



FRA
Thematic Study on Child Trafficking
Belgium

Frank Verbruggen (coordinator)
Ken Van hoogenbemt
Tim Van hoogenbemt
Paul Lemmens

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Executive Summary

- [1]. Over the last decades Belgium has adopted different legislative provisions to permit prosecution of human trafficking in general and child trafficking in particular.
- [2]. Belgian legislation has no specific criminal offence of child trafficking. The fact that the victim is a minor (under 18), constitutes an aggravating circumstance of the offence of trafficking human beings. The definition of the latter has been amended in 2005. The definition is new, as it is the first time that human trafficking is defined as exploitation of people in various ways, rather than exclusively as sexual exploitation, and regardless of whether the victim is a Belgian national or not. Although inspired by the definition contained in EU legislation, the Belgian definition is not completely the same as the European definition.
- [3]. Also in 2005 a new definition for human smuggling was created. The fact that the smuggled person is a minor is also an aggravating circumstance of the general offence of human smuggling. Whereas human trafficking has been transferred to the Criminal Code, the offence of human smuggling continues to feature in the Aliens Act of 1980. The new Belgian definition goes beyond making the aid to illegal stay punishable, as required by EU legislation, since it also encompasses the aid to illegal entry or aid to illegal transit, if it is rendered with a profit motive.
- [4]. In his fight against human trafficking, the Belgian legislator has also adopted some additional legal provisions, so as to make it possible to punish those who take advantage of the situation of victims, in particular through rack-renting, and to prevent seemingly legal ways of human trafficking, in particular through marriages of convenience.
- [5]. The Centre for Equal Opportunities and Opposition to Racism has created a database for victims of human trafficking. It is a collection mechanism, in cooperation with three specialized reception centres for victims of human trafficking. It contains a detailed, standardised and centrally maintained set of data, concerning various aspects of human trafficking and human smuggling. The input into the database is done directly by the reception centres, using a standardised list of questions.
- [6]. In many cases, victims of trafficking are also offenders in cases of moonlighting or prostitution. This can lead to confinement in closed reception centres or even in prison. It can be very hard for social workers to recognise victims as victims instead of as perpetrators of other offences. As a general rule, children cannot

commit offences, but they can be subjected to youth protection measures. As such, they are incapable of being criminalised in the strict sense: they have to be protected even if they break the law. However, by decision of the juvenile courts, minors from 16 to 18 years can exceptionally be transferred to special chambers of the ordinary criminal court system and can get prison sentences.

- [7]. For each non-accompanied minor (NAM) a legal guardian is appointed by the Legal Guardianship Office of the Federal Ministry of Justice. This applies to all NAMs and therefore includes non-accompanied victims of trafficking. However, it does not include EEA nationals. For non-accompanied EEA nationals who are in a vulnerable condition (including trafficking victims), a pragmatic alternative regime was set out by a circular letter issued by the Ministers of Justice and the Interior on 02.08.2007.
- [8]. If there are doubts about the age of the NAM, be it a victim of human trafficking or not, the Legal Guardianship Office will, as a part of its general duty to identify the subject, have to establish the age. Although the law states that this has to happen through medical tests which have to encompass psycho-affective tests, in practice no such psycho-affective tests have been done. The method used is rather that of a three-fold X-ray test: wrist bone, collar bone and teeth are used to determine the age.
- [9]. The above mentioned *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme* [Centre for Equal Opportunities and Opposition to Racism] is perhaps the most important player in the fight against human trafficking, including child trafficking. Not only is the Centre legally obliged to stimulate this fight and to report yearly about the status of this struggle, but the Centre is also present in every field of action. It is in contact with the specialised reception centres to gather information for the database and, as mentioned above, it contacts other actors. The Centre can also be in direct contact with the victims of trafficking, as it is entitled to represent the victims in court or to act independently to start prosecution against traffickers.
- [10]. Adult victims of human trafficking, who are illegally in the country and who receive an order to leave the country, have a reflection period of 45 days. In this period they have to decide if they want to stay in the country and want to cooperate with the authorities to prosecute the offenders or not. Child victims have at least the same protection concerning residence. The status 'victim of human trafficking' is also available to them. As a result they have to meet the demands that are set for all victims. They have to break off all contact with the traffickers, cooperate with the authorities and be counselled by a specialised reception centre. The difference with adults lies in the fact that they do not have a reflection period of 45 days, but one of three months.

- [11]. During the reflection period, the title of residence for children also differs from the title that adults have. During the first phase, adults receive an order to leave the country, but children receive a certificate of registration. This certificate grants a temporary stay. Adult victims only receive this registration for a period of three months after they have been counselled by a specialised reception centre and want to file a complaint. During the entire procedure, the best interests of the child should be taken into account.
- [12]. During the next phase, the victim receives the right to reside in Belgium for a period of six months if he or she cooperates with the authorities and if the investigation is still going on. If the victim contacts the traffickers, the right to reside can be withdrawn. This right can also be prolonged as long as the investigation is going on.
- [13]. When the investigation is finished and the public prosecutor considers the involved person to be a victim of human trafficking, that person can be granted a right to reside in Belgium for an indefinite period of time.
- [14]. Belgium has three specialised shelters for victims of trafficking. There are also specialised shelters specifically for children who are victims of trafficking.
- [15]. All care and protection is related to the status of ‘victim of human trafficking’. Recognised victims are entitled to psychosocial and psychological care. To be recognised as a victim of human trafficking however, the victim has to break off all contacts with the traffickers, has to be counselled by a specialised reception centre and has to file a complaint against the traffickers. These conditions have been criticised as being too high of a threshold, particularly for victims below the age of 16. The government has therefore promised it intends to adjust these rules.
- [16]. The Code of Criminal Procedure contains a chapter that deals specifically with the questioning of minors who are victims or witnesses of certain crimes, including child trafficking. These provisions allow for the audiovisual recording of the interview of the minor, with his or her consent if the minor is 12 years or older. The interviewer is generally a specifically trained police officer. The questioning takes place in a room that is specially arranged for that purpose (which implies that it must be child-friendly), in the presence of the interviewer, an accompanying person chosen by the minor, a member of the technical staff and a psychiatrist or a psychologist. The recording makes it possible to avoid a direct confrontation between the perpetrator and the child victim.

A. General anti-child trafficking framework

A.1. International texts

[17]. Many of the international legal instruments concerning child trafficking have been signed by Belgium, but not all of them have been ratified:

- the International Labour Organisation Convention No. 182 on the worst forms of child labour (1999) has been ratified on 08.05.2002,

- the Optional Protocol to the United Nations Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography (2000) has been ratified on 17.03.2006,

- the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime (2000), has been ratified on 11.08.2004,

- the Council of Europe Convention No. 197 on Action against Trafficking in Human Beings (2005) has been signed on 17.11.2005, but has not been ratified yet. In 2006, steps were already taken to start the necessary procedures. However, since this Convention is considered a so-called “mixed treaty”, the parliamentary assemblies of the federal State and of all federated entities have to give a separate approval before the Convention can be ratified. This can slow the ratification down.¹ The latest action plan concerning human trafficking (cf. *supra*) explicitly proposes to “finish the process of ratification of the Warsaw Convention against Trafficking in Human Beings”, but does not mention when this goal is to be reached.

- the Council of Europe Convention No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) has been signed on the 25.10.2007, but has not been ratified yet. No specific plans for the ratification of this Convention are known at this time.

[18]. Of course, Belgium is bound by the Council Framework Decision of 19.07.2002 on combating trafficking in human beings and that of 28.11.2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

¹ Parliamentary records, Senate, Session of 04.05.2006, pp. 7-10 (question no. 3-1094); See http://www.senate.be/www/?MIval=/index_senate&MENUID=24400&LANG=nl.

A.2. National implementation

- [19]. Over the last decades Belgium has adopted different legislative provisions to permit prosecution of human trafficking in general and child trafficking in particular. Recently the Belgian legislator has adapted these legal provisions to the requirements of the above mentioned Framework Decisions of 19.07.2002 and 28.11.2002, as well as to Council Directive 2002/90/EC of 28.11.2002 defining the facilitation of unauthorised entry, transit and residence.

The provisions that make child trafficking and related activities criminal offences can be divided into different categories.

A.2.1. Child trafficking and child smuggling

A.2.1.1. Child trafficking

- [20]. Belgian legislation has no specific criminal offence of child trafficking. The fact that the victim is a minor (under 18), constitutes an aggravating circumstance of the offence of trafficking human beings. The definition of the latter has been amended in 2005.² As suggested at the international level, human trafficking was set apart from human smuggling and both forms of behaviour were forged into separate offences by the act of 10.08.2005. Since child trafficking is merely a specific, aggravated form of human trafficking, it is necessary to give an overview of the Belgian legislation on human trafficking in general.

- [21]. Human trafficking, which previously was an offence under the Aliens Act³, has been inserted as a discrete offence in the Criminal Code. The new article 433^{quinquies} §1, first paragraph, defines it explicitly as *the recruitment, transportation, transfer, harbouring, reception of a person, or the exchange or transfer of control over that person, in order to:*

1. *allow sexual offences against this person,*
2. *allow that the person would be involved in begging,*
3. *employ that person or let that person be employed in circumstances that violate human dignity,*

² Act of 10.08.2005 on the adaptation of various regulations with a view to strengthening the combat against human trafficking and human smuggling and against the practices of rack-renters.

³ Formerly, human trafficking had only been defined in the Aliens Act of 15.12.1980.

4. *remove organs or tissues or let organs or tissues be removed without respect for the Act of 13.06.1986 concerning the removal or transplantation of organs,*
5. *force that person to commit offences against his will.*

The same paragraph provides that, except for the last case (trafficking to commit offences *against one's will*), the consent of the victim to the exploitation is irrelevant.

- [22]. This definition is new in Belgium, as it is the first time that human trafficking is defined as exploitation of people in various ways, rather than exclusively as sexual exploitation, and regardless of whether the victim is a Belgian national or not.
- [23]. However, in view of the EU's harmonising ambitions, it can be considered somewhat strange that the new definition is not completely the same as the European definition. Coercion, deceit or the lack of freedom of the alleged victim are a key element in the European definition, but were excluded from the Belgian definition. The element of movement and the element of exploitation suffice to convict someone for human trafficking. Coercion and lack of freedom (deceit, fraud, abuse of vulnerable position, etc.) are aggravating circumstances that lead to a more severe punishment. The Belgian legislator considered that the European definition was a minimum and that the Member States were free to create a more severe definition, incriminating a broader range of behaviour. Practical considerations, in particular the difficulty to prove the coercion or deceit beyond reasonable doubt seem to have prevailed. The official version is however that human smuggling is also a form of exploitation.⁴
- [24]. According to authoritative legal commentators, the Belgian legislator deviated further from the European standard by adding profit as a motive to the constituting elements of the offence of human trafficking, whereas the Framework Decision was silent on that issue. The text of the statute is not really explicit on this issue. In the European definition the profit motive is an element of human smuggling, but it is not required in order to find someone guilty of human trafficking.
- [25]. Belgium also supplemented the European definition with the explicit inclusion of use of people for *begging* or *to commit offences* as new variants of human trafficking. Begging can of course be seen as a form of economic exploitation, which can already be punished under the new article 433*quinquies* §1, first paragraph, 3° (employment in circumstances that violate human dignity). The explicit mention therefore seems to be rather a political response to concern in society about organised begging. The actions in view of using someone to *commit offences* were normally already punishable under the rules of

⁴ Email message of the 18.09.2008 sent by the Office of Criminal Policy.

participation in offences, soliciting or ordering the commission of offences and sometimes even under offences related to criminal organisations and terrorist groups. The new offence does turn behaviour which would traditionally be merely a preparatory act into a serious crime in its own right, even if that was not the explicit goal.

- [26]. The basic penalty for trafficking human beings is imprisonment of one to five years and a fine of 2750 euro to 275000 euro. Article 433septies of the Criminal Code increases the penalty for trafficking if it concerns children, to imprisonment of ten to fifteen years and a fine of 5500 euro to 550000 euro. However, an opaque system designed to avoid expensive and cumbersome jury trials, leads to quasi-automatic mitigation (article 80 Criminal Code). Consequently, the normal penalty if children are victimised is imprisonment of six months to ten years. A complex conversion system is provided to determine the fine if the perpetrator is a legal person (article 41bis Criminal Code). Confiscation of instruments is compulsory and the confiscation of proceeds is possible. Convicted persons also lose a number of civil rights (such as the right to be a public official, to be elected, to be a juror, to be guardian, to carry arms,...) (article 433nonies in combination with article 31 Criminal Code).
- [27]. Finally, it should be noted that the Belgian legislator has subjected child trafficking with the purpose of sexual exploitation to an exceptional statute of limitations. Generally speaking, Belgium has a differentiated and quite complex system of statutes of limitations. The systematic use of mitigating circumstances to avoid jury trials changes ‘felonies’ into ‘lesser offences’. This has become a routine practice, but it has the side-effect that the term for prosecution to become time-barred is reduced. Whereas for felonies it was ten years, for ‘lesser offences’ it normally is five years. However, article 21bis of the Preliminary Title of the Code of Criminal Procedure provides for different rules for sexual offences: the term remains ten years, even when there are mitigating circumstances. Moreover, when the sexual offences have been committed against minors, the limitation period only starts when the minor turns eighteen.
- [28]. The act of 10.08.2005 has amended article 21bis of the Preliminary Title of the Code of Criminal Procedure. Human trafficking with the goal of sexual exploitation (article 433quinquies § 1, first paragraph, 1°, of the Criminal Code) is now explicitly mentioned as one of the sexual offences to which the above mentioned exceptional rule applies. The legislator thus hopes to prevent that offenders escape prosecution in cases of human trafficking with underage victims.
- [29]. Statutes of limitations will therefore be different depending on whether or not the exploitation of the minor is of a sexual nature.

A.2.1.2. Child smuggling

- [30]. As mentioned above, by the act of 10.08.2005 a new definition was created, not only for human trafficking, but also for human smuggling. The fact that the smuggled person is a minor is also an aggravating circumstance of the general offence of human smuggling. Whereas human trafficking has been transferred to the Criminal Code, the definition of human smuggling is modified but the offence still features in the Aliens Act of 15.12.1980.
- [31]. The new version of article *77bis* of the Aliens Act defines human smuggling as *contributing, in whichever possible way, directly or by the use of an intermediary, to the fact that a person who is not a national of a Member State, can enter, transit or stay in the territory of a Member State of the European Union or of a State which is a party to an international agreement concerning the crossing of border that binds Belgium, and such in defiance of the legislation of this State, with the goal of obtaining a direct or indirect monetary profit.*
- [32]. The mere facilitating of illegal immigration is punishable under article 77 of the Aliens Act and is defined as any aid to illegal entry, illegal transit or illegal stay of aliens in Belgium, without profit motive, which distinguishes it from human smuggling. Only if the aid to illegal immigration is given out of humanitarian concern, the assistance cannot be punished under Belgian law.
- [33]. Once more, Belgian criminal legislation is broader than what has been agreed on at the European level. Although not obliged to do so by the Directive of 28.11.2002, the new article *77bis* of the Aliens Act goes beyond making the aid to illegal stay punishable, as it also encompasses the aid to illegal entry or aid to illegal transit, if it is rendered with a profit motive. The European Directive does not require the simple aid to illegal immigration (as in article 77 of the Aliens Act) to be punishable either.

A.2.1.3. Punishment

- [34]. The new offences are punished more severely than had been possible before the act of 10.08.2005. The basic offence can be punished with imprisonment of up to five years, in addition to a fine. However, the punishment can become much higher when certain aggravating circumstances are present. Trafficking of minors is one of these aggravating circumstances, with the result that child trafficking can be punished with up to fifteen years of imprisonment. Once more, the quasi-automatic mitigation reduces the penalty in practice to imprisonment of six months to ten years.
- [35]. It can be regretted that the punishment for human smuggling and child smuggling is as high as the punishment for human trafficking and child trafficking. This blurs the distinction between smuggling and trafficking.

However, the Belgian legislator was of the opinion that it was best for the coherence to bring the punishments in line with each other. Nevertheless this creates the risk that the public prosecutor will only prosecute for human smuggling and no longer for human trafficking as the burden of proof is much lighter for smuggling and it can be proven more easily without help of the victim. This is important, because the special status that is reserved for victims of human trafficking would not be granted in case of ‘mere’ smuggling. The Office of Criminal Policy (of the Ministry of Justice) states that the special status can also be granted to victims of smuggling in case of aggravating circumstances, ensuring enough protection. The Office is also of the opinion that in practice, the public prosecutor chooses the right qualification, even if this implies a more serious burden of proof.⁵ No statistics are available.

A.2.2. Supportive legislation

- [36]. In his fight against human trafficking, the Belgian legislator has also adopted some additional legal provisions, so as to make it possible to punish those who take advantage of the situation of victims, in particular through rack-renting, and to prevent seemingly legal ways of human trafficking, in particular through marriages of convenience.

A.2.2.1. Rack-renting

- [37]. The act of 10.08.2005 created the offence of rack-renting. Rack-renting is the situation in which a landlord lets his properties for an obviously unreasonable price, while they do not meet the housing quality standards. Often, these houses are rented to foreigners, who stay in the country illegally, and who cannot enforce their rights, as they lack access to the justice system. It had been noticed that victims of human trafficking often become victims of rack-renting afterwards. Therefore, the Belgian legislator opted to act against rack-renting in the framework of the larger combat against human trafficking and human smuggling.
- [38]. The new articles 433*decies* until 433*quinqüesdecies* were inserted into the Criminal Code (right below the articles concerning human trafficking). Rack-renting is now considered as an autonomous offence, irrespective of whether the offender has any part in trafficking. Thus, rack-renting is no longer considered as a specific form of human trafficking, as was the case in Belgium before the act of 10.08.2005.

⁵ Email message of 18.09.2008 sent by the Office of Criminal Policy.

A.2.2.2. Marriages of convenience

- [39]. Probably the best-known method of seemingly legal human trafficking is the marriage of convenience. People marry without any intention to form a durable family, only to obtain a legal stay in the country. These marriages can be annulled, but since the act of 12.01.2006⁶, the new husband and wife can also be charged with a specific offence. This offence is the object of the new article 79bis of the Aliens Act of 1980. If both partners knew that it would be a ‘fake’ marriage, they can both be punished. Of course, if one of the spouses was misled or forced to take part in a marriage of convenience, this person is considered as a victim and cannot be punished. To gather reliable evidence on the true intentions of both partners remains difficult however. The difference between a ‘sham’ marriage and a ‘failed’ marriage can be hard to establish. Recent simplification and acceleration of Belgian divorce proceedings only add to this difficulty.
- [40]. The normal sanction is imprisonment of eight days to three months or a fine of 143 to 550 euro. If the consent to the ‘fake’ marriage is given in exchange for money, the penalty is fifteen days to one year of imprisonment or a fine of 275 to 1100 euro. Persons who use violence or threats to force a person into such a marriage, risk imprisonment of one month to two years or a fine of 550 to 2750 euro. Attempt to commit one of these offences is also punishable, albeit with less severe sentences (article 79bis, § 2 Aliens Act)..

A.3. Miscellaneous issues relating to the general anti-child trafficking framework

A.3.1. Case-law

- [41]. No specific case-law concerning child trafficking has been found, as child trafficking is merely a specific form of the more general human trafficking offence and is not registered as such.

The Belgian legislator has tried to implement the international instruments through legislation, in those situations where the international standards are not directly applicable. No relevant case-law concerning direct applicability has been found.

⁶ Act of 12.01.2006 amending the Aliens Act of 15.12.1980.

A.3.2. Best interests of the child

- [42]. The act of 13.01.2006 has inserted a Preliminary Title in the Child Protection Act of 1965. Point 5° of the single article of this title provides that *minors enjoy, within the framework of this Act, personal rights and liberties, among which those inscribed in the Constitution and the International Convention on the Rights of the Child, especially the right to be heard during a trial that leads to decisions that concern them and the right to participate in these trials.*
- [43]. Insofar as this Title thus refers to the International Convention on the Rights of the Child, it must be considered to refer also to article 3 of that convention, which enunciates the principle of the “best interests of the child”. One can conclude that the best interest of the child is elevated to the level of a general guideline for the application of the Child Protection Act. Although the Child Protection Act focuses mainly on child offenders and less on child victims, this may have some consequences in practice.
- [44]. References to the best interests of the child are made explicitly in some other acts. The Aliens Act of 1980 states that during the entire procedure concerning the right to residence of the child, the best interests of the child should be taken into account.⁷ The best interests of the child are also guaranteed in the provisions on legal guardianship over non-accompanied minors of the act of 24.12.2002, to be discussed further.

A.3.3. National Action Plans

- [45]. Human trafficking and human smuggling (with a focus on economic and sexual exploitation) were included among the points of interest (priorities) in the National Security Plan 2008-2011, especially when they are related to organised crime.⁸ This will be further elaborated in yearly integrated Action Plans.
- [46]. A National Action Plan to Combat Trafficking was adopted by the federal Council of Ministers on 11.07.2008. It is said to contain a list of measures and intentions, both in the short and the long term. A number of concrete actions should be realized by 2011. This Plan has not yet been made public at the moment of drafting of this report.⁹ It had been expected for a while, not only because EU Member States had engaged themselves to draft such plans, but also because Belgium likes to consider itself a model in the field and its

⁷ Article 61/2 of the Aliens Act of 15.12.1980.

⁸ National Security Plan, adopted by the federal Council of Ministers on 01.02.2008, p. 7-8, www.polfed-fedpol.be/pub/pdf/NVP2008-2011.pdf.

⁹ See press release by the Ministry of Justice of 11.07.2008, <http://www.just.fgov.be/persberichten/2008/07/11.html> or <http://www.just.fgov.be/communiques/2008/07/11.html>.

adoption had been recommended by the Centre for Equal Opportunities and Opposition to Racism.¹⁰

- [47]. The College of Procurators General has issued a circular letter concerning human trafficking in 2007.¹¹ It replaces an old circular letter on human trafficking, adapting the prosecuting policy to the new legislation on human trafficking and human smuggling.
- [48]. So far, it is impossible to assess the impact of these plans, as they still have to be worked out in several more detailed ‘working plans’ usable in day-to-day routine of prevention and prosecution.

A.3.4. Data collection mechanisms

- [49]. The General National Database, managed by the federal police, contains data supplied by the federal and the local police services. The information relates to all possible offences. It uses standardised qualifications, which makes it difficult to obtain exact data about child trafficking in particular, as this offence is viewed as merely a given form of behaviour which is covered by other, more general incriminations.
- [50]. At the local level data are collected through a *uniform data form on human trafficking*. This form is used by police services and administrative authorities during checks on human trafficking. It is a checklist with several elements on human trafficking¹² and the results should be reflected in a report afterwards. These data can be transferred to the *district information clearing house*.
- [51]. By royal decree of 16.05.2004 the Belgian government has set up an Interdepartmental Coordination Cell, consisting of 22 representatives of federal ministers, different offices of the state, and also Child Focus and the Centre for Equal Opportunities and Opposition to Racism.¹³ The members of the Cell meet at least two times per year. The same royal decree has also created an *Informatie- en Analysecentrum Mensensmokkel en Mensenhandel / Centre d'information et d'analyse en matière de trafic et de traite des êtres humains* [Centre for Information and Analysis on Human Trafficking and Human Smuggling]. This is supposed to become an information network where the

¹⁰ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, p. 31, www.diversiteit.be.

¹¹ Circular letter COL 01/07 of 17.01.2007 concerning the policy on investigation and prosecution of human trafficking, <http://www.poldoc.be/data/Data/Active/NL/25346-01/COL%201%20-%202007.pdf>.

¹² G. VERMEULEN, *Mensenhandelbeleid in België: Status quaestionis, evaluatie en toekomstopties* [Human trafficking policy in Belgium: status quaestionis, evaluation and options for the future], Brussels, King Baudouin Foundation, 2006, p. 50, www.kbs-frb.be/publication.aspx?id=193662&LangType=2067.

¹³ See no 74.

members of the Cell cooperate to share information which their specific departments have gathered on human trafficking. The data should be analyzed to create prevention strategies. However, at this time the Centre for Information and Analysis is said not to have realized anything yet.¹⁴ The definitions on economic exploitation and registered data which are used by different departments differ, making it impossible to register information in a uniform manner.

- [52]. More importantly, the Centre for Equal Opportunities and Opposition to Racism has created a database for victims of human trafficking. It is a collection mechanism, in cooperation with three specialized reception centres for victims of human trafficking. It contains a detailed, standardised and centrally maintained set of data, concerning various aspects of human trafficking and human smuggling.¹⁵ The input into the database is done directly by the reception centres, using a standardised list of questions.

A.3.5. Budget

- [53]. The overall budget for anti-trafficking measures is not known. It is difficult to obtain correct figures, as they are often mixed with or part of other budgets. For example, the Centre for Equal Opportunities and Opposition to Racism (together with the police services perhaps the most important player in the fight against human trafficking) also has other objectives, apart from the combat against human trafficking (e.g. combat against discrimination and racism). Therefore it is impossible to determine which share of its budget is reserved for anti-trafficking on an annual basis. The same problems are encountered when one tries to determine the budget to support research on child trafficking.

A.3.6. Monitoring mechanisms

- [54]. In Belgium, the Centre for Equal Opportunities and Opposition to Racism functions as a matter of fact, as a national reporter¹⁶ on human (and therefore also child) trafficking. Belgium has not yet created a legally appointed national reporter. The Centre is an independent public authority and has the task (among others) to stimulate the fight against human trafficking and human smuggling. It

¹⁴ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, pp. 38-39, www.diversiteit.be.

¹⁵ G. VERMEULEN, *Mensenhandelbeleid in België: Status quaestionis, evaluatie en toekomstopties*, Brussels, King Baudouin Foundation, 2006, pp. 49-52, www.kbs-frb.be/publication.aspx?id=193662&LangType=2067.

¹⁶ In the sense of the Hague Ministerial Declaration of 26.04.1997 on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation.

is also obliged to make an annual independent and public report about the evolution and the results of the combat against human trafficking and smuggling.¹⁷ These reports are then delivered to the parliament. The reports contain conclusions and recommendations which can be used to adjust the anti-trafficking-measures.

A.3.7. National Referral Mechanism

- [55]. In the early nineties Belgium created a system of multidisciplinary cooperation to track victims and thus to contribute to the combat against networks. This cooperation was formalised through a circular letter of 1994¹⁸ and guidelines of 1997¹⁹. These circular letter and guidelines stated that (supposed) victims who reside legally in the country have to be brought in contact with specialised reception centres. The guidelines of 1997 also contain information concerning the practical organisation of the contact with the reception centres and the procedure to grant residence permits.²⁰
- [56]. In practice, this means that each time that the police or inspection services are convinced or at least suspect that they have found a victim of human trafficking, they have to contact the reception centre to allow the victim to be counselled.
- [57]. More recently a working group within the Interdepartmental Coordination Cell against human trafficking and smuggling has been preparing a circular letter to replace the circular letter of 1994 and the guidelines of 1997. The reception centres have been consulted in this process. The new circular letter tries to describe the role of each different actor and to explain in detail which measures have to be taken when someone believes that she or he is dealing with a potential victim. One of the first steps to be taken is still the contact with a reception centre. Sometimes the victim also receives a multilingual information brochure. In the reception centre, additional information is provided. If the

¹⁷ Article 2 of the above mentioned royal decree of 16.05.2004 concerning the combat against human trafficking and human smuggling.

¹⁸ Circular letter of the Ministers of the Interior and Work of 07.07.1994 concerning the distribution of residence permits and work permits to aliens, victims of human trafficking.

¹⁹ Circular letter of the Ministers of Justice, the Interior, Work and Social Affairs of 13.01.1997 containing guidelines for the Aliens Office, the prosecutor offices, the police services, the inspection of social laws and the social inspection concerning the aid to victims of human trafficking.

²⁰ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007, 2008*, p. 52, www.diversiteit.be.

victims are children, specialised reception centres for minors will be contacted.²¹

A.3.8. Training strategies

- [58]. During the last couple of years serious efforts have been made to provide specialised training for professional actors (police, inspection and immigration services) who are involved in the fight against human trafficking. In 2002, training and awareness raising was organised as a formal training called ‘human trafficking, tailor-made’ (*mensenhandel op maat*). It targeted local police services, federal police and employees of the Ministry of Foreign Affairs. Also in 2002, another training of 400 hours was organised for border inspectors. However, this training is not organised on a regular basis. There is no regulation concerning the training strategies and the control of its effect. Concerning child trafficking, the Centre for Equal Opportunities and Opposition to Racism ascertained that there is still a void in the field of training strategies on the treatment of underage victims.²²

A.3.9. Policy of non-criminalisation of children who are victims

- [59]. There is no real policy of non-criminalisation of victims of trafficking in general, let alone for underage victims specifically. The Centre for Equal Opportunities and Opposition to Racism already pointed out the risks of criminalising victims of trafficking.²³ In many cases, victims of trafficking are also offenders in cases of moonlighting or prostitution. This can lead to confinement in closed reception centres or even in prison. It can be very hard for social workers to recognise victims as victims instead of as perpetrators of other offences. As a general rule, children cannot commit offences, but they can be subjected to youth protection measures. As such, they are incapable of being criminalised in the strict sense: they have to be protected even if they break the law. However, by decision of the juvenile courts, minors from 16 to 18 years can exceptionally be transferred to special chambers of the ordinary criminal court system and can get prison sentences.

²¹ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, pp. 51-52, www.diversiteit.be.

²² CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, p. 43, www.diversiteit.be.

²³ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, p. 61, www.diversiteit.be.

- [60]. There is still no real consensus in Belgium concerning the approach to prostitution.²⁴ It is not illegal in Belgium to prostitute oneself, but it is illegal to make publicity for prostitution. In principle, a victim of trafficking who is working as a prostitute could therefore not be mistaken for a criminal. Still, the prostitute can be held accountable for other acts related to her or his activities. This unclear situation can cause problems for victims of trafficking, who are rarely informed about Belgian legislation. A clear policy on non-criminalisation of victims is still necessary, both in the domain of prostitution as for other forms of exploitation.

B. Prevention of child trafficking

- [61]. There have been some awareness-raising campaigns in Belgium during the last decade, although not every campaign is limited to human (or child) trafficking. Trafficking is often one of the aspects among others.²⁵
- [62]. In 2001 the federal police launched the information project ‘Flyer’. The idea was to distribute practical information and tips to truck drivers concerning the transportation of illegal foreigners hiding under the cargo.
- [63]. After a study of the federal police about sexual offences against minors, the action group ‘Stop child prostitution’ was created in 2001. They launched two awareness-raising campaigns. The first in 2004-2005 with the name “*It is easy to ignore child prostitution abroad*”. The second in 2007 with the slogan “*Stop ignorance when travelling*”. These campaigns were meant to inform the public about the existence of sexual exploitation, the prohibition of such conduct in Belgium and abroad and the possibility of prosecution for extra-territorial sex crimes in Belgian courts.
- [64]. The Aliens Office has also taken some preventive actions, like the creation of a website for transporters or the sending of immigration officers to countries like Congo and China.
- [65]. There were also some initiatives at a more local level. For example, in the city of Mechelen a brochure was distributed among employers in seasonal labour. This brochure contained information about the legislation on the employment of foreign employees and the consequences in case of offences. A similar action

²⁴ G. VERMEULEN, *Mensenhandelbeleid in België: Status quaestionis, evaluatie en toekomstopties*, Brussels, King Baudouin Foundation, 2006, p. 55, www.kbs-frb.be/publication.aspx?id=193662&LangType=2067.

²⁵ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, pp. 47-48, www.diversiteit.be.

was taken by the King Baudoin Foundation²⁶ concerning international housing personnel.

- [66]. UNICEF organises some campaigns in schools, e.g. “*What do you think*”, where children are encouraged to think about child trafficking. The NGO ‘Stop the traffic’ organises awareness-raising campaigns in the province of Limbourg.²⁷
- [67]. There is no evidence of direct participation of children or minority groups in these awareness-raising and preventive efforts.

C. Appointment of a legal guardian

- [68]. Since 01.05.2004 for each non-accompanied minor (NAM) a legal guardian is appointed by the Legal Guardianship Office of the Federal Ministry of Justice. This applies to all NAMs and therefore includes non-accompanied victims of trafficking. However, it does not include EEA nationals. For non-accompanied EEA nationals who are in a vulnerable situation, a pragmatic alternative regime was set out by a circular letter issued by the Ministers of Justice and the Interior on 02.08.2007.²⁸ NAMs are deemed vulnerable if they are in danger because of their administrative situation, unstable social situation, pregnancy, physical or mental handicap, and, last but not least, if they are victim of trafficking or smuggling or if they are begging. Every authority that has knowledge that a non-EEA minor is not accompanied, must warn the Legal Guardianship Office immediately by telephone, other organisations or private persons can do so as well. The Office then asks that authority to assume temporary care for the minor and can arrange temporary housing. The police will in practice have to control whether the minor stays there. Sometimes a guardian is appointed immediately, sometimes temporarily, for instance if certain information has to be verified. In urgent matters, the head of the Office can assume temporary guardianship.
- [69]. If there are doubts about the age of the NAM, be it a victim of human trafficking or not, the Legal Guardianship Office will, as a part of its general duty to identify the subject, have to establish the age.²⁹ The law states that this has to happen through medical tests which have to encompass psycho-affective

²⁶ This charitable foundation is, in its own words, “*an independent and pluralistic foundation that pursues sustainable ways to bring about justice, democracy and respect for diversity*”. Consult <http://www.kbs-frb.be>

²⁷ www.stophetraffik.org.

²⁸ Circular letter of the Ministers of Justice and the Interior of 02.08.2007 concerning non-accompanied European minors in a vulnerable situation (*Moniteur belge*, 17.09.2007).

²⁹ Article 7 § 1 of the provisions on Legal Guardianship over Non-Accompanied Minors, contained in Title XIII, Chapter 6 (article 479) of the Programme Act (I) of 24.12.2002.

tests.³⁰ In its report on 2007, published in 2008, the Centre for Equal Opportunities and Opposition to Racism pointed out that no such psycho-affective tests had been done. The method used is rather that of a three-fold X-ray test: wrist bone, collar bone and teeth are used to determine the age. The average result should help to establish the age.³¹ As the method sometimes has a margin of error of 2 to 2,5 years, it is important to note that article 7 § 3 of the Legal Guardianship Law states that “in case of doubt about the result of the medical examination, the lowest age is taken into account”. Between May 2004 and May 2005 291 examinations were carried out. 183 persons (63%) were deemed over 18 years, 108 (37%) were considered to be minors (under 18). In 2005 there were 513 examinations: in 70% (360 persons) the subjects were adults, in 30% (153) they were qualified as minors. The Centre suggests in a subtle way that the principle that doubt should benefit the minor might in daily practice not be applied as frequently as it should be. Furthermore it criticises the routine use of X-rays to verify the age. As X-rays are potentially dangerous, they should only be used in case of medical necessity. Medical examination should in any event be a last resort; the normal verification should be based on physical appearance, psychological maturity, personal statements, verifications with embassies and other authorities and documents.³² NGOs have also asked for a critical review of the methods used to verify the age.³³

- [70]. The Legal Guardianship Office has launched a specific training program for legal guardians of NAMs to harmonize their practices. Nevertheless the Centre for Equal Opportunities and Opposition to Racism stresses that human and financial resources of the Legal Guardianship Office have to improve, more professional legal guardians are needed, and their tasks, practices and payment should be harmonised.³⁴
- [71]. A particularly difficult issue is the situation of NAMs from Rumania and Bulgaria. As these are EU (and previously EEA) countries, minors cannot get the protective NAM status in Belgium. This is deemed problematic as minors (and adults) often turn up among the possible victims of exploitation, particularly of sexual exploitation. A special circular letter addresses the issue to provide the necessary help.³⁵ The Office for the Signalling of Non-

³⁰ Article 3 of the Royal Decree of 22.12.2003 implementing Title XIII, Chapter 6 ('Legal guardianship over non-accompanied minors') of the Programme Act (I) of 24.12.2002.

³¹ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, pp. 31-32, www.diversiteit.be.
CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, p. 32, www.diversiteit.be.

³³ PLATFORM 'KINDEREN OP DE DOOL', *Newsletter*, no. 15, July-August 2007, www.mena.be.

³⁴ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, p. 35, www.diversiteit.be.

³⁵ Circular letter of the Ministers of Justice and the Interior of 02.08.2007 concerning non-accompanied European minors in a vulnerable situation.

Accompanied European Minors in a Vulnerable Position of the Federal Ministry of Justice has to organise social assistance. It is nevertheless suggested by the Centre for Equal Opportunities and Opposition to Racism that the special protection for NAMs should be extended to the trafficking victims from EU and EEA states. This would require a change of the law.

- [72]. A final problem, stressed by the Aliens Office³⁶ and already studied by Child Focus³⁷, is the disappearance of NAMs. Most of them are youngsters who do not want to stay on Belgian territory or who resent the control measures. This problem has been growing every year, and the trend has continued since legal guardianship has become compulsory and control over the NAMs has increased. The Centre for Equal Opportunities and Opposition to Racism suggests that suspected victims of trafficking should therefore be prioritised over other NAMs when a legal guardian is appointed. The Aliens Office states in its 2006 report that it is not clear yet whether the number of missing NAMs is a consequence of the new guardianship regime, or rather that awareness and follow-up have improved and therefore when a NAM goes missing, the chances of him or her being reported have increased.

D. Coordination and cooperation

D.1. Centre for Equal Opportunities and Opposition to Racism

- [73]. Next to general organisms like the police, the Ministry of Foreign Affairs, the Aliens Office, the Social Inspection and the Office of Criminal Policy, several more specific entities exist. As mentioned above, the *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme* [Centre for Equal Opportunities and Opposition to Racism] is perhaps the most important player in the fight against human trafficking, including child trafficking. Not only is the Centre legally obliged to stimulate this fight and to report yearly about the status of this struggle, but the Centre is also present in every field of action. It is in contact with the specialised reception centres to gather information for the database and, as national reporter (see above), it contacts other actors. The Centre can also be in direct contact with the victims of trafficking, as it is entitled to represent the victims in court or to act independently to start prosecution against traffickers. Its specialisation makes it a key partner for police forces.

³⁶ ALIENS OFFICE, *Report of Activities 2006*, pp. 72-73.

³⁷ CHILD FOCUS, *De verdwijning van niet-begeleide minderjarigen en minderjarige slachtoffers van mensenhandel [The disappearance of non-accompanied minors and minors who are victims of human trafficking]*, April 2002.

D.2. Interdepartmental Coordination Cell for the Fight Against Human Trafficking

- [74]. The Interdepartmental Coordination Cell was created by a royal decree of 16.06.1995. It has to make an efficient coordination possible between the concerned departments, who have to exchange information on the combat of international human trafficking. As mentioned above, the Interdepartmental Coordination Cell has problems gathering the necessary information, which makes it practically impossible to meet the expectations.³⁸

D.3. Interministerial Conference on Migration Policy (I.C.M.)

- [75]. The Interministerial Conference on Migration Policy (I.C.M.) was founded in 1989. It is composed of all federal ministers and ministers of the regions and communities³⁹ who are competent for matters relating to the migration policy. The Prime Minister is the chairperson and the Centre for Equal Opportunities and Opposition to Racism works as its secretary. The I.C.M. ensures the coordination of dossiers of human trafficking that exceed the federal competences. The I.C.M. also determines the general policy on the trafficking in human beings.

D.4. Special Committee on Human Trafficking

- [76]. On 14.11.1996 the House of Representatives created a Special Committee on human trafficking. The objective of this parliamentary committee was to evaluate the government policy on human trafficking, on the basis of the annual reports of the government and of the Centre for Equal Opportunities and Opposition to Racism. Its task was to formulate recommendations for new legislation. However, it was discontinued in the next parliamentary session.

³⁸ See also no 51.

³⁹ In federal Belgium they have important competences in the field of assistance to persons, integration, education etc.

D.5. Others

- [77]. The Office for Criminal Policy mentions the existence of an ‘Expertise network in the fight against human trafficking and human smuggling’ and the ‘National Commission on the Rights of Children’.⁴⁰ Due to a lack of written sources, reports or statistics however, it is difficult to assess their exact assignment and impact in the fight against human trafficking. Because of the amount of agencies and institutions that are involved in some manner, the division of tasks and its coordination can become somewhat difficult.

E. Care and protection

E.1. Residence permit

E.1.1. Reflection period

- [78]. Adult victims of human trafficking, who are illegally in the country and who receive an order to leave the country, have a reflection period of 45 days. In this period they have to decide if they want to stay in the country and want to cooperate with the authorities to prosecute the offenders or not.

Child victims have at least the same protection concerning residence. The status ‘victim of human trafficking’ is also available to them. As a result they have to meet the demands that are set for all victims. They have to break off all contact with the traffickers, cooperate with the authorities and be counselled by a specialised reception centre. The difference with adults lies in the fact that they do not have a reflection period of 45 days, but one of three months.

E.1.2. Right to residence

- [79]. During the reflection period, the title of residence for children also differs from the title that adults have. During the first phase, adults receive an order to leave the country, but children receive a certificate of registration. This certificate grants a temporary stay. Adult victims only receive this registration for a period of three months after they have been counselled by a specialised reception

⁴⁰ Email message of 18.09.2008 sent by the Office of Criminal Policy.

- centre and want to file a complaint. During the entire procedure, the best interests of the child should be taken into account.⁴¹
- [80]. During the next phase, the victim receives the right to reside in Belgium for a period of six months if he or she cooperates with the authorities and if the investigation is still going on.⁴² If the victim contacts the traffickers, the right to reside can be withdrawn. This right can also be prolonged as long as the investigation is going on.
- [81]. When the investigation is finished and the public prosecutor considers the involved person to be a victim of human trafficking, that person can be granted a right to reside in Belgium for an indefinite period of time.⁴³
- [82]. Under a circular letter of the Minister of the Interior of 15.09.2005 on the residence of NAMs provides, a previous three year residence permit is a prerequisite to get an indefinite residence permit. The Centre for Equal Opportunities and Opposition to Racism regrets that, as a result, NAMs who arrived in Belgium after their 15th birthday do not automatically get a residence permit when turning 18.⁴⁴
- [83]. The Centre also raises a more fundamental issue: since the rules on the protection of trafficking victims are the same for minors and adults, the specially protected status is linked to the willingness to cooperate with the authorities against the traffickers. According to the Centre, in line with specialised NGOs, it is immoral to make the special protection of child victims conditional to their willingness to cooperate. The Centre pleads for an objective, interdisciplinary assessment of whether someone is a victim of trafficking⁴⁵, a suggestion also made by a special working group of the Interdepartmental Coordination Cell for the Fight against Human Trafficking and Smuggling.
- [84]. There are no data available concerning the number of children being granted a temporary stay on grounds of trafficking.

E.2. Specialised shelters

- [85]. Belgium has three specialised shelters for victims of trafficking. Assistance to people is a competence of the communities, not a federal matter. In Flanders

⁴¹ Article 61/2 § 2 of the Aliens Act of 1980.

⁴² Article 61/4 of the Aliens Act of 1980.

⁴³ Article 61/5 of the Aliens Act of 1980.

⁴⁴ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007, 2008*, p. 30, www.diversiteit.be.

⁴⁵ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Focus 2011*, p. 34, www.diversiteit.be.

there is ‘Payoke’ in Antwerp.⁴⁶ In Wallonia there is ‘Sürya’ in Liège.⁴⁷ In the bilingual Brussels area the specialised shelter is called ‘Pag-Asa’.⁴⁸

- [86]. There are also specialised shelters specifically for children who are victims of trafficking like ‘Juna’ in Aalst (Flanders)⁴⁹, ‘Esperanto’ in Wallonia⁵⁰, and ‘Minor Ndako’ in Brussels⁵¹.

E.3. Health care, education and legal protection

E.3.1. Access to health care services and education

- [87]. In Belgium, all care and protection is related to the status of ‘victim of human trafficking’. Recognised victims are entitled to psychosocial and psychological care, as is the case for all victims of crime.⁵² To be recognised as a victim of human trafficking however, the victim has to break off all contacts with the traffickers, has to be counselled by a specialised reception centre and has to file a complaint against the traffickers. These conditions have been criticised by the Centre for Equal Opportunities and Opposition to Racism. They seem to be too high of a threshold, particularly for victims below the age of 16. More fundamentally, the state’s obligation to protect the children is said to be unconditional.⁵³ The Council of Ministers agreed and included the issue into the above mentioned National Action Plan to Combat Trafficking, adopted on 11.07.2008

In the specialised reception centres, the child victims will receive all medical and psychological help they need. They are also entitled to access to education.

⁴⁶ Leguit 4, 2000 Antwerp, tel: 03/ 201 16 90, fax: 03/ 233 23 24, www.payoke.be, e-mail: admin@payoke.be.

⁴⁷ Rue Trappé 9, 4000 Liège, tel: 04/ 232 40 30, fax: 04/ 232 40 39, e-mail : info@asblsurya.be.

⁴⁸ Cellebroersstraat – rue des Alexiens 16, 1000 Brussels, tel: 02/ 511 64 64, fax: 02/ 511 58 68, www.pag-asa.be, e-mail: info@pag-asa.be.

⁴⁹ Spaarzaamheidsstraat 29, 9300 Aalst, tel: 053/ 70 99 79, fax: 053/ 77 75 21, e-mail: info@juna-vzw.eu.

⁵⁰ Esperanto is kept as a secret shelter.

⁵¹ Vogelenzangstraat 76, 1070 Brussels, tel: 02/ 503 56 29, fax: 02/ 503 47 45, e-mail: info@minor-ndako.be, www.minor-ndako.be.

⁵² Since the services for aid of victims support all victims of crime equally, no information is readily available on how much aid was provided to victims of the specific crime of human trafficking.

⁵³ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007, 2008*, p. 59, www.diversiteit.be.

Since 01.08.2008 all children who have been going to school for at least three months are entitled to a refund of all medical costs.⁵⁴

E.3.2. Access to legal assistance

- [88]. Victims of human trafficking who are officially registered as victims have a right to legal assistance, as is the case for everyone who lacks the financial means to provide his own assistance. The reception centre can assist the victim in finding a lawyer. The specialised reception centres and the Centre for Equal Opportunities and Opposition to Racism are also entitled to defend the rights of the victim in court.
- [89]. When an alleged victim is not officially recognised as a victim, it is still possible for him or her to consult a ‘pro bono’ lawyer. This is possible when the victim has no legal residence in the country, as ‘pro bono’ lawyers are also often consulted to start an asylum or immigration procedure. In this case however, the victim will miss the specialised legal assistance of the reception centre and the Centre for Equal Opportunities and Opposition to Racism.

E.3.3. Reporting instruments

E.3.3.1. Child Focus

- [90]. In Belgium, Child Focus is an organisation for missing and sexually exploited children.⁵⁵ They have a hotline where all cases concerning children in need can be reported 24/7. The (general) free Belgian emergency number is 110. It can be contacted from abroad on the number +32 2 475 44 99. Child Focus has also been granted the 116 000 European hotline number for Belgium (in July 2007). Before it can be activated, a number of technical difficulties have to be overcome.⁵⁶ Since the new number is not yet recognized as an official emergency number, the hotline cannot function as a free number, Child Focus therefore still uses its old number. Negotiations between the government and the telephone operators to solve this problem are in progress, but it is not possible to say how much time this will take.

⁵⁴ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007*, 2008, p. 30, www.diversiteit.be.

⁵⁵ www.childfocus.be.

⁵⁶ CHILD FOCUS, *Yearly Report 2007*, p. 46, See <http://www.europeanfederation.org/uploads/documents/132-467-child%20focus%2007%20ra%20nl%20for%20web.pdf>

E.3.3.2. Others

- [91]. Situations of exploitation of trafficked children can also be reported to the Centre for Equal Opportunities and Opposition to Racism and the specialised reception centres. They will inform the police services as soon as possible. These centres however, can not be contacted at all times.

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

F.1. Durable solution

- [92]. The issue of a durable solution is explicitly addressed with respect to NAMs. In their case, it is for the Legal Guardianship Office to make sure that the competent authorities, upon the proposal of the legal guardian, search for durable solutions based on the best interests of the child.⁵⁷ The Centre for Equal Opportunities and Opposition to Racism believes that the durable solution for the NAM, ultimately determined by the Aliens Office, is sometimes too easily focused on a return to the country of origin. The Centre notes, however, that where the minor probably is a victim of trafficking, the file is studied with special care, in order to check whether the family might be involved in the trafficking.⁵⁸

F.2. Residence permit

- [93]. As indicated above, victims of trafficking can obtain a residence permit, provided that they are willing to cooperate with the judicial authorities. It should be recalled that the Centre for Equal Opportunities and Opposition to Racism considers this condition too harsh for minors, especially if they are younger than 16 and the Council of Ministers has adopted an Action Plan containing initiatives to remedy this situation.

⁵⁷ Articles 3 § 2, 4° and 11 § 1 of the Legal Guardianship Act.

⁵⁸ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, Focus 2011, p. 33, www.diversiteit.be.

F.3. Participation of the child in the proceedings

- [94]. During the proceedings relating to asylum or subsidiary protection, minors receive a special attention. NAMs are assisted and represented by their legal guardian. Interviewers are instructed and trained to interview minors, whether NAMs or others, in a manner that takes into account their age and their maturity.

G. Prosecution

G.1. Child-sensitive procedures

- [95]. An act of 28.11.2000 has inserted a chapter in the Code of Criminal Procedure, dealing specifically with the interrogation of minors who are victims or witnesses of certain crimes, including child trafficking (articles 91*bis* to 101 CCP).
- [96]. These provisions allow for the audiovisual recording of the interrogation of the minor, with his or her consent if the minor is 12 years or older. The interrogator is generally a trained police officer. The interrogation takes place in a room that is specially arranged for that purpose (which implies that it must be child-friendly), in the presence of the interrogator, an accompanying person chosen by the minor, a member of the technical staff and a psychiatrist or a psychologist. The recording makes it possible to avoid a direct confrontation between the perpetrator and the child victim. For that reason the legislative provisions have been welcomed by NGOs defending children's rights.⁵⁹

G.2. Access to justice

- [97]. There are no specific legal provisions relating to court proceedings instituted by minors. In 2002 the federal Senate adopted a bill on the right of minors to access to a court.⁶⁰ That bill would make it possible for minors to bring themselves a case before a civil court or to join criminal proceedings as an injured party (*'partie civile'*), in cases where the legal representatives did not

⁵⁹ Kinderrechtenforum, *Geweld tegen kinderen* 2006, no. 3, pp. 42-44.

⁶⁰ The bill was adopted by the Senate on 18.07.2002 and transmitted to the House of Representatives (see Parliamentary documents, House of Representatives, 2001-02, no. 50-1975/1, available at <http://www.dekamer.be/FLWB/PDF/50/1975/50K1975001.pdf>).

take an initiative or where there was a conflict of interests between the minor and his or her representatives. The bill would also make it possible for the president of the court of first instance to appoint an *ad hoc* representative. The bill did, however, not make it to an act adopted by both houses of parliament.⁶¹ The State run compensation fund for crime victims can grant need-based support to certain crime victims faced with unknown or insolvent perpetrators. In the latter situation, it normally requires that a civil party claim has been made and compensation granted by the courts.

- [98]. Article 2, 6°, b) of the Act of 17.05.2006 on the External Legal Position of Prisoners, which deals with early release from prison, exit permits, etc. also allows victims who were minors and for which the guardian did not join criminal proceedings as an injured party, to manifest themselves in the proceedings in the *strafuitvoeringsrechtbank / tribunal d'application des peines* [Execution of Sentences Court]. This way, they can participate in the debates preceding release of the offender from prison and they can ask for victim-related conditions to be imposed (e.g. a prohibition to contact the victim or to reside in a certain area).

H. Good practices

- [99]. Whereas coercion, deceit or the lack of freedom of the alleged victim are a key element in the European definition of human trafficking, these elements are excluded from the Belgian definition. The element of movement and the element of exploitation suffice to convict someone for human trafficking. Coercion and lack of freedom (deceit, fraud, abuse of vulnerable position, etc.) are aggravating circumstances that lead to a more severe punishment.
- [100]. The Belgian legislator has subjected child trafficking with the purpose of sexual exploitation to an exceptional statute of limitations. The term remains ten years, even when there are mitigating circumstances. Moreover, when the sexual offences have been committed against minors, the limitation period only starts when the minor turns eighteen.

⁶¹ After having obtained the opinion of the High Council for the Judiciary, the government considered that an autonomous right of action was not a good idea, and that it would be sufficient to allow for the appointment of an *ad hoc* representative (amendments tabled by the government, Parliamentary documents, House of Representatives, 2005-06, no. 51-643/3, available at <http://www.dekamer.be/FLWB/PDF/51/0643/51K0643003.pdf>). The bill has thereafter not been discussed.

- [101]. Rack-renting is the situation in which a landlord lets his properties for an obviously unreasonable price, while they do not meet the housing quality standards. It has been noted that these houses are often rented to foreigners, who stay in the country illegally, and who cannot enforce their rights, as they lack access to the justice system. Victims of human trafficking often become victims of rack-renting afterwards. Therefore, the Belgian legislator has opted to act against rack-renting in the framework of the larger combat against human trafficking and human smuggling. However, rack-renting is considered as an autonomous offence, irrespective of whether the offender has any part in trafficking.
- [102]. A system of multidisciplinary cooperation helps to track victims and thus contributes to the combat against networks. This cooperation has been formalised through ministerial guidelines. These guidelines state that (supposed) victims who reside legally in the country have to be brought in contact with specialised reception centres. The guidelines also contain information concerning the practical organisation of the contact with the reception centres and the procedure to grant residence permits.
- [103]. For each non-accompanied minor (NAM) a legal guardian is appointed by the Legal Guardianship Office of the Federal Ministry of Justice. This applies to all NAMs (except for those who are EEA nationals), and therefore includes non-accompanied victims of trafficking.
- [104]. The Code of Criminal Procedure allows for the audiovisual recording of the questioning of the minor, with his or her consent if the minor is 12 years or older. The interviewer is generally a specifically trained police officer. The interview takes place in a room that is specially arranged for that purpose (which implies that it must be child-friendly). The recording makes it possible to avoid a direct confrontation between the perpetrator and the child victim. Measures of this kind are not new, since an extensive list of conditions had already been imposed in the Council Framework Decision of 15.03.2001 on the standing of victims in criminal proceedings.

Annex 1 - Tables and Statistics

For the reasons explained above, hardly any statistical data focusing on *child* trafficking are available. Practices under the circular letter of the Minister of the Interior of 15.09.2005 on the residence of NAMs (see *supra*, no. 79) should improve this situation. For 2006, e.g., it is clear how many people who applied for status of trafficking victim were minors. In the recent National Action Plan to Combat Trafficking (2008) (see *supra*, no. 44), the Council of Ministers has stated that in the future, better information should be gathered on the jurisprudence concerning human trafficking. If children are recognised as victims of trafficking, they normally get health care, legal aid etc., but separate statistics are not available. Separate codes in the registration of criminal files by the prosecution services for each of the different aggravating circumstances connected to the offenses of trafficking will probably make it somewhat easier to obtain specific data.

	2000	2001	2002	2003 ⁶²	2004	2005	2006 ⁶³	2007
Number of children being granted temporary stay ⁶⁴ on grounds of trafficking				31			14	
Adults and children				205	184 ⁶⁵		160	178 ⁶⁶
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)								
Number of trafficked children receiving education/training, in particular secondary education and vocational training								
Number of trafficked children receiving								

⁶² ALIENS OFFICE, *Report of Activities 2003*, no. 3.7.

⁶³ ALIENS OFFICE, *Report of Activities 2006*, p. 74.

⁶⁴ No specific data on the nature (temporary, indefinite,...) of the residence permit are available, as the statistics also cover minors getting documents for humanitarian reasons unrelated to child trafficking. ALIENS OFFICE, *Report of Activities 2006*, p. 76.

⁶⁵ ALIENS OFFICE, *Report of Activities 2004*, p. 64.

⁶⁶ CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Human trafficking and smuggling: annual report 2007, 2008*, p. 33.

legal assistance (e.g. for claiming compensation)								
Number of final convictions based on child trafficking cases, per year								
Total of amount of compensation paid to trafficked children, per year								
Average of amounts of compensation paid to trafficked children, per year								
Range of amount of compensation paid to trafficked children, per year								

Any other tables or statistics relevant for child trafficking

Type of exploitation as basis for new applications for status of victim of trafficking (2006)⁶⁷

New applic. victims THB	Rack renting	Econ. exploit.	Begging	Prostitut.	Smuggling	Other	Total
Children (< 18)	0	3	0	5	4	2	14
Adults	2	62	1	52	18	11	146

Registered criminality (police reports, not necessary followed by prosecution): trafficking of human beings (against children and adults; including attempts)⁶⁸

	2001	2002	2003	2004	2005	2006	2007
Economic exploitation				6	9	45	262
Exploitation of begging					1	2	11
Forcing commission of crimes					1	3	8
Production of child pornography					2	3	21
Sexual exploitation	3	2	1	1	4	23	117
TOTAL	3	2	1	7	17	76	419

⁶⁷ ALIENS OFFICE, *Report of Activities 2006*, p. 74. The numbers relate to applicants who apply for a residence permit as a victim of human trafficking.

⁶⁸ FEDERAL POLICE, *Police Registered Crime Statistics 2000-2007* through Datawarehouse (closed 3 June 2008). See http://www.polfed-fedpol.be/crim/crim_statistieken/2007/rapporten/rapporten_2000_2007_nationaal.pdf (Dutch) or http://www.polfed-fedpol.be/crim/crim_statistieken/2007/rapports/rapports_2000_2007_national.pdf (French).