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OPINION ON CERTAIN LEGISLATION ON COMBATting TRAFFICKING IN PERSONS

FINLAND

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It is based on unofficial English translations of the legislation provided by the Ministry of Social Affairs and Health of Finland, Wellbeing and Health Protection Unit, and two laws commissioned by the OSCE Office for Democratic Institutions and Human Rights.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The legislation of Finland provided for legal review displays a high level of understanding for the prioritisation of assistance and protection of victims of trafficking in human beings. While the provisions are largely in line with international law, more can be done to ensure that both law and practice reflect a victims-based, human rights approach in providing assistance and protection to victims, prevention of the phenomenon, and at the same time ensuring effective prosecution, are not mutually exclusive - but rather assist in the achievement of all goals (protection, assistance, prevention and prosecution).

It is particularly welcome that the Finnish authorities have requested ODIHR to both scrutinise the laws in place and shown their willingness to understand how certain practices work in other OSCE participating States.

In view of the above, ODIHR submits the following recommendations to further enhance the framework for protection of trafficking in persons in Finland as well as the overview of the relevant practices of some OSCE participating States . It is recommended :

- A. to – improve the definition of “trafficking in human beings” found in Section 3 of Chapter 25 of the Criminal Code of Finland by;
 - by revising the definition of trafficking in persons in line with the latest guidance provided in the UNODC Model Legislative Provisions Against Trafficking in Persons;
 - expanding the concept of “means” used to subject a person to human trafficking covering, for instance, non-obvious physical force and abuse of the position of vulnerability;
 - ensuring that the consent of the adult victim is deemed irrelevant where the means stated in the article have been employed; and
 - ensuring that even where none of the means, as stated by the article are employed, the consent is deemed irrelevant as concerns children, people who belong to a vulnerable group, who are disabled or do not have full legal capacity; [Section 3]
- B. to ensure that trafficking committed by all public officials in the performance of their duties constitutes an aggravating circumstance; [Section 4]
- C. to refrain from passing information about victims to the law enforcement authorities until the recovery and reflection period is completed, unless strictly necessary, in narrowly defined situations, such as for the protection of the rights of trafficked individuals or when there is there an order from a judge for a victim to testify; [Section 5]
- D. to establish a clear national referral mechanism with a system of victim identification by a) law enforcement authorities for the purpose of criminal

justice procedure and b) social services providers for assistance and support purposes; [Section 5.1]

- E. to introduce a specific article on identification of child victims stipulating that where there is uncertainty of the age of the victim of trafficking, it should be presumed that the victim is a child and the specialised protection, referral and assistance would therefore follow through specialised legislation or provision tailored to the needs of children; to clarify that all children regardless of immigration status benefit from the allocation of a representative; [Section 5.1.2]
- F. to ensure that anti-trafficking legislation or policy documents, or action plans, include specific articles which provide for regular training and capacity building as an essential component of the methodical support of professionals who are involved in identification procedures and support of victims of trafficking in situations both within and outside Finland, with special focus on the gender aspect of human trafficking as well as the particular vulnerability of children and persons with disabilities; [Section 5.2]
- G. to establish a system of data collection at national level that is specific to trafficking and can therefore help to shape policy decisions and identify needs, and allowing disaggregation (based on sex, age, type of exploitation, country of origin and/or destination); [Section 5.3]
- H. to provide separate and appropriate assistance and protection measures for victim-witnesses who decide to participate in criminal investigations and trials relating to the prosecution of their trafficker. Such assistance may include physical protection, relocation, pre-recorded interviews, identity change and assistance in obtaining jobs (where the case may take a lengthy amount of time); [Section 6.1]
- I. to provide child victim-witnesses with special protection measures taking into account the “best interests of the child” under the UN Convention on the Rights of the Child; [Section 6.3] and
- J. to include in the legislation of Finland a clear and specific non-punishment provision for victims of trafficking in human beings for the offences that they committed non-voluntarily in the course of the trafficking situation, in particular, also for child victims of trafficking; [Section 6.5]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR, upon request, conducts reviews of draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments. It provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 11 November 2020 the Wellbeing and Health Protection Unit of the Ministry of Social Affairs and Health of Finland sent a request to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) for a legal review of Acts aimed at combatting trafficking in human beings in Finland, with a special focus on measures of support and assistance to victims of trafficking in human beings.
2. The request for the legal review included provision of a comparative overview of the practices that are in place in other OSCE participating States. Therefore, each section which follows ODIHR’s recommendations is followed by a comparative overview.
3. On 22 December 2020 ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of legislation against trafficking in human beings with international human rights standards and OSCE human dimension commitments, with a particular focus on assistance measures and a comparative overview.
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments in the field of combatting trafficking in human beings.¹

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the legislation provided to ODIHR by the Ministry of Social Affairs and Health of Finland, Wellbeing and Health Protection Unit in their follow up correspondence after receipt of the request. Thus the Opinion is limited: it does not constitute a full and comprehensive review of the entire legal and institutional framework which regulates human trafficking in Finland.
6. The legislation provided in connection with the request is as follows;
 - Social Welfare Act 710/1982, Health Care Act 1326/2010;
 - Act on the Status and Rights of Social Welfare Clients 812/2000;
 - Act on Social and Health Care Client Fees 734/1992;
 - Act on Social Assistance 1412/1997;
 - Chapter 4 of the Reception Act 388/2015 (Act on the reception of persons seeking international protection and on the identification of and assistance to victims of trafficking in human beings)
 - Act on the Promotion of Integration 1386/2010;
 - The Criminal Code of Finland (39/1889, amendments up to 766/2015 included)
7. The Opinion raises key issues and provides indications of areas for revision. In the interests of conciseness, it focuses specifically on legislative provisions which require amendment or improvement. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. As requested, the Opinion also provides extensive information on how other OSCE participating States have regulated this field. It must be emphasized that when referring to national legislation, ODIHR does not advocate for any specific country model. Any country

¹ [1] **ANTI-Trafficking in Human Beings**: The OSCE/ODIHR conducted this assessment within its mandate as established by the OSCE Action Plan to Combat Trafficking in Human Beings (2003): See pars 9.1 and 15.1 of the [Annex to OSCE Ministerial Council Decision 2/03 on Combatting Trafficking in Human Beings](#) (2003).

example should always be approached with caution since it cannot necessarily be replicated exactly in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

8. The same may be said with regards to “model legislation” which will be referred to throughout the text. The UNODC (United Nations Office on Drugs and Crime) has developed model legislative provisions² (UNODC 2020 Model) in this field, which should serve to guide legislators, rather than suggest a straightforward blueprint for laws. The CIS (Commonwealth of Independent States) model law³ referred to herein should be seen in the same way.
9. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*⁴ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁵ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
10. This Opinion is based on an unofficial English translation of the legislation, partially commissioned by the OSCE/ODIHR and in part available online in the unofficial English version of the text. Errors from translation may result. The Opinion is translated into Finnish and Swedish, but the English version shall prevail in case of inconsistencies between these versions of the Opinion.
11. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Finland in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

12. The commitment to combat trafficking in human beings has been undertaken by states at a number of levels and is reflected in various human rights instruments and documents, notably at the international level. This includes the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000 to the UN Convention against Transnational Organized Crime⁶ (hereinafter “the UN Palermo Protocol”). The Conference of the Parties to the UN Convention against Transnational Organized Crime established a review mechanism to the convention during its meeting in Vienna from 15 to 19 October 2018.⁷
13. At the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings⁸ (hereinafter “the CoE Trafficking Convention”) has been adopted. Article 1 par. 2 of the CoE Trafficking Convention sets up a monitoring mechanism to ensure the effective implementation of the Convention by all states parties to the Convention. Chapter VII of the CoE

² [UNODC: Model Legislative Provision Against Trafficking in Persons](#), Vienna 2020

³ [CIS Model Law About counteraction to human trafficking, accepted at the thirtieth plenary session of Inter-parliamentary Assembly of the State Parties of the CIS \(The resolution of April 3, 2008 No. 30-11\)](#)

⁴ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly Resolution 34/180 on 18 December 1979. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

⁵ See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Protocol adopted by GA resolution 55/25 of 15 November 2000: <http://www2.ohchr.org/english/law/protocoltraffic.htm>

⁷ [Review Mechanism of the United Nations Convention against Transnational Organized Crime \(UNTOC\)](#)

⁸ Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 16 May 2005, [ratified by Finland on 30 May 2012](#).

Trafficking Convention specifies the details of this two-pillar monitoring system, which includes a technical body (Group of Experts on Action against Trafficking in Human Beings (hereinafter, GRETA)) and a political body (Committee of the Parties, Article 37). GRETA has conducted two evaluation rounds in Finland, issuing its final reports in 2015 and 2019.⁹ The recommendations by the Committee of the Parties were addressed by the Government of Finland in 2020.¹⁰

14. Importantly, the European Court of Human Rights has also ruled that human trafficking as a crime falls under the umbrella of violations prohibited in Article 4 of the European Convention of Human Rights (ECHR).¹¹
15. As an OSCE participating State, Finland has also committed to follow the main principles of the OSCE Action Plan to Combat Trafficking in Human Beings (hereinafter “the OSCE Action Plan”).¹² The OSCE Action Plan, while explicitly referring to the UN Palermo Protocol, also commits States to develop and implement “National Referral Mechanisms”, defined as co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, especially children, coordinating their efforts in a strategic partnership with civil society organizations, survivor leaders and the private sector.¹³
16. In addition to the OSCE Action Plan, and since then, OSCE participating States have adopted several OSCE decisions that will be referred to throughout the document.¹⁴
17. Finland has also been a member of the European Union (EU) since 1995. Therefore, for the sake of completeness the relevant EU legal framework will be referenced as a comparative legal analysis tool, in particular the EU Anti Trafficking Directive 2011/36/EU (hereinafter, the “Anti-Trafficking Directive”).¹⁵
18. International and European conventions aim to offer a “minimum standard” of protection of human rights,¹⁶ that is, they provide the “floor” rather than the “ceiling” for states. States are free and indeed encouraged to go above the minimum benchmark to the degree possible.

⁹ [GRETA \(2015\)9: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland](#), published 4 June 2015, [GRETA\(2019\)06 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland](#), published 5 June 2019 and [Recommendation CP\(2015\)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland](#), adopted 15 June 2015.

¹⁰ [Report submitted by the authorities of Finland on measures taken to comply with Committee of the Parties Recommendation CP/Rec\(2019\)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), received 16 October, 2020.

¹¹ [European Court of Human Rights: *Rantsev v. Cyprus and Russia*](#), ((Application no. 25965/04), judgment 7 January 2010, par 282.

¹² [Decision No. 2/03 Combating Trafficking In Human Beings, MC.DEC/2/03, 2 December 2003](#);

¹³ [OSCE/ODIHR: National Referral Mechanisms – A Practical Handbook](#), p. 15.

¹⁴ [Decision No. 1 Enhancing The OSCE’s Efforts To Combat Trafficking In Human Beings, MC\(8\).DEC/1, 28 November 2000](#); [Decision No 6 of the Ministerial Council MC\(9\).DEC/6, 4 December 2001](#); [Decision of the Ministerial Council No 426 Trafficking in Human Beings, 12 July 2001](#); [Decision No. 13/04 The Special Needs For Child Victims Of Trafficking For Protection And Assistance MC.DEC/13/04, 7 December 2004](#); [Decision No. 557/Rev.1* OSCE Action Plan To Combat Trafficking In Human Beings, PC.DEC/557/Rev.1, 7 July 2005](#); [Decision No. 685 Addendum To The OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, 7 July 2005](#); [Decision No. 13/05 Combating Trafficking In Human Beings, MC.DEC/13/05, 6 December 2005](#); [Decision No. 14/06 Enhancing Efforts To Combat Trafficking In Human Beings, Including For Labour Exploitation, Through A Comprehensive And Proactive Approach, MC.DEC/14/06, 5 December 2006](#); [Decision No. 8/07 Combating Trafficking In Human Beings For Labour Exploitation, MC.DEC/8/07, 30 November 2007](#); [Decision No. 5/08 Enhancing Criminal Justice Responses To Trafficking In Human Beings Through A Comprehensive Approach, MC.DEC/5/08, 5 December 2008](#); [Decision No. 1107 Addendum To The OSCE Action Plan To Combat Trafficking In Human Beings: One Decade Later, PC.DEC/1107/Corr.1, 6 December 2013](#); [Decision No.15/06 On The Combatting Of Sexual Exploitation Of Children, 5 December 2006](#); [Supplementary Human Dimension Meeting On Combatting Sexual Exploitation Of Children, 18-19 October 2007: Final Report](#); [-Child Trafficking: From Protection To Prevention, 28-29 May 2018, Final Report](#); [-Decision No.9/07 On Combatting Sexual Exploitation Of Children On The Internet, 30 November 2007](#); [Decision No. 7/17 Strengthening Efforts To Combat All Forms Of Child Trafficking, Including For Sexual Exploitation, As Well As Other Forms Of Sexual Exploitation Of Children, MC.DEC/7/17, 8 December 2017](#); [Decision No. 6/17 Strengthening Efforts To Prevent Trafficking In Human Beings, MC.DEC/6/17, 8 December 2017](#); [Decision No. 6/18 Strengthening Efforts To Prevent And Combat Child Trafficking, Including Of Unaccompanied Minors, MC.DEC/6/17 7 December 2018](#).

¹⁵ [EU Anti Trafficking Directive 2011/36/EU](#). Other relevant EU instruments include: [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#) (hereinafter “The Victims’ Directive”), and [Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography](#).

¹⁶ E. Bjorge, “National supreme courts and the development of the ECHR rights”, *ICON*, vol. 9, 2011, n° 1, p. 22.

2. BACKGROUND

19. Finland has undertaken a remarkable effort to improve its framework legislation on combatting trafficking in human beings, in order to ensure compliance with international law and regional standards. This Opinion aims to outline those legislative provisions which would benefit from future revision, in particular in terms of the assistance that should be provided to identify victims of trafficking, or presumed victims of trafficking. Where possible, examples are provided from other OSCE participating States to illustrate better how such provisions may work in practice.

3. DEFINITIONAL ISSUES

20. Under Article 3 par a) of the Palermo Protocol and Article 4 par a) of the CoE Trafficking Convention, trafficking in persons/human beings is “*the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”. Exploitation shall include, at a minimum, “*the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”. A similar definition is also included in the OSCE Action Plan.
21. The Finnish Criminal Code¹⁷ is divided into chapters. Chapter 25 on Offences Against Personal Liberty contains Section 3 on Trafficking in Human Beings. While the current definition of human trafficking includes provisions where a person is pressured, deceived or under control of another person into “sexual abuse, forced labour and other demeaning circumstances”, which may suffice for the purposes of prosecuting the crime of trafficking in human beings, it should also be noted that the most updated UNODC 2020 Model recommend that the offence be drafted as follows:

“(1) *Trafficking in persons shall mean the act of recruiting, transporting, transferring, harbouring or receiving another person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person in order to exploit that person.*

(2) *Exploitation, for the purpose of subsection (1) shall include, at a minimum, the exploitation of the prostitution of others; sexual exploitation; forced labour or services; slavery; practices similar to slavery; servitude; or, the removal of organs.*

(3) *In the case of child victims, trafficking in persons shall mean the act of recruiting, transporting, transferring, harbouring or receiving another person in order to exploit that person.*

(4) *Trafficking in persons is punishable by a period of imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].*”¹⁸
22. **It is recommended that the current Section 3 on Trafficking in Human Beings in Chapter 25 of the Finnish Criminal Code be adjusted to reflect the latest guidance, in particular, making reference to “or other forms of coercion”.**¹⁹
23. Further, **the concept of the “means” employed to subject a person to trafficking could be expanded** for instance by including (i) threats of harm or physical restraint of any person; (ii) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act

¹⁷ The Criminal Code of Finland (39/1889, amendments up to 766/2015 included)

¹⁸ *Op. cit.* footnote 2 (UNODC Model Legislative Provisions against trafficking in persons), p. 34.

¹⁹ *Op. cit.* footnote 2, (UNODC Model Legislative Provisions against trafficking in persons), Annex A pages 96-166 for examples of how trafficking in persons is stipulates in the criminal codes of all regions of the world.

would result in serious harm to or physical restraint against any person; (iii) abuse or any threat linked to the legal status of a person; (iv) psychological pressure.²⁰ **Such an addition is recommended, as it would cover the fact that human trafficking also involves non-obvious use of physical force.**

24. Also, it is recommended to buttress the definition by **stating clearly that consent of the adult victim to the intended exploitation should be deemed irrelevant where the means listed in the article have been used.**
25. Importantly, par (2) of Article 3 in Chapter 25 the Finnish Criminal Code under review here states that even if none of the means listed in the provision have been used, trafficking will still be deemed to have been committed in the case of children. Indeed, a provision that consent of the child should be irrelevant regardless of the use of the means is commendable. **It is recommendable that in addition to children, other vulnerable groups or those without full legal capacity,²¹ such as persons with disabilities, should also be included in the category of those persons whose consent is to be considered irrelevant, regardless of the use of the means.**
26. Lastly, it should be emphasized that the current definition of trafficking in human beings contained in Article 3 in Chapter 25 of the Criminal Code lists a number of forms of exploitation and includes also “other demeaning circumstances”. It should be mentioned that the definition of what constitutes “exploitation” under international law is not exhaustive. **In order to be compliant to the Palermo Protocol Article 3 “or other forms of coercion... for the purpose of exploitation” needs to be added as this could have significant impact for the legal interpretation, especially as there is no current international legal definition of sexual exploitation.**
27. There are different ways for legislators to provide guidance on the meaning of exploitation. One approach, followed by a number of countries, is to define exploitation by reference to an itemized list of exploitative conduct (e.g., sexual exploitation, forced labour, slavery), as per the approach taken in the Palermo Protocol and the Council of Europe Convention. These exploitative practices may themselves also be defined in law, as in Finland. Common examples of exploitative practices not specifically itemized in the Trafficking in Persons Protocol and that are included in domestic laws include forced marriage, forced begging or forced criminality. In Europe, the EU Directive 2011/36/EU specifies that the concept of exploitation must also be interpreted to include the exploitation in criminal activities (e.g., drug trafficking) and forced begging.²²
28. Some legislative examples also include a more generic “catch-all” provision, such as “any other exploitation” or “other forms of exploitation.” The advantage of such an approach is that it provides flexibility and a margin of appreciation enabling anti-trafficking laws to be applied to exploitative situations not explicitly contemplated by the legislation but constantly evolving in practise. To provide the necessary specificity to enable the public, police, prosecutors and the courts to understand the precise limits of what is and is not captured by the law, the judicial interpretation of the concept of exploitation shall be reflected in future legislative amendments including in the area of administrative law.
29. Finally, another approach is to specifically define exploitation through a qualitative description of the prohibited conduct. Instead of defining exploitation by reference to specific practices (e.g., sexual exploitation), this approach provides general guidance on the meaning of exploitation through a description of the conduct that the victim is intended to be subjected to.

²⁰ *Ibid.* UNODC Model Law against Trafficking in persons, see also [UNODC Issue Paper “Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons” 2013.](#)

²¹ [OSCE/ODIHR Opinion on the Draft Law on Counteracting Trafficking in Human Beings, of the Republic of Ukraine Opinion-Nr.: TRAFF-UKR/190/2011 \(AT\), Warsaw, 5 September 2011, par. 38](#)

²² [Explanatory Report Council of Europe Convention “for the purpose of exploitation, which includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”, par 74.](#)

RECOMMENDATION A

- improve the definition of “trafficking in human beings” found in Section 3 of Chapter 25 of the Criminal Code of Finland by;
- by revising the definition of trafficking in persons in line with the latest guidance provided in the UNDOC 2020 Model Against Trafficking in Persons;
- expanding the concept of “means” used to subject a person to human trafficking covering, for instance, non-obvious physical force and abuse of the position of vulnerability;
- ensuring that the consent of the adult victim is deemed irrelevant where the means stated in the article have been employed; and
- ensuring that even where none of the means, as stated by the article are employed, the consent is deemed irrelevant as concerns children, people who belong to a vulnerable group, who are disabled or do not have full legal capacity; [Section 3]

4. ENTITIES LIABLE FOR TRAFFICKING IN HUMAN BEINGS

4.1 Liability of Public Officials

30. Chapter 4, Section 38c of the Reception Act (388/2015) states that “In attending to their duties, the members of the expert group are subject to criminal liability for acts in office.” The liability, whilst welcomed, first of all should constitute an aggravating circumstance and secondly, should be expanded to all public officials and not only the members of the multi-professional expert group set up by Section 38c (388/2015). **The State should take the necessary measures to ensure that the fact that human trafficking offences committed by public officials in the performance of their duties are regarded as an aggravating circumstance.**²³

RECOMMENDATION B

- ensure that trafficking committed by all public officials in the performance of their duties constitutes an aggravating circumstance

5. PREVENTION

31. The prevention of trafficking in human beings is mentioned as a core principle in Article 2, par (a) of the UN Palermo Protocol, and Article 1 par (a) of the CoE Trafficking Convention. Articles 9 to 13 of the UN Palermo Protocol deal with specific aspects of prevention and cooperation, namely the establishment of pertinent policies, programmes and measures, information exchange, border measures, and actions to ensure the security, authenticity and verification of travel and identity documents. Chapter II (Articles 5 to 9) of the CoE Trafficking Convention describes similar prevention aspects and further includes measures to discourage demand for services that

²³ This recommendation is also in line with *op. cit.* footnote 15 (EU Anti Trafficking Directive), Article 4 par.3.

are linked with trafficking in human beings, in particular the adoption or strengthening of legislative, administrative, educational, social, cultural or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children.²⁴

32. The European Court of Human Rights has stressed consistently in its jurisprudence the importance of prevention of trafficking in human beings. While the content of State obligations has been developed by European Court of Human Rights jurisprudence, the fundamental obligation of States is derived from Article 1 ECHR. Read in conjunction with other ECHR articles, Article 1 obliges Contracting States to secure the rights and freedoms under Section I of the Convention that are relevant to the situation of the individual. This can entail, for example, an obligation on the State to take all reasonable steps to prevent harm of which they knew or ought to have known, under Articles 2 and 3 ECHR, as set out in the case of *Osman v the United Kingdom* (referred to as the *Osman test*).²⁵ While the *Osman test* was initially formulated by the European Court of Human Rights to determine when States have a positive obligation to intervene to protect individuals from the acts of other private parties under Article 2 of the ECHR, it has been applied subsequently in cases claiming violations of Articles 3²⁶ and 4.²⁷ While the majority of human trafficking cases before the European Court of Human Rights rely on Article 4 when claiming a State obligation, Article 3 has also been relied on before the Court.²⁸
33. Interagency cooperation is apparent already in the Reception Act, Chapter 4 on the Assistance System, Section 37 (388/2015) in the framework of the right to transmit necessary information among various stakeholders involved in the assistance system. It should be noted that the solution is not optimal as information is submitted to the police even before a victim has the opportunity to agree to cooperate with authorities (or not) and has had the benefit of a reflection period.²⁹ In fact it has been noted by NGOs that the reception system reaches in particular those victims who are ready to share their experiences with the criminal investigation authority already at the referral stage.³⁰ Therefore, as described in this section, it would be optimal for the information sharing with the law enforcement authorities to be limited to the extent possible, especially during the reflection period (See section 7.1 *infra*) which is designed, according to Article 13 of the CoE Trafficking Convention, to give the victim time to assess whether or not they wish to collaborate at all. Section 38b of the Reception Act (388/2015) regarding arrangement of assistance measures foresees cooperation between the Joutseno Reception Centre and the municipality of residence of the victim, and Section 38c on the “Multi-professional expert group” provides for support and evaluates the need for assistance measures and protection for victims; meanwhile, in Section 38d cooperation between the Reception Centre, municipal authorities and police is stipulated in order to provide assistance and protection. However, it should be borne in mind that if information is submitted to the police about the victim before that person has agreed to cooperate in criminal investigation or had the benefit of a reflection period, this information can be used to the detriment of a person’s safety and also asylum claim.³¹ **Therefore, any exchange of information**

²⁴ *Op. cit.* footnote 8 (CoE Convention against trafficking in Human Beings), Prevention is also a part of *op. cit.* footnote 12 (EU Anti-Trafficking Directive), see Articles 1 and 18. .

²⁵ European Court of Human Rights, *Osman v the United Kingdom*, (Application no 23452/94), judgment 28 October 1998, par 151.

²⁶ European Court of Human Rights, *M. and others v. Italy and Bulgaria*, (Application No. 40020/03), 31 July 2012, see pars 99-101

²⁷ European Court of Human Rights *Chowdury and Others v Greece*, (Application No. 21884/15), judgment 30 March 2017 (In French), pars 86-91.

²⁸ *Op. cit.* footnote 26 (*M. and others v. Italy and Bulgaria*).

²⁹ Maija Koskenoja, Natalia Ollus, Venla Roth, Minna Viuhko and Laura Turkia (HEUNI report), [An unknown future](#), A report on the effectiveness of legislation concerning assistance for victims of human trafficking Conclusions and recommendations, September 2018, p 13: “NGO representatives interviewed for the report took a rather critical view of NGO representative interviewed for the report took a rather critical view of these periods: the regulations and procedures regarding reflection and recovery periods do not work, and their purpose is not fulfilled. In the opinion of NGO representatives, the legal provisions on reflection and recovery periods and their application do not allow for genuine reflection and recovery. The reason for this is that information concerning the victim is always transferred from the system of assistance to the criminal investigation authorities. Information is passed, regardless of what the victim has decided to do during the reflection and recovery period and whether or not the victim can or dare share their experiences with the criminal investigation authorities and initiate criminal proceedings in the matter.”

³⁰ *Ibid.* (“An unknown future”), page 12.

³¹ *Ibid.* (“An unknown future”), page 9: “the NGO representatives and reception centre employees interviewed for the report noted that a very detailed proposal may even harm the client, for example if his or her asylum application is pending. If the proposal includes descriptions or

should be for the purposes of assistance and protection of the victim and the granting of a reflection and recovery period for the victim should be prior to information being passed to the police. The only exception to this rule can be found in the Explanatory notes of the CoE Trafficking Convention where it is stated that the reflection and recovery period may be interrupted in case there is an order from a judge for a victim to testify.³²

34. There is a role for civil society under Section 34 of the Reception Act (388/2015) Chapter 4, where it is stated that “public, private or third sector actors” may make a proposal to the Joutseno Reception centre for admitting a presumed victim of trafficking into the assistance programme (there is no indication in the law about what happens if this proposal is rejected).³³ **However, it is recommended that the role of civil society is further strengthened in the process of inter-agency cooperation (and further in a National Referral Mechanism described below.)**
35. In particular, in practice it is recommended that occupational health and safety inspectors play a key role in identifying exploitation of employees as they may encounter potential victims of human trafficking in their work. **Cooperation between the occupational health and safety authorities and the police is recommended to be stepped up**, for example in the form of joint workplace visits, in particular in situations where exploitation of workers is suspected. **Trafficking in human beings is also recommended to be included among the offences on which the occupational health and safety inspectors have a duty to report.³⁴**
36. Further to this OSCE participating States are recommended to establish National Referral Mechanisms (NRMs). Furthermore, PC.DEC/1107/Corr.1 (Addendum to the OSCE Action Plan) under Chapter V provides a detailed list of recommended actions at the national level to enhance partnerships domestically. According to the Anti - Trafficking Directive, Member States shall take the necessary measures to establish appropriate mechanisms, aimed at victim identification, assistance and support in cooperation with relevant support organizations.³⁵ The National Coordinator already mentioned above would be the natural central point for establishing an effective system.
37. Similarly, in Article 5 par 1 of the CoE Trafficking Convention, States are required to strengthen or establish a national coordination mechanism, consisting of various bodies, in order to improve cooperation across different agencies in the fight against trafficking in human beings. Par 6 of the same Article stresses the importance of involving non-governmental organisations and other civil society organisations committed to anti-trafficking efforts in the development and implementation of prevention measures, where appropriate. This principle is also laid down in Article 9 par 3 of the Palermo Protocol. Reference to National Rapporteurs or equivalent mechanisms and close cooperation with civil society organisations is also made in Article 19 of the EU Anti Trafficking Directive.
38. **In general, it is recommended that interagency cooperation and the role of civil society is streamlined in all areas which are addressed in the Reception Act (388/2015) Chapter 4 regarding (i) identification and referral³⁶ (ii) awareness-raising and training, and; (iii) information collection.**

details that deviate from those expressed in the asylum interview, the credibility of the client seeking access to the system of assistance may be questioned. Any contradictions may have a negative impact on the asylum and residence permit proceedings.”

³² *Op. cit.* footnote 22 (Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings), par “176: ‘The decision to cooperate or to not cooperate with the competent authorities does not exclude the obligation to testify when it is required by a judge. Someone who is legally required to do so therefore cannot use Article 13, paragraph 1, as a basis for refusing to testify. For that reason, Article 13, paragraph 1, specifies that it is “without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned”.

³³ *Op. cit.* footnote 29 (“An unknown future”), p. 9, mentions that NGOs only submit a small number of proposals, and a quarter are rejected. See also [Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings: Occasional Paper no. 8: OSCE the Critical Role of Civil Society in Combating Trafficking in Human Beings](#).

³⁴ *Ibid.* (An unknown future), p. 13.

³⁵ *Op. cit.* footnote 15 (EU Anti Trafficking Directive Article) 11.4.

³⁶ *Op. cit.* footnote 9 (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland CP/REC(2019)6), par 111.

RECOMMENDATION C

- to refrain from passing information about victims to law enforcement authorities until the recovery and reflection period is completed, unless strictly necessary, in narrowly defined situations, such as for the protection of the rights of trafficked individuals or when there is there an order from a judge for a victim to testify.

5.1 Identification and Referral – Establishing a National Referral Mechanism

39. Pursuant to the extensive recommendations made at the OSCE level and in response to the recommendation made in the Report of the Committee of the Parties of the CoE,³⁷ the government of Finland has declared that, through its national action plan, it plans to establish a National Referral Mechanism (also referred to as “NRM”) for victims (or presumed victims) of trafficking in human beings.³⁸ This is planned to be taken forward by the Anti-trafficking Coordinator.³⁹
40. The Reception Act (388/2015) Chapter 4 contains a number of encouraging features which would fit well into a complete National Referral Mechanism. In the Report of the Committee of the Parties (GRETA 2015)9 it has been noted that to date the identification is often tied to the criminal process.⁴⁰ This is prominent in Article 38 (388/2015) Chapter 4 of the Reception Act, where the “pre-trial investigation authority or the prosecutor shall identify the victim.” This close association is particularly problematic as it means that a victim is often identified as a victim only when a perpetrator is also identified, hinging identification of the victim on criminal proceedings. The Explanatory Report to the CoE Trafficking Convention clearly states that “*the identification process provided for in Article 10 is independent of any criminal proceedings against those responsible for the trafficking. A criminal conviction is therefore unnecessary for either starting or completing the identification process.*”⁴¹
41. It should be noted that currently, according to pars (1) and (2) of Article 38 (388/2015) Chapter 4 of the Reception Act, the Joutseno Reception Centre may deem a person a victim of trafficking, even if investigation is not commenced, terminated or interrupted for lack of possibility of bringing charges against perpetrators. However, such a decision is made after hearing the multi-professional group set up under Section 38c of the same act. This body “shall hear as experts municipal authorities, occupational safety authorities, labour market organizations, mental health and child welfare experts and other parties that are needed for assisting the victim of trafficking in human beings.” It is not clear whether this is done on the basis only of these hearings and documents or whether interviews with a possible victim and/or witnesses are also conducted. **It is recommended that this provision be clarified to stipulate whether the potential victim may also be interviewed.**
42. Initial mention of the identification of victims can be found in Article 34 of the Reception Act (388/2015) Chapter 4, which states that “*Public, private or third sector actors may make a proposal to the Joutseno Reception Centre for admitting a suspected victim of trafficking in human beings*”. Moreover, the proposal may be made by the victim him- or herself, suggesting that self-identification is also possible. However, further formalities are found in later provisions (described above). Combined with the criminal investigative approach outlined above, it appears that the legislation as it stands does not paint a clear picture. First, there is an initial stage of identification and then an official stage of identification (as described above in par 40) and it is not clear how and when the two connect. **This is recommended to be clarified in the acts,**

³⁷ *Ibid.*

³⁸ *Ibid.*, p. 9

³⁹ *Ibid.*

⁴⁰ *Op. cit.* footnote 9 (GRETA 2015)9 p. 33

⁴¹ *Op. cit.* footnote 22, par 134

alongside the recommendation to disentangle assistance from criminal investigation. Therefore it is highly recommended that these provisions be revised to ensure coherence and the meeting of international standards on identification of victims found in particular in Article 10 of the CoE Trafficking Convention.

43. Furthermore, as concerns self-identification, and while it is welcomed as an option for victims, the OSCE Guidelines⁴² state that “*Many victims do not recognize themselves as such, since they may be in a transportation, post-recruitment or pre-exploitation phase, and thus it is possible that no exploitation has occurred yet*”. Others, particularly undocumented migrants, may avoid identifying themselves to authorities due to fear of deportation, retaliation by their traffickers, or because their behaviour has been pre-conditioned by religious rituals or beliefs that have been imposed upon them. In a great number of cases, the victims have a relationship with the trafficker, or may fear stigmatization, especially if the abuse they have suffered was sexual in nature.” For this reason it is highly recommended that an effective and human-rights based national referral system is introduced in Finland. Annex 2 provides a reference to the key principles for setting up the system on national referral.

RECOMMENDATION D

- to establish a clear national referral mechanism with a system of victim identification by a) law enforcement authorities for the purpose of criminal justice procedure and b) social services providers for assistance and support purposes.

5.1.1 Examples of practice from other OSCE participating States on National Referral Mechanisms

44. In **Belgium**, a government circular sets out the framework for early identification and referral to assistance of foreign victims, setting out a list of indicators to facilitate detection of trafficking situations, including evidence of falsified travel documents, indebtedness, unsanitary workplace, poor working conditions, non-payment of wages and limited freedom of movement. When victims are detected by relevant authorities, the circular requires them to inform the public prosecutor, contact a specialised reception centre and inform the Foreigner’s Office. Moreover, education has been established for front-line staff, including health workers and social workers, to facilitate quick referral of potential victims.⁴³ Also, victims must be informed of the existence of a special protected status under Belgian Law.⁴⁴
45. In the Republic of **Moldova**,⁴⁵ the National Referral System has established a series of regional multidisciplinary teams, composed of representatives of the local social assistance and family protection departments, medical staff, police officers, representatives of NGOs and other relevant bodies, who have developed guidelines on identification of victims and potential victims of trafficking with the support of IOM and the NGO La Strada Moldova and serve as an operational tool establishing steps to be taken by relevant authorities during the identification process.⁴⁶ The guidelines have annexes containing questionnaires for identifying victims and presumed victims of trafficking.

⁴² [Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region](#), page 12.

⁴³ [Revised Circular, adopted by the Federal Ministry of Justice on 23 December 2016 and published on 10 March 2017, European Commission – Information on Human Trafficking in Belgium](#) and [Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), p. 12.

⁴⁴ *Ibid.* (Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings), p.14.

⁴⁵ See [UNWomen’s Global Database on Violence against Women for information on the National Referral Mechanism in Moldova](#)

⁴⁶ [GRETA Report Moldova, Adopted 22 February 2012](#), par 27; *op. cit.* footnote 43 (Compendium of good practices), p. 14.

46. In **Poland**, the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking is responsible for the identification of victims legally present in Poland, but who do not wish to contact law enforcement,⁴⁷ and victims with an irregular immigration status are identified by the Police or the Border Guard. It is required that a specially trained officer of the same gender as the victim to determine if they are victims.⁴⁸
47. In **Serbia**, the Centre for the Protection of Victims of Trafficking in Human Beings is a structural part of the Ministry of Labour, Employment and Social Policy and therefore victim identification is based on a social protection approach. When a victim is detected, staff from the Office for Co-ordination of the Protection of Victims travel to the location of the victim to interview him/her and co-ordinate actions to determine their status. The Centre has developed a semi-structured questionnaire for the assessment and identification of victims and an individual service plan is set up for the victim concerned.⁴⁹
48. The legal basis for establishment of a national referral mechanism may vary from state to state and at least at the EU level, there is no one prescribed way of arranging an NRM. There are some instances where NRMs may be directly enshrined in binding acts or laws, but in general, a plethora of laws or acts form the foundation for the functioning of various actors involved in NRMs.⁵⁰
49. For example, NRMs are directly enshrined in binding acts or laws in **Cyprus, Belgium, Italy, Spain, and Greece**.
50. In **Cyprus**, the NRM is regulated under Article 44 on the *National Mechanism for Reporting and Informing the Victims of Law N° 60(I) of 2014* on the prevention, fight against trafficking and exploitation of human beings and protection of victims.
51. In **Austria**, the legal basis for the NRM can be found in Article 56 (1) and (3) of the *Security Police Act*, while in **Belgium** – in the *Law of 15 September 2006* modifying the Law of 15 December 1980 on the access to the territory, stay, residence and removal of foreigners.⁵¹
52. In **Italy**, the *Legislative Decree n. 24 of 4 March 2014*⁸⁴ introduces the integrated approach promoted by the EU Anti-trafficking Directive. The Italian NRM is adopted, but has yet to be established, within the *National action plan against trafficking and severe forms of exploitation 2016-2018*⁵² approved by the Council of Ministers in accordance with the *Law n. 228 of 11 August 2003*. While a formal NRM is not established, Italy does have, based on the Immigration Act No 286/1998⁵³, a “social path” and a “judicial path” which will be mentioned under the residence permits section.
53. In **Spain**, the legal basis for the Spanish Framework Protocol is Article 59 of the *Organic Act 4/2000 of the rights and freedoms of foreigners in Spain* and their social integration, which

⁴⁷ [European Commission, information on trafficking of human beings in Poland](#)

⁴⁸ *Op. cit.* footnote 43 (Compendium of good practices), p.14.

⁴⁹ [GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia](#), par. 104.

⁵⁰ [European Commission \(2018\) Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms HOME/2018/ISFP/PR/THB/0000](#), p. 24

⁵¹ Belgium, [Loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers](#), Belgian Official Gazette, 6 October 2006.

⁵² Italy, Consiglio dei Ministri (2016), Piano nazionale d'azione contro la tratta e il grave sfruttamento 2016-2018 [National Action Plan against trafficking and severe forms of exploitation 2016-2018] available in English at: www.osservatoriointerventitratte.it/wp-content/uploads/2018/01/traduzione-pari-opportunita_en.pdf.

⁵³ Consolidated Immigration Act No. 286/1998 is available in Italian, see [Decreto Legislativo 25.7.1998, n. 286 recante “Testo Unico delle Disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”](#). See also Council of Europe GRETA (2018), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy: Second Evaluation Round](#), (GRETA), 7 December 2018, par 197.

provides that the competent authorities will adopt the necessary measures for the identification of victims.⁵⁴

54. In **Greece**, the NRM was officially launched on the 1st of January 2019 (according to the *Ministerial Decision 3003/2016*)⁵⁵ and is coordinated and supervised by the Office of National Rapporteur and managed by the National Centre for Social Solidarity (EKKA). The NRM includes a range of stakeholders from the public sector and civil society and serves as a hub for coordinated action and partnership building. This does not only concern law enforcement (police and prosecutors), but involves additional front-line professionals, such as labour inspectors, health providers, migration services, local administration authorities and other stakeholders who may come across vulnerable populations who are at risk from trafficking. The overall target of this more inclusive and victim-centred identification regime has been pursued through a series of extensive trainings on human trafficking indicators and victim protection Standard Operating Procedures (SOPs) which are offered to frontline professionals.
55. In other jurisdictions, the foundation and functioning of various actors involved in NRMs fall within the remit of a broad legal framework consisting of a number of laws. In **Bulgaria**, the Crime Victim Assistance and Financial Compensation Law;⁵⁶ in **Estonia** – the Victim Support Law⁵⁷ and in **Malta** – the Victims of Crime Act.⁵⁸ It should be underlined that the different systems (NRM based and non NRM ones) are not *de facto* mutually exclusive. A functioning and well-coordinated NRM system could be complemented by surrounding legislation to ensure optimal protection for victims of human trafficking.

5.1.2 Special Measures for identification and referral of child victims

56. Identification of child victims of trafficking requires measures to be employed by States, in particular is the child is unaccompanied. The Reception Act (388/2015) in Section 38e foresees that a child may be a trafficked person and therefore admitted to the assistance programme. Article 38b also goes on to stipulate that assistance measures would be arranged according to the special needs of a person depending on his or her age. According to Article 10 (3) of the CoE Trafficking Convention and Article 13 (2) of the EU Anti-Trafficking Directive, states must ensure that where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe (but no proof) that the person is a child (under 18 years old), that person should be presumed to be a child and receive immediate access to assistance, support and protection. It is recommended that **the Reception Act (388/2015) include a provision which would stipulate that where there is uncertainty as to the age of the child, the presumption at the point of identification shall be that the person is a child.**
57. Further measures of protection and assistance which should be afforded to children will be discussed below, under the relevant sections. However, it is noteworthy that the Reception Act (388/2015), Chapter 4, Section 38e already foresees the Joutseno Reception Centre's cooperation with child welfare authorities and for child victims, children accompanying victims, and unaccompanied minors. Reference is also made to the Act on Promotion of Immigration Integration (1386/2010), which itself states in Chapter 7, section 56 that an unaccompanied minor who is a victim of trafficking shall be appointed a representative. **The article is not sufficiently clear however when it speaks of residence permits and whether these rights to representation are only applicable to children issued with a residence permit. This is recommended to be clarified and all children should benefit from legal representation, regardless of immigration status** (and other rights found in this act for children, such as taking into account the opinion of the child in decision making under Section 4 par 2, which stipulates that when

⁵⁴ [Spain, Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social](#) [Organic Act 4/2000 of the Rights and Freedoms of Foreigners in Spain and Their Social Integration],

⁵⁵ [See information from the Greek Ministry of Foreign Affairs](#) (Accessed 25 September 2021)

⁵⁶ [Crime Victim Assistance and Financial Compensation Law of Bulgaria](#)

⁵⁷ [Victim Support Law of Estonia](#)

⁵⁸ [Victims of Crime Act of Malta](#)

determining an opinion or hearing a child, the language used shall be one that the child understands).

RECOMMENDATION E

- to introduce a specific article on identification of child victims stipulating that where there is uncertainty of the age of the victim of trafficking, it should be presumed that the victim is a child and the specialised protection, referral and assistance would therefore follow through specialised legislation or provisions tailored to the needs of children; and to clarify that all children regardless of immigration status benefit from the allocation of a representative.

5.1.3 Examples from other States regarding protection of children

58. **Italy:** ‘Zampa Law’ Protection Measures for Unaccompanied Minors (Law No. 47/17)⁵⁹ contains detailed provisions on age determination for unaccompanied minors including children who have been victims of trafficking and those who have not been identified. According to the law, the procedure for assessing the social and medical age of young people may be ordered by the competent judicial authorities if there is reasonable doubt as to a young person’s claimed age, or if it is not possible to assess their age on the basis of documents.
59. Age assessment procedures, aims, methods and consequences must be explained to the child and they must be treated as a minor until the assessment is concluded. The assessment is conducted by multi-disciplinary methods, involving professionals who have the appropriate expertise, with a cultural mediator present at all stages. The result has to indicate the margin of error and the benefit of doubt has to be given to the child. Both the person concerned and their guardian have to be informed about the final decision adopted by the competent judicial authority and given the possibility to appeal it.⁶⁰
60. **Iceland:** The Barnahus (‘Children’s House’) is a child-oriented, interdisciplinary and multiagency centre whereby different professionals work under one roof in investigating suspected child sexual abuse cases and providing appropriate support for child victims. Barnahus Iceland’s activities are based on partnership between the State Police, the State Prosecution, the University Hospital and the local child protection services as well as the Government Agency for Child Protection which is responsible for its operation.⁶¹
61. **Bulgaria:** “Blue Rooms for children” have been established to accord with European Directive 2012/29 which establishes minimum standards for the rights, support and protection of victims of crime. Children who are victims of violence are not questioned in police or court premises, but in part of a room separated by a one-way mirror in which the Judge and prosecutor can sit with the child. The defendant and their lawyer sit in another part of the room which is separate. The resulting video tape is recognized as evidence for the trial. A total of 14 blue rooms are now ready and used in Bulgaria by the court, prosecution, the police investigative bodies and social workers.⁶²
62. **Greece:** The Ministry of Labour, Social Security and Social Solidarity developed the Guardianship Law which promotes the protection and social inclusion of unaccompanied minors. Law No. 4554 of 18 July 2018 introduced a regulatory framework for guardianship.⁶³

⁵⁹ [Law No. 47 of 7 April 2017 \(Provisions on Protective Measures for Unaccompanied Foreign Minors\)](#)

⁶⁰ Rozzi, E. (2017), [The new Italian law on unaccompanied minors: a model for the EU?](#), EU Immigration and Asylum Law and Policy, 13 November 2017.

⁶¹ [Iceland Government Agency for Child Protection \(n.d.\)](#), Note on [The Children’s House in Iceland – “Barnahus”](#).

⁶² Stanchev, Z. (2016), [“Blue Room now instrument of Bulgarian justice as well”](#), Bulgarian National Radio, 19 January 2016.

⁶³ http://www.opengov.gr/minlab/wp-content/uploads/downloads/2018/07/nomos-4554_2018-1.pdf

63. According to the Guardianship Law, a guardian will be appointed to a foreign or stateless person under the age of 18 who arrives in Greece who is not accompanied by a relative or a non-relative exercising parental guardianship or custody. The law provides a best interest of the child determination procedure following the issuance of standard operational procedure to be issued (Article 21). Under the framework, appointed guardians have responsibilities related to the integration of unaccompanied minors. The guardians are professionals who receive training on how to sensitively support children in all their activities.
64. **USA: The Safe Harbour Act:** New York State enacted the Safe Harbour for Exploited Children Act, and became the first state in the nation to recognize that sexually exploited minors are victims—and not perpetrators—of crimes. A child who is charged in Family Court with committing an act of prostitution is a victim of human trafficking as defined in US federal law. The court must convert the proceeding to a ‘*Person in Need of Supervision*’ proceeding, and specialized services for the child must be provided. The Safe Harbour Act defines a "sexually exploited child" as *someone under the age of 18 who may be subject to sexual exploitation because they engaged or agreed or offered to engage in sexual conduct in return for a fee, food, clothing, a place to stay, has stripped being filmed or photographed doing sexual acts, traded sex for drugs or loitered for the purpose of engaging in a prostitution offense.*⁶⁴ Across the USA, 34 states have adopted “safe harbour” laws.⁶⁵

5.2 Training as a Preventative Measure

65. While the documents under review do not reveal the nature of training programmes in Finland, in its report from 2019, the Committee of the Parties welcomed the progress made by Finland in the realm of training a range of professionals on issues related to identification of victims, including health care staff and social workers. It also welcomed the issuance of guidance to municipalities regarding the assistance to be given to victims of trafficking and the efforts made to raise awareness.⁶⁶
66. It is therefore highly recommended for Finland to continue down this path and enshrine its training programmes in law or at least, policy documents and the action plan as one of the rudimentary tasks in combatting trafficking in human beings. The OSCE Action Plan calls participating States to provide or improve training for border officials, law enforcement officials, judges, prosecutors, immigration and other relevant officials in all aspects of trafficking in persons by giving, in such training programs, consideration to human rights and child and gender-sensitive issues,⁶⁷ and encouraging cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. Furthermore, OSCE MC.DEC 5/08 par 2, *inter alia*, encourages Member States to ensure that training on combating trafficking in human beings is included in the curricula for law enforcement personnel and that specialized anti-trafficking training is provided for relevant officials in national prosecution services and the judiciary. PC.DEC/1107/Corr.1 (Addendum to the OSCE Action Plan) also includes in Section III. Prevention of trafficking in human beings, Article 2.1 (page 4) a detailed list of stakeholders to be trained in the human trafficking area.
67. The CoE Trafficking Convention stresses the need for continuous training of professionals who are engaged in anti-trafficking efforts, either working directly with victims or otherwise.⁶⁸ Particular emphasis should be put on Article 10 of the CoE Trafficking Convention which states that each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combatting trafficking in human beings, in identifying and helping victims, including children. The need for training is also mentioned expressly in Article 5 (2) of the CoE

⁶⁴ See [State of New York, The Safe Harbour For Exploited Children Act](#).

⁶⁵ [2020 Trafficking in Persons Report: United States](#)

⁶⁶ *Op. cit.* footnote 9 (Recommendation of the Committee of the Parties CP/REC(2019)5), point 2, page 24-25.

⁶⁷ For more information see: Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings: Occasional Paper no. 10: “[Applying Gender-Sensitive Approaches in Combating Trafficking in Human Beings](#)”

⁶⁸ *Op. cit.* footnote 22 (Explanatory Note the Council of Europe Convention), par 297.

Trafficking Convention and has been repeatedly emphasised by the European Court of Human Rights.⁶⁹

RECOMMENDATION F

- to ensure that anti-trafficking legislation or policy documents, or action plans, include specific articles which provide for regular training and capacity building as an essential component of the methodical support of professionals who are involved in identification procedures and support of victims of trafficking in situations both within and outside Finland, with special focus on the gender aspect of human trafficking as well as the particular vulnerability of children and persons with disabilities.

5.2.1 Examples of training programmes of other OSCE participating States

68. On a European level, different Member States implement projects and training aimed at professionals who are most likely to encounter victims. Finland is encouraged to develop and implement national simulation based training⁷⁰. The Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings is ready to assist in this regard.
69. In **Greece**, the Office of National Rapporteur (ONR) follows a proactive approach to the identification of THB-victims and recognizes the essential role of the first responders. With the aim of capacity building and bringing in more professional groups in identification and referral of presumed victims, a series of training programs have taken place, conducted by the NRM under the auspices of ONR, the National Centre for Public Administration & Local Government, and international organizations.⁷¹
70. In **Spain**, Article 30 of *Law 4/2015 of 27 April 2015* on the Statute of Crime Victims requires the Ministry of Justice, the General Council of the Judiciary, the Prosecution Service and the autonomous regions, in their respective competencies, to ensure general and specific training on the protection of victims in criminal proceedings for judges, prosecutors, legal secretaries, members of the State Security Forces, forensic doctors, officers in the administration of justice, officers in Victims Assistance Offices and officers in the central state administration or autonomous regions with these competencies.⁷²
71. In **Latvia**, employees of the Riga municipality have access to regular (annual) training for identification of cases of THB⁷³. Since 2010, the Riga municipality implements the project “*Preventive measures for elimination of trafficking in human beings*”, through which the training for employees of local government authorities is offered each year. For example, in 2015, 20 municipal police officers and 85 social employees and social teachers participated in training.
72. In the **Netherlands**, the Human Trafficking Academy run by the national coordinator of the NRM offers a portfolio of training and online training modules for various groups of professionals (municipality workers, aid workers, hospitality workers, police investigators).

⁶⁹ *Op. cit.* footnote 11 (*Rantsev v Cyprus and Russia*), par 287

⁷⁰ See for instance *op. cit.* footnote 43 (Compendium), chapter 1.6.

⁷¹ [See information from the Greek Ministry of Foreign Affairs \(Accessed 25 September 2021\)](#)

⁷² [Greta \(2018\)7: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain](#), par 46.

⁷³ [Ombudsman of the Republic of Latvia \(2017\). The Role of Local Governments' Social Services, Orphan's and Custody Courts and Branch Offices of the State Employment Agency of Latvia in the Process of Identification of Victims of Trafficking in Human Beings](#), p. 12.

73. In **Denmark**, the Centre against Human Trafficking provides regional authorities involved in the detection of potential victims with capacity-building and guidelines for recognising THB indicators. They carry out regular evaluations to see if other relevant actors should be included in such education.⁷⁴
74. **USA:** U.S Health and Human Services SOAR training (Stop, Observe, Ask, Respond).⁷⁵
- Many victims and survivors of trafficking come into contact with healthcare and social service professionals during and after their exploitation, but are not identified. SOAR training is targeted for health care providers, social workers, public health professionals and mental health professionals. The SOAR framework is a trauma-informed, culturally and linguistically appropriate response to human trafficking, providing health care professionals with tailored information on how to identify and respond to human trafficking within their field.
- SOAR training consists of three tiers:
- Tier 1 – Develop online, on-demand content to equip participants with the knowledge and skills to identify and respond to human trafficking.
- Tier 2 – Develop online, blended learning content for organizations which is focused on enhancing their institutional response to human trafficking.
- Tier 3 – Develop in-person training content for communities which is focused on identifying strategic partnerships and building capacity to effectively respond to human trafficking.
75. Some bilateral programmes also exist, for example, the "**Swiss-Hungarian Transnational Cooperation on the Referral of Victims of Trafficking**"⁷⁶ project launched in April 2017 and within the framework of the EU's Internal Security Fund ISF. The project was successfully implemented by the International Organisation for Migration (IOM) in Budapest and comprised of three study visits (one to Switzerland and two to Hungary) with the participation of the most relevant Swiss and Hungarian counter-trafficking actors.

5.3 Statistics and Data Collection

76. Rigorous, continuous and consistent monitoring as well as data collection constitute key elements in the prevention of human trafficking crimes as well as to inform protection and prosecution.
77. Monitoring and collection of data must evidently take place in accordance with applicable legislation on data collections, storage and transfer. This aspect is outside the scope of this opinion and such provisions do not normally feature in the scope of the laws reviewed.
78. Nevertheless, international and regional standards such as the OSCE Action Plan address this aspect in Ch. IV (1) and V(1.1). OSCE MC.DEC 6/17 in par 1 encourages participating States to develop enhanced research and systematically gather reliable information in cooperation with other relevant stakeholders and stresses, in par 8, the role of media in prevention of human trafficking. The CIS Model Law stresses in Article 4 the vital role of "independent and effective supervision and monitoring of the implementation of the state legislation and the fulfilment of the state's international obligations in the field of combating human trafficking". The importance of the collection of objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings as well as experience and best practices in the field of preventing and combating trafficking in human beings is also mentioned in preamble par 27 of the EU Anti-Trafficking Directive. Articles 19 and 20 expressly oblige the gathering and reporting of statistics on trafficking in human beings by Member States.⁷⁷

⁷⁴ [European Commission – Together Against Trafficking in Human Beings – Denmark](#)

⁷⁵ <https://www.acf.hhs.gov/otip/training/soar-health-and-wellness-training/soar-online>

⁷⁶ [European Commission – Together Against Trafficking in Human Beings – Hungary](#)

⁷⁷ Article 19 of the Directive requires that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organizations active in this field, and reporting.' Article 20 requires that "*Member States shall transmit to the ATC the information referred*

79. **It is recommended that in order to obtain reliable data characterizing trends, achievements and new risks in the field of combating trafficking in persons in Finland, a comprehensive and coordinated data collection system should be developed at the national level.** Data should be gathered in relation to: the number of presumed victims, the number of people with the confirmed status of victims, the social and demographic characteristics of victims, types of exploitation, the recruitment method, countries of destination, transit and origin, the method of identifying victims, organizations providing assistance in each case, and assistance results. Further areas of focus, which should be covered in domestic provisions, include labour exploitation and socio-cultural aspects of human trafficking. Data collection should also have a separate, dedicated focus on child trafficking.
80. It is also recommended that data should be categorised, contain information on trafficking related offences as well as be collected in line with data protection requirements. Data protection requirements should not be used as an excuse not to share data, which is necessary at different stages and for different procedures. Clear protocols on who can share what, when, how, in what format and for what purpose, should be adopted and followed.

RECOMMENDATION G

- to establish a system of data collection at national level that is specific to trafficking and can therefore help to shape policy decisions and identify needs, and allowing disaggregation (based on sex, age, type of exploitation, country of origin and/or destination).

5.3.1 Examples from OSCE participating States on Statistics and Data Collection

81. Within the EU, the relevant data is collected from Member States and is drawn solely from administrative sources, such as national rapporteurs and/or equivalent mechanisms by the European Commission/DG HOME/EU Anti-Trafficking Coordinator (EU ATC), with support from Eurostat. A questionnaire is sent to each Member State with requests for data. Primary data is collected within Member States by the organizations and authorities that come into contact with victims and perpetrators of trafficking in human beings. More than five types of governmental authorities and non-governmental organizations are mentioned as registering victims of trafficking in persons, such as: the police, non-governmental organizations (NGOs), immigration officials, border guards, and labour inspectors, as well as others including: Office of Combating Trafficking in Human Beings, centres for migrants and asylum seekers, National Assistance System for Victims of Human Trafficking, etc.⁷⁸
82. States vary in how many of these types of authorities and organisations register victims. The police are reported to register in 25 Member States, NGOs in 16, immigration officials in 12, border guards in 11, and labour inspectors in 10. Out of these five main types of organisations, the United Kingdom accepts registration of victims from all five, while Bulgaria, **Germany, Spain, France, Croatia, Luxembourg, Hungary, Austria and Finland** from one.⁷⁹ This includes authorities/organisations reporting zero victims, but authorities/organizations reporting “no information available” are excluded.

to in Article 19”. In the Directive’s preamble, par 28 states that “in order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics”

⁷⁸ [European Commission \(2018\) Data collection on trafficking in human beings in the EU](#)

⁷⁹ *Ibid*, p. 13

83. In **Hungary**, a database for the registration of presumed victims of trafficking in persons, EKAT, was launched in September 2017, enabling the collection of information from a range of relevant professionals, including NGOs.
84. In **Estonia**, the collection and analysis of data is done through different ministries (primarily Ministry of Justice and Social Affairs) and the information is collected for the developmental plan report once a year by the Ministry of Justice, who is also national rapporteur on trafficking in persons to the EU Commission.⁸⁰

6. PROSECUTION

85. The issue of prosecution of the crime of trafficking is an extensive one that would have to span a number of codes and acts beyond the scope of this review.
86. However, from the requested viewpoint of the protection and assistance to the victim, a number of issues transpire as important to underscore. First and foremost because the crime of trafficking is prosecuted *ex officio* based on Chapter 25, Section 3 on Trafficking in Human Beings of the Criminal Code of Finland (39/1889, amendments up to 766/2015 included), the victims will not have any standing during the trial.

6.1 Assistance regardless of participation in a trial

87. In addition to this, the role of the Prosecution can be found in Section 38 of Chapter 4 of the Reception Act (388/2015) as one of the authorities which may formally identify victims of trafficking in human beings. According to that same provision and in accordance with Section 38 pars (1) and (2), even where a prosecutor has not decided to institute proceedings but there are reasonable grounds to believe the person is a victim of trafficking, or, where the matter cannot be brought before the prosecutor as it has not been possible to bring charges against anyone, the National Assistance Centre running the Joutseno Reception Centre may still identify the person as a victim of trafficking in human beings after a hearing of the multi-professional expert group. While identification has been discussed at length in this Opinion, and previous recommendations have been made that the Finnish system of assistance is too closely tied with the investigations, this particular article appears to move in the right direction of disentangling every case of a person suspected of being a victim from any potential participation in a trial, especially since, as the provision itself admits, many cases may remain unsolved, or rather it would be impossible to bring charges against someone. Assistance to the victims therefore should clearly not be dependent on a prosecution case going ahead, or in fact any cooperation of victims in such. **The Article could be strengthened to acknowledge this very important principle that assistance is not given only when a person (victim) agrees to cooperate.** Furthermore, Section 38 of the Reception Act is not clear on whether assistance is dependent on a residence permit, so it is recommended it be clarified that assistance shall be given regardless of immigration status. Identification of a person as trafficking victim by the National Assistance System should form a basis for giving to such a person a temporary residence permit either on the basis of the cooperation with the authorities (Article 28 of the CoE Trafficking Convention) or on the basis of his/her personal situation as per the CoE Trafficking Convention.
88. **A personal interview with the individual** should take place and decisions shall not be made without being able to exercise the right to be heard. **It would also be advisable to delineate what the definition of “cooperation with the authorities” entails (as in Section 36 of the Reception Act).** This would be in line with the Article 28 of the CoE Trafficking Convention wording : “...or otherwise cooperating with investigating and prosecuting authorities”.

⁸⁰ [European Commission – Together Against Trafficking in Human Beings – Estonia](#)

89. Further, **it is recommended that legislation or guidance for investigating authorities, prosecutors, and courts⁸¹ state that the responsibility to explore alternative investigative strategies, with reliance on intelligence information lies with law enforcement authorities.** This would encourage the carrying out of investigations and prosecutions without solely and exclusively relying on victim/witness testimony and would reduce the need for victims to be required to testify in court.⁸²

RECOMMENDATION H

- to provide separate and appropriate assistance and protection measures for victim-witnesses who decide to participate in criminal investigations and trials relating to the prosecution of their trafficker. Such assistance may include physical protection, relocation, pre-recorded interviews, identity change and assistance in obtaining jobs (where the case may take a lengthy amount of time)

6.2 Compensation

90. At the EU level, Council Framework Decision 2001/220/JHA of 15 March 2001⁸³ on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition, victims of trafficking in human beings should be given access without delay to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and representation could also be provided by the competent authorities, for the purpose of claiming compensation from the State. Article 15 par 1 of the CoE Trafficking Convention and European Union regulations⁸⁴ require that information on compensation from administrative and judicial authorities be provided in a language that the victim understands.

6.3 Assistance and Protection for Victims -Witnesses and Collaborators

91. Where the Chapter 4 of the Reception Act (388/2015), or other relevant provision (not within the scope of the Opinion) **are recommended to be strengthened is in the cases where the victim of trafficking in human beings decides to cooperate with the authorities for the purposes of conviction of his/her trafficker.** Currently, the said Act does not refer to any assistance measure for victim-witnesses.
92. Both the UN Palermo Protocol and the CoE Trafficking Convention stress that victims' safety and protection needs shall duly be taken into account (Article 6 par 5 and Article 12 par 2 respectively). Article 28 of the CoE Trafficking Convention specifically stipulates that states shall provide effective and appropriate protection from potential retaliation or intimidation **during and after** investigation and prosecution of perpetrators for victims, persons reporting criminal offences **or otherwise cooperating with the investigating or prosecuting authorities,** witnesses and, where necessary, family members of victims and witnesses. **Such measures may include physical protection, relocation, identity change and assistance in obtaining jobs (as the case may take a lengthy amount of time). What is more, child victim-witnesses must be afforded special protection measures taking into account the best interests of the child.** Finally an important obligation under the CoE Trafficking Convention may be found in Article

⁸¹ For more information see for instance: ["Ruling of the Plenary Session of the Supreme Court of the Russian Federation no. 58, as of 24 December 2019 "On Judicial Practice in Cases regarding Abduction, False Imprisonment and Human Trafficking"](#)

⁸² *Op. cit.* footnote 11 (OSCE Action Plan to Combat Trafficking in Human Beings, PC.DEC/557) Chapter III, points 2.6 and 2.7. See also: [Preliminary Recommendations on the draft Law of the Republic of Moldova on Prevention and Combating of Trafficking in Persons, 6 April 2004, par 3.36.](#)

⁸³ [Official Journal of the European Communities L 82 volume, 4, 22.3.2001](#), p. 1.

⁸⁴ *Ibid*, Article 4.1.

28 par 4, which states that those persons assisting victims should also receive adequate protection, stipulating that “when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organizations” who assist victims. **It is therefore strongly recommended to introduce measures of assistance to all victims-witnesses and persons who report to or otherwise cooperate with judicial authorities in the legislation of Finland.** Furthermore, it is incumbent on the state to conduct a risk assessment in order to ascertain the risk of retaliation to the victim or of re-trafficking. Chapter 4 of the Act on Assistance System (388/2015), in Article 38a, already provides for these assistance measures and is welcomed. **Indeed it is recommended that if victims are already able to benefit from other sources of assistance these should not be taken away as a result of re-classification of status.**

RECOMMENDATION I

-to provide child victim-witnesses with special protection measures taking into account the “best interests of the child” under the UN Convention on the Rights of the Child.

6.4 Privacy

93. In particular in the context of prosecution but not only, the right to privacy of victims and their physical safety as well as those who assist them should be ensured regardless of whether or not they partake in a trial. Both Article 6 of the UN Palermo Protocol and Article 11 of the CoE Trafficking Convention stress the need to protect the privacy/private life and identity of victims of trafficking. Article 11 stipulates that personal data should be stored and used in conformity with the conditions provided by the CoE Trafficking Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It also stimulates States to adopt measures encouraging the media to protect the private life and identity of victims. Article 28 of the CoE Trafficking Convention provides particular protection for victims and witnesses (particularly if they are children) in the course of judicial proceedings. The importance of personal data of victims is also noted in Preamble par 33 of the EU Anti Trafficking Directive.
94. With regard to privacy, the current Chapter 4 of the Reception Act (388/2015), par 38c (388/2015) states that “the multi-professional expert group” attends to the **flow of information between the Reception Centre and other authorities. There should be a specific legal norm that would provide for this type of data sharing.** It is stressed that particular attention should be paid to issues of confidentiality with regards to victims of sexual exploitation and the transmission of sensitive information to the police or to or from the multi-expert group. For these purposes, **it is recommended to develop a procedure of sharing and storage of data on victims of human trafficking and include issues about the confidentiality of personal data in training programs for specialists that would meet the demands of the CoE Trafficking Convention, Article 11,** which refers to the obligations of Finland on storing and using of personal data in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), but also under the obligations of the European Union Regulation General Data Protection Regulation (“GDPR”),⁸⁵ and cooperation on criminal matters. It is also worth noting the obligation in the CoE Trafficking Convention Article 5 pars 1 and 2 on ensuring coordination (including information sharing) between bodies responsible for preventing trafficking. This extends beyond criminal matters.

⁸⁵ Regulation (EU) 2016/679 ([General Data Protection Regulation](#)) in the current version of the OJ L 119, 04.05.2016; cor. OJ L 127, 23.5.2018,

6.5 Non-Punishment

95. Currently, Chapter 17, Section 7 – State border offence (146/2014), of the Criminal Code (39/1889, amendments up to 766/2015 included) of Finland, Section 2 states that “[...] A foreigner who has committed the offence referred to in subsection (1) [illegal border crossing into Finland] due to the fact that he or she has been subjected to trafficking in human beings referred to in Chapter 25, Section 3 or 3(a) *shall not be sentenced* for a border offence (650/200). **This provision is highly commendable and welcome, however, its scope covering only illegal border crossing is much too narrow.** Chapter 6 Section 12 – on the Waiving of punishment (515/2003), is not considered suitable, sufficient or indeed even relatable to a genuine non-punishment provision.
96. A non-punishment clause that would meet the standards of both international law and reflect the reality of the trafficking situations that are extremely varied must go beyond simply not punishing illegal border crossing. An express non-punishment clause should be available to victims who have committed crimes or offences of varying degrees (administrative law provisions, petty offences etc.), in the course of or as a consequence of the situation of enslavement, duress or exploitation. *“The rationale for non-punishment of victims of trafficking is that, whilst on the face of it a victim may have committed an offence, such as irregular crossing of a State frontier or theft, the reality is that the trafficked person acts without real autonomy. They have no, or limited, free will because of the degree of control exercised over them and the methods used by traffickers, consequently they are not responsible for the commission of the offence and should not therefore be considered accountable for the unlawful act committed. The same applies where the victim has escaped from their trafficker and the crime they have committed arises as a direct consequence of their trafficked status.”*⁸⁶ Other acts such as use of false ID or passports, or the making of false declaration in front of authorities, have in some cases in fact served to prove as evidence that the person was a victim of trafficking.⁸⁷
97. The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings has urged that the “non-punishment provision should be interpreted in light of the definition of trafficking in human beings, especially with regard to compulsion. A comprehensive understanding of compulsion includes all the means of trafficking: threat/ use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability. Being “compelled” to commit a crime thus includes the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will.”⁸⁸
98. In 2011, the adoption of the EU Anti-Trafficking Directive strengthened the approach to non-punishment and it appears wider than the CoE Trafficking Convention; **the Directive establishes an express obligation not to prosecute.** Article 8 provides: “Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are **entitled not to prosecute or impose penalties** on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts [i.e., offences concerning trafficking in human beings] referred to in Article 2” (emphasis added). **It is recommended therefore that the Finnish authorities adopt the wider approach recommended by the EU Directive which includes not only expanding the variety of crimes that may be committed under duress (or the lack of any viable alternative while subject to the trafficker) of the trafficking situation, but also refraining from prosecution all together**

⁸⁶ [Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team](#), par 5

⁸⁷ *Ibid*, (Policy and Legislative Recommendations) p. 10, “People trafficked for sexual exploitation are often forced by traffickers to buy false ID documents or forged passports to be used when there are police controls. In one judgement, the Court of Appeal of Ghent examined a situation in which a trafficked person was forced to declare to the immigration office a false identity and nationality and the Court considered that this was a fact confirming the exploitation of the individual.” Source: Centre for Equal Opportunities and Opposition to Racism, Trafficking in and smuggling of human beings (Belgium) relating to judgment from the Court of Appeal of Ghent (Belgium), 31 May 2007.

⁸⁸ *Ibid* (Policy and Legislative Recommendations), par 12

and not just refraining from punishment (as is the case now in the Finnish law for illegal border crossing).⁸⁹

99. As regards children victims of human trafficking, the non-punishment principle is especially important given that consent to exploitation is irrelevant. **This principle should also be reflected in clear wording in the Finnish anti-trafficking legislation/criminal code.** It is recommended that concrete wording be adopted so that criminalisation of children victims of human trafficking is effectively prevented.
100. Adequate punishment for perpetrators of trafficking in human beings, as well as accomplices and accessories, should be in place. The crime of human trafficking according to Chapter 25, Section 3 of the Criminal Code carries a sentence of imprisonment of at least 4 months and to a maximum of 6 years. The aggravated version of the crime, which includes the situation of child trafficking, carries a sentence of imprisonment of at least two years to a maximum of ten years. **These provisions are in line with relevant international standards, which require that human trafficking crimes be punished in national legislation by effective, proportionate and dissuasive sanctions. However, the minimum sentence is low compared to other countries, such as Slovakia (minimum 4 years) and Italy (8 to 20 years).**

RECOMMENDATION J

to include in the legislation of Finland a clear and specific non-punishment provision for victims of trafficking in human beings for the offences that they committed non-voluntarily in the course of the trafficking situation, in particular, also for child victims of trafficking.

6.5.1. Examples of Non-Punishment Provisions from other OSCE participating States

101. In **Cyprus**, Article 29 of Law 60(I)/2014 provides that victims of human trafficking are not to be prosecuted and subject to sanctions for their involvement in criminal activities, if those were a direct consequence of the fact that the persons were victims of human trafficking.⁹⁰
102. In **Latvia**, non-punishment provisions can be found in Criminal as well as Administrative Law according to which a person may be released from a criminal or administrative liability if he or she has committed a criminal offence during a period when he or she was subjected to human trafficking and was forced to commit it.⁹¹
103. In **Germany**, the German authorities have also referred to articles in the Criminal law as a legal basis for the implementation of the non-punishment provision.⁹² However, recommendations

⁸⁹ *Op. cit.* footnote 9 GRETA CP/Rec(2019)06, par. 202 “To take further steps to ensure that the non-punishment provision is capable of being applied to all offences that victims of THB were compelled to commit, and to develop relevant guidance for police officers, prosecutors and judges” [Recommendation CP/Rec\(2019\)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland](#), adopted at the 25th meeting of the Committee of the Parties on 18 October 2019, page 3, and; *Op. cit.* footnote 10 (Report submitted by the authorities of Finland on measures taken to comply with Committee of the Parties Recommendation CP/Rec(2019)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings Second evaluation round Received on 16 October 2020 (CP(2020)09)), p. 12: “The newly issued instructions to the police take in account also the possibility that the victim of THB may have been forced to commit crimes. All circumstances around a committed crime need to be taken in consideration. The principle of non-punishment will be included in the THB training of prosecutors in the beginning of 2021. The consequences of the non-punishment provision have been proposed for revision as part of the development of the Action Plan against THB addressing all forms of THB. The concrete actions are included in the plan are still under discussion. The police instructions will be updated accordingly in due time.”

⁹⁰ [GRETA, Evaluation Report – Cyprus](#), published on 11 June 2020, par. 91.

⁹¹ [EU Commission, Together Against Trafficking in Human Beings- Latvia](#). Such provisions can be found in Criminal Law Section 58 “Release from Criminal Liability”, The Criminal Procedure Law Section 379 “Termination of Criminal Proceedings, releasing a Person from Criminal Liability” as well as in Latvian Administrative Violations Code.

⁹² Provisions in Criminal Law which could be used as a legal basis for the non-punishment principle: (Articles 240, 253, 232 of the [Criminal Code](#)) Also, Article 35 of the Criminal Code concerning duress, as well as Articles 153 and 153a of the [Code of Criminal Procedure](#)

have been put forward for the German authorities to ensure that the non-punishment provision can be applied to all offences that victims of human trafficking were compelled to commit and for all forms of trafficking.⁹³

104. In **Romania**, according to Article 20 of the Anti-trafficking law, “a person subject to trafficking who committed as a result of his/her exploitation, the crime of prostitution, begging, illegal immigration or unlawful crossing of a border of a state or donation of organs or tissues or cells of human origin (...) should not be punished for these crimes.” However, there are concerns that this provision gives a rather narrow interpretation of the non-punishment clause and that it does not cover all offences which victims of human trafficking were compelled to commit, including administrative and immigration-related offences.⁹⁴
105. Regarding, the **United Kingdom**; In *England and Wales*, Section 45 of the Modern Slavery Act⁹⁵ introduces a statutory defence for victims of modern slavery; The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act in *Northern Ireland* also introduced a statutory defence in Section 22. In Scotland, there is no statutory defence in place. Instead, Section 8 of the Human Trafficking and Exploitation Act 2015 in *Scotland* places a duty on the Lord Advocate to issue and publish Instructions about the prosecution of a person who is, or appears to be, the victim of an offence of human trafficking.

7. PROTECTION AND ASSISTANCE

106. The request for review of legislation submitted by the Finnish authorities requested a particular focus on the protection and assistance measures that ought to be in place for victims of trafficking in human beings. This section shall analyse the existing provisions on assistance against international and regional standards with a view to providing concrete recommendations, and also provide examples from other OSCE participating States on how such assistance is provided.
107. Of the legislation scrutinised, the most relevant to trafficking-related assistance is Chapter 4 of the Reception Act (388/2015). **The operation of this Act must first be clarified in order to ensure that it, as well as the acts that it refers to such as the Social Welfare Act 710/1982, Health Care Act 1326/2010, Act on the Status and Rights of Social Welfare Clients 812/2000, Act on Social and Health Care Client Fees 734/1992, and Act on the Promotion of Immigrant Integration 1386/2010,** are applicable to all victims of trafficking in human beings including third country nationals with an irregular immigration status.
108. As it stands, the Reception Act (388/2015) Article 36 provides for a recovery period for victims who “may be a victim of the offence” (see section 7.1 below). Access to services such as health care, welfare assistance, accommodation, interpretation and translation services, counselling and guidance, legal aid, services for children and unaccompanied minors and support and safe return, are dependent on whether a person is identified as a victim and admitted to the assistance system (Article 35). The earlier discussion on identification (and the aspects needing clarification) is of relevance here.

7.1 Recovery and reflection period⁹⁶

109. International and regional standards are clear on the necessity of introducing a recovery and reflection period for victims of trafficking in human beings who have been identified. They are also clear that the granting of such recovery and reflection period shall not be dependent on

providing for the possibility of dispensing with prosecution because the trafficking victim’s alleged guilt is considered to be of a minor nature and there is no public interest in prosecution.

⁹³ [GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human beings by Germany, published on 20 June 2019](#), ps. 50-51.

⁹⁴ [GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human beings by Romania, published on 30 September 2016](#), ps. 36-37

⁹⁵ [United Kingdom - Modern Slavery Act 2015](#)

⁹⁶ See also the NRM Assessment, p.

whether or not the victims participate in criminal investigations. Article 13 of the CoE Trafficking Convention requires only that there should be reasonable grounds to believe that the person concerned is a victim. Analogous provisions that relate to identification and reflection delay can be found in Article 11 and preamble par 18 of the EU Anti Trafficking Directive.

110. Article 13 of the CoE Trafficking Convention states that this period should last “at least” (minimum) of 30 days and it is designed to allow the person to free themselves of the trafficking situation, the perpetrator and receive all the necessary protection and assistance measures outlined in Article 12 pars (1) and (2) of the CoE Trafficking Convention. Therefore the minimum 30 days, with a possible extension to 60 is in line with international and regional standards.
111. While Section 36 on the Reception Act (388/2015), provides for such recovery period, it is not clear (unless by reason of translation) what is meant by the opening sentence, which states “A Finnish citizen or an alien who is a victim of trafficking in human beings and resided in the country legally as provided for in section 40 of the Aliens Act may be granted a recovery period of 30 days”. The reflection period for a victim of trafficking in human beings who is in Finland without legal right of residence is clearly governed by the provisions of sections 52b and 52c of the Aliens Act. The Aliens’ Act is not within the purview of this review.⁹⁷
112. **It is recommended that this provision be clarified and if necessary amended to ensure that it does not amount to the possibility of granting a recovery and reflection period only to those persons who are legally on the territory of Finland.** Furthermore, Section 38 states that a residence permit is granted if a victim is identified by the Finnish Immigration Service. Amended provisions on the reflection period should be implemented, under which the criminal investigation authorities are only provided with the data related to the victim’s identity when the Jousting Reception Centre makes a decision to grant a reflection period. The personal details of victims who have been granted a recovery period should not be disclosed to the law enforcement authorities if the victim is not willing to initiate cooperation with them, unless strictly needed, in narrowly defined situations, such as to ensure the rights of trafficked individuals (see also section 5.1 *supra* on identification of victims of human trafficking⁹⁸).
113. The recovery and reflection period it may also be used by nationals of Finland. The same aspects as for non-nationals can be relevant, even if the issue of immigration status will evidently not apply. For non-nationals, the measure is aimed at regularizing for a short period of time the potentially irregular status of the victims in the first place, which is often a barrier to coming forward to denounce their traffickers, reporting to the police, etc. for fear of sanctions for their irregular stay in the country.
114. The law is recommended to clearly state that as per Article 13 of the CoE Trafficking Convention, even where a person is on the territory of Finland in irregular migration status “[D]uring this period it shall not be possible to enforce any expulsion order against him or her”. This would also be in line with the *non-refoulement* obligation of Finland under international law and the Finnish Constitution, which in Section 9 states “The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A *foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity*”.⁹⁹ Additionally, the reflection period should be granted to victims of human trafficking who are residing in the country irregularly. It should be possible to disclose personal data to the authorities in order to ensure that the victim is not

⁹⁷ *Op. cit.* footnote 27 (Unknown future), p. 13: “Reflection and recovery periods. The report also examined reflection and recovery periods, the granting of these periods, and the practical implications for victims. The report showed that very few reflection and recovery periods have been granted so far. NGO representatives interviewed for the report took a rather critical view of these periods: the regulations and procedures regarding reflection and recovery periods do not work, and their purpose is not fulfilled. In the opinion of NGO representatives, the legal provisions on reflection and recovery periods and their application do not allow for genuine reflection and recovery. The reason for this is that information concerning the victim is always transferred from the system of assistance to the criminal investigation authorities. Information is passed, regardless of what the victim has decided to do during the reflection and recovery period and whether or not the victim can or dare share their experiences with the criminal investigation authorities and initiate criminal proceedings in the matter.”

⁹⁸ Under section 38 of the Reception Act, the actual identification of victims of human trafficking is made by a criminal investigation authority, the prosecutor, a court, the Finnish Immigration Service or, in certain limited cases, the Assistance System.

⁹⁹ [Constitution of Finland, Section 9 par 4.](#)

removed from the country, for example in a situation where he or she is encountered in connection with the controls of irregular migration.

7.1.1 Regulation of the Reflection and Recovery Period in other OSCE participating States

115. In **Portugal**, pursuant to Law No. 23/2007 on the Entry, Stay, Exit and Removal of Foreigners from Portugal, as amended through Law No. 29/2012, only third-country nationals are entitled to a recovery and reflection period, the duration of which is a minimum of 30 days and a maximum of 60 days. During this period, no expulsion order may be enforced. Persons granted a recovery and reflection period are entitled to emergency medical treatment, psychological assistance, protection, interpretation and legal assistance. When the victim is a child, the period may be further extended if this is in the child's best interests.¹⁰⁰
116. In the **Netherlands**, according to the Dutch authorities, a person who does not have legal residence and shows the "slightest indication" of possibly being a victim of THB is offered a three-month recovery and reflection period by the Police or KMar (a gendarmerie force performing military and civilian police duties). There is no requirement that the person concerned makes a formal statement or declaration.¹⁰¹
117. In **Spain**, a period for recovery and reflection of at least 30 days is granted by the Royal Decree 557/2011.¹⁰² Article 142 par 1, which approves The Regulations of the Organic Law 4/2000, on the Rights and Freedoms of Foreigners in Spain and their Social Integration, Following its reform by Organic Law 2/2009.
118. In **Ireland**, according to Section 5 of the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, persons who have been identified as presumed victims of trafficking may be granted a 60-day recovery and reflection period if they have no other valid permission to remain in Ireland. Further, the Administrative Immigration Arrangements provide that the Minister for Justice and Equality may grant a period longer than 60 days to suspected child victims, having regard to the arrangements in place for the care and welfare of the child.¹⁰³
119. In **Poland**, the Act on Foreigners came into force in May 2014. It regulates the issues of residence of foreigners in Poland, including foreigners who were identified as victims of trafficking in human beings. Under the act, **victims are entitled to a reflection period (3-month time permission of legal stay) as well as to a temporary residence permit of up to 6 months with the possibility of extension for another 6 months.**¹⁰⁴
120. In **Cyprus**¹⁰⁵, Law 60(I)/2014¹⁰⁶ defines trafficking in persons as a penal offence. The Law is aligned with the Council Directive 2004/81 and provides victims of trafficking with at least a one-month reflection period with the possibility of renewal. It is also aligned with the EU Anti-Trafficking Directive. According to the Law 60(I)/2014, victims are granted a reflection period of at least one month, with the possibility of renewal. During this period the victims have the following rights: protection from deportation, the right to medical care, the right to information concerning their rights and possibilities provided for by the Law, public allowance, the right to psychological support, protection by the police, free translation and interpretation services, protection of personal data, access to programmes provided by the State or by NGOs in cooperation with the State (if available).
121. In **Sweden**, on 1 July 2007, the provision in the Aliens' Act was amended in order to harmonise with the EU Directive on the victims of trafficking in human beings. At the request of the leader

¹⁰⁰ [GRETA Report Portugal](#), adopted 2 December 2016, p. 27.

¹⁰¹ [GRETA Report Netherlands](#), adopted 13 July 2018, p. 33

¹⁰² [Spanish Royal Decree 557/2011 of 20 April, approving the Regulation of the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social Integration](#)

¹⁰³ [GRETA Report Ireland](#), adopted 7 July 2017, p. 41

¹⁰⁴ *Op. cit.* footnote 47 ([European Commission, information on trafficking of human beings in Poland](#))

¹⁰⁵ [European Commission, information on trafficking of human beings in Cyprus](#)

¹⁰⁶ [Law 60\(I\)/2014 \(in Greek\)](#)

of the preliminary investigation, a residence permit for thirty days can now also be issued if the witness wants time for reflection in order to recover and to make a decision as to whether he or she wishes to cooperate with the criminal investigation authorities.

7.2 Residence Permits

122. The manner in which a residence permit is regulated for victims of trafficking has been described above and recommendations have been made, with the caveat that the Aliens Act of Finland does not fall within the scope of this review.
123. Under international law, according to Article 7 of the Palermo Protocol, states shall consider adopting legislation allowing victims to remain on the territory of a given state, temporarily or permanently, as appropriate. Humanitarian and compassionate factors should be taken into account. The OSCE Action Plan deals with residence permits under Ch. V (8.2 and 8.3). Provision of 8.3 is expansive in that it even provides for a work permit for the victim. MC(8).DEC/1 28 November 2000 par 10 states that participating States will consider adopting legislative or other appropriate measures, such as shelters, which permit victims of trafficking in persons to remain in their territories, temporarily or permanently, in appropriate cases.
124. Article 14 par 1 a of the CoE Trafficking Convention reiterates this principle by obliging states to issue renewable residence permits if authorities consider this necessary due to the victim's private situation, or for the purpose of this person's cooperation with competent authorities in investigation or criminal proceedings. In any event, granting such a permit shall be without prejudice to the respective persons' rights to seek and enjoy asylum. The European Court of Human Rights in the case of *Chowdury and Others v Greece* noted that "*States' domestic immigration law must respond to concerns regarding the incitement or aiding and abetting of human trafficking or tolerance towards it*"¹⁰⁷, recognising the link between the victim's immigration situation and vulnerability to human trafficking.
125. The EU Anti Trafficking Directive recognises the importance of granting residence permits to victims in Preamble pars 17 and 18.
126. Given the recognised link between a person's precarious or irregular immigration status and increased vulnerability to human trafficking or re-trafficking, it is recommended that a concrete, independent provision be adopted, recognising regularised immigration status and temporary (extendable) stay permit for those who have entered formal human trafficking identification procedures. This stay permit should not be linked with the victim's cooperation in criminal investigations, given the fact that many victims still struggle to come forward and participate in proceedings against their traffickers.

7.2.1 Regulation of Residence Permits for Victims of Trafficking in other OSCE participating States

127. In **Italy**,¹⁰⁸ a special residence permit for social protection has been established, envisaged by Article 18 of the National Law on Migration (Legislative Decree No 286 of 1998). The granting of this residence permit does not depend on reporting traffickers/exploiters to law enforcement agencies by the victim. The residence permit is renewable for one year and may be converted into a residence permit for education or work. To benefit from the Article 18 assistance programs funded by the government and implemented by regions, municipalities and NGO partners, the trafficking victim must be evaluated by a mandated agency provider as "in danger".
128. In **Greece**,¹⁰⁹ As provided by article 19A of the Criminal Procedure Code, victims of trafficking in human beings who do not cooperate with the competent authorities are granted, free of charge, a residence permit for humanitarian reasons according to a decision of the Minister of Migration

¹⁰⁷ *Op. cit.* footnote 27 (*Chowdury and others v Greece (Application no. 21884/15)*), par 87.

¹⁰⁸ [European Commission, information on trafficking of human beings in Italy](#)

¹⁰⁹ [European Commission, information on trafficking of human beings in Greece. See also European Website on Integration: Greek Citizenship Code-Modification of Law 4521/2014 with Law 4332/2015](#)

Policy. The holders of this permit have free of charge access to medical services and health care (Article 33 of law 4368/2016).

129. In **Belgium**,¹¹⁰ foreign potential victims of trafficking are granted a reflection period of 45 days during which they can decide either to file a complaint or make a statement of return to his/her country of origin. Under the Belgian system, testimony in court proceedings is not a condition for a victim to be granted the status of “victim of trafficking in human beings”. The victim may obtain permanent residency after their traffickers have been sentenced. The victim can also obtain an unlimited residence permit without the conviction of the trafficker(s), provided that the Public Prosecutor or the Labour Auditor has established in his/her charges the offence of trafficking in human beings. The legal basis of the scheme has been provided by the Law of 15 September 2006¹¹¹ amending the Aliens Law of 15 December 1980 (Article 61/2 to 61/15).
130. In **Germany**,¹¹² Section 25 (4a) of the Act on the Residence, Employment and Integration of Foreigners in the Federal Territory of the Federal Republic of Germany contains a special humanitarian provision on the issuance of a residence permit to a victim of human trafficking. A permit should be granted if (inter alia) the individual in question shows a willingness to testify as a witness in the criminal proceedings concerning the offence committed against them. In addition, after conclusion of the criminal proceedings against the perpetrators the permit should be prolonged if the foreign individual’s continued presence in Germany is required for humanitarian or personal reasons, or for matters of public interest.
131. In **Spain**,¹¹³ there has been an amendment of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 2/2009, of 11 December and OL 10/2011, of 17 July)¹¹⁴, introducing Article 59 bis (subsequently amended by Organic Law 10/2011, of 17 July), which establishes a specific status for undocumented migrants who are victims of trafficking in human beings so that the victim is informed of the provisions under the said Article. Trafficking victims subject to the regime provided for in Article 59 bis of the Aliens Act may freely choose to seek a residence and work permit for exceptional circumstances, or assisted return to their country of origin.
132. In **Malta**,¹¹⁵ Subsidiary Legislation (S.L. 217/07)¹¹⁶ transposing Council Directive 2004/81/EC was passed in 2007. This legislation provides for giving victims of trafficking or illegal immigrants who cooperate with the Maltese authorities, permission to reside in Malta for a period of six months (renewable). This legislation also provides for a reflection period of up to two months, prior to the granting of the six-month residence permit. The temporary residence permit may be renewed if required in accordance with the Permission to Reside for Victims of trafficking or Illegal Immigration who Cooperate with the Maltese Authorities Regulations (S.L. 217/07).
133. **USA: T-Visa status was created by US Congress in 2000 as part of the Victims of Trafficking and Violence Protection Act**. The T-Visa system permits certain victims of trafficking to remain in the USA for up to 4 years if they have assisted law enforcement in a criminal investigation or prosecution for human trafficking. T-visas offer protection to victims who lack regular immigration status and are therefore specifically vulnerable to traffickers. The T-Visa provides them with lawful residence status, access to the employment market and a range of federal and state benefits and services.
134. T-Visa status can become permanent residence with provision of a green card, and it can also extend to victims’ qualifying family members. By keeping witnesses and their families safe in a

¹¹⁰ *Op. cit.* footnote 43 ([European Commission, information on trafficking of human beings in Belgium](#))

¹¹¹ Website of the [Ministry of Foreign Affairs of Belgium: Asylum Procedure in Belgium](#)

¹¹² [European Commission, information on trafficking of human beings in Germany](#)

¹¹³ [European Commission, information on trafficking of human beings in Spain](#)

¹¹⁴ *Op. cit.* footnote 94 ([Spanish Royal Decree 557/2011 of 20 April, approving the Regulation of the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social Integration](#))

¹¹⁵ [European Commission, information on trafficking of human beings in Malta](#)

¹¹⁶ [Permission to Reside for Victims of Trafficking or Illegal Immigration who Co-operate with the Maltese Authorities Regulations, 6 July, 2007](#)

way that provides them with the ability to support themselves, the T-Visa system has greatly strengthened the ability of law enforcement agencies to investigate trafficking crime and secure successful convictions of traffickers.¹¹⁷

135. It is worth to noting that a properly established NRM is essential to ensure that all identification stakeholders operate within their mandates and respective roles depending on whether this identification leads to a residence permit or further supports an asylum application. Discrepancies may arise in recognition rates for human trafficking victims, disputes between different decision-making authorities or divergent burdens of proof which impact the outcome of a human trafficking case. This is a newly presented problem in the United Kingdom, which has manifested in two domestic cases *MS (Pakistan)* and *DA and Others v SSHD*.¹¹⁸

7.3 Assistance Measures

136. According to Article 6 par 3 (d) of the Palermo Protocol, victims shall be provided with employment, educational and training opportunities. This is reflected in Article 12 par 4 of the CoE Trafficking Convention, which notes that states shall authorize lawfully resident victims to access the labour market, vocational training and education. Provision of social assistance is regulated in Ch. V(6) of the OSCE Action Plan. Article 6 par 3 of the Palermo Protocol specifies that states shall consider implementing measures to provide for, *inter alia*, the social recovery of victims of trafficking, including in particular the provision of material assistance (par 3 (c)). Article 12 of the CoE Trafficking Convention, particularly its par 1 a), reiterates this obligation.
137. It is assumed that once a person who may be a victim of trafficking is identified according to Chapter 4 of the Reception Act (388/2015), the assistance measures which are laid down in the said act and other acts which are referenced in it apply to the said individuals. However, it is recommended that a special act should be drafted on assisting victims of human trafficking, in which the link between assistance and criminal proceedings should be loosened and the system of assistance made more victim-oriented.¹¹⁹
138. If no special act is enacted, the special status of victims of human trafficking should be secured under the general social welfare and healthcare legislation by laying down provisions on the status of victims as beneficiaries of social and healthcare services in municipalities, including therapy services provided for the client free of charge.
139. The Ministry of Social Affairs and Health should issue instructions for the application of legislation on victims of human trafficking and the relationship between this legislation and other statutes applicable to social welfare and healthcare (including the Act on Social Assistance).
140. It remains to be clarified however, to what extent assistance measures are available where Finnish Immigration Services do not grant a residence permit as per Section 38 of the act referring to the Aliens Act (outside the scope of the review).
141. As regards secure accommodation (Section 38a par (2), the OSCE Action Plan addresses the need for accommodation provision in Chapter V(4) with reference to dedicated “shelters”. Under Article par 3 (a) of the Palermo Protocol, states should consider providing appropriate housing to victims of trafficking to help them recover. In OSCE MC.DEC 5/08 special reference is made to the obligation of participating States to provide secure accommodation without undue delay. This is reiterated and enhanced in Article 12 par 1 a) of the CoE Trafficking Convention obliging states to provide, at the least, standards of living capable of ensuring the subsistence of victims of trafficking, through such measures as e.g. appropriate and secure accommodation. The necessity for States to take due account of victims’ safety and protection needs is reiterated in Article 12 par 2 of the CoE Trafficking Convention which requires that victims are placed in safe

¹¹⁷ U.S. Citizenship and Immigration Services (2018), [Victims of Human Trafficking: T Nonimmigrant Status](#), Washington, DC: USCIS.

¹¹⁸ Supreme Court of the United Kingdom: [\[2020\] UKSC 9, 18 March 2020](#)

¹¹⁹ *Op. cit.* footnote 29 ([An unknown future](#)), p 26

accommodation. Accommodation is also referenced in Article 11 par 5 of the EU Anti Trafficking Directive.

142. Chapter 4 of the Reception Act (388/2015), refers mainly to the Joutseno Reception Centre but also to the responsibilities of the municipalities.¹²⁰ The Act on the Promotion of Immigrant Integration (1386/2010), contains a number of provisions referring to reimbursement of municipalities for the assistance provided to victims of trafficking (Section 53 Act on the HEUNI Promotion of Immigrant Integration (1386/2010), which form a basis of the Finnish dual assistance system. **It is recommended that accommodation and services provision are at all times based on individual needs assessment in the already existent dual Finnish assistance system created and funded by the government of Finland, regardless of who is the provider under the dual system (indeed, the provider may change from the reception centre to the municipality, NGO and vice versa in different stages in which assistance is offered to trafficking victims). Facilities where the physical safety of victim-witnesses may be secured, and the special needs of children or vulnerable persons can be met, based on such needs assessment should be made available, created and funded in Finland.**
143. **Accommodation safeguards are therefore recommended to be put in place** taking into consideration gender and age sensitivities; for instance unaccompanied children should not be accommodated in the same space as adults. During the rehabilitation period, it is necessary to provide for the possibility of separate accommodation for men and women: the establishment of separate shelters or separate rooms for men and women with children within one shelter. Separate arrangements should be made for members of the LGBTI+ group, disabled persons etc. and families.
144. **It is also recommended that it be made clear that the “counselling and guidance”| assistance provided by Article 38a of the Reception Act (388/2015) ensures psychological assistance: In line with Article 12 par 2 of the CoE Trafficking Convention. It is also recommended to develop and finance on an ongoing basis long-term psychological assistance programs** during the reintegration period of victims and the regular training of psychologists involved in the provision of rehabilitation and reintegration services in working methods within the framework of trauma-focused therapy.
145. With regards to material assistance, social welfare and other assistance, it is welcomed that Section 38a of Chapter 4 of the Reception Act, (388/2015) par 3, 4, 5 includes social assistance, medical and social service. It is also welcomed that references to *individualised assessment* of the need for support of a victim takes into consideration their age, vulnerability, physical and mental state as well as other security considerations. The individualized assessment may need to be updated periodically to reflect the current situation of the victim. This provision is a positive step towards establishing in law the services needed by trafficking victims to regain control of their lives. The introduction of a victim’s needs-based approach in the provision of such assistance has significantly enhanced this law, in line with international legal standards. Section 38a par 7 of the Reception Act, (388/2015), helpfully refers to the Act on Legal Aid as assistance offered to victims. Chapter 7, Section 56 of the Act on the Promotion of Immigrant Integration (1386/2010), refers to the right to a legal representative for unaccompanied child victims of trafficking. Otherwise, the Act on the Status and Rights of Social Welfare Clients 812/2000, and the Act on Client Charges in Healthcare and Social Welfare, as well as Act on the Promotion of Immigrant Integration (1386/2010) (bar one provision), do not make it clear that the generous social provisions would be available to victims of trafficking, therefore leaving them within a separate system as outlined by Section 38a pars 1-7 in the Reception Act. **It is recommended to take the opportunity to clarify the applicability of social, material and (as in the laws on integration) linguistic opportunities offered to non-citizens/residents.**

¹²⁰ Section 33 of Reception Act which states: The purpose of the assistance system shall be to: 3) arrange assistance measures for victims of trafficking in human beings who do not have a municipality of residence in Finland as referred to in the Municipality of Residence Act;

4) act in cooperation with a municipality in assisting a victim of trafficking in human beings who has a municipality of residence in Finland as referred to in the Municipality of Residence Act;

146. Section 38a of Chapter 4 of the Reception Act (388/2015), par 8 also states that one form of assistance is “tracing a parent or some other person responsible for the actual custody of an unaccompanied minor who is a victim”. **It is recommended that the provision ensures individual assessment of each child’s case prior to seeking out and tracing the parents responsible for the minor, in full conformity with the provisions of the CRC Convention (in particular Articles 9 and 10).**
147. **It is recommended to consider introducing special assistance measures for children, whose needs will greatly vary to those of adult victims of trafficking (see section 7.5 *infra*).**

7.3.1 Examples of practice of other participating States in providing assistance

148. In **Italy**, transitional protection is ensured under the “Article 13 Programme”, which includes access to work, welfare, and health care, and reintegration assistance.¹²¹ Article 13 of Law no. 228/2003 provides an assistance program specific for victims of trafficking and exploitation and ensures transitional protection through access to adequate housing conditions, health care and psychological assistance after the reflection period.¹²²
149. In **Romania**, accommodation in specialised centres for a period of ten days is mandated by the state, and may be extended to three months, which corresponds to the length of the reflection period. After the reflection period, victims of trafficking have access to continued psychological and medical assistance.¹²³
150. In the **United Kingdom**, victims of trafficking are entitled to free basic healthcare. The Provision of Health Services to persons not ordinarily resident foresee free access to basic healthcare for potential victims of trafficking during the reflection period, or for identified victims of trafficking within the meaning of Article 4 of the CoE Trafficking Convention.¹²⁴
151. In the **Netherlands**, project plans for the further development of **specialized** shelters for victims is being developed and said to increase. The project works to ensure that when victims are ready to move on to (semi-) independent housing, such housing is available, and that municipalities have an obligation to provide them with housing. Also, within the specialized shelters, psycho-social diagnostics will be introduced, to make certain that victims receive tailor-made care and assistance, also after they leave the shelter.¹²⁵
152. With regards to free legal assistance in **Georgia**, the State Fund for Protection of and Assistance to Victims of Trafficking in Persons provides free legal representation to victims, including court representations in civil cases when victims claim compensation. There are solid arrangements made by the State Fund to provide free legal aid in both civil and criminal proceedings.¹²⁶
153. In **Austria**, the Intervention Centre for Trafficked Women is mandated by the Ministry for Constitutional Affairs, Reforms, Deregulation and Justice on the basis of section 66 of the Code of Criminal Procedure to legally advise and offer psychosocial support to victims during investigations and court proceedings free of charge.¹²⁷
154. In **Bulgaria**, the Law on Assistance and Financial Compensation to Crime Victims entitles both regular and irregular residents who are victims of human trafficking to free legal aid if they can present evidence that they cannot pay for legal assistance themselves. Moreover, the Law on Child Protection allows child victims the right to legal aid at all stages of legal proceedings.

¹²¹ [“The Italian system of assistance and integration of victims of trafficking in human beings, Article 13 Programme”](#)

¹²² *Ibid.*

¹²³ [European Commission, information on trafficking of human beings in Romania.](#)

¹²⁴ Regulation amendments of 2008 for Northern Ireland (Article 3), as well as the National Health Service (Charges to overseas visitors) (Amendments) Regulations for England (Articles 1 and 2), Wales (Article 2) and Scotland (Article 4).

¹²⁵ [European Commission, information on trafficking of human beings in the Netherlands.](#)

¹²⁶ [GRETA \(2011\)24 Report on Georgia](#), 7 February 2012, par. 185.

¹²⁷ [European Commission, information on trafficking of human beings in Austria.](#)

Lastly, foreigners who have suffered from a crime in Bulgaria are entitled to report it in their own language and to have the assistance of an interpreter, free of charge.¹²⁸

155. In **Romania** free legal advice and free legal representation are provided for victims of human trafficking.¹²⁹
156. In **Denmark**, pursuant to section 741(a to c) of the Administration of Justice Act, the court shall assign, on the victim's request, a lawyer to a victim of trafficking during criminal proceedings.¹³⁰ Their tasks include explaining the procedures, informing victims about access to psychological and social support and the right to compensation, assisting them in court, handling the compensation claim and providing assistance if the victim applies for asylum or residence. The lawyers are entitled to participate in the police questioning of the victim and can ask follow-up questions to the victim. The lawyers are assigned free of charge for the victims unless the expense is covered by a legal expenses' insurance or other insurance.¹³¹

7.4 Compensation for Victims of Trafficking

157. The legislation under review does not expand on the notion of compensation of victims of trafficking in human beings. Whereas, under international law victims of human trafficking have a right to compensation. Compensation entails the reimbursement of material and immaterial damages a trafficked person has suffered. According to both Article 6 par 6 of the UN Palermo Protocol, states shall ensure that their domestic legal systems offer to victims of trafficking the possibility of obtaining compensation for damages suffered. The importance of compensation is also addressed in par 10 of OSCE MC.DEC/5/08, which encourages participating States to ensure under domestic law that victims have access to compensation, which is fair and appropriate under criminal and/or civil law proceedings.¹³² The CoE Trafficking Convention has a separate provision on compensation and legal redress, namely Article 15, obliging states to provide proper information on judicial/administrative proceedings in a language that the victims understand and the right to legal assistance and free legal aid. This same provision stipulates the right to compensation under states' domestic systems, both from perpetrators (par 3) and via other conditions, e.g. a victims' fund or measures or programmes aimed at social assistance and social integration of victims, which could be funded by funds obtained through fines and other sanctions. Article 12 of the EU Anti-Trafficking Directive makes an explicit reference to compensation in connection with the provision of free legal assistance and legal aid.

7.4.1 Examples from other OSCE participating states on compensation schemes

158. In the **United Kingdom**, Section 8 of the Modern Slavery provides for reparation orders to ensure that more money from convicted perpetrators goes directly to victims.¹³³ If the perpetrator does not have sufficient funds to pay both fines and compensation, the court should give preference to compensation.¹³⁴
159. In **France**, confiscated assets may be used to compensate victims of trafficking, and the Agency for the Management and Collection of Seized and Confiscated Assets, which facilitates seizures and confiscations in criminal matters, must prioritise the compensation of those that have started a civil action.¹³⁵

¹²⁸ [Crime Victim assistance and financial compensation Act of 2006 of Bulgaria](#), Articles 8 and 10.

¹²⁹ 2 Romania, Law No. 211/2004 on Measures to Ensure the Protection of Crime Victims (Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor), 27 May 2004, Articles 8, 14 and 21. See also: [The Impact of the "Victim's Directive on the Romanian Support Legislative Framework"](#).

¹³⁰ [Danish Administration of Justice Act as of 2013.pdf \(unodc.org\)](#).

¹³¹ [GRETA Report Denmark, Adopted 11 March 2016, par 127](#)

¹³² *Op. cit.* footnote 14 (OSCE, Ministerial Council Decision No. 5/08)

¹³³ *Op. cit.* footnote 97 (UK Modern Slavery Act), Provision 9.1

¹³⁴ *Ibid*, Provision 8.6

¹³⁵ In terms of Article [1382 of the Civil Code](#): "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it". Article 475-1 (criminal court) and 375 CCP (Cour d'assise) of the Code of Criminal Procedure.

160. In **Georgia**, victims of trafficking can apply for a one-off payment compensation from the State Fund (equivalent to approximately 390 euros), regardless of their cooperation with the law enforcement authorities, if the alleged perpetrator is not identified and detained within three months, or if it is impossible to enforce the compensation order against the perpetrator within six months after the court decision.¹³⁶ If a victim has received compensation from the State Fund, they remain eligible for compensation from the offender, even if the offender is detained and brought to justice after the victim received State compensation.¹³⁷
161. In **Sweden**, the law allows for compensation claims of trafficking victims in both criminal and civil courts.¹³⁸ In cases where the perpetrator was not identified or cannot pay compensation, victims can apply for state compensation through the Crime Victim Compensation and Support Authority. Moreover, it is possible to apply for compensation up to three years after the completion of the criminal case (in case of child victims the limit is until the victim reaches the age of 21),¹³⁹ and mechanisms ensure that a victim can still access compensation if they have returned to the country of origin.¹⁴⁰
162. In **Iceland**, state compensation is paid to victims of crimes even if the offender is unknown, is a minor or is mentally unstable.¹⁴¹ The victim claims compensation directly from the state and has no obligation to try to collect it first from the offender. The state recovers the compensation amount from the perpetrator if the latter is known, and the nationality of the victim has no bearing on the outcome.¹⁴²
163. In the **Netherlands**, since 2011 Dutch law provides for advance payment by the state to victims of human trafficking.¹⁴³ Moreover, if the convicted perpetrator has not paid the full amount of compensation eight months after the judgment has become final, the state pays the outstanding amount to the victim and recovers it from the perpetrator.¹⁴⁴
- In **Austria**, the Victims of Crime Act was amended in 2013 to provide compensation to victims of trafficking with irregular immigration status.¹⁴⁵ Moreover, the Chamber of Labour provides legal support for claiming unpaid wages and supports victims of trafficking through labour law court proceedings.¹⁴⁶

7.5 Assistance and Protection Of Children

164. As already recommended above, it is recommended to consider addressing the special assistance needs of children who are victims of trafficking.
165. Recognising the enhanced vulnerability of children, the UN Palermo Protocol, Article 6 par 4 stresses that states shall take into account the special needs of children victims of human trafficking, including appropriate housing, education and care. The UN Convention on the Rights of the Child urges States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or

¹³⁶ [GRETA \(2021\)02 Evaluation Report Georgia, par 60.](#)

¹³⁷ In accordance with Article 16 of the Anti-Trafficking Law, victims of trafficking have the right to claim compensation in a civil court for moral, physical or material damages suffered. In addition, victims have the right to request compensation from the State Fund, pursuant to the Operational Instructions for the Protection of Victims of THB and the “Rules and amounts for compensating victims of THB”, adopted by the Co-ordination Council on 26 November 2006, *Op. cit.* footnote 128 (GRETA Report on Georgia), par 182.

¹³⁸ *Op. cit.* footnote 43 (Compendium), p.20. See also: [Criminal Injuries Compensation \(brottsoffermyndigheten.se\)](#)

¹³⁹ [GRETA Report on Sweden, adopted 23 March 2018](#) pars. 157-159.

¹⁴⁰ *Ibid* (GRETA Report on Sweden), par 158.

¹⁴¹ Victims of human trafficking are entitled to compensation according to Article 1(1) of the Act on Compensation to Crime Victims No. 69/1995; [Hard Data Data Collection Mechanisms on Human Trafficking in the Baltic Sea Region](#), p.107.

¹⁴² *Op. cit.* footnote 43 (Compendium), p.20.

¹⁴³ *Ibid*, p.19.

¹⁴⁴ *Ibid*, p.19.

¹⁴⁵ *Op. cit.* footnote 129 (European Commission – Austria)

¹⁴⁶ *Op. cit* footnote 43 (Compendium), p. 19

punishment; or armed conflicts.¹⁴⁷ At OSCE level, the OSCE Action Plan contains specific safeguards in relation to children victims of human trafficking under Ch.V par 10. OSCE MC.DEC 5/08 specifically refers in par 7 to child victims with direct reference to the principles of the best interests of the child, non-discrimination and the right of the child to be heard. OSCE MC. DEC 6/18 and 7/17 as well as PC.DEC/685 (pars 6-13) contain an additional extensive list of safeguards, which the participating States are encouraged to adopt in respect of children.¹⁴⁸

7.5.1 Examples from other states on special assistance measures for children

166. **In Cyprus**, under Law 60(I)/2014¹⁴⁹ in compliance with the Optional Protocol of the UN Convention on the Rights of the Child, there are several provisions included for cases where children are involved. For example, stricter penalties, while in the 'identification and protection of the victims' part of the Law, special measures and methods are provided for child victims. The Law also provides for victims' access to education and provides child victims the opportunity to testify in court through video recorded statements.¹⁵⁰
167. **In Belgium**,¹⁵¹ children who are victims of trafficking are granted a three month residence permit, during which time they have to decide whether to testify against their traffickers. The competent authorities must consider the best interests of the minor as long as the procedure runs. The minor will also be placed under guardianship. Foreign child victims are received in special centres for unaccompanied minors, which cooperate with the other three specialised reception centres for victims of trafficking. If they do not qualify for victim status, they may still qualify for protection under the government's rules for unaccompanied minors.
168. **In Greece**,¹⁵² according to the National Law, after an unaccompanied minor (UAM) is identified, the Reception and Identification Service (RIS) is responsible to inform the local prosecutor who acts as temporary guardian of the UAMs in the area of his jurisdiction. RIS also informs the National Centre for Social Solidarity (EKKA) for the identification of the UAMs. EKKA is the responsible authority for the accommodation of the UAMs. The Greek authorities reviewed the guardianship rules based on relevant EU directives, but the new guardianship law is still pending. According to the new law, EKKA will be the competent authority for recruiting, training, coordinating, and supervising professional guardians. The Office of the National Rapporteur monitors closely the process and advocates towards its timely conclusion.
169. **In Italy**,¹⁵³ the National Action Plan pays particular attention to the need to fully protect the rights of children in close co-ordination with child protection institutions. It contains in an annex the Standard Operating Procedures "AGIRE for the identification and support of child victims and at risk of trafficking", developed by Save the Children Italy and a network of partner organizations from Austria, Greece and Romania. These SOPs require that a specially trained guardian be immediately appointed in order to accompany the child throughout the identification process. Formal identification interviews must be preceded by a "reflection time" and take place in a child-friendly space under the responsibility of a qualified professional.
170. **In Spain**,¹⁵⁴ foreign children who are in Spain get access to education, health care and to basic social services and welfare benefits, under the same conditions as Spanish children, stressing that public administrations shall ensure the rights of the most vulnerable groups, such as child victims of trafficking in human beings. Also, when it is not possible to determine the age of majority of a person, that person shall be deemed to be a minor and shall remain subject to the provisions of

¹⁴⁷ UN Convention on the Rights of the Child, Article 39. [The Convention ratified by the Republic of Finland in 1991.](#)

¹⁴⁸ See also: [Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings: "Ensuring that Child Protection Mechanisms Protect the Rights and Meet the Needs of Child Victims"](#)

¹⁴⁹ *Op. cit.* footnote 108 (Law of Cyprus 60(I)/2014)

¹⁵⁰ *Op. cit.* footnote 107 (European Commission – Human Trafficking in Cyprus)

¹⁵¹ *Op. cit.* footnote 43 (European Commission – Human Trafficking in Belgium)

¹⁵² *Op. cit.* footnote 111 (European Commission – Human Trafficking in Greece)

¹⁵³ *Op. cit.* footnote 53 (Greta Report Italy), par 178.

¹⁵⁴ *Op. cit.* Footnote 115 – (European Commission - Human Trafficking in Spain)

that Law, whilst his or her actual age is determined. It is envisaged that, to the effect that the corresponding public entity may take a child in charge by operation of law, that child is in a situation of helplessness, when he or she is identified as a victim of trafficking in human beings and there is a conflict of interest with both parents, legal guardians and guardians. It has also been established as a requirement for access to, and practice of the professions, services and activities that involve regular contact with children, not having been convicted of an offence relating to prostitution, sexual exploitation and corruption of children, among others, as well as of the offence of trafficking in human beings.

171. In **Sweden**,¹⁵⁵ in February 2014, the Government presented a communication to the Parliament with the aim to strengthen the rights of children in Sweden and integrate the best interest of the child in all measures. The action plan aims to increase the understanding by public authorities, professionals, the public, and children themselves about the risks for children to become victims of human trafficking, exploitation and sexual abuse, increase the effectiveness of protection measures, and improve the contributions of Swedish public authorities to the international cooperation for the protection of children from human trafficking, exploitation and sexual abuse.¹⁵⁶
172. In **Denmark**,¹⁵⁷ children are considered a particularly vulnerable group under the Danish Aliens Act. Therefore, special protective measures are in place in relation to minors who are potential victims of trafficking. Most of the child victims of trafficking are either asylum seekers or irregular migrants. A broad range of stakeholders including the Danish Centre against Human Trafficking and other authorities such as the Danish police, the Danish Immigration Service, and the municipalities are involved in the efforts addressed at potential victims of trafficking who are children. Equally important are the reception and accommodation centres, social organizations conducting outreach work or child- and youth welfare institutions, staff in the penal system, including prisons and institutions for young criminals, hospitals, health units and tax authorities. These actors play an important role in ensuring early identification and support in accordance with the national action plan. Children in the asylum system are accommodated in specialized centres with trained staff. A personal representative (and a professional legal guardian when relevant i.e. for unaccompanied minors) is appointed to children, who are potential victims of trafficking, and their applications for asylum are assessed in a fast-track procedure.
173. **Lithuania:** The Barnahus Support Centre for Sexually Abused Children launched in 2016 in Lithuania, with the support of the EEA Grants, is the only service in Lithuania which provides specialized, complex services for sexually abused children and their family members. The Centre is unique among the European Barnahus centres, in that it has 10 places for children and also their carers to stay overnight if needed. The average stay is about 3 days.¹⁵⁸
174. **United Kingdom:** UK: The Scottish Guardianship Service for unaccompanied and separated children. In Scotland, the Guardianship service for children allocates a Guardian for each unaccompanied, asylum-seeking child who can provide independent advocacy, advice and support on welfare, immigration, asylum and NRM procedures. Any local authority or agency in Scotland can make a referral to the Scottish Guardianship Service.
175. The Guardianship service has developed from three guardians supporting approximately 30-45 new children each year to 15 guardians supporting 165 new children each year, with an average caseload of about 300 children and young people. The service has continued to innovate, by introducing complimentary services and projects to support young people's needs. For example, in addition to the legal service provision, it has introduced a befriending service as well as mental health peer support for young men.¹⁵⁹

¹⁵⁵ [European Commission - Human Trafficking in Sweden](#)

¹⁵⁶ [Regeringens skrivelse 2013/14:91: Åtgärder för att stärka barns rättigheter och uppväxtvillkor i Sverige \(20 February 2014\)](#)

¹⁵⁷ [European Commission - Human Trafficking in Denmark](#)

¹⁵⁸ <https://www.barnahus.eu/en/lithuanian-md-ia-centre-provides-temporary-accommodation-trains-1000-specialists-in-identifying-sexual-abuse-among-children/>

¹⁵⁹ [Scottish Guardianship Service](#)

176. **The Netherlands:** The Nidos Guardianship Service provides high standards of guardianship, support and care for children as well as child-specialist accommodation. It is appointed as a legal guardian under Dutch law for unaccompanied children arriving in the Netherlands. There are approximately 180 guardians working at Nidos, supported by a team which includes guardianship administration, a legal department and ICT department. Nidos is appointed as guardian by the court if the child is unaccompanied or their parents are unable to exercise parental authority over the child. The court-appointed guardian is the child's legal representative and is responsible for their welfare and the task of protecting them. A core element of the Guardian's role is provision of appropriate assessment and an ongoing Child Safety Plan. Guardianship is carried out by professionals with specific expertise who primarily act in the best interest of the child with respect for their cultural background and based on mutual commitment. Guardians are responsible for a maximum of 16 children at any one time, or less depending on individual children's levels of need. Nidos is responsible for managing the child's development to independence and intervening if this development is at risk of stagnation in any way.¹⁶⁰

8. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING LEGISLATION IN THE FIELD OF COMBATTING TRAFFICKING IN HUMAN BEINGS

8.1. Impact Assessment and Participatory Approach

177. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, par 5.8).¹⁶¹ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, par 18.1).¹⁶² The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.¹⁶³
178. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society and in this case specifically all of those non-governmental organisations that work with victims of trafficking at a grass roots level. All stakeholders from the public sector should also be consulted, in particular police, immigration authorities, social workers and members of education institutions. Sufficient time should be provided to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.¹⁶⁴ To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,¹⁶⁵ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).
179. In light of the above, **the public authorities are encouraged to ensure that legislation in this field is subjected to inclusive, extensive and effective consultations, including with civil society, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of**

¹⁶⁰ <https://www.nidos.nl/en/>

¹⁶¹ Available at <<http://www.osce.org/fr/odihr/elections/14304><http://www.osce.org/fr/odihr/elections/14304>>.

¹⁶² Available at <<http://www.osce.org/fr/odihr/elections/14310><http://www.osce.org/fr/odihr/elections/14310>>.

¹⁶³ See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

¹⁶⁴ See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

¹⁶⁵ See e.g., *op. cit.* footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders).

the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the laws, once adopted.¹⁶⁶

[END OF TEXT]

Annex 1: List of Laws reviewed and relevant excerpts :

The legislation provided in connection with the request is as follows;

- Social Welfare Act 710/1982, Health Care Act 1326/2010;
- Act on the Status and Rights of Social Welfare Clients 812/2000;
- Act on Social and Health Care Client Fees 734/1992;
- Act on Social Assistance 1412/1997;
- Chapter 4 of the Reception Act 388/2015 (Act on the reception of persons seeking international protection and on the identification of and assistance to victims of trafficking in human beings)
- Act on the Promotion of Integration 1386/2010;
- The Criminal Code of Finland (39/1889, amendments up to 766/2015 included)

Annex 2: Key Principles of Setting up a National Referral Mechanism can be found at: <https://www.osce.org/files/f/documents/0/4/13967.pdf> , Section 2, page 23.

¹⁶⁶ See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).