



FRA  
Thematic Study on Child Trafficking

Luxembourg

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## Executive Summary

- [1]. According to local sources, child trafficking is a rare phenomenon in Luxembourg, and has been classified as a ‘marginal’ or an ‘isolated’ incident.<sup>1</sup> According to the State Public Prosecutor’s Office and others there were no cases of child trafficking between 2000-2007.<sup>2</sup> While existing child trafficking legislation has not yet incorporated all elements of the current international standards, a series of bills before the Chamber of Deputies indicates the government’s awareness of its obligations in the matter.

## General anti-child trafficking framework

- [2]. Luxembourg’s primary child trafficking legislation is the Law of 31 May 1999 aimed at reinforcing measures against the trafficking of humans and sexual exploitation of children (the ‘1999 Law’), amending the criminal and criminal procedure codes.<sup>3</sup> The Law was Luxembourg’s response to its international obligations after having ratified the UN CRC, and its obligations at the European level under Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, subsequently repealed with respect to trafficking by Council Framework Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings.<sup>4</sup> The Framework Decision appears not to have been transposed into Luxembourg law.

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<sup>1</sup> Interview of 17 June 2008, with Luxembourg’s Children’s Rights Ombudscommittee President; telephone conversation of 20 June 2008 with an agent from the Youth Protection Service of the Grand-Ducal Police’s Criminal Investigation Department; and, reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division. See also Luxembourg/Ombuds-Comité fir d’Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 17, available at <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008).

<sup>2</sup> Letter of 25 June 2008, from State Prosecutor’s Office, and e-mail of 6 July 2008 from Caritas representative.

<sup>3</sup> Luxembourg/*Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l’exploitation sexuelle des enfants et portant modification du Code pénal et du Code d’instruction criminelle* (31.05.1999).

<sup>4</sup> Joint Action 97/154/JHA (24.02.1997) available at: <http://www.legalex.eu/text/en/T71565.htm> (11.06.2008), and Council Framework Decision 2002/629/JHA (19.07.2002) available at: <http://eur->

- [3]. The 1999 law provides no definition of trafficking and deals with it solely in the context of sexual exploitation. However, once voted into law, the bills before the Chamber of Deputies will bring Luxembourg's legislation into line with current international standards.

## Prevention of child trafficking

- [4]. Luxembourg's main awareness-raising campaigns of 2002 and 2007 focussed on child sex tourism in relation to adults. More recently in April of 2008, the Ministry of Equal Opportunity launched a prostitution awareness-raising campaign through posters hung in public areas. The campaign denounced the banalisation of prostitution in a world that finances in large part the trafficking of human beings. Thus, it appears that the prevention of child trafficking in the sexual exploitation context is being dealt with through other, indirect means.

## Appointment of legal guardian

- [5]. The 1999 Law makes no provision for legal guardian appointment when an unaccompanied minor is identified as a victim of trafficking. However, Article 12 of Luxembourg's asylum law of 2006 provides that an unaccompanied minor seeking asylum is to be appointed a guardian as soon as possible.<sup>5</sup> Additionally, Luxembourg's youth protection legislation provides that should the circumstances so require, a judge can order that a minor be placed under the surveillance of a trusted individual. Thus, a mechanism for appointment of an unaccompanied minor's legal guardian exists in a more general context.<sup>6</sup>

## Coordination and cooperation

- [6]. In 2006, the Grand-Ducal Police created a special investigative unit called 'human trafficking for sexual exploitation', that employs four officers.<sup>7</sup> Also, within the general minor protection framework, Luxembourg has the Central

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[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML](http://lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML) (11.06.2008).

<sup>5</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 12(1) (05.05.2006), as amended.

<sup>6</sup> Luxembourg/*Loi du 10 août 1992 relative à la protection de la jeunesse*, Art. 1 (10.08.1992), as amended.

<sup>7</sup> Luxembourg/*Projet de Loi No. 5874 portant sur l'assistance et la protection des victimes de la traite des êtres humains modifiant le nouveau code de procédure civile* (22.04.2008), p. 14.

Social Welfare Service's Victim Assistance Service (*Service central d'assistance sociale*, or SCAS) that provides assistance, *inter alia*, to victims of sexual exploitation or violence. In addition there is an informal network of NGOs and local associations that provide assistance to child victims of sexual abuse, exploitation and assault.

## Care and protection

- [7]. At this time there are no legal provisions specifically ensuring care and protection to trafficked children. However, a series of bills before the Chamber of Deputies provides for that care and protection.

## Best interests determination and durable solutions, including social inclusion/return

- [8]. At this time there are no legal provisions specifically providing for a best interests determination and durable solutions, including social inclusion/return for trafficked children. However, a series of bills before the Chamber of Deputies provides for those elements.

## Prosecution

- [9]. As described above, the 1999 Law provides for the recording/filming of hearings to avoid direct confrontation with the trafficker. The 1999 Law does not provide for child trafficking witness or victim security and protection.

## Miscellaneous

- [10]. A series of bills before the Chamber of Deputies would bring Luxembourg's child trafficking legislation into line with the current international standards. These include a bill ratifying the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005) and the Palermo Protocol to prevent, suppress and punish trafficking in persons (2000).

## Good practices

- [11]. We have requested information on good practices from the Ministry of the Family and Integration, and the Grand-Ducal Police, and will forward any relevant information they may provide.

## A. General anti-child trafficking framework

[12]. Luxembourg's ratification status of the following international instruments regarding, or related to, child trafficking is as follows:

1. Hague Convention on the civil aspects of international child abduction (1980) – signed on 18.12.1984 and ratified on 08.10.1986;
2. UN Convention on the Rights of the Child (CRC) (1989) – signed on 20.11.1989 and ratified on 06.04.1994;
3. Joint Action of 24 February 1997 adopted by the Council on the basis of Article K (now 31) (97/154/JHA) (repealed with respect to trafficking in human beings by Council Framework Decision of 19 July 2002 on combating trafficking in human beings) – adopted on 24.02.1997, but the Framework Decision appears never to have been transposed into Luxembourg law;
4. ILO Convention No. 182 on the worst forms of child labour – adopted 1 June 1999 and ratified on 21.03.2001;
5. Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000) – signed on 08.09.2000, not yet ratified;
6. UN Convention against transnational organised crime Palermo Protocol to prevent, suppress and punish trafficking in persons (2000) – signed on 13.12.2000, not yet ratified;
7. Council of Europe Convention on cybercrime (2001) – signed 21 January 2003, not yet ratified;
8. Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA) – adopted on 19.07.2002, but appears never to have been transposed into Luxembourg law;
9. Council of Europe Convention on action against trafficking in human beings (2005) – signed on 16.05.2005; not yet ratified; and
10. Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (2007) – neither signed nor ratified.

[13]. Luxembourg's primary child trafficking legislation is the Law of 31 May 1999 aimed at reinforcing measures against the trafficking of humans and sexual exploitation of children (the '1999 Law'), amending the criminal and criminal procedure codes. The Law was Luxembourg's response to its international

obligations after having ratified the UN CRC, and its obligations at the European level under Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, subsequently amended by Council Framework Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings. With respect to the UN CRC, the Luxembourg government specifically stated that its priority was to fight pedophilia. Its European obligations consisted of reviewing its domestic legislation to bring the deficiencies in line with Joint Action 97/154/JHA, provisions, as repealed by Council Framework Decision 2002/629/JHA with respect to combating trafficking in human beings.<sup>8</sup>

- [14]. As indicated by the 1999 Law's title, it focuses solely on the trafficking and exploitation of children in the context of sexual exploitation and abuse. Adoption of the international standards embodied in the 1999 Law required the reduction of the legal age of a minor from under 21 to under 18 years of age. It amended Articles 379, 379bis, 383, 385 and 385 bis of the Criminal Code, also added Article 384, to include provisions that criminalise the trafficking of children for the purposes of exploitation through prostitution or the production of pornographic materials or performances. Following is an unofficial translation of the most relevant parts, amended Articles 379bis and 383.
- [15]. Article 379bis.- The following are punishable by imprisonment for a term of six months to three years and a fine of 10,001 to 2,000,000 Luxembourg francs (251 to 50,000 EUR):
- [16]. 1. Whosoever, in order to satisfy the passions of others, hires, leads or corrupts, even with that person's consent, another person for the purpose of prostitution or immoral behaviour, either in the Grand Duchy or in a foreign country.
- [17]. If the victim has been hired, led or corrupted through fraud or violence, threats abuse of authority or any other means of constraint; if the victim has been effectively led to prostitution or immoral behaviour, or if the perpetrator took advantage of a person's particularly vulnerable situation, especially due to that person's illegal or precarious situation, pregnancy, sickness, injury or physical or mental handicap, imprisonment will be from one to five years.

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<sup>8</sup> Legislative history of the Law of 31 May 1999 (*Dossier parlementaire no. 4508*) available at: [http://www.chd.lu/archives/ArchivesPortlet?lqs\\_fmId=J&lqs\\_dpId=4508](http://www.chd.lu/archives/ArchivesPortlet?lqs_fmId=J&lqs_dpId=4508) (11.06.2008); Joint Action 97/154/JHA (24.02.1997) available at: <http://www.legalextext.eu/text/en/T71565.htm> (11.06.2008); and, Council Framework Decision 2002/629/JHA (19.07.2002) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML> (11.06.2008).

- [18]. The criminal act is punishable by confinement for a term of five to ten years if it was committed under a combination of two of the abovementioned circumstances.
- [19]. 2. Whosoever facilitates the entry into, transit through, stay within or exit from the country for the purposes listed in point 1.
- [20]. The heightened punishment in paragraphs 2 and 3 from point 1 will also apply to point 2.
- [21]. 3. Whosoever possesses, directly or through a third party, manages, directs or operates a house of ill repute or prostitution.
- [22]. 4. Any owner of a hotel, lodging, cabaret, and generally anyone who transfers, rents or makes available to others or tolerates the use of all or part of a building knowing that the premises transferred, rented or made available are used for the purposes of prostitution of others.
- [23]. 5. The procurer.
- [24]. A procurer is he or she who
- [25]. a) in any way knowingly aids, assists or protects the prostitution of others or solicitation for the purpose of prostitution;
- [26]. b) in whatever manner shares in the profits of the prostitution of others or receives the financial gains of someone engaged in prostitution;
- [27]. c) who hires leads or maintains someone, even with that person's consent, including a consenting adult, in prostitution or leads that person into prostitution or immoral behaviour;
- [28]. d) who acts as intermediary, in whatever capacity, between persons engaging in prostitution or immoral behaviour and the individuals who use or remunerate prostitution or the immoral behavior of others; or
- [29]. e) through threats, pressure, action or by any other means impedes any preventive, monitoring, assistance or re-educative actions undertaken by qualified organisations, in favour of persons engaged in prostitution.
- [30]. Attempt of the acts listed in numbers 1, 2 and 5 is punishable by imprisonment for a term of three months to two years.
- [31]. The acts listed in points 1, 3, 4 and 5 of this Article are each punishable by imprisonment for a term of one to five years and a fine of 10,001 to 200,000,000 francs if they were committed against a minor under 18 years of age; imprisonment for a term of two to five years if committed against a minor

- under 14 years of age; and, confinement for a term of five to ten years if committed against a minor under 11 years of age.
- [32]. Attempt is punishable by imprisonment for a term of six months to three years if the act was committed against a minor under 18 years of age; imprisonment for a term of six months to four years if the act was committed against a minor under 14 years of age; and, imprisonment for a term of six months to five years if the act was committed against a minor under 11 years of age.
- [33]. Article 383 – The following are punishable by imprisonment for a term of eight days to three years and a fine of 10,001 to 2,000,000 francs. Whosoever:
- [34]. 1. makes or possesses written or printed materials, images, photographs, films or other pornographic objects, for the purpose of selling, distributing or publicly exposing them;
- [35]. 2. imports, transports, imports or has exported, transported or imported for the purposes listed above said written or printed materials, images, photographs, films or other pornographic objects, or circulates them in any manner;
- [36]. 3. sells, even if not publicly, carries out any transaction concerning them in any manner whatsoever, distributes, publicly exposes or rents them;
- [37]. 4. announces or makes known through whatever means, for the purposes of encouraging the prohibited circulation or trafficking, that a person engages in one of the punishable acts listed above; whosoever announces or makes known how and by whom the written or printed materials, images, photographs, films or other pornographic objects can be obtained, either directly or indirectly.
- [38]. The acts listed above in points 1, 2, 3 and 4 are punishable by imprisonment for a term of one to five years and a fine of 10,001 to 2,000,000 francs if they involve or show minors under 18 years of age or a particularly vulnerable person, especially due to that person's illegal or precarious situation, pregnancy, sickness, injury or physical or mental handicap.<sup>9</sup>
- [39]. The 1999 Law further criminalises the possession and distribution of pornographic materials involving minors, including distribution over the Internet. The facilitation of the entry into, transit through, stay in or departure from Luxembourg for the above purposes was also criminalised. The showing or involvement of minors or particularly vulnerable individuals in pornographic materials constitutes an aggravating factor that increased the maximum mandatory statutorily-imposed prison term from eight days to three years, to a

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<sup>9</sup> Luxembourg/Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l'exploitation sexuelle des enfants et portant modification du Code pénal et du Code d'instruction criminelle (31.05.1999) Arts. 379bis and 383 (the franc is the old Luxembourg franc, LUF, that currently has a value of approximately 40.- LUF to 1.- EUR).

statutorily-imposed prison term ranging from one year to five years. Finally, in addition to the increase of certain prison terms, fines were added.<sup>10</sup>

- [40]. The amendments to the criminal procedure code provide for means of recording or filming the testimony or hearing of a minor or sensitive witness. The Law also introduces provisions aimed at prohibiting sexual tourism through the application of Luxembourg's extraterritorial jurisdiction to sexual crimes and misdemeanors committed abroad. With respect to misdemeanors, the Law provides that a Luxembourg citizen can be prosecuted under Luxembourg law when the misdemeanour is qualified as such under both Luxembourg law and the law of the foreign jurisdiction in question. Additionally, when a Luxembourg citizen *or* a foreigner even momentarily in Luxembourg has committed certain enumerated offences in a foreign jurisdiction, including offenses related to child trafficking, abduction of minors and document forgery, the individual can be prosecuted under Luxembourg law regardless of whether the offence is punishable under the law of the foreign jurisdiction.<sup>11</sup>
- [41]. In contrast to the above-mentioned international instruments, the 1999 Law does not contain a definition or standard for exploitation or trafficking (neither with respect to humans generally, nor children in particular). Thus, the 1999 Law does not contain the internationally-accepted standard for child trafficking that includes trafficking for economic exploitation, and other illicit activities such as drug dealing, trafficking for adoption, forced marriages, removal of organs, etc.<sup>12</sup>
- [42]. The legal provisions set forth above are valid with respect to child trafficking between Luxembourg and other countries as well as within Luxembourg.
- [43]. At this time, Luxembourg legislation is still in line with the standards set forth in the Joint Action that defines child trafficking only as it relates to the sexual exploitation or abuse of children. While the 2002 Council Framework Decision referenced above repealed the Joint Action as regards combating trafficking in

<sup>10</sup> Legislative history of the Law of 31 May 1999 (Dossier parlementaire no. 4508) available at: [http://www.chd.lu/archives/ArchivesPortlet?lqs\\_fmid=J&lqs\\_dpuid=4508](http://www.chd.lu/archives/ArchivesPortlet?lqs_fmid=J&lqs_dpuid=4508) (11.06.2008), and Luxembourg/*Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l'exploitation sexuelle des enfants et portant modification du Code pénal et du Code d'instruction criminelle* (31.05.0999).

<sup>11</sup> Luxembourg/*Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l'exploitation sexuelle des enfants et portant modification du Code pénal et du Code d'instruction criminelle* (31.05.1999).

<sup>12</sup> ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 18. See also United States Department of State, Bureau of Democracy, Human Rights, and Labor (2008), *2007 Country Report on Human Rights Practices in Luxembourg*.

human beings, Luxembourg legislation has not incorporated the Joint Action's broadened definition of trafficking in human beings that includes the exploitation of a 'person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude.'<sup>13</sup> Recently however, bills have been introduced in the Chamber of Deputies that would bring Luxembourg legislation in line with the internationally-accepted standards of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005) and the Palermo Protocol to prevent, suppress and punish trafficking in persons (2000).<sup>14</sup> A summary of the relevant content of those bills is set forth below in Section H.

- [44]. Our request for a case law search from the Luxembourg Court of Appeals Documentation Centre revealed a total of seven decisions.<sup>15</sup> Of those decisions, two dealt with the return of a child to a parent under the Hague Convention on the civil aspects of international child abduction of 25 October 1980. One dealt with a father's overnight visitation right under the UN CRC. Two dealt with the application of the 1999 Law to two distinct situations concerning child pornography over the Internet but not in a child trafficking context. And, two (criminal court and court of cassation upholding of lower court's decision) dealt with application of the 1999 Law to the same case regarding long-term sexual tourism with minors by a high-ranking public sector employee. Below we discuss the latter four decisions.
- [45]. In the first Internet child pornography case, the Luxembourg Court of Appeals overturned the District Court's conviction of the individual for a failure to adequately show that the defendant 'knowingly' possessed the materials in

<sup>13</sup> Council Framework Decision 2002/629/JHA (19.07.2002) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML> (11.06.2008), Article 1.

<sup>14</sup> Luxembourg/*Projet de Loi No. 5860 relatif à la traite des êtres humains* (26.03.2008); *Projet de Loi No 5874 portant sur l'assistance et la protection des victimes de la traite des êtres humains modifiant le nouveau code de procédure civile* (22.04.2008); *Projet de Loi No. 5802 portant sur la libre circulation et l'immigration* (07.11.2007); *Projet de Loi No. 5718 introduisant la responsabilité pénale des personnes morales dans le Code pénal et dans le Code d'instruction criminelle* (20.04.2007).

<sup>15</sup> Letter of 4 June 2008, requesting case law search under the following terms : adoption (human trafficking for adoption), Convention on the Rights of the Child, Council of Europe Convention on action against trafficking in human beings, rights of the child, child, abduction, abduction of children, slavery, exploitation, exploitation of children, sexual exploitation of children, the best interest of the child, forced marriage, pornography, prostitution, child prostitution, witnesses (in proceedings concerning human trafficking), slave trafficking, human trafficking, child trafficking, forced labour, forced child labour and victims of human trafficking.

question because the defendant had not saved the materials on his computer. In its analysis, the court cites to the legislative history of the 1999 Law in which the Chamber of Deputies states that human trafficking and sexual exploitation of children is a major form of international organised crime, increasingly worrying at the European Union level, and that EU Member States must adopt adequate means to combat those phenomena. Moreover, the court cites the legislative history's statement that the legal protection of minors is a Luxembourg legislative priority.<sup>16</sup> There is no meaningful discussion of international standards.

[46]. In the second Internet child pornography case, the defendant did not appeal his conviction, but rather the lower court's discretionary application of Article 11 of the Criminal Code depriving him of certain civil liberties. In particular, defendant appealed the bar to his right to public sector employment as he had just obtained a job in the public sector. Due to the discretionary nature of a court's application of Article 11 and the defendant's efforts to cooperate with law enforcement and undergo psychiatric treatment for two years, the court overturns the application of Article 11 to the defendant's penalty.<sup>17</sup> The court's analysis revolves around the application of the sanction and there is no discussion of international standards.

[47]. The last two decisions involve the application of the extraterritorial jurisdiction provisions in the 1999 Law to the assistant secretary general of the Luxembourg Chamber of Deputies, who had for years engaged in sexual tourism and developed pornographic materials with minor-aged female prostitutes in Southeast Asia. The defendant had stored the materials in his computer at the Chamber of Deputies and safe deposit boxes at a Luxembourg bank. To create a legal basis for application of the extraterritorial provisions, the Grand-Ducal Police sent investigators to the Philippines, Thailand and Cambodia. The charges of rape and child pornography against the defendant were confirmed by the Grand-Ducal Police as well as by the defendant himself. The lower court's discussion revolves around confirming whether some of the victims were in fact under 14 years of age as they did not have identification papers, and whether the young prostitutes were capable of giving voluntary consent. The Court of Cassation rejected, *inter alia*, the defendant's arguments regarding the victims' voluntary consent, the defendant's right to a fair trial and review of criminal conviction by a higher court under the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended. Neither court discussed any involvement of the defendant in child trafficking activities.<sup>18</sup> There is no meaningful discussion of international standards relating to child trafficking.

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<sup>16</sup> Luxembourg/Arrêt No. 490/06 X (18.10.2006).

<sup>17</sup> Luxembourg/Arrêt No. 562/06 X (22.11.2006).

<sup>18</sup> Luxembourg/Arrêt No. 13/07 Ch. Crim. (23.04.2007) and No. 15/2008 pénal, numéro 2494 (06.03.2008). *See also* 'Haut fonctionnaire luxembourgeois accusé de pédophilie et écoué', available at

- [48]. At this time there is no constitutional provision that guarantees the application of the principle of the best interest of the Child as a primary consideration in all actions and decision affecting children.<sup>19</sup> And, it appears that while the CRC was ratified by Luxembourg, its provisions are not directly applied by the courts.<sup>20</sup> In its 2007 annual report, the Children’s Rights Ombudscommittee again recommends that the constitution be amended to include provisions guaranteeing the rights of Child under the CRC.<sup>21</sup> In fact, in making such a recommendation in its 2006 annual report, the Ombudscommittee noted that one Luxembourg constitutional amendment would protect animals, and that while the Belgian constitution did not yet contain a provision protecting animals, it had contained a provision protecting children since 2000.<sup>22</sup> The Ombudscommittee notes, however, that ‘positive initiatives’ have been undertaken to promote the principle of the best interest of the Child. The Ombudscommittee’s recommendation is a reiteration of the UN CRC Committee’s recommendations of 2005 that Luxembourg reinforce its actions emphasizing the principle of the best interest of the child and respect for the opinion of the child in legislation, legal decisions and proceedings, programs, services affecting children.<sup>23</sup>
- [49]. Luxembourg has no National Plan of Action specifically against Trafficking, however in 1996, Luxembourg adopted a National Plan of Action to combat the sexual exploitation of children, but it appears that much remains to be done to

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[http://www.investigateur.info/news/articles/article\\_2003\\_05\\_23\\_thielen.html](http://www.investigateur.info/news/articles/article_2003_05_23_thielen.html) (30 June 2008).

- <sup>19</sup> Luxembourg/Service Central de Legislation, *Constitution du Grand-Duché de Luxembourg, texte à jour au 1<sup>er</sup> janvier 2008* (01.01.2008), available at : [http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page\\_de\\_garde.pdf](http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page_de_garde.pdf), (01.07.2008).
- <sup>20</sup> Luxembourg/Ombuds-Comité fir d’Rechter vum Kand (2004) *Rapport 2004 au Gouvernement et à la Chambre des députés*, p. 39, available at <http://www.ork.lu/PDFs/rapport2004.pdf> (30 June 2008), reiterated in Ombuds-committee’s 2007 report.
- <sup>21</sup> Luxembourg/Ombuds-Comité fir d’Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 23, available at <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008).
- <sup>22</sup> Luxembourg/Ombuds-Comité fir d’Rechter vum Kand (2006) *Rapport 2006 au Gouvernement et à la Chambre des députés*, p. 22, available at <http://www.ork.lu/PDFs/rapport2006.pdf> (30 June 2008). The amendment, stating that the State would promote the protection and well-being of animals, was adopted in 2007. Luxembourg/Service Central de Legislation, *Constitution du Grand-Duché de Luxembourg, texte à jour au 1<sup>er</sup> janvier 2008* (01.01.2008), Article 11bis, available at : [http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page\\_de\\_garde.pdf](http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page_de_garde.pdf), (01.07.2008).
- <sup>23</sup> UN Committee on the Rights of the Child (2005) *Review of the reports presented by the States party in application of Article 44 of the Convention* (CRC/C/15/Add.250), paras. 25 and 27.

implement the plan, or to develop a general plan to implement the CRC as the CRC Committee and Children's Rights Ombudscommittee would recommend.<sup>24</sup> Our interview with an ECPAT Luxembourg representative revealed that while the National Plan of Action exists, it is not made widely available.<sup>25</sup> Thus, we are unable to relay any evidence relating to changes as a part of a National Plan of Action impact assessment. We have requested this information from the Ministry of the Family and Integration's Child and Family Division and the Grand-Ducal Police.<sup>26</sup>

[50]. There are very few data collection mechanisms, if any. It is a subject that has been brought up on many occasions, and the Luxembourg government is well aware of the problem.<sup>27</sup> We have sent letters to the relevant ministries and Grand-Ducal Police requesting any statistics that they may have.<sup>28</sup> The Luxembourg Public Prosecutor's Office and the Ministry of the Family and Integration, Child and Family Division, have informed us that they have no statistics for 2000-2007 on the topic.<sup>29</sup> And, the Ministry of Equal Opportunity

<sup>24</sup> UN Committee on the Rights of the Child (2005) *Review of the reports presented by the States party in application of Article 44 of the Convention* (CRC/C/15/Add.250), para. 11; ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, pp. 13-14; Luxembourg/Ombuds-Comité fir d'Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 22, available at : <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008).

<sup>25</sup> Interview of 19 June 2008.

<sup>26</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division), and 26 June 2008 (Grand-Ducal Police).

<sup>27</sup> Interviews of 17 June 2008 with Children's Rights Ombudscommittee President, and 19 June 2008 with ECPAT Luxembourg representative. See also UN Committee on the Rights of the Child (2005) *Review of the reports presented by the States party in application of Article 44 of the Convention* (CRC/C/15/Add.250), para. 17; Luxembourg/Ombuds-Comité fir d'Rechter vum Kand (2007) *Rapport 2007 au Gouvernement et à la Chambre des députés*, p. 22, available at <http://www.ork.lu/PDFs/rapport2007.pdf> (30 June 2008);

Luxembourg/*Projet de Loi No. 5754 relatif à l'aide à l'enfance* (22.08.2007), p. 19 (citing the lack of reliable national data in respect of child trafficking); and, ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 13.

<sup>28</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>29</sup> Letter of 25 June 2008 from State Prosecutor's Office, and reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

also confirmed that there have been no official cases of child trafficking during those years.<sup>30</sup>

[51]. The financial statement in the bill for trafficking victim protection and assistance described in Section H, states that the bill formalises financial measures already in place. Those include providing EUR 40,000 for assistance to victims and witnesses of trafficking (here specified as the ‘trafficking of women’), to include victim protection programs abroad. Secondly, shelters and services for women are given EUR 114,500 for their assistance to trafficking victims. The calculation is based on a rate of EUR 82.36 per day when the victim is provided shelter. From 2003 to 2007, the total length of stay for 10 women trafficking victims (of which one was a victim of labour exploitation) was 68 months. For one trafficking victim, the cost in a shelter is calculated by multiplying 365 days by EUR 82.36, totalling EUR 30,061 per victim, per year. When the victim did not stay at the shelter or centre, the cost in 2007 required 324 hours of labour per year. It was calculated by multiplying 2 months by 5,000 (gross social worker salary), equalling EUR 10,000 per year. Added to that were fees for accommodations, immigration processing and medical expenses, totalling EUR 12,000 (12 months multiplied by EUR 1,000).<sup>31</sup> We specifically requested updated budget information from the Ministry of the Family and Integration’s Child and Family Division.<sup>32</sup> Their reply only states that for 2007 and previous years the Government budgeted approximately EUR 100,000 for promotion of the rights of the child and against sexual exploitation of children.<sup>33</sup>

[52]. At this time, the only monitoring mechanisms appear to be the Children’s Rights Ombudscommittee and the Ministry of the Family and Integration’s Child and Family Division. As mentioned above the Ombudscommittee does not view child trafficking as a major problem in Luxembourg, having dealt only with isolated cases of a forced marriage, and a not-too-credible account of an adolescent fleeing a Russian shelter because of a possible threat of organ removal. The Ombudscommittee deals with the issue of child trafficking indirectly within the context of cooperation in its European-wide network, the

<sup>30</sup> Telephone conversation of 2 July 2008 with the Ministry of Equal Opportunity, Senior Directorate Advisor for social policy within the subsidised sector. *See also* Luxembourg/Commission Consultative des Droits de l’Homme (2008) *La situation des mineurs en prison*, available at: <http://www.gouvernement.lu/dossiers/justice/droits/hom/mineurs.pdf> (18 July 2008) (report on minors in Luxembourg’s penitentiary center makes no mention of child trafficking or victims thereof).

<sup>31</sup> Luxembourg/*Projet de Loi No. 5874 portant sur l’assistance et la protection des victimes de la traite des êtres humains modifiant le nouveau code de procédure civile* (22.04.2008), p. 14.

<sup>32</sup> Letter of 24 June 2008.

<sup>33</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

ENOC, or European Network of Ombudspersons for Children.<sup>34</sup> We have requested monitoring information from the Ministry of the Family and Integration's Child and Family Division.<sup>35</sup>

[53]. At this time there is no formalised National Referral Mechanism specific to the rights of trafficked children. However, within the general minor protection framework, Luxembourg has the Central Social Welfare Service's Victim Assistance Service (*Service central d'assistance sociale*, or SCAS) that provides assistance, *inter alia*, to victims of sexual exploitation or violence. The SCAS is set up in the public prosecutor's office and is under the direction of the State Public Prosecutor. Included in the SCAS are all of the sections/units/departments in charge of performing social surveys and providing assistance to people placed under judicial supervision, such as the Youth Protection or Victim Assistance Services. The SCAS is composed of seven psychologists, sociologists, criminologists or educationalists, and 39 probation officers.<sup>36</sup> The State's network of homes for children, *Les Maisons d'Enfants de l'Etat* (MEE) houses minors whose families are unable to raise them, or who are placed there by the court. The MEE provide social and educational guidance, therapeutic and other forms of assistance. These facilities and other services, which are free of charge and open to all, could be used by child trafficking victims.<sup>37</sup>

[54]. In addition, there is an informal network of NGOs such as Caritas (Catholic social justice charity) and local associations such as *Protection des droits de l'enfant asbl* involved.<sup>38</sup> A search of the Belgian NGO Child Focus' Childscope website for Luxembourg NGOs dealing with sexually exploited children (sexually exploited children as general criteria only) reveals a list of the following eight NGOs: *Maisons Enfants de l'Etat*, *Fondation Pro Familia*, *Kanner – Jugendtelefon*, *Fondation Maison de la Porte Ouverte*, *Foundation Kannerschlass*, *Association Luxembourgeoise pour la Prévention des Sévices à*

<sup>34</sup> Interview of 17 June 2008 with Children's Rights Ombudscommittee President.

<sup>35</sup> Letter of 24 June 2008.

<sup>36</sup> ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 21, and Luxembourg-OHCHR/*Etude sur la pornographie impliquant des enfants sur Internet* (2005?), p. 12, available at : <http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008).

<sup>37</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

<sup>38</sup> Interviews of 17 June 2008 with Ombuds-Comité fur d'Rechter vum Kand President, and 19 June 2008 with ECPAT Luxembourg representative. Luxembourg-OHCHR/*Etude sur la pornographie impliquant des enfants sur Internet* (2005?), p. 12, available at : <http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008);

*Enfants* (ALUPSE), ECPAT Luxembourg and *Femmes en Détresse a.s.b.l.* It bears noting that some of these NGOs specialise in dealing with cases of intra- or extra-family sexual assault.<sup>39</sup>

- [55]. All members of the Grand-Ducal Police Criminal Investigation Department's Youth Protection Section have received at least four weeks' training at the police school in Freiburg, Germany, on the prevention and treatment of sexual abuse, the special needs of children and minors, cognitive listening techniques and therapy for children. The training also included protection of children in relation to the media, pornography and staging of shows with minors. Special training of Grand-Ducal Police officers in their law enforcement districts is planned.<sup>40</sup> We have requested information specific to a training strategy on child trafficking from the Ministry of the Family and Integration's Child and Family Division.<sup>41</sup>
- [56]. At this time there are no legal provisions evincing non-criminalisation of children victims of trafficking. However, the existing Code Provisions do not directly criminalize prostitution by adults or minors in Luxembourg, but rather pimping.<sup>42</sup>

## B. Prevention of child trafficking

- [57]. Luxembourg's main awareness-raising campaigns of 2002 and 2007 focussed on child sex tourism in relation to adults. In 2002, the then-Ministry of the

<sup>39</sup> <http://www.childscope.net/2006/httpdocs/index.php?sw=2> (3 July 2008) (ECPAT is the Luxembourg partner of Child Focus, a Belgian NGO dealing with missing and sexually-exploited children).

<sup>40</sup> Grand-Ducal Police website at: [http://www.police.public.lu/conseils\\_prevention/protection\\_enfance/preventionJeunesse/lutte.html](http://www.police.public.lu/conseils_prevention/protection_enfance/preventionJeunesse/lutte.html) (24 June 2008); ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 21; and, Luxembourg-OHCHR/*Etude sur la pornographie impliquant des enfants sur Internet* (2005?), p. 10, available at: <http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008).

<sup>41</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>42</sup> Luxembourg/*Code pénal Grand-Duché de Luxembourg*, 01.01.2008, Art. 382 (01.01.2008). It should be noted however, that a parliamentary bill proposing to replace the existing provision with one providing a misdemeanor sanction for the purchase or attempted purchase of sexual services is currently before the Chamber of Deputies and subject of debate. Luxembourg/*Proposition de loi No. 5857 sur la prostitution* (22.04.2008).

Family, Social Solidarity and Youth launched a campaign in collaboration with ECPAT Luxembourg. The campaign was addressed to the public at large because often the perpetrators were not pedophiles but tourists wishing to engage in sex with minors in the anonymity of a far-away country. Brochures, stickers and radio spots were among the means used to broadcast the message. Additionally, the tourists were to be made aware of the problem at travel agencies, doctors' offices, the local government and the airport. The campaign also emphasized the 1999 Law's provision allowing for the prosecution in Luxembourg of anyone having sexually abused a minor abroad, even if the country in question's legislation did not punish that abuse. The ministries of the Family, Tourism, Justice, as well as the Chamber of Commerce and the National Tourism Office participated in the campaign.<sup>43</sup>

- [58]. The 2007 campaign was broader, including the participation of private sector actors such as travel agencies and their unions, in addition to that of the ministries and ECPAT.<sup>44</sup> ECPAT developed an informational brochure with luggage tags for mass distribution. The campaign did not have the desired impact as the private sector actors feared too much emphasis on the subject would be bad for business. However, ECPAT is planning its next campaign for 2009-2010, that will include training of more actors in the tourism sector, journalists and students.<sup>45</sup>
- [59]. More recently in April of 2008, the Ministry of Equal Opportunity launched a prostitution awareness-raising campaign through posters hung in public areas. The campaign denounced the banalisation of prostitution in a world that finances in large part the trafficking of human beings. The poster itself says 'to buy oneself a prostitute is to finance the trafficking of human beings.' It goes on to cite the ILO 2006 statistics that worldwide each year 2,450,000 people are victims of human trafficking, of which 92% are involved in sexual exploitation, and that 98% of sex industry victims are women and children. Finally, the government website, but not the poster, mentions the 'uncontested' UNICEF statistic that 1.2 million children annually are victims of trafficking.<sup>46</sup> Thus, it

<sup>43</sup> *Présentation de la campagne « Non au tourisme sexuel avec des enfants »* (18.11.2002), available at [www.gouvernement.lu/salle\\_presse/actualite/2002/11/18jacobs/index.html](http://www.gouvernement.lu/salle_presse/actualite/2002/11/18jacobs/index.html) (04.06.2008), and ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 15.

<sup>44</sup> Press release: *Lancement de la campagne de sensibilisation contre l'exploitation sexuelle des enfants dans le tourisme le 8 mai 2007* (04.05.2007), available at [www.gouvernement.lu/salle\\_presse/communiqués/2007/05/04campagne\\_exploitation\\_sexuelle/index.html](http://www.gouvernement.lu/salle_presse/communiqués/2007/05/04campagne_exploitation_sexuelle/index.html) (04.06.2008).

<sup>45</sup> Interview of 19 June 2008 with ECPAT Luxembourg representative.

<sup>46</sup> *Campagne de sensibilisation sur la prostitution* on Ministry of Equal Opportunity website at [www.mega.public.lu/actualites/actu\\_min/2008/04/campagne/index.html](http://www.mega.public.lu/actualites/actu_min/2008/04/campagne/index.html) (30.06.2008).

appears that the prevention of child trafficking, while remaining in the sexual exploitation context is being dealt with through other, more indirect means.

[60]. At this time there is no evidence that the campaigns are directed at children, nor of their direct participation in them. ECPAT appears to be the only NGO involved. Neither do we see evidence of direct participation of local communities and/or minority groups in preventive efforts, or policies to prevent children in a vulnerable position become victims of child trafficking upon arrival in Luxembourg. However, we requested this information from the Ministry of the Family and Integration's Child and Family Division and the Grand-Ducal Police.<sup>47</sup> In its reply, the Ministry of the Family and Integration's Child and Family Division stated that the Government Commission for Foreigners (CGE) takes charge of unaccompanied foreign minors, providing them with a series of services such as pocket money (EUR 88 /month), as well as free health insurance and lodging.<sup>48</sup>

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<sup>47</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division), and 26 June 2008 (Grand-Ducal Police).

<sup>48</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

## C. Appointment of legal guardian

- [61]. The 1999 Law makes no provision for legal guardian appointment when a unaccompanied minor is identified as a victim of trafficking. However, Article 12 of Luxembourg's asylum law of 2006 provides that an unaccompanied minor seeking asylum is to be appointed a guardian as soon as possible.<sup>49</sup> Additionally, Luxembourg's youth protection legislation provides that should the circumstances so require, a judge can order that a minor be placed under the surveillance of a trusted individual. Thus, a mechanism for appointment of an unaccompanied minor's legal guardian exists in a more general context.<sup>50</sup> Also, under the recently-passed immigration bill, an unaccompanied minor that is now allowed entry into the country is appointed an *ad hoc* legal representative (*administrateur ad hoc*) as soon as possible. The representative assists the minor in all administrative and judicial proceedings related to the minor's stay in the airport waiting zone (*zone d'attente*).<sup>51</sup>
- [62]. Luxembourg's Civil Code defines a minor as one who has not yet reached the age of 18.<sup>52</sup> All legal texts use the term minor with that meaning. Thus, a guardian for a minor is usually appointed until the minor reaches 18, but in certain circumstances, a juvenile court has the discretion, with the agreement and in the interest of the individual concerned, to extend that appointment until the individual reaches a maximum of 21 years of age.<sup>53</sup> A bill described in Section H that is before the Chamber of Deputies provides for a guardian for an accompanied minor who is a trafficking victim.
- [63]. The 2006 asylum law also provides for the Ministry of Immigration's ability to order medical examinations to determine the minor's age. The minor is informed of the consequences of refusal to submit to the examination, and must agree thereto. However, refusal to accord international protection to an unaccompanied minor cannot be based purely on his or her refusal to submit to the medical examination. And, the unaccompanied minor's refusal to submit to the examination does not prevent the Minister of Immigration from determining

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<sup>49</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 12(1) (05.05.2006), as amended.

<sup>50</sup> Luxembourg/*Loi du 10 août 1992 relative à la protection de la jeunesse*, Art. 1 (10.08.1992), as amended.

<sup>51</sup> Luxembourg/*Projet de Loi No. 5802 portent sur la libre circulation et l'immigration* (07.11.2007), Art. 119(5), voted into law on 9 July 2008, but not published as of 22 July 2008.

<sup>52</sup> Luxembourg/*Code Civil Grand-Duché de Luxembourg*, 01.01.2007, Art. 388 (01.01.2007).

<sup>53</sup> Luxembourg/*Loi du 10 août 1992 relative à la protection de la jeunesse*, Art. 1 (10.08.1992), as amended.

whether or not to accord international protection. No request for international protection will be accepted from an EU Member State citizen.<sup>54</sup>

[64]. Under the asylum law, people in charge of unaccompanied minors are to receive appropriate training.<sup>55</sup> We have requested further information on training from the Ministry of the Family and Integration's Child and Family Division and the Grand-Ducal Police.<sup>56</sup>

[65]. Given that there are no confirmed cases of child trafficking in Luxembourg, the information relating to guardianship in practice is very general. The guardian is appointed under the administrative auspices of the CGE. The guardian and the unaccompanied minor work with a school to devise a program for the minor's insertion. Unaccompanied minors are most often housed either in the MEE or the private centres with which the Ministry of the Family and Integration has a cooperation agreement. Additionally, the Luxembourg Red Cross, in collaboration with the European Refugee Fund, has developed an innovative project called *Oppe Famill* under which 15 persons who have sought asylum in Luxembourg, including unaccompanied minors, can stay with a foster family for a few months. The program provides the individuals a "total immersion" experience in Luxembourg.<sup>57</sup>

[66]. With respect to NGOs, Caritas, a social justice NGO, provides support services and guardianship to unaccompanied minors who declare themselves to be over 16 years of age but under 18, through its educational service, *Passe-partout*. Generally, either the Police Criminal Investigative Division or the Ministry of the Family and Integration informs Caritas of the arrival of an unaccompanied minor. The Red Cross provides guardianship to unaccompanied minors under 16. When Caritas suspects it is dealing with an unaccompanied individual who is not a minor, the NGO will give the individual the benefit of a doubt and provide guardianship, unless it is too obvious that the individual is no longer a minor. In that case, Caritas does not provide guardianship, but rather support services with the agreement of the Ministry and other partners. At the end of 2007, 12 unaccompanied minors (2 females and 10 males) were enrolled in the *Passe-partout* program, 8 of whom (all males) were under the guardianship of Caritas.<sup>58</sup>

<sup>54</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Arts. 12(3)-(4) and 16 (05.05.2006), as amended.

<sup>55</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 52(6) (05.05.2006), as amended.

<sup>56</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division), and 26 June 2008 (Grand-Ducal Police).

<sup>57</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

<sup>58</sup> E-mail of 6 July 2008 from Caritas representative.

- [67]. From initial contact, the NGO works to develop a relationship of trust through regular contact with the minors, and accompanies them to the first meeting with their lawyer as well as any hearings. As guardian, Caritas monitors the progress of the unaccompanied minor's immigration file and, with the minor's consent, will carry out tracing to prove the minor's origin.<sup>59</sup>
- [68]. Caritas social workers have participated in training sessions with individuals from other European entities working with unaccompanied minors where they have exchanged best practices non-specific to child-trafficking. The general network within which Caritas works includes the *Fondation Caritas Luxembourg*, Luxembourg Red Cross, the *Collectif Réfugiés*, Unicef Luxembourg, the Ministry of the Family and Integration, local lawyers and the Separated Children in Europe Programme.<sup>60</sup>

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<sup>59</sup> E-mail of 6 July 2008 from Caritas representative.

<sup>60</sup> E-mail of 6 July 2008 from Caritas representative.

## D. Coordination and cooperation

- [69]. In 2006, the Grand-Ducal Police created a special investigative unit called 'human trafficking for sexual exploitation', that employs four officers. The Police provide the following statistics related to prostitution: between June and September 2006, they counted 136 prostitutes on the sidewalk, 60 in apartments and 150 in cabarets. During the year they estimate that there are 700 prostitutes in the country (the substance abuse treatment centre The Drop-In estimates there are 1,500). The international statistics indicate that 10% of women prostitutes are trafficking victims. According to this estimate, approximately 70 people per year would be sexual exploitation trafficking victims in Luxembourg. There is no information on other forms of trafficking.<sup>61</sup>
- [70]. Also, within the general minor protection framework, Luxembourg has the Central Social Welfare Service's Victim Assistance Service (*Service central d'assistance sociale*, or SCAS) that provides assistance, *inter alia*, to victims of sexual exploitation or violence. The SCAS is set up in the public prosecutor's office and is under the direction of the State Public Prosecutor. Included in the SCAS are all of the entities in charge of performing social surveys and providing assistance to people placed under judicial supervision, such as the Youth Protection or Victim Assistance Services. The SCAS is composed of seven psychologists, sociologists, criminologists or educationalists, and 39 probation officers.<sup>62</sup> In addition there is an informal network of NGOs such as Caritas (Catholic social justice charity) and local associations such as *Protection des droits de l'enfant asbl* involved.<sup>63</sup> A search of the Belgian NGO Child Focus' Childscope website for Luxembourg NGOs dealing with sexually exploited children (searching under sexually exploited children as general criteria only) reveals a list of the following eight NGOs: *Maisons Enfants de l'Etat*, *Fondation Pro Familia*, *Kanner – Jugendtelefon*, *Fondation Maison de*

<sup>61</sup> Luxembourg/*Projet de Loi No. 5874 portant sur l'assistance et la protection des victimes de la traite des êtres humains modifiant le nouveau code de procédure civile* (22.04.2008), p. 14.

<sup>62</sup> ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 21, and Luxembourg-OHCHR/*Etude sur la pornographie impliquant des enfants sur Internet* (2005?), p. 12, available at : <http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008).

<sup>63</sup> Interviews of 17 June 2008 with Ombuds-Comité fur d'Rechter vum Kand President, and 19 June 2008 with ECPAT Luxembourg representative. Luxembourg-OHCHR/*Etude sur la pornographie impliquant des enfants sur Internet* (2005?), p. 12, available at : <http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008).

*la Porte Ouverte, Fondation Kannerschlass, Association Luxembourgeoise pour la Prévention des Sévices à Enfants (ALUPSE), ECPAT Luxembourg and Femmes en Détresse a.s.b.l.* None of those NGOs have signed a cooperation agreement with government authorities.<sup>64</sup>

[71]. We requested updated information from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>65</sup> In its reply, the Ministry of the Family and Integration's Child and Family Division informed us that there are 23 reception centres (*centres d'accueil*, CAC) which have cooperation agreements with the Ministry of the Family and Integration. These centres are equipped to receive and lodge—during the day or at night—children and young adults who are victims of a harmful family or social environment. The CAC provide individualised educational, psychological, social and therapeutic services to the children under their charge. Additionally, there are 5 emergency shelters (*foyers d'accueil et de dépannage*, FADEP), with 42 spaces nationwide, that also have cooperation agreements with the Ministry of the Family and Integration. These shelters take in children and young adults who are victims of a harmful family or social environment, intervening in emergency and family crisis situations. Placement in these shelters is limited to three months, and the social workers, psychologists and others working in these shelters deal primarily with family crises and teenage suicide. Finally, the *Meederchershaus* Refuge, one of the FADEP, provides shelter to young girls and women between 12 and 21 years of age who are victims of psychological, physical and/or sexual abuse.<sup>66</sup>

[72]. The proposed bill described in Section H provides for trafficked children's data protection. We have also requested current information from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>67</sup>

[73]. According to the Grand-Ducal Police and the Government, judicial cooperation with respect to sexual assault and exploitation is carried out through the Schengen, Benelux, European and other bilateral mutual legal assistance conventions. Police cooperation is carried out through the Schengen Agreements, EUROPOL, INTERPOL and border relations and meetings.<sup>68</sup> We

<sup>64</sup> Childscope website at:

<http://www.childscope.net/2006/httpdocs/index.php?sw=2> (3 July 2008).

<sup>65</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>66</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

<sup>67</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>68</sup> Grand-Ducal Police website at:

[http://www.police.public.lu/conseils\\_prevention/protection\\_enfance/preventionJeunesse/lutte.html](http://www.police.public.lu/conseils_prevention/protection_enfance/preventionJeunesse/lutte.html) (24 June 2008) and Luxembourg-OHCHR/*Etude*

have requested further information from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>69</sup> Also, on 12 June 2008, France and the Benelux countries participated in a judicial and law enforcement cooperation exercise regarding the fictive abduction of a Luxembourg child. The exercise was aimed at emphasizing the importance of such cooperation in the fight against crossborder crime, which could potentially include child trafficking.<sup>70</sup>

- [74]. Luxembourg provides development assistance to countries of origin through its support of ECPAT International. ECPAT has approximately 20 projects in countries such as Brazil, Senegal, India, Pakistan, Madagascar, Mali, Bangladesh and Nepal.<sup>71</sup> In 2005, the UN CRC Committee expressed its satisfaction that Luxembourg had dedicated over 0.7% of its gross domestic product to public development aid, going beyond the set objective.<sup>72</sup>

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*sur la pornographie impliquant des enfants sur Internet (2005?)*, p. 12, available at :

<http://www2.ohchr.org/english/issues/children/rapporteur/Luxembourg%20Gov.doc> (3 July 2008).

<sup>69</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>70</sup> Europaforum Luxembourg Press Release: *Justice, liberté, sécurité et immigration Exercice commun de la France et de Benelux dans le cadre du plan « Alerte Enlèvement » Luc Frieden a mis en exergue la dimension européenne de la coopération policière et de la lutte contre la criminalité* 12 June 2008, available at : [www.europaforum.public.lu/fr/actualites/2008/06/plan-alerte/index.html](http://www.europaforum.public.lu/fr/actualites/2008/06/plan-alerte/index.html)? (19 June 2008).

<sup>71</sup> Interview of 19 June 2008 with ECPAT Luxembourg representative, and ECPAT International (2006) *Rapport Global de Suivi de la mise en oeuvre des actions de lutte contre l'exploitation sexuelle des enfants à des fins commerciales – Luxembourg*, p. 14.

<sup>72</sup> UN Committee on the Rights of the Child (2005) *Review of the reports presented by the States party in application of Article 44 of the Convention (CRC/C/15/Add.250)*, para. 5.

## E. Care and protection

- [75]. At this time there is no legal provision ensuring respect for a 30-day minimum reflection period. The recently-passed immigration bill also described in Section H provides for a 90-day reflection period.<sup>73</sup>
- [76]. At this time there is no legal provision ensuring entitlement to residence to trafficking victims, irrespective of cooperating with the police or prosecutors. The recently-passed immigration bill also described in Section H provides for a residence permit on the condition that the individual cooperate with investigating authorities.<sup>74</sup>
- [77]. We have requested 2000-2007 information for the number of children being granted temporary stay on grounds of trafficking from the Ministry of Foreign Affairs and Immigration, but have received no response to date. **We will forward any substantive response that we may receive to you.**<sup>75</sup>
- [78]. Under Luxembourg's asylum law, children appear to be subject to the same administrative detention/detention pending deportation procedures as adults. However, the UNHCR, Children's Rights Ombudscommittee and other certified entities have access to the children in these situations.<sup>76</sup>
- [79]. In a recently-published report, Luxembourg's Consultative Commission on Human Rights (CCDH) revealed that three apparently Roma minors, one of whom was 11 years of age, had been held in the Luxembourg Penitentiary Center (CPL). They were released under the condition that they be escorted to the border, but the CCDH did not receive a guarantee as to whether an investigation had been conducted into the situation of the minors, the minors were apparently simply escorted to the border.<sup>77</sup>

<sup>73</sup> Luxembourg/*Projet de Loi No. 5802 portent sur la libre circulation et l'immigration* (07.11.2007), Arts. 92 and 93, voted into law on 9 July 2008, but not published as law of 22 July 2008.

<sup>74</sup> Luxembourg/*Projet de Loi No. 5802 portent sur la libre circulation et l'immigration* (07.11.2007), Arts. 92 and 93, voted into law on 9 July 2008, but not published as of 22 July 2008.

<sup>75</sup> Letter of 24 June 2008.

<sup>76</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Arts. 10 and 13 (05.05.2006), as amended. Luxembourg/Commission Consultative des Droits de l'Homme (2008) *La situation des mineurs en prison*, available at: <http://www.gouvernement.lu/dossiers/justice/droits/hom/mineurs.pdf> (18 July 2008) (report on minors in Luxembourg's penitentiary center citing cases of unaccompanied minors in the penitentiary center)

<sup>77</sup> Luxembourg/Commission Consultative des Droits de l'Homme (2008) *La situation des mineurs en prison*, available at:

- [80]. We have requested information on special safeguards for detained children, the existence of a family tracing program, as well as the existence and number of specialised shelters for trafficked children from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>78</sup> We have received no response to date, but will forward to you any substantive response we may receive. Luxembourg's asylum law provides that the family members of a unaccompanied minor will be sought out as soon as possible in order to look after that minor's best interest.<sup>79</sup>
- [81]. We have requested statistics on children who, between 2000-2007, left shelters with an unknown destination from the Ministry of the Family and Integration.<sup>80</sup> We have received no response to date, but will forward to you any response we may receive.
- [82]. At this time there are no specific provisions ensuring trafficked children full health care services. However, the proposed bill on assistance and protection to victims of human trafficking briefly described in Section H provides for such services. We have asked the Ministry of the Family and Integration for the number of children who received such services between 2000 and 2007.<sup>81</sup> The Ministry has not provided us with that information.
- [83]. Luxembourg's asylum law provides that minors receiving asylum status or subsidiary protection will have full access to the Luxembourg educational system, under the same conditions as Luxembourg citizens.<sup>82</sup> We have requested information on number of trafficked children that received that education/training between 2000-2007 from the Ministry of the Family and Integration.<sup>83</sup> The Ministry has not provided us with that information.
- [84]. At this time there is no specific provision ensuring legal assistance to minors, although such assistance appears to exist informally. A pending bill for legal assistance to minors is briefly described in Section H. In response to our request for statistics on the number of trafficked children receiving legal assistance

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<http://www.gouvernement.lu/dossiers/justice/droitshom/mineurs.pdf> (18

July 2008) (report on minors in Luxembourg's penitentiary center citing cases of unaccompanied minors in the penitentiary center) p. 17.

<sup>78</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

<sup>79</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 52(5) (05.05.2006), as amended.

<sup>80</sup> Letter of 24 June 2008.

<sup>81</sup> Letter of 24 June 2008.

<sup>82</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 49 (05.05.2006), as amended.

<sup>83</sup> Letter of 24 June 2008.

from 2000-2007, the Luxembourg State Prosecutor's Office stated that they have no knowledge of any cases of child trafficking for those years.<sup>84</sup>

- [85]. As a general matter, the asylum law provides for translation to unaccompanied minors with respect to translation of basic information on their rights and duties, and that once the unaccompanied minor is granted asylum, he or she is to be housed in premises that take into account his or her needs.<sup>85</sup> The proposed human trafficking victim assistance and protection bill described in Section H specifically provides for such needs.
- [86]. The Grand-Ducale Police's Youth Protection Service has put into place a telephone help number for child victims of physical, sexual or psychological abuse or assault. The number is 12321, and is called 'Aktioun Bobby'.<sup>86</sup> There is also a youth website ([www.12345kjt.lu](http://www.12345kjt.lu)) and telephone number (12345), that provides a forum for discussion of various problems.<sup>87</sup> Both "Luxembourg Safer Internet – LuSI" ([www.lusi.lu](http://www.lusi.lu)), subsidised by the European Commission's Safer Internet Plus Program, and the Luxembourg Ministry of the Economy and Foreign Trade's CASES website ([www.cases.lu](http://www.cases.lu)), are designed to raise the awareness of children and minors about the dangers of the Internet to which they could be subject such as exploitation, harassment and fraud.<sup>88</sup> And, the Luxembourg website for reporting illegal Internet content such as child pornography, racist, terrorist or crime incitation content is the LISA (Luxembourg Internet Safety Alert) Stop Line ([www.lisa-stopline.lu](http://www.lisa-stopline.lu)). The website offers the possibility to report illegal Internet content using either the web or a free hotline.<sup>89</sup> Also, many of the NGOs cited in the Childscope report have their own hotlines. We have asked for further information and for information on similar instruments to report other situations of exploitation of trafficked children from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>90</sup>

<sup>84</sup> Letter of 25 June 2008, from State Prosecutor's Office.

<sup>85</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 52 (05.05.2006), as amended.

<sup>86</sup> Available on Grand-Ducal Police website at:

<http://www.police.public.lu/functions/search/resultHighlight/index.php?linkId=1&SID=e73b77ce296f65d2fd09f6676aa8ac6f> (24.06.2008).

<sup>87</sup> Found at: <http://www.12345kjt.lu/> (20.06.2008).

<sup>88</sup> Reply of 25 July 2005 from Ministry of the Family and Integration, Child and Family Division.

<sup>89</sup> Found at: <http://www.lisa-stopline.lu> (07.07.2008).

<sup>90</sup> Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

## F. Best interests determination and durable solutions, including social inclusion/return

- [87]. At this time there is no formalised process for identification of durable solutions based on best interest determination, including risk and security assessment prior to possible return of the child. However, a series of proposed legislation briefly described in Section H provides for those elements.
- [88]. Under the asylum law, unaccompanied minors may be granted subsidiary protection that, upon request of the Ombudscommittee, can be extended after they have reached the age of 18. The asylum law also provides for translation of basic information regarding the minor.<sup>91</sup>
- [89]. Evidence of respect for the child's participation in the decision making and relevant legal procedures, access to integration programs, and specialised integration programs are all provided for in the bills described in Section H currently before the Chamber of Deputies.
- [90]. As mentioned above, the asylum law provides for translation to unaccompanied minors with respect to translation of basic information on their rights and duties, and that once the unaccompanied minor is granted asylum, he or she is to be housed in premises that take into account his or her needs.<sup>92</sup> The proposed human trafficking victim assistance and protection bill described in Section H specifically provides for such any other needs a child may have.

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<sup>91</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 12 (05.05.2006), as amended. Interview of 17 June 2008 with Ombuds-Comité fur d'Rechter vum Kand President.

<sup>92</sup> Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection*, Art. 52 (05.05.2006), as amended.

## G. Prosecution

- [91]. As described above, the 1999 Law provides for the recording/filming of hearings to avoid direct confrontation with the trafficker. The 1999 Law does provide for child trafficking witness or victim security and protection.<sup>93</sup>
- [92]. The Luxembourg Public Prosecutor's Office has informed us that they know of no child trafficking cases for 2000-2007.<sup>94</sup>
- [93]. The 1999 Law does provide for children's right to justice or any form of victim compensation, either from the convicted perpetrator or state funds.
- [94]. We have asked the Ministry of the Family and Integration for the total amount, average amount and range of amounts of compensation paid to trafficked children between 2000 and 2007.<sup>95</sup> However, given that the Public Prosecutor's Office says there have not been any child trafficking cases during those years, there will likely not be any amount cited.

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<sup>93</sup> Luxembourg/*Loi du 31 mai 1999 visant à renforcer les mesures contre la traite des êtres humains et l'exploitation sexuelle des enfants et portant modification du Code pénal et du Code d'instruction criminelle* (31.05.0999).

<sup>94</sup> Letter of 25 June 2008 from State Prosecutor's Office.

<sup>95</sup> Letter of 24 June 2008.

## H. Miscellaneous

- [95]. The following bills, and one very recently-passed law, that will bring Luxembourg's child trafficking legislation into line with the current international standards are before the Chamber of Deputies:
- [96]. Bill No. 5156 reinforcing the rights of victims of crimes and improving witness protection – provides for entry and stay in Luxembourg of trafficking victims.<sup>96</sup>
- [97]. Bill No. 5718 introducing corporate criminal liability – bill's preamble cites Council Framework Decision of 19 July 2002 on combating trafficking in human beings among the instruments adopted at the European level that required the legislation of the responsibility of legal persons/corporate entities.<sup>97</sup>
- [98]. Bill no. 5754 on assistance to children – provides for a more formalised social assistance network for children under the guiding principle of the best interest of the child in decisions concerning children.<sup>98</sup>
- [99]. Bill No. 5802 on free movement and immigration - provides for 90-day reflection period and residence permit when trafficking victim participates with law enforcement authorities with respect to the investigation and prosecution of perpetrators. This bill was voted into law on 9 July 2008, but has not been published as of 22 July 2008.<sup>99</sup>
- [100]. Bill No. 5848 modifying the law on the profession of lawyer, the Civil Code and the New Civil Procedure Code – provides for legal aid to minors.<sup>100</sup>
- [101]. Bill No. 5860 relating to human trafficking – ratifies the Palermo Protocol to prevent, suppress and punish trafficking in persons and the Council of Europe Convention on Action against Trafficking in Human Beings; defines human

<sup>96</sup> Luxembourg/*Projet de Loi No. 5156 renforçant le droit des victimes d'infractions pénales et améliorant la protection des témoins* (20.05.2003), Art. 48.

<sup>97</sup> Luxembourg/*Projet de Loi No. 5718, 1. introduisant la responsabilité pénale des personnes morales dans le Code pénal et dans le Code d'instruction criminelle, 2. modifiant le Code pénal, le Code d'instruction criminelle et certaines autres dispositions législatives* (20.04.2007).

<sup>98</sup> Luxembourg/*Projet de Loi No. 5754 relatif à l'aide à l'enfance* (22.08.2007), Art. 2.

<sup>99</sup> Luxembourg/*Projet de Loi No. 5802 portant sur la libre circulation et l'immigration* (07.11.2007), Arts. 92 and 93, voted into law on 9 July 2008, but not published as of 22 July 2008.

<sup>100</sup> Luxembourg/*Projet de Loi No. 5848 portant modification : 1) de l'article 37-1 de la loi modifiée du 10 août 1991 sur la profession d'avocat ; 2) du Livre premier, Titre X, Chapitre 1<sup>er</sup> du Code civil ; 3) de l'article 1046 du Nouveau Code de procédure civile* (13.03.2008).

trafficking; provides for judicial cooperation at the European Union level and non-criminalisation/non-criminal liability of human trafficking victims.<sup>101</sup>

- [102]. Bill No. 5874 on assistance and protection for human trafficking victims and modifying the New Code of Civil Procedure – provides for: all forms of assistance (psychological, financial, linguistic, legal); a guardian for unaccompanied minor victim of trafficking from EU Member State, associated State, or third country until either the situation is resolved or an authority from the victim’s country of origin takes care of the victim in the his or her best interest; victim training and access to employment; cooperation between police and assistance services; a follow-up committee in the fight against human trafficking with an integrated approach of equality between men and women; and the collection of data and statistics.<sup>102</sup>
- [103]. Parliamentary Bill No. 5857 on prostitution - proposes replacing the existing provision that sanctions public solicitation of someone for the purposes of immoral behavior, with one providing a misdemeanor sanction for the purchase or attempted purchase of sexual services.<sup>103</sup>

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<sup>101</sup> Luxembourg/*Projet de Loi No. 5860 relatif à la traite des êtres humains* (26.03.2008).

<sup>102</sup> Luxembourg/*Projet de Loi No. 5874 portant sur l’assistance et la protection des victimes de la traite des êtres humains modifiant le nouveau code de procédure civile* (22.04.2008).

<sup>103</sup> Luxembourg/*Proposition de loi No. 5857 sur la prostitution* (22.04.2008).

## I. Good practices

[104]. We have requested information on good practices from the Ministry of the Family and Integration, and the Grand-Ducal Police.<sup>104</sup> We have received no response to date, but will forward to you any relevant information they may provide.

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<sup>104</sup>

Letters of 24 June 2008 (Ministry of the Family and Integration, Child and Family Division, Ministry of Foreign Affairs and Immigration), and 26 June 2008 (Grand-Ducal Police).

## Annex 1 - Tables and Statistics

|   | 2000  | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|------|------|------|------|------|------|------|
| Number of children being granted temporary stay on grounds of trafficking   | Requested from Ministry of Foreign Affairs and Immigration by letter of 24 June 2008. <b>No response received to date.</b>  |      |      |      |      |      |      |      |
| Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment) | Requested from Ministry of the Family and Integration by letter of 24 June 2008. <b>No response to the question in their letter of 25 July 2008.</b>  |      |      |      |      |      |      |      |
| Number of trafficked children receiving education/training, in particular secondary education and vocational training                                 | Requested from Ministry of the Family and Integration by letter of 24 June 2008. <b>No response to the question in their letter of 25 July 2008.</b>  |      |      |      |      |      |      |      |
| Number of trafficked children receiving legal assistance (e.g. for claiming compensation)   | Requested from Ministry of the Family and Integration by letter of 24 June 2008, and State Prosecutor's Office by letter of 24 June 2008 (State Prosecutor's Office responded by letter of 25 June, 2008, saying that there were no known cases during those years) |      |      |      |      |      |      |      |
| Number of final convictions based on child trafficking  | Requested from State Prosecutor's Office by letter of 24 June 2008 (State Prosecutor's Office responded by letter of 25 June, 2008, saying that there were no known cases during those years)   |      |      |      |      |      |      |      |

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|--|--|
| cases, per year  |  |
| Total of amount of compensation paid to trafficked children, per year    | Requested from Ministry of the Family and Integration by letter of 24 June 2008. <b>No response to the question in their letter of 25 July 2008.</b> |
| Average of amounts of compensation paid to trafficked children, per year | Requested from Ministry of the Family and Integration by letter of 24 June 2008. <b>No response to the question in their letter of 25 July 2008.</b> |
| Range of amount of compensation paid to trafficked children, per year    | Requested from Ministry of the Family and Integration by letter of 24 June 2008. <b>No response to the question in their letter of 25 July 2008.</b> |

Any other tables or statistics relevant for child trafficking