgerlijk Wetboek (Civil Code)]. Possible victims are placed in one of three special locations, which provide extra guidance. Part of the procedure with regard to any unaccompanied minor asylumseeker is the establishing of the identity of the minor, her or his nationality and if there is family in the country of origin who can receive the minor.

The general position of unaccompanied minor asylumseekers is regulated in the Vw 2000 (Aliens Act 2000), the Rva (Regulation on Provisions for asylumseekers and other categories of aliens) and the Wet centraal orgaan opvang asielzoekers (Act on the central body for the reception of asylumseekers).

In case of unaccompanied minors a special organisation (NIDOS) is appointed as guardian and acts as the legal representative of the child. (Possible) minor victims of trafficking are placed in (one of three) specific locations, that provide extra guidance.

In practice it appears that this organisation often lacks expertise in the area of trafficking and the rules and procedures applicable in case of trafficking. Minors who have been recruited overseas are sometimes returned to their home country with a stamp in their passport to prevent them from returning to the Netherlands. In reality, however, some of them return to the Netherlands, for example with false identity papers, because their parents make part of the trafficking chain. Officially all unaccompanied minors who are returned to their home country should be followed up. In practice this rarely happens.

Other problems are
- The lack of proper identification of unaccompanied minors/minor asylumseekers as victims of trafficking.
- Unaccompanied minors are a special risk group to become victims of (internal) trafficking after their arrival in the Netherlands, either during their reception as minors or after they turn 18, because of their vulnerable position. Some unaccompanied minors disappear ‘with unknown destination’ from the
reception centres. Moreover, when they turn 18 and are not recognised as refugee, they lose the right to a staying permit, social benefits, shelter and assistance and are supposed to return to their country. For some this is not possible due to various reasons. Since they are not entitled anymore to a staying permit and assistance and become illegal, they are in a vulnerable position to become victim of trafficking. The National Rapporteur on Trafficking in Human Beings has made a number of recommendations to improve the identification of unaccompanied minors and to prevent them from becoming victim of internal trafficking.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

There are no special criteria that need to be met.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

In principle victims of trafficking have access to vocational training under the same conditions as nationals. In practice, however, it is difficult to find appropriate vocational training because of language problems, because they do not fulfill the criteria to be admitted (e.g. previous education), or because it is insecure how long they will be allowed to stay legally in the Netherlands. There are no special vocational training programmes for victims of trafficking. Victims, however, are entitled to study grants for higher education. There are also special NGOs that support victims in getting access to vocational training, education and finding work.
Q.13.C. Do the holders of the residence permit have access to education? 
See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes    ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

In principle they have access to education under the same conditions as nationals. In practice, however, it is difficult to find appropriate education because of language problems, because they do not fulfill the criteria to be admitted (e.g. previous education), or because it is insecure how long they will be allowed to stay legally in the Netherlands. There are no special vocational or educational programmes for victims. Local governments have very different rules and criteria for access to vocational training and education for victims of trafficking. Only very few have a special program. However, there are special NGOs that support victims in finding education and work.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes    ☐ No

Explanation:

Access to work, vocational training and education is tied to the condition of legal residence in the Netherlands. If the criminal proceedings are completed, the residence permit will be cancelled or not renewed, so the victim will no longer reside legally in the Netherlands, unless she or he applies for permanent residence.

There are no cases known of victims who were granted a residence permit for work or education, after the completion of the criminal case.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes    ☐ No
**Explanation:** If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them.

Victims have access to social assistance, psychological help etc. with an eye to their recovery. However, there are no special programmes for victims aimed at their recovery of a normal life, courses to improve their professional skills or to prepare their assisted return to the country of origin. There is one specialised NGO, which assists victims in developing a long term perspective, finding courses to improve their skills or preparing their assisted return. However, this NGO is not funded on a structural basis. Individual assistance providers will also try to find local possibilities for education and work for victims. In practice, local governments have very different rules and criteria for access to training, education and work for victims of trafficking. Only very few have a special program.

**Q.14.B.** Were specific programmes or schemes created for the holders of the residence permit due to the Directive? *See article 12(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes ☒ No

**Explanation:**
No, this has not been done and there is also no intention to do so.

**Q.14.C.** Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? *See article 12(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes ☒ No

**Explanation:**

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? *See article 13.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☒ Yes ☐ No
Explanation:

The only condition that is checked is whether or not the criminal proceedings (criminal investigation and/or judicial proceedings in first resort and appeal) are still going on (which would fall under condition art. 8, para 1 a). If this is the case, the residence permit will be renewed.

With regard to paragraph 1b: the fact that the victim has pressed charges and is willing to act as witness is considered as fullfilling para 1b.

With regard to paragraph 1c: this requirement is not posed in the Dutch legislation with regard to victims of trafficking. This is a more favourable provision, which is allowed under art. 4 of the Directive.

After completion of the criminal case the victim can apply for a permanent resident permit on humanitarian grounds (Vc B9/11; Vc B16/7). If the victim has pressed charges and the criminal case has led to a conviction for trafficking, permanent residence on humanitarian grounds will be granted. If the victim has pressed charges and the criminal case has not led to a conviction, but the victim has been in the possession of a temporary B9-residence permit for three years or more on the date of the ruling, s/he will also be granted a permanent residence permit. In all other cases, the application will be judged on the basis of the following criteria:
- the risk of reprisals from the side of the traffickers and the degree of protection the authorities in the homeland are willing and able to offer
- the risk of prosecution in the country of origin, e.g. for prostitution
- the possibilities for social reintegration, taking into account the cultural background and, where applicable, the fact that the victim has worked in prostitution, possible disruption of family ties, the social views on prostitution and the government policies on prostitution

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The temporary residence permit can be cancelled if the criminal proceedings (criminal investigation and/or judicial proceedings in first resort and appeal) are completed.


As a general procedure the application for renewal of the temporary residence permit will be rejected if it appears that the criminal proceedings are completed. The victim has the formal possibility to appeal against this decision. The victim has also the possibility to apply for a residence permit on other grounds (among which humanitarian grounds), after the completion or dismissal of the criminal proceedings. See also Q 15.
**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Trafficking in Human Beings; First report of the Dutch National Rapporteur, The Hague 2002 (English translation)
Trafficking in Human Beings; Second report of the Dutch National Rapporteur, The Hague 2003 (Dutch)
Trafficking in Human Beings, Supplementary figures; Second report of the Dutch National Rapporteur, The Hague 2003 (English translation)
Trafficking in Human Beings; Third report of the Dutch National Rapporteur, The Hague 2004 (English translation)
Trafficking in Human Beings, Supplementary figures; Fourth report of the Dutch National Rapporteur, The Hague 2005
Annual reports Foundation Against Trafficking in Women (Dutch)
Documentanalyse B9 regeling mensenhandel (Document Analysis B9 Regulation trafficking in human beings), Marjan Wijers, Verwey Jonker Instituut 2004 (Dutch)
Human Trafficking Human Rights, Elaine Pearson, Anti-slavery International 2002 (chapter 5)
Monitor Positie Slachtoffers Mensenhandel (Monitor Position victims of trafficking in human beings), Bureau van Montfoort & Verwey Jonker Instituut, to be published in 2007


**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No, the only change due to the Directive has been to allow victims of trafficking access to the labour market. This has passed without public debate.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

The implementation of the B9-regulation in general is still inadequate, though it has improved over the last years.

Problems in practice include:

- Victims are not always adequately informed by the police about the B9-regulation, in particular about the reflection period;
- There are a number of cases in which - although there were clear indications of trafficking - the police first took the (possible) victim in detention as illegal alien, and only afterwards informed the victim on the B-regulation and offered the reflection period and/or the possibility to press charges;
- There are a number of cases in which the police refused to take the statement of the victim, or qualified trafficking cases as rape cases, thus denying the (possible) victims their rights under the B9-regulation;
- There are several cases in which the police victims who wanted to press charges, incorrectly referred to the asylum procedure instead of taking their statement.

- Especially asylum seekers who are victim of trafficking, often fail to be adequately identified, and are consequently denied the rights they are entitled to under the B9-regulation;
- Another group which often fails to be adequately identified as (possible) victims of trafficking are undocumented migrants who are taken in detention as illegal aliens;
- It often takes a long time before a victim actually receives the special pass belonging to the B9-residence permit. This causes problems in the access to education and work, as he or she cannot identify her/himself and prove that she/he has legal residence status;
- Cooperation between the several official services involved is problematic, as a result sometimes it can take months before the victim receives social benefits;
- There are few possibilities for vocational training and education for victims of trafficking;
- The legal aid for victims of trafficking is not always optimal: criminal lawyers often have no knowledge of Alien Law and lawyers specialised in Alien Law often lack knowledge of criminal law.

- Though in theory victims can apply for a residence permit on humanitarian grounds after completion of the criminal case, in practice such permit was - at least until the policy changes in 2006 - rarely granted. Victims have to prove themselves that they are at risk of reprisals when returned. This appears to be extremely difficult if not impossible (even if the family of the victim has been threatened or assaulted, this is not accepted as proof). It is still to early to assess if the policy changes in 2006 have led to improvement. However, there are some indications that the number of victims who are granted residence on humanitarian grounds has increased since the new policy came into effect.

- In general there is a tension between the interest of restrictive immigration policies (deportation and/or non-admission of migrants) at the one hand, and the interest of the an effective prosecution of trafficking (presence of the victim-witness) and the human rights interest of the victim (assistance and protection) at the other hand. This tension shows in many courtcases between the Immigration and Naturalisation Service (IND) and victims of trafficking around the implementation of the B9-regulation, as well as in the lack of adequate identification of victims during (in particular) the asylumprocedure, during police raids and in aliens detention;
- In general the interest of the victim is made subordinate to the interest of the prosecution, as the B9-residence permit is dependent on the victim being able and willing to press charges and act as witness.
- In many cases the police judges that the report of the victim does not contain sufficient information to start a criminal investigation. If so, the case is quickly dismissed and the victim looses her/his temporary residence permit.

With regard to minors, problems include:

- Inadequate identification of (possible) victims by the police, the Immigration and Naturalisation Service (IND), and during the asylum procedure;
- In case of unaccompanied minors a special organisation is appointed as guardian and is assumed to represent the best interest of the child. In practice, however, procedures go slow and it can take a long time before a guardian is appointed. Moreover, the caseload is very high, so children often do not get the special care and attention they are entitled to. In addition, the organisation lacks expertise in the area of trafficking and the rules and procedures applicable in case of trafficking;
- Minors are often returned through special return programs to their home country with a stamp in their passport to prevent them from returning to the Netherlands. In practice, however, some of them return to the Netherlands, for example with false identity papers, because their parents make part of the trafficking chain. Officially all unaccompanied minors who are returned to their home country should be followed up. In practice this rarely happens;
- In case of illegal, unaccompanied minors who do not fall under the asylum procedure, and/or who make use of the B9-regulation, it is not clear who is responsible for their assistance and protection;
- Both the capacity and the quality of the assistance and protection of minor (possible) victims fall short, according to the NGOs involved. There is, for example, a lack of shelters for minor victims of trafficking, especially when they are younger than 16.
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>☑ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Explain the situation before transposition</td>
<td>☑ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(to be indicated by the national rapporteur)</td>
<td>To enhance the protection of victims</td>
<td></td>
</tr>
</tbody>
</table>

Explain the situation before transposition

Except for the change described above (access to the labour market) there have been no other changes as a result of the Directive. In general I would say that the Dutch B9-regulation is more favourable than the Directive:
- A reflection period of 3 months;
- If the victim presses charges s/he is automatically entitled to a temporary residence permit;
- The only condition for the issue and/or renewal of the temporary residence permit is that the victim has pressed charges and that the criminal proceedings are not yet completed (first resort and appeal);
- Renewal of the temporary residence permit if the victim when the case is dismissed by the prosecutor and the victim files a complaint about the decision not to prosecute the suspects;
- Possibility for non-victim witnesses to be granted a residence permit if this is deemed to be in the interest of the prosecution;
- The B9-regulation applies to both adults and minors;
- possibility to apply for a residence permit on humanitarian grounds after completion of the criminal case.

Explain the situation after transposition

Except for the change described above (access to the labour market) there have been no other changes as a result of the Directive. In general I would say that the Dutch B9-regulation is more favourable than the Directive:
- A reflection period of 3 months;
- If the victim presses charges s/he is automatically entitled to a temporary residence permit;
- The only condition for the issue and/or renewal of the temporary residence permit is that the victim has pressed charges and that the criminal proceedings are not yet completed (first resort and appeal);
- Renewal of the temporary residence permit if the victim when the case is dismissed by the prosecutor and the victim files a complaint about the decision not to prosecute the suspects;
- Possibility for non-victim witnesses to be granted a residence permit if this is deemed to be in the interest of the prosecution;
- The B9-regulation applies to both adults and minors;
- possibility to apply for a residence permit on humanitarian grounds after completion of the criminal case.
Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision of Appeal Courts</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>Decision(s) in First Resort</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

Decision of Supreme Courts:

18 July 2006

Rb Den Haag zp Den Bosch, 18 July 2006, AWB 06/32049, 06/32046

During the asylum procedure it appears that the woman concerned might be a victim of trafficking. Despite indications that it might concern a victim of trafficking, the application for asylum of the (possible) victim is disposed of within the 48 hours procedure (accelerated asylum procedure). The court judges that the application has been unjustly rejected within the 48 hours procedure, in light of this new information. The fact that the woman has
pressed charges of trafficking and that her statement has been taken in investigation, is an extra indication that there is still insufficient knowledge about her experiences preceding the asylum application, whereas this information can be relevant for the decision about her application.

Since by that time the woman concerned had been issued a temporary B9-residence permit (on the basis that she had pressed charges as victim of trafficking) the court rejects the asylum application (according to the law it is impossible to have a regular residence permit and an asylum procedure at the same time). The INS has appealed.

Table 2

<table>
<thead>
<tr>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
</tr>
</thead>
</table>

**SUMMARY OF CONTENT:**

The Supreme Court confirms the judgement of the lower court (see below). If the conditions for taking a person into custody as an illegal alien are fulfilled (no identity papers, no fixed address, the person concerned has not reported himself to the aliens police) the police is entitled to take the person into custody, whether or not the person might be a victim of trafficking in human beings.

<table>
<thead>
<tr>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
</tr>
</thead>
</table>

**SUMMARY OF CONTENT:**

In the framework of a criminal investigation into trafficking a house is raided, in which 10 illegal possible victims are found. They are arrested and detained as illegal aliens. Only after their detention they are informed about the B9-regulation and the possibility of the reflection period and of pressing charges. The Court judges that there are no grounds to assume that the Aliens police should have offered them the B9-regulation before taking them into custody. The fact that there was an indication of trafficking at the moment the police found them, does not alter this. This fact in itself does not bear any relevance as to the moment that the police should offer them the B9-regulation.
The police has refused to take the statement of a woman who wanted to press charges of trafficking and refers her to the asylum procedure. The National Ombudsman considers that the police has the duty to take the statement of a person who wants to report a crime ex art. 163 Criminal Procedure Code, regardless of whether or not it will lead to a criminal investigation. He judges that ‘also in those cases where the idea might arise that the person concerned only wants to press charges to acquire legal residence status, the basic rule holds that the statement should be taken (...). An investigation into the reliability of the informant, nor an assessment of whether or not sufficient evidence can be gathered, should play a role in this stage. If there is a suspicion that the person only wants to press charges with an eye to his or her legal status AND there are hardly any leads for further criminal investigation, it can be decided to stop the investigation and to report this decision to the INS. In this way, the right of the person concerned is secured to lodge a complaint against the decision to not further prosecute the suspect (art. 12 procedure Code of Criminal Procedure).

Following the judgement of the National Ombudsman the Procurators General issued an Instruction which subscribed the recommendations of the Ombudsman and instructs the police to always take the statement of a person who wants to press charges of trafficking.

Despite the fact that the victim concerned has pressed charges, she is refused a temporary residence permit ex Vc B9 (the regulation on
victims of trafficking). After lodging a complaint with the INS, she is granted a temporary residence permit one-and-half year later. The INS admits that she has unjustly been denied a temporary residence permit ex Vc B9. In appeal she requests compensation of damages she suffered as a result of the unjust rejection of her application for a B9-residence permit (as a result she did not receive social benefits for 1 1/2 year and could not insure herself against medical costs, which she subsequently had to pay herself). The Court judges her complaint to be founded.

It is not known whether or not the INS appealed against the decision of the Court.

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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### Table 5

<table>
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<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25 October 2005</td>
<td>Afdeling Bestuursrechtspraak Raad van State, 25 oktober 2005, 200504944/1, JV 2005/465</td>
<td>The Supreme Court confirms the judgement of the lower court (see below): according to the current policy, the ground for the temporary residence permit ex Vc B9 expires if the criminal case is completed. It is not relevant whether or not the victim is informed about this fact at the time of her application for renewal of the temporary residence permit. The INS has no 'duty to inform' in this respect. Whereas Vc B9 states that the Public Prosecutor has the duty to inform the INS and the victim about the completion of the criminal case, there are no grounds to assume a 'duty to inform' for the INS. The possible failure of the Public Prosecutor to inform the victim does not alter this.</td>
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<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11 May 2005</td>
<td>Rechtbank Den Haag zp Leeuwarden, 11 May 2005, AWB 04/55193</td>
<td>The dispute concerns the question whether or not the victim concerned should be informed about the completion of the criminal case, before the withdrawal of the temporary residence permit ex Vc B9. The Court judges that this is not required.</td>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>To collect all available information from the various bodies on trafficking in human beings in the Netherlands, trends and developments.</td>
<td>In 2000, a special, independent, Rapporteur on Trafficking in Human Beings was appointed by the government. The annual reports of the Rapporteur and its conclusions and recommendations have proved to contribute greatly to the knowledge about trafficking and the impact of measures, and to the improvement of policies with regard to prevention, assistance and prosecution of trafficking.</td>
</tr>
</tbody>
</table>

Table 2

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

THE REPUBLIC OF POLAND
[16 May 2007]
[updated on 26 September 2007]

By

DR MICHAŁ KOWALSKI

DEPARTMENT OF PUBLIC INTERNATIONAL LAW
JAGIELLONIAN UNIVERSITY, KRAKÓW, POLAND
kowalsma@ists.pl

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Act on Aliens</td>
</tr>
<tr>
<td>DATE:</td>
<td>13 June 2003</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>N/A</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1 September 2003</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Journal of Laws 2006, No 234, item 1694 (consolidated text)</td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>☒ LEGISLATIVE ☐ REGULATION ☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
### Table 2

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

**TITLE:** Act amending the Act on Aliens and the Act on granting protection to aliens within the territory of Poland and some other acts

**DATE:** 22 April 2005

**NUMBER:** N/A

**DATE OF ENTRY INTO FORCE:** 1 October 2005

**PROVISIONS CONCERNED:** Art. 1

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Journal of Laws 2005, No. 94, item 788

**LEGAL NATURE** (please tick the correct box):

☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

### Table 3

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

**TITLE:** Act on Social Assistance

**DATE:** 12 March 2004

**NUMBER:** N/A

**DATE OF ENTRY INTO FORCE:** 1 May 2004

**PROVISIONS CONCERNED:**

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Journal of Laws 2004, No. 64, item 593

**LEGAL NATURE** (please tick the correct box):

☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
Table 4
This table is about: ☒ a text already adopted  ❌ a text which is still a project to be adopted
TITLE: Act Amending the Act on Social Assistance
DATE: 16 February 2007
NUMBER: N/A
DATE OF ENTRY INTO FORCE: 1 April 2007
PROVISIONS CONCERNED : Art. 1
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: Journal of Laws 2007, No. 48, item 320
LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 5
This table is about: ❌ a text already adopted  ☒ a text which is still a project to be adopted
TITLE: Support and Protection Programme for Victims of Trafficking in Human Beings for 2007
DATE: 13 December 2006
NUMBER: 
DATE OF ENTRY INTO FORCE: 
PROVISIONS CONCERNED :
(for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box):
☐ LEGISLATIVE
☐ REGULATION
☒ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Constitution of the Republic of Poland</th>
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</thead>
<tbody>
<tr>
<td>DATE</td>
<td>2 April 1997</td>
</tr>
<tr>
<td>NUMBER</td>
<td>N/A</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>17 October 1997</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>Journal of Laws of 1997 No 78, item 483 as amended</td>
</tr>
<tr>
<td>LEGAL NATURE</td>
<td>(indicate by ticking the correct box):</td>
</tr>
<tr>
<td>☒ LEGISLATIVE</td>
<td></td>
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<tr>
<td>☐ REGULATION</td>
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</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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</table>

Table 2

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act on Educational System</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>7 September 1991</td>
</tr>
<tr>
<td>NUMBER</td>
<td>N/A</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>25 October 1991</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>Journal of Laws 2004, No. 256, item 2572 as amended</td>
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<tr>
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Table 3

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act on the Promotion of Employment and Labour Market Institutions</th>
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<tbody>
<tr>
<td>DATE</td>
<td>20 April 2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>N/A</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1 June 2004</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
</tr>
<tr>
<td>LEGAL NATURE</td>
<td>(indicate by ticking the correct box):</td>
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<tr>
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<td>☐ REGULATION</td>
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Table 4

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Act on Freedom of Self-Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>2 July 2004</td>
</tr>
<tr>
<td>NUMBER</td>
<td>N/A</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>21 August 2004</td>
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<tr>
<td>PROVISIONS CONCERNED :</td>
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Table 5

<table>
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<tr>
<th>TITLE</th>
<th>Law on Higher Education</th>
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<tr>
<td>DATE</td>
<td>27 July 2005</td>
</tr>
<tr>
<td>NUMBER</td>
<td>N/A</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1 September 2005</td>
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<tr>
<td>PROVISIONS CONCERNED :</td>
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<tr>
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<td>IN THE OFFICIAL JOURNAL: Journal of Laws 2005, No. 164, item 1365</td>
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Table 6

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<tr>
<th>TITLE</th>
<th>Act on Health Care Services Finaced from Public Resources</th>
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<tr>
<td>DATE</td>
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</tr>
<tr>
<td>NUMBER</td>
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<td>DATE OF ENTRY INTO FORCE</td>
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Table 7

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<th>☐ a text which is still a project to be adopted</th>
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<tr>
<td>TITLE:</td>
<td>Criminal Procedure Code</td>
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<tr>
<td>DATE:</td>
<td>6 June 1997</td>
<td></td>
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<tr>
<td>NUMBER:</td>
<td>N/A</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
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<td>PROVISIONS CONCERNED:</td>
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<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Journal of Laws 1997, No 89, item 555 as amended</td>
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<td>☐ REGULATION</td>
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Table 8

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<th>This table is about:</th>
<th>☒ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Family and Guardianship Code</td>
<td></td>
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<tr>
<td>DATE:</td>
<td>25 February 1964</td>
<td></td>
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<tr>
<td>NUMBER:</td>
<td>N/A</td>
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<td>DATE OF ENTRY INTO FORCE:</td>
<td>1 January 1965</td>
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<td>PROVISIONS CONCERNED:</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>issuing the decision on granting, refusal or withdrawal of the residence permit for a specified period for victims of trafficking in human beings</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Voivod competent with respect to the place of the alien's intended residence</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Voivod (wojewoda) is a local representative of government; Poland is divided into 16 regions named voivodships (województwo)</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>appellate authority from a decision taken in the first instance by a voivod</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Head of the Aliens Office</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Head of the Aliens Office is an independent organ of administration. Although the Minister of Interior and Administration has the general competence to coordinate, control and supervise its activities and to give binding orders and guidelines, they cannot concern decisions taken in individual cases.</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>judicial review of the administrative decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>administrative courts</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Since 1 January 2004 and following the reform of the Polish administrative judicial system the administrative judicial procedure consists of two instances. Administrative courts are not entitled to make decisions on the merits of a case. Procedure at Administrative Courts is regulated in Law of 30 August 2002.</td>
</tr>
</tbody>
</table>
### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>issuing the decision on granting or refusal of extraordinary residence visa for victims of trafficking in human beings</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
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</table>

### Table 5

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

#### Q.4.A.
Has the central regulation foreseen by the central norm of transposition already been adopted?

☑ YES  ☐ NO

#### Q.4.B.
If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES  ☐ NO
If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MISSING TEXTS</strong></td>
</tr>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA39).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC40).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ ‘Trafficking in human beings’ only
☐ ‘An action to facilitate illegal immigration’ only
☐ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

See Art. 33(1)5 and Art. 53(1)15 of the Act on Aliens.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in

The clause "a victim of trafficking in human beings in the sense of the Framework Decision of 19 July 2002" is used in the Act on Aliens.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction,, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☒ Yes ☐ No

Explanation:

No limitations exist in this regard.
Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes ☐ No

Explanation:
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Adults
- [x] Both adults and minors

Explanation:

The Act on Alines refers to aliens who are victims of trafficking in human beings irrespectively of their age.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] All minors
- [ ] Minors, for which the following criteria are fulfilled:
  
  •
  •
  •
  •
  •

Explanation:

The Act on Alines refers to aliens who are victims of trafficking in human beings irrespectively of their age.
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: No data available.

‘An action to facilitate illegal immigration (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The first information is provided when relevant authorities (mainly the Police) identify a person concerned as a victim of trafficking in human beings. In case of identification especially trained officials are in charge of the case. Introducing a special training on the treatment of victims of trafficking in human beings for policemen, Border Guard officials, prosecutors, judges and other officials forms parts of the National Programmes on Combating and Prevention of Trafficking in Human Beings and has been realised. However, according to the consulted NGOs, providing information by the relevant authorities is still unsatisfactory in practice.

Moreover, a special “Support and Protection Programme for Victims of Trafficking in Human Beings” is established every year. The Programme includes, among others, case-management and providing information to the victims. Minister of Interior and Administration entrusts a non-governmental organisation with realisation of the Programme in official selection procedure. Foundation against Trafficking in Human Beings and Slavery ‘La Strada’ (Fundacja Przeciwko Handlowi Ludzmi i Niewolnictwu ‘La Strada’) was appointed for realisation of the Programme in 2006 and 2007. It is estimated that as for now the ‘La Strada’ Foundation is the only NGO in Poland which is enabled to offer realisation of the Programme nationwide. Relevant authorities inform the ‘La Strada’ Foundation when they identify a person as a victim and when he or she wishes to enter the Programme.

Moreover, the person concerned is provided with information in legal proceedings he or she is involved in. According to Art. 10 of the Act on Aliens, an alien applying for, among others, the residence visa or the residence permit for a specified period (both of which may regard victims of trafficking) is to be informed in understandable language on details of the procedure as well as of his or her rights and duties.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
Both orally and in writing

Explanation:
The victim is provided with the information on his or her status under the Support and Protection Programme by the representative of the 'La Strada' Foundation both orally and in writing.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The victim is provided with the information by the representative of the 'La Strada' Foundation on his or her status under the Support and Protection Programme. Moreover, the person concerned is provided with information in legal proceedings he or she is involved in. According to Art. 10 of the Act on Aliens, an alien applying for, among others, the residence visa or the residence permit for a specified period (both of which may regard victims of trafficking) is to be informed in understandable language on details of the procedure as well as on his or her rights and duties. Art. 10 is silent as far as the form of information is concerned. However, in practice the information is provided in writing and with confirmation of receipt.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

As far as the activities of the appointed NGO (the 'La Strada' Foundation), information routines function satisfactorily and no deficiencies have been identified. However, identification of a person concerned as a victim of trafficking in human beings as well as providing him or her with necessary information by the relevant authorities in the moment of the first contact with the person concerned are both still highly unsatisfactory in practice.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Under Art 33(1)5 and Art. 33(3) of the Act on Aliens the third-country national concerned may be granted the residence visa in order to enjoy reflection period. The residence visa is issued for period necessary for reflection and not exceeding 2 months.
Q.9.B. **Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders?** See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes       ☐ No

**Explanation:**

In practice yes. However, it remains unclear as far as legal provisions of the Act on Aliens are concerned. The person concerned may be granted the residence visa for reflection period even if general premises for visa refusal occur (including those justifying expulsion) and he or she will not be generally granted expulsion decision while residing under residence visa for reflection period. However, no formal exclusion has been provided in the Act on Aliens and the expulsion decision may be granted e.g. for reasons relating to public policy and to the protection of national security (see Art. 88(1)5 of the Act on Aliens); the expulsion decision results ipso iure in cancellation of the visa (Art. 90(3) of the Act on Aliens).

Q.9.C. **Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes       ☒ No

**Explanation:** (If the answer is “yes”, which are the criteria?)

No special termination procedure of the reflection period has been provided for. However, see the explanation to Q9B. General rules on cancellation of visas established in the Act on Aliens practically do not apply to victims of trafficking cases as they provide with cancellation procedure by a commanding officer of the Border Guard checkpoint, which take place while entering the territory of Poland (Art. 48 of the Act on Aliens).

Q.9.D. If the answer on Q.9.C is “yes”: **Which authority in your Member State has the competence to take the decision to terminate the reflection period?** (Please give details on the name and function of the authority)

Q.9.E. If the answer on Q.9.C is “yes”: **Please describe the procedure for termination of the reflection period.**

Q.9.F. **Do you think that the practice of granting reflection periods functions satisfactorily in practice?** Please provide us with your personal judgement, and indicate any known problems.

Granting reflection periods to victims of trafficking in human beings itself functions satisfactorily in practice. Introducing of this institution was highly appreciated by the NGOs involved in protecting and supporting the victims. However, identifying victims and providing them with necessary information by the authorities as well as rather modest guaranteed treatment during the reflection period form serious impediments.
Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

In the framework of the Support and Protection Programme, the 'La Strada' Foundation provides the persons concerned with accommodation, meals, clothes, hygiene products, medicines and others aimed at meeting their essential needs. Moreover, as the result of the 2007 Act Amending the 2004 Act on Social Assistance, which entered into force on 1 April 2007, access to social assistance of aliens who are victims of trafficking has been ensured on statutory basis. Newly introduced Art. 5a of the 2004 Social Assistance Act states that the alien victims of trafficking who reside in Poland under the residence visa (Art. 33 of the Act of Aliens) or the residence permit for a specified period (Art. 53(1)15 of the Act of Aliens) are entitled to services in form of crisis-management, shelter, meal, necessary clothes and necessary financial benefit for a determined particular purpose. According to the consulted NGOs, granting some financial support could encourage victims to cooperation with authorities.

After the issue of the residence permit

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with accommodation, meals, clothes, hygiene products, medicines and others aimed at meeting their essential needs. Moreover, as the result of the 2007 Act Amending the 2004 Act on Social Assistance, which entered into force on 1 April 2007, access to social assistance of aliens who are victims of trafficking has been ensured on statutory basis. Newly introduced Art. 5a of the 2004 Social Assistance Act states that the alien victims of trafficking who reside in Poland under the residence visa (Art. 33 of the Act of Aliens) or the residence permit for a specified period (Art. 53(1)15 of the Act of Aliens) are entitled to services in form of crisis-management, shelter, meal, necessary clothes and necessary financial benefit for a determined particular purpose.
Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Generally yes, especially since the access to social assistance of aliens who are victims of trafficking has been ensured in the 2007 amendment. However, it should be stressed that the support is rather modest and is not perceived as attractive by the victims. Moreover, the NGOs involved face practical problems while granting support and co-operation with social authorities is difficult.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanations: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with shelter and other necessary protection needs which may include the arrangement of the victim's appearance change. The relevant criminal procedures (e.g. anonymous witness status, see Art. 184 of the 1997 Criminal Procedure Code) may apply as well under general rules.

After the issue of the residence permit:

☑ Yes ☐ No

Explanations: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with shelter and other necessary protection needs which may include the arrangement of the victim's appearance change. The relevant criminal procedures (e.g. anonymous witness status, see Art. 184 of the 1997 Criminal Procedure Code) may apply as well under general rules.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with necessary translation services. Rules of criminal procedure may also apply if relevant.

After the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with necessary translation services. Rules of criminal procedure may also apply if relevant.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with necessary interpreting services. Rules of criminal procedure may also apply if relevant.

After the issue of the residence permit:

☑ Yes  ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with necessary interpreting services. Rules of criminal procedure may also apply if relevant.
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with free legal aid offered by qualified lawyers. Also, the 'La Strada' Foundation takes steps aimed at legalising the stay of the victim concerned in Poland. Rules of criminal procedure may also apply if relevant.

After the issue of the residence permit

☒ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with free legal aid offered by qualified lawyers. Also, the 'La Strada' Foundation takes steps aimed at legalising the stay of the victim concerned in Poland. Rules of criminal procedure may also apply if relevant.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with emergency medical care.
After the issue of the residence permit

☑ Yes  ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with emergency medical care. Also, a person holding the residence permit for a specified period enjoys the status of the insured in the sense of 2004 Act on Health Care Services Financed from Public Resources (Art. 3(1)2) and as such is entitled to general medical care.

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:

The provision on attending to the special need of the most vulnerable has not been formally transposed. Their needs are only met in the framework of the Support and protection Programme of the ‘La Strada’ Foundation.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:

The provision on attending to the special need of the most vulnerable has not been formally transposed. Their needs are only met in the framework of the Support and protection Programme of the ‘La Strada’ Foundation.
Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with psychological help.

After the issue of the residence permit

☑ Yes ☐ No

Explanation:

In the framework of the Support and Protection Programme the 'La Strada' Foundation provides the persons concerned with psychological help.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:

Necessary medical or other assistance to the third-country nationals concerned is provided by the 'La Strada' Foundation in the framework of the Support and protection Programme. Moreover, as the result of the 2007 Act Amending the 2004 Act on Social Assistance, Art. 5a of the 2004 Social Assistance Act states that the alien victims of trafficking who reside in Poland under the residence visa (Art. 33 of the Act of Aliens) or the residence permit for a specified period (Art. 53(1)15 of the Act of Aliens) are entitled to services in form of crisis-management, shelter, meal, necessary clothes and necessary financial benefit for a determined particular purpose. Additionally, it should be noted that after the issue of the residence permit the person concerned enjoys the status of the insured in the sense of 2004 Act on Health Care Services Financed from Public Resources (Art. 3(1)2) and as such is entitled to general medical care.
Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

Under Art. 53(1)15 of the Act on Aliens the victim of trafficking is granted the residence permit for a specified period if he or she cumulatively stays within the territory of Poland, co-operates with relevant authorities, and has severed relations with those suspected of offences related to trafficking in human beings.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☑ Yes ☐ No

Explanation:

Reasons related to public policy and national security form a premise to refuse the issue of a residence permit under Art. 57(1)5 AA.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Under Art. 56(2)4 the residence permit for a specified period is granted to a victim of trafficking for 6 months.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

General rules apply - the residence permit for a specified period may be renewed (the new permit must be issued) including the permit granted to a victim of trafficking. No special limitations exist.

**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

No norms of transposition have been adopted in this regard as the principle of the best interest of the child is established in very foundations of the Polish legal system including the 1997 Constitution, as well as guarantees ensured in criminal procedure.

**Q.12.B.** Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [x] No

**Explanation:** (If the answer is “yes”: For how long?)

**Q.12.C.** Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes
- [ ] No

**Explanation:** (If yes, explain which measures are taken)

This is ensured on regular basis and no special measures have been taken in this respect.

**Q.12.D.** Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes
- [ ] No
Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

This is guaranteed in Art. 94a of the 1991 Act on Educational System. Yet, according to the consulted NGOs, ensuring the minors’ access to education (placing in schools, language problems etc.) is very problematic in practice.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)**

- [ ] Yes
- [ ] No

Explanation:

Such assistance is granted on the same basis as to the adult victims of trafficking in human beings. Special arrangements exist only in relation to unaccompanied minors (see answer to Q.12.E).

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c)** (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

As the result of the 2007 Act Amending the Act on Social Assistance which entered into force on 1 April 2007, financing of placing and stay of the unaccompanied alien minors in foster-families and foster centres (under a court decision on regular basis; Art. 72(1 and 6) and Art. 80 of the Act on Social Assistance) has been regulated and is currently covered from state budget (and not from the respective local-government’s budget; Art. 20(1)5 of the Act on Social Assistance). Moreover, general rules on establishing legal representation (e.g. legal guardianship under Art. 90(3) and 178 of the Family and Guardianship Code of 25 February 1964) apply.

The non-governmental organisation - the 'Nobody's Children' Foundation (Fundacja 'Dzieci niczyje') runs programmes aimed at protection of unaccompanied alien minors who are victims of trafficking. Activities of the 'Nobody's Children' Foundation include offering psychological help. The 'Nobody's Children' Foundation is supported by and co-operates with the authorities including the Minister of the Interior and Administration, the Head of Repatriation and Aliens Office. As a consequence of the agreement with the Minister of Education and Sport it was established in 2004 as the National Consultation Centre for Unaccompanied Alien Minors and for Children who are Victims of Trafficking within the framework of the Council of Baltic Sea States.

Nonetheless, it seems that that transposition of Art. 10(c) of the Directive is incomplete as the obligation to make every effort to locate their families as quickly as possible has not been introduced. Moreover, coherent legal framework of dealing with unaccompanied alien minors is missing.
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

As the persons concerned are granted residence permit for a specified period regular rules apply.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

As the persons concerned are granted residence permit for a specified period regular rules apply.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

However, access for persons concerned to educational system under the same conditions as Polish nationals in the meaning of Art. 94a of the 1991 Act on Educational System is limited to those under educational obligation (minors).
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:
General rules apply.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

No limitations exist. However, only one programme of such character and in which governmental authorities are involved has been identified: 'IRIS - Social and Vocational Reintegration of Women - Victims of Trafficking in Human Beings'. The managing organisation of the programme is the "La Strada" Foundation and other participants include the other NGO, local-government authorities and governmental authorities. Also, measures aimed at the safe return of victims to their countries of origin are undertaken by the 'La Strada' Foundation in the framework of the Support and Protection Programme.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:
Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation:

The same rules apply and no special regime for renewal exists.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The general rules on withdrawal of the residence permit for specified period apply (see Art. 58 in conjunction with Art. 57 AA) and they seem to correspond with the standard of Art. 14 of the Directive. Yet, they may be considered as of more extensive character than the Directive standard and as such may be perceived as problematic.
**Q.16.B.** Explain the procedure for withdrawal of the residence permit.

The relevant Voivod is competent for issuing a withdrawal decision. Under Art. 58(1) AA the residence permit for specified period is to be withdrawn if 1) the cause for which it was granted ceased to exist; 2) the premise for refusal to grant the residence permit under Art. 57(1) AA appeared save the sole premises of sickness or illegality of residence; premises for refusal to grant the residence permit include inter alia reasons relating to public policy and to the protection of national security; 3) the holder of the permit misused it for other aims than it was granted; 4) the holder of the permit left Poland definitely.

**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

No materials on this aspect of trafficking in human beings have been identified.

**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

There was no such debate at all.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

It seems that consistence of introducing the regulations relating to victims of trafficking to the framework of the Act on Alines could be improved, as general rules which apply in relation to victims of trafficking do not always fully reflect the specificity of trafficking situations.
THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td></td>
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</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td>Aliens law did not provide for provisions aimed at regulating the residence status of victims of trafficking in human beings.</td>
<td>Provisions aimed at regulating the residence status of victims of trafficking in human beings have been introduced in line with the Directive and enhanced their protection.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less favourable than previous national rules</td>
</tr>
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<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
<table>
<thead>
<tr>
<th>OBJECTIVE</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(to be indicated by the national rapporteur)</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
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<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
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<td>□ More favourable than previous national rules</td>
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<td>□ Less favourable than the Directive</td>
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<td>□ In line with the directive</td>
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<td></td>
<td></td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES  ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES  ☐ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
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<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
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<tr>
<td>DECISION(S) IN FIRST RESORT</td>
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<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
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<tbody>
<tr>
<td>OBJECTIVE OF THE PRACTICE</td>
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</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

PORTUGAL

By

Cristina Crisóstomo

Assistant of the Law Faculty of the Universidade Autónoma of Lisbon
ccrisostomo@netcabo.pt
11.06. 2007
amended 01.10.2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>□ a text already adopted □ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Legal Framework of Entry Stay and Departure of Third Country Nationals in Portuguese Territory</td>
</tr>
<tr>
<td>DATE:</td>
<td>4 July 2007</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>23/2007</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>3 August 2007</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED :</td>
<td>Articles 109 to 115</td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>□ LEGISLATIVE □ REGULATION □ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

Q.1.B Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):
• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

| TITLE: |  |
| DATE: |  |
| NUMBER: |  |
| DATE OF ENTRY INTO FORCE: |  |
| PROVISIONS CONCERNED: |  |
| (for example if the norm also pursues other objectives than the transposition of the directive) |  |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |  |
| LEGAL NATURE (indicate by ticking the correct box): |  |
| [] LEGISLATIVE |  |
| [] REGULATION |  |
| [] CIRCULAR OR INSTRUCTIONS |  |

**Q.2.** This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Concession of residence permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Home Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Immigration and Borders Service</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Immigration and Borders Service is dependent of the Minister of Home Affairs and vertically organized.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☒ NO
Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES  ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
<tr>
<td>The definition of “victims of trafficking in human beings” (foreseen in the article 109 of the Law 23/2007 of 4th July) is obliged to a special legislation to be approved after 120 days of the entrance in force of the present Law.</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5.

According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^{41}\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^{42}\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

In the article 109 of the Law 23/2007 of 4th July granted the authorization of residence to "victims of trafficking in human beings" and victims of action to facilitate illegal immigration. This regime can still be applicable to victims that do not collaborate with the national authorities of inquiry since they have breached or cut the linkings to the authors of the infraction.


This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt* to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

**Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?**

☑ Yes ☐ No

**Explanation:**

The Law 23/2007 of 4th of July is applicable to the victims of criminal offences concerning trafficking in human beings, establishing measures with the purpose to protect them. However, the definition of the legal status of "victims of trafficking in human beings" (foreseen in the article 109 of the Law 23/2007 of 4th of July) is obliged to a special legislation, to be approved after 120 days of the entrance in force of the present Law.

**Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).**

The definition of "trafficking in human beings” in the Framework decision 2002/629 is not transposed. The entrance in force of the Law 23/2007 of 4th July is foreseen the adoption of a special law to transpose this definition in the stated period of 120 days.

**Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
     - (a) use is made of coercion, force or threat, including abduction, or
     - (b) use is made of deceit or fraud, or
     - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
     - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.
2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The definition of ” an action to facilitate illegal immigration" is preview in the article 183 of the Law23/2007 of 4th July. Portugal adopt sanction for any person who assist a person who is not a national to enter, or transit across the portuguese territory in breach the national laws. If exist finantial gain the sanction is aggravated. Portugal does not preview situations of humanitarian assistance for the person concern, but, this question, in accordance with the criminal law, is had in account for the national judge at the moment of the application of the penalty.

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens ;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)
Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☑ Yes  ☐ No

Explanation:
The Article 109(1) of the Law 23/2007 is applicable to the victims of criminal offences concerning an action to facilitate illegal immigration.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☑ Both adults and minors

Explanation:
The Law23/2007 of 4th July is applicable to minors, and the article 114 preview a special regime for them. All the procedures are adjusted to the age of the child and in the defense of the interests of the minor. The authorities look for to determine the paternity of the child and to locate its families. The minors have access to the education system.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:
(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑️ All minors

☐ Minors, for which the following criteria are fulfilled:

- 
- 
- 
- 
- 
- 

Explanation:

The Law 23/2007 of 4 July does not establish no criteria of distinction applying to all the minors that are victims of "trafficking in human beings" and "action to facilitate illegal immigration".

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

‘An action to facilitate illegal immigration (If applicable): The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The public authority responsible is the Immigration and Borders Service dependent of the Minister of Home Affairs. For more data, we will have to wait for the application of the Law.
Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☐ Both orally and in writing

Explanation:
The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

Reflection period

Q.9. According to the mandatory provision in Article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The article 111 of the Law 23/2007 of 4th July preview a reflection period, that period allowed the person to recover and to escape the influence of the perpetrators. The reflection period is in minimo of 30 days and the maximum of 60 days. This period starts to count when the victim manifest is will in collaboration or when the authorities request this collaboration, or from the moment that the person is identified as a victims of "trafficking in human beings"
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

According with the article 111 (3) of the Law 23/2007 of 4 July, under the reflection period, the person has the right to assistance and is protected from expulsion orders.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation: (If the answer is “yes”, which are the criteria?)

The Law 23/2007 of 4th July does not mention this possibility, only sets out the conditions for cancellation of the residence permit.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

The reply to these data cannot still be supplied, we will have to wait for the application of the Law.
Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:
The article 112 (1) of the Law23/2007 of 4th July granted for the victims of "trafficking in human beings" and "action to facilitate illegal immigration" resources for ensuring their subsistence (in cash). For more data, we will have to wait for the application of the Law.

After the issue of the residence permit

☑ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:
The same regime is granted in article 113 (1) of the Law23/2007 of 4th July after the issue of the residence permit. There are no differences between the treatment granted before and after the issue of the residence permit.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The reply to these data cannot still be supplied, we will have to wait for the application of the Law.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

The reply to these data cannot still be supplied, we will have to wait for the application of the Law.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes
☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to the article 112 (3) of the Law 23/2007 of 4th July, the national authorities provide the safety and protection for the third-nationals concerned, for more data, we will have to wait for the application of the Law.

After the issue of the residence permit:

☐ Yes
☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The same regime is granted in article 113 (1) of the Law 23/2007 of 4th July after the issue of residence permit. There are no differences between the treatment granted before and after the issue of the residence permit.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes
☐ No

Explanation:

According to the article 112 (4) of the Law 23/2007 of 4th July, the third-nationals concerned are provided with translation services. For more data, we will have to wait for the application of the Law.

After the issue of the residence permit:

☐ Yes
☐ No
Explanation:
The same regime is granted in article 113 (1) of the Law 23/2007 of 4th July after the issues of residence permit. There are no differences between the treatment granted before and after the issue of the residence permit.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:
According to the article 112 (4) of Law 23/2007 of 4th July, the third-nationals concerned are provide with interpreting services, for more data, we will have to wait for the application of the Law.

After the issue of the residence permit:

☒ Yes ☐ No

Explanation:
The same regime is granted in article 113 (1) of the Law 23/2007 of 4th July after the issues of residence permit. There are no differences between the treatment granted before and after the issue of the residence permit.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

According to the article 112 (4) of the Law 23/2007 of 4th July, the third-nationals concerned are provide with free legal aid. The legal assistance is carried through the legal regime of the Judiciary Assistance. According with this regime does not exist limitations concerning the costs, spent hours, or other criteria. The legal assistance is given by lawyers qualified and fits to the Order of Lawyers/ Barristers to nominate a lawyer to represent the interests of the third-country nationals concerned.
After the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

The same regime is granted in article 113 (1) of the Law23/2007 of 4th July after the issues of residence permit. There are no differences between the treatement granted before and after the issue of the residence permit.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

According with the article 112 (1) of the Law23/2007 of 4th July the third-nationals concerned are provide with emergency medical care.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

After the issue of the residence permit the third-country nationals have access to the National System of Health, and have access to a general medical care.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)
Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

**Before** the issue of the residence permit:

☑ Yes ☐ No

**Explanation:**

According to the Article 112 (2) of the Law 23/2007 of 4th of July, before the issue of the residence permit, the competent authorities (BIS- Immigration Borders and Service) shall attend to special needs of the most vulnerable persons, what includes granting them resources for ensuring their subsistence and access to psychological help.

The special legislation foreseen in the article 109 of the Law 23/2007 of 4th of July will regulate the rights and duties of the victim and preview the necessary measures to assure them.

**After** the issue of the residence permit

☑ Yes ☐ No

**Explanation:**

According to the Article 113(1) of the Law 23/2007 of 4th of July, the holder of a residence permit has the right to the same treatment that he used to have before the issue of the residence permit, and the competent authorities shall attend to the special needs of the most vulnerable persons.

There are no differences between the treatment granted before and after the issue of the residence permit.

**Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes ☐ No

**Explanation:**

According to the article 112 (2) of the Law 23/2007 of 4th July, the persons more vulnerable that have necessities specify can have access to psychological help, for more data, we will have to wait for the application of the Law.

**After** the issue of the residence permit
The same regime is granted in article 113 (1) of the Law 23/2007 of 4th July after the issue of residence permit. There are no differences between the treatment granted before and after the issue of the residence permit.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

Yes ☑️ No ☐

Explanation:
According to the Article 113 (2) of the Law 23/2007 of 4th of July, the victims of trafficking who do not have sufficient resources and have special needs (such as minors, disabled, pregnant women, victims of sexual violence or other forms of violence) have the right to receive assistance to their special needs, such as medical and psychological assistance and also social assistance.

The definition of the legal status of "victims of trafficking in human beings" (foreseen in the Article 109 of the Law 23/2007 of 4th of July) will regulate these aspects.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Yes ☑️ No ☐

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

The Law 23/2007 of 4th July transposed all the requirements set by the article 8 of the directive. The article 109 (1) grants the residence permit to the third-country nationals who are or have been victims of trafficking in human beings or victims of an action to facilitate illegal immigration, even if they have illegally entered in the national territory.
The Article 109 (2) establishes that the residence permit is granted, after the term of the reflection period, since the following conditions have been verified:

a)- when the presence of the person in national territory is necessary to the investigations and the judicial proceedings

b)- whether the person has shown a clear intention to cooperate with the national authorities in investigation and repression of the "trafficking in human beings" and "action to facilitate illegal immigration"

c)- and since the person has breached or cut the linkings to the suspect of acts that may include the offenses of "trafficking in human beings" and "action to facilitate illegal immigration".

Following the article 109(3), the residence permit can be granted before the term of the reflection period if it is considered that the third-country national concerned fulfills the criteria foreseen in the subparagraph (b).

The article 109 (4) establishes that after the term of the reflection period, the residence permit can be granted to the third-country nationals identified as victims of "trafficking in human beings", with dismissal of the conditions established in the subparagraphs (2) (a) and (b), this means, there is only one specific criteria that has to be accomplished: that the person cut the connections with the suspects of the infraction.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?  

☑ Yes ☐ No

Explanation:

According to the Article 77 (2) of the Law 23/2007 of 4th of July the issue of a residence permit may be refused for reasons related to public policy, national security and public health.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

According to the article 109 (5) of the Law 23/2007 of 4th July the residence permit is valid for one year.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The renewal of the residence permit is subject to the same criteria demanded for the authorization, sets out in article 109 (2).

There is no limitations concerned to how many times or for how long the residence permit can be renewed. The residence permit is renewable for periods of one year if the criteria established in the article 109 (2) are verified or while remains the needing to protect the person identified as victim of "trafficking in human beings".

There is no limit concerning how many times or for how long the residence permit can be renewed.
Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

All the procedures are adjusted to the age of the child and in the defense of the interests of the minor. According to the Article 114 (1) of the Law 23/2007 of 4th of July, the application of measures must consider the best interest of the child. The law establishes that all the procedures are adjusted to the age and maturity of the child and in defense of the interest of the minor. The law does not specify how the procedures are adjusted. The article 114 only foresees measures about the reflection period, the access to the education system and determine the identity of the unaccompanied minor.

However, the Law 147/99 of 1st of September of 1999 (amended by the Law 31/2003, of 22nd of August, and regulated by the Decree-Law 332-B/2000, of 30th of December) that establishes the protection regime for the youngs and children in danger is applicable to any minor being in the national territory and who needs help for the promotion and protection of his rights. This Law regulates the Commissions for Minors’ Protection and defines as main principle the superior interest of the child. The Commissions for Minors’ Protection has the duty of guarantee the security, health, training, education and well-being conditions to the minors.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: For how long?)

According to the article 114 (2) of the Law 23/2007 of 4th July the reflection period is extended if the best interest of the child demanded and for the time considered necessary.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

The Law 23/2007 does not mention any concrete measures to ensure that the procedures are appropriated to the age and the maturity of the child. However, the Law 147/99, that establishes the protection regime to youngs and children in danger, foresees concrete measures to guarantee the protection of the minor interests. These measures foresee the accompaniment and support next to the parents or other minor relative, or when necessary, the familiar shelter or the shelter in some institution. It is the Family Courts responsibility to determinize this measures.
Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

According to the article 114 (3) of the Law 23/2007, the minors have access to the education system in basis of equality of treatment.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☑ Yes  ☐ No

Explanation:

The Article 113(2) of the Law 23/2007 of 4th of July is also applicable to minors granting them medical and psychological assistance, as well as social assistance attending to their special needs. According to the Article 114 (1) the application of measures must consider the best interest of the child. Whenever is verified a situation of a minor at risk or unaccompanied, the Law 147/99, that establishes the protection regime to young and children in danger, foresees concrete measures to guarantee the protection of the minor interests.

The special legislation foreseen in the Article 109 of the Law 23/2007 of 4th of July will regulate these aspects.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

The article 114 (4) establishes that all the diligences should be made to determine the identity and the nationality of the unaccompanied minor and to locate his family, as well as granting his legal representation as soon as possible.

The establishment of the identity is made in accordance with the "Lei da Organização Tutelar de Menores" (Decree Law 314/78, of 27th of October –amended by the Law 147/99, of 1st of September and the Law 166/99, of 14th of September). It is the Family Courts responsibility to develop all the necessary efforts to investigate the minor identity.

The measures of accompaniment of the minor are foreseen in the Law 147/99 of 1st of September 1999 (amended by the Law 31/2003, of 22nd of August, and regulated by the Decree-Law 332-B/2000, of 30th of December). Whenever a situation of a minor at risk or unaccompanied is verified, the BIS (Immigration and Borders Service) communicates to the Court of Minors to who fits to determine the measures of protection for the minor.
Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

There no criteria established to the holders of the residence permit to access to the labour market. According to the article 83 (1) of the Law 23/2007 of 4th July the holders of the residence permit have access to the labour market without needing a special authorisation. The access to the labour market implies the exercise of a subordinated professional activity or the exercise of an independent activity. The article 83(2) of the Law 23/2007 assure the equal treatment of the third-country nationals concerning the work conditions, namely, the rights and fiscal benefits, the social security and the recognition of diplomas, as well as certify or other professional titles.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

There no criteria established to the holders of the residence permit to access to vocational training. According to the article 83(d)of the Law 23/2007, the holders of the residence permit have access to vocational training and professional orientation and update. There is no criteria established to the holders of the residence permit to access to vocational training and is not necessary any special authorization related to his condition of third-country national.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

According to the article 83(e) of the Law 23/2007, the holders of the residence permit have access to education. There is no criteria established to the holders of the residence permit to access to the education system, and is not necessary any special authorization related to his condition of third-country national.

**Q.13.D.** Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

There is no specific reference to this issue, but the Article 83 (1) establishes that the right to access to work, vocational training, education and access to judicial suport is assured only to the holders of the residence permit. Thus, the Article 83(1) should be interpreted as the access to work, vocational training and education is limited to the duration of the residence permit.

**Programmes or schemes for the third-country nationals concerned**

**Q.14.** Questions regarding programmes or schemes for the third-country nationals concerned:

**Q.14.A.** Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

According to the article 113(3) of the Law23/2007 of 4th July, the holders of the residence permit have acess to existing programmes , aimed at their recovery of a normal social life, including courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explaination:
The Law 23/2007 entered in force at 3rd of August of this year. There were not yet created specific programmes or schemes for the third-country nationals.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explaination:
Following the article 109 (5) of the Law 23/2007 of 4th of July, the renewal of the residence permit is not dependent of the participation in programmes or schemes.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explaination:
According to the article 109 (5) of the Law 23/2007 of 4th July the renewal of a residence permit is subject to the conditions demanded for the authorization. The residence permit is also renewed to victims of "trafficking in human beings" while to remain the protection needs.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No
Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

According to the article 115 of the Law 23/2007 of the 4th July the withdrawal of the residence permit is possible at any time in the following conditions:
- if the holder of the residence permit has actively, voluntarily and by his own initiative renewed contacts with the suspected of the trafficking of human beings or "action to facilitate illegal immigration";
- if the competent authority believes that the victim's cooperation is fraudulent or that his complaint is fraudulent or wrongful;
- if the victim ceases to cooperate.

However, according to the article 115(2) in case of victims of "trafficking in human beings" the lack of collaboration with the authorities is not a reason to withdraw of the residence permit.


According to the article 85(6) of the Law 23/2007, the Minister of Home Affairs has competence to cancel the residence permit, but he also can delegate it to the General Director of BIS (Immigration and Borders Service). The withdrawal of the residence permit with the exposition of the reasons under this decision are communicated to the third-country national concerned, as well as to the High Commissioner for Immigration and Ethnic Minorities (ACIDI I.P.) and to the Consultative Council for the Immigration Affairs.

After the notification, the authorities apprehend the residence permit.

The decision of withdrawal of the residence permit can be contested in the Administrative Courts.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

There is no legal literature, or study concerning the practice of granting reflection periods and residence permit to victims of trafficking or victims of action to facilitate illegal immigration.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

No, the special legislation concerning victims of trafficking is foreseen in the stated period of 120 days after the entrance in force of the Law 23/2007 of 4th July.
**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
</tr>
<tr>
<td>The entrance in force at 3rd of August 2007 of the Law 23/2007 of 4th July, grants the residence permit to &quot;victims of trafficking in human beings&quot; and victims of an action to facilitate illegal immigration. The Law 23/2007 transposed the Directive Victims of trafficking of 29th April 2004. This law is essential to fight against the criminal networks of traffic of human beings and the economic exploitation of migrants However the first priority is to protect the victims' rights. This regime grants the right to information and provides free legal aid, safety, as well as protection for the victims, before and after the issue of the residence permit. During the reflection period, the victim has the right to assistance and is protected from expulsion orders. The Law 23/2007 of 4th July is applicable</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
</tbody>
</table>

The previous regime was foreseen in the Decree-Law nr 244/98 of 8th of August, as amended by Decree-Law nr 34/2003 of 25th of February, that establishes the legal framework about entry and residence of aliens. There is no express previsions concerning the victims off trafficking.

The Decree-Law nr 34/2003 transposed the Directive 2002/90/CE of 28th of November defining the facilitation of unauthorised entry, transit and residence, as well as the Council Framework Decision of 28th November. The article 137B of the Decree-Law 34/3002, provides that to the third-country national who shown a clear intention to cooperate with the national authorities in the investigation of the action to facilitate illegal immigration may be granted residence permit without visa.
These dispositions are insufficient and little efficient in the fight against illegal immigration to minors, and preview a special regime for them. The Law 23/2007 establishes rules more favourable for the third country national concern.

Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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</thead>
<tbody>
<tr>
<td>Protection of the victims of trafficking</td>
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<tr>
<td>Explain the situation after transposition</td>
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<tr>
<td>The Law 23/2007 of 4th July (in force since 3rd August of 2007), governs the rights of treatment of the victims of trafficking and grants resources for ensure their subsistence and treatment attending their special needs, such as medical assistance and psychological assistance.</td>
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</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO
Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
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<th>Table 1</th>
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<tbody>
<tr>
<td>DECISION OF SUPREME COURTS</td>
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<td>DECISION OF APPEAL COURTS</td>
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<tr>
<td>DECISION(S) IN FIRST RESORT</td>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.
Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
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</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

For now, it is not possible to analyse the impact of the directive in the Portuguese law. Only after this Law entering in force it will be possible to analyse the administrative practices and to evaluate the impact of the transposition of this directive. It is also necessary to wait for the special law that will complement the Law23/2007 of 4th July.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

ROMANIA

By

National Rapporteur: Ruxandra COSTACHE

PhD. candidate in Law, Assistant Professor - University of Bucharest, Faculty of Law
ruxandracos@yahoo.com

Corapporteur and National Coordinator: Corneliu-Liviu POPESCU
Professor, University of Bucharest - Faculty of Law

September 1st, 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
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<td><strong>TITLE:</strong> GOVERNMENT EMERGENCY ORDINANCE AMENDING THE GOVERNMENT EMERGENCY ORDINANCE NO. 194/2002 REGARDING THE LEGAL STATUS OF ALIENS IN ROMANIA</td>
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<tr>
<td><strong>DATE</strong>:</td>
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<td><strong>PROVISIONS CONCERNED</strong>:</td>
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Table 4

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**TITLE:** LAW FOR THE APPROVAL OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 79/2005 AMENDING THE LAW NO. 678/2001 ON THE PREVENTION AND FIGHTING AGAINST TRAFFICKING IN HUMAN BEINGS

**DATE:** October 11, 2005

**NUMBER:** 287

**DATE OF ENTRY INTO FORCE:** 3 days from the date of publication in the Official Gazette of Romania

**PROVISIONS CONCERNED:** prevention and fighting against trafficking in human beings (for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 917/October 13, 2005

**LEGAL NATURE** (please tick the correct box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Table 5

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**TITLE:** GOVERNMENT EMERGENCY ORDINANCE REGARDING THE FOUNDATION OF THE ROMANIAN OFFICE FOR IMMIGRATION

**DATE:** June 20, 2007

**NUMBER:** 55

**DATE OF ENTRY INTO FORCE:** the day of publication in the Official Gazette of Romania

**PROVISIONS CONCERNED:** organisation and functioning of the national authority competent in this field (for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 424/June 26, 2007

**LEGAL NATURE** (please tick the correct box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

**Q.1.B.** Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):
• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

| TITLE: | |
| DATE: | |
| NUMBER: | |
| DATE OF ENTRY INTO FORCE: | |
| PROVISIONS CONCERNED: | (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: | |
| LEGAL NATURE (indicate by ticking the correct box): | |
| ☐ LEGISLATIVE | |
| ☐ REGULATION | |
| ☐ CIRCULAR OR INSTRUCTIONS | |

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

| LEGISLATIVE RULES | |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: | |
| COMPETENCES OF THE COMPONENTS: | |
| EXPLANATIONS IF NECESSARY: | |

| REGULATIONS | |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: | |
| COMPETENCES OF THE COMPONENTS: | |
| EXPLANATIONS IF NECESSARY: | |
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
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<tbody>
<tr>
<td>COMPETENCE CONCERNED:</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES  ☐ NO
Q.4.B.  If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES  
- [ ] NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>Table 1</th>
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<tr>
<td><strong>MISSING TEXTS</strong></td>
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<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
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Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^43\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^44\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

As provided by art. 120 index 3 par. 1 of the Government Emergency Ordinance no. 194/2002, as amended by the Government Emergency Ordinance no. 113/2005:
The aliens who are victims of trafficking in human beings, smuggling in migrants, facilitation of illegal stay of aliens on the Romanian territory may be granted a temporary stay permit, even if they have illegally entered the territory, upon request from the prosecutor or the court, subject to the following conditions:

a) they express a clear intention to cooperate with the Romanian authorities for the purpose of identification and prosecution of the participants to the crimes the respective aliens are victims of;
b) the have ceased the relations with the suspects of committing the crimes they are victims of;
c) granting the right of stay is suitable for the carrying the judicial investigations;
d) their stay in Romania does not represent a danger for the public order and the national security.


This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☐ Yes  ☐ No

Explanation:

Attempt and preparatory acts (the organization of the offences concerning trafficking) are considered criminal offences according to Law no.678/2001 art.15 para (1) and (2).

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

In principle, there is the same definition.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

   - the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
     - (a) use is made of coercion, force or threat, including abduction,, or
     - (b) use is made of deceit or fraud, or
     - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
     - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a
child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

In principle, there is the same definition.

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☑ Yes ☐ No

Explanation:

Attempt is considered a criminal offence according to GEO no.194/2002 art.130/1. All the other forms are criminally incriminated by virtue of criminal code.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults  ☒ Both adults and minors

Explanation:

There is no norm the exclude the minors, the text does not make any distinction.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: this is not the case

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •

Explanation:

There are no norms to make such distinction.
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: Romania became an EU member starting with January 1st, 2007

‘An action to facilitate illegal immigration’ (If applicable): Romania became an EU member starting with January 1st, 2007

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The law does not contain an explicit provision with respect to a specific responsible authority; therefore, it may be the Romanian Office for Immigration, police, the Public Ministry.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
☐ In writing
☒ Both orally and in writing

Explanation:

THE LAW DOES NOT EXPLICITLY PROVIDE FOR A MODALITY. Since this form is not specifically mentioned though, we should consider both as available.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

The Law requires the authorities to provide the necessary information to the person in a language he/she understands.
Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Romania became EU member starting with January 1st, 2007. We do not detain relevant information, to the date, to answer the question.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

According to art. 39 index 1 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005:

(1) Aliens regarding to whom there are serious reasons to consider that they are victims of trafficking in human beings, have a recovery and reflection period up to 90 days in order to recover, elaborate from the influence of the criminals and to make a conscious decision regarding the cooperation with the competent authorities, period when the Romanian Office for Immigration, upon request of the prosecutor or the court, grant them a decision of toleration on the Romanian territory. During the recovery and reflection period the aliens benefit of the right to be accommodated in accommodation centres.

(2) During or after the expiry of the reflection period, the aliens victims of trafficking in human beings may be granted, upon request, a permit of temporary stay, under the conditions provided by the Government Emergency Ordinance no. 194/2002, republished, with the subsequent amendments.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
Explanation:

According to art. 39 index 1 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005:
(1) Aliens regarding to whom there are serious reasons to consider that they are victims of trafficking in human beings, have a recovery and reflection period up to 90 days in order to recover, eliberate from the influence of the criminals and to make a conscious decision regarding the cooperation with the competent authorities, period when the Romanian Office for Immigration, upon request of the prosecutor or the court, grant them a decision of toleration on the Romanian territory. During the recovery and reflection period the aliens benefit of the right to be accommodated in accommodation centres.
(2) During or after the expiry of the reflection period, the aliens victims of trafficking in human beings may be granted, upon request, a permit of temporary stay, under the conditions provided by the Government Emergency Ordinance no. 194/2002, republished, with the subsequent amendments. The Government Emergency Ordinance no.194/2002, in addition to the provisions of Law no.678/2001, regulates the specific conditions in which the victim of trafficking can be legally tolerated on the Romanian territory and also the conditions in which he/she may receive the temporary residence/stay permit.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”, which are the criteria?)

---------

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Not applicable.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not applicable.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

Not applicable.
Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash    ☑ Yes, in kind    ☐ No

Explanations:

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:
The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.

After the issue of the residence permit

☐ Yes, in cash    ☑ Yes, in kind    ☐ No

Explanations:

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:
The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The support consists in accommodation in special accommodation centres.

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

The support consists in accommodation in special accommodation centres.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes        ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The support consists in accommodation in special accommodation centres.

After the issue of the residence permit:

☑ Yes        ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The support consists in accommodation in special accommodation centres.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes        ☐ No

Explanation:

The national legislation refers to a language the alien understands.

After the issue of the residence permit:

☑ Yes        ☐ No

Explanation:

The national legislation refers to a language the alien understands.
Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation:
The national legislation refers to a language the alien understands.

After the issue of the residence permit:

☑ Yes ☐ No

Explanation:
The national legislation refers to a language the alien understands.

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

According to art. 44 of the Law no. 678/2001:
The victims of trafficking in human beings have the right to receive the compulsory legal assistance in order to exercise their rights in the criminal procedures provided by the law, at all stages of the criminal procedure, and to sustain their applications and civil claims against the persons who have committed the crimes provided by this law, and in which such persons are involved.

After the issue of the residence permit:

☑ Yes ☐ No
Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

According to art. 44 of the Law no. 678/2001:
The victims of trafficking in human beings have the right to receive the compulsory legal assistance in order to exercise their rights in the criminal procedures provided by the law, at all stages of the criminal procedure, and to sustain their applications and civil claims against the persons who have committed the crimes provided by this law, and in which such persons are involved.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? *See mandatory provision in article 7(1).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only.)

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:
The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.
The text does not specify what kind of medical assistance.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.)

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:
The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.
The text does not specify what kind of medical assistance.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))
Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

According to art.38 para 5 of Law no.287/2005, the victims of traffic may benefit of mental and psychological counseling, in a language that they understand, as well as of medical and social assistance. There are no differences between the treatment granted before or after the issue of the residence permit.

After the issue of the residence permit

☒ Yes ☐ No

Explanation:

According to art.38 para 5 of Law no.287/2005, the victims of traffic may benefit of mental and psychological counseling, in a language that they understand, as well as of medical and social assistance. There are no differences between the treatment granted before or after the issue of the residence permit.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:

The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.

The text does not specify what kind of medical assistance.

After the issue of the residence permit

☒ Yes ☐ No
Explanation:

According to art. 38 par. 5 of the Law no. 678/2001, as modified by the Government Emergency Ordinance no. 79/2005 and the Law no. 287/2005:
The victims of trafficking in human beings may benefit of psychic and psychological support, in a language they understand, as well as social and medical assistance.
The text does not specify what kind of medical assistance.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:

The Romanian legislation (Law no.678/2001, art.26 para(4) and (5)) regulates as persons with special needs the following categories of persons: (i) minors victims of traffic; (ii) women victims of traffic and (iii) women with high risk of potentially becoming victims of traffic.
Women (in general, regardless of their situation) victims of the trafficking, but also those who are potentially exposed to the trafficking risk do receive a special protection and assistance. Therefore, all women, victims or potential victims of traffic are entitled to specific protection and social assistance.
This special protection is offered regardless of whether the situation occurred before or after the issue of the residence permit.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
Explanation: (If he answer is “yes”, explain the criteria that have to be met)

As provided by art. 120 index 3 par. 1 of the Government Emergency Ordinance no. 194/2002, as amended by the Government Emergency Ordinance no. 113/2005:
The aliens who are victims of trafficking in human beings, smuggling in migrants, facilitation of illegal stay of aliens on the Romanian territory may be granted a temporary stay permit, even if they have illegally entered the territory, upon request from the prosecutor or the court, subject to the following conditions:
a) they express a clear intention to cooperate with the Romanian authorities for the purpose of identification and prosecution of the participants to the crimes the respective aliens are victims of;
b) the have ceased the relations with the suspects of committing the crimes they are victims of;
c) granting the right of stay is suitable for the carrying the judicial investigations;
d) their stay in Romania does not represent a danger for the public order and the national security.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☑ Yes ☐ No

Explanation:
The issue of a residence permit for victims of traffic may be refused for reasons related to public order and national security (GEO no.194/2002, art 120/3 para 1 lit.d).

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

6 months, with the possibility of extension for new periods, under the same conditions

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Possibility of extension for new periods of 6 months, under the same conditions as in the case of granting the residence permit.
**Minors**

**Q.12.** (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. *See article 10*):

**Q.12.A.** Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? *See article 10(a).*

The legislation explicitly provides that it shall be taken into account the superior interest of the child, without any additional explanations.

**Q.12.B.** Has your Member State extended the reflection period for minors? *See article 10(a).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: For how long?)

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**Q.12.C.** Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? *See article 10(a).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If yes, explain which measures are taken)

----------

**Q.12.D.** Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

They have access to the compulsory state educational system, but only if they "live" in Romania.
This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)**

☑ Yes  ☐ No

**Explanation:**

The minors, victims of traffic, receive a special protection and assistance, in accordance with their age. (Law no.678/2001, art.26 para (4)).

**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c)** (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Art. 121 par. 1 of the Government Emergency Ordinance no. 194/2002, as republished, provides that:

1) In case of minor aliens entering unaccompanied on the Romanian territory, the Romanian Office for Immigration and its territorial units shall act as follows:
   a) shall establish their identity and way of entering the territory;
   b) irrespective of their way of entering in Romania, they shall be offered representation through a competent institution according to the law, which shall ensure their protection and necessary care, including accommodation in special centres for protection of minors, under the same conditions to those for Romanian minors;
   c) take steps for the identification of the parents, irrespective of the latter’s place of residence, with a view to family reunification;
   d) if the parents are identified, minors of scholar age shall have access to the education system;
   e) if the parents of the minor do not have their residence on the Romanian territory, the minor shall be returned to the state of his/her parents’ residence or in the state where other family members have been identified, with their approval;
   f) if the parents or other family members could not be identified, or if the minor is not accepted by the state of origin, he/she shall be granted the right of temporary stay on the Romanian territory.

**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

There are no derogatory provisions for the victims, the general legislation regarding the aliens shall apply.
**Q.13.B. Do the holders of the residence permit have access to vocational training?** See article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] Yes
- [x] No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

There are no derogatory provisions for the victims, the general legislation regarding the aliens shall apply.

**Q.13.C. Do the holders of the residence permit have access to education?** See article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] Yes
- [x] No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

There are no derogatory provisions for the victims, the general legislation regarding the aliens shall apply. Minors have access to education.

**Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit?** See article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] Yes
- [ ] No

**Explanation:**

No object.
Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them.

The Law no.678/2001 provides the right for the victims of trafficking to a physical, emotional and social recovery. The victims may also benefit of reintegration, under the same conditions as the aliens with residence permit.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation: There are only general programs for aliens.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation:
Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:
The extension of the right of stay shall be done under the same conditions as those regarding its granting.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

Article 120 index 3 par. 3 of the Government Emergency Ordinance no. 194/2002, as amended by the Government Emergency Ordinance no. 113/2005 provides that:
(3) The right of stay may be revoked in the following cases:
a) when the conditions allowing the aliens victims of trafficking in human beings to obtain a permit of temporary stay, are not met anymore;
b) the holder of the right of stay intentionally has renewed the contacts with the persons suspect of trafficking in human beings;
c) if it is acknowledged that the alien intentionally misinformed the competent authorities with regard to the capacity of victim or with regard to the data and information provided;
d) when the victims does not cooperate anymore;
e) when the competent authorities decide that it exist one of the cases provided by the Code of Criminal Procedure, when the criminal prosecution cannot continue anymore.


The authority which has granted the right of stay can decide to revoke it.
Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Romania became an EU member starting with January 1st, 2007.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

Romania became an EU member starting with January 1st, 2007.
## THIRD PART

### IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable.** Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

- Before the adoption of the Directive, the general framework regarding the protection of victims of trafficking was set in place.
- The national legislation has been improved after the adoption of the Directive. That implies that, before the Directive, Romania had a specific legislation in the field and also concerns regarding the situation of the victims of trafficking. The Directive introduced though more specific rules and also obliged the State to introduce enforcement measures.

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

*When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
</tr>
<tr>
<td></td>
<td>□ Status quo</td>
<td>□ In line with the directive</td>
</tr>
<tr>
<td></td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

- [x] YES  
- [ ] NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

- [ ] YES  
- [x] NO

**Q.31.C.** If yes, give some examples:

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**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

----------
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

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Explain the difficulties that this could create:

-------------
ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

There are difficulties related to the application at the national level, due to the fact that the provisions of the directive are to be found in two laws, one previous (the Law no. 678/2001) and one subsequent (the Government Emergency Ordinance no. 194/2002, as amended).

Observation: The evolution of the legislation, the jurisprudence and the practical aspects are not relevant, as Romania became an EU member only from January 1st, 2007.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

Slovak Republic

By

Stevulova Zuzana

Mgr., Lawyer, stevulova@lawclinic.sk

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>The Act on the Stay of Aliens and on Amendments and Modifications to Some Other Acts</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>48/2002</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>2.2.2002</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Articles: 1; 3; 4/b; 43/l/e; 43/7; 43/8; 43/9; 43/10; 44/2; 44/3; 56/first sentence; 57/11/d;</td>
<td></td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>☒ LEGISLATIVE</td>
<td>☐ REGULATION</td>
</tr>
</tbody>
</table>
Table 2

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: The Act on the Amendments and Modifications to the Act No. 48/2002 on the Stay on Aliens and on Amendments of Some Acts as Amended, and on Amendments of Some Acts

NUMBER: 693/2006
DATE OF ENTRY INTO FORCE: 1.1.2007

PROVISIONS CONCERNED: Article I. Point 65, 68, 69, 70, 71, 107 ; Article III. Point 1, 2
(for example if the norm also pursues other objectives than the transposition of the concerned directive)


LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

TITLE: Criminal Code
DATE: 20.5.2005
NUMBER: 300/2005
DATE OF ENTRY INTO FORCE: 1.1.2006

PROVISIONS CONCERNED: Articles : 179 ; 355; 356 ;
(for example if the norm also pursues other objectives than the transposition of the directive)

REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 129/2005 page 3002

LEGAL NATURE (indicate by ticking the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS
**Table 2**

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>Criminal Procedure Code</th>
</tr>
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<tbody>
<tr>
<td>DATE:</td>
<td>24.5.2005</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>301/2005</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1.1.2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Articles : 2/20 ; (for example if the norm is not devoted only to the transposition of the concerned directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>129/2005 page 3098</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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<td>☐ REGULATION</td>
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<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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</table>

**Table 3**

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>The Act on the Police Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE:</td>
<td>6.7.1993</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>171/1993</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1.9.1993</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Articles : 2/1/a ; (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>46/1993 page 770</td>
</tr>
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<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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**Table 4**

<table>
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<tbody>
<tr>
<td>DATE:</td>
<td>4.12.2007</td>
</tr>
<tr>
<td>NUMBER:</td>
<td>386/1997</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1.1.1998</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Articles : 1 / 2 ; (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>146/1997 page 3583</td>
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<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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</table>
Table 5

<table>
<thead>
<tr>
<th>TITLE</th>
<th>The Act on Social Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>19 May 1998</td>
</tr>
<tr>
<td>NUMBER</td>
<td>195/1998</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Articles: 1;</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate by ticking the correct box):</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE</th>
<th>The Act on Aid in Material Poverty and on Amendments of Some Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>11.11.2003</td>
</tr>
<tr>
<td>NUMBER</td>
<td>599/2003</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1 January 2004</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Articles: 1; 3;</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION</td>
<td>IN THE OFFICIAL JOURNAL:</td>
</tr>
<tr>
<td>LEGAL NATURE</td>
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<td>☐ REGULATION</td>
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</table>

<table>
<thead>
<tr>
<th>TITLE</th>
<th>The Act on Services of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>4.12.2003</td>
</tr>
<tr>
<td>NUMBER</td>
<td>5/2004</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>1.2.2004</td>
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<tr>
<td>PROVISIONS CONCERNED</td>
<td>Articles: 22/5/g;</td>
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<td>LEGAL NATURE</td>
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<td>☒ LEGISLATIVE</td>
<td></td>
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<td>☐ REGULATION</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Procedure on granting the residence permit for the victim of trafficking</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Local Departments of the Aliens Police (for granting the residence permits) and Departments of Border Police (for granting the entry visas for the Aliens)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>They are all State Authorities, under the subordinations of the Ministry of Interior</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Procedure of the investigation and detection of the crimes on trafficking in human beings or the crimes of illegal immigration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Police Force</td>
</tr>
</tbody>
</table>
| OTHER LEVEL OF ADMINISTRATION: | International Police Cooperation Office  
Office on the Fight against the Illegal Immigration  
Office on the Investigation of the Particular Serious Crimes  
Departments of the Police Force (Local, Regional) |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) |                                                                                                                  |

### Table 3

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decision on granting the aid in material poverty according to the Act No. 599/2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour, Social Affairs and Family</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Headquarters for labour, social affairs and family</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Local offices for labour, social affairs and family</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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### Table 4

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>The social aid in the process of finding the employment opportunities according to the Act No.: 5/2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour, Social Affairs and Family</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Headquarters for labour, social affairs and family</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Local offices for labour, social affairs and family</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Legal entities and persons empowered by the Headquarters on providing the aid on finding the employment opportunities under the charge</td>
</tr>
</tbody>
</table>

### Table 5

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Providing the basic health care for the victims of trafficking according to the Act No.: 576/2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td></td>
<td>Ministry of Public Health</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Currently, it is not legally defined and practically cleared who will be responsible and / or pay for the health insurance and/or pay for the basic health care in such case. But the basic responsibility is on the Ministry of Interior as the central authority for dealing with the target group.</td>
</tr>
</tbody>
</table>
Currently, it is not legally and practically defined, who will be responsible and/or provide and/or pay for the additional educational courses for the victims of trafficking. But the basic responsibility is on the Ministry of Interior as the central authority for dealing with the target group.

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES  ☒ NO

There is no central regulation foreseen by the central norm of transposition.

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES  ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- ‘Trafficking in human beings’ only
- ‘An action to facilitate illegal immigration’ only
- Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The mandatory provision of article 3/1 of the Directive has been transposed to the Act on the Stay of Aliens by the transposition norm No. 693/2006 (entry into force on 1.1.2007). The content of the article is envisaged in the provisions regulating the reasons for granting the tolerated stay on the territory of Slovakia. Slovakia did not transpose the optional article 3/2 of the Directive.

Reference:
- Verification could be made with reference to the official table of correspondence sent to the Commission (available on the website of Ministry of Interior http://www.minv.sk/pk/) as well;
- Verification could be made also with reference to the content of the article 43/1 lit.e) of the Act on the Stay of Aliens where the article 3/1 of Directive has been transposed.

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☒ Yes ☐ No

Explanation:
The definition of the offences related to the trafficking in human beings is included in the § 179/1 of the Criminal Code. It is a wide definition, which includes also the acts defined in Article 1 and 2 of the Framework decision 2002/629/JHA.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Yes, the national definition of “trafficking in human beings” is identical with the definition in the Framework Decision.

The definition of “trafficking in human beings” is not mentioned in transposition norm, nor in the Act on the Stay of Aliens. They both refer to the article 179 of the Criminal Code (which regulates the definitions of the crimes), where the provisions of article 1 of the Framework Decision were transposed since 1.1.2006.

The definition of “trafficking in human beings” in the article 179/1 envisaged the provisions I n Art.1/1. and Art.1/2. of the Framework Decision.

The provisions of Art.1/3. and art.1/4. of the Framework Decision are transposed to the article 180 and article 181 – “Trafficking in children” - of the Criminal Code. The term “child” is defined in the first part of the Criminal Code – Head V., article 127/1 as: “For the purpose of this act, “child” shall mean any person below 18 years of age, except he/she did achieve the majority earlier”. The last part of the definition (underlined) is therefore the deviation to the definition of child in the Framework Decision. This deviation shall refer to the internal civil law regulation on achievement of the majority age, which stipulates single one possibility of being legally considered as a major while still below 18 years of age, by get in marriage upon the permission of the Court.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

47 This means, that a minor older than 16 years received the permission of the Court to get married and by matrimonial act achieved the majority.
1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
(a) use is made of coercion, force or threat, including abduction, or
(b) use is made of deceit or fraud, or
(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.
This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes  ☐ No

Explanation:

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Adults  ☐ Both adults and minors

Explanation:

The article 43/1/e of the Act on the Stay of Aliens, where is the provision concerned transposed in regulates: “Police department shall grant the permission for tolerated stay to an alien who is a victim of trafficking in human beings if he/she is at least 18 years old; ... “. 
Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: **What is the age of majority according to the national law of your Member State?**

**The age of majority is:** 18 years of age. Prior to that age, an individual shall achieve the majority by contracting marriage upon the clarification of the Court, if he/she is more than 16 years old. The age of majority and possibility to achieve majority prior to the age of 18 years are stated in the article 8/2 of the Civil Code (Act No. 40/1964 Coll. Civil Code, as amended).

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: **Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?**

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- [ ] All minors

- [ ] Minors, for which the following criteria are fulfilled:
  - •
  - •
  - •
  - •
  - •

Explanation:

Q.7. **How many persons received residence permits under the national norms of transposition in your Member State in 2006?**

- **‘Trafficking in human beings’**: 0, as the transposition norm came into force on 1.1.2007.

- **‘An action to facilitate illegal immigration’** (If applicable):

**Information given to the third-country nationals concerned**

Q.8. **According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.**
Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

According to the article 43/1 lit.e) (sentence behind the semicolon) of the Act on the Stay of Aliens, the authority responsible for providing the third-country nationals concerned with the information is the authority active in the criminal proceedings or a person authorized by the Ministry of Interior. All of them are public authorities.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☒ Both orally and in writing

Explanation:

The Act on the Stay of Aliens and its articles concerning victims of trafficking do not deal with the providing of the information according to the article 5 of the Directive in detail. Article 43/1 lit. e) of the Act stipulates: “… authority active in the criminal proceeding or a person authorized by the Ministry of Interior shall inform an alien on the possibility and conditions for granting the tolerated residence permit because of this reason (means reason of being victim of trafficking) and on right and duties while being granted the permit.”

The exercise of the right for the information is governed by the articles 46 - 54 in the First part, Head II, Section 7 of the Criminal Procedure Code dealing with the rights and duties of victims of the criminal acts in general. According to the article 49:
(1) Authority active in the criminal proceedings shall provide a victim with written information on his/her rights in the criminal proceedings and on organizations providing the aid for the victims including the services offered, in first contact with the victim.
(2) Authority active in the criminal proceedings and the Court shall instruct the victim on his rights and provide him with the full possibility for the enjoyment.

In compliance with above mentioned, the enjoyment of the right for information offered under the Directive shall be based on the right for the information and aid provided to the victim of criminal act in criminal procedure in general. Out of the practical implementation of above mentioned article 49 of the Criminal Procedure Code, the responsible authorities provide the victims of crimes with pre-paid written instruction on their rights as well as with the oral instructions.

As far as there is no specification with reference to the information of victims of trafficking under Directive in particular; and regarding to the provisions in the Criminal Procedure Code which shall apply in criminal proceedings at all, the right on information under the article 5 of the Directive shall be subjected to the article 49 of the Criminal Procedure Code.
Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

There are basic information on the legal position of the victim, list of basic rights and contact information of NGOs in various languages.

Than, there are leaflets created by:
- Ministry of Interior: leaflet informing the third country national concerned on his rights, protection and assistance available and contact information on NGO SKC Dotyk. This leaflet is in 9 languages - Slovak, English, Polish, Vietnam, Russian, Moldovian, Romanian, Ukrainian and Hungarian.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Those leaflets provide the third country national with the basic information on the legal position and rights and contact information. Their aim is to provide a person with basic orientation only. I appreciate the information written in different languages (the leaflet of Ministry).

Information given by the authorities is usually provided in official manner, without detail explanation which might cause misunderstanding, especially for an alien with limited legal knowledge. Than, the need of additional explanation and orientation by the lawyer with interpreter might be the necessity.

It is difficult to answer the practical issue, as there is still no third country national concerned with residence permit since January 2007.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No
**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

Yes, even though the law does not recognize the term ‘reflection period’. The Act on the Stay of Aliens regulates the granting of the first tolerated stay residence permit for the victim of trafficking, which can be considered as a reflection period regarding to its content and to the Explanation Statement of the Ministry of Interior attached to the proposal of the act No.693/2006 on transposition of the Directive.

In compliance, the reflection period is 40 days and starts with the day of the beginning of the first tolerated stay residence permit. According to the article 43/7 of the Act on the Stay of Aliens, the police department shall grant the residence permit for the tolerated stay based on this reason maximum for the period of 40 days (this means first permission).

According to the article 43/8 of the Act on the Stay of the Aliens, police department shall prolonged the residence permit for the period of minimum 180 days, and the prolongation shall be repeated, if the reason for granting the residence permit continuous and the presence of the alien concerned is necessary for the purpose of the criminal proceedings.

**Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders?** See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)  
[ ] Yes  [ ] No

**Explanation:**

The protection against expulsion while being in the reflection period is transposed in the article 57/11 lit.d) of the Act on the Stay of Aliens, which regulates: “Police department shall not administrative expel an alien granted the residence permit for tolerated stay under the article 43/7 (which is the article providing victim of trafficking with the first residence permit for reflection period of maximum 40 days)”.

**Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)  
[ ] Yes  [ ] No

**Explanation:** (If the answer is “yes”, which are the criteria?)

The Act on the Stay of Aliens does not recognize the term ‘termination of the reflection period’. The act provides only the criteria for the withdrawal of the residence permit, which shall apply to the first residence permit (equal to reflection period) as well as to the withdrawal of second and further residence permits (equal to renewed residence permit). For that reason we can consider the criteria for the withdrawal of the tolerated stay residence permit stated in article 44/3 of the Act as the criteria for the termination of the reflection period.

Reasons for termination of the reflection period were transposed to the Act as the reasons for withdrawal of the residence permit and are specified in the article 44/3 lit. a) :

- The alien renewed contact with the persons suspected to perpetrate the offences related to the trafficking in human beings;

And to the article 44/3 lit. d) :

- For the reasons of threat to national security or to the public order.
Other criteria for withdrawal of the residence permit and all the same for the termination of the reflection period are as follows:

Police department shall terminate the tolerated residence permit if:
- The legal reason for granting the residence permit extinct (art.44/2);
- The cooperation of the alien with the authority active in criminal proceedings was assumed (art. 44/3 lit. b);
- The alien cease to cooperate with the authority active in criminal proceedings (art. 44/3 lit. c).

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

The authority competent to take decision in the case of residence permit is department of alien’s police as a part of the Bureau of the Border and Aliens Police of the Police Directory of Police Force.

The Act on the Stay of Aliens uses the term ‘police department’ for recognition of the competent authority.

According to the article 80/1 of the Act, the police department competent due to the residence or presumed residence of an alien concerned shall act in the cases of residence permit under the provisions of the Act on the Stay of Aliens, if special law does not provide otherwise.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

The procedure on termination of the reflection period or withdrawal of the residence permit takes place if the criteria mentioned in Q.9 are met. An alien shall inform competent police department if the reason for granting the residence permit extinct within the period of 15 days since being informed on that circumstance. This obligation is stated in the article 44/1 of the Act on the Stay of Aliens. The police department shall take the action on withdrawal of the permit upon the information of an alien concerned or ex offo upon its own investigation. Based on the outcomes of the evaluation of the situation, the police department shall take the decision on the withdrawal of the residence permit if appropriate.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

During the first five months of the effectivity of the amended version of the Act on the Stay of Aliens with transposed Directive, I do not have any information on the granting of tolerated residence permit for the victim of trafficking with the human beings; therefore I cannot respond this question in this time.

Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).
Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes, in cash ☑ Yes, in kind ☐ No

Explanation:

Various types of the support available for the victims of trafficking:

1. Accommodation
   According to the provision of article 43/9 of the Act on the Stay of Aliens, Ministry of Interior shall provide an alien granted tolerated stay for the reason of being victim of trafficking appropriate accommodation if he/she is not able for self-ensurance of the accommodation.

   According to the available information, the Ministry of Interior chose two NGOs providing the accommodation and psycho-social and legal aid for the victims of trafficking while being in reflection period. Those organizations are: Slovak Crisis centre Dotyk – “SKC Dotyk” (in the town called Beckov) and Storm. The accommodation, legal, psychological and social assistance is provided by the NGO SKC Dotyk.

2. Benefit in the material poverty and contributions
   According to article 3 of the Act No.599/2003 on Aid in Material Poverty and on Amendments of Some Acts (AAMP), an alien shall be considered as a citizen for purposes of ensuring basic subsistence and aid in the material poverty, if he/she is not receiving the aid in accordance with the provisions of special acts (means Act on the Stay of Aliens).

   According to the AAMP, person is entitled for the benefit if he/she is considered as being in material poverty. Material poverty means (§2 of AAMP), that the income of the person considered is below the minimum living standard and he/she is unable to ensure or increase the income by him/herself.

   Minimum living standard is accepted minimal standard of incomes of a person, which, if not achieved, creates the material poverty of that person. The amount of minimum living standard is evaluated to the 1st of July annually. Currently, minimum living standard is amount of -4980,- SK for single adult person per month (approximately 146, 5 EURO).

   Bearing in mind above mentioned provisions, an alien – victim of trafficking is entitled for the benefit under the AAMP if he/she could be considered as a person in material poverty that means a person whose monthly incomes are below the amount of 4980 SK.

   Benefit could be provide in cash, in kind or combined.
   Benefit provided in cash is paid regularly per month, on the month following the month of the demand. The payment could be done in advance.
   Benefit in kind means one meal per day, necessary clothes and shelter.

   The contribution to the benefit could be providing to entitled person upon conditions stated in the AAMP. The contribution could take the form of:

   - Contribution to the medical care;
   - Contribution for activity;
   - Protective contribution; and
   - Contribution for the accommodation.

   The authority competent for providing the benefit and contribution/contributions to the person is the Office for Employment, Social Affairs and Family, which provides the benefit and contribution not longer than two years since the date of having demand for the benefit for the first time, than the competency is derogate to the commune.
3. Simple benefit in material aid

The simple benefit could be providing for the person in material poverty entitled to and receiving benefit and contribution mostly for the:
- Payment for the extraordinary outcomes for the necessary clothes;
- Basic equipment of the household;
- Payment for the school instrument for the unprovided – for child;
- Payment for extraordinary medical care.

The amount of the simple benefit is in the amount of real proved expenses, not more than the triple amount of the minimum living standard (max. 14 940 SK; 439,4 EURO).

After the issue of the residence permit

☑ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

The related provisions of the Act on the Stay of Aliens do not distinguish between the reflection period and the period after issuing residence permit. In both cases, the tolerated stay is granted to the victim of trafficking with the objection of period limitation of first residence permit on maximum 40 days (what shall have the meaning of reflection period). Therefore, the provisions of the Act on the Stay of Aliens referring to the support provided by the authorities shall apply to an alien granted the first tolerated stay for 40 days as well as to the victim of trafficking with renewed residence permit. So, the third country national has still the right for accommodation if he is not able to arrange by himself/herself alone (§43/9 of the Act on the Stay of Aliens). An alien has the right for apply for the benefits in material poverty as well. However, after the reflection period of 40 days, the State does not re – found the costs of the assistance provided by the NGOs.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

The amount of the benefit provided according to the §10 sub.2 lit a) AAMP is 1640 SK (approximately 48 EURO) per month for single person in material poverty. The law does consider an alien as a citizen for being granted the benefit. The amount might be subjected to the change upon the particular conditions of an individual (pregnancy, number of unprovided-for children considered with an individual, etc.)

The amount of the simple benefit is in the amount of real proved expenses, not more than the triple amount of the minimum living standard ( max. 14 940 SK; 439,4 EURO).

Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

From my point of view, the support which shall be given to the victim of trafficking is low, but sufficient to ensure ‘standards of living capable of ensuring their subsistence’. However, as there is no practise in the time of writing this report, the conclusion is based only on the legal provisions not on the real practise.
Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

According to the information given in the National Action Plan against the Trafficking in People for the years 2006-2007, fight against the trafficking in people is one of the priorities for the State. Unfortunately, as the Plan declares, Slovakia has been criticized for the lack of sufficient legal and practical institutions providing the help for the victims of trafficking who were not Slovak nationals. The legal position of an alien victim of trafficking is now stipulated by the transposition of Directive concerned. However, there is still lack of sufficient programmes and schemes able to provide the victim with shelters or long-term accommodation. The NGOs active in this field are mostly working on regional level and only few of them have enough financial and institutional background for providing the sufficient aid.

Victims of trafficking could receive the protection based on the provisions of the Criminal law protected the victims of criminal acts in general. There are no special provisions related to the protection of victim of trafficking particularly.

According to the Criminal Procedure Code, if the victim of trafficking decides for cooperating with the police, such person has two positions in the criminal proceedings – witness status and victim of the crime status.

A witness in criminal proceedings might be protected by the institute of confidentiality of the identity or the protection based on the provisions of the Act No.: 256/1998 on the protection of witness and amendments and modifications of some acts (“Act on protection of the witness).

The first institute is regulated by the § 136 of the Criminal Procedure Code and shall protect the identification data of witness if he/she or his/her close relative is in danger. The confidentiality shall include the address of a witness or all the identity data of the witness. In such case, the documents concerning the protected data are not included in the criminal folder and are attached there only in the case that the danger does not exist anymore. The interview of such witness, depending on the particular circumstances of the case, might be done with the help of special technical instruments able to change the voice, appearance, height and weight of the witness. In special case, the legend (collection of false identification data) might be used like in the case of the special agent.

The Act on the protection of the witness defines the status of witness in danger and protected witness. The witness in danger is a witness (or his/her close relative), who might have a well founded fear of being in the risk for the reason of his testimony.

The protected witness is a person (or his/her relative) in the witness protection program. The witness protection program is the collection of protective instruments based on the written agreement between the witnesses in danger (if he/she is legally capable), authorities in criminal proceedings and special commission (authorized to confirm the inclusion of the witness in danger to the witness – protection program). The agreement shall include the list of rights and duties of both sides and the instruments done for the protection of the witness, based on the particular circumstances.

Regarding to the activities of the NGOs, I found out the information from NGO SKC Dotyk only. They declared, that they are able to provide the victims of trafficking (both Slovakian and third country nationals) with the shelters and concealed protected accommodation, by the network of protected flats. In such cases, the protection of accommodated persons is arranged by the organisation using the employees of its own security service with awarded licence.
After the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Victims of trafficking could receive the protection based on the provisions of the Criminal law, protected the victims of criminal acts in general. There are no special provisions related to the protection of victim of trafficking particularly.

According to the Criminal Procedure Code, if the victim of trafficking decides for cooperating with the police, such person has two positions in the criminal proceedings – witness status and victim of the crime status.

A witness in criminal proceedings might be protected by the institute of confidentiality of the identity or the protection based on the provisions of the Act No.: 256/1998 on the protection of witness and amendments and modifications of some acts (“Act on protection of the witness”).

The first institute is regulated by the § 136 of the Criminal Procedure Code and shall protect the identification data of witness if he/she or his/her close relative is in danger. The confidentiality shall include the address of the witness or all the identity data of the witness. In such case, the documents concerning the protected data are not included in the criminal folder and are attached there only in the case that the danger does not exist anymore. The interview of such witness, depending on the particular circumstances of the case, might be done with the help of special technical instruments able to change the voice, appearance, height and weight of the witness. In special case, the legend (collection of false identification data) might be used like in the case of the special agent.

The Act on the protection of the witness defines the status of witness in danger and protected witness. The witness in danger is a witness (or his/her close relative), who might have a well founded fear of being in the risk for the reason of his testimony.

The protected witness is a person (or his/her relative) in the witness protection program. The witness protection program is the collection of protective instruments based on the written agreement between the witnesses in danger (if he/she is legally capable), authorities in criminal proceedings and special commission (authorized to confirm the inclusion of the witness in danger to the witness – protection program). The agreement shall include the list of rights and duties of both sides and the instruments done for the protection of the witness, based on the particular circumstances.

Regarding to the activities of the NGOs, I found out the information from NGO SKC Dotyk only. They declared, that they are able to provide the victims of trafficking (both Slovakian and third country nationals) with the shelters and concealed protected accommodation, by the network of protected flats. In such cases, the protection of accommodated persons is arranged by the organisation using the employees of its own security service with awarded licence.

**Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☑ Yes  ☐ No
Explanation:

There are general legal guarantees for the right to act in the language he/she understands guaranteed in the Act No.460/1992 Coll. Constitution of the Slovak Republic (article 47) and in the Criminal Procedure Code in article 2/20 providing the victim of crime with the right for the interpreter or translator if he/she does not understand the language of the proceedings.

After the issue of the residence permit:

☑ Yes
☐ No

Explanation:

There are general legal guarantees for the right to act in the language he/she understands guaranteed in the Act No.460/1992 Coll. Constitution of the Slovak Republic (article 47) and in the Criminal Procedure Code in article 2/20 providing the victim of crime with the right for the interpreter or translator if he/she does not understand the language of the proceedings.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes
☐ No

Explanation:

There are general legal guarantees for the right to act in the language he/she understands guaranteed in the Act No.460/1992 Coll. Constitution of the Slovak Republic (article 47) and in the Criminal Procedure Code in article 2/20 providing the victim of crime with the right for the interpreter or translator if he/she does not understand the language of the proceedings.

After the issue of the residence permit:

☑ Yes
☐ No

Explanation:

There are general legal guarantees for the right to act in the language he/she understands guaranteed in the Act No.460/1992 Coll. Constitution of the Slovak Republic (article 47) and in the Criminal Procedure Code in article 2/20 providing the victim of crime with the right for the interpreter or translator if he/she does not understand the language of the proceedings.
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

There is no legal provision providing third – country nationals concerned with the right for free legal aid specifically.

The free legal aid to the third country national concerned is provided by the NGOs active in this field. According to the NGO “SKC Dotyk” (Slovak Crisis Centre Dotyk), they provide the third country national concerned with the free legal aid if they are within their program. The legal aid is provided by contracted attorneys (only attorney shall act in criminal proceeding in Slovakia) and is founded by the Ministry of Interior in the reflection period only. After the reflection period, the costs of the legal aid are found by the NGO.

The free legal aid shall be afforded by another NGOs active in this field:
- Aliancia žien Slovenska (Alliance of the women in Slovakia) which established NGO Cesta späť (Course return) dealing with the issue of trafficking;
- Migration information centre of IOM (www.mic.iom.sk) providing the migrants with counselling including basic legal orientation
- IOM (International Organization for Migration) providing the third country national with the assistance if willing to return to the country of origin;

Then, a third country national concerned has the possibility to apply for free legal aid from the Centre of Legal Aid (CLA) established by the State, but only in issues concerning:
- Family law
- Labour law
- Across – borders causes regarding the commercial law in particular

There is stated explicitly, that the CLA can not provide the legal aid in criminal law, social security law, administrative law and administrative judicial law.

An applicant for the legal aid provided by the CLA must be a person in the material poverty (meaning that his monthly amount is below the amount of 1,4 x of the amount of minimal living costs – 7182 Sk/ 211 Euro for adult person per month) and at the same time, he/she is not able to sustain the costs of the legal aid by his/her property. Than, it must be the case which is not manifestly unfounded and the value of the case must be minimum 7600 Sk / 223,5 Euro (stated by the directive of the State). The CLA provides the legal aid in inter – Slovakian cases for everybody fulfilling the above mentioned conditions. In extra-territorial cases for the persons with the habitual or regular stay within EC, except Denmark, only. The additional information and application form could be downloaded on www.legalaid.sk

After the issue of the residence permit

☐ Yes  ☒ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

As mentioned in previous question.
Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

The legal basis for providing the third-country nationals with emergency medical care is established in the article 11/1 of Act No. 576/2004 Coll. The Act on the Health Care, Services Related with the Providing of the Health Care and on the Amendment and Modifications of some Acts (Act on Medical Care). The article regulates: Everyone has the right for the medical care. Article 78/1 lit b) of the Act No. 578/2004 Coll. on the Providers of the Health Care, Medical Staff, Professional Organizations in the Public Health and on the Amendment and Modifications of some Acts (Act on Providers of Medical Care) states that the provider of the medical care holding the permission or licence for providing the self-governing medical practice shall provide the emergency medical care to everyone and provide the collaboration to the provider of the emergency rescue service upon the directive of the operation centre of the emergency rescue service.

After the issue of the residence permit

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only).

The legal basis for providing the third-country nationals with emergency medical care is established in the article 11/1 of Act No. 576/2004 Coll. The Act on the Health Care, Services Related with the Providing of the Health Care and on the Amendment and Modifications of some Acts (Act on Medical Care). The article regulates: Everyone has the right for the medical care. Article 78/1 lit b) of the Act No. 578/2004 Coll. on the Providers of the Health Care, Medical Staff, Professional Organizations in the Public Health and on the Amendment and Modifications of some Acts (Act on Providers of Medical Care) states that the provider of the medical care holding the permission or licence for providing the self-governing medical practice shall provide the emergency medical care to everyone and provide the collaboration to the provider of the emergency rescue service upon the directive of the operation centre of the emergency rescue service.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)
Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

Before the issue of the residence permit:

☐ Yes ☒ No

Explanation:

There is no legal provision concerning the special needs of the most vulnerable, tranposing the provision of the article 7(1) second sentence of the Directive to the Act on the Stay of Aliens. The provisions stipulating the obligation of the State to provide accommodation for the third country national concerned if he /she is not able to arrange one is included in the Act on the Stay of Aliens only.

After the issue of the residence permit

☐ Yes ☒ No

Explanation:

There is no legal provision concerning the special needs of the most vulnerable, tranposing the provision of the article 7(1) second sentence of the Directive to the Act on the Stay of Aliens. The provisions stipulating the obligation of the State to provide accommodation for the third country national concerned if he /she is not able to arrange one is included in the Act on the Stay of Aliens only.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation:

According to the § 43/ sub. 10 of the Act on the Stay of Aliens, the authority active in the criminal proceedings or person authorized by the Ministry of Interior shall inform the victim of trafficking on tolerated stay on the eventually existing programmes or projects aimed to his integration into the society. This is not a legal obligation for the State to provide the third country national with the psychological help. However, according to the information provided by the NGO SKC Dotyk, the Ministry of Interior does retire the costs for the accommodation and necessary assistance for the third country national in the reflection period of 40 days, including the cost of the psychological assistance. This means, that the services are provided by the NGO SKC Dotyk, but re-found by the Ministry of Interior.
However, as mentioned above, since January 2007, there was no third country national considered as the victim of trafficking or included in the program. The NGOs based their information on the system which is created also for Slovakian victims of trafficking.

**After the issue of the residence permit**

[ ] Yes  [x] No

**Explaination:**

According to § 43/ sub. 10 of the Act on the Stay of Aliens, the authority active in the criminal proceedings or person authorized by the Ministry of Interior shall inform the victim of trafficking on tolerated stay on the eventual programmes or projects aimed to his integration into the society. Thus, the law does not provide the State with legal obligation to provide psychological help to the victim of trafficking.

Regarding to the information provided by the NGO SKC Dotyk, the Ministry of Interior re-found the costs of assistance for the third country national during the reflection period only. The costs of the following assistance are re-found by the existing financial sources of NGO in charge and could be about 280 000 Sk – 300 000 Sk (8235 – 8823 Euro) per year.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

**Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence?**  See mandatory provision in Article 9(2)

[ ] Yes  [ ] No

**Explaination:**

The emergency medical care is available for everyone in the territory of Slovakia.

### Issue and renewal of the residence permit

**Q.11.** Questions regarding the issue and renewal of the residence permit.  See mandatory provisions in article 8:

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

[ ] Yes  [ ] No
Explanation: (If he answer is “yes”, explain the criteria that have to be met)

The criteria for issue of the first residence permit for 40 days are as follows:
1. The alien must be a victim of trafficking in human beings;
2. The alien must be older than 18 years of age;

The criteria for issue second and further residence permit repeatedly and even for the period of at least 180 days are as follows:
1. Reason for granting the residence permit continues;
2. The presence of the alien concerned is necessary for the purpose of criminal proceedings.

There is also the negative criterion stipulated in article 43/8 of the Act on the Stay of Aliens, sentence behind the semicolon, upon which the police department shall not renew the residence permit if:
3. Based on the evidences it is clear that an alien did not terminate or renewed the relation with the perpetrators of the offences related to the trafficking.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

**Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?**

☑ Yes ☐ No

Explanation:
The Act on the Stay of Aliens does not include the possibility to refuse the issue of tolerated residence permit for this reasons, but stipulates the possibility of its withdrawal in such case. The article §44/3 lit. d) stipulates: "The police department shall withdraw the residence permit to the victim of trafficking for the reasons of threat to the national security or public policy.

**Q.11.B. For how long is the residence permit valid?** According to the mandatory provision in article 8(3), it should be valid for at least six months.

According to the article 43/8 of the Act on the Stay of Aliens the second and further residence permit shall be granted for the period of at least 180 days.

**Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No
Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The criteria for renewal of the residence permit are as follows:
1. Reason for granting the residence permit continues;
2. The presence of the alien concerned is necessary for the purpose of criminal proceedings.

There is also the negative criterion stipulated in article 43/8 of the Act on the Stay of Aliens, sentence behind the semicolon, upon which the police department shall not renew the residence permit if:
3. Based on the evidences it is clear that an alien did not terminate or renewed the relation with the perpetrators of the offences related to the trafficking.

The Act on the Stay of Aliens does not provide any limitations for the numbers of renewal of the residence permit.

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: For how long?)

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If yes, explain which measures are taken)
Q.12.D. Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☐ No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

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Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? *See mandatory provision in Article 9(2)*

☐ Yes  ☐ No

Explanation:

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Q.12.E. What measures has your Member State taken regarding unaccompanied minors? *See article 10(c)* (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

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**Work, vocational training and education**

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? *See article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☒ Yes  ☐ No
Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

Article 43/5 of the Act on the Stay of Aliens regulates the access to the labour market for the persons holding tolerated stay residence permit. The access to labour market is allowed only to particular groups of holders, including victims of trafficking holding the renewed residence permit after the expiration of the first permit for 40 days.

The criteria for an alien to obtain access to the labour market in Slovakia are stipulated by the act No. 5/2004 on the Services of the Employment (Part V.). In general, aliens willing to be employed in Slovakia shall apply for the work permit prior to the arrival to Slovakia and the residence permit shall be issued only in the case that that the vacancy could not be filled by a job seeker in the register of job seekers (this means that the office shall consider the situation in labour market before issuing the work permit to an alien).

The criteria for receiving the work permit for victims of trafficking are more favourable than those for other aliens. The legal basis for access of the labour market is the provision of article 43/5 of the Act on the Stay of Aliens, which allows victims of trafficking to apply for the work permit and enter the labour market. According to the article 22/5 lit g) of the Act on Services of Employment, holders of residence permit concerned shall apply for the work permit, in order to be employed. However, the office for employment, social affairs and family shall issue the permit to the holder concerned without considerate the situation on the labour market.

The criteria for the application for the work permit are as follows:
- The application shall be in writing, addressed to the competent Office
- Application shall be submitted either by an alien himself/herself or through the future employer, or through the legal person or natural person to whom he/she should be posted to perform work.

The application for the work permit shall include particularly (article 21/5 of the act on services of employment):
- Name, surname and date of birth of the alien;
- Address in the state of permanent residence and address for mail delivery;
- Travel document number and name of the issuing authority;
- Name, domicile, identification number and type of economic activity of the employer;
- Type, location and period of work performance.

The application for issuing the work permit shall be accompanied with the employer’s promissory statement to employ the alien.

The forms, instructions and other documents are available for downloading on the official website of ministry of Employment, Social Affairs and Family on http://www.employment.gov.sk/new/index.php?SMC=1&id=757 some of them in English language also.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No
Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

In general, the conditions for access to vocational training are set in the Act No. 5/2004 Coll. On the Services of the Employment (“Act on Employment”). This law states, that vocational trainings may be supported by local Office for Employment, Social Affairs and Family for “employment seeker” and “In employment interested person”. Both categories are defined in law, by the possession of citizenship. Consequently, the Act on Employment states, that a third country national taking part in the relations in accordance with this law, has position equal to Slovak citizen if:
a) Was granted work permit and temporary residence permit;
b) He/she is an asylum seeker who has access to labour market according to the Act on Asylum.

For that reason I considered that victims of trafficking would not have legal access to vocational training supported by state authorities. However, they would have access to those vocational training were the condition of self – foundation is set in the case, that they would be supported by NGOs. Of course, they would have access to vocational trainings provided by organizations helping to victims of trafficking.

The Act on the Stay of Aliens does not explicitly provide the victim of trafficking with the conditions for the access to vocational trainings. There is only the legal obligation for the State to inform third country national on eventually existing programs or schemes.

The problem with access to vocational training might arise from the content and meaning of the tolerated stay itself, as it is usually considered by the authorities as temporary kind of stay with the short duration for the emergency uses only. This might create real problems with accessing the vocational trainings and education in general.

The access to vocational training might be provided with the assistance of NGO mostly. In such case, costs of the vocational training are found by the Ministry of Interior in the reflection period only, than the NGO uses own sources. There are no special requirements to be met for the access to this vocational training; the person has to be a victim of trafficking included in the assistance program of the NGO.

Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The legal basis for access to education at all is article 1(2) of the act No.386/1997 on the Further Education and on the amendment to the act no. 387/1996 on the employment as amended by the act no. 70/1997 which states: Everyone interested in further education has the right for education in every age in accordance with the condition settled herein and with his/her abilities and interests.

According to this article, the aliens in Slovakia have access to the education in Slovakia upon conditions settled by the educational institution, mostly on the self-financed basis.
Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:
The access to the work, vocational training and education will be limited to the duration of the residence permit, because if the residence permit will be withdraw, the person concerned become illegal migrant and would be subjected to the provisions of administrative expulsion and/or detention of the illegal migrants. In spite of this, article 43 (10) of the Act on the Stay of Aliens (providing the right on information on programmes or schemes aimed to victims) specifies that the programmes and schemes are aimed at the recovery of the holder of residence permit of a normal social life during the continuation of tolerated stay.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Article 43 (10) of the Act on the Stay of Aliens regulates that the authority active in criminal proceedings or person authorized by the Ministry shall inform holder of the residence permit on the programmes or schemes aimed at their recovery of normal social life during duration of the residence permit.

The assisted return to the country of origin is provided by the programmes and schemes of the International Organization for Migration (IOM) www.iom.sk which has its offices in Bratislava and Košice, by its Migration information centre of IOM ( www.mic.iom.sk ) which deals with the integration of the migrants to the society.
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

There is no legal obligation for the State to create specific programmes or schemes in internal law. The State shall only provide the victim with the information on existing programmes or schemes. In the time of writing the report, there were two NGOs chosen by the Ministry responsible for the accommodation and psycho-social aid to the aliens concerned and there are several NGOs dealing with the issue on voluntary basis.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

The issuance of residence permit is not based on the participation in existing programmes or schemes, only on the fact of being victim of trafficking.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

Active reconsideration of the conditions in article 8(2) transposed to the article 43/8 of the Act on the Stay of Aliens is the legal obligation for renewal of the residence permit, therefore the police department shall issue decision on renewal based on the evaluation and reconsideration of the current situation.
Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

The reasons for withdrawal of the residence permit for person under the Directive are stated in article 44/2 and 44/3 of the Act on the Stay of Aliens.

Article 44 (2):
The police department shall withdraw tolerated stay residence permit, upon the finding that the reason for its granting extinct.

Article 44 (3):
The police department shall also withdraw the tolerated stay residence permit granted upon article 43/1 lit.e)\textsuperscript{48} if:

a) The alien renewed contact with the persons suspected to perpetrate the offences related to the trafficking in human beings;
b) The cooperation of the alien with the authority active in criminal proceedings was assumed;
c) The alien cease to cooperate with the authority active in criminal proceedings; and
d) For the reasons of threat to the national security or to public order.


The procedure on withdrawal of the residence permit takes place if the criteria mentioned above are met. An alien shall inform competent police department if the reason for granting the residence permit extinct within the period of 15 days since being informed on that circumstance. This obligation is stated in the article 44/1 of the Act on the Stay of Aliens. The police department shall take the action on withdrawal of the permit upon the information of an alien concerned or ex offo upon its own investigation. Based on the outcomes of the evaluation of the situation, the police department shall take the decision on the withdrawal of the residence permit if appropriate.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Due to the short time of the efficiency of the transposition, I do have information only on the existence of the Manual for the Third Sector Personnel “Stop Trafficking In Human Beings” done in January 2007 in English language by Ing. Jozef Slezák, Phd. from SKC Dotyk.

Prior to the transposition, there were several studies related to the trafficking of persons done by the NGOs active in this field and the National Action Plan for Fighting Against the Trafficking for the years 2006-2007 has been made by the government.

\textsuperscript{48} Shall mean the residence permit for the victim of trafficking.
Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

No, there was not political or public debate. The proposal of the transposition norm was publicized for the comments on the official website of the Ministry of Interior, only.

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

Not indicated in this time.
THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>To enhance the protection of Victims of trafficking</em></td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules □ Status quo □ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Explain the situation before transposition

Prior to the transposition of the Directive, persons in the position of being the victim of trafficking, had only limited legal possibility to legalize their residence in Slovakia and being helpful in the criminal proceedings, or integrate to the society. Similarly, if being granted the tolerated stay, the persons were not entitled to receive working permission and enter the labour market or do business activities.

After the transposition of the Directive, new reason for granting tolerated stay was amended to the Act on the Stay of Aliens with reference to the victims of trafficking, who now has the possibility to stay in Slovakia legally. This could make their decision to cooperate with the authorities active in criminal proceedings easier.

This transposition entitled aliens granted the tolerated stay for reasons of being victims of trafficking to work or does business activities legally in Slovakia, what is able to help them to reconsolidate.

| Q. 30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below |
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OBJECTIVE</strong>&lt;br&gt;(to be indicated by the national rapporteur)</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

Q.31.C. If yes, give some of examples:
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

| Table 1 |
|------------------|---------------|------------------|
| DECISION OF SUPREME COURTS | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |
| DECISION OF APPEAL COURTS | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |
| DECISION(S) IN FIRST RESORT | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |

| Table 2 |
|------------------|---------------|------------------|
| DECISION OF SUPREME COURTS | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |
| DECISION OF APPEAL COURTS | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |
| DECISION(S) IN FIRST RESORT | DATE: | REFERENCE OF PUBLICATIONS: |
| | | |
Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.
☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

SLOVENIA

By

(Surname and name)

Mag. KOGOVŠEK Neža, ll.m. (12.11.2007)

(Title, function and email address)
National Rapporteur and Coordinator, neza.kogovsek@mirovni-institut.si

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Act amending the Aliens Act</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>14.07.2006</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>2006-01-3454</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>26.08.2006</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED:</td>
<td>Articles 38.a, 2 (indent 17) of the consolidated text. (for example if the norm also pursues other objectives than the transposition of the directive)</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>☒ LEGISLATIVE</td>
<td>☐ REGULATION</td>
</tr>
</tbody>
</table>
Table 2

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: Aliens Act and subsequent modifications
DATE: 08.07.1999
NUMBER: 1999-01-2912
DATE OF ENTRY INTO FORCE: 14.08.1999
PROVISIONS CONCERNED: / (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted

TITLE: Aliens Act – Consolidated Text
DATE: confirmed on 29.09.2006
NUMBER: 2006-01-4586
DATE OF ENTRY INTO FORCE: / (see tables above)
PROVISIONS CONCERNED: articles 2 (indent 17), 38.a. (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION
LEGAL NATURE (please tick the correct box):
☒ LEGISLATIVE
☐ REGULATION
☐ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th><strong>TITLE:</strong></th>
<th>Act amending the Penal Code</th>
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</thead>
<tbody>
<tr>
<td><strong>DATE:</strong></td>
<td>30.03.2004</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>2004-01-1662</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>05.05.2004</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>article 387.a of the consolidated text</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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</tr>
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<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
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<td>☐ REGULATION</td>
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<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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### Table 2

<table>
<thead>
<tr>
<th><strong>TITLE:</strong></th>
<th>Penal Code of the Republic of Slovenia</th>
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<tbody>
<tr>
<td><strong>DATE:</strong></td>
<td>06.10.1994</td>
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<tr>
<td><strong>NUMBER:</strong></td>
<td>1994-01-2167</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>01.01.1995</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>article 311 of the Penal Code</td>
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<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Published on 13.10.1994 in the Official Journal RS, No. 63/1994</td>
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<td>☐ REGULATION</td>
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<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th><strong>TITLE:</strong></th>
<th>Penal Code of the Republic of Slovenia – Consolidated Text</th>
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<tbody>
<tr>
<td><strong>DATE:</strong></td>
<td>confirmed on 17.06.2004</td>
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<tr>
<td><strong>NUMBER:</strong></td>
<td>2004-01-4208</td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>/ (see tables above)</td>
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<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>article 311 of the Penal Code</td>
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<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</td>
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<tr>
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<td>Published on 27.08.2004 in the Official Journal RS, No. 95/2004</td>
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<tr>
<td>☐ REGULATION</td>
<td></td>
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<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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<td>Table 4</td>
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<tr>
<td><strong>TITLE</strong>: Personal Data Protection Act</td>
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</tr>
<tr>
<td><strong>DATE</strong>: 15.07.2004</td>
<td></td>
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<tr>
<td><strong>NUMBER</strong>: 2004-01-3836</td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 01.01.2005</td>
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<td><strong>PROVISIONS CONCERNED</strong>: Article 24</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL</strong>: Published on 05.08.2004 in the Official Journal RS, No. 86/2004</td>
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<tr>
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<tr>
<td>☐ REGULATION</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
<td></td>
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</table>

<table>
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<th>Table 5</th>
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<tbody>
<tr>
<td><strong>TITLE</strong>: Witness Protection Act</td>
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<tr>
<td><strong>DATE</strong>: 30.11.2005</td>
</tr>
<tr>
<td><strong>NUMBER</strong>: 2005-01-5003</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 31.12.2005</td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong>: Article 1</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
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<tr>
<td>☑️ LEGISLATIVE</td>
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<tr>
<td>☐ REGULATION</td>
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<td>☐ CIRCULAR OR INSTRUCTIONS</td>
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</table>

<table>
<thead>
<tr>
<th>Table 6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE</strong>: Vocational Education Act</td>
</tr>
<tr>
<td><strong>DATE</strong>: 13.07.2006</td>
</tr>
<tr>
<td><strong>NUMBER</strong>: 2006-01-3449</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>: 11.08.2006</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong>: Article 7, § 4</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL</strong>: Published on 27.07.2006 in the Official Journal RS, No. 79/2006</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
</tr>
<tr>
<td>☑️ LEGISLATIVE</td>
</tr>
<tr>
<td>☐ REGULATION</td>
</tr>
<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
Table 7

<table>
<thead>
<tr>
<th>TITLE: Elementary Schools Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 14.02.1996</td>
</tr>
<tr>
<td>NUMBER: 1996-01-0570</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 15.03.1996</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED: Article 10</td>
</tr>
<tr>
<td>LEGAL NATURE: LEGISLATIVE</td>
</tr>
</tbody>
</table>

Table 8

<table>
<thead>
<tr>
<th>TITLE: Free Legal Aid Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 31.05.2001</td>
</tr>
<tr>
<td>NUMBER: 2001-01-2642</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 11.09.2001</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED: Article 10</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Published on 13.06.2001 in the Official Journal RS, No. 48/2001</td>
</tr>
<tr>
<td>LEGAL NATURE: LEGISLATIVE</td>
</tr>
</tbody>
</table>

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: National Assembly</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Not applicable.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCE CONCERNED:</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
</tr>
</tbody>
</table>
### Table 2

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED</th>
<th>Ministry of Interior</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE</td>
<td>Police</td>
</tr>
<tr>
<td>WITHIN THE ABOVE MINISTRY</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION</td>
<td></td>
</tr>
</tbody>
</table>

**IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY**
(For instance if it is independent of the competent minister)

The Police is a state body with a special position within the Ministry of Interior. It is independent and run by a General Director; however its human resources, technical and infrastructural activities are carried out by the Ministry of Interior (article 2 of the Police Act).

---

**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

- [x] YES  
- [ ] NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES  
- [x] NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

In the Republic of Slovenia no regulations were or are foreseen to be adopted concerning victims of trafficking.

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

Not applicable.
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^{49}\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^{50}\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [X] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

In accordance with the provision of Article 38.a of the Aliens Act, residence permits can only be issued to victims of human trafficking if they agree to cooperate in criminal proceedings against traffickers with human beings. As stipulated with article 2, indent 17 of the Aliens Act, victims of trafficking are foreigners who are not nationals of any member state of the European Union and who was purchased, taken over, harbored, transferred, sold, delivered or in any other way handled for purposes of prostitution or other forms of sexual abuse, forced labor, slavery, servitude or trade with body parts, tissue or blood.


This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt* to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

**Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?**

☑ Yes ☐ No

**Explanation:**

The Penal Code of the Republic of Slovenia consists of two parts: general part with the articles on the general principles of the criminal law, and the specific part with the list of all the crimes for which a person can be persecuted in Slovenia. While the crime of trafficking with human beings is enlisted in the second part of the Penal Code (Article 387.a), instigation of (Article 26), aiding and abetting (Article 27) or attempt (Article 22) are enlisted in the first part of the Penal Code. This means that persons are punished for a crime if they commit it themselves or, under certain conditions they are instigating to it, aiding, abetting or even for only attempting it.

Namely, Article 22 of the Penal Code states that the person who began with the execution of the crime but did not finish it is punished for attempt in cases of crimes for which a punishment of three years of imprisonment or more is foreseen. For other crimes a person can be punished for attempt if this is specifically set out by the law. For the crime of human trafficking the foreseen punishment of imprisonment is from one to ten years.

Regarding instigation of, Article 26 of the Penal Code states that the person who instigates another person to commit a crime is punished as if they committed it themselves (§1). A person that purposefully instigates another person to commit a crime form which a punishment of imprisonment of three years or more can be issued, is punished as for the attempt of the crime, even if the crime was not even attempted (§2). Regarding aiding and abetting, Article 27 of the Penal Code states that a person who purposefully assists another person at committing a crime is punished as if they committed it themselves (§1). Ading an abetting means especially: if someone gives a perpetrator advice or intructions on how to comit a crime, if hhe or she gives the perpetrator means or removes obstacles for cimmitting a crime, and if someone promises in advance to cover up the crime, the perpetrator, the means for committing a crime, leads to the crime or objects, obtained by the crime (§2). Further, Article 28 of the Penal Code states that if the crime is only attempted, the instigator or assistant are punished as for the attempt.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): **Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).**

Article 2, indent 17 of the Aliens Act defines a victim of human trafficking as a foreigner who is not a national of an EU Member State and who was purchased, taken over, harbored, transferred, sold, delivered or in any other way handled for purposes of prostitution or other forms of sexual abuse, forced labor, slavery, servitude or trade with body parts, tissue or blood. This shows that the definition of a victim of human trafficking is not as specific as the definition in the Framework Decision. The national definition e.g. does not include coercion, force, threat, abduction, deceit, fraud, abuse of authority or vulnerability, or payments or benefits to achieve consent of a
person having control over another person. Consequently, the definition of victims of human trafficking in the national legislation has a wider meaning.

It needs to be mentioned though, that the definition of trafficking in human beings is also specified in the article 387.a of the Penal Code of the Republic of Slovenia, which defines human trafficking as criminal act and prescribes punishments for the perpetrators, and is therefore not directly relevant for the transposition of this directive. In the Penal Code, the definition is almost identical to the definition in the Framework decision, except for the indent (d) of § 1 (payments or benefits given or received to achieve a consent of a person having control over another person). This formulation is not included in the Slovenian norm of transposition. The provisions of this also do not specifically stipulate that the consent of the victim is irrelevant. The full norm of transposition as stipulated with the article 387.a of the Penal Code, is: (1) One who for reasons of prostitution or other forms of sexual abuse, forced labor, slavery, servitude or trafficking with human organs, human tissues or blood, purchases, takes over, harbors, transfers, sells, delivers or handles with him or her in any other way or mediates in such acts, is punished with an imprisonment from to ten years. (2) If the act from the previous paragraph is committed against a minor or with a force, threat, deceit, abduction or abuse of inferior or dependent position, or with a purpose of forced pregnancy or in vitro fertilization, the perpetrator is punished with an imprisonment of at least three years. (3) The same punishment is given to the one who commits a crime from the first or second paragraph of this article as a member of a joint criminal enterprise or if a large financial benefit was acquired by such act.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).)

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for
Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt to commit* offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes    ☐ No

**Explanation:**
Not applicable.

**Q.5.C.** Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The national legislation of the Republic of Slovenia does not foresee a possibility to issue a residence permit to third country nationals who were subject to a criminal act of facilitation of illegal migration. However, it needs to be mentioned that the definition of this act as stipulated in the provision of article 311, § 3 of the Penal Code is almost identical to the one defined in 2002/90/EC Directive. This provision stipulates that a punishment of imprisonment for up to five years is foreseen for those who illegally bring foreigners with no permission to enter or reside in the Republic of Slovenia to the territory of Slovenia, transfer them within Slovenian territory or assist them with hiding, or for those who take a group of such foreigners over the border or territory of the state for payment. However, it needs to be stressed that this provision is not directly relevant for the transposition of the directive on victims of human trafficking.

**Article 1 General infringement**

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults ☑ Both adults and minors

Explanation:
The national norms of transposition do not distinguish between adults or minors: both adults and minors may obtain the residence permit if they decide to cooperate in criminal proceedings against human traffickers, in accordance with the Aliens Act, article 38.a. Since there are no specific provisions in the Aliens Act that the protection is provided only for adult victims of human trafficking or since there is no prohibition of the application of this protection for minor victims of human trafficking, it should be concluded that the protection is applicable to both. In accordance with the Article 15, § 2 of the Constitution of the Republic of Slovenia, the conditions and manners of the implementation of rights should be determined by law. If minors were not entitled to protection in accordance with the Article 38.a of the Aliens Act, the law should specifically state so.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ All minors

☐ Minors, for which the following criteria are fulfilled:

•
•
•
•
•
Since there are no specific provisions for whom the norms apply, it should be concluded that they apply for adults and all minors.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: 0

‘An action to facilitate illegal immigration’ (If applicable): Not applicable.

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

Article 38.a, § 3 of the Aliens Act stipulates that the obligation to inform the third country nationals of the possibilities offered under the Directive lies with the Police and the non-governmental organizations. The Police is a special organizational structure within the Ministry of Interior. It is not specified which non-governmental organizations have these obligations, however, usually the Ministry of Interior has an agreement concluded with one of the non-governmental organizations to carry out specific tasks concerning victims of trafficking. Currently this organizations are Slovenian Karitas and Association Ključ.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Orally

☑ In writing

☐ Both orally and in writing

Explanation:

The information on the possibility to obtain a residence permit and the rights and obligations deriving from this status are provided to victims of trafficking orally while conducting the procedure. Besides, leaflets on the issues concerning human trafficking are also available for the victims.
Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

A leaflet titled ‘Dictionary’ was published in 2004. The leaflet looks as a dictionary, but in the middle it contains information on human trafficking in various languages. The leaflet encompass information on how to determine whether or not one is victim of human trafficking, description of ways to get help in the Republic of Slovenia, contact information of organizations assisting victims of human trafficking (phone numbers, locations where they are present etc.), type of assistance offered to victims of human trafficking, and contact information of organizations in other countries that assist victims of human trafficking.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The assessment is that information routines are functioning satisfactorily in practice. The Police have been well trained on issues concerning victims of trafficking. Also, there are two organizations specialized for victims of trafficking, Slovenian Karitas and Association Klijuč that carry out programs for victims of trafficking, employ specialized staff and offer all the necessary information. There have been no specific problems observed in this respect.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

In accordance with Article 38.a, § 1 of the Aliens Act, the third country national may be granted upon request or ex officio, a permission to remain in Slovenia (i.e. a toleration status) for up to three months. In case of justified reasons the permission to remain may be extended for additional three months. There is no specific provision on when such permission is issued to her. The reflection period begins with the day when the permission to remain was issued to the victim (which usually takes a few weeks from the moment when the application was lodged).
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation:

Permission to remain granted to a third country national under the Directive is equal to the permission to remain issued to other third country nationals who cannot be returned to their country of origin due to the principle of non-refoulement or for other reasons, in accordance with article 51 and 52 of the Aliens Act. The permission to remain in all cases protects third country nationals from expulsion.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☑ No

Explanation: (If the answer is “yes”, which are the criteria?)

In accordance with article 38.a of the Aliens Act the reflection period cannot be terminated. However, in accordance with § 2 of this article, the permission to remain is not even granted if the third country national's residence in Slovenia would represent a danger for public order, security or international relations of the Republic of Slovenia, or if there is a suspicion that his or her residence will be tied to terrorist or other violent acts, illegal intelligence activities, drug trafficking or committing of other crimes, or if he or she comes from territories where contagious diseases are present with a possibility of epidemics (stated in international health regulations of the International Health Organization) or from areas where contagious diseases are present that could endanger the health of people and for which special measures are required in accordance with the law.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Not applicable.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Not applicable.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

So far there were only two reflection periods (permissions to remain) granted in the Republic of Slovenia to victims of trafficking. None of them was issued a residence permit on the basis of article 38.a of the Aliens Act afterwards. There are some victims of trafficking benefiting from the NGO programs at the moment, but all of them already had residence permits issued on other grounds, which means that they did not need a residence permit in accordance with article 38.a of the Aliens Act. It can therefore not be stated that there has been a sufficient practice established in the Republic of Slovenia which could be assessed in terms of satisfactory functioning.
Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

In accordance with article 38.a, § 3 of the Aliens Act, a third country national with a permission to remain under the Directive has the same rights as other foreigners with the permission to remain, specified with the article 55 of the Aliens Act (urgent health care, basic subsistence, and the right to elementary schooling for children under 15 years of age). In addition to that, they have the right to interpretation and translation free of charge.

After the issue of the residence permit

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

In accordance with article 38.a, § 9 of the Aliens Act, a victim of trafficking who has been issued a residence permit and has no means of subsistence, has the right to urgent health care in accordance with the act regulating health care and health insurance, and the right to basic subsistence to the same extent as foreigners who have a permission to remain in Slovenia. In the time of residing in the Republic of Slovenia on the basis of the temporary residence permit a victim of trafficking has the right to work or employment under the conditions of the Employment and Work of Aliens Act.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

Victims of trafficking do not receive any financial aid.
Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Since in addition to the rights, stipulated by the legislation, care programs are being carried out by the NGOs with the support of the Ministry of Labor, Family and Social Affairs, the support given to victims is sufficient to ensure standards of living capable of ensuring their subsistence.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

In court procedures there is a possibility to offer protection to victims of human trafficking who decide to testify against the perpetrators of the crime of human trafficking, in accordance with the Witness Protection Act, adopted on 30.11.2005. NGOs carrying out care programs for victims of trafficking are careful not to reveal personal information of the victims and the whereabouts of the safe houses where they are accommodated, in accordance with the Personal Data Protection Act, Article 24.

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

In court procedures there is a possibility to offer protection to victims of human trafficking who decide to testify against the perpetrators of the crime of human trafficking, in accordance with the Witness Protection Act, adopted on 30.11.2005. In addition, NGOs carrying out care programs for victims of trafficking are careful not to reveal personal information of the victims and the whereabouts of the safe houses where they are accommodated.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No
**Explanation:**

In accordance with the article 38.a, § 3 of the Aliens Act, victims of trafficking have the right to interpretation and translation services free of charge.

**After** the issue of the residence permit:

☐ Yes  ☒ No

**Explanation:**

The analysis of the legal provisions show that after they are issued a temporary residence permit victims of trafficking are not entitled to translation services, since they are not mentioned in the § 9 of the article 38.a of the Aliens Act, where their rights after the issue of residence permit are listed. In addition to that, from the wording of the § 3 of the article 38.a of the Aliens Act, stipulating the rights before the residence permit, it derives that translation services are available free of charge only during the reflection period. They only have the right to interpretation and translation in court procedures in accordance with the Criminal Procedure Act, Civil Procedure Act and General Administrative Procedure Act.

**Q10.F. Does your Member State provide the third-country nationals concerned with interpreting services?** See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☒ Yes  ☐ No

**Explanation:**

In accordance with the article 38.a, § 3 of the Aliens Act, victims of trafficking have the right to interpretation and translation services free of charge.

**After** the issue of the residence permit:

☐ Yes  ☒ No

**Explanation:**

The analysis of the legal provisions show that victims of trafficking after they are issued a temporary residence permit, are not entitled to interpretation services, since they are not mentioned in the § 9 of the article 38.a of the Aliens Act, where their rights are listed. In addition to that, from the wording of the § 3 of the article 38.a of the Aliens Act, stipulating the rights before the residence permit, it derives that interpretation services are available free of charge only during the reflection period. However, pursuant the Penal Code of the Republic of Slovenia victims of trafficking would have the right to interpretation services free of charge while they would stand before court as witnesses, since interpretation free of charge is provided for witnesses who do not speak Slovenian language.
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

In accordance with the Article 10 of the Free Legal Aid Act, adopted on 31.05.2001, victims of human trafficking with only permission to stay (reflection period) would not fall under the beneficiaries of the free legal aid. For more information please see the explanation at the following question.

After the issue of the residence permit

☒ Yes  ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

In accordance with the article 10, § 1, indent 2 of the Free Legal Aid Act, free legal aid is provided to, inter alia, foreigners with permanent or temporary residence permit in Slovenia. This provision therefore includes victims of trafficking who have been issued a temporary residence permit in accordance with article 38.a of the Aliens Act. Free legal aid includes first legal advice (which can be obtained at the NGOs with a license to provide such advice or attorneys at law) or legal counseling and representation (which can be obtained at attorneys at law). While first legal advice is accessible for all kinds of legal issues and procedures, free legal aid for counseling and representation is granted only for specific legal judicial (and not administrative) procedures and it is not approved if the applicant does not have prospects to win the case. If free legal aid is approved, the attorney obtains a reimbursement of costs of the procedure.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes  ☐ No
Explanation: (If the answer is “yes”, please provide details on whether persons have access to _general_ medical care during the reflection period or if care is restricted to _emergency_ medical care only).

In accordance with article 38, § 3 of the Aliens Act a victim of trafficking during the reflection period has the right to emergency health care to the same extent as foreigners with the permission to remain in Slovenia (their rights are defined with article 55 of the Aliens Act). The content of the emergency health care is defined with the Health Care and Health Insurance Act. In accordance with this act emergency health care includes:
1. emergency medical care, emergency ambulance transport, and emergency dental care;
2. essential treatment based on the decision by the physician in charge of treatment, which shall consist of: the preservation of vital functions, stopping serious bleeding or preventing fatal bleeding; the prevention of a sudden deterioration of health that could cause permanent damage to individual organs or vital functions; treatment of shock; services relating to chronic diseases and states of illness the abandonment of which could directly and imminently result in disability and other permanent health defects and in death; treatment of states of fever and prevention of the spread of an infection that could lead to a septic state; treatment and prevention of poisoning; treatment of bone fractures, sprains and other injuries requiring emergency medical assistance; medications included in the positive list and issued on the basis of a prescription for the treatment of the states specified above; emergency transport using ambulance and other vehicles in the cases specified above.

After the issue of the residence permit

- [ ] Yes
- [ ] No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to _general_ medical care or if care is restricted to _emergency_ medical care only.

In accordance with article 38, § 9 of the Aliens Act a victim of trafficking after he or she is issued a temporary residence permit has the right to emergency health care to the same extent as foreigners with the permission to remain in Slovenia (their rights are defined with article 55 of the Aliens Act). The content of the emergency health care is defined with the Health Care and Health Insurance Act. In accordance with this act emergency health care includes:
1. emergency medical care, emergency ambulance transport, and emergency dental care;
2. essential treatment based on the decision by the physician in charge of treatment, which shall consist of: the preservation of vital functions, stopping serious bleeding or preventing fatal bleeding; the prevention of a sudden deterioration of health that could cause permanent damage to individual organs or vital functions; treatment of shock; services relating to chronic diseases and states of illness the abandonment of which could directly and imminently result in disability and other permanent health defects and in death; treatment of states of fever and prevention of the spread of an infection that could lead to a septic state; treatment and prevention of poisoning; treatment of bone fractures, sprains and other injuries requiring emergency medical assistance; medications included in the positive list and issued on the basis of a prescription for the treatment of the states specified above; emergency transport using ambulance and other vehicles in the cases specified above.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1))

Have your Member State transposed the provision on attending to the special needs of the most vulnerable? _See mandatory provision in Article 7(1)_

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, _before_ and _after_ the issue of the residence permit).
Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:
There are no specific provisions concerning the special needs of the most vulnerable victims of trafficking before the residence permit.

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:
There are no specific provisions concerning the special needs of the most vulnerable victims of trafficking after the residence permit.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☒ No

Explanation:
Legally, victims of trafficking do not have the right to psychological help. No such right is stipulated with the law. In practice, the psychological help depends on the programs of the non-governmental organizations, funded by the authorities.

After the issue of the residence permit

☐ Yes  ☒ No

Explanation:
Legally, victims of trafficking do not have the right to psychological help. No such right is stipulated with the law. In practice the psychological help depends on the programs of the non-governmental organizations, funded by the authorities.
This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☐ Yes ☒ No

Explanation:

Out of the special groups stated in Article 9 (2) of the Directive, only health care of pregnant women is defined, while there are no special provisions for health care for other persons with special needs, such as disabled, victims of sexual violence or other forms of violence.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

In accordance with article 38.a, § 4 of the Aliens Act, the main condition for obtaining a temporary residence permit is that a victim of trafficking is willing to participate in a criminal procedure against traffickers and if the testimony of a victim would be important for the procedure, as confirmed by the competent body of the criminal prosecution. § 5 of the same article stipulates further conditions. Namely, the temporary residence permit is not issued if:
- residence of the victim of trafficking would represent a danger for public order, security or international relations of the Republic of Slovenia, or of there is a suspicion that his or her residence will be tied to terrorist or other violent acts, illegal intelligence activities, drug trafficking or committing other crimes,
- if in the course of issuing the permit it is established that he or she comes from territories where contagious diseases are present with a possibility of epidemics (stated in international health regulations of the International Health Organization) or from areas where contagious diseases are present that could endanger the health of people and for which special measures are required in accordance with the law,
- if in the course of the procedure of issuing a residence permit it is established that a victim has voluntary contacts with the suspect or the accused of a crime of human trafficking.

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))
Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☑ Yes ☐ No

Explanation:
In accordance with article 38.a (5) of the Aliens Act the reflection period cannot be terminated. However, in accordance with § 2 of this article, the residence permit is not issued if the third country national's residence in Slovenia would represent a danger for public order, security or international relations of the Republic of Slovenia, or if there is a suspicion that his or her residence will be tied to terrorist or other violent acts, illegal intelligence activities, drug trafficking or committing of other crimes, or if he or she comes from territories where contagious diseases are present with a possibility of epidemics (stated in international health regulations of the International Health Organization) or from areas where contagious diseases are present that could endanger the health of people and for which special measures are required in accordance with the law.

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

In accordance with the article 38.a, § 7 of the Aliens Act, the first residence permit is issued for a minimum period of six months and a maximum of one year.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

In accordance with the article 38.a, § 7 of the Aliens Act, the residence permit can be renewed until the end of the criminal procedure (each extension is issued with a validity of one year maximum), if the victim of trafficking still fulfills the conditions stipulated under paragraphs 4 and 5.
Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

The conditions and benefits for the victims of trafficking are the same regardless of the fact if they are adults or minors. There are only two provisions specifically applicable to minors: the first one is that during the reflection period they have the right to elementary schooling (article 38.a, § 3 of the Aliens, connected to article 55 of the Aliens Act). The second one is that in case of an unaccompanied minor victim of trafficking, the police informs the centre for social work which is obliged to appoint a legal guardian to the minor, in accordance with the Marriage and Family Relations Act. There are no other provisions ensuring the best interest of the child in the national legislation transposing the Directive.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)

Not applicable.

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If yes, explain which measures are taken)

Not applicable.

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

In accordance with Article 20 of the Elementary Schools Act, children who are foreigners have the right to access elementary education under the same conditions as Slovenian nationals.

This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)**

☐ Yes  ☒ No

Explanation:

In the legislation there are no provisions regarding health care for minors with special needs.

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**Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).**

For unaccompanied minors who are victims of trafficking the same provisions apply as for other unaccompanied minors who are not returned to their country of origin, this means that the minor has the right to a legal guardian (Article 60, § 1 of the Aliens Act). The competent body for providing a legal guardian is a center for social work, while the legal guardians usually come from an NGO Slovene Philanthropy. There were no specific provisions introduced for victims of trafficking who are unaccompanied minors, concerning establishing the identity, nationality or location of family.

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**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No
**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

A victim of trafficking with the residence permit has the right to work or employment in the Republic of Slovenia under the Employment and Work of Aliens Act, in accordance with Article 38. a, § 9. That means that in order to access the labor market a victim has to be issued a work permit from the Employment Office. A victim of trafficking would be issued a personal work permit for a limited period of time which would correspond with the temporal validity of his or her residence permit.

**Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

In Slovenia vocational training is organized in a form of education programs provided by secondary schools. In accordance with the article 7, § 4 of the Vocational and Professional Education Act, foreigners have the right to vocational training under the principle of reciprocity (i.e. if Slovenian nationals have the right to vocational training in the country of origin of the foreigner). If the reciprocity principle is not fulfilled, the foreigner has to cover the expenses of training. Further, article 38.a, § 10, of the Aliens Act enables a victim of trafficking to obtain a residence permit on another ground (e.g. studying, work etc), provided the conditions required are fulfilled.

**Q.13.C. Do the holders of the residence permit have access to education? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

See the answer to the previous question.

**Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
Explanation:

When the validity of the residence permit expires the victims of trafficking are no longer protected from expulsion from the Republic of Slovenia and become illegal aliens. Illegal aliens legally have no right to any kind of training in Slovenia.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Legally, there is no norm of transposition indicating that the victims of trafficking have access to social programs or schemes. However, in practice there are some programs and victims of trafficking are ensured access to it. The programs for victims of human trafficking are carried out by two non-governmental organizations: Association Ključ and Slovenian Karitas. The programs of the NGOs is funded by the Ministry of Labor, Family and Social Affairs, Ministry of Foreign Affairs and Ministry of Internal Affairs. Before, the Ministry funded Association Ključ. The programs focus on the care and support for the victims of human trafficking through a safe house where care, protection, professional assistance, food and accommodation is offered to the victims. The victims are accommodated in the safe house on their own or with the facilitation and support of the police. In addition to the safe house, the Slovenian Karitas also open three crisis accommodation facilities. The crisis accommodation encompasses food and subsistence, psychological assistance, assistance in ensuring basic health care, interpretation and translation, assistance in offering support for the children of victims, if necessary, counseling and providing information in a language they can understand, and other measures concerning socialization and revitalization. If the victim would decide to cooperate in criminal procedures against the perpetrators, the NGOs would also provide support in regulating the residence permissions for the victims. Slovenian Karitas also offered support in procedures before courts, organized employment workshops (painting, crafts, literature, various leisure activities), offered allowance for daily expenses, 'treats', provided security, assisted at return to their home countries, facilitated the inclusions into education process, or offered religious support.

In addition, Article 82 of the Aliens Act stipulates that the Republic of Slovenia ensures conditions for integration into cultural, economic and social life of the Republic of Slovenia through organizing classes of Slovenian language, classes and other forms of continuous professional education, ensuring information about rights and duties of foreigners, offering information on history, culture and constitutional regulation of the REPUBLIC of Slovenia. As all foreigners with residence permit in Slovenia these provisions apply also to victims of trafficking with the residence permit in Slovenia. However, the implementing acts to implement these provisions in practice have not been adopted yet.
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
Please see the answer to the previous question.

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:
No such conditions exist in the national legislation.

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:
When renewing the residence permit the authorities consider the same conditions as in issuing the first residence permit, as stipulated in the article 38.a, § 7 of the Aliens Act.

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

As stipulated in the article 44, § 1 of the Aliens Act, any temporary residence permit can be withdrawn under the following conditions: i) if it is established ex post facto that the reasons for refusal of the residence permit existed, ii) if the reasons for refusal of the residence permit arise after the residence permit was issued, or iii) if the foreigner purposefully gave false information on his or her identity or other false information, or purposefully covered up the circumstances important for issuing the residence permit.


The permission for temporary residence is withdrawn by the competent body which issued the residence permit (i.e. the Administrative Unit) or a body competent for the territory where the victim resides. On the withdrawal the competent body issues a decision which can be appealed at the Ministry of Internal Affairs in eight days since the decision has been served to the foreigner (article 44, § 1 and 3 of the Aliens Act).

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

So far there have been only two reflection periods granted to victims of trafficking and no residence permits on the basis of Article 38. a of the Aliens Act. All victims of trafficking legally residing in Slovenia already had some kind of residence permits before they were included in the programs (e.g. for employment or work). This information was made available by the Police of the Republic of Slovenia. There are no reports where the practice of granting reflection periods or residence permits is described, are available. The only report available on victims of trafficking is the Report of the activities of the government working group on combat against human trafficking 2006 (http://www.vlada.si/util/bin.php?id=2007041309562231). This report, however, does not contain information on the stated practice.

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

There was no public debate, but there was a debate in professional circles that were monitoring the transposition of the directive into the national legislation. The main concerns of the non-governmental organizations were as follows:

1) The problem is that victims of trafficking will be exploited by the governments if residence permits are issued to them solely for the purpose of attracting them to testify, but not much is being done to reintegrate them to social life and increase their possibilities to escape from the world of human trafficking. While the provisions of granting a residence permit are very clear from the law, the provisions on their safety, re-integration into society or facilitation of their professional development are unclear and do not represent any special obligation for the government. Also, the scope of rights given to the victims of trafficking is extremely narrow. E.g. the national legislation provides a much lower scope of rights to victims of trafficking than to asylum seekers.

2) The problem is also that it is not clear what happens if the suspect of the crime of trafficking in human beings makes attempts to contact the victim. The question is how the victim can prove that the contacts have not been initiated by him or her and that the contacts with the suspect are not voluntary.

3) It was also problematic that there is no assistance offered to the victim of trafficking after the criminal procedure is completed. E.G. the Slovenian legislation foresees that the victim of trafficking may apply for other types of residence permits if he or she fulfills the conditions in accordance with the Aliens Act. Although it is positive that such option is provided for by the law, it is not likely that any victim of trafficking will be able to fulfill all the legal conditions to obtain other residence permits for example for employment or work, schooling or family reunification (e.g. financial resources, health insurance, valid passport etc).
On the other hand, the position of the Ministry in these debates was that the regulations which ensure certain benefits to victims of trafficking who decide to participate in criminal procedures as witnesses, importantly contribute to public safety not only in the Republic of Slovenia but also internationally because victims of trafficking help with the prosecution and conviction of the international criminal enterprises which usually commit the crimes of human trafficking. The position of the Ministry in the debates was also that the scope of rights stipulated by the Aliens Act was sufficient and that the Republic of Slovenia ensures the victims of trafficking sufficient conditions for integration.

**Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?**
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29  Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>After the transposition the victims of trafficking obtained an opportunity to obtain both a permission to stay and a permission to remain in Slovenia in order to consider involvement in the criminal procedure as a witness, and to obtain a residence permit until the completion of the criminal procedure. The victims also obtained an opportunity to apply for further residence permits on other grounds.</td>
<td>□ Less favourable than previous national rules</td>
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<td></td>
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<td>□ Status quo</td>
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<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.30. From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

Not applicable.
When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation after transposition (To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
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<td>□ Less favourable than the Directive</td>
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<td>□ In line with the directive</td>
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<td></td>
<td>□ More favourable than the directive</td>
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</table>

**Table 2**

<table>
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<tr>
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<tr>
<td></td>
<td>In line with the directive</td>
<td>□ More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

□ YES  ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

□ YES  ☒ NO

Q.31.C. If yes, give some of examples:

Not applicable.
Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Not applicable.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE: /</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE: /</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE: /</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).


**AN IMPORTANT ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

SPAIN

By

GARCIA, EMILIANO
RUIZ DE HUIDOBRO, JOSE MARIA

Professor on European Union Law (Comillas University, Faculty of Law)
(egcoso@der.upcomillas.es)
Professor on Civil Law (Comillas University, Faculty of Law,
(jrmhuidobro@der.upcomillas.es)
May 19th 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
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<tbody>
<tr>
<td></td>
<td>a text already adopted</td>
<td>a text which is still a project to be adopted</td>
</tr>
</tbody>
</table>

| TITLE: | Organic Law 4/2000, on the rights and liberties of aliens in Spain and their social integration |
| DATE: | January 11, 2000 |
| DATE OF ENTRY INTO FORCE: | January 31, 2000 |
| PROVISIONS CONCERNED: | Art. 55.1-3 on granting residence permits (today art. 59.1-3: the Organic Law 4/2000, on the rights and liberties of aliens in Spain and their social integration has been revised by Organic Law 8/2000, Organic Law 11/2003 and Organic Law 14/2003). (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: | January 12, 2000 marginal number 544 |
| LEGAL NATURE (please tick the correct box): | 🔴 LEGISLATIVE |
|                                      | ☐ REGULATION |
|                                      | ☐ CIRCULAR OR INSTRUCTIONS |
Table 2

This table is about: ✗ a text already adopted    □ a text which is still a project to be adopted


DATE: December 30, 2004

NUMBER: Royal Decree 2393/2004

DATE OF ENTRY INTO FORCE: February 7, 2005

PROVISIONS CONCERNED: Art. 45.5; Art. 45.6; Art. 45.7, párr. 2; Art. 46.1; Art. 46.6; Art. 46.8; Art. 47.1; Art. 47.4 on granting residence permits for exceptional circumstances and Art. 117 on collaboration against criminal organizations

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL: January 7, 2005 marginal number 323

LEGAL NATURE (please tick the correct box):

□ LEGISLATIVE
☒ REGULATION
□ CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: ✗ a text already adopted    □ a text which is still a project to be adopted

TITLE: Circular 2/2006 General Attorney on different aspects of legal regulation of aliens in Spain

DATE: July 27, 2006

NUMBER: Circular 2/2006

DATE OF ENTRY INTO FORCE: July 27, 2006

PROVISIONS CONCERNED: Section.V.12, pages 112-114, specially the last one.

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL: SEE official web of the General Attorney (www.fiscal.es)

LEGAL NATURE (please tick the correct box):

□ LEGISLATIVE
□ REGULATION
☒ CIRCULAR OR INSTRUCTIONS
Table 4

This table is about: □ a text already adopted □ a text which is still a project to be adopted

TITLE: Instruction DGSI/SGRJ/06/2006, on temporal residence permits in exceptional circumstances by cooperating with the Employment and Social Security Inspection of Work and Social Affairs Ministry (this Instruction develops article 45.5 of the Implementation Rules RD 2393/2004 in cases of cooperation with non-policeable administrative authorities)

DATE: July 4, 2006

NUMBER: Instruction DGSI/SGRJ/06/2006

DATE OF ENTRY INTO FORCE: July 4, 2006

PROVISIONS CONCERNED: this Instruction develops article 45.5 of Regulation 2393/2004

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL: NOT OFFICIAL PUBLICATION (see in private web: http://www.intermigra.info/extranjeria/archivos/legislacion/InstrDGIColab.pdf)

LEGAL NATURE (please tick the correct box):
□ LEGISLATIVE
□ REGULATION
☑ CIRCULAR OR INSTRUCTIONS

Table 5

This table is about: □ a text already adopted □ a text which is still a project to be adopted

TITLE:

DATE:

NUMBER:

DATE OF ENTRY INTO FORCE:

PROVISIONS CONCERNED:

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL:

LEGAL NATURE (please tick the correct box):
□ LEGISLATIVE
□ REGULATION
□ CIRCULAR OR INSTRUCTIONS

Q.1.B. Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

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<tr>
<th>TITLE</th>
<th>Organic Law 4/2000, on the rights and liberties of aliens in Spain and their social integration</th>
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<tbody>
<tr>
<td>DATE</td>
<td>January 11, 2000</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>January 31, 2000</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED</td>
<td>Article 12 on the right to health care; Article 14 on Social Assistance</td>
</tr>
<tr>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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Table 2

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<tbody>
<tr>
<td>DATE</td>
<td>December 22, 2000</td>
</tr>
<tr>
<td>NUMBER</td>
<td>Organic Law 8/2000</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>January 22, 2001</td>
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<tr>
<td>PROVISIONS CONCERNED</td>
<td>Article 22 on the right to free legal assistance</td>
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<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
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Table 3

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<th>Organic Law 19/1994 on the protection of witnesses and expert witnesses in criminal prosecutions</th>
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<tbody>
<tr>
<td>DATE</td>
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<tr>
<td>NUMBER</td>
<td>Organic Law 19/1994</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE</td>
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</table>
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below
LEGISLATIVE RULES

COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: Yes, on alien matters

COMPETENCES OF THE COMPONENTS: Yes, on social integration matters

EXPLANATIONS IF NECESSARY: Art. 149.1.2ª of the Spanish Constitution declares that the central level is solely competent concerning Aliens, however the components can have competences regarding the social integration of aliens or immigrants. In some cases, there is no coordination between measures on the social integration of immigrants and the general regulation of aliens.

REGULATIONS

COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: Yes, on alien matters

COMPETENCES OF THE COMPONENTS: Yes, on social integration matters

EXPLANATIONS IF NECESSARY: Article 149.1.2ª of the Spanish Constitution declares that the central level is solely competent as regards Aliens, however the components can have competences concerning the social integration of aliens or immigrants. In some cases, there is no coordination between the measures on the social integration of immigrants and the general regulation of aliens.

CIRCULAR OR INSTRUCTIONS

COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: Yes, on alien matters

COMPETENCES OF THE COMPONENTS: Yes, on social integration matters

EXPLANATIONS IF NECESSARY: Article 149.1.2ª of the Spanish Constitution declares that the central level is solely competent as regards Aliens, however the components can have competences concerning the social integration of aliens or immigrants. In some cases, there is no coordination between the measures on the social integration of immigrants and the general regulation of aliens.

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>CONCESSION OR GRANTING OF RESIDENCE PERMITS IN CASES OF TRAFFICKING</th>
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<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>INTERIOR or HOME AFFAIRS</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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<td><strong>Table 2</strong></td>
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<tr>
<td><strong>COMPETENCE CONCERNED:</strong></td>
<td>CONCESSION OR GRANTING OF RESIDENCE PERMITS IN ILLEGAL IMMIGRATION CASES WITH NO CRIMINAL OFFENCES</td>
</tr>
<tr>
<td><strong>CENTRAL MINISTRY OF:</strong></td>
<td>EMPLOYMENT AND SOCIAL AFFAIRS</td>
</tr>
<tr>
<td><strong>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</strong></td>
<td>THE SECRETARY OF STATE FOR IMMIGRATION AND EMIGRATION (cf. Art.46.6.b Implementation Rules RD 2393/2004).</td>
</tr>
<tr>
<td><strong>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</strong></td>
<td></td>
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</tbody>
</table>

| **Table 3**                                   |                                                                                                                   |
| **COMPETENCE CONCERNED:**                     | Social Integration Programmes (health care, housing, social assistance)                                           |
| **CENTRAL MINISTRY OF:**                      | EMPLOYMENT AND SOCIAL AFFAIRS                                                                                     |
| **DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:** | SECRETARY OF STATE FOR IMMIGRATION AND EMIGRATION                                                                |
| **OTHER LEVEL OF ADMINISTRATION:**            | Government of Autonomous Communities                                                                            |
| **IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):** | This is a shared competence                                                                                       |
**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES  ☒ NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES  ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
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<th>Table 1</th>
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<tr>
<th>MISSING TEXTS</th>
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*INDICATE HERE THE MISSING TEXTS*
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the "trafficking in human beings" (referring to Framework Decision 2002/629/JHA\textsuperscript{51}).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of "an action to facilitate illegal immigration" (referring to articles 1 and 2 of Directive 2002/90/EC\textsuperscript{52}).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [ ] ‘An action to facilitate illegal immigration’ only
- [x] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The Spanish pre-existing law provides in the Art. 59 of Organic Law 4/2000 on the rights and liberties of aliens in Spain and their social integration and Art.117 of Regulation 2393/2004 Implementation Rules of Organic Law 4/2000 that its content is applicable to third-country nationals who have been victims of offences related to "trafficking in human beings" as well as to third-country nationals who have been the subject of an "action to facilitate illegal immigration".

In addition, victims (damaged person, witness) must collaborate in dismantling the organised criminal networks engaged in trafficking or smuggling.


\textsuperscript{52}Read the Directive 2002/90/EC at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0090&model=guichett
This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt* to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

**Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for *instigation of, aiding, abetting or attempt* to commit offences concerning trafficking in human beings?**

☐ Yes  ☐ No

**Explanation:**

Under Spanish Law the article 59 (former art. 55) of OLA 4/2000 on the rights and liberties of aliens in Spain and their social integration and article 117 of Implementation Rules (RD 2393/2004) are applicable too to the victims (damaged persons, witness) of trafficking in human beings (cf. article 318 bis of Criminal Code) when the perpetrators is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings.

**Q.5.B.** Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): **Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)?** Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

There are some deviations as we can appreciate on reading the following provisions of the Spanish Criminal Code of 1995 and we can consider these to be pre-existing laws for this definition. The central norm of transposition of the Framework Decision was article 318 bis of the Criminal Code, revised by Organic Law 11/2003, of September 29 on specific measures concerning the security of citizens, domestic violence and the social integration of aliens. Article 318 bis is drafted as follows: “1. The person, who directly or indirectly promotes, encourages or facilitates the illegal trafficking in or the smuggling of persons from, in transit through or with destination to Spain will be punished with four to eight years imprisonment.

2. If the intention of the illegal trafficking or the smuggling of persons is the sexual exploitation of the persons, punishment will be 10 years imprisonment.

3. Those who carry out the activities described in either of the previous two sections with the intention of making profit or using violence, intimidation, deceit, or by abusing a situation of superiority over or the special vulnerability of the victim, or if the victim is a minor or disabled or putting lives, health or the integrity of the persons in danger will be punished with the upper half of the penalties.

4. Those who carry out these activities by availing themselves of their condition of authority are agents of the authority or civil servants will incur the same penalties as the previous section and absolute disqualification from six to twelve months.

5. The penalties of a higher degree than those stipulated in sections 1 to 4 of this article will be imposed in the respective cases and special disqualification as regards the profession, trade, industry or commerce for the period of time of the conviction when the guilty person belongs to an organisation or association involved in such activities even if this is transitory.

When the leaders, administrators or persons responsible for these organisations or associations are involved, the upper half of the penalty will be applied to them, and this can be raised to the level immediately above.

In the cases stipulated in this section, the judicial authority can also decree one or several of the measures laid down in article 129 of this Code.
6. Taking into account the seriousness of the activity and its circumstances, the condition of the guilty person and the intentions of this person, the Courts can impose the penalty at the lower level to that stated in this regard”.

Other dispositions applicable in Spain are the Art.312 of Criminal Code of 1995, which punishes those who "traffic illegally with labour", those who "employ aliens who have no work permits under conditions which damage, suppress, or restrict their recognised rights under the legal provisions, collective agreements and individual contracts", and the Art.313 of Criminal Code of 1995 which punishes those who "promote or encourage the smuggling of workers into Spain by any means" and "determine or encourage the emigration of any person to another country, simulating a job contract or by using similar deceit". Additionally, it must be borne in mind that article 59 of Organic Law 4/2000 requires that the trafficking of human beings be committed by an organised criminal network, which is interpreted to mean that three or more participants are required to form a network.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction,, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

There are some deviations as we can appreciate on reading article 54, 1º, b) of the Organic Law on Aliens 4/2000, of January 11, 2000. Article 54, 1º, letter b), describes the following case of smuggling as a very serious
administrative infringement "to induce, promote, encourage or facilitate the smuggling of persons in transit through Spain or with Spain as destination or their permanence in Spain, with a view to making profit, individually or as part of an organisation, on condition that the act does not constitute an offence". As we can observe, the Spanish legislator did not transpose the letter a) of article 1 of Directive 2002/90/EC.

In addition, it must be taken into account that article 59 de Organic Law 4/2000 requires that the action aimed at facilitating illegal immigration be committed by an organised criminal network, which is interpreted to mean that three or more participants are required to form a network.

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2)).

This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☐ Yes ☐ No

Explanation:

Under Spanish Law article 59 (former art. 55) of OLA 4/2000 on the rights and liberties of aliens in Spain and their social integration and article 117 of Implementation Rules (RD 2393/2004) are applicable too to the victims (damaged persons, witness) of a very serious administrative infringement of actions to facilitate illegal immigration (cf. article 54, 1º, b) of OLA 14/2003) when the perpetrator is charged for instigation of, accomplice in, or attempt to commit an offence related to an action to facilitate illegal immigration.
Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults
☒ Both adults and minors

Explanation:

However, in practice, minors are usually protected through the ordinary system of protection for minors. This system is characterised by the fact that, if they are not accompanied, they come under the custody of the competent Autonomous Community and an attempt is made to repatriate them in order to achieve family reunification; only when repatriation is not possible within a period of 9 months, is the residence permit processed (cf. art. 35 OLA 4/2000 and articles 92-94 of Regulation 2393/2004). This means that, in practice, minors are excluded from the scope of application of the specific protection stipulated in the Directive. In our opinion, the repatriation for the purposes of family reunification laid down in Spanish legislation can be more damaging to the minor who has been a victim.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: 18

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ All minors

☐ Minors, for which the following criteria are fulfilled:
  •
  •
  •
  •
  •
Explanation:

In principle, the legal provisions are applicable to all minors. Although, in practice, as was stated in question Q.6.A., the Spanish general regime on the protection of minors is applied which means that the specific system for the protection of victims in the Directive is dispensed with.

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: It has been impossible to obtain this figures from the competent authorities

‘An action to facilitate illegal immigration’ (If applicable): It has been impossible to obtain this figures from the competent authorities

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

If the third-country nationals are victims of acts constituting criminal offences involving trafficking or smuggling, the Spanish competent authorities are the Police, the Prosecutor or Attorney General and the Judge. If the acts do not constitute criminal offences, the Spanish competent authority is an Official Employment and Social Security Inspection (Employment and Social Affairs Ministry). Both authorities are public authorities. In some cases the NGOs have a role in assisting and informing the victims.

However, there are no protocols, at least there are none published, for providing the information stipulated in the Directive and, in practice, this is not carried out systematically. Neither is the authority responsible for providing this information specifically determined.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Orally
- [ ] In writing
- [ ] Both orally and in writing
Explanation:

As stated in the previous question, since there is no protocol for information, no written information is provided.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Regarding the answers to the above questions, it is not possible to provide details on the information given to victims.

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

The usual information procedures do not seem to be satisfactory. The lack of determination of the authorities specifically responsible for the information, as well as the lack of protocols for acting mean that the information does not reach many of the victims of illegal trafficking or smuggling, added to the fact that the information provided is insufficient.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

There are no legal provisions in Spanish legislation which expressly stipulate a reflection period stating the time of commencement and its duration.

Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No
Explanation:
As the reflection period is not stipulated, this cannot be answered affirmatively. However, the law provides that, during the whole cooperation procedure, the victim is protected from the execution of expulsion orders while he complies with the conditions stipulated in article 59.1 of the Organic Law on Aliens 4/2000, which provides that: The alien, being a victim or a witness of an act involving the smuggling of labour or exploitation in prostitution by abusing a situation of need, can remain exempt from administrative liability and will not be expelled if he reports the perpetrators of or those cooperating in this smuggling to the competent authorities or cooperates and collaborates with the police authorities with competence for aliens by providing essential data or possibly testifying in the cases against such perpetrators.

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

As stated above, although reflection period is not stipulated, it is true that, during the whole cooperation procedure with the Spanish authorities, if the national of the third State ceases to cooperate or collaborate with the police or judicial authorities, the residence and work permits authorised will be withdrawn, in accordance with the stipulations in article 117 of RD 2393/2004.

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

The same authorities competent for providing or seeking protection.

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

No procedure for termination is stipulated as such.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.

No, as it is not legally stipulated, it does not make it possible to guarantee any of the victims, and this remains at the discretion of the police authorities involved.
Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

Only during the period of active cooperation or collaboration with the labour, police or judicial authorities. There are some support programmes for immigrants in a vulnerable situation and the victims of illegal trafficking or smuggling on sexual exploitation can be assisted by these. In some Autonomous Communities there are specific NGOs programmes. The majority of the beneficiaries are women, who normally find public financing through subsidies or cooperation agreements. These programmes usually provide accommodation, cover for basic necessities, psychological medical support, legal information and orientation in order to have access to the job market. In practice, these resources are restricted or insufficient or the victims subject to these have not access to them and usually involve the police authorities passing the victims on to the NGOs.

After the issue of the residence permit

☐ Yes, in cash ☒ Yes, in kind ☐ No

Explanation:

In the same terms as in the previous question, although article 117 RD 2393/2004 only states that the competent Administration will provide the alien with the necessary social and legal attention.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

This is not possible given the diversity of programmes; in general, the help is not in cash.
Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

NO. Although the Spanish legislation foresees the social support, the aforementioned programmes do not give sufficient support to an autonomous subsistence.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Only in the case that the alien cooperates actively in the struggle against those responsible for trafficking or smuggling. Article 59 of Organic Law 4/2000 and article 117 RD 2393/2004 stipulate the possibility of adopting the protection of witnesses in accordance with Organic Law 19/1994, of December 23, on the protection of witnesses and experts in criminal cases, security measures and the protection of aliens, as, for example, the anonymity of the person involved in the proceedings, police involvement, etc. However, this law is of a general nature, applicable to all types of offences, and there is substantial scarcity of resources for its execution (for example, in relation to the victims of trafficking, it is frequent that the police authorities in charge of the investigation and checks are those in charge of the physical protection of the victims, which presents countless problems for the judicial formalities and, even, for the proceedings).

After the issue of the residence permit:

☒ Yes ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

In the same terms as in the previous phase to the concession of the residence permit.

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☒ Yes ☐ No
Explanation:
This is stipulated and guaranteed by the general legislation, at the police and the judicial instances. Occasionally, there are practical problems in rural areas due to the lack of translation resources.

**After** the issue of the residence permit:

☑ Yes  ☐ No

Explanation:
In the same terms as in the phase previous to the concession of the residence permit.

**Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

Explanation:
This is stipulated and guaranteed by the general legislation, at police and judicial instance level. Sometimes there are practical problems in rural areas due to the lack of interpretation services.

**After** the issue of the residence permit:

☑ Yes  ☐ No

Explanation:
In the same terms as in the phase previous to the concession of the residence permit.

**Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☑ Yes  ☐ No
Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

This is stipulated and guaranteed in general legislation. There are lawyers specialised in immigration in the Bar Association, and in the event that the alien does not have financial resources, he is provided with legal assistance free of charge.

**After** the issue of the residence permit

☑ Yes ☐ No

Explanation: (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

In the same terms as in the phase previous to the concession of the residence permit

**Q.10.H.** Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

It is stipulated and guaranteed in the general legislation (cf. art. 12 OLA 4/2000). Emergency medical treatment is guaranteed to everybody. Generally aliens easily access public health care assistance and obtain the health care card which is automatically granted to those who are on the local Register of Population and in certain Autonomous Communities when social precariousness is proved.

**After** the issue of the residence permit

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only).

In the same terms as in the phase previous to the concession of the residence permit
This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable? See mandatory provision in Article 7(1)**

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, *before* and *after* the issue of the residence permit).

**Before** the issue of the residence permit:

☑ Yes ☐ No

**Explanation:**

Article 117 of Implementation Rules (RD 2393/2004) foresees that the competent authority grants to victims the necessary assistance in social and legal matters, which can be interpreted to include the special needs of the most vulnerable. In fact, there are special support programmes for them, although there is also scarcity of resources for these programmes.

Q.10.I. **Does your Member State provide the third-country nationals concerned with psychological help? See article 7(1)**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes ☐ No

**Explanation:**

In principle, this is transferred to the public health care system, which is insufficient, as the public health care system offers limited psychological attention, which is normally subsidiary to psychiatric attention, and is not specialised.

However, within the programmes of some NGOs, psychological attention is included, but this is not generalised.

**After** the issue of the residence permit

☑ Yes ☐ No

**Explanation:**

In the same terms as in the phase previous to the concession of the residence permit.
This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? See mandatory provision in Article 9(2)

☑ Yes ☐ No

Explanation:
The medical assistance is stipulated and guaranteed in the general legislation (cf. art. 12 OLA 4/2000). Emergency medical treatment is guaranteed to everybody. Generally aliens easily access public health care assistance and obtain the health care card which is automatically granted to those who are on the local Register of Population and in certain Autonomous Communities when social precariousness is proved. There are some general legal dispositions to protection of pregnant women (cf. art. 12.4 OLA 4/2000; art. 57.6 OLA 8/2000). In the public health care system and in the social assistance system, there are special programmes for vulnerable people.

Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)
The legal criteria to be met by the victim of trafficking who is to be granted a residence permit involves active collaboration with the police and judicial authorities against the traffickers or smugglers, articles 31 and 59 of the Organic Law on Aliens 4/2000, articles 45, 46, 47 and 117 of RD 2393/2004.
If we consider the information obtain in different interviews with ONGs we must said that in the administrative practice the Spanish authorities require the follow criteria:
- To be identified with a passport or registration certificate.
- Having collaborated by denouncing the perpetrators of a crime involving the smuggling of persons or the illicit traffic of immigrants involving an organised criminal network (three or more members).
- Having provided essential information for the dismantling of the trafficking or smuggling network.
- To break up the relationship with the network
- To exit the prostitution environment, even though they have broken up with the network. If they are found exercising prostitution on their own account, they will not be granted permission, except in the case they denounce this.
- To collaborate with the authorities as regards the complaint and as regards the continued claim involved.
This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))? 

☑ Yes ☐ No

Explanation:

In Spanish general aliens legislation, the clause of public order and national security constitutes a reason to refuse the issue of (or withdrawal of) all authorizations or permits (cf. art. 53., d y f; art. 54.; a; art. 57 OLA 8/2000 and art. 138 Implementation Rules [RD 2393/2004]).

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

Article 31 of the Organic Law on Aliens denominated this residence permit as temporary and valid from 90 days to five years, but article 45.6 of RD 2393/2004 provides that the residence permit will be valid for a year and could be renewed.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

Article 47.1 of RD 2393/2004 provides that "the holders, ..., can renew the authorisation on condition that the reasons for the concession remain as perceived by the competent authorities". That is without prejudice to applicability of the ordinary alien legislation (article 98 of RD 2393/2004).

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

Article 35 of Organic Law on Aliens 4/2000 and article 92 of RD 2393/2004, ensure that "the best interest of the child" is accounted for.
**Q.12.B.** Has your Member State extended the reflection period for minors? *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:** (If the answer is “yes”: For how long?)

Remember that the reflection period is not expressly stipulated for senior citizens.

**Q.12.C.** Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? *See article 10(a).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes  ☒ No

**Explanation:** (If yes, explain which measures are taken)

There are no special guarantees apart from the guarantees generally stipulated in the ordinary system for the protection of minors.

**Q.12.D.** Do minors have access to the educational system under the same conditions as nationals? *See article 10(b).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☒ Yes  ☐ No

**Explanation:** (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

In the terms stipulated and guaranteed by the general legislation.

This question should only be answered if your Member State has recourse to the option provided for in Article 3(3) i.e. has decided to apply the Directive to minors.

**Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs?** *See mandatory provision in Article 9(2)*

☒ Yes  ☐ No
Explanation:

The medical assistance of minors is specifically stipulated and guaranteed in the general legislation (cf. art. 12.3 OLA 4/2000). Other assistance is foreseen by general legislation on minor aliens (cf. art. 35.1 OLA 8/2000 and art. 92 Implementation Rules [RD 2393/2004]) relating to general legislation on protection of minors (cf. Organic Law 1/1996 on Legal Protection of Minors) and Autonomous Community legislation on protection of minors.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Article 92 of RD2393/2004 provides that:

1. In the cases in which the Security Forces of the State know of, or locate an indocumented alien in Spain and it cannot be determined with certainty whether he is under age, they will inform the services for the protection of minors so that they may provide the immediate attention required, in accordance with what is established in the legislation on the legal protection of minors. The Attorney General's Office will be immediately informed of this and will order the determination of his age, for which the relevant health care institutions will collaborate with the required tests urgently and giving priority to the case.

2. Once the age is determined, if the person is a minor, the Attorney General will place him at the disposal of the services competent for the protection of minors.

3. During the procedure for the determination of the age of the minor, if he requires immediate attention, the Security Forces of the State will request the assistance of the services competent for the protection of minors.

4. In accordance with the principle of family reunification for the minor, the General Administration of the State will hear the minor and receive a report from the services for the protection of minors and will decide on what is right concerning the repatriation to his country of origin, or to the country where his family is, or, failing this, on whether he should stay in Spain. In accordance with the principle of the best interest of the child, the repatriation to his country of origin will only be agreed to if the conditions for the effective family reunification of the minor or for the adequate custody by the services for the protection of minors in the country of origin are complied with.

The procedure will be initiated ex officio by the General Administration of the State or, possibly, on the proposal of the public entity which has the custody of the minor. The Institution which has the custody of the minor will provide the Government authority with any information it might have regarding the identity of the minor, his family, his country or place of residence, and will provide information on the steps it has taken to locate the family of the minor.

The Government authority will provide the Attorney General’s Office with information on all the actions taken in these proceedings.

The General Administration of the State which is competent for taking the steps concerning the repatriation of an unprotected minor from Spain will act through the Delegations and Sub-Delegations of the Government, and these will request the Police Station for Aliens and Documentation to take the steps required regarding the corresponding embassies and consulates in order to locate the family members of the minors or, failing this, the services for the protection of minors in his country of origin which might be responsible for him. If there is no diplomatic representation in Spain, these steps will be channelled through the Ministry of Foreign Affairs and Cooperation.

Once the family of the minor is located or, failing this, the services for the protection of minors in his country, repatriation will take place through the handover to the border authorities of the country the minor is repatriated to. This measure will not apply if risk or danger to the integrity of the minor, or the persecutions of the minor or his family are detected.

In the event that the minor is involved in judicial proceedings, the repatriation will be conditioned to the judicial authorisation. In any case, the notification to the Attorney General's Office must be recorded in the dossier.

The repatriation of the minor will be agreed to by the Government Delegate or by the Government Sub-Delegate, and will be executed by the Civil Servants of the National Police.

The repatriation will take place at the expense of the family of the minor or of the services for the protection of minors in his country. Otherwise, the diplomatic or consular representative of his country will be informed to this effect. Subsidiary, the General Administration of the State will be responsible for paying the repatriation
costs. Once nine months have elapsed from the time that the minor is placed at the disposal of the services competent for the protection of minors, in accordance with section 2, and once repatriation to his family or to the country of origin is attempted, if this is not possible, he will be granted a residence permit as referred to in article 35.4 of Organic Law 4/2000, of January 11. In any case, the fact of not having a residence permit will not suppose an obstacle for the minor to access the education or training activities or programmes which, in the opinion of the competent entity for the protection of minors, will benefit him. The fact that residence has been authorised will not be an impediment to the repatriation of the minor when this can subsequently be carried out in accordance with the stipulations in this article. In the event that the minors under the custody of the entity competent for the protection of minors which become of age and have not obtained the aforementioned residence permit and have participated adequately in the training and the activities programmed by this entity for their social integration, the entity can recommend the granting of a temporary residence permit for exceptional circumstances, which will include the stipulations in article 40.j) of Organic Law 4/2000, of January 11.

6. If this involves minors requesting asylum, the stipulations in article 15.4 of the Implementation Rules of Law 5/1984, of March 26, Regulating the Right to Asylum and the Condition of Refugee approved by Royal Decree 203/1995, of February 10 will apply.

**Work, vocational training and education**

**Q.13.** Questions concerning the access to work, vocational training and education:

**Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes    ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

They need a job offer to apply for a work permit. The granted permit will be limited geographically and by sector depending on the job offer submitted. Although the possibility of changing these limitations in the work permit is planned (cf. art. 47.3 in relation to art. 98 RD 2393/2004).

**Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes    ☐ No

**Explanation:** (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

With the residence permit, the alien can register in the public employment service as applicants for training and can access such training.
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

In the terms stipulated in the general legislation. Access free of charge to primary and secondary levels.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation:

Except for primary and secondary levels.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
**Explanation:** If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

Normally, integration courses for training and assisting the victims of sexual exploitation are offered. The NGOs and public institutions depending on the Autonomous Communities are responsible for these. These resources are limited.

**Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [x] No

**Explanation:**
Remember that we refer to pre-existing law.

**Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).**

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] Yes
- [x] No

**Explanation:**
Legally, the renewal is not dependent on these programmes or schemes (cf. article 47.1 RD 2393/2004).

**Non-Renewal and Withdrawal**

**Q.15.** Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [x] Yes
- [ ] No

**Explanation:**
Article 47.1 of RD 2393/2004 foresees that authorities reconsider that the reasons for the concession remain.
Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes     ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

If the administrative or police authority, the Attorney General or the judge verifies that the victim is unwilling to cooperate actively, again contacts the network or returns to prostitution on his or her own account, unless this is as a police informer.


Article117 of RD 2393/2004 establishes that “the concession of this documentation can be revoked if the holder ceases to cooperate or collaborate with the police or judicial authorities, during the time that the proceedings in which he is the victim, person damaged or witness last”. There are no ulterior legal provisions concerning the procedure to be followed.

Final questions

Q.17. Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

Yes, see Report on the Spanish Plan Draft drawn up by the Spanish Network against the trafficking of Human Beings,

Q.18. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

NO

Q.19. Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

NO
IMPART OF THE DIRECTIVE ON NATIONAL LAW

**Q.29** Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td></td>
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<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td></td>
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<tr>
<td>The responses given have been provided with the Spanish legislation previous to the Directive (pre-existing legislation) which is adapted to the general content of the Directive.</td>
<td>no formal transposition</td>
<td></td>
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</tbody>
</table>

- □ Less favourable than previous national rules
- × Status quo
- □ More favourable than previous national rules

- × Less favourable than the Directive
- □ In line with the directive
- □ More favourable than the directive

**Q.30.** From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below.

*When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*
**Table 1**

<table>
<thead>
<tr>
<th>OBJECTIVE (to be indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
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<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
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<tr>
<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Less favourable than previous national rules</td>
<td>□ Less favourable than the Directive</td>
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<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the directive</td>
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**Q.31.A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

□ YES  ☒ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

□ YES  □ NO

**Q.31.C.** If yes, give some of examples:

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

As stated, the Spanish legislation is previous to the Directive
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:
**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

*Table 1*

<table>
<thead>
<tr>
<th>OBJECTIVE OF THE PRACTICE</th>
<th>EXPLANATION</th>
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</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se

July 1st 2007

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
### Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
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<tbody>
<tr>
<td><strong>TITLE</strong>:</td>
<td>Amendment (2007:322) to the Aliens act (2005:716)</td>
</tr>
<tr>
<td><strong>DATE</strong>:</td>
<td>June 5th 2007</td>
</tr>
<tr>
<td><strong>NUMBER</strong>:</td>
<td>SFS 2007:322</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>:</td>
<td>July 1st 2007</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong>:</td>
<td>This is the main norm of transposition of the Directive.</td>
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<td>However, even before the entry into force of the norms of transposition there were a provision concerning the issue of residence permits where a foreigner is about to give testimony in a criminal trial. The preparatory works acknowledged, however, that in order for the Swedish law to fulfil the requirements of the Directive, there is a need for several amendments to the Aliens act (2005:716), the Aliens regulation (2006:97) and the regulation on preliminary investigations (1947:948).</td>
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<td><strong>LEGAL NATURE</strong> (please tick the correct box):</td>
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<tr>
<td>☑ LEGISLATIVE</td>
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<tr>
<td>☐ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
This table is about: ☑ a text already adopted ☐ a text which is still a project to be adopted

**TITLE**: The Social services act (2001:453)

**DATE**: June 7th, 2001

**NUMBER**: SFS 2001:453

**DATE OF ENTRY INTO FORCE**: Januari 1st, 2002

**PROVISIONS CONCERNED**: Chapter 1 section 2, Chapter 2 section 2, Chapter 4 section 1, Chapter 5 section 1, Chapter 5 section 11, Chapter 11 section 2.

(for example if the norm also pursues other objectives than the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**:

**LEGAL NATURE** (please tick the correct box):

☑ LEGISLATIVE

☐ REGULATION

☐ CIRCULAR OR INSTRUCTIONS

---

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

**Table 1**

**TITLE**: The Instrument of Government

**DATE**: February 28th, 1974

**NUMBER**: SFS 1974:152

**DATE OF ENTRY INTO FORCE**:

**PROVISIONS CONCERNED**:

(for example if the norm also pursues other objectives than the transposition of the directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**:

**LEGAL NATURE** (indicate by ticking the correct box):

☑ LEGISLATIVE

☐ REGULATION

☐ CIRCULAR OR INSTRUCTIONS
### Table 2

| TITLE: | The act on guardians for unaccompanied minors (2005:429) |
| DATE: | June 9th 2005 |
| NUMBER: | SFS 2005:429 |
| DATE OF ENTRY INTO FORCE: | 1 July 2005 |
| PROVISIONS CONCERNED: | (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): |
  - [ ] LEGISLATIVE
  - [ ] REGULATION
  - [x] CIRCULAR OR INSTRUCTIONS

### Table 3

| DATE: | November 22, 2001 |
| NUMBER: | SFS 2001:976 |
| DATE OF ENTRY INTO FORCE: | January 1st, 2002 |
| PROVISIONS CONCERNED: | (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): |
  - [ ] LEGISLATIVE
  - [x] REGULATION
  - [ ] CIRCULAR OR INSTRUCTIONS

### Table 4

| TITLE: | The health and medical services act (1982:763) |
| DATE: | June 30th 1982 |
| NUMBER: | SFS 1982:763 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: | (for example if the norm also pursues other objectives than the transposition of the directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate by ticking the correct box): |
  - [x] LEGISLATIVE
  - [ ] REGULATION
  - [ ] CIRCULAR OR INSTRUCTIONS
<table>
<thead>
<tr>
<th>Table 5</th>
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<tbody>
<tr>
<td><strong>TITLE:</strong> The Dental services act (1985:125)</td>
</tr>
<tr>
<td><strong>DATE:</strong> March 14th 1985</td>
</tr>
<tr>
<td><strong>NUMBER:</strong> SFS 1985:125</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> January 1st 1986</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong> (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td><strong>LEGAL NATURE</strong> (indicate by ticking the correct box):</td>
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<td>□ CIRCULAR OR INSTRUCTIONS</td>
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</table>

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<tr>
<th>Table 6</th>
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<tbody>
<tr>
<td><strong>TITLE:</strong> The Police act (1984:387)</td>
</tr>
<tr>
<td><strong>DATE:</strong> June 7th 1984</td>
</tr>
<tr>
<td><strong>NUMBER:</strong> SFS 2001:976</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> October 1st 1984</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong> (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<tr>
<td><strong>LEGAL NATURE</strong> (indicate by ticking the correct box):</td>
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<tr>
<th>Table 7</th>
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<tbody>
<tr>
<td><strong>TITLE:</strong> The Administrative procedure Act (1986:223)</td>
</tr>
<tr>
<td><strong>DATE:</strong> May 7th</td>
</tr>
<tr>
<td><strong>NUMBER:</strong> SFS 1986:223</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> January 1, 1987</td>
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<tr>
<td><strong>PROVISIONS CONCERNED:</strong> (for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
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<td><strong>LEGAL NATURE</strong> (indicate by ticking the correct box):</td>
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<td>□ REGULATION</td>
</tr>
<tr>
<td>□ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decisions on the issue of residence permits for the persons concerned.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>The Swedish Migration Board</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Swedish Migration Board is independent of the competent minister.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☒ YES ☐ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☒ YES ☐ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA).53

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC).54

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ ‘Trafficking in human beings’ only
☐ ‘An action to facilitate illegal immigration’ only
☒ Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The scope of the norms of transposition of the Directive in Swedish is in fact much wider than what is required by the Directive: Chapter 5 section 15 in the Aliens act (2005:716) is not only applicable for victims of "trafficking in human beings" and victims of "an action to facilitate illegal immigration" but for all who are about to give evidence in a criminal trial, even citizens of the EEA.

Chapter 5 section 15 of the Aliens act (2005:716) provide for the following:

A temporary residence permit, valid for at least six months, shall upon application of the prosecutor be issued to a foreigner staying in Sweden if,

1. There is a need for the person to stay in Sweden in order for the authorities to be able to carry out a preliminary investigation or a criminal trial.
2. The foreigner has shown a clear intention to cooperate with the investigating authorities.
3. The foreigner has severed all relations with those suspected of the crimes under investigation.
4. There are no reasons relating to public policy or national security not to issue a residence permit to the foreigner concerned.

Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

This question is not relevant considering that the scope of the Swedish norms of transposition is considerably wider than what is required by the Directive. This means that the persons concerned is not only eligible for a residence permit under the norms of transposition of the Directive if they are victims of the crime ‘trafficking in human beings’ or ‘an action to facilitate illegal immigration’ but also if they are victims of any other crime.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.
This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings. (See Article 2(c) with reference to Article 2 in the Framework decision 2002/629/JHA on combating trafficking in human beings)

Are the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings?

☑ Yes    ☐ No

Explanation:

See Q.5.A

Q.5.C. Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

See Q.5.A

Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

   (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
   (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

This question should only be answered if your Member State has recourse to the option of applying the Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration (See Article 3(2).
This question concerns the applicability of the norms of transposition of the Directive in your Member State in cases where a perpetrator is charged for instigation of, accomplice in, or attempt to commit offences concerning an ‘action to facilitate illegal immigration’ (See Article 2(b) with reference to Article 2 in Council Directive 2002/629/JHA on the facilitation of unauthorised entry, transit and residence)

Is the norms of transposition of the Directive in your Member State applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning an ‘action to facilitate illegal immigration’?

☑ Yes ☐ No

Explanation:
See Q.5.A

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Adults ☒ Both adults and minors

Explanation:
See Q.5.A. The applicable provision is neutral with regard to age which means that it is applicable also for minors.

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is:
Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ All minors

☐ Minors, for which the following criteria are fulfilled:

•

•

•

•

•

Explanation:

Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’: No information available since the norms of transposition has not yet entered into force.

‘An action to facilitate illegal immigration (If applicable): No information available since the norms of transposition has not yet entered into force.

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

The applicable provision in domestic law is problematic considering the wording of the Directive. The Directive requires the Member States to inform the person concerned of “the possibilities offered under the Directive”. The applicable provision in Swedish legislation is more circumscribed since it merely prescribes that the prosecutor shall inform the person concerned on the possibility of receiving a residence permit.
Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally

☐ In writing

☐ Both orally and in writing

Explaination:

There is no information available since the norms of transposition have not yet entered into force and the applicable provision does not say whether the information shall be provided orally or in writing.

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

See Q.8.B

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

See Q.8.B

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes

☐ No


**Explanation:** (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

A temporary residence permit, valid for 30 days, shall upon application of the prosecutor be issued to a foreigner staying in Sweden if,
1. There is a need for the person staying in Sweden in order for the authorities to be able to carry out a preliminary investigation or a criminal trial,
2. the foreigner wants to have a reflection period in order to be able to recover and take an informed decision as to whether to cooperate with the investigating authorities.
3. there are no reasons related to public policy or national security not to issue a residence permit to the person concerned.

It is stated in the preparatory works that 30 days is an appropriate length of the reflection period considering both the need of the person staying with regard to the preliminary investigation and the interests of the victim. The reflection period may however be extended if there are special reasons for a longer reflection period.

The Swedish Migration Board takes the decision to issue a temporary residence permit upon application of the prosecutor. The preparatory works states that the prosecutor shall apply for a residence immediately if he or she is of the opinion that the person concerned might qualify for a residence permit under chapter 5 section 15 in the Aliens act (2005:716) (see also Q.5.A and Q.5.B).

**Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes  ☐ No

**Explanation:**

The person concerned will indeed be protected from expulsion under the reflection period because he or she is in possession of a valid residence permit.

**Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☑ Yes  ☐ No

**Explanation:** (If the answer is “yes”, which are the criteria?)

According to chapter 7 section 7b in the Aliens act (2005:716), the temporary residence permit may be withdrawn if:

1. the criteria for approval of the residence permit are no longer fulfilled. The residence permit may however not be withdrawn before the prosecutor has had the possibility to express his or hers opinion concerning the withdrawal (see chapter 7 section 7b).

2. the third-country national has knowingly supplied incorrect information or knowingly suppressed circumstances that have been important for obtaining the permit (see chapter 7 paragraph 1 in the Aliens act (2005:716). This particular ground clearly goes beyond the exhaustive list of criteria mentioned in Article 6(4) of the Directive and is therefore problematic.
3. It can be assumed, on the basis of previous activities or otherwise, that the alien will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in some other Nordic country (see chapter 7 section 3 in the Aliens act (2005:716). The residence permit may however not be withdrawn if the alien has been in Sweden on a residence permit for more than three years when the question of withdrawal is examined by the authority that makes the first decision in the matter (see chapter 7 section 3 in the aliens act (2005:716). Or,

4. the third-country national has been registered on the list of persons not to be permitted entry referred to in section 3 point 2 of the Schengen Information System Act (2000:344) if there are sufficient grounds for withdrawal (see chapter 7 section 5 in the aliens act (2005:716) or,

5. A residence permit may be withdrawn from a person who is not a national of a state belonging to the European Union if a refusal-of-entry or expulsion order has been issued in a state belonging to the European Union or in Iceland or Norway and the order is based on there being a serious threat to public order or internal security and on
- the alien having been convicted in the state issuing the order of an offence for which a sentence of at least one year’s imprisonment is prescribed or
- the alien being suspected on reasonable grounds of having committed a gross offence or there being strong grounds to indicate that the alien intends to commit such an offence. A residence permit may however not be withdrawn before consultation with the state that has ordered a refusal of entry or expulsion. (see chapter 7 section 6 in the (2005:716) Aliens act.

Q.9.D. If the answer on Q.9.C is “yes”: **Which authority in your Member State has the competence to take the decision to terminate the reflection period?** (Please give details on the name and function of the authority)

According to chapter 7 section 8 in the Aliens act (2005:716) the Swedish Migration Board is the competent authority.

Q.9.E. If the answer on Q.9.C is “yes”: **Please describe the procedure for termination of the reflection period.**

It is a formal decision made by the Swedish Migration Board (see chapter 7 section 8 in the Aliens act (2005:716).

Q.9.F. **Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.**

No information available since the norms of transposition has not yet entered into force.

**Treatment**

**Q.10.** According to the Directive the Member State **shall**, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. **See article 7.**

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).
Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes, in cash  ☑ Yes, in kind  ☐ No

Explanation:

The beneficiaries of a temporary residence permit under the criteria explained under Q.5.A and Q.5.B are eligible to social benefits on the same footing as nationals. Chapter 2 section 2 in the Social services act (2001:453) states that the municipality is ultimately responsible for ensuring that persons staying within its boundaries receive the support and assistance they need. Furthermore it is stated in chapter 4 section 1 in the social services act that persons unable to provide for their needs or to obtain provision for them in any other way are entitled to assistance from the social welfare committee towards their livelihood (livelihood support) and for their living in general. Through the assistance, the individual shall be assured of a reasonable standard of living. The assistance shall be designed in such a way as to strengthen his or her resources for independent living.

Livelihood support is provided for reasonable expenditure on:
1. food, clothing and footwear, play and leisure, disposable articles, health and hygiene, a daily newspaper, a telephone and a television licence fee,
2. housing, domestic electricity supply, journeys to and from work, household insurance and membership of a trade union and an unemployment insurance fund.

The level of "reasonable expenditure" is prescribed in more detail by the government in the social services regulation (2001:937). It shall be computed according to a norm (the national norm) on the basis of official price surveys regarding basic consumption in various types of household. The social welfare committee shall, however, compute this expenditure at a higher level if, in a particular case, there are special reasons for doing so. The committee may also, in a particular case, compute the expenditure at a lower level if there are special reasons for doing so.

**After** the issue of the residence permit

☑ Yes, in cash  ☑ Yes, in kind  ☐ No

Explanation:

See above. There is no difference between the treatment granted before and after the issue of the residence permit.

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.

It is the same amount as the social benefits for nationals (see the social services regulation (2001:937) chapter 2 section 1.
**Q.10.C.** Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): **In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’?** See article 7(1) which is a mandatory provision.

The level of social aid is decided each year based on the latest report from The Swedish Consumer Agency (see the social services regulation (2001:937) chapter 2 section 1). This implies that the support given is indeed sufficient to ensure "standards of living capable of ensuring their subsistence".

**Q.10.D.** Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

- [ ] Yes
- [ ] No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

The protection of victims of crimes falls under the general responsibilities of the police.

According to section 2 in the Police act (1984:387) the police is duty bound to
1. prevent crime and other disturbances of public order or safety,
2. maintain public order and safety, prevent disturbances of the same and take action when such disturbances occur,
3. carry out investigations and surveillance in connection with indictable offences,
4. provide the public with protection, information and other kinds of assistance, whenever such assistance is best given by the police, and to
5. perform such duties as are incumbent on the police pursuant to special regulations.

According to paragraph 2a in the Police act (1984:387) the police may take special measures regarding the personal safety of witnesses and other persons who are under a threat. These measures depend on the situation and the threat at hand but it may, according to the preparatory works, consist of moving the person to a "safe house" and/or contacts with different public authorities’ etcetera.

Furthermore, according to chapter 5 section 11 of the social service act (2001:453) the social welfare committee should take measures to ensure that persons subjected to criminal acts and their next-of-kin are supported and helped. This may for example include protection in safe houses.

**After** the issue of the residence permit:

- [ ] Yes
- [ ] No

**Explanation:** (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

See above. There is no difference between the treatment granted before and after the issue of the residence permit.
Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☒ Yes ☐ No

Explanation:

During the preliminary investigation translation services may be provided according to the Code of administrative procedure (1986:223) section 8. During the criminal trial, the court may translate certain documents according to chapter 33 section 9 in the Code of judicial procedure (1942:740).

**After** the issue of the residence permit:

☒ Yes ☐ No

Explanation:

See above. There is no difference between the treatment granted before and after the issue of the residence permit.

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☒ Yes ☐ No

Explanation:

During the preliminary investigation interpreting services may be provided according to the Code of administrative procedure (1986:223) section 8. During the criminal trial the court shall according to chapter 5 section 6 in the code of judicial procedure (1942:740) consult an interpreter.

**After** the issue of the residence permit:

☒ Yes ☐ No

Explanation:

See above. There is no difference between the treatment granted before and after the issue of the residence permit.
Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No

**Explanation:** (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantititative limit on hours spent or costs accumulated?)

According to the act on legal advisers (1988:609) the court may appoint (ex officio or upon request by the victim of the crime) a free legal adviser who will assist the victim of the crime in the court proceedings if the crime committed is one of the crimes which the above mentioned law refers to, among them human smuggling. When the project of legislation was circulating for comments the importance of a legal adviser being appointed as early as before the first interrogation was emphasized by the Swedish Association of Women's Shelters (SKR).

Also, according to chapter 18 in the Aliens act (2005:716) a free legal adviser shall be appointed for the person whom the measure concerns, unless it must be assumed that there is no need for a legal adviser, in e.g. cases of refusal of entry.

**After** the issue of the residence permit

☑ Yes  ☐ No

**Explanation:** (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

See above. There is no difference between the treatment granted before and after the issue of the residence permit.

Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care? See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

**Before** the issue of the residence permit:

☑ Yes  ☐ No
**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care during the reflection period or if care is restricted to *emergency* medical care only).

The County council is, according to section three in the health and medical service act (1982:763) and paragraph 5 in the Dental service act (1985:235), under the obligation to provide health and dental care to person 'residing' within the county. However, the County Council is according to paragraph 4 in the health and medical service act (1982:763) and paragraph 6 in the Dental service act (1985:235) also under the responsibility to provide immediate health and medical services for a person 'present' within the county without being a resident of the same.

Hence, if a person is present within the county council without being a resident, (which predominantly will be the case for the persons concerned) medical and dental care is limited to immediate needs according to law. However, there is an agreement between the County council and the Swedish government giving the persons within the scope of the norms of transposition of the Directive access to healthcare under the same circumstances as nationals. Furthermore the Swedish government is currently working on a project of legislation concerning access to medical care the project of legislation has not yet been made available.

**After the issue of the residence permit**

- [ ] Yes
- [ ] No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to *general* medical care or if care is restricted to *emergency* medical care only.

See above. There is no difference between the treatment granted before and after the issue of the residence permit.

This question concerns the requirement of attending to the special needs of the most vulnerable both before and after the issue of the residence permit (See article 7(1)

**Have your Member State transposed the provision on attending to the special needs of the most vulnerable?** See mandatory provision in Article 7(1)

(When answering this question, please note that you are asked to indicate if there are any differences between the treatment granted, according to law, before and after the issue of the residence permit).

**Before the issue of the residence permit:**

- [ ] Yes
- [x] No

**Explanation:**

There is no transposition of the provision on attending to the special needs of the most vulnerable. Presumably the assistance provided to all is considered sufficient also for the most vulnerable. I am however of the opinion that a reference to the treatment granted to all might be problematic given that this does not generate a positive obligation to create suitable care resources for the group of victims that indeed have special needs.
After the issue of the residence permit

☐ Yes    ☒ No

Explanation:
See the previous answer.

Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help? *See article 7(1)*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Before the issue of the residence permit:

☒ Yes    ☐ No

Explanation:
See the answer to the previous question.

After the issue of the residence permit

☒ Yes    ☐ No

Explanation:
There is no difference between the treatment granted before and after the issue of the residence permit.

This question concerns the treatment granted after the issue of the residence permit to persons with special needs (See Article 9(2)).

Does your Member State provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or other forms of violence? *See mandatory provision in Article 9(2)*

☐ Yes    ☒ No

Explanation:
There is no transposition of the provision on attending to the special needs of the most vulnerable. Presumably the assistance provided to all is considered sufficient also for the most vulnerable. I am however of the opinion that a reference to the treatment granted to all might be problematic given that this does not generate a positive obligation to create suitable care resources for the group of victims that indeed have special needs.
Issue and renewal of the residence permit

Q.11. Questions regarding the issue and renewal of the residence permit. See mandatory provisions in article 8:

Q.11.A. According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No

Explanation: (If he answer is “yes”, explain the criteria that have to be met)

See Q.5.B

This question concerns the possibility to refuse the issue of a residence permit for reasons related to public policy and national security (See Article 8(2))

Is it possible to refuse the issue of a residence permit in your Member State for reasons related to public policy and national security (See Article 8(2))?

☑ Yes  ☐ No

Explanation:

See Q.5.A

Q.11.B. For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

The residence permit is according to chapter 5 section 15 in the Aliens act (2005:716) valid for six months.

Q.11.C. When residence permit has expired, can it be renewed? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes  ☐ No
Explanation: (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).

The criteria for renewal is according to chapter 5 section 15 in the Aliens act (2005:716) that the criteria for the issue of the residence permit are still met. According to the preparatory works there is no limitation of how many times the residence permit may be renewed. (prop. 2006/07:53 p. 25).

Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

The transposition of the Directive did not imply any amendments to the existing legislation. However, pre-existing legislation provides for the following:

Regarding the decision on residence permits the Chapter 1 section 10 of the Aliens act (2005:716) states: In cases involving a child, particular attention must be given to what is required with regard to the child's health and development and the best interest of the child in general. Furthermore, when assessing the issue of residence permit under the Aliens act when a child will be affected by the decision, the child must be heard, unless this could be considered inappropriate. Account must be taken of what the child has said to the extent warranted by the age and maturity of the child (see the Aliens act (2005:716) chapter 1 paragraph 11.

Furthermore, Chapter 14 section 1 of the social services act (2001:453) prescribes that public authorities such as the police and the Swedish Migration Board shall notify the social welfare committee immediately of any matter which comes to their knowledge and may imply a need for the social welfare committee to intervene for the protection of a child. The same applies to persons employed by such authorities. The social committee has a general responsibility for children regardless of if they are Swedish citizens or not (cf. chapter 5 paragraph 1 in the Social services act (2001:453).

Apart from these general provisions Swedish legislation does not foresee any particular measures in order to ensure that the procedure is appropriate to the age and maturity of the child.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation: (If the answer is “yes”: For how long?)

It is however stated in the preparatory works that extension of the reflection permit will be considered when the victim of a crime is a minor (see government proposition 2006/07:28).
Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

See Q.12.A

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Yes ☐ No

Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

The regulation on education, pre-schooling and child-care for asylum seeking children (2001:976) provide for that minors staying in Sweden on a residence permit under the norms of transposition of the Directive shall have access to the educational system on the same footing as nationals.

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

The unaccompanied minor shall be given a legal guardian according to the act on guardian for unaccompanied minors (2005:429). Also, if a legal guardian is not appointed but a legal adviser has been appointed according to chapter 18 paragraph 1 in the Aliens act (2005:716) the legal advisor is the legal guardian for the child in the matter for which he or she is appointed.

There is no specific provision regarding the obligation to locate the families of the unaccompanied minors which is problematic considering that Article 10(c) specifically prescribes that the Member States "shall make every effort to locate their families as quickly as possible". That being said, the locating of family members may indeed fall under the general responsibilities of the different authorities responsible for taking care of the minor.

Does your Member State provide necessary medical or other assistance to minors who do not have sufficient resources and have special needs? See mandatory provision in Article 9(2)

☐ Yes ☒ No
Explanation:

There is no transposition of the provision on attending to minors who do not have sufficient resources and have special needs. Presumably the assistance provided to all minors is considered sufficient also for the minors having special needs. I am however of the opinion that a reference to the assistance granted to all might be problematic given that this does not generate a positive obligation to create suitable care resources for the group of victims that indeed have special needs.

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

A person who has been granted a temporary residence permit under the norms of transposition of the Directive is, according to chapter 5 section 1 in the Aliens regulation (2006:97), exempted from the requirement to have a work permit.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).

The holders of the residence permit have access to vocational training according to the (2001:239) act on vocational training subject to the admission criteria for the vocational training concerned. Since no special remedies are provided for the persons concerned practical problems will most likely occur because of language problems, criteria for admittance (previous education etcetera), and the temporary nature of the stay.
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

The holders of the residence permit have access to vocational training according to the (2001:239) act on vocational training subject to the admission criteria for the vocational training concerned. Since no special remedies are provided for the persons concerned practical problems will most likely occur because of language problems, criteria for admittance (previous education etcetera), and the temporary nature of the stay.

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation:

The exemption from the requirement to have a work permit is indeed connected to the person being in possession of the residence permit.

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No
Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).

The person concerned have indeed access to any existing programmes or schemes. In the preparatory works the government refers to certain programmes organized by NGOs and also to the EQUAL-project which is a collaboration between certain public authorities and NGOs funded by the European Social fund.

Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☒ No

Explanation:

It is in fact stated in the preparatory works that even though there are some benefits for the person receiving a residence permit under the norms of transposition of the Directive, the main interest in having him or her in Sweden for the purpose of the criminal investigation and trial, lies with the state. Hence, to make the issue of the residence permit or its renewal conditional upon the participation in certain programmes or schemes would be inappropriate (cf. government proposition 2006/07:53).

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes  ☐ No

Explanation:

According to chapter 5 section 15a, the residence permit may be extended if the criteria for the issue of the residence permit are still fulfilled.
Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☒ Yes ☐ No

Explanation: (if the answer is “yes”, explain under which circumstances that is possible)

According to chapter 7 section 7b in the Aliens act (2005:716), the temporary residence permit may be withdrawn if:

1. the criteria for approval of the residence permit are no longer fulfilled. The residence permit may however not be withdrawn before the prosecutor has had the possibility to express his opinion (see chapter 7 section 7b.

2. the third-country national has knowingly supplied incorrect information or knowingly suppressed circumstances that have been important for obtaining the permit (see chapter 7 paragraph 1 in the Aliens act (2005:716). This "fraud-clause"clearly goes beyond the exhaustive list of criteria in Article 14 of the Directive and is therefore problematic.

3. It can be assumed, on the basis of previous activities or otherwise, that the alien will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in some other Nordic country (see chapter 7 section 3 in the aliens act (2005:716). The residence permit may however not be withdrawn if the alien has been in Sweden on a residence permit for more than three years when the question of withdrawal is examined by the authority that takes the first decision in the matter (see chapter 7 section 3 in the aliens act (2005:716) Or,

4. the third-country national has been registered on the list of persons not to be permitted entry referred to in section 3 point 2 of the Schengen Information System Act (2000:344) if there are sufficient grounds for withdrawal (see chapter 7 section 5 in the aliens act (2005:716) or,

5. A residence permit may be withdrawn from a person who is not a national of a state belonging to the European Union if a refusal-of-entry or expulsion order has been issued in a state belonging to the European Union or in Iceland or Norway and the order is based on there being a serious threat to public order or internal security and on

   - the alien having been convicted in the state issuing the order of an offence for which a sentence of at least one year’s imprisonment is prescribed or
   - the alien being suspected on reasonable grounds of having committed a gross offence or there being strong grounds to indicate that the alien intends to commit such an offence. A residence permit may however not be withdrawn before consultation with the state ordering the refusal of entry or expulsion. (see chapter 7 section 6 in the (2005:716) Aliens act.

The preparatory works emphasizes that the provisions on withdrawal are facultative. Hence, the fulfilment of any of the criteria does not mean that the authorities have to withdraw the permit. Also, it is stated in the preparatory works that when considering the withdrawal of a residence permit the foreigners circumstances of the individual shall be taken into account. If, for example the criminal action is over it may nevertheless be appropriate to allow the person concerned stay for the remaining period of validity of the residence permit if the residence permit if the expiry of the permit is imminent and the foreigner has made plans for his return at the date of expiry of the permit. Also, it is said in the preparatory works that there may be other circumstances under which it may be appropriate to allow the person to stay in Sweden for the remaining period of validity of the residence permit (cf. government proposition 2006/07 p. 42).
**Q.16.B.** Explain the procedure for withdrawal of the residence permit.

The decision to withdraw the residence permit is made by the Swedish Migration Board (chapter 7 section 8 in the Aliens act (2005:716). The residence permit may, however, according to chapter 7 section 7b of the Aliens act (2005:716) not be withdrawn before the prosecutor has had the opportunity to express his or hers opinion on the withdrawal of the permit. The decision to withdraw a residence permit under the norms of transposition of the Directive may be appealed by the prosecutor before the Migration Court.

**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

When the project of legislation was circulating for comments several NGOs commented on the possibilities for victims of trafficking to apply for and receive a permanent residence permit in Sweden. "Save the Children Sweden" stated that the prosecutor should be duty bound to inform the victim of trafficking on the possibility to apply for and receive a permanent residence permit, not only a temporary residence permit. Furthermore, the Swedish Red Cross, among others, stated that a permanent resident permit should be granted to a victim of trafficking on humanitarian grounds if he or she for any reason cannot return to his or hers country of origin. This could be achieved either by a generous interpretation of the existing rules on humanitarian residence permits, or by an amendment to the Aliens act laying down the right to a permanent residence permit for victims of trafficking in human beings.
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
</tr>
<tr>
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<td>Explain the situation before transposition</td>
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<tr>
<td></td>
<td>The transposition of the Directive into Swedish law had the effect of that the persons concerned will be benefiting from a more solid regulation concerning the possibility of a reflection period, social and health benefits etcetera.</td>
<td>□ Status quo</td>
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<tr>
<td></td>
<td></td>
<td>□ More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
Table 1

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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<tbody>
<tr>
<td>(to be indicated by the national rapporteur)</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
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<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Status quo</td>
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<tr>
<td>Explain the situation before transposition</td>
<td>□ More favourable than previous national rules</td>
<td>□ More favourable than the Directive</td>
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<td>□ In line with the directive</td>
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<td>□ More favourable than the directive</td>
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Q.31. A. Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☒ NO

Q.31.B. If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☒ NO

Q.31.C. If yes, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
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<th>DECISION OF SUPREME COURTS</th>
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ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive.

☐ There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Not that I am aware of.

Explain the difficulties that this could create:
ANY OTHER INTERESTING ELEMENT

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

_When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire)._  

<table>
<thead>
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<th>Table 1</th>
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<tbody>
<tr>
<td><strong>OBJECTIVE OF THE PRACTICE</strong></td>
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</tbody>
</table>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE:

VICTIMS OF TRAFFICKING OF 29 APRIL 2004

IN

the UNITED KINGDOM

By

MITSILEGAS Valsamis

Department of Law, Queen Mary University of London
v.mitsilegas@qmul.ac.uk

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

Markus Gunneflo
Telephone: +46 46 2221037 / +46 31 16 38 89
E-mail: markus.gunneflo@jur.lu.se
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>This table is about:</th>
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<th>a text which is still a project to be adopted</th>
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<td>DATE OF ENTRY INTO FORCE:</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm also pursues other objectives than the transposition of the directive)</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
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<tr>
<td>LEGAL NATURE (please tick the correct box):</td>
<td>LEGISLATIVE</td>
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<td></td>
<td>REGULATION</td>
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<tr>
<td></td>
<td>CIRCULAR OR INSTRUCTIONS</td>
<td></td>
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</tbody>
</table>

Q.1.B Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):
• This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

<table>
<thead>
<tr>
<th>TITLE:</th>
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<tr>
<td>DATE:</td>
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<tr>
<td>REGULATION</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

Q.2. This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
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<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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<table>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

<table>
<thead>
<tr>
<th>Table 1</th>
<th>COMPETENCE CONCERNED:</th>
<th>Decisions on referral to the POPPY project</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CENTRAL MINISTRY OF:</td>
<td>Home Office</td>
</tr>
<tr>
<td></td>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
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<tr>
<td></td>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
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<td></td>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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<table>
<thead>
<tr>
<th>Table 2</th>
<th>COMPETENCE CONCERNED:</th>
<th>Decision on co-operation with the authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
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<tr>
<td></td>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
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<tr>
<td></td>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Police authorities</td>
</tr>
<tr>
<td></td>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>
Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

☐ YES ☒ NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES ☒ NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

<table>
<thead>
<tr>
<th>Table 1</th>
<th><strong>MISSING TEXTS</strong></th>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
<tr>
<td></td>
<td>The United Kingdom has not opted into the Directive and is thus not bound by it. At present there is no specific binding legislation on the issues covered by the Directive.</td>
</tr>
</tbody>
</table>
SECOND PART

Scope

Q.5. According to the mandatory provision in article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to the ‘trafficking in human beings’ (referring to Framework Decision 2002/629/JHA\(^55\)).

According to the optional provision in article 3(2) the Member States may also apply the directive to third-country nationals who have been the subject of ‘an action to facilitate illegal immigration’ (referring to articles 1 and 2 of Directive 2002/90/EC\(^56\)).

Q.5.A. Are the national norms of transposition in your Member State applicable to third-country nationals who have been victims of offences related to ‘trafficking in human beings’ (mandatory) as well as to third-country nationals who have been the subject of an ‘action to facilitate illegal immigration’ (optional)?

The national norms of transposition are applicable in cases of:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

- [ ] ‘Trafficking in human beings’ only
- [x] ‘An action to facilitate illegal immigration’ only
- [ ] Both ‘trafficking in human beings’ and ‘an action to facilitate illegal immigration’

Explanation:

The United Kingdom has not opted into the Directive. Moreover, there is no specific legislation governing the rights of victims of trafficking in the UK. Some protection is provided by the POPPY Project, funded by the Home Office and run by an organisation called Eaves House (http://www.eaves4women.co.uk/POPPY_Project). There are reports that a parallel project (Tara) is being established in Scotland. POPPY provides accommodation and support for 25 women at a time. To qualify for assistance, a woman must satisfy the following Home Office criteria:
- that she was brought to the UK
- that she has been forcibly exploited
- that she was working forcibly in prostitution (in the UK), and
- that she is willing to co-operate with the authorities
Therefore it appears that protection is limited to trafficked women who are victims of sexual exploitation and are willing to co-operate with the authorities


Q.5.B. Answer this question if the national norms of transposition are applicable in cases of ‘trafficking in human beings’ (which is mandatory): Is the definition of ‘trafficking in human beings’ by national norms of transposition in your Member State identical with the definition of ‘trafficking in human beings’ in the Framework Decision (quoted below)? Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The UK has not opted into the victims Directive. However, there are a number of domestic law provisions criminalising various forms of trafficking in human beings. Sections 57-59 of the Sexual Offences Act 2003 criminalise trafficking for sexual exploitation (a series of offences cover trafficking into, within and out of the UK respectively). It is an offence to intentionally arrange or facilitate the arrival, travel within, or the departure of another person (B) from the UK and either a: intend to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a sexual offence under the Act, or b: to believe that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a sexual offence.

This is a quite broad definition (note also the mens rea element of belief) and the offences are punishable with a maximum custodial sentence of 14 years.

The Asylum and Immigration (Treatment of Claimants etc) Act 2004 (section 4), introduces in very similar terms (re territorial scope, mens rea and sanctions) the offence of trafficking people for 'exploitation'. A person is exploited if (and only if):

1. he is the victim of behaviour that contravenes article 4 of the Human Rights Convention (on slavery and forced labour)
2. he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human organ Transplants Act 1989
3. he is subjected to force, threats or deception, designed to induce him
   i. to provide services of any kind
   ii. to provide another person with benefits of any kind, or
   iii. to enable another person to acquire benefits of any kind
4. he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that
   i. he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
   ii. a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

UK law covers thus a wide range of elements existing in the EU definition of trafficking. A number of elements have been simplified and the legislative choice has certainly not been one of mere translation or verbatim transposition of the Framework Decision into domestic law. Both acts view trafficking as predominantly arranging travel to, within and outside of the UK- it is open to what extent this would cover 'recruitment' or 'harbouring' once in the UK. However, the economy in the drafting of the domestic law may serve as a flexible tool to catch the majority of the situations envisaged by the EU Framework Decision.

Art. 1 Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
   the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
   (a) use is made of coercion, force or threat, including abduction,, or
   (b) use is made of deceit or fraud, or
   (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
   (d) payments or benefits are given or received to achieve the consent of a person having control over another person.
for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.

**Q.5.C.** Answer this question if the national norms of transposition are applicable in cases of ‘an action to facilitate illegal immigration’:

Is the definition of ‘an action to facilitate illegal immigration’ by national norms of transposition in your Member State identical with the definition of ‘an action to facilitate illegal immigration’ in the Directive 2002/90/EC (quoted below). Please explain any deviations in detail, if necessary, by quoting national norms of transposition (in translation).

The UK has not opted into the victims Directive. However, it has opted into the facilitation Directive. The definition of facilitation in domestic law is as follows:

Section 25 of the 1971 Act (as substituted and amended) states that a person commits an offence if he
- does an act which facilitates the commission of a breach of immigration law \(^{57}\) by a person who is not a citizen of the European Union,
- knows or has reasonable cause to believe the act facilitates the commission of a breach of immigration law by the individual, and
- knows or has reasonable cause to believe the individual is not a citizen of the European Union.

Please note the quite extensive scope of mens rea which covers cases where a person ‘knows or has reasonable cause to believe’ that the act facilitates the commission of a breach of immigration law.

It is not a requirement under section 25 that a person assists (facilitates the breach) for financial gain. Anyone who does will commit the offence, but the prosecution is not required to prove this as a separate element of the criminal offence.

BUT: This can be compared with section 25A (offence of helping an asylum seeker to enter the UK) which has a requirement that this was “for gain”. The person must know or have reasonable grounds to believe that a person is an asylum seeker. Note again the quite broad mens rea. The term of ‘gain’ is not defined in the legislation.

Section 25A(3) makes it clear that the offence does not apply to anything done by a person acting on behalf of an organisation which aims to assist asylum-seekers and does not charge for its services. There is no requirement of gain under section 25B (facilitation of entry etc. to the UK in breach of a deportation order or exclusion order).

For further details, see my Report on the implementation of the facilitation Directive in the UK.

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\(^{57}\) “Immigration law” is defined as “a law which has effect in a Member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to – (a) enter the State, (b) transit across the State, or (c) be in the State”.

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NATIONAL REPORTS – DIRECTIVE ON VICTIMS OF TRAFFICKING
Article 1 General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour Defined in paragraph 1(a) by applying its national law and practice for cases where The aim of the behaviour is to provide humanitarian assistance to the person concerned.

Q.6. According to the mandatory provision in article 3(3) the Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned. According to the optional provision in article 3(3) the Member State may also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

Q.6.A. Are the national norms of transposition applicable to adults as well as minors?

The national norms of transposition are applicable to:

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☑ Adults
☐ Both adults and minors

Explanation:

There is specific reference to 'women' protected under the POPPY project which seems to exclude minors. HOWEVER certain categories of minors (such as unaccompanied children) including trafficked children fall under the Children Act 1989 as amended and are entitled to care and assistance. When a child does not qualify for refugee status or humanitarian protection, discretionary leave to remain may be given until the child reaches 17 1/2 years (Immigration Rules and Asylum Policy Instructions for Children)

Q.6.B. Answer this question if the national norms of transposition are applicable only to adults: What is the age of majority according to the national law of your Member State?

The age of majority is: for immigration purposes, see above.

Q.6.C. Answer this question if the national norms of transposition are applicable to minors as well: Are the national norms of transposition applicable to all minors or are there certain criteria that have to be met in order for the norms to apply?

The national norms of transposition are applicable to:
Q.7. How many persons received residence permits under the national norms of transposition in your Member State in 2006?

‘Trafficking in human beings’:

‘An action to facilitate illegal immigration’ (If applicable):

Information given to the third-country nationals concerned

Q.8. According to the mandatory provision in article 5, when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Q.8.A. Which authority is responsible for providing the third-country nationals concerned with information of the possibilities offered under the Directive? (In your answer, please state the name of the authority/organisation and explain if it’s a public authority, NGO etc.)

There is no central authority which is responsible for providing such information. However, references to the POPPY project can be made by the police. There is a Memorandum of Understanding between the Association of Chief Police Officers (ACPO), the Crown Prosecution Service, Eaves Housing and the UK Human trafficking centre on co-operation- but the Home Office (Borders and Immigration Agency) are not party to this.

Q.8.B. Is the information given orally or in writing?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Orally
In writing

Both orally and in writing

Explanation:

Q.8.C. Please provide details on the content of oral/written information (feel free to enclose relevant leaflets, brochures etc).

Q.8.D. Do you think that information routines function satisfactorily in practice? Please provide us with your personal judgment, and indicate any known problems.

Reflection period

Q.9. According to the mandatory provision in article 6, the Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period shall be determined according to national law.

Q.9.A. Is the third-country national concerned entitled to a ‘reflection period’ in your Member State?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: How long is the reflection period, and when does the reflection period start?).

The United Kingdom had adopted a negative stance regarding reflection periods and residence permits for victims of trafficking. It was deemed that such schemes would act as a ‘pull’ factor for traffickers and trafficked persons and would lead to the abuse of the system. The logic of abuse has been central in the UK Government’s justification of its choice not to opt in to the Directive. The Government repeated this reasoning in its evidence to the inquiry of the Joint Committee on Human Rights on trafficking (for references on both see bibliography). It has also been suggested that granting a reflection period would actually hinder police work because it would delay giving information to the police. This lack of a reflection period has been heavily criticised by a number of organisations in the recent Home Office consultation on trafficking. Pressure may have resulted in the recent signature by the UK of the Council of Europe Trafficking Convention, which provides for reflection periods and residence permits. This is a substantial change, but it is not clear when the Convention will be ratified.
Q.9.B. Under the reflection period, is the third-country national concerned protected from enforcement of expulsion orders? See mandatory provision in article 6(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☒ No

Explanation:

There is no reflection period. However, according to the Home Office, for member sof the POPPY project, removal action is held in abeyance for an initial four weeks or for longer if they decide to stay on the project and co-operate with the authorities- in these circumstances (discretionary) temporary leave to remain can be granted where appropriate and each case is considered on its own merits (Home Office and Scottish Executive, Action Plan on Tackling Human Trafficking, March 2007).

Q.9.C. Is it possible to terminate the reflection period in your Member State for any of the reasons provided in article 6(4)?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”, which are the criteria?)

N/A

Q.9.D. If the answer on Q.9.C is “yes”: Which authority in your Member State has the competence to take the decision to terminate the reflection period? (Please give details on the name and function of the authority)

Q.9.E. If the answer on Q.9.C is “yes”: Please describe the procedure for termination of the reflection period.

Q.9.F. Do you think that the practice of granting reflection periods functions satisfactorily in practice? Please provide us with your personal judgement, and indicate any known problems.
Treatment

Q.10. According to the Directive the Member State shall, both before (article 6(2)) and after (article 9(1)) the issue of the residence permit ensure that the third country-nationals concerned who do not have sufficient resources are granted ‘standards of living capable of ensuring their subsistence and access to emergency medical treatment’ etc. See article 7.

(When answering question Q.10 A-I please note that you are required to indicate if there are any differences between the treatment granted before and after the issue of the residence permit).

Q.10.A. Does your Member State grant the third-country nationals concerned any support in cash or in kind? See article 7(1) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

PLEASE NOTE: GENERAL ANSWER FOR THE WHOLE SECTION ON SUPPORT:
The POPPY project provides: food/subsitence allowance/health assessment/medical treatment/counselling/legal advice/support through asylum and immigration processes/liaison with police and immigration/access to education and English classes, and where applicable, support with the voluntary return scheme. Further protection will be offered, along the lines of UK asylum law, to victims who choose to apply for asylum (this may include translation, legal aid and medical and psychological care). The almost unanimous view of NGOs is that the safest (if not the only) real way for victims of trafficking (especially those not in the POPPY project) to enjoy some protection is to apply for asylum. Children receive support under the Children Act 1989. Otherwise, the support to which adults receive largely depends on their immigration status. There are limitaitons to health care in this context. Emergency medical care will be offered, and it is free if certain conditions are met.

After the issue of the residence permit

☐ Yes, in cash ☐ Yes, in kind ☐ No

Explanation:

Q.10.B. Please specify how much the persons concerned receives in Euros and relate that to minimum amount of social aid guaranteed for nationals in your Member State.
Q.10.C. Question to be answered if the answer on Q.10.A is “yes” (in cash or in kind): In your opinion, is the support given sufficient to ensure ‘standards of living capable of ensuring their subsistence’? See article 7(1) which is a mandatory provision.

Q.10.D. Does your Member State provide for the safety and protection needs of the third-country nationals concerned? See article 7(2) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (If the answer is “yes”, please specify what kind of protection is provided, for example witness-protection programs, “safe houses” etc.)

Q.10.E. Does your Member State provide the third-country nationals concerned with translation services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

After the issue of the residence permit:

☐ Yes  ☐ No
Explanation:

Q.10.F. Does your Member State provide the third-country nationals concerned with interpreting services? See article 7(3) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

After the issue of the residence permit:

☐ Yes  ☐ No

Explanation:

Q.10.G. Does your Member State provide the third-country nationals concerned with free legal aid? See article 7(4) which is an optional provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

Before the issue of the residence permit:

☐ Yes  ☐ No

Explanation: (please offer details: Is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

After the issue of the residence permit

☐ Yes  ☐ No
**Explanation:** (please offer details: is legal aid offered by qualified lawyers/attorneys? Is there a quantitative limit on hours spent or costs accumulated?)

**Q.10.H. Does your Member State provide the third-country nationals concerned with emergency medical care?** See mandatory provision in article 7(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☐ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care during the reflection period or if care is restricted to emergency medical care only).

**After** the issue of the residence permit

☐ Yes  ☐ No

**Explanation:** (If the answer is “yes”, please provide details on whether persons have access to general medical care or if care is restricted to emergency medical care only.

**Q.10.I. Does your Member State provide the third-country nationals concerned with psychological help?** See article 7(1)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Before** the issue of the residence permit:

☐ Yes  ☐ No

**Explanation:**

**After** the issue of the residence permit

☐ Yes  ☐ No
Explanation:

**Issue and renewal of the residence permit**

**Q.11.** Questions regarding the issue and renewal of the residence permit. *See mandatory provisions in article 8:*

**Q.11.A.** According to the national norms of transposition in your Member State, are there any specific criteria that have to be met for a victim of trafficking to be granted a residence permit?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes ☐ No

**Explanation:** (If he answer is “yes”, explain the criteria that have to be met)

N/A. The police may decide to delay removal. There is a tension (also documented in the Report on the implementation of the POPPY project) between supporting trafficked women seen as victims and attempts to remove them as illegal immigrants.

**Q.11.B.** For how long is the residence permit valid? According to the mandatory provision in article 8(3), it should be valid for at least six months.

**Q.11.C.** When residence permit has expired, can it be renewed? *See mandatory provision in article 8(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

☐ Yes ☐ No

**Explanation:** (If the answer is “yes”, please explain the criteria that have to be met, and if there are any limitations on how many times or for how long the residence permit can be renewed).
Minors

Q.12. (Questions regarding minors to be answered only if your Member State has decided to apply the national norms of transposition to minors. See article 10):

Q.12.A. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the national norms of transposition? See article 10(a).

See above. MOREOVER it is remarkebale that the UK retains a reservation to the UN Convention on the Rights of the Child, entered under article 22, whcih states: ‘The UK reserves the right to apply such legislation, in so far as it relates to the entry into, stay and departure from the UK of those who do not have the right under the law of the UK to enter and remain in the UK and to the acquisition and possession of citizenship,as it may deem necessary from time to time’. This reservation has been heavily criticised by NGOs, by the UN Committee on the Rights of the Child, as well as by the UK Joint Committee on Human Rights.

Q.12.B. Has your Member State extended the reflection period for minors? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: For how long?)

Q.12.C. Has your Member State taken any measures to ensure that the procedure is appropriate to the age and maturity of the minor? See article 10(a).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If yes, explain which measures are taken)

Q.12.D. Do minors have access to the educational system under the same conditions as nationals? See article 10(b).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No
Explanation: (If the answer is “no”, under what conditions, if at all, do minors have access to the educational system).

Q.12.E. What measures has your Member State taken regarding unaccompanied minors? See article 10(c) (Please provide details on the establishing of identity, nationality and the fact that they are unaccompanied, location of family, legal representation etc).

Work, vocational training and education

Q.13. Questions concerning the access to work, vocational training and education:

Q.13.A. Do the holders of the residence permit have access to the labour market? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to the labour market? See article 11).

N/A. Please note the restrictions imposed to access to the labour market by asylum seekers, demonstrating a general restrictive attitude towards granting rights to certain categories of third country nationals.

Q.13.B. Do the holders of the residence permit have access to vocational training? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to vocational training? See article 11).
Q.13.C. Do the holders of the residence permit have access to education? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: (If the answer is “yes”: Are there any criteria that have to be met for the holders of the residence permit to have access to education? See article 11).

Q.13.D. Is access to work, vocational training and education limited to the duration of the residence permit? See article 11.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation:

Programmes or schemes for the third-country nationals concerned

Q.14. Questions regarding programmes or schemes for the third-country nationals concerned:

Q.14.A. Do holders of the residence permit have access to any existing programmes or schemes aimed at their recovery of a normal social life, courses designed to improve their professional skills or preparation of their assisted return to their country of origin? See article 12(4) which is a mandatory provision.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation: If the answer is “yes”: explain what kind of programmes or schemes are available and who is responsible for them).
Q.14.B. Were specific programmes or schemes created for the holders of the residence permit due to the Directive? See article 12(1).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation:

Q.14.C. Is the issuing or renewal of a residence permit conditional on participation in the programmes or schemes? See article 12(2).

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation:

Non-Renewal and Withdrawal

Q.15. Question concerning non-renewal of the residence permit:

In cases where authorities consider the renewal of a residence permit, are the conditions of article 8(2) actively reconsidered by the authorities? See article 13.

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No

Explanation:

Q.16. Question regarding withdrawal of the residence permit:

Q.16.A. Is it possible to withdraw the residence permit issued in your Member State for a person falling under the Directive?

(Please indicate by ticking the correct box and EXPLAIN YOUR ANSWER)

☐ Yes  ☐ No
**Q.16.B.** Explain the procedure for withdrawal of the residence permit.

**Final questions**

**Q.17.** Can you refer us to any study, report or research by any source on the practice of granting reflection periods and residence permits to victims of trafficking or other persons falling under the Directive?

On the Poppy project in general:
Home Office Research Development and Statistics (RDS Dept), Evaluation of the victims of trafficking pilot project- summary findings

On trafficking in general and victims in particular:
Joint Committee on Human Rights, Human Trafficking, 26th Report, 2005-06.

On the future Home Office strategy:

On the UK's decision not to opt in to the Directive:

**Q.18.** Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

**Q.19.** Are there any problems of legislation or practice in your Member State which relate to victims of trafficking and have not been covered in preceding questions?

To summarise: AND RELATED TO PART 3

- Currently protection of victims of trafficking in the UK is far from extensive. The framework for protection is far from clear. It is not based on legislative footing. It is discretionary, ad hoc and applies to a very limited category (and numbers) of women. The main source of protection is the asylum route. For the rest of the victims- the lucky ones to be admitted to the POPPY project- protection would mostly take the form of a delay to deportation- rather than a relatively secure residence status. Protection of victims in practice is hampered by the treatment of victims as immigration offenders who should be removed from the UK. This causes organisational tensions between the different departments involved.

- This restrictive attitude is in line with restrictions to the rights of asylum seekers and the tightening of immigration laws in the last 5 years. They reflect the Government's predominant view of asylum seekers and irregular migrants as benefit tourists who arrive in order to abuse the system. This 'logic of abuse' has been dominant in the UK's decision not to opt in to the Directive on the victims of trafficking.

- An important change in policy was initiated by the signature by the UK of the CoE Convention on trafficking. This may introduce some standards equivalent to those of the Directive whenever the Convention ois ratified. However, the UK has not indicated that it will opt in to the Directive, so it remains to be seen whether the adopted standards will reflect the Directive provisions.
IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: Did the transposition of the Directive make the rules related to the protection of Victims of trafficking become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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<tbody>
<tr>
<td>To enhance the protection of Victims of trafficking</td>
<td>Explain the situation after transposition</td>
<td>□ Less favourable than previous national rules</td>
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<td>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</td>
<td>□ Status quo</td>
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<tr>
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<td>Explain the situation before transposition</td>
<td>□ More favourable than previous national rules</td>
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This section is not applicable to the United Kingdom.

Q.30 From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).
**Table 1**

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<td>☐ Less favourable than previous national rules ☐ Status quo ☐ More favourable than previous national rules</td>
</tr>
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**Q.31. A.** Question regarding the method of transposition: Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.

☐ YES ☐ NO

**Q.31.B.** If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ YES ☐ NO

**Q.31.C.** If yes, give some of examples:

- 

**Q.31.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

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ANY SUPPLEMENTARY COMMENT ABOUT THE TRENDS OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive.
There are some problems with the translation of the directive.

**Explanation**: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

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**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.