

Governmental report on Combatting Human Trafficking : 2011 - 2012



Federal Public Service
Justice

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1. INTRODUCTION

Under the law of 13 April 1995 containing provisions to suppress the trafficking and smuggling in human beings, the Government has the responsibility to draw up a biennial report on combating human trafficking.

This report covers the measures taken and actions undertaken by the competent institutions during the years 2011 and 2012. The next report will cover the 2013-2014 period.

It again uses the traditional structure first adopted several years ago.

Traditionally, three Ps are evoked when talking about human trafficking (prevention, protection of victims and prosecuting the authors, with a fourth P often included for partnership).

The report therefore summarises various Government initiatives during 2011 and 2012 regarding these different dimensions.

It details furthermore the working of the Interdepartmental Coordination Unit for Action against Trafficking and Smuggling in Human Beings. The Unit is not designed in itself to take all the departmental initiatives; its role is to bring the players together to ensure a consistent approach towards the trafficking phenomenon in terms of policy.

The report also includes a series of more operational data submitted by the players in the field or by other departments and certain information from specialised victim reception centres.

Apart from expanding the sections on prevention, protection and prosecution, this report also includes certain evaluations or analysis of specific themes. These are analyses conducted over the two years covered by the report.

Firstly, an *ad hoc* working group of the Interdepartmental Unit had been entrusted with examining the problem of recourse to interpreters under procedures linked to human trafficking. A report on this analysis is given in the section relating to investigations and prosecutions.

All members of the Interdepartmental Unit Bureau then assessed the circular of 26 September 2008 on multidisciplinary cooperation in relation to the protection of the victims of trafficking. The results of this evaluation are also provided in this report. Note that this analysis is still current despite some changes made after the results were published.

An analysis of the application of the system to minors was also commenced in 2012. The results are now available but will be incorporated into the next report (we are already publishing a summary in the annex, however).

The Government report confirms the desire of the Belgian authorities to combat the trafficking phenomenon constantly and also to provide information on what is being undertaken and on the evolution of the phenomenon.

We are certain that the collaboration between the various players and departments is going to continue so as to maintain the same level of combat against this phenomenon in the years to come.

2. INTERDEPARTMENTAL COORDINATION UNIT

The Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings was revitalised by the Royal Decree of 16 May 2004. Its missions are to:

- 1° allow effective coordination between the departments involved, which exchange the necessary information to achieve this with a view to ensuring a sustainable policy of combating the trafficking in and smuggling of human beings and especially with a view to dismantling and eliminating the activities of traffickers and their rings;
- 2° assess critically the evolution of results in the field of the combat against human trafficking and smuggling;
- 3° contribute to the formulation of proposals and recommendations for combating human trafficking and smuggling.

The Unit is not intended in itself to execute any human trafficking policy. This is down to the departments and units concerned. However, the Unit and its Bureau act as a platform for exchanging information and make sure that there is a consistent policy among players. It also develops its own initiatives when a multidisciplinary approach is required between departments.

We return here to certain initiatives specific to the Interdepartmental Unit. The Unit or its Bureau has also been involved in other actions but this is more partnership between players and these elements can be found at other levels of this report.

2.1. New action plan to combat the trafficking in and smuggling of human beings 2012-2014

The Belgian Government had previously adopted the 2008-2011 action plan. This was the first Belgian action plan to combat trafficking. There was previously a "management chart" prepared and monitored by the Interdepartmental Unit, but it was decided to make the initiatives to be taken more formal. This also complies better with the international recommendations on the subject.

Before discussing the new action plan, it may be interesting to assess the execution of the previous plan.

2.1.1. Execution of the 2008-2011 action plan

Overall, many points in the 2008-2011 action plan were executed, but little progress was made with others.

2.1.2. Prevention and training

The awareness-raising initiatives focused on miscellaneous aspects already stated in the previous report. Note that the Interdepartmental Unit Bureau prepared the flyer for Foreign Affairs for distribution in certain diplomatic offices to people requesting work visas. The Unit Bureau then worked on the issue of raising awareness in hospitals (see point 2.1.1.). Various departments also took initiatives in line with their skills: FEDASIL (Federal Agency for the reception of asylum seekers) training or preventing the exploitation of Brazilian citizens (Immigration Office), etc.

The College of Public Prosecutors also organised its briefing in 2009.

However, it was impossible for some initiatives to be achieved. For example, no awareness-raising tool was developed under the issue of sexual exploitation (except for the initiatives to combat child prostitution such as "Stop child prostitution"). This question should no doubt become a focus of attention in the future.

2.1.3. Protection of victims

Many tools have been set up to protect victims in line with formulated recommendations. The procedure for granting residence permits to human trafficking victims has been transposed into law and an *ad hoc* group from the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings prepared the circular on implementing multidisciplinary cooperation about the victims of trafficking in human beings and/or certain aggravated forms of smuggling of human beings¹.

The 2008 multidisciplinary circular is a key component of Belgian policy in combating human trafficking. It sets out clearly the operating schemes and inter-player communication channels. In addition, it provides concrete solutions to problems such as the protection of victims exploited when working privately for a diplomat. Criminal prosecution may not be commenced due to diplomatic immunity, and yet the issuing of residence permits in the victim protection procedure assumes the application of a criminal procedure. The circular establishes that in the event of a positive opinion by the Labour Inspectorate on the trafficking situation is revealed, the victim may be able to take advantage of the protection, even if the file is not pursued.

As the work is focused on the major areas of victim protection, there is now a need to look into more specific issues. This is especially true of measures to be taken to facilitate access to the procedure for victims who are minors.

The action plan also intended to work on the recognition and financing of reception centres. This point will be addressed in greater detail further on (see section on victim protection). Overall, the Interdepartmental Unit Bureau has drafted a variety of notes putting the potential courses of action into perspective. However, no solution for the financing section could be found from the options that had been envisaged. These consisted of creating a form of contractualisation in the payment of subsidies between the Federal State and the reception centres. However, the system was made very complex to set up due to the highly different nature of several existing sources of financing. This approach was finally set aside and it was decided to work on other options.

¹ Hereafter called "multidisciplinary circular".

2.1.4. Prosecution, convictions and legislative instruments

Few basic things stand out in terms of legislative changes. The period considered represented a time for assessing new human trafficking offences. These analyses normally showed that the new law had been applied reasonably correctly. Naturally, questions of case law interpretation and the need to clarify certain elements of the definition also emerged (for example, how the purpose of sexual exploitation is defined or the question of whether or not a "ring" is needed to convict on the basis of human trafficking).

Note that the draft legislative text on sanctioning main-contractors who rely on sub-contractors engaged in human trafficking was not followed up during the action plan execution period, despite being finalised in an *ad hoc* group of the Interdepartmental Unit. The Government also resigned in 2011, leaving the text as a product of the working group available for examination.

2.1.5. Evaluations and statistics

The Government continued with its evaluations, mainly of criminal policy directives (Circular on investigations and prosecutions of trafficking in human beings - Col 01/07). The Interdepartmental Unit Bureau also evaluated the multidisciplinary circular as planned. The results of this evaluation will be given in this report.

In the Justice Department, changes were made to the conviction database to differentiate between convictions for trafficking in or convictions for smuggling of human beings. These two categories were joined before 2010, which resulted in an over-representation of convictions.

It is however regrettable that the work of the CIATSHB (Centre for Information and Analysis regarding Trafficking and Smuggling in Human Beings) could not advance further. Many discussions were held on the possibility of adapting the legislation to be able to cross-refer the available data between departments (the Royal Decree of 16 May 2004 talks about anonymous data). However, the representations on the CIATSHB goals were not the same within the Management Committee and the falls of the government during the period precluded any concrete decisions.

2.2. 2012-2014 action plan

A traditional scheme was used to prepare the 2012-2014 action plan. It is important firstly to underline that it was never intended as such to be a "new" action plan, more an update of the previous one. Some projects under the previous plan were already in progress, others had been deemed as fairly unrealistic in retrospect and lastly it also had to be possible to launch a few new initiatives.

The new action plan was inspired not only by discussions between the experts making up the Unit Bureau but also by reports of the Centre for Equal Opportunities and the Fight against Racism (CECLR), the most recent government reports, criminal policy evaluations and conclusions of the Senate working group.

Not all the recommendations of this working group were incorporated in the action plan, for it was felt that some should be examined in greater detail. It does however include at least 80% of them.

The Interdepartmental Unit Bureau therefore prepared this new version of the document. In its final stages, it was submitted to the specialised reception centres for human trafficking victims and then to the Interdepartmental Unit for final approval (May 2012). The Minister for Justice and the Secretary of State for Asylum and Migration finally submitted the action plan to the Council of Ministers on 26 June 2012.

2.2.1. Legislative changes

Legislative modifications are a major issue in the 2012-2014 action plan. Firstly, because Belgium has to transpose the new European Union Directive on combating trafficking in human beings² and secondly, because some useful corrections can be made to the incrimination of human trafficking.

First and foremost, it was noted on several occasions that the definition of the purpose of sexual exploitation could lack clarity. Secondly, the fact it refers to the articles of the Criminal Code relating to the exploitation of prostitution does not make it any easier to understand the concept of trafficking for the purposes of sexual exploitation. In addition, the question can also be raised of knowing whether the purpose as stated covers sufficiently the hypotheses provided for by the international instruments such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. Does the 2005 definition actually cover the trafficking in human beings for the purpose of sexual exploitation in the context of adult pornography, for example?

Another difficulty relates to certain case-law interpretations of sexual exploitation that, on the basis of the presentation of the reasons for the law, have considered that where there is no ring, the qualification of trafficking as "personal" exploitation cannot be retained. This was hardly the concept of the drafters of the law, but clarification is needed in any event³.

Furthermore, multiplying fines by the number of victims was also highlighted as a point to be expanded. Several evaluations in fact emphasised the difference between the system of fines practised in social law and the question of trafficking for the purposes of economic exploitation. In the first case, the fines can really be multiplied by the number of victims⁴, but this is not the case in the hypothesis of economic trafficking. It was therefore proposed to apply the same mechanism in both cases⁵.

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA

³ The Law of 29 April 2013 clarified this question by replacing the terms "allow the commission of the offence..." with "in order to...".

⁴ It should involve victims in the order of summons and then repeated in the decision over funds.

⁵ The Law of 24 June 2013 on suppression of the exploitation of begging, prostitution and human trafficking and smuggling based on the number of victims introduced this type of mechanism into the offence of trafficking (among others).

Lastly, it must also be possible to find a solution following an order of the Court of Cassation (Cass., 27 May 2009, RD P.09.0240.F) which invalidated the option of confiscating property when this is not provided for by a text, even when the building was used to commit the offence. It would therefore no longer be possible to confiscate property for trafficking in human beings (unlike slum landlords).

The action plan then pays special attention to the revision of the directive of the Minister for Justice on investigations and prosecutions of acts of human trafficking (better known under the reference of the circular of the College of Public Prosecutors - Col. 01/2007). For years, this directive has formed the basis of the organisation of the framework for prosecutions and collaboration between local players in investigations. This needs updating to address more specifically the international aspects of combating trafficking or to have updated indicators.

Lastly, the action plan once more raises the question of following up the project relating to sanctioning originators who rely on go-betweens engaged in human trafficking.

Except for this last point, all planned modifications were made during the term of office and will be presented in the next report.

2.2.2. Protection of victims

Protecting victims of trafficking is always one of the key areas in the policy to combat this criminal phenomenon. The action plan proposes here to finalise the work started to obtain official recognition of reception centres. This point will be detailed in section 4.1. of this report.

There is also a requirement to finalise the "minors" section of the multidisciplinary directive, to have a completed image of the implementation of this instrument. Following this evaluation, the action plan recommends reconvening the working group that prepared the circular to re-examine globally the changes that could be made to the current provisions.

Questions to be addressed include:

- The application of the protection system for human trafficking victims under an extended Europe. The system for issuing a residence permit loses its relevance under the protection of European victims;
- The circulation of victims in the EU and the question of victims exploited abroad but discovered in Belgium;
- The application of conditions to benefit from the status of "human trafficking victim", especially with respect to minors;
- Etc.

2.2.3. Awareness-raising, training and information

The action plan on this subject recommends finalising the initiatives started under the previous term of office, mainly the information brochure for hospitals. The document also provides for special emphasis on identifying child victims of human trafficking by suggesting the creation of an information sheet of potential use to the guardians following the situation of UFM and for social workers in FEDASIL centres.

The action plan also addresses the issue of domestic exploitation. Detecting trafficking situations in a private context is known to be particularly difficult. The plan is therefore to update the information brochures that had been published in 2005 by the King Baudouin Foundation and the Employment and Social Dialogue FPS.

Training is also a point that has been developed further by encouraging the organisation of specialised sessions, mainly with the contact magistrates for trafficking or with the competent social inspectors.

2.2.4. Conclusion

The 2012-2014 action plan did not want to focus its contents on new large projects. The planned legislative modifications will in themselves require a great deal of time and it was preferred to maintain a realistic point of view when drafting the document. The action plan also set out to be more pragmatic in that it did not focus on projects hazardous to execute but wished to emphasise more the implementation of practical tools for the players in the field.

It goes without saying that it is not always obvious to execute all the projects in a straight line as they were conceived, but every effort is made to advance in the various themes addressed.

3. PREVENTION, AWARENESS-RAISING AND TRAINING IN HUMAN TRAFFICKING

3.1. Prevention

Overall, the initiatives already started have been continued. The flyer distributed by the Department of Foreign Affairs in the embassies has been extended to new offices. The offices currently involved are Philippines, Ecuador, China, India, Nigeria, Morocco, Brazil, Algeria, Tunisia and Thailand. Other specific initiatives have been launched.

3.1.1. Awareness-raising brochure distributed in hospitals

The Interdepartmental Unit Bureau engaged in discussions in 2010 to prepare an awareness-raising brochure for hospital environments (see Government Report 2009-2010, p. 7). The Bureau continued and finalised its work in 2012. The brochure was discussed with the specialised reception centres. Lastly, contacts were made with the Public Health FPS and the Office of the Deputy Prime Minister and Minister for Social Affairs and Public Health, Beliris representative and federal cultural institutions to agree on the final version of the document and its distribution.

After consultation, the brochure and a poster were sent to all Belgian hospitals by post and electronically in September 2012. The initiative was also relayed by the press⁶. In addition to the general hospital managements, the addresses were the social services, registered nurses, the emergency services and gynaecological departments (as abortions may hide cases of sexual exploitation).

The brochure "What to do about trafficking in human beings?" gives firstly a brief description of what human trafficking may involve. It distinguishes between economic and sexual exploitation and provides a few indicators towards suspecting a human trafficking situation. To illustrate its comments, the brochure takes some concrete examples of human trafficking identified in hospitals.

Example taken from the brochures

In the Brussels-Capital region, a citizen of Morocco has been taken to hospital after an accident at his place of work. He was employed illegally under deplorable conditions. At the hospital, the doctors concluded that this man would now be disabled for life. The social department of this hospital and the support department for people without residence permits contacted the human trafficking reception centre in Brussels, Pag-asa. The reception centre found temporary accommodation for this man and provided psychological and social assistance. It also investigated with the victim whether he wished to sue his employer. The employer was subsequently found guilty of human trafficking by the criminal court.⁷

⁶ http://justice.belgium.be/fr/nouvelles/communiqués_de_presse/news_pers_2012-09-17_2.jsp

⁷ The brochure "What to do about trafficking in human beings?", p. 7

Lastly, the brochure indicates how to contact the centres specialising in assistance for human trafficking victims.

Once the brochure had been distributed, some positive feedback was received from certain hospitals which requested additional copies, among other things. However, there was no plan to evaluate the impact of the initiative. There was also more mixed feedback about the results. Anyway, a repeat of the initiative has been planned for 2014 and an "online" evaluation questionnaire will be prepared to provide better feedback.

3.1.2. Contributions de la police fédérale

3.1.2.1. In Belgium

The police has taken no specific initiatives to raise awareness of or inform the general public on the trafficking in or smuggling of human beings. However, the new publications, brochures and campaigns of the Inter-departmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings have always been addressed in the human trafficking newsletter.

The police has furthermore entered into various concrete partnerships. It was thus present on the ECPAT stand during the 2011 Holiday Salon as part of the multidisciplinary awareness-raising campaign against child sex tourism. During the Salon, the problem of sham marriages was also raised on the police stand to raise awareness of travellers to the risk of becoming victim abroad of a person with the sole aim of staying in the European Union (poster). As a partner, the police was also involved in an ECPAT workshop during the Alternative Tourism Fair (2011) to explain the police approach to child sex tourism.

To inform the general public on trafficking in and smuggling of human beings, the Federal Police Central "Human Trafficking" Department also took part in the (local) open days and the police village on 21th of July 2011, with a stand devoted specifically to trafficking in and smuggling of human beings. In 2011 and 2012 it also played a role of "invited lecturer" at the Criminology Faculty of the KU Leuven on the theme of trafficking in and smuggling of human beings. The service also presented the police approach to human trafficking during a themed day at the University of Courtrai (2011) and during an informal study day on the economy at the University of Ghent (2012).

Various federal and local police officers and the Central Human Trafficking Department organised information sessions in 2011 and 2012 on the forms of trafficking in and smuggling of human beings and on the related partnership. These sessions were intended for the civil servants in charge of visas at the Foreign Affairs FPS, servicemen leaving for long periods abroad (training organised by the Defence), civil servants in municipalities who mainly issue identity documents, hospital staff so that they can recognise any human trafficking victims and employees in the new reception centres for (young) asylum seekers.

Lastly, human trafficking and smuggling "rings" existed in 2011 and 2012 in which local and federal police officers working as a priority in these areas met.

3.1.2.2. In the country of origin

The police does not organise development programmes for the prevention of human trafficking or smuggling in the countries of origin of potential victims. The police nevertheless offer to collaborate in this type of campaign if they include a "law enforcement" section. There was, for example, a prevention campaign organised in Brazil to discourage the recruitment and departure of people running a major risk of becoming victims of human trafficking in Belgium. Various services and departments were involved (Immigration Office, Justice, Social Inspection Services, etc.).

Elsewhere, the police collaboration protocol with Bulgaria has received new attention. In 2011 and 2012, this collaboration focused mainly on exchange and harmonisation in terms of inspection. The Bulgarian liaison officer raises more and more often operational questions. He has also facilitated the assistance of Bulgarian police officers to the local Ghent police. In 2012, the exchange of police information with Romania also improved. In addition, a police collaboration agreement was signed with Serbia and an agreement was reached in Moldavia.

Police collaborated in the UNODC manual on preventing and detecting the smuggling of human beings and this was supplemented by a manual on combating and prosecuting the trafficking in human beings. Both manuals targeted mainly the police forces of Africa, Asia and Latin America to act as a common thread in combating human trafficking. The Belgian good (police) practices were addressed in these manuals.

Under the European Return Fund, the Immigration Office initiated a campaign on migrant rights. The police collaborated in the film included in this campaign. The film explains in various languages the right to consular assistance and medical aid, the possibilities offered by the Red Cross Tracing programme and the services of the International Organisation for Migration.

3.1.3. Immigration Office

In 2011, the Immigration Office set aside 10,000 euros from its budget for a prevention campaign in Nigeria, in conjunction with the Justice FPS (Criminal Policy Department). This was a project with UNODC (United Nations Office on Drugs and Crime) in conjunction with IOM (International Organisation for Migration). The subject was "Enhancing multi-stakeholder cooperation to fight human trafficking in countries of origin and destination".

3.1.4. Control of Social Legislation

In 2005-2006, the Social Legislation Inspectorate, in conjunction with the King Baudouin Foundation, published two brochures as part of the awareness-raising/information campaign on the economic exploitation of domestic staff to private individuals and people with diplomatic status. In 2012, there was an impetus to renew these brochures, but they are not yet available.

3.1.5. Specialised reception centres for victims

The specialised reception centres for victims of human trafficking also have a role in preventing and raising the awareness of both the population and the employees in the centres themselves and in the frontline social aid services. An initiative has been taken for several years to circulate information on human trafficking in order to detect the offence more quickly and direct the victims towards the centres.

Payoke, located in Antwerp, worked on an ISEC project with seven EU Member States (including also countries of origin), Albania and Moldavia. The project commenced on 20 October 2011, with two main objectives. Firstly, improving cooperation between the medical world and the police and secondly, raising awareness of doctors and social workers to human trafficking⁸.

Payoke also produced an awareness-raising film for doctors and medical personnel. This is available on the Payoke website⁹. The film was shown mainly by the UA, EC and IOM and was very well received by the medical world. The Payoke website also contains a great deal of information on human trafficking: news, events, a multi-language brochure for victims and the contact details of three specialised Belgian reception centres and of other organisations.

Under the SIRIUS programme¹⁰, Payoke was mentioned in a brochure on European networks for educational projects, with information on the projects, the work and the programmes. Payoke has also organised public conferences that have attracted a huge participation.

The PAG-ASA association has not itself organised a development aid programme in the countries of origin. PAG-ASA is nevertheless a member of various international projects that intervene socially in developing countries. Due to a lack of financial means, PAG-ASA has not embarked on its own initiatives for awareness-raising and information on human trafficking. It has nevertheless contributed to the initiatives of other players through the expertise acquired during its fifteen year experience in the field. PAG-ASA collaborated, for example, in drafting the brochure for hospitals (see point 3.1.1).

⁸ www.joint-efforts.org

⁹ www.payoke.be

¹⁰ www.sirius-migrationeducation.org

3.1.6. Public Prosecutor

3.1.6.1. In the country of origin

Setting up development aid programmes for preventive action against trafficking in the countries of origin of trafficking victims is not a specific mission of the Public Prosecutor. This does not, however, exclude an interest in understanding the human trafficking phenomenon in the countries of origin.

Thus, under the project developed by UNODC and IOM and supported by Germany, Austria, Belgium, Nigeria, United Kingdom and Switzerland, the contact magistrate from the Belgian Public Prosecutor's office for human trafficking in the district of Brussels was involved in a programme to boost cooperation between the countries of origin and destination in combating human trafficking. This programme took place over eighteen months, starting in February 2011, and assembled participants from the aforementioned countries (project already addressed in 3.1.3.).

3.1.6.2. At national level

Although human trafficking prevention and information instruments must be generally developed, such initiatives are not an essential mission for the Public Prosecutor.

Nevertheless, certain actions by the Public Prosecutor are intended to inform the various active players and to raise awareness of a less-informed public.

As an illustration, note that under the working group chaired by the Liège contact magistrate, miscellaneous local initiatives attempt to raise awareness and inform the social, medical and student environments mainly via the CPAS, the hospitals and the various Liège schools. These actions are supported logistically and financially by the Province of Liège.

Note that under the 2008-2012 action plan to combat human trafficking, the College of Public Prosecutors is obliged to organise a "press contact point" aiming to "advertise" investigations prosecutions and sanctions widely in concrete files. The aim of this communication is to attract attention to the actions undertaken legally to combat human trafficking; it is also an occasion to underline the multidisciplinary of the human trafficking phenomenon and the integrated approach to combat it effectively.

In order to comply with the above-mentioned action plan, the Anti-trafficking Day 2011 was preceded by a press conference that introduced an evening of debate on 18 October 2011. A film was shown during this event that addressed the phenomena of trafficking in and smuggling of human beings. This gave the various players a chance to discuss and debate the various problems relating to the trafficking in and smuggling of human beings. As part of the Anti-trafficking Day 2012, "general public" awareness-raising was also targeted through a variety of events in conjunction with the police, the Surya reception centre and the human trafficking contact magistrates.

To emphasise the prevention aspect, the College of Public Prosecutors participates as far as practical, through the intervention of the main coordinator of the network of expertise, in the initiatives organised by other participants (government departments and interdepartmental coordination, Centre for Equal Opportunities and the Fight against Racism, Samilia, King Baudouin Foundation, etc.) and in the work of supranational institutions involved in human trafficking (UN, Council of Europe, OSCE, Eurojust, BIT, UNODC, ERA, etc.)

It is clear that trafficking and smuggling constitute criminal phenomena that are combated by miscellaneous entities acting in the prevention, protection and suppression sector. It is important to maintain concerted efforts between these bodies that are pursuing an identical purpose beyond their respective missions.

3.2. Specific training or awareness-raising initiatives

Several special initiatives have been developed during 2010 and 2012, including some that are continuing or being repeated in 2013 and 2014.

3.2.1. FEDASIL training (Federal Agency for the reception of asylum seekers)

The Agency has taken an initiative under raising the awareness to human trafficking to inform and train teams in the field in charge specifically of Unaccompanied Foreign Minors (UFM). This initiative also falls under the execution of the 2012-2014 action plan to combat human trafficking¹¹.

The first awareness-raising/training day was held in October 2012 at the Rixensart reception centre. The aim was to improve the detection and protection of young human trafficking victims by frontline workers (mainly workers in first and second phase reception centres¹²) and to become involved in developing a reference system towards the specialised structures (as provided for in the 2008 multidisciplinary circular).

The idea is therefore to raise the awareness of the UFM social workers initially (social and education teams), the so-called first phase. The observation and orientation centres in existence since 2004 and 2005 had already some experience, but the Rixensart reception centre, which has dual status of first and second phase (first phase for certain young mothers), attended by an at-risk public, did not have collaboration experience and was fairly anxious about this problem.

The awareness-raising/training took place in conjunction with the Immigration Office (MINTEH (human trafficking minors) unit), the specialised reception centre for human trafficking victims, Pag-asa and the Esperanto Association, reception centre for Unaccompanied Foreign Minors, victims of Human Trafficking. The various entities involved together formed a training monitoring group.

The Immigration Office as a member of the Bureau of the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings acted as a go-between with the Bureau in the communication on preparing the initiative.

An evaluation was conducted after the first training session.

3.2.1.1. Positive points:

The participants found the training very useful. It was noted that the participants felt it was important to understand the limits of their work better and also to know whom to call when faced with which situations. The participants often show a certain anxiety in relation to this target group. In this context, it is important for the social workers to create a network of contacts and know their limit.

3.2.1.2. Points to be adjusted or improved:

The terms used by the speakers were not always clear for all UFM workers in the field. This subject is very familiar to social workers, but less so to the youth workers.

More practical and concrete cases were also requested.

More legal information could also be useful.

¹¹ See proposal 9 of the action plan

¹² First phase = period devoted to examining the admissibility of the request for asylum; Second phase = examining the claim on its merits.

Having evaluated the training in the Rixensart federal reception centre on Tuesday, 2 October 2012, the monitoring group was expanded to two other specialised reception centres for human trafficking victims for the awareness-raising/training planned for the entire UFM field, as provided for in the action plan to combat trafficking in and smuggling of human beings.

The monitoring group decided on certain adaptations.

It was decided specifically to:

- work with all specialised reception centres for human trafficking victims;
- review the timing in order to work in plenary session in the morning and sub-groups in the afternoon. The morning focuses more on information on the phenomenon and the meeting/presentation of institutions involved in human trafficking (Immigration Office and specialised centres, prosecution, etc.) and the afternoon, in sub-groups, should encourage each reception structure more to set up a vigilance and reference reflex when human trafficking is suspected and clarify its responsibility;
- submit an A4 document for the attention of social workers. This describes the definition of trafficking in human beings, sexual exploitation, economic exploitation, human trafficking indicators, how to react, the limits of general social work, etc. and the people or specialised reception centres to contact. A first version of a basic document was submitted to the Bureau of the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings. The Bureau reworked the A4 sheet by including different references to the legislation and the indicators but also on the issue of the smuggling of human beings that can also be encountered;
- This sheet will serve as the basis for creating an awareness-raising tool for the guardians in charge of monitoring unaccompanied foreign minors. It should of course be reworked in this sense and the Interdepartmental Unit Bureau is in contact with the Guardianship Service on this subject.

The second training session took place on 19 September 2013, in French and Dutch.

3.2.2. Initiatives by the federal police

In 2011 and 2012, the federal police undertook several actions to make sure that police officers (and magistrates) were always kept informed on recent changes in human trafficking.

First and foremost, the police newsletter on trafficking in (and smuggling of) human beings from the Central Human Trafficking Department gave police officers and magistrates information on new trends, forms and noteworthy observations in relation to trafficking in and smuggling of human beings. In addition to this periodical, the Central Human Trafficking Service also circulated themed issues. Similar contributions were also published in the human trafficking newsletter that the department sent once more to the partners in 2011 and 2012.

In addition, the police "Portal" website includes all the magazines, brochures and police manuals relating to human trafficking in 2011 and 2012. These can be downloaded.

Themed information, training and feedback days were also organised for local and federal police investigators in charge of the trafficking in and smuggling of human beings. Several magistrates also took part. During these days, the effective (investigation) practices were shared and specific topics were addressed. In 2012, a themed day was devoted to Nigeria and Nigerian human trafficking.

The Central Human Trafficking Department circulated a prospectus in the three national languages giving information on the human trafficking approach and on the frontline role of police officers. The civil servants in the local and federal police forces received a copy during the various information sessions in order to explain their role as frontline players. The information sessions were organised in police areas requested by the area heads, for the judicial police within districts and in the police schools.

In 2011, the federal police division "violence against people" organised a themed day for three hundred police officers from all police areas and for the federal judicial police. Human trafficking - especially the identification of potential victims of human trafficking - was addressed as a specific form of violence. All participants received an information pack with a UNODC VITA application (Victim Translation Assistance Tool), to be able to carry out an initial "discussion" with potential victims should an interpreter not be immediately available. The VITA application allows communication with a potential victim in forty different languages through closed questions.

Investigators specialised in trafficking in and smuggling of human beings provided training on these issues in 2011 and 2012 in the various police schools as part of inspector and chief inspector training. During these sessions, they focused on identifying the exploitation and smuggling of human beings, identifying potential victims and the first contact with the police. The Central Human Trafficking Department also provided specific training on trafficking in and smuggling of human beings for border control officials and candidate police commissioners. In this context, the Department has also supplied several instruments for detecting potential trafficking victims from certain countries based on a risk profile like the FRONTEXT manual.

In 2012, the training division and the Central Human Trafficking Department introduced this problem into the curriculum of candidate inspectors and chief inspectors. At the request of the CSL (Control of Social Legislation), the Central Department explained how to recognise human trafficking situations and detect potential victims of the phenomenon to the Dutch- and French-speaking CSL inspectors during their training sessions in October 2012.

3.2.3. Control of Social Legislation

In 2012, the Control of Social Legislation trained 65 social inspectors in the context of combating human trafficking, especially combating the economic exploitation of people. This involved one-day training in Brussels for both Dutch- and French-speaking inspectors, per language case list.

The federal police (Central Human Trafficking Department) gave an overview of the legislation, investigating/detecting human trafficking victims, international collaboration in combating human trafficking, welcoming victims to recognised reception centres and active structures in the field within the police force.

In addition, the Control of Social Legislation and the Social Inspectorate of the Social Security FPS (Human Trafficking Unit) have dealt with several cases and the working/detection methods were examined, especially those relating to economic exploitation. The *pro justitia* writing and monitoring of observations were then discussed. Collaboration between the various departments was also a key issue.

3.2.4. Office of the Commissioner General for Refugees and Stateless Persons (OCGRSP)

In terms of raising awareness to the problem of human trafficking, the CGRS has copies available for its employees of the brochure published by the Centre for Equal Opportunities and Opposition to Racism (CEOR) entitled "Multilingual brochure for victims of human trafficking". This is a document written in 27 representative languages that aims to help a potential victim recognise him/herself as such and present the first aid and supervision options provided for in Belgium (for example, it lists the contact details of centres specialising in welcoming and supporting victims of trafficking in or smuggling of human beings).

3.2.5. Specialised reception centres for human trafficking victims

The reception centres also play a major role in specific training and awareness-raising. The Payoke association works closely with schools, universities and colleges, for example. Payoke offers annual work experience opportunities to interested Belgian or foreign students. Economics students at the University of Antwerp also do work experience at Payoke as part of their course. Training sessions are given regularly and information sessions on human trafficking are organised in schools. Payoke is also involved in training events, mainly for the army, police and various NGOs in Belgium and abroad. Under the ISEC project, a training manual and a programme concentrating on the medical world and its cooperation with the police have been developed¹³.

Although PAG-ASA has not organised its own training courses due to lack of means, it has taken part in various initiatives. They consider that imparting information is important to increase the understanding of the problem of human trafficking and the operation of specialised centres. The result will be improved detection and identification of potential victims.

In concrete terms, PAG-ASA presents not only its own operation but also the multidisciplinary cooperation and the aid procedure for human trafficking victims. In 2012, the association carried out presentations for various future professionals:

- Police officers in ten police areas in Walloon Brabant;
- New guardians in the Justice FPS Guardianship Service;
- Employees of Esperanto, the reception centre for minors who are victims of human trafficking ;
- Employees of miscellaneous associations in the Brussels social sector : Bravo, Comme chez Toi, Fami-Home, La Strada and Plate-forme Santé Mentale ;
- Students of law, criminology and social works of several institutions : Erasmus Hogeschool Brussel, Hogeschool Kortrijk, Ecole supérieure Paul Henri Spaak, Universiteit Antwerpen and Universiteit Gent ;
- Researchers from the Centrum voor Migratie en Interculturele Studies (Antwerp) and the Wetenschappelijk Onderzoek- en Documentatie Centrum (Netherlands).

PAG-ASA has also been regularly invited to present the Belgian multidisciplinary model to combat human trafficking in an international context. Foreign countries are very interested in how the various players involved collaborate in Belgium. In 2012, PAG-ASA spoke during the following international events:

- EC press conference on the new EU strategy for the victims of human trafficking;
- EU Anti-Trafficking Day
- European Journalism Seminar-Trafficking in Human Beings and EU coverage;
- EU-Brazil Civil Society Human Rights Seminar;
- International Conference EU-Brazil on combating Trafficking in Persons ;

¹³ See www.joint-efforts.org

- IOM FIIT Project-Study Visit to Belgium.

The Surya association follows the same intervention model. It participates in different training courses and provides its expertise when so requested. For example, it collaborated actively in the FEDASIL project and continues to play a highly-effective role locally, especially in relation to the issue of awareness-raising in hospitals.

3.2.6. Public Prosecutor

In conjunction with the Judicial Training Institute, two training days (one on trafficking in human beings, the other on smuggling of human beings) were organised in the first half of 2011.

The basic training sessions were intended for the members of the Public Prosecutor's Office, including judicial trainees and members of the bench.

The evaluation of miscellaneous interventions was positive.

The preparation of a training programme for specialised magistrates was also commenced during 2012 with a view to training courses being available at the beginning of 2013.

A plenary meeting of the network of expertise was also held on 21 September 2011 during which the new forms of sexual and economic exploitation were examined. The problem of slum landlords was also studied. The various themes were addressed in the form of interactive workshops and a summary of the workshops was made available to magistrates on the Public Prosecutor's Ompranet.

4. INVESTIGATIONS AND PROSECUTIONS

In this section, we are going to examine general information and special elements emerging from initiatives regarding investigations and prosecutions. Thus, a specific chapter will be dedicated to the results of the working group entrusted with examining the question of relying on interpreters under human trafficking investigations. The rest of the section will be a more traditional presentation of information from police forces or work inspectorates as well as data on conviction statistics.

4.1. The question of interpreters

The Interdepartmental Coordination Unit for the Fight against Trafficking in and Smuggling of Human Beings decided to set up an ad hoc working group on relying on interpreters under control operations and the legal proceedings commenced following acts of human trafficking.

In accordance with the mandate, this group was responsible for:

- Recording difficulties noted when relying on interpreters during investigations into human trafficking, firstly, and events going beyond trafficking, secondly.
- Preparing proposals to respond to these problems. The group was also entrusted with separation the proposals involved with the actual trafficking and those relating to the reliance on interpreters in legal proceedings in general.

The working group met several times in 2012 and concluded its work in 2011. It comprises representatives of the Office of the Commissioner General for Refugees and Stateless Persons (OCGRSP), the Immigration Office, the Central Human Trafficking Department of the federal policy, the Directorate General of the Judiciary, the Legislation, Freedom and Fundamental Rights Directorate General, the College of Public Prosecutors and the Centre for Equal Opportunities and Opposition to Racism. The group was chaired by the Criminal Policy Department as Chairman of the Interdepartmental Unit Bureau.

This section lists the conclusions submitted to the Interdepartmental Unit. It involves the state of the situation for the period covered (2011-2012). Note that in 2014, the Law of 10 April amending miscellaneous provisions with a view to establishing a national register of legal experts and establishing a national register of translators, interpreters and sworn translators-interpreters responds to certain problems addressed here.

It must also be emphasised that basically the working group had to identify the difficulties relating specifically to the trafficking in and smuggling of human beings, but it quickly became clear that it was difficult to separate the general issues from the more specific aspects.

4.1.1. State of the legislation when the working group issued its conclusions (2011)

The use of languages in legal matters is regulated by the Law of 15 June 1935. Other articles also govern this subject, mainly Article 282 of the Criminal Instruction Code which, although taken up under proceedings at the Court of Assize, is valid for all other criminal jurisdictions.

No prerequisite was required for people called on to carry out translating or interpreting assignments in legal proceedings. There is no status for interpreters, translators or sworn interpreters-translators.

Regarding the remuneration of sworn interpreters-translators, by virtue of the Royal Decree of 13 June 1999 amending the general regulation on the law-enforcement of legal charges established by the Royal Decree of 28 December 1950, the interpreters are paid pro rata to the length of their services based on an hourly rate that varies according to the language used. Interpreters of less commonly used languages, such as the Far Eastern languages, for example, are paid more..

4.1.2. List of difficulties encountered in practice

During the meeting of the working group, the players made an inventory of problems encountered in the field when they have to call on interpreters/translators. These problems were grouped under three main themes: availability, competence, remuneration, reliability and protection of interpreters.

On a preliminary basis, it is important to underline that the good practices recorded here cover the interpreters generally, be they officiating in legal proceedings or for the authorities. Clearly, the standards are not necessarily the same and the distinction between these two categories of interpreter must be kept well in mind.

4.1.2.1. Availability

Given that the number of languages requiring the use of an interpreter has grown considerably in recent years, it is increasingly difficult to find an available, qualified interpreter quickly. As the federal police has remarked, the question of the growing number of languages combined with the availability of interpreters is raised above all in trafficking in and smuggling of human beings where uncommon foreign languages are often used.

There is also a lack of uniformity in resources as for some languages, prosecutions have translators, whereas others not. Furthermore, a good number of interpreters are often overloaded, which can cause occasionally significant waiting times for the investigators who need them quickly. Furthermore, the interpreters can absolutely turn down any request, for a variety of reasons: delay in paying for previous jobs, unavailability during weekends or at night, problem with means of transport, another profession during the day, etc.

Lastly, as underlined by the College of Public Prosecutors, the difficulty in finding suitable interpreters, due to the multitude of languages used, often means having to call on interpreters living quite far away; this is a problem for "immediate" interviews following, for example, the interception of a foreigner during a control.

4.1.2.2. Competence

The question of interpreter competence is linked to the status of this function. Under current legislation, no condition of competence is required for people called on to carry out translating or interpreting assignments in legal proceedings. There is no status for interpreters, translators or sworn interpreters-translators. This is viewed as a problem by all players in the field interviewed.

Some people are included on the judiciary's lists without their skills actually being verified. This obviously causes a problem with the quality of the translation, with a risk of it being altered. The interpreter selection procedures vary from one judicial district to the next. The judicial districts do not in any case all have the same requirements in terms of the quality required from interpreters. Thus, certain prosecutions insist on a test, for example via a language school, whereas others do nothing to check the quality of their interpreters.

The interpreters are not always totally fluent in the language of the person being interviewed - accents, nuances, dialects, etc. They also sometimes lack knowledge of the basic vocabulary used in the sector and where the service takes place (e.g. a police interview). Similarly, the interpreters do not always understand one of the national languages fully.

As underlined by several players (federal police, Immigration Office and OCGRSP), there are no subsequent controls of the quality of the interpretation. Some interpreters also tend to overstep the limits of their function, for example by taking control of the interview/hearing. The necessary objectivity requires the interpreters to remain withdrawn and restrict themselves to a faithful rendering of comments made by the protagonists.

Another problem caused by the lack of status and raised regularly is the lack of an official, national and updated list available to the miscellaneous services (police, prosecution, social inspectorate, Immigration Office, etc.) of the interpreters/translators active in the Kingdom. There are several "unofficial" lists, like the one in the Ompranet for the courts, but these are not always updated. Furthermore, these lists are no guarantee as to the quality of the translation work provided by such and such an interpreter included on them..

4.1.2.3. Remuneration

The remuneration of interpreters is a tricky question in many ways. The General Directorate of the Judiciary (GDJ), the Immigration Office and the OCGRSP mention the difficulty in controlling the working times when determining the remunerations due to the interpreters, who can sometimes abuse the system (e.g. timesheets showing more than 24 hours a day). As underlined by the OCGRSP, there is no code of ethics to date for the interpreters that covers the invoicing of hours worked.

According to the GDJ, there is also a lack of guidelines in terms of the translation work content, which could lead to superfluous services and therefore high invoicing levels.

In addition, the GDJ points out that the credit for the legal costs was insufficient in 2008 due to increased charges, which results in waiting times for payment for services. This problem of delay in paying interpreters, which makes the profession of little appeal, is also raised by the federal police and the OCGRSP.

The OCGRSP and the Immigration Office underline the problem raised of the social status of interpreters. Currently, interpreters are obliged to have freelancer status (except when they provide very reduced services), which very frequently is not enough to counterbalance the social contributions and is therefore not very advantageous. The federal police also emphasises the lack of clarity surrounding the legal status of interpreters, which often results in them not declaring the services they perform for the Judiciary to avoid paying social charges.

Lastly, a certain imbalance is quoted in paying services insofar as the rarest languages are better paid than the national languages, regardless of the quality of interpreting service provided. Situations therefore arise where graduates earn less than non-graduates based on the language they speak.

4.1.2.4. Reliability

The question of reliability is linked to interpreter competence and also to the difficult objectivity interpreters have to show in accomplishing their assignments. The question of reliability also involves the problem of tactless or even dishonest interpreters.

As underlined by the Immigration office, the Commissioner General for Refugees and Stateless Persons and the federal police, experience has shown that some interpreters do not remain truly objective during hearings/interviews (empathy for one of "theirs", with the risk of helping the person questioned rather than the policy; or clear pressure or threats towards the person, questions made easier by long or frequent hearings, steerability of some interpreters to the comments by lawyers, etc.).

In addition, the police officer - who does not understand the language in question 2 - is not always certain that the interpreter translates his questions, or the replies of the person he is questioning, correctly. The interpreter and the person questioned can in fact exchange during the interrogation bits of conversation with a content that will escape the police officer. The Immigration Office and the OCGRSP also mention the tricky problem of paraphrasing during interviews, when long exchanges between the interpreter and the person interrogated are often translated by short, simplified sentences, with a potential loss of nuance.

In addition, the federal police points out that some interpreters fail entirely to understand the need for a certain integrity, especially relating to professional confidentiality, neutrality and establishing contacts with the person interrogated outside the hearing premises. Sometimes even, the interpreters are known to the courts for acts committed in other districts. There is no "code of ethics" nor procedure for "removing" an interpreter at national level.

In this respect, as underlined by the Prosecutor's office in Liège, unreliable or dishonest interpreters cannot be blacklisted, meaning that some of them are still used in certain districts whereas they have been refused in others. However, some prosecutions control interpreter reliability themselves, by organising a preliminary investigation into the morality of candidate interpreters..

4.1.2.5. Protection

In files as sensitive as those relating to trafficking in and/or smuggling of human beings, the interpreter can occasionally risk receiving subsequent threats, as his/her name is shown in the file. It has been seen that in some environments, a community can place huge pressure on its members in relation to possible participation in investigations. The question is also raised when the police are accompanied in the field, when controlling at-risk sectors, by interpreters to establish potential contact with the victims or try to understand what is happening "in the wings". The same question is raised during contacts between police, accompanied by interpreters, and informers. Overall, should mechanisms to keep interpreters anonymous be planned in certain cases?

4.1.3. List of good practices/tools/solutions

4.1.3.1. Interpreter availability

In terms of the problem of interpreter availability, the players interrogated have attempted to compensate for this by preparing lists of interpreters officiating in their district and even beyond. For example, the Ompranet (list of prosecutions), the OCGRSP and Immigration Office lists and a few random examples like an initiative by the district of Malines where the DIH (District Information Hub) has put together a list of interpreters that is accessible via the Internet and password-protected.

The federal police also draws attention to a tool developed by the United Nations Office on Drugs and Crime (UNODC), which compensates, at least initially, for the lack of interpreters in the context of the human trafficking phenomenon, in particular. This is a questionnaire on CD-ROM prepared to assist the police officer when conducting interviews with people who are potentially human trafficking victims. The questionnaire is made up of closed questions (they can only be answered by a yes or a no) and has been translated into a large number of languages likely to be used by potential human trafficking victims. The questionnaire also contains sub-titles so that the police officer can monitor the progress of the hearing. This tool has been distributed to several "pilot" police stations to test its usefulness in practice.

Another tool mentioned by the federal police should also remedy at least temporarily the availability of interpreters under investigations into human smuggling. This involves the "human smuggling" directive that was being drafted when this working group met¹⁴. The directive contains a form, translated into several languages, whose format can be compared easily with its Dutch or French version. The form contains a list of questions and the person residing illegally who has been intercepted ticks the appropriate replies about his/her journey, contacts, etc.

One method used by the federal police to get round the problem of "physical" unavailability of interpreters at the interception location is an initial telephone contact between the police, the interpreter and the person interrogated. The police is referring here to a practice used especially by the Dutch police and the French police in the Calais area, when intercepting a person residing illegally. This avoids waiting for the interpreter to arrive and uses the rare interpreters available to the police more efficiently. Furthermore, using the telephone gives the police a chance to check whether the person intercepted indeed speaks the language he/she claims to speak, which avoids the interpreter travelling to the interception site for no purpose.

4.1.3.2. Competence of interpreters

We have seen that the question of competence raises the problem of interpreter status and, thus, their registration on a national list. When these questions were examined by the working group, the European Union directive on the right to interpretation and to translation in criminal proceedings should be transposed. This involves, at European level, providing for the free assistance of an interpreter and the translation of essential documents in criminal proceedings and procedures for implementing the European arrest warrant. The recipient of these rights is the person suspected or accused of criminal acts. This draft directive is currently being finalised. A recommendation will probably follow later on as a support document for the directive, with the aim of promoting the implementation of the right to interpreter/translator services in criminal proceedings. Some elements of a previous draft resolution prepared for this purpose have already been included in the draft directive, for example the creation of a register of qualified translators and interpreters.

Note that the OCGRSP also has an interpreter selection process to ensure their quality. This selection procedure is based on a recruitment interview. The National Safety Authority is requested to run a safety check and give an opinion.

¹⁴ The text was finalised and adopted on 13 May 2011. Joint circular from the Minister for Justice, the Minister for the Interior, the Secretary of State for Migration and Asylum Policy and the College of Public Prosecutors containing provisions to suppress human trafficking

Lastly, to facilitate the work of interpreters under specific procedures for refugees and stateless persons, the OCGRSP makes available terminology lists prepared in several languages compiling the specific words that frequently crop up during interviews. The police has also elected to prepare "basic vocabulary" lists. Would it not be possible to think about sharing some lists??

4.1.3.3. Remuneration of interpreters

This question is also linked to the question of availability. According to some players, the fact that the interpreters are poorly paid and often late is largely caused by the reduced number of candidates in this subject.

The Dutch remuneration system has been evoked in terms of good practices. Interpreter tariffs are higher than in Belgium and there is no difference in remuneration between the languages, which creates less of a perverse effect (for example, someone holding a degree in Germanic philology who is paid less than a non-graduate whose mother tongue is Japanese).

The Dutch system is based on an hourly rate and a "dual" compensation for travelling costs so that a journey is paid per kilometre and for the time actually spent on the road.

4.1.3.4. Reliability

The players use different methods to ensure greater reliability from interpreters they employ. The OCGRSP organises its own selection procedure and has its interpreters sign a code of ethics. The interpreter is removed from the list if he/she fails to comply with it.

The prosecutions also control sworn interpreter reliability by organising a preliminary investigation into the morality of candidate interpreters. The Prosecutor's Office in Liège is attempting to have the results of this investigation circulated to avoid potential duplication of efforts in controlling reliability. Lastly, the federal police suggests recording interpreter services, during a person's hearing, for example, so that the quality and reliability of the interpreter's work can be controlled subsequently.

4.1.3.5. Protection

In terms of interpreter safety, the OCGRSP mentions its system, under good practices, whereby the interpreters providing their services are guaranteed to remain anonymous in the administrative file. The interpreters receive a unique number as identification when they start work known only to the interpreting department within OCGRSP. Naturally, this involves a system set up in an administrative context, as a similar judicial initiative would require legislative modification.

4.1.4. Recommendations and follow-up

The following recommendations have been formulated at the end of the working group:

In terms of the problem of interpreters in **trafficking in and smuggling of human beings especially**:

- the federal police should monitor the use of the tool developed by UNODC (VITA CD-ROM) in several "pilot" police stations. A report of the results obtained should be submitted to the Bureau of the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings.
- Using the standard questionnaire in the "smuggling" directive currently being finalised should be evaluated by the College of Public Prosecutors and the Criminal Policy Department.

In terms of the problem of interpreters envisaged across the board:

It had also been suggested whilst awaiting new legislative measures - mainly awaiting the evolution of discussions in creating a file - that a manual should be prepared within prosecution services to outline the existing practices.

- More elaborate discussions should be held on the optimisation/constitution and management of interpreter lists in prosecutions.
- In addition, basic information documents (ethics, interpreter's role, position, etc.) intended for interpreters may be attached to the manual. A real effort must be made so that the interpreters are informed correctly of the role they have to play in the procedure. Specific information on their intervention in relation to certain criminal phenomena (human trafficking, especially) should also be transmitted to the interpreters.

The recommendations specific to human trafficking have been implemented as they fall directly under the monitoring reserved for them by the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings. However, proposals like producing a standard manual whilst awaiting legislative measures were not part of its competence.

Nevertheless, the legislation has recently been adapted through the Law of 10 April amending miscellaneous provisions with a view to establishing a national register of legal experts and establishing a national register of translators, interpreters and sworn translators-interpreters.

The Law creates a national register and obliges the candidate translator or sworn interpreter to prove that he/she is professionally capable with appropriate skills.

4.2. Controls by different players

4.2.1. Federal and local police

Both the local and federal police look for signs of human trafficking during different interventions. These are routine controls (in bars, clubs and on the public highway) and also interventions of investigations (judicial) and assistance (upon request) to one of the social inspectorate services. These interventions most frequently are requested by and under the control of the contact magistrate for human trafficking, the prosecution service or the labour inspectorate.

When police officers note or suspect the offence of human trafficking during these interventions, they write an (initial) report.

Table 1: initial observations of human trafficking for 2011 and 2012 from the National General Database (NGD).

Type offence/exploitation	2011	2012
Human trafficking – sexual exploitation	522	466
Human trafficking – economic exploitation	377	321
Total	899	787

The figures in Table 1 illustrate the police activity and its repercussion in the initial reports. The number of reports depends among other things on the number of (positive) controls and the number of open investigations. In 2012, police officers reported on controls carried out in at-risk locations without positive observation in an information report. The contents of this report are also found in the NGD. Although the directive on the human trafficking investigations and prosecutions policy wishes to harmonise the approach, the contact magistrates sometimes give other directives regarding the intervention reports. The figures do not therefore fully represent all police efforts.

The human trafficking contact magistrate in each judicial district determines the number and place of controls (systematic or selective) within the district. This takes place in consultation with the various departments. He/she assigns these controls to precise local or federal (police) forces. To have the full picture, the police figures should be supplemented by the figures from other partners like the various inspection services. This will be re-examined under the review of the directive on investigations and prosecutions of acts of human trafficking (taken up in the 2012-2014 action plan).

4.2.1.1. Economic exploitation

4.2.1.1.1. Initiatives and activities

The police initiatives and activities in the judicial districts take place under the execution of the Col. 1/2007 (directive on investigations and prosecutions of acts of human trafficking). They relate to the choices made principally by the human trafficking contact magistrate and employees of the social inspection services. The information provided by the police (among other things the District Information Hub (DIH) has helped them to choose the sectors to be controlled in multi-disciplinary fashion.

Outside the COL 1/2007, the local and federal police have also taken part in routine integrated actions in the at-risk sectors. The various inspection services above all determine the sectors for the shared controls.

Based on the GND, the following locations pop up the most often in the initial reports (human trafficking and economic exploitation):

- public highway;
- a house or villa;
- an apartment or studio;
- a restaurant;
- a public house;
- a site.

Given its responsibility for the GDJ department (Article 102 of the Law relating to the integrated police force), the Central Human Trafficking Department put together a package-programme "human trafficking by economic exploitation" for the integrated police force in 2012. Based on the National Safety Image, the National Safety Plan 2012-2015 has kept human trafficking through economic exploitation as a priority. This package-programme lists the various front- and back-office initiatives that the local and federal police will take. The package gives a timing for each activity.

In 2011 and 2012, various brochures on human trafficking and economic exploitation were updated or written. Each police officer can download all the brochures from the police Intranet portal.

The film on the exploitation of domestic staff produced by the Centre for Equal Opportunities and the Fight against Racism was screened during the information or feedback days for police officers. The film was also screened during the federal (judicial) police open days.

There was a consultation in 2011 on the collaboration/circulation of information between the "organised social fraud" department and the Central Human Trafficking Department in cases of economic exploitation involving Brazilian nationals.

The previous consultation (2010) of the Central Human Trafficking Department with the Federal Agency for the safety of the food chain and the FGTB (Belgian General Federation of Labour – Trade Union)-construction did not provide any real progress.

4.2.1.1.2. Difficulties encountered

The controls are conducted in a variety of ways. Too frequently, the police, control and inspection services intervene again in the same sectors or at the same locations for a new control (scheduled and multi-disciplinary).

The police no longer has access to "DIMONA" for a control without the social inspection services. It can only contact the social inspection services for a "DIMONA" control based on a report number or an apostille. The social inspection services can also not always count on the available police information on a place or person for which they are scheduling a control.

Lastly, the round-the-clock contact between the police and the social inspection service is a problem often evoked.

A police officer faced with a problem of "social criminal right" during the night or over the weekend must frequently deal with it by him/herself. The social inspectors can also not always count on police support when their physical integrity is threatened.

4.2.1.3. Sexual exploitation

4.2.1.3.1. Initiatives and activities

Given its responsibility for the GDJ department (Article 102 of the Law relating to the integrated police force), the Central Human Trafficking Department put together a package-programme "human trafficking for the purpose of sexual exploitation" for the integrated police force in 2012. This package-programme provides for a compilation of information focusing on four at-risk nationalities in terms of human trafficking for the purpose of sexual exploitation. Based on the National Safety Police Image, the National Safety Plan 2012-2015 has kept human trafficking for the purpose of sexual exploitation as a priority. This package-programme lists the various front- and back-office initiatives that the local and federal police will take. The package gives a timing for each activity.

From 2011, the Belgian police force was actively involved in a European action plan (police and judicial) in terms of trafficking: EMPACT (European Multidisciplinary Platform against Criminal Threats) OAP (Operational Action Plan) THB (Trafficking in Human Beings) 2012-2013. In this plan, several countries take joint initiatives to improve the exchange of information on offenders in human trafficking for the purpose of sexual exploitation and rings identified in certain countries in order to arrest them. Under the execution of this action plan, a EU human trafficking action day was held in 2012 with controls in the Nigerian prostitution sector in the participating countries. Several local and federal police departments in Belgium took part. Europol analysed the results. Several investigations made progress as a result.

In 2011 and 2012, various brochures on human trafficking for the purpose of sexual exploitation were updated, written or placed on the police Intranet. They contain a good working method regarding situations of sexual exploitation that are less visible or hidden. All the brochures are available to any police officer and can also be downloaded.

A representative of the "Human Trafficking" Police Department and a magistrate were invited on a working visit to Sweden to observe the approach towards human trafficking and especially sexual exploitation. Useful information for police officers specialising in human trafficking for the purpose of sexual exploitation was addressed in the human trafficking newsletter.

A themed day "human trafficking - sexual exploitation of Nigerian nationals" was held in 2012. The investigators received detailed information on this problem during this day. The brochure on human trafficking for the purpose of Nigerian sexual exploitation was updated but only circulated in 2013. In 2011 also, the police took part with the social inspectorate, the Immigration Office and Foreign Affairs in a project to combat the exploitation of Brazilian nationals in Belgium.

Via Child Focus and eCops, information from web surfers about pictures of sexual exploitation of minors was also sent to the Central Human Trafficking Department in 2011 and 2012. The annual reports of Child Focus and the DJF contain statistics on these notifications.

Out of 1,256 Child Focus transmissions, 310 actually concern pictures of sexual abuse of minors (child pornography). Of the 310, 283 sites are located abroad. Of the remaining 27 notifications, 25 involve a "suspect profile". The central "violence against people" department followed this up. The two remaining cases were followed up by the Central Human Trafficking Department, but ultimately were filed without action due to lack of sufficient elements.

4.2.1.3.2. Difficulties encountered

For several years already, prostitutes and exploiters are very creative in avoiding surveillance and control by the police and inspection services. They use disguised forms of sexual exploitation like massage parlours, beauty salons, tanning centres, saunas, strip-tease clubs, pole-dance bars, swingers clubs, associations without lucrative purpose and escort services. They also use a variety of locations and methods to reach their clients. For example, this can be encounters in motels and hotels, studios and apartments, houses, cafés and clubs frequented by prostitutes. The Internet plays a significant role in this. A huge amount of work is therefore needed to detect these situations.

Nevertheless, Internet searches are not a magic solution. There is a huge grey area in prostitution advertising, where it is difficult to decide whether debauchery, prostitution or exploitation of prostitution is involved. Furthermore, active surveillance on the Internet appears to be possible only with a "mandate" from a magistrate. The question therefore arises on knowing just how far this assignment can go in order to use the results in the investigation (identification of telephone numbers, sites, site managers, account controls, telephone history, etc.) and how far we can use the information technologies to compile information (for example, sending an SMS to the GSM used by the client for an appointment with a prostitute in order to obtain feedback on his experience, a DDOS of an Internet page advertising prostitution that conceals the exploitation, saturation of an e-mail address, etc.).

4.2.1.3.3. Limit cases

In limit cases that do not fall under the application of prostitution/indecency offences, but which can be considered as cases of trafficking of human beings for the purpose of sexual exploitation, the issue is whether this uncertainty exists precisely because it is a limit case or whether it is because the police officer or magistrate is often left to interpret it as he/she sees fit.

What about the owner of an asset where prostitution takes place openly or covertly and for which he/she gains clear financial advantage despite potential signs of trafficking? What about third parties that benefit financially from the prostitution of another without being the direct exploiters and despite potential indications of human trafficking?

4.2.1.4. Other forms of exploitation

As soon as the National Safety Plan mentions uniquely the economic and sexual exploitation as police priorities, the police interventions for this special phenomena become part of the routine (reactive) operating framework.

4.2.1.4.1. Taking of organs

Although the GND contains two initial reports on organ trafficking (1 in 2011 and 1 in 2012), in practical terms this does not involve an actual investigation but, for example, an anonymous letter without factual basis or a declaration by a person residing illegally. The police brochure on organ trafficking from the Central Human Trafficking Department, including the state of progress of national and international investigations, was updated in 2011.

The Central Human Trafficking Unit has made contact with transplant coordinators via the main coordinator of UZ Jette to raise their awareness to organ trafficking and to transplants relating to human trafficking. This initiative was welcomed favourably. Under this partnership, the Central Unit participated in all gatherings of transplant coordinators. The contact persons in this network have always replied comprehensively to any question on a specific medical matter.

A partnership with the transplant coordinators and with the General Pharmacy Inspectorate (Ministry of Social Affairs, Public Health and Environment) could also be useful in detecting this offence better.

4.2.1.4.2. Perpetrating an offence through coercion

There were 21 initial reports in the 2011-2012 period (nine in 2011 and thirteen in 2012) on human trafficking - perpetration of an offence through coercion.

Too frequently, the magistrates to whom these files are sent (who are not "trafficking" magistrates, but "drugs" magistrates, for example) are not going to receive the section "human trafficking - perpetration of an offence through coercion) when a criminal group committing miscellaneous offences is involved. If a magistrate follows a precise subject like drugs or itinerant criminal gangs, he/she does not pay attention specifically to any potential exploitation as the file is first and foremost perceived as governed by "traditional" litigation. Here also, a multidisciplinary approach in a prosecution service or within the police force can open up other avenues of investigation.

This will be an element to consider when reviewing the circular on investigations and prosecutions of acts of human trafficking (2007).

4.2.1.4.3. Exploitation of begging

There were 91 initial reports in the 2011-2012 period on human trafficking - exploitation of begging (47 in 2011 and 44 in 2012).

A working group was set up in the Justice Department. Some police forces were part of this (railway police, Brussels-Capital police, Central Human Trafficking Department). In 2012, the working group had not yet put together concrete initiatives, but one goal was also to get the players responsible for these files around the table and communicating more between each other. Future initiatives should depend on what certain actions in the field bring in the way of information.

To raise awareness of police officers in the field to the various forms of human trafficking for the purpose of the exploitation of begging, the Central Human Trafficking Department has published several contributions on the exploitation of begging in the human trafficking newsletter.

The department's contacts with Europol and the various Member States culminated in 2012 in an investigation whereby a person from a Member State exploited disabled adults from this State in Belgium. The investigation started based on information included in the BNG by the Central Department.

There are various forms of human trafficking for the purpose of the exploitation of begging. It affects both adults and minors. This topic should be examined further in the future.

4.2.2. Control of Social Legislation

In 2011, the Control of Social Legislation (CLS) opened a total of 37 human trafficking files involving 42 workers. In 2012, the Control of Social Legislation opened 45 files involving 75 workers. These controls took place in conjunction with the Social Inspectorate (of the Social Security FPS) and the federal or local police.

4.2.2.1. Economic exploitation

As during previous years, systematic controls have continued to be organised in the at-risk sectors where there is an increased risk of economic exploitation (mainly in the sectors employing foreign labour).

These controls took place under district units, but outside this cooperation agreement, the Control of Social Legislation also carried out various targeted actions with the collaboration of the Social Inspectorate. Apart from traditional at-risk sectors in the hospitality (including ethnic restaurants) and building industry, they also mention the meat-processing industry, convenience stores and some small shops like the ethnic bakers.

An investigation is carried out when a control reveals potential economic exploitation (living conditions, salary, working hours, etc.). In some of these files, mainly those involved in organised exploitation and organised social fraud, the initiative was taken by the Labour Inspectorate and special police searches were launched. This large-scale approach results in some significant convictions of providers of Turkish and Bulgarian workers. Many abuses have also been noted in temporary employment agencies and service voucher companies of Turkish origin. The Control of Social Legislation is especially faced with a problem known as "salary theft". This phenomenon has been widely addressed in the recent annual reports of the O.R.C.A. (Organisation for Undocumented Workers).

4.2.2.1.1. "Salary theft"

In itself, there are enough legal instruments to protect the rights of undocumented workers. According to some sources, the greatest problem for these workers is the "salary theft" and the excessive number of hours they are forced to work. The Law on the protection of remuneration applies fully to the workers, even if they are employed illegally. These workers can invoke the rights resulting from our labour laws. The problem is that as their employment is concealed, it only comes to the surface in a control by the social inspection services.

These workers virtually never make an unsolicited complaint to the "Control of Social Legislation" Inspectorate of the Employment, Labour and Social Dialogue FPS. It is a step too far for the undocumented workers. The risk of being deported or the delivering of an order to leave the country put the brakes on "unsolicited" use of these instruments. Although the Control of Social Legislation Inspectorate is the only competent service for undocumented workers by regularising their salaries and extra pay or by paying their compensatory rest not obtained, this is very difficult in practice. The cases notified by NGO like "O.R.C.A." have only rarely been successful until now, for various reasons.

The first involves the difficulty in acquiring proof. If the Inspectorate had been unable to see the clandestine work physically for itself, for example, this proof was already too easy for the employer to deny (service between friends, fortuitous aid, difficulty in proving exact services, witnesses who do not dare to confirm their accounts, etc.).

The social inspection services and therefore also the traditional "Control of Social Legislation" Labour Inspectorate must collectively give absolute priority to combating fraud and the illegal occupation of foreign workers due to previous government decisions, administrative instructions, the "ISSS" (Information and Social Search Service) policy, etc. Their actions to search out and combat social fraud and the illegal occupation of foreign workers are not enough to note such serious offences (level 4 sanction in the Social Criminal Code) and to exercise their traditional right of assessment by not speaking out but opting for other solutions, for example. In addition, it is impossible for a social inspector to "regularise" the residence of a person with illegal status in the country or to close his/her eyes. He/she is obliged to submit the observation to the Immigration Office, which decides on the future right of residence of the worker in question. It is therefore easy to understand in this context that the social inspectors who wish in fact to regularise the salary due to the foreign workers employed illegally find themselves stuck between this normal assignment and the basic task (see the task of labour inspectorates as per the ILO and Convention 81 on the labour inspectorate) and the difficult duty to denounce fraudulent occupation of workers. More often than not, the victims then prefer not to acquire the protected status of human trafficking victim through fear of retaliation.

In addition, it is more difficult to have these salaries paid late when the undocumented worker has disappeared, is no longer employed or when a search has to be made for his/her bank account number. The "Caisse des Dépôts et Consignations/Depositoren Consignatiekas" must be advised of credits, etc.

A change is expected after the adoption of two important laws: firstly, the law transposing the "Sanctions Directive" of 18 June 2009 (sanctions against employers of illegally staying third-country nationals) and secondly, a law on the joint liability for unpaid wages (also for illegal-staying third-country nationals)¹⁵. Both these laws will give the "Control of Social Legislation" Inspectorate far more freedom of action with respect to the main contractors or entrepreneurs who use the services of employers exploiting cheap workers.

4.2.2.1.2. Au pair

Young foreigners must have a valid work permit if they wish to reside in Belgium as an au pair. This condition does not apply to nationals of a Member State of the European Economic Area (European countries and Iceland, Norway and Liechtenstein) and Switzerland.

The host families must request an employer's work permit and a work permit B for a young person they wish to employ as an au pair within their family. The young person can request a visa on the basis of this employer's work permit.

This form of employment is very atypical; it mainly involves young students who have the chance to learn another language. Complaints rarely reach the social inspection services. In addition, everything takes place in a family environment (private) and in the event of a control, the social inspectors are faced with the inviolability of the home. To obtain access to such homes, the inspectors have to obtain authorisation from the judge (now the investigating judge), in return for a justified request. Access is only permitted for serious offences.

4.2.2.1.3. Diplomatic mission staff

Apart from the fact that this also is work within a private household (protected domicile), one or other form of criminal immunity applies in many cases, which means that such employers can never be the target of searches, investigations or criminal proceedings in Belgium.

Nevertheless, in practice, huge numbers of complaints have been resolved through advanced collaboration between the Foreign Affairs FPS and the Control of Social Legislation. These two services have put together a complaint procedure that has been strongly promoted and communicated in diplomatic and consular environments, the Internet site, Diplobel, etc.

The complaint procedure in question takes place via national contact persons, firstly the Foreign Affairs Protocol Department and secondly, the Control of Social Legislation (in the person of the Director General). Any anomaly, complaint or abuse is notified to the Control of Social Legislation and is discussed with the Protocol Department. This department attempts to push the employers to fall into line through mediation, sometimes admonition and regularisation proposals.

In addition, apart from preventive systems set up at the Foreign Affairs FPS, the 2008 multidisciplinary directive includes instructions for protecting the victims when there are signs of human trafficking separately from the question of proceedings against the offenders that will be impossible due to diplomatic immunity.

¹⁵ This involves respectively the programme law of 29 April 2012 that includes a chapter on combating social fraud. The chapter creates a joint liability mechanism for unpaid wages and amends the law of 12 April 18=965 on the protection of workers' remuneration. The second law, dated 11 February 2013, provides for sanctions and measures against employers of illegally staying third-country nationals.

4.2.2.1.4. Results

There are no unequivocal statistics available for the Control of Social Legislation. It can nevertheless be stated that at least two social inspectors from the Control of Social Legislation were present during each control (see 4.2.3), based on the size of the controlled body.

It can also be indicated in terms of the Control of Social Legislation that a *pro justitia* was drafted in 2011 for economic exploitation (two workers exploited in a car wash station). No *pro justitia* for economic exploitation was drafted in 2012.

These figures seem very limited, but the fact that these controls are almost all the time made in conjunction with the police and the social inspectorate must be taken into account. These services are very specialised in the subject and therefore more often than not take the initiative themselves to draft the *pro justitia*.

The Control of Social Legislation then receives the salary calculation request for the employers. Their repercussion is found in the "criminal reports" attached to the criminal file in the Labour Inspectorate.

4.2.2.2. Difficulties

The main difficulties are firstly the proof to be produced when it is a question of economic exploitation (different indicators have to be established, not just the fact that the person is paid well below the minimum salary). It is therefore not always easy to submit a conclusive file to the labour inspectors.

4.2.3. Office of the Commissioner General for Refugees and Stateless Persons (OCGRSP)

The Commission General's Office can play a major role in potentially detecting the phenomenon of human trafficking through asylum requests submitted to him and, subsequently, in sending assembled information to the competent services (Immigration Officer, Police, legal authorities).

The difficulty encountered by the Commissioner General's Office in detecting this phenomenon through its analysis of asylum stories is precisely the ability to compile reliable, detailed information from asylum seekers who are potential victims of trafficking in or smuggling of human beings. It is clear that the number of asylum seekers declaring themselves to be such victims when transiting through the OCGRSP, even those for whom serious signs of trafficking and/or smuggling have been detected, is very low compared with all asylum files examined, which certainly does not reflect the magnitude of the phenomenon.

For 2011 and 2012, 25 cases of potential victims of trafficking in or smuggling of human beings were notified to the Commissioner General's "human trafficking and public order" unit. The potential cases of sexual exploitation communicated mainly concerned women originating from Sub-Saharan Africa or the Balkans. Other forms of exploitation or potential smuggling notified above all involved men originating from Iraq, Afghanistan and Pakistan.

In addition, it must be recorded that, during the same period, several dozen cases of potential offenders of trafficking in or smuggling of human beings also came to the attention of the aforementioned unit (this involved above all men originating from the Iraq, Afghanistan and Pakistan area and men originating from the Balkans or Sub-Saharan Africa).

4.2.4. The Social Inspector ECOSOC units

Controls were also performed by the Social Inspectorate's human trafficking units. At the beginning of 2012, they were named ECOSOC units (for Economic Exploitation and Social Fraud). These units are responsible for controls in workplaces where the illegal occupation of foreign workers is suspected and of detecting forms of economic exploitation of workers, firstly by giving priority to combating social security frauds and secondly, regularising them.

Their assignments are defined as:

- firstly, seeking out social fraud situations in sensitive sectors, i.e. the situations where an employer does not declare work services in order to evade social security contributions, both deliberately and systematically;
- secondly, combating human trafficking as stated in Article 433quinquies of the Criminal Code, especially economic exploitation.

These investigations take place in conjunction with the legal authorities and the police forces.

4.2.4.1. Economic exploitation

Targeted investigations take place mainly in the at-risk sectors (hospitality sector, ethnic restaurants and bars, construction sector, mainly the renovation sector, agricultural and horticultural sectors, textile workshops, convenience stores, phone shops and car wash stations, cleaning sector and the road haulage sector). To these sectors can be added particular sectors specific to a region or a period.

In terms of the exploitation of domestic staff, especially diplomatic, the controls made follow on from complaints by workers involved and are above all concentrated in Brussels.

Targeted human trafficking controls are organised regularly in all the regional divisions (nine divisions) of the Social Inspectorate in the sensitive sectors, but do not always lead to revelations of human trafficking. On average, one or two control actions take place every month in each judicial district.

It is difficult to state the exact number of companies controlled for human trafficking; the number of companies targeted for control do not necessarily produce results and are encoded under other subjects specific to the Social Inspectorate.

One or two inspectors are normally involved in these actions (in conjunction with other services including police forces), unless it is a large-scale control, in which case there may be five or six inspectors mobilised per action.

In terms of the human trafficking cells that became ECOSOC in 2012, they are directed in each region by one inspectorate and comprise between three and five inspectors, a total of nine inspectorates and 31 inspectors for the country. It is however important to state that several of these inspectors are not allocated full time to the human trafficking or ECOSOC problem and may also be responsible for specific social security investigations.

In 2011, thirteen *pro justitia* were raised for human trafficking (economic exploitation - 35 workers involved) and twenty criminal reports were established (21 workers involved). In 2012, seven human trafficking *pro justitia* were established (economic exploitation) for seven workers involved by the offences and 21 criminal reports (48 workers).

4.2.4.2. Difficulties

The Social Inspectorate encounters two main problems - identification and language. It has to call on other players in both cases. For undocumented persons whose identity is uncertain, it is often necessary to call on the police. For language problems, the Inspectorate has to call on interpreters to carry out hearings of workers and/or victims and of employers (potential exploiters).

4.3. Prosecution services

This section summarises certain parts of the evaluation of the circular on investigations and prosecutions of acts of human trafficking. The implementation of this circular is evaluated annually. The evaluation is based on the compilation made by the Criminal Policy Service in conjunction with the "human trafficking" expertise network of the College of Public Prosecutors of reports prepared by the "trafficking" contact magistrates into a single report made available by the College. The report is not public but we present a short summary of certain elements here.

4.3.1. Image of the phenomenon

As stated during the previous evaluation, the phenomena mainly reported by the districts are sexual and economic exploitation. It seems, however, that other related themes appear such as smuggling in human beings, sham marriages, slum landlords, exploitation of begging or the use of persons with the intention of having them commit crimes and offences.

4.3.1.1. Districts facing little human trafficking or with no precise picture of the phenomenon

The most rural districts do not reveal a clear tendency in the manifestation of the human trafficking phenomenon. There is little evidence of the phenomenon. Certain factors can explain this: lack of major communication structure giving access to the national territory, rural aspect, more extensive social control, lack (or virtually) of prostitution (or basically private and therefore difficult to bring out), etc.

Some districts indicate that they are well aware that the phenomenon is present in the area but that it is very difficult to bring out through traditional control actions insofar as it takes place in a far more concealed or hidden manner.

Be that as it may, some magistrates underline remaining attentive to certain at-risk sectors in the district's area (forestry, seasonal work, building and catering).

4.3.1.2. Prostitution and sexual exploitation - evolution

The Eastern European criminal gangs (basically Bulgarian and Romanian) are very active in the Schiperskwartier of Antwerp.

It would seem that the number of prostitute women working for the Albanian gangs is not increasing. In addition, these women often have Belgian identity papers obtained through marriage. They are active in the bars of Antwerp and of other municipalities such as Brussels and Louvain.

It seems clear that Nigerian prostitution is turning towards Brussels, Liège and Diest-Sint-Truiden despite a concentration of African-origin prostitution remaining in some districts or cafés in Antwerp.

A large number of bars are located in the area of Louvain and there is a major rotation of exploiters and people recruiting the prostitutes, not just the prostitutes themselves. Controls therefore take place regularly. Reports are then written or soft information on human trafficking is obtained that can then be exploited.

There is a reduction in the number of bars and at the same time in the number of observations of severe forms of human trafficking in the bars. Nevertheless, there is more and more an impression that a limited number of people control these various locations.

The prosecution service henceforth emphasises the importance of establishing a correct profile. It wishes in fact to get an idea of structures in which the bars are active (changing companies (operating or holding), shareholders, managers (apparently), etc.) and people who actually run the business sustainably in the background. In addition, it has become clear that these bars are not only places of debauchery or places where people are exploited, but they can also serve as cover for drug and weapon smuggling, laundering practices or other criminal activities.

Apart from this visible form of sexual exploitation, note, for example in the Judicial District of Louvain, the proliferation of sex-related advertisements in all its variants (daily newspapers, specialist publications, Internet, chat rooms, etc.) and therefore of more concealed forms of sexual exploitation, namely exploitation in the home appointments and escort service sectors. These sectors sometimes fall outside the traditional controls performed in the bars. To identify these sectors, it was decided to extend their profile using other procedures. Information would be performed and controls executed on this basis to check whether they are forms of exploitation.

The Thai massage parlours involved de facto in prostitution continue to attract the attention of the authorities. Some are easily recognisable, others operate more on the quiet. Their numbers seem however to be increasing constantly. Several controls have already led to more in-depth investigations.

In 2009 and 2010, two investigations discovered genuine chains between Thailand and Belgium, whereby Thai human trafficking organisations installed Thai girls in massage parlours in Belgium. In these affairs, the organisations tried to regularise the precarious residence situation of their victims through the technique of partnership agreements. The costs of this regularisation were passed on to the girls who had to provide sexual services to the customers of the parlours to pay them back.

In 2011, an investigation was opened into an Albanian gang that recruited men to enter into marriages of convenience with Eastern European women. These women were then employed in prostitution. In 2012, another financial investigation focused more specifically on their activities and the income from bars they owned. At the end of the day, initial reports were also raised, mainly for holding banned weapons and drugs.

The prosecution service also tries to have the marriages of convenience cancelled by the civil court as soon as they are contracted.

In the South of the country, the phenomenon of sexual exploitation is also encountered but it depends on whether or not the locations are rural and the proximity to the borders.

Prostitution on the public highway occurs sporadically in Summer in certain motorway car parks. Sexual exploitation is also found in the bars. In the region of Namur, for example, 24 bars and 42 private establishments have been counted. A population of 125 prostitutes frequent the bars whereas about ninety are found in private establishments. The forms of touting are always established through the press (advertisements in the door-to-door papers) and also on increasingly specialised computer sites.

The profile of prostitution in Brussels remains mainly unchanged compared with previous years. This is concentrated mainly in three municipalities: Schaerbeek (windows in the rue d'Aarschot), Saint-Josse-ten-Noode (squares) and Brussels (street prostitution).

Bulgarian rings are mainly hidden behind the windows. Eastern European prostitutes, mainly of Bulgarian origin (70%), are recruited. The leaders of this ring rarely leave Bulgaria, if at all. The girls are controlled by accomplices in Belgium or by telephone from Bulgaria. The earnings are sent to Bulgaria by plane or minibus by special carriers to be invested in property. As soon as they suspect that the girls are being investigated, the girls are moved to the Netherlands or Germany where the ring is also active.

The collaboration with the Bulgarian authorities is, however, more effective than before 2010.

In 2012, it became clear that the milieu was adapting to the investigation techniques and prosecution policy:

- firstly, lover boys are used increasingly. The under-age victims are recruited in Bulgaria and employed in prostitution in Bulgaria. They are employed in Belgium as soon as they reach their majority. They give up their earnings voluntarily as they think that the money will be invested in a shared future as a couple (purchase of cars, property, etc.). These victims now refuse to collaborate in the investigation and remain in prostitution to pay the legal fees of their pimp;
- secondly, violence is used to a lesser degree. The victims can also keep more and more frequently part (very small) of their earnings to send to their family. A sort of win-win situation is created and the victim, who earns a great deal of money by Bulgarian standards, will therefore have little interest in going to the police and cooperating with the investigation.

Brussels also has Albanian and Romanian pimps who operate mainly in street prostitution and in the windows.

The Albanian rings are not organised and work more without real or stable structures or in clan structures with friends/pimps of the same nationality. The exploitation of prostitution above all represents a supplementary activity for them, in addition to drug smuggling and cargo thefts. They are characterised by extreme violence towards their victims. In 2011, these victims were mainly of the same nationality and worked often with a false identity and with false identity papers - Italians, Czechs and Bulgarians - despite visas no longer being required. In 2012, it was noted that the victims also nowadays come from Bulgaria, Romania and Ukraine.

As in previous years, numerous Nigerian prostitutes work in the squares and in the street. They undergo a voodoo rite in their country of origin before being brought to Belgium. They are thus especially nervous about the idea of making a statement. To regain their freedom, they have to pay a certain sum (some 60,000 euros meanwhile) to their 'madam'. A new trend is that the madam normally lives abroad. She has accomplices in Belgium who house the victims and who transit the earnings via a transfer company. This is without doubt the consequence of miscellaneous major files that have culminated in recent years in a series of arrests.

It often happens that these victims, when they are free, bring in girls themselves and become themselves 'madams'. It is very tricky to identify these girls as they always use other names, other nationalities and even other papers (that they hire from existing people).

4.3.1.3. Economic exploitation

The situations identified in several districts often use structures or means such as false self-employment or posting of foreign workers. Some magistrates state that if they normally commence proceedings based on qualifications of human trafficking, it can sometimes be difficult to obtain convictions on this basis through lack of evidence.

In the districts of the "Centre" (Mons, Tournai, Charleroi, etc.), the various files essentially relate to the milieu of ethnic restaurants, the construction sector, the equestrian milieu, the hospitality industry, shops (tobacconists, hairdressers, car wash stations, petrol pumps, convenience stores), but also the economic exploitation of domestic staff or manual labourers by a private employer.

The potential victims are of Asian, Ukrainian, Bulgarian, Romanian, Brazilian, Pakistani, Sudanese, Tunisian and Algerian nationality.

One of the youth hostels in the region underlines that it is difficult to achieve a picture of the phenomenon. Economic human trafficking is hidden and operates in "micro-structures" rather than in large rings. *"These micro-structures are unlikely to attract attention, so that the police often come upon situations that can be qualified as human trafficking quite by chance."*

In Flanders, economic exploitation, apart from the most traditional sectors, is found mainly in the agricultural sector and in the private service employment sector.

A relatively closed and discrete population of Nepal and Bhutan nationals is also employed illegally in the hospitality industry in some districts.

Lastly, Louvain also draws attention to the pseudo-legal migration in its district. The concentration of the KUL and various higher education establishments bring many foreign students to Louvain. However, many of them do not sit any exam and then disappear into illegality. Some are found during controls in the hospitality industry. It is nevertheless difficult to note offences and even more difficult to establish the existence of a human trafficking ring given that these students enter the country legally and reside here to study.

In the Brussels district, various human trafficking rings for the purpose of economic exploitation, incorporating employment conditions contrary to human dignity (poor accommodation, restricted freedom and very low salaries) have been revealed by the Central Human Trafficking Unit of the federal police:

- Human trafficking ring in the hospitality sector;
- Human trafficking ring in the garage sector;
- Ring in the car wash sector;
- Chain in the construction sector;
- Chain in catering (not necessarily for work performed in conditions contrary to human dignity; few victims declared);
- Active ring in 'phone shops and convenience stores.

4.3.1.4. Use of persons with the intention of having them commit crimes and offences

Charleroi is the only district listing this phenomenon in its reports. Thus, *"it would seem that the sale of drugs by persons not residing legally in the country is a characteristic phenomenon here. Some vendors state having been forced to sell these drugs, without knowing how to decide whether this is a true statement or through necessity."*

In addition, it is frequently these same "victims" who once freed from prison recommence their criminal activities. The sale of drugs on the public highway with the use of minors to transport them is an on-going phenomenon.

The lure of easy gain constitutes for people not residing legally in the country a powerful incentive to become involved deliberately in this type of delinquency. The recruiters do not seem to use threats, violence or force at the moment. This phenomenon, undoubtedly currently on the fringes of Article 433d 5 is dealt with by the "drugs" section.

4.3.2. Summary

Most districts have a picture of human trafficking in their territory. However, the dark figure, the adaptability of the phenomenon, the difficulty in proving it, changes in modus operandi and trafficking techniques, available capacities, etc. can make the information less exhaustive.

Some districts have highlighted the importance of a systematic, regularly updated evaluation, cross-checking of data between the various services involved and the use of particular search methods to draw the most complete, reliable picture possible.

In terms of sexual exploitation, it seems that the most active criminal gangs come from Eastern Europe. Thus, the Bulgarian and Romanian rings are found in great numbers in certain districts and their level of organisation has been noticed. Elsewhere, difficulties linked to the cross-border aspect of the problem and Belgian bodies being confronted with the corruption or the "tolerance" of the country of origin with respect to offenders under a European mandate have been reported.

The less-organised Albanian gangs seem to have withdrawn somewhat from the visible prostitution sectors. However, the violence they demonstrate towards their victims remains serious. It seems also that contracting sham marriages gives the victim's identity papers.

Nigerian prostitution is still present and the voodoo rituals used to force victims are still used. In addition, certain Brazilian prostitutes carrying false Portuguese papers have appeared and files relating to Thai victims have been reported.

Lastly, an interactional phenomenon seems to be reported between the visible and private prostitution sectors. Indeed, miscellaneous districts indicate that repeated operations in the "official" prostitution sectors tends to move the pimps and their prostitutes towards the private sectors. Thus, many people have noted an increase in sex-related advertising through the press or via the Internet. Some people consider also that private prostitution and escort services are growing.

Economic exploitation examples are found in most districts. However, these breaches of social or labour legislation are not necessarily a sign of acts of human trafficking. Given difficulties in qualifying, proving or identifying these precise acts, it is not always possible to determine the extent of the human trafficking for the purpose of economic exploitation in the different districts.

The milieu considered to be at risk are the traditional ones and seem constant compared with the previous evaluations. Thus, the construction sector, farming and cleaning, the equestrian milieu, the hospitality industry, shops (tobacconists, hairdressers, car wash stations, petrol pumps), but also the economic exploitation of domestic staff or manual labourers by a private employer are quoted by the respondents.

In addition, the pseudo-legal migration by foreign students through study visas in judicial districts with universities and higher education establishments has been reported to use again for 2011 and 2012. In one district, acts of exploitation of begging at the expense of three disabled people were noted. This file led to a conviction.

Human trafficking is found also fairly frequently in different districts. The districts encountering this phenomenon have highlighted the ingenuity and increasing precautions shown by the smugglers. In addition, the chains continue to operate across Europe.

4.3.3. Coordination within judicial districts

Col. 01/2007 states that the contact magistrates must organise four coordination meetings a year. The evaluations conducted show the difficulty in complying with this threshold. Firstly, because certain districts are confronted with the trafficking phenomenon far less than others and secondly, because there are different platforms where the subject can be addressed. The relevance of keeping a threshold of four meetings a year should be reviewed.

The following elements can be indicated in terms of meeting content. As the human trafficking phenomenon does not seem to express itself in the same way in all districts, it is normal for the management of related coordination meetings to vary. Thus, some, more general meetings, focus on legislative clarification, the definition of terms used or encountering different players to refine the collaborations. Others address more precisely the actions carried out in the region and the concrete phenomena encountered.

We shall present the content of the coordination meetings from two angles. Firstly, the working areas adopted under these encounters and secondly, the topics addressed.

Thus, the main working areas developed under the 2011 and 2012 coordination meetings are:

First and foremost, mutual information with a view to improved coordination of various players and their reality. From visits from forces or services specifically to clarify the skills of each player via the definition of terms used and the exchange around difficulties encountered, these meetings improve the understanding of each one's practices, tasks and expertise.

Then, the legislative updates and miscellaneous policies. These meetings recalled or presented legislative amendments such as the new law relating to the family group of 8 July 2011, the state of the case law and the doctrine on the subject of human trafficking, the legislative amendments brought by the law of 24 November 2011 on the abuse of the situation of weakness of persons and the criminal-law protection of vulnerable people, European Directive 2011/36/EU and the new Social Criminal Code (in force on 1 July 2011). The contact magistrates were also able to present or recall the criminal policy on human trafficking they intended to carry out in the country, the priorities they intended to uphold and the main elements contained in the criminal policy circular.

The consultation meetings are also a forum for presenting current files and their evolution to acquire a first glimpse of the picture of the phenomenon in the district or the areas. In addition, the state of progress of working groups or expertise networks can be stated.

The results of the controls and control operations are presented and analysed. In addition, the practical modalities of these controls, the forthcoming operations and the sectors monitored or to be monitored are given. Furthermore, the inventory and investigation of bars, massage parlours, convenience stores, textile shops, phone stores, etc. are discussed.

Miscellaneous topics have been addressed in coordination meetings. Some have been more detailed than others.

Thus, in terms of victims, support for trafficking victims, the situation of Belgian victims, first contacts with the human trafficking victims, victim detection tools, and initiatives by reception centres around combating human trafficking are recurring topics on the meeting agendas.

Human trafficking for the purpose of sexual or economic exploitation are obviously topics high on the list. Under forced prostitution, the question of voodoo rituals and the phenomenon of lover boys are also addressed.

The issue of the exploitation of prostitution and visible and hidden prostitution seems to be raised fairly regularly. The topics thus presented in the coordination meetings cover the attempts to map the phenomenon, identify clients, record registration numbers or clarify offences surrounding prostitution.

The phenomena of slum landlords and sham marriages, despite not being human trafficking in the strictest sense, also recur very frequently in coordination meetings and are the subject many times of agreements with the local bodies (towns, mayors) to combat them more efficiently. New phenomena or modus operandi encountered are presented to clarify the image of the phenomenon.

Clandestine immigration, labour legislation fraud and the holding of clandestine workshops are included to a lesser degree.

Human trafficking, identity fraud, child pornography, social criminality, the "ravioli apartments" - food distribution locations with no hygiene control operated by foreigners in irregular situation - are also addressed sporadically.

4.4. Judicial data

In this section, we examine the conviction data available. These data cover the years 2011 and 2012¹⁶. The information is taken from the Justice FPS conviction databank. For information, the databank includes codes to distinguish between the human trafficking offence, the type of exploitation, the aggravated circumstances and the sentences. The detail is given in the table below:

Number of convictions

Human trafficking

to allow the commission against this person of offences provided for in Articles 379, 380, paragraph 1 and paragraph 4, and 383 bis, paragraph 1

to allow the commission against this person of the offence provided for in Article 433 ter

to put to work or allow this person to work in conditions contrary to human dignity

to allow the taking of organs or tissues from this person

to make this person commit a crime or offence against his/her will

Aggravating circumstances

by a person who has authority over the victim or by a person who has abused the authority or facilities conferred by his/her functions

by an officer or civil servant, a custodian or a law enforcement officer acting during the exercising of his/her functions

committed towards a minor

by abusing the particularly vulnerable situation in which the victim finds himself/herself

through the use of fraudulent manoeuvres, violence, threats or any form whatsoever of constraint

when the life of the victim has been deliberately put in danger or through severe negligence

when the offence has caused a seemingly incurable illness, a permanent physical or psychological disability, the total loss of an organ or the use of an organ or a severe mutilation

¹⁶ The extraction of 2011 data dates from 2012 and the extraction of 2012 data dates from November 2013. A subsequent extraction will give a slightly higher number of convictions (due to files that can still be encoded for previous years).

when the activity in question constitutes a customary activity

When the offence constitutes an act of participation in the main activity or accessory of an association, whether or not the guilty party is the leader

when the offence has caused the death of the victim without intending to

the offence constitutes an act of participation in the main activity or accessory of a criminal organisation

having attracted or used a minor to commit a crime or an offence

Remember also that the criminal record databank only holds the final decisions (decisions that are no longer subject to appeal).

4.4.1. State of the databank

Before providing the figures, a few preliminary comments on their reliability are in order. The Criminal Records Office encodes data based on "paper" conviction reports. It is therefore currently manual encoding, not automated (the same is not true, for example, for the prosecution databanks). This explains why there is still a discrepancy in the encoding of information.

In November 2012, it was estimated that +/- 300,000 conviction bulletins were still not totally entered into the central criminal records. The oldest verdict-related data missing date back to the last quarter of 2006. This is not an operational problem once the identity of the person convicted and the central criminal record number have been entered. These data only matter from a statistical point of view. A sample of two thousand non-registered files shows that they are mostly cases (83%) of convictions handed down by the police courts (17% split between the other courts). The greatest share of conviction bulletins yet to be entered from police courts is explained by the order of priority followed by the central criminal records in terms of registration of conviction bulletins. During 2012, it will be possible to feed the central criminal records databank from the MaCH databank, which will mean that the backlog will be absorbed systematically and conviction statistics will be completed¹⁷.

It is difficult to say whether there are convictions for human trafficking in the decisions yet to be encoded, but it should not be excluded. Lastly, remember that the codes relating to human trafficking have recently changed. A manual check has found that "false positives" have been recorded as human trafficking acts. In concrete terms, it is clear that the smuggling decisions are still encoded in the human trafficking category. Provisions are being made to reduce these registration errors but this must therefore be taken into account as it could give an overestimation of decisions.

The data presented here are based on two extractions: for the 2011 data, an extraction in December 2012 and for the 2012 data, an extraction in November 2013. This therefore involves a photograph of the databank at a given moment. All information presented must be read taking into account the methodological observations evoked above.

¹⁷ Source: Central Criminal Records Office, November 2012

4.4.2. Number of convictions

The databank shows 68 convictions for human trafficking acts in 2011 and 77 in 2012 (as stated previously, these figures may still include convictions for smuggling of human beings).

As previously, it is difficult to give precise information on the types of exploitation. However, discussions were held at the beginning of 2013 with the Central Criminal Records Office to find a solution to that. A technical solution was proposed and, if it works as expected, it should be possible to provide this information with greater accuracy in the future. The information for 2011 is, however, slightly more complete than for 2010. Thus, we know that at least 23 convictions were for acts of sexual exploitation and thirteen for economic exploitation.

If the information was complete, we should find all convictions split between the various types of exploitation, but this is not the case. It is therefore difficult to comment on this information at the moment on the basis of conviction data, but these data should be more accurate in the future.

A sample of 49 conviction bulletins was examined for 2012, broken down as follows:

type of exploitation	number
Not mentioned	4
Sexual exploitation	29
Economic exploitation	15
Several forms of exploitation	1
	49

4.4.3. Review of aggravating circumstances

A study of aggravating circumstances is possible. It must be indicated that a conviction can count one or more aggravating circumstances. This is why the total exceeds 68 here (when talking about 2011). For example, a person can have been convicted of human trafficking through having committed the acts on a minor and having used threats. In this case, there are two aggravating circumstances for a same conviction.

4.4.3.1. Aggravating circumstances 2011

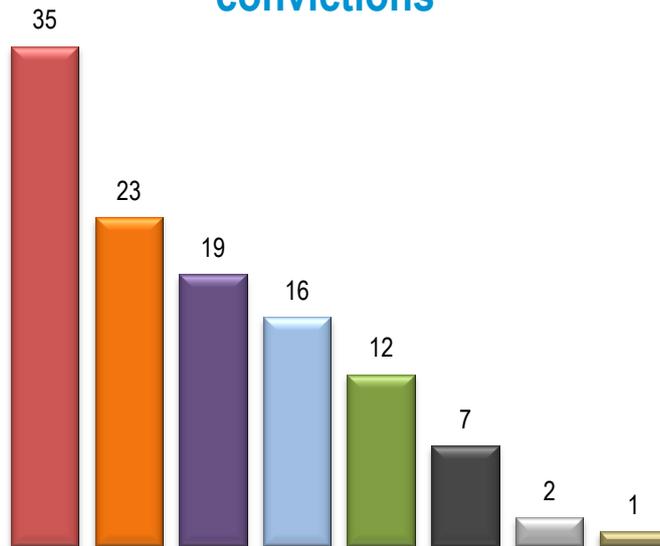
Out of a total of 68 convictions that appear in the databank for 2011, there are 116 aggravating circumstances¹⁸.

Type of aggravating circumstances	Number	%
Abusing the particularly vulnerable situation in which the victim finds himself/herself	35	30,43
the activity in question constitutes a customary activity	23	20,00
The offence constitutes an act of participation in the main activity or accessory of an association, whether or not the guilty party is the leader	19	16,52
Use of fraudulent manoeuvres, violence, threats or any form of constraint whatsoever	16	13,91
The offence constitutes an act of participation in the main activity or accessory of a criminal organisation	12	10,43
The offence has been committed on a minor	7	6,09
The offence has caused a seemingly incurable illness, a permanent physical or psychological disability, the total loss of an organ or the use of an organ or a severe mutilation	2	1,74
The offence has been committed by a person who has authority over the victim or by a person who has abused the authority or facilities conferred by his/her function	1	0,87
TOTAL	115	100

¹⁸ Five additional occurrences exist in the aggravating circumstances category but are not associated with a corresponding code. We have not therefore taken them in the data.

The following graph repeats the table data:

Number and type of aggravation circumstances in the 2011 convictions



Types of aggravating circumstances

- The offender abused the particularly vulnerable situation of the victim
- The criminal activity constitutes an habitual activity
- The criminal activity constitutes participation in the principal or accessory activity of an association
- The offender used of, directly or indirectly, fraud, violence, threats or any form of coercion
- The criminal activity constitutes participation in the principal or accessory activity of a criminal organisation
- The victim is a minor
- The offence has caused a seemingly incurable illness, a permanent physical or psychological disability, the total loss of an organ or the use of an organ or a severe mutilation
- The offence has been committed by a person who has the authority over the victim or by a person who has abused the authority inherent to his/her function

Certain aggravating circumstances have not appeared in the convictions at all. Their number is therefore equal to zero. This involves the following cases:

- The acts have placed the life of the victim in danger deliberately or through severe negligence;
- The acts have caused the death of the victim without intending to;

The act of having abused the particularly vulnerable situation in which the victim finds himself/herself is found most frequently (30%). It is logical to find this aggravating circumstance at the top of the list given that the abuse of situation of vulnerability is a characteristic element of human trafficking.

The customary activity refers to an offence that has persisted over time. In 19% of cases, therefore, the human trafficking activity by offenders has constituted a continuous, repeated activity.

The use of violence, threats or fraudulent manoeuvres is in fourth place.

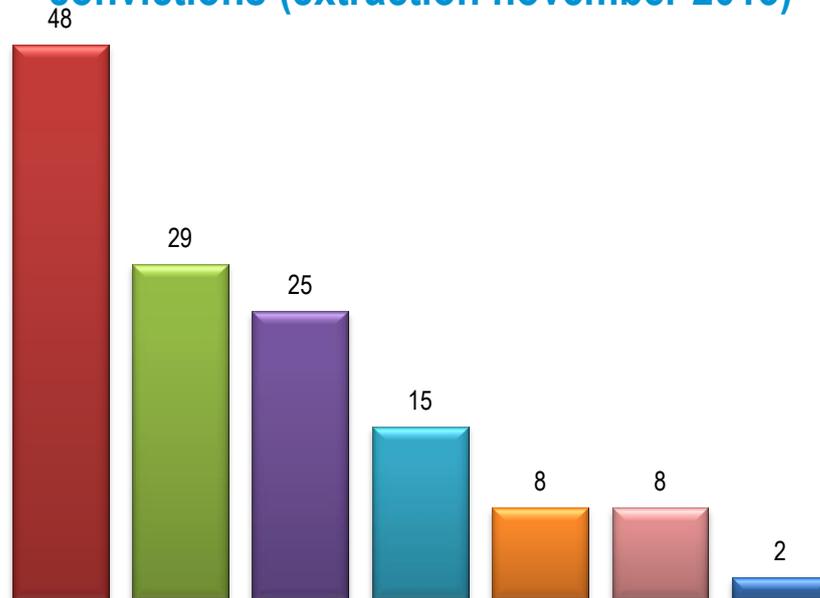
There is a reduced number of final convictions in which the "minority" aggravating circumstance appears (compared with 2010).

Overall, it is also clear that the customary, organised nature of human trafficking occurred more in convictions handed down in 2011 than in 2010. The "association" nature appears in 16% of aggravating circumstances and is placed third, which was not the case in 2010. Criminal organisation also appears in fifth place.

4.4.3.2. Aggravating circumstances 2012

Type of aggravating circumstance	Number	%
Abusing the particularly vulnerable situation in which the victim finds himself/herself	48	35,56
the activity in question constitutes a customary activity	29	21,48
through the use of fraudulent manoeuvres, violence, threats or any form of constraint whatsoever	25	18,52
The offence constitutes an act of participation in the main activity or accessory of an association	15	11,11
committed on a minor	8	5,93
The offence constitutes an act of participation in the main activity or accessory criminal organisation	8	5,93
The offence has caused a seemingly incurable illness, a permanent physical or psychological disability, etc.	2	1,48
Total	135	100,00

Number and type of aggravation circumstances in the 2012 convictions (extraction november 2013)



- The offender abused the particularly vulnerable situation of the victim
- The criminal activity constitutes an habitual activity
- The offender used of, directly or indirectly, fraud, violence, threats or any form of coercion
- The criminal activity constitutes participation in the principal or accessory activity of an association
- The victim is a minor
- The criminal activity constitutes participation in the principal or accessory activity of a criminal organisation
- The offence caused a serious disease, a permanent physical or mental disability, the loss of an organ

The general trends are confirmed. The abuse of vulnerable situation remains the most often target aggravating circumstance. That is also the feeling of players in the judicial system. The use of violence, fraud, fraudulent manoeuvres, etc. also remains one of the most frequent aggravating circumstances.

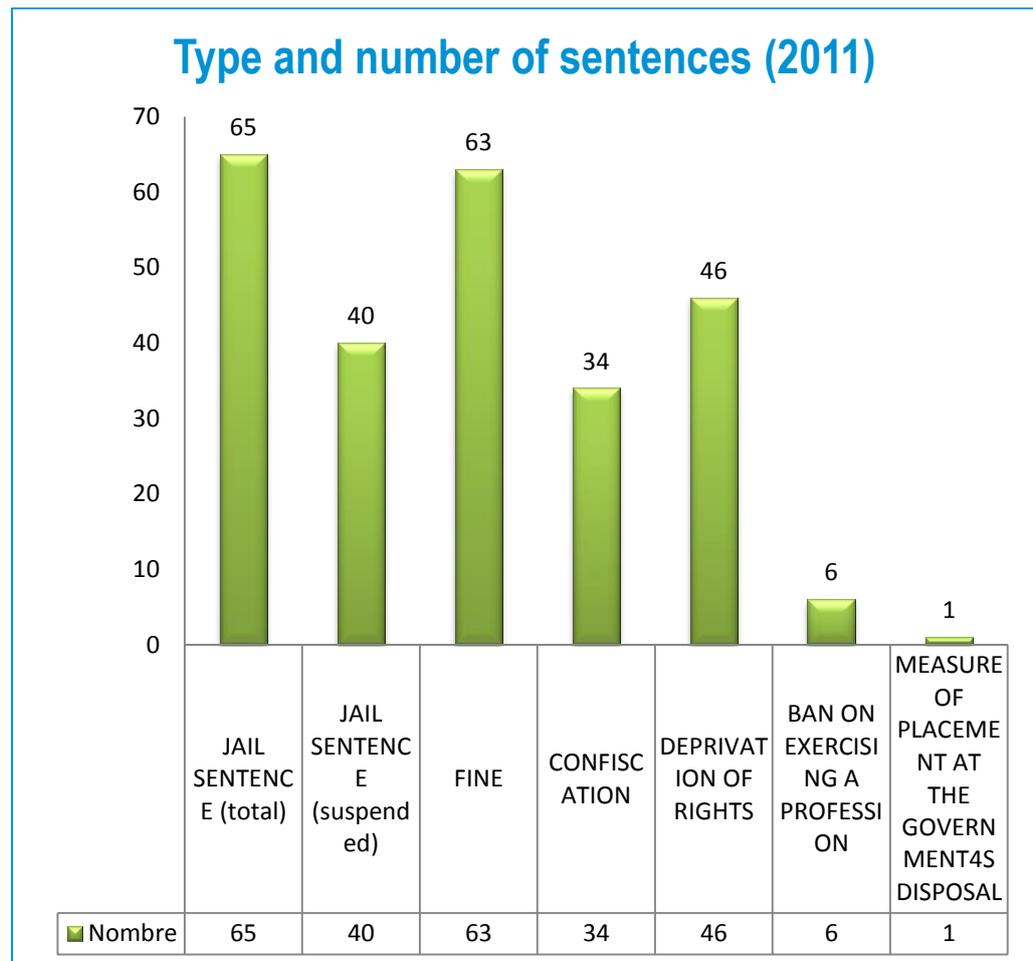
4.4.4. Sentences

Information is encoded in the databank based on conviction bulletins (document sent to criminal records listed various items of information on the conviction). A conviction bulletin can have one or more main decisions. These decisions (sentences) are taken in relation to an offence or more often than not to a group of offences. The sentences presented here are therefore those handed down in relation to a group of offences, an amount which figures at least one offence relating to human trafficking.

4.4.4.1. 2011 data

4.4.4.1.1. Table 1: Types of decisions

This first table lists the types of sentence handed down for the 68 convictions appearing in the databank. Attention must be paid to the fact that several decisions can be taken at the same time for one conviction (prison, fine, confiscation, etc.). One category does not exclude the other, therefore.



There is always a maximum of prison sentences handed down. There were 65 prison sentences. Of these 65 sentences, forty were suspended (this can be partial or total but the detail cannot currently be obtained from the databank).

4.4.4.1.2. Table 2: prison sentences handed down

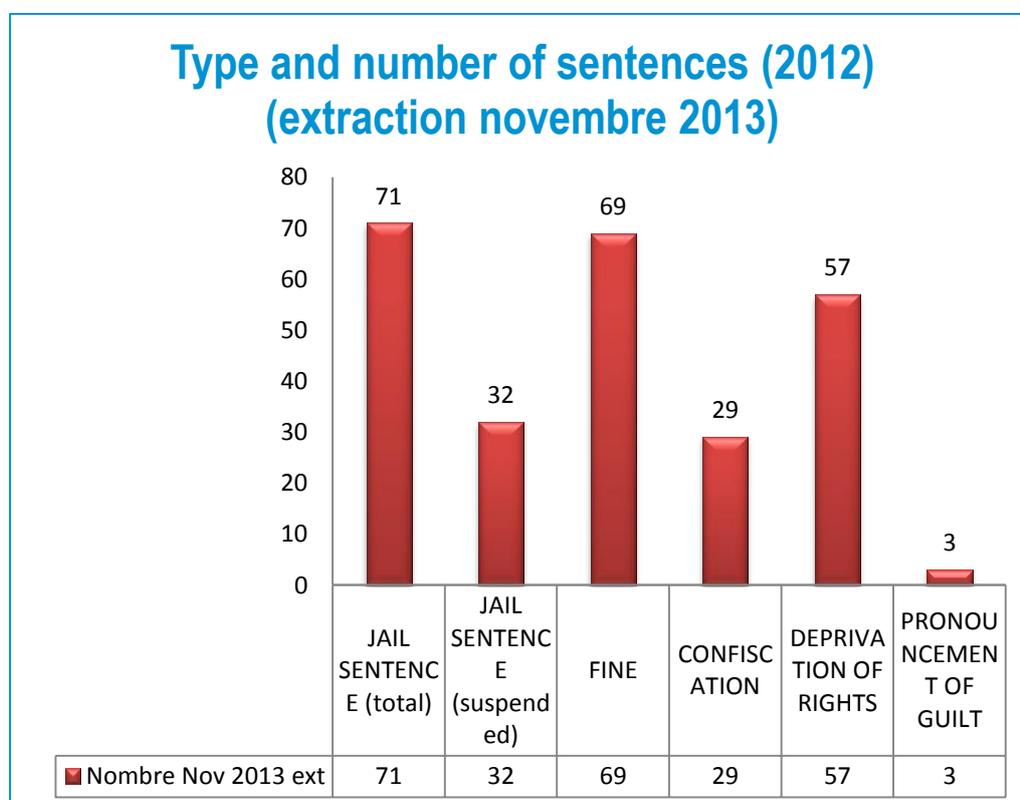
This second table breaks down the prison sentences based on the term handed down.

Decisions duration	Number (2011)	2011%
Less than 1 year	9	13,85
1 year to less than 3 years	29	44,62
3 years to less than 5 years	16	24,62
5 years and more	11	16,92
	65	100

This does not vary fundamentally between 2010 and 2011, except possibly in the "over five years sentence" where there is a very clear difference upwards in 2011.

4.4.4.2. 2012 data

4.4.4.2.1. Table 1: Types of decision



4.4.4.2.2. Table 2: prison sentences handed down

Duration	Number (2012)	2012%
Less than one year	4	5,6
1 year to less than 3 years	33	46,5
3 years to less than 5 years	19	26,8
5 years or more	15	21,1
	71	100,0

4.4.4.3. Questions specific to the trafficking offence

Questions have been raised on several occasions as to whether the definition of trafficking as adopted in Belgium is not too broad. Unlike international instruments, Belgium has made the means of human trafficking (violence, constraint, threat, abuse of vulnerability, etc.) as aggravating circumstances rather than considering them as constituent elements of the offence. The legislator wished to emphasise the exploitation that is at the heart of human trafficking rather than on the means used.

Certain players or institutions sometimes question the fact that the broad definition could lead to convictions for trafficking that are not in line with the international standards¹⁹.

There is every reason to respond that the Belgian definition continues to comply with the international stipulations by adopting a more extensive position. This would be more of a problem if we had a narrower definition which, in this case, would not comply with the supranational standards.

Subsequently, remember that this choice was made deliberately having noted certain case law difficulties linked to the proof of *modus operandi*.

This does, however, give rise to the question of whether in practice there are convictions without reference to the means and in what proportion.

A sample of conviction bulletins for 2011 and 2010 was analysed.

The conviction reports are verdict summaries. They can give an indication of the aggravating circumstances determined. However, when no aggravating circumstance is mentioned in the report, it cannot be excluded that the verdict has not determined it. What these samples indicate to us, therefore, is the minimum number of verdicts for which an aggravating circumstance linked to human trafficking has well and truly been handed down.

¹⁹ Internationally, see for example: Trafficking in Person Report (2013), US State Department, Belgium country narrative, p. 93, (also 2014) or UNDOC Issue Paper, Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, UNODC, Vienna, 2013, p.46

The sample for 2011 was made up of forty reports relating to 33 verdicts. The sample for 2010 was made up of 51 bulletins for 35 verdicts. In 2011, only four conviction reports make no mention of aggravating circumstances (10% of the sample); in 2010, eleven reports do not list aggravating circumstances (22%). The results for 2011 do not confirm an "extensive" use of the definition of trafficking, however the 2010 results are slightly more mixed (checks should be made in the verdicts themselves for this part of the sample)²⁰.

Overall, it is impossible to conclude on an extensive use of the definition of human trafficking, but vigilance should be maintained despite everything. After reading some verdicts, it seems that whilst the aggravating circumstance is normally retained in the first instance and that they can then be raised again at the appellate level by the defending party, which may result in the appeal judge not retaining it. Changes in practices or a broad application of the definition by some practitioners can also not be excluded.

²⁰ A full analysis of this issue can be found in C. Huberts and J.-F. Minet, "La loi du 29 avril 2013 visant modifier l'article 433quinquies du Code pénal en vue de clarifier et d'étendre la définition de la traite des êtres humains : analyse et mise en perspective", RDPC, January 2014, pp. 13-19.

5. PROTECTION OF VICTIMS

Protection of victims has remained a central issue in the concerns of various departments responsible for combating human trafficking. The years 2011 and 2012 were, however, above all focused on evaluating systems in place, mainly the 2008 multidisciplinary circular²¹. In addition, even if the resignation of the Government meant little progress was made on certain projects in 2011, it was possible to set the bases for some initiatives. The Interdepartmental Coordination Unit for the Fight against Trafficking in and Smuggling of Human Beings thus prepared a report and draft text on the recognition of human trafficking reception centres.

Little progress was however made on the question of financing reception centres. At federal level, although they continued to be funded, the amounts had not been indexed for several years and there is still no structural financing to date.

5.1. Evaluation of the circular on implementing multidisciplinary cooperation about the victims of trafficking in human beings and/or certain aggravated forms of smuggling of human beings (26 September 2008)

Point XI of the multidisciplinary circular indicates that the Interdepartmental Coordination Unit for Action against Trafficking in and Smuggling of Human Beings (created by the RD of 16 May 2004) must evaluate the circular within 24 months of its publication in the Belgian Official Gazette.

The aim of the evaluation is to check the effectiveness, efficacy and efficiency of the directive and more specifically to what extent the multidisciplinary operation is encountered.

The circular indicates that the evaluation is conducted by the Interdepartmental Unit. Given that the Interdepartmental Unit Bureau is responsible for actually carrying out the Unit's tasks, it was decided that it would take charge of the evaluation. It was also decided that the Criminal Policy Department that chairs the Interdepartmental Unit Bureau would intervene as project leader. However, it is very clear that all the members of the Unit Bureau had contributed actively to the execution project, mainly by chairing miscellaneous round tables.

In terms of the evaluation, whether or not there was a need for separate work for the measures/chapters of two specific target groups were raised, namely unaccompanied foreign minors and domestic staff in the private service of diplomats.

The Bureau decided to split the evaluation into two parts.

- An evaluation of the basic procedure as indicated in the circular. This part would also address the problem of domestic staff in the private service of diplomats. This general evaluation was launched at the beginning of 2010. The activities were nevertheless suspended due to obligations relating to the Presidency of the European Union. Furthermore, the Bureau decided to undertake additional methodological steps. The period was thus extended.
- An evaluation of specific measures regarding unaccompanied foreign minors.

It was decided to evaluate these measures separately, as unaccompanied foreign minors working in a

²¹ Circular on implementing multidisciplinary cooperation about the victims of trafficking in human beings and/or certain aggravated forms of smuggling of human beings (26 September 2008)

group had already been constituted under problems raised by Espéranto, a specialised reception centre for foreign minors who are victims of human trafficking.

The evaluation of the unaccompanied foreign minors part has been finalised in 2013²².

We shall therefore only deal here with the results of the evaluation of the general procedure and measures specific to domestic staff of diplomatic personnel. The entire report is presented in its summary form.

5.1.1. Methodology

No special guidance is given in the circular on the methodology to be followed.

The Bureau elected to carry out a qualitative evaluation that identified the problems and black spots in applying the circular.

The target group for the evaluation was then defined. Based on the circular, it was decided to seek out the following players: police forces (local and federal), Immigration Office, specialised reception centres (Pag-Asa, Sürya, Payoke), the human trafficking contact magistrates with the prosecution services and inspectorates, the social inspection services, the Protocol Department at the Ministry of Foreign Affairs, Office of the Commissioner General for Refugees and Stateless Persons, the Public Social Assistance Centers (PSAC) and the Customs and Excise Bureau.

It was decided to organise target groups/group interviews to question these players effectively. This evaluation technique has the advantage of being able to collect a great deal of qualitative information from various players involved in a short space of time. The experiences and facts to be examined can then be understood and compared based on the common interaction. This interaction also highlights new opinions and arguments to address the problem better. The disadvantage is a possible distortion if some participants are also the end users of the policy to be evaluated. There is a risk of these people theoretically giving a positive opinion, for example to protect the maintaining of the policy subject to this evaluation. To this is added the risk of seeing the group phenomenon influence the individual perception of participants. The participants could behave differently knowing that they are being observed.

The Bureau thought it appropriate to organise target groups given that the people could also learn from each other by exchanging new knowledge and perspectives. This may incite the people responsible involved in the evaluated policy to bring improvements resulting from the target group. In this way, the "target group" technique has an impact on the policy to be evaluated.

A questionnaire was drawn up when preparing the target groups. The questionnaire topics were fixed on the basis of miscellaneous phases of the procedure relating to the status of human trafficking victims.

The target groups were led by a moderator assisted by a rapporteur. Members of the Bureau performed both functions. Each member service or department of the Bureau organised the round tables or interview in succession.

The Bureau decided to work in two phases to obtain more information from the various players.

An initial phase saw a target group organised per player involved split, if necessary, per linguistic group. The Bureau believed that the miscellaneous players would provide more information in this way.

²² When this report is published, the results of the evaluation of the "minors" section can be requested from the Justice FPS.

A total of ten target groups were organised:

1. Target group of Dutch-speaking contact magistrates
2. Target group of French-speaking contact magistrates
A representative of the Protocol Department of the Foreign Affairs FPS was also invited to these two target groups for the "domestic staff of diplomats and civil servants" aspect.
3. The target group of Dutch-speaking police forces
4. The target group of French-speaking police forces
Representatives of Customs and Excise were also invited to these two target groups.
5. Immigration Office target group - bilingual
Representatives from the Office of the Commissioner General for Refugees and Stateless Persons were also invited to this target group.
6. Target group of Dutch-speaking social inspection services
7. The target group of French-speaking social inspection services
Social inspectors from both the Employment, Labour and Social Dialogue FPS and the Social Security FPS attended this target group;
8. Target group of Dutch-speaking PSAC
9. Target group of French-speaking PSAC
10. Target group of specialised reception centres - representatives of three centres (Payoke, Pag-Asa and Surya) were invited.

A maximum of ten people were invited to each target group. The average attendance rate was nine people in most target groups. Four target groups, namely the police and PSAC, had a maximum attendance rate of about four people.

These target groups were convened during May 2010.

A mixed target group was organised in a second phase. This mixed target group was bilingual and each sector had been invited to send at least one representative. Most players attended. No police representative could attend, however, for organisational reasons.

Given activities during the Belgian Presidency of the EU, the mixed target group could only meet in February 2011.

5.1.2. Results of the evaluation of the circular

The most significant results of the evaluation are given here, based on the summary report of ten target groups and the mixed target group.

The procedure provided for in the circular was repeated for information for each topic.

5.1.2.1. General comments

The participants indicated that the collaboration between the miscellaneous players took place without a hitch. The circular has improved the knowledge of the role of other players, which boosts cooperation.

In this context, it is important for clear agreements to be reached, for example between the prosecution service magistrate and the labour inspector. This often happens during coordination meetings based on Col. 01/07 or in the district unit.

In some judicial districts, the social law offences are separated from acts relating to human trafficking. The labour inspector is thus responsible for social law offences. Most magistrates plead more in favour of common processing of offences. There is thus always a safety net should, for example, the qualification of human trafficking not be retained.

Most participants believe on the other hand that the circular has not resulted in significant changes in the field. Some believe that this is because the contents confirm what actually happens. Others note, on the other hand, that the circular is not always known and that additional information would be necessary.

The circular is thought to be too long and too repetitive. Many participants argue in favour of a simple scheme and a more practical instrument.

The Immigration Office indicates that the circular must continue to exist, as a legal document is necessary, but requests that a practical instrument be established at the same time. It can take the form of a brochure or a scenario like the missing persons scenario.

Most PSAC are not familiar with the directive. The Antwerp PSAC found out about the circular via Payoke with which it works closely. Other PSAC, like Brussels and Liège, also work respectively with Pag-asa and Surya.

5.1.2.2. Detection/information/orientation

The directive makes the following provisions:

Human trafficking victims are mostly discovered by the police and inspection services. As frontline services, they play a decisive role in applying the procedure correctly.

To achieve this, they use human trafficking and smuggling indicators contained, among other things, in the Directive Col. 01/07. In addition, they are trained regularly in combating these phenomena.

The aforementioned services must advise the victims that the protection status exists. This is done, among other things, by handing them a multilingual information brochure. Every potential victim must be directed towards one of three recognised specialised reception centres intended for human trafficking victims.

These three specialised centres provide a reception and support service along with psychological, medical and legal assistance. These centres alone are authorised to request residence documents and their prolongation directly from the Immigration Office.

Any police or inspection service discovering a person victim of human trafficking carries out the following tasks simultaneously:

- advises the magistrate of the Public Prosecutor's Office;
- contacts one of the specialised reception centres;
- advises the Immigration Office.

The control report (administrative report) on a foreigner in an illegal or irregular situation must also be sent on. The heading "human trafficking and certain aggravated forms of smuggling of humans" provided for this purpose in the report must be filled in correctly.

5.1.2.2.1. Detection

The evaluation reveals that the frontline social inspection services and police forces above all call on police departments specialising in detection in the first instance. They therefore also plead for awareness-raising/increased training for these frontline services. This should focus more on the practical; the hearing of victims and suspect persons should among things be taken into account.

In addition, the social inspectors appreciate being advised of the follow-up given to their files. They currently receive little feedback.

In the circular, the role of PSAC is limited to detection. The PSAC indicate that they would also like to play a role in monitoring victims.

Regarding detection, the Immigration Office notes that its non-specialised services can also enter into contact with potential human trafficking victims. They must therefore be made more aware. A clearly-presented brochure showing some indicators and contact information would be useful for the orientation.

Language remains a problem in the detection phase. There is a shortage of interpreters and there is not always a list of available interpreters in the judicial district. In addition, a problem of neutrality is also raised still for some interpreters.

To resolve the linguistic problem in a first instance, one of the target groups suggested a telephone contact initially with the interested party. The language can thus be determined and an appropriate interpreter called in.

Reference was also made to an instrument developed by the United Nations Office on Drugs and Crime (UNDOC). This is VITA - Victim Translation Assistance.

Reference is made in the circular to the targeted balance between combating the networks and assisting the victim. The specialised reception centres comment that this philosophy of the circular is not known in the field. Whereas the victim previously played a decisive role in terms of proof, the services now call on new techniques such as the legislation on the special investigation methods.

This issue must be qualified, however, for the need to avoid basing the results of an investigation on the collaboration of the victim only and thus to expose him/her to unduly burdensome expectations must not be forgotten.

Furthermore, the centres comment that one or other contact magistrate for human trafficking is not always available or that the magistrate has several skills including especially human trafficking, which can dilute the follow-up to the file.

The specialised reception centres therefore also plead in favour of raising awareness of players even further.

There should also be more cooperation between the specialised reception centres and the magistracy. This cooperation is provided for in the circular, but not always applied. The reason sometimes given by some players is the professional secrecy of specialised reception centres. But the centres indicate that they can nevertheless pass information on within the limits of their professional secrecy or code of ethics.

5.1.2.2.2. Multilingual information brochure

The information brochure is viewed as a useful instrument informing the people concerned of their rights and duties.

Not all players are yet aware of the brochure, however. It should above all be circulated within the magistracy and PSAC.

5.1.2.2.3. Orientation

The specialised reception centres are known to all players. Orientation is mainly carried out by the police forces or the Immigration Office.

The reception centres are noting clearly a perceptible drop in the number of orientations. Reference is also made here, among other things, to the potential information that should be found in certain departments, like the non-specialised departments of the Immigration Office (see also detection). These departments should therefore be earmarked for awareness-raising.

5.1.2.2.4. Administrative report

The evaluation has revealed that the administrative report is not always complete or has been carelessly filled in. It has also been noted that some services are still working with the old documents.

It also seems that it is very unclear who should be filling in this report. The administrative report can only be filled in by the police forces.

5.1.2.2.5. Training

All players are requesting that training be organised for the procedure.

The specialised reception centres emphasise above all the importance of training for social services and services other than the specialised services.

When the mixed target group met, it was proposed that training on human trafficking should be made mandatory in the police colleges. The same applied for training judicial trainees in human trafficking.

The social inspectors indicated that the training should pay special attention to interviewing victims and offenders.

The CPAS also request this. This is possible for the PSAC through a coordination body. But there is also a request to collaborate with the specialised reception centres.

5.1.2.2.6. Awareness-raising of other sectors – which ones?

The participants note that players other than those listed in the circular come into contact with potential victims. They must therefore also be made aware.

Awareness-raising should once more focus on the traditionally at-risk sectors such as hospitality, horticulture, etc. The finance administration, some professional organisations, lawyers and legal aid offices are also quoted.

As potential frontline services, the PSAC, social services, schools and hospitals are also mentioned.

Some participants indicate, however, that the awareness-raising initiatives must not take place with respect to everyone residing illegally, as it is important not to give the impression that anyone residing illegally is a victim of human trafficking. Initiatives that are too broad give rise to expanding numbers of returns who have no link whatsoever to the problem of human trafficking.

5.1.2.3. Reflexion period

The circular provides for several phases in the context of issuing residence permits to human trafficking victims.

Start of the procedure

- Phase 1 (reflexion period): handing over of an order to leave the territory within 45 days

The aim of this phase is to allow the victim to rest and find a serene situation. During this period, the victim can decide if he/she wishes to submit a complaint, make a statement or return to his/her country of origin.

If the victim does not have a residence permit, the Immigration Office can issue him/her an order to leave the territory valid for 45 days, at the request of the specialised reception centre. This phase is unnecessary when the victim submits a complaint directly or makes a statement.

The potential victim cannot be sent away during this first phase.

- Phase 2: issuing of a three-month registration certificate.

When the victim has submitted a complaint or made a statement, he/she can receive a three-month registration certificate. This document can be prolonged at a resumption for a period of three months.

In his/her own interest, the victim is urged in this phase to try to prove his/her identity by presenting a national passport, a valid travel document or a national identity card.

The victim receives social aid and can work if he/she has received a work permit C.

For the police forces and the magistracy among others, 45 days is too long given that there is still a risk of the victim being approached by the offenders. They also believe that many signs disappear when the victim is found in a reception centre.

The specialised reception centres point out that issuing an "order to leave the territory within 45 days" does not send a clear message to the victims.

They suggest using a different wording, for example "45-days registration certificate". This certificate would therefore cover the provisional residence during the cooling-off period.

The centres comment that in practice the cooling-off period is often left out. A police force will quickly start to interview the person intercepted. With this statement, the person in question is directly in phase 2, where a registration certificate is issued. The centres note nevertheless that the victims then often alter their statements, which makes the police suspicious.

The centres also comment that the circular states that a magistrate must be advised as soon as a victim enters a centre. They fear that the magistrate will act immediately and proceed to a hearing, but this is contrary to the philosophy of the 45 days and results in problems with professional secrecy, in the centres' view. The magistrate should only be contacted when the victim decides to make a statement.

The specialised centres plead also for a correct application of the reflexion period. The reflexion period should allow the victim to reflect and be advised about status.

The police should therefore have the task of reorienting the person involved. They should contact a centre as soon as there is an assumption of human trafficking. They may then review what is the best solution in conjunction with the centre. This may involve a reflexion period and also, for example, a statement by the victim.

The cooling-off period must be maintained but should be applied pragmatically. Otherwise, that could generate a feeling of insecurity in the centres.

One suggestion made during a target group meeting was to work with "pre-stations". To achieve this, a certain number of centres like Steenokkerzeel could be created. The victims can then stay in these centres during this period. This gives them time to decide whether or not they wish to make a statement or submit a complaint. As soon as human trafficking is presumed, contact can be made with the specialised reception centres to continue to support the person. In this way, the safety of specialised reception centres can also be maintained.

However, this hypothesis would assume a considerable budget.

The PSAC underline the problems of actually issuing residence documents. The problem raised is, for example, the fact that the PSAC receive a letter indicating that the victim has a registration certificate instead of the certificate itself. A health insurance fund cannot, however register the victims on the basis of a letter.

They sometimes receive the registration certificate rather late despite instructions being given about it. The PSAC need the registration certificate to obtain subsidies or the work permit C for the victim.

5.1.3.4. Temporary status

The next phase is to grant temporary status - issuing a proof of registration on the register of foreigners, valid six months - renewable.

The magistrate from the Public Prosecutor's Office is authorised to grant the temporary status in consideration of advice from other partners involved. Before granting this status, the magistrate from the Public Prosecutor's Office must confirm that:

- the investigation or legal proceedings are still in progress;
- the person involved in this phase can still be considered as a victim of human trafficking or certain aggravated forms of human trafficking;
- the person in question is ready to cooperate in legal proceedings;
- the person in question has severed all links with the presumed offenders;
- the person in question is not viewed as a potential danger to the public order or national security.

In this phase, the victim then receives proof of registration on the register of foreigners. This proof can be prolonged under the same conditions throughout the legal proceedings.

The victim receives social aid and can work if he/she has received a work permit C.

The magistracy mainly asks for notices from the police forces. The social inspectors receive few requests for notice.

The centres also comment that their notice is infrequently sought. This mainly takes place when there is a problem.

The Immigration Office must take the initiative to call on the magistrate in order to receive a reply to five questions. There is no time limit to this.

It can therefore happen that the specialised reception centres are only belatedly made aware of the decision of the contact magistrate. The result is that the person involved becomes an illegal resident overnight.

The centres plead also in favour of consultation between the magistracy and the specialised reception centres. They also support stating, as in the previous circular, that the Immigration Office must contact the magistrate one month before document validity runs out.

In addition, it should be agreed that the magistrate also advises the specialised reception centres of his decision one month before residence document validity runs out. The magistrate should also justify his decision. A consultation could thus take place between the specialised reception centre and the magistracy.

This would avoid advising the centre too late of the case closure, for example. And it would then be possible to prevent the person from becoming an illegal resident in the country overnight.

The magistrates believe that it is difficult to answer the five questions. The notions are too vague for them also and should be refined. In particular, the notion of "public order" should be more explicit. The proposal would be to clarify these notions by the expertise network in trafficking in and smuggling of human beings.

5.1.3.5. End of the procedure

There are three hypotheses for closing the procedure..

a. issuing a residence permit with no cut-off date

The responsible minister or his representative can authorise unlimited residence for the victim by issuing proof of registration on the register of foreigners (unlimited residence) when:

- the complaint or statements have resulted in a legal conviction: the offenders have therefore been convicted (in first instance) for human trafficking;
- the magistrate from the Public Prosecutor's Office has maintained in his requisitions the prevention of trafficking in or smuggling of human beings with aggravating circumstances.

b. Return

The victim can sometimes wish to return to his/her own country. In this case, the return will be organised through the International Organisation for Migration (IOM) or a non-governmental organisation (currently, basically for victims who are not nationals of a State in the European Economic Area).

c. Stopping the procedure

The magistrate from the Public Prosecutor's Office decides on his own initiative and at any time that a person can no longer be considered as a victim of human trafficking. He consults in this context the police and/or inspection services, the specialised reception centre for human trafficking victims and the Immigration Office.

During the procedure, the Immigration Office can end the residence authorisation in the following cases:

When the person in question holds a registration certificate, his/her residence may be ended if:

- it is noted that he/she has renewed contact voluntarily with the presumed offenders;
- the victim no longer collaborates with the magistrate from the Public Prosecutor's Office;
- he/she is viewed as a potential danger to the public order or national security.

When the person in question holds proof of register on the register of foreigners, his/her residency may be ended if:

- the legal authorities have decided to end the procedure;
- the collaboration of the foreign person is fraudulent or when the complaint is fraudulent or unfounded. In this case, the Immigration Office consults the human trafficking contact magistrate and the specialised reception centre is also advised.

Increased contact between the miscellaneous players is requested during this phase so that each situation can be examined individually. Failure to comply with these conditions will not, therefore, result in the procedure being stopped automatically.

Under the evaluation, the magistracy notes that the centres do not always advise when they are ending the support (because the victim is failing to comply with the internal rules of the reception centre and is putting the other victims in danger, for example).

For the specialised reception centres, there is confusion between the notions of "end of support" and "end of the procedure".

The current circular indicates that the centres can only end the support in consultation with the magistrate. The centres believe, however, that they should be able to decide autonomously on ending the support if problems occur.

They emphasise the fact that this does not cause the end of the procedure. Another centre, which will continue with the support, is contacted in such a case.

However, despite this, one may wonder whether it would not be relevant for the magistrate to be advised of this to avoid prejudicing his action.

Regarding the end of the procedure, the centres comment that they are often not directly aware of the decision of the magistrate to end the procedure. They often learn of it through the Immigration Office. In this context, the centres also ask that a consultation take place before the decision is taken. This would avoid having only five days to find a solution for the interested parties.

In this context, the Immigration Office points out that there can sometimes be doubts over the magistrate's decision or that the Immigration Office is not always advised of the magistrate's decision until it is too late. This is important, among other things, under the Stop procedure. This was introduced at the proper time by the minister and continues to be applied by the Immigration Office. The procedure implies that the people committed for at least two years in a procedure relating to human trafficking can be regularised for humanitarian reasons. It is therefore important to the Immigration Office to be aware of the magistrate's decision. The magistrate's decision can sometimes cause confusion given that it can be communicated rather vaguely. Contact occasionally has to be made with the magistrate again.

The circular does not provide a solution when there is doubt.

The same problem can also arise in the temporary status phase.

The Immigration Office requests that the magistrate's decision is sent as an official letter. The social inspection services system is quoted as an example. The court must communicate its opinion to the social inspection services within a given time.

The Immigration Office also evokes another problem, namely the files whereby a person has been exploited in another country but has ended up in Belgium. The decision is then that the prosecution and verdict will take place abroad. This is not a problem as long as the magistrate indicates that the file is still being processed. As soon as a verdict is reached abroad, the person in question leaves the procedure.

Another procedure is sometimes conducted at the same time as the procedure on human trafficking, like seeking asylum. But in some cases, the person has already sought asylum in another country. The other country will therefore be in charge of processing the request for asylum (based on the Dublin Regulation).

The question is then to know who has priority?

5.1.3.6. Staff in the private service of a diplomat

To be able to work in Belgium as a member of the domestic staff in private service of a diplomat, the foreigner must have a special identity card. He/she must collect it himself/herself from the Protocol and Security Department of the Foreign Affairs FPS. The application and annual renewal of this card are subject to an interview with an authorised civil servant from this department. During the interview, the worker receives information and advice in the event that problems are raised over his/her employment.

A criminal process should in principle be possible in the Belgian judicial system if a domestic employee wishes to be considered for the procedure relating to "human trafficking". This is however excluded due to the absolute immunity of diplomats (the matter will ultimately be filed without follow-up).

A certain number of specific measures have however been provided for in this circular.

For the domestic employee to be able to benefit from the status of victim of human trafficking, the magistrate from the Public Prosecutor's Office can issue a positive opinion relating to the reality of the human exploitation and trafficking situation. In this case, the magistrate will compare the victim's statements with other specific elements in the file. He will not content himself with simply checking compliance or otherwise with the employment contract but will consider the elements of the investigation.

The circular stipulates again that the victim is only considered for the status if he/she is supported by a reception centre, no longer maintains contact with the presumed offender and cooperates with the magistrate from the Public Prosecutor's Office. The victim must then renounce the status of domestic employee and return the special identity card. An application to obtain a registration certificate can then be submitted.

All the participants think that the regulations taken up in the circular are effective. The players and the Protocol Department of the Ministry of Foreign Affairs collaborate well together. The system and operation of the Protocol Department is perceived as a good example of detection, registration, etc.

The representative of the Protocol Department indicates, on the other hand, that there is frequently a problem of timing. The diplomat is often away when the investigation begins. Solutions should therefore also be formulated to accelerate the processing of these files.

Overall, with respect to the work in private service, the social inspectors point out that there is actually a problem with au pairs and domestic employees. There are many forms of hidden exploitation and it is difficult to detect them.

In this context, the social inspectors argue for more spontaneous controls in private houses. However, it is often difficult to obtain permission for a home inspection.

5.1.3.7. “Good practices”

Several "good practices" were quoted during target group meetings:

5.1.3.7.1. VITA – Victim Translation Assistance (UNDOC)

In terms of detection, reference was also made to an instrument developed by the United Nations Office on Drugs and Crime (UNDOC). This is VITA - Victim Translation Assistance. This is a questionnaire on CD-ROM. The questionnaire is made up of closed questions and has been translated into many different languages. The aim of this instrument is to be able to communicate with the victim shortly after the intervention and thus to determine what language is spoken by the person in question and whether there are signs of human trafficking. This is also a way of obtaining information on the "elementary" needs of the person in question.

5.1.3.7.2. Provincial platform in Liège

A provincial platform of contact persons has been created in Liège regarding human trafficking. The aim of this platform is to raise awareness and inform in Liège on the problem of human trafficking. The platform is made up, among other things, of provincial representatives, the Labour Inspectorate, miscellaneous police forces, social inspection services, etc.

They have, for example, entered into a partnership with certain hospitals.

An awareness-raising campaign has targeted the medical sector by contacting mainly the members of staff in the gynaecological department and emergency services.

5.1.3.7.3. Working methods within PSAC

There is a reception service at the Liège PSAC for foreign nationals in a precarious situation. The service has a social assistant trained in human trafficking and he is in regular contact with Sürya.

The Antwerp PSAC maintains close relations with Payoke. The PSAC itself has developed a working method to support the victims.

5.1.4. Recommendations

At the end of the analysis, several recommendations have been formulated by the Interdepartmental Unit Bureau. Some relate simply to the text of the circular, others cover different organisational aspects. These are presented below.

5.1.4.4. Recommendations for the circular

5.1.4.4.1. Simplification

The circular should be simplified and an instrument focused more on the practical should be produced in the form of a brochure or scenario.

5.1.4.4.2. Discussion on the application of the directive

The coordination meetings provided for in Col. 01/07 have also been evoked. These local coordination meetings should play a role in communicating the entry into force of directives and of the circular in question. An oral explanation about the circulars could be given, for example. Problems linked to the application of the directive could be addressed. It is also recommended to pay attention during each coordination meeting to the status of the victim and the feedback on human trafficking files.

5.1.4.4.3. Administrative report

The attention of police forces must again be drawn to the obligation of filling in the administrative report. The human trafficking heading must always be filled in. When automating the writing of the administrative report and sending it to the Immigration Office, it would be a good idea to think about how to block the system as long as this heading has not been completed.

5.1.4.4.4. "Order to leave the territory within 45 days" document

The title of the document has a negative connotation for people who are victims. It would be a good idea to think about altering this title or even issuing another type of document.

5.1.4.4.5. Professional secrecy

Thought must be given to the scope of professional secrecy of specialised reception centres in relation with the legal and police services.

5.1.4.4.6. Issuing a registration certificate

The municipal authorities should be required to send the registration certificate within a set time. This should be sent as priority mail. A copy should also be sent to the CPAS.

5.1.4.4.7. Provisional status of the victim of trafficking in human beings and/or certain aggravated forms of smuggling of human beings - the five questions.

The circular should again indicate, as did the previous circular, that the Immigration Office must contact the magistrate from the Public Prosecutor's Office at the latest one month before document validity expires. The specialised reception centres must be advised of the decision taken within the same period. In this context, some notions associated with the five questions – such as "public order" – could be clarified. This could take place via the expertise network in "trafficking in and smuggling of human beings", in conjunction with the Immigration Office and the police.

5.1.4.4.8. Decision on closing the procedure

One possible thought would be to advise the Immigration Office officially (by letter?) of the decision of the magistrate from the Public Prosecutor's Office on closing the procedure or the end of the procedure, within a set time. The specialised reception centres should also be advised within a set timeframe.

5.1.4.5. Recommendations about training/awareness-raising

5.1.4.5.1. Training courses

The frontline players, namely the police and inspection services, do not understand the procedure sufficiently. More attention must be paid to this problem in the basic training courses.

Training should be mandatory for both the police civil servants and for the legal trainees. The CPAS personnel should also receive training.

In terms of content, training courses should focus more on the practical and increased attention should be paid to interviewing potential victims and offenders.

The training should also emphasise a correct application of the 45-days reflexion period.

5.1.4.5.3. Awareness-raising

Traditionally at-risk sectors such as horticulture, construction, hospitality, etc. must be made aware once again. Other sectors such as professional organisations, law firms, legal aid offices, hospitals, schools, etc. can also undergo awareness raising.

5.1.4.6. Other recommendations

5.1.4.6.1. Interpreters

The role and code of ethics of interpreters should be clarified. More practically, thought must be given to how the lists of interpreters are drawn up in the prosecution services and how to optimise them. The management must also be reviewed. The possibility of prior telephone contact between the person intercepted and the interpreter should be examined in greater detail.

5.1.4.6.2. Strengthening cross-border collaboration and protection and support of human trafficking victims

The problem of the uncertain status of a victim who is exploited in other Member States, but who resides in Belgium, should be addressed at European level. In this context, places where the victim can be welcomed must be examined.

5.2. Recognition and approval of centres specialised in supporting human trafficking victims

The organisation of an "official" recognition system of specialised reception centres was possible in 2011 and 2012. Note, however, that this only became a reality in 2013 with the publication of a Royal Decree.

5.2.3. Discussions

The victims of human trafficking can, in return for complying with certain conditions, benefit from a residence permit of fixed or even open-ended duration. Various centres specialised in accommodating human trafficking victims have existed in Belgium since 1994. These specialised centres provide the victims with accommodation and psycho-social, legal and administrative monitoring under the protection offered to them.

Initially, this system of protection and issuing of a residence permit was organised in different circulars. Three specialised centres were referred to in these texts (one per region): Payoke (Flanders), Pagasa (Brussels) and Surya (Wallonia). The Law of 15 December 1980 (amended by the Law of 15 September 2006) currently contains all the provisions on the procedure for granting a residence permit to the victims of human trafficking. The law does not mention the reception centres directly, but talks about recognised centres specialising in supporting human trafficking victims (Art. 61.2. § 1 Law of 15 December 1980). The centres themselves are only mentioned in the explanatory memorandum.

During the first meetings of the Interdepartmental Coordination Unit for the Fight against Trafficking in and Smuggling of Human Beings, it had been estimated that an objective view of the recognition of specialised reception centres would be required.

The procedure for granting a residence permit to the victims of human trafficking has been part of the Law of 15 December 1980 since 2006. Contrary to the previous circulars, the law does not indicate directly which are the specialised reception centres.

Article 61/2 indicates: When the police or inspection services have indications that a foreigner is a victim of the offence referred to in Article 433quinquies of the Criminal Code or a victim in the circumstances stated in Article 77c, 1), solely in relation to unaccompanied minors 5), of the offence within the meaning of Article 77a, they shall inform the Minister or his/her representative immediately and notify the foreigner of the possibility of obtaining a residence permit by cooperating with the competent authorities in charge of the investigation or the prosecutions concerning these offences and put him/her in contact with a centre recognised by the competent authorities that specialises in the reception of victims of these offences.

The article quoted therefore restricts itself to stating only that there are "centres recognised by the competent authorities", nothing else.

The explanatory memorandum has to be consulted to find out which are the "recognised" reception centres: *At the moment, it is possible to call on three reception centres with extensive experience. They are the non-profit organisation Payoke in Flanders, the non-profit organisation Pagasa in the Brussels region and the non-profit organisation Surya in Wallonia.*

We therefore find ourselves in a strange situation, as no regulatory act has categorically recognised the centres since the Law entered into force.

To update the questions raised by this file, the Interdepartmental Unit Bureau has brought together the three specialised reception centres mentioned in the explanatory memorandum (Payoke, Surya and Pagasa) and the three reception centres that house under-age victims of human trafficking.

It is worth mentioning that, as a rule, the centres welcoming under-age victims of human trafficking don't in principle carry out the administrative and legal follow-up of their file. The recognised centres are in charge of this. The Esperanto Centre does, however have staff for the administrative and legal follow-up.

The following elements came out of the discussion:

The three "currently recognised" reception centres do not favour a recognition and approval system if the aim is an inconsistent and non-controlled increase in new centres. They point out that there are times when fewer victims are sent to them. They fear that the potential increase in players could disperse the victims even more and therefore render the work of some centres obsolete, which would be counter-productive.

In addition, the importance of establishing a relationship of trust is underlined along with good collaboration with the frontline players. Increasing the specialised centres could make everything less clear for the various players.

Esperanto has mentioned that there is an advantage in recognising specialised reception centres for minors, mainly because they are treated very differently from adults. This would also mean that the number of people involved in the file could be limited. This centre would like to be recognised, as it has the staff and experience required for the administrative and legal follow-up of under-age victims of human trafficking. This recognition would also give it greater visibility and allow it to carry out the orientation of under-age human trafficking victims more systematically. This centre is currently in the paradoxical situation of being able to follow up human trafficking victims without benefiting from official recognition.

Minor n'Dako and Juna (reception of under-age human trafficking victims in the Flemish and Brussels regions) are not specifically requesting recognition. Recognition and approval is not linked directly to the reception but to the possibility for a centre to embark on the administrative and legal steps with regard to the human trafficking victim. These centres currently house the under-age human trafficking victims sent to them and Pag-asa or Payoke carry out the administrative and legal follow-up to the situation.

For all that, neither centre is against recognition but, when the topic was being discussed, they did not deem such a mechanism absolutely necessary as far as they were concerned.

5.2.4. Changes in the file in 2012

The debate over the file was presented during the meeting of the Unit on 7 July 2011. The Interdepartmental Unit Bureau then received the mandate to finalise a draft Royal Decree creating a recognition system whilst surrounding it with certain guarantees to take into account concerns passed on by the specialised reception centres.

Section 3.5 of the 2012–2014 action plan addressed this question and the government declaration also mentioned the government's commitment to finalising this file²³.

The entire text was finalised in 2012. Its content will be presented in the next report given that the text was published in 2013²⁴.

²³ Government agreement, December 2011, p. 132; 2012-2014 action plan to combat human trafficking, pp. 27-28.

²⁴ The text will be published in the Belgian Official Gazette of 23 May 2013 (Royal Decree of 18 April 2013 on the recognition of centres specialising in the reception and support of victims of trafficking in human beings and certain aggravated forms of smuggling of human beings and on the approval to engage in legal proceedings).

However, broadly speaking, the draft prepared takes up the following elements:

- An "open" recognition system has been adopted. The three reception centres currently taking charge of the files of adult and under-age victims are recognised immediately. The text opens up the possibility of other recognitions but sets limits. It establishes among other things that there is no need to recognise other institutions without a specific reason for doing so in relation to changes in the problem of human trafficking and the number of victims;
- The recognition of a specialised reception centre automatically confers the approval to engage in legal proceedings. Recognition in the strictest sense of the word relates to the ability to request from the Immigration Office residence documents for human trafficking victims whereas approval relates to the ability of centres to engage in legal proceedings. The Interdepartmental Unit deemed it pointless and of no great interest to create a separate system for each hypothesis;
- The draft text fixes the recognition conditions in terms of the status or expectations linked to the work of centres in the Belgian multidisciplinary framework;
- The text lastly provides for the possibility of withdrawing the recognition although this is a rather theoretical hypothesis at the moment.

5.3. Reception and monitoring of victims by the specialised centres

5.3.3. New support

The specialised reception centres received a total of 945 registrations in 2011 and 2012. Not all registrations related to cases of human trafficking; they involved intra-family violence, questions relating to residence documents, accommodation, etc. The support that finally started in 2011 and 2012 is shown in the table below.

	PAG-ASA			Sürya			Payoke		
	Registrations			Registrations			Registrations		
	Support started	No. of human trafficking victims	Of	Support started	No. of human trafficking victims	Of	Support started	No. of human trafficking victims	Of
2011	47	308		55	171		49	125	
2012	63	341		43	156		69	169	

It must also be underlined that the centres generally support people for over a year. The number of actual support cases a year is therefore higher than the number of new support cases started. For example, Payoke still had 101 support cases in progress from previous years in 2011, a figure that rose to 117 in 2012.

5.3.4. Types of exploitation noted²⁵

	PAG-ASA		Sürya		Payoke	
	2011	2012	2011	2012	2011	2012
Sexual exploit.	10	24	9	9	18	25
Economic exploit.	25	28	39	28	20	19
Exploit. of begging	0	4	0	0	0	2
Forced to commit an offence	4	1	3	4	0	1
Smuggling of organs	0	0	0	0	0	0
Severe smuggling situations	6	6	4	2	11	21
	45	63	55	43	49	68

²⁵ The table covers the new support (not all the files being monitored in 2011 and 2012)

5.3.5. Age of supported victims

	PAG-ASA		Sürya		Payoke	
	2011	2012	2011	2012	2011	2012
< 18 years old	2	9	2	2	2	5
> 18 years old	45	54	39	41	47	63
Total	47	63	41	43	49	68

5.3.6. Anonymity of the victim

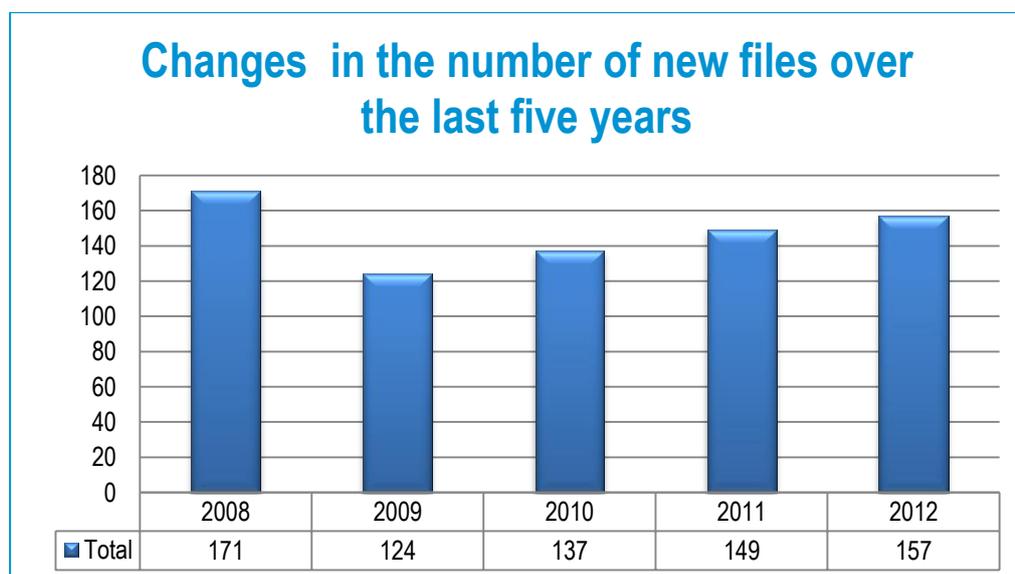
The centres do not apply (or only exceptionally) the measure relating to the anonymity of potential human trafficking victims. Payoke points out that this measure does not work well in practice, despite several attempts having been made to uphold it. PAG-ASA explains that the measure is pointless to the potential victims who raise the question of anonymity. The reasons are not so much linked to the measure itself but to the conditions of it being applied. Very frequently, the exploiter recognises the victim as the exploitation of each person is different and the legal debate assumes that there is a return to the person's circumstances. The facts discussed therefore give an indication of who is the victim who may be involved. PAG-ASA also points out that in most cases, the name of the victim is already given in the report of a hearing when he/she goes home. This information cannot be subsequently deleted.

The anonymity of a potential victim can only be preserved in human trafficking or smuggling affairs involving many other victims; the identity can then be dissimulated "in the numbers".

5.3.7. Residence documents and Immigration Office statistics

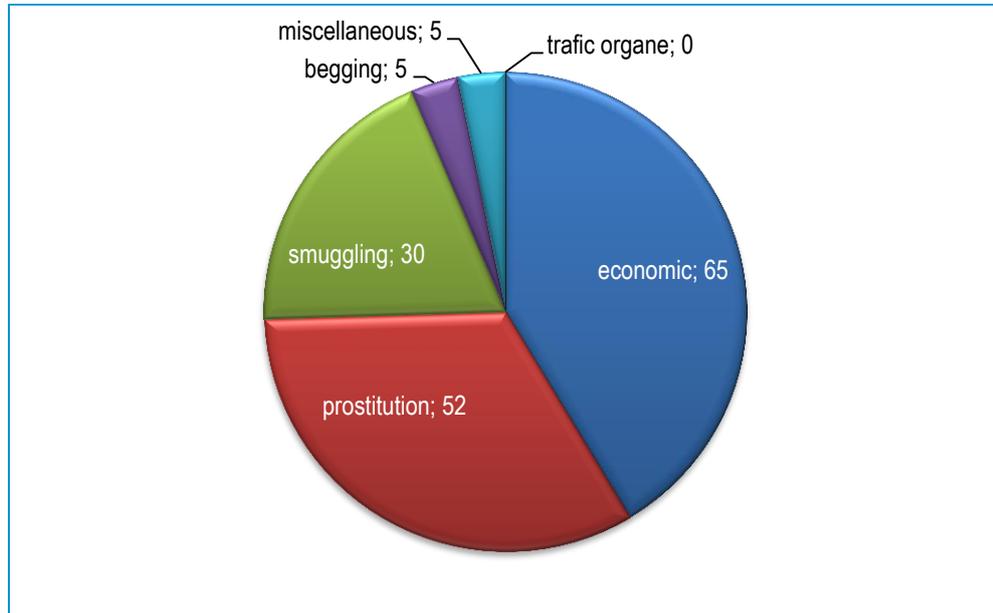
We repeat here all or part of the elements from the annual Immigration Office reports available on the website: <https://dofi.ibz.be/sites/dvzoe/FR/Pages/Publications.aspx>

The first table shows the new requests for application based on Articles 61/2 to 61/5 inclusive of the Law of 15 December 1980 and Articles 110bis and 110ter of the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and distance of foreigners.



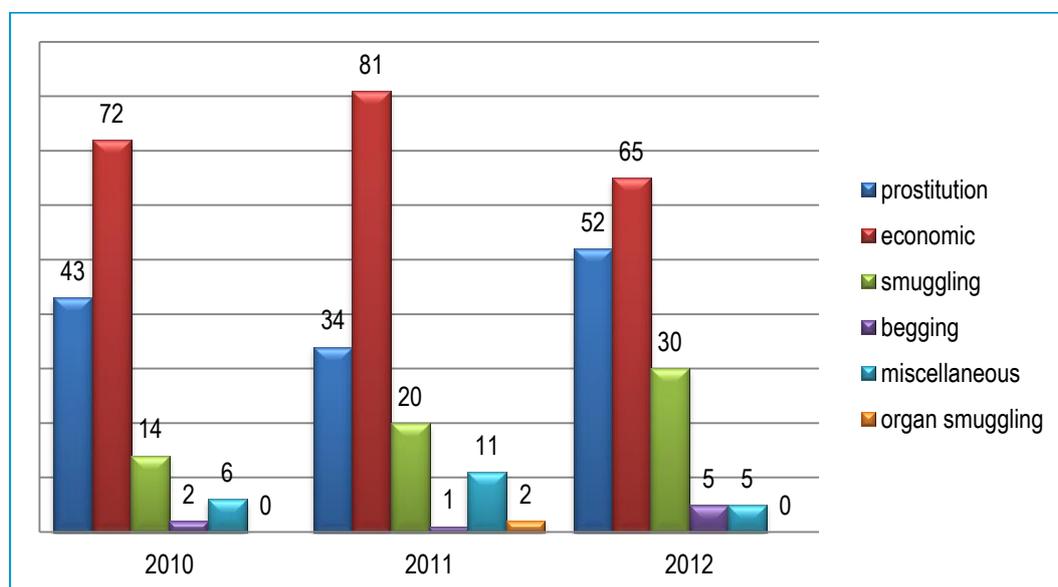
In 2009, the number of people with a protection status dropped. We note a slight rise in 2010 and 2011. This trend is continuing in 2012.

Breakdown of new files per sector in 2012



However, this upward trend is not the highlight for 2012. New trends appear along with changes in the exploitation sectors, as shown in the next graph.

Breakdown of new files per sector from 2010 to 2012



Although the economic sector remains the largest in 2012, this has seen a certain decrease compared to previous years (see table above). On the other hand, whereas the number of prostitution files dropped in recent years, it has increased radically this year. Another significant trend involves the smuggling files, which have more than doubled in two years. The following graphs will refine this analysis slightly.

5.3.7.4. Review of various residence permits issued

The next tables present all documents issued during 2011 and then 2012, be it a first document or a renewal. We can also see the documents issued for humanitarian reasons outside the human trafficking procedure in the strictest sense (i.e., mainly for humanitarian reasons or stopping the procedure).

5.3.7.4.1. 2011

	M	F	Total
45 days order to leave the territory/THB	20	10	30
Registration certificate	73	47	120
Registration certificate prolongation	1	11	12
Temporary PRAR ²⁶ /THB	45	27	72
Temporary PRAR prolongation/THB	282	180	462
Unlimited PRAR/THB	31	19	50
Temporary PRAR/humanitarian	5	6	11
Temporary prolongation PRAR/humanitarian	14	33	47
Unlimited PRAR/humanitarian	5	6	11
Annex 13	3	4	7
Annex 13 prolongation	0	1	1
Total	474	339	813

²⁶ Proof of Registration in the Alien's Register

5.3.7.4.2. 2012

	M	F	Total
45 days order to leave the territory/THB	18	18	36
Registration certificate	70	73	143
Registration certificate prolongation	4	8	12
Limited PRAR/THB	61	45	106
PRAR prolongation/THB	285	158	443
Unlimited PRAR/THB	15	20	35
Limited PRAR/HUM	2	2	4
PRAR prolongation/HUM	17	34	51
Unlimited PRAR/HUM	7	4	11
Annex 13	3	4	7
Total	482	366	848

Note an increase in the number of documents issued in 2012 (+ 35). This increase can be explained by the slight increase in new files in 2011.

5.3.8. Voluntary return of the victim

Very few people returned voluntarily to their country of origin via the IOM in 2011 and 2012. In most cases, people return in another way. Of the eight people who returned voluntarily from Payoke, just one was repatriated by the IOM. Other solutions were found for the others. Sürya also confirms that most people return under their own steam.

5.4. Intervention by the Commission for financial aid for victims of deliberate acts of violence and occasional rescuers

5.4.1. Commission working framework

The Commission is not itself competent to investigate the circumstances of the act of violence. It acts based on the decision of the criminal judge. He or she will adjudicate the human trafficking case attributed to the exploiter and the act of violence that has caused serious harm. The final decision is *erga omnes*.

Furthermore, the Commission can carry out all the useful investigations and request information on the financial, social and fiscal situation of the offender and the victim from any authority.

The financial aid allocated by the Commission does not give right to compensation, as provided for under Article 1382 of the Civil Code or in accordance with the social security law. The fact that this involves a totally autonomous compensation is revealed by various elements:

- the aid is allocated based on the principle of solidarity of society/authorities with victims or their family due to voluntary acts of violence, in this case, victims of trafficking in and smuggling of human beings and their families;
- the competence to grant this financial aid has not been allocated to the ordinary courts but to an administrative jurisdiction created specifically for this purpose;
- a specific procedure is planned;
- there is an exhaustive list in terms of beneficiaries and measures of damages for which intervention can be requested.

It is also important to underline that the Commission reviews cases individually and decides in all fairness.

For the remainder, Article 31 of the Law of 1 August 1985 must be consulted. This stipulates that:

"The Commission can grant financial aid:

to people suffering major physical or psychological harm resulting directly from a deliberate act of violence."

A deliberate act of violence is made up of a material element and a moral element.

The material element is the act or behaviour that relates to the definition of "act of violence". This involves the form of the act of violence that can be seen from outside. Neither the preparatory work nor the legal text defines the notion of "act of violence". According to the Commission's case law, the material element consists of the use of violence towards a person.

The Commission defines the material element of the deliberate act of violence as the use of violence towards a person. Some standard examples of use of violence towards a person are: kill, beat, rape, burn, suffocate, mutilate, torture, kidnap, poison, etc.

There is no intervention for a simple attack on the material property of the person wronged. The act of violence must target a person. To appreciate the meaning of the notion of "act of violence", the Commission takes its inspiration from Article 483 of the Criminal Code, which defines violence as acts of physical force exercised on people. Acts committed on animals (mistreating domestic animals) and property do not enter the scope of the concept.

The Commission has thus refused requests for damages resulting from a non-violent theft from a person, abuse of trust, fraudulent insolvency, swindling, misappropriation, refusal to pay salaries and fire.

The Commission agrees that the act of violence can also consist of exercising any form of psychological violence directed against a person. Such an interpretation matches the intention of the legislator.

People who are victims of serious threats, like having a weapon (loaded or otherwise) pointed at you during a hold-up, are taken into consideration for financial aid from the Commission. The Commission has granted financial aid several times to people suffering major physical or psychological harm resulting directly from harassment, in the form of psychological terror, threats, pursuit, telephone harassment, deterioration of furniture and accommodation, etc.

Although damage to property cannot in itself be considered violence towards a person, causing such material damage can nevertheless constitute an element of harassment and psychological violence towards a person. It goes without saying that bodily injuries are considered for aid.

However, the simple fact that a person is shocked or traumatised by an act of violence targeting his/her property is not enough to benefit from an intervention by the Commission. The Commission's case law really is not constant on this point

5.4.2. Dossiers

- In 2011, a decision was taken in French, whereby financial aid was granted for human trafficking, qualified as such.
- In 2012, a decision was taken under two (related) requests in Dutch and two in French²⁷.

Only the two requests in Dutch (in 2012) qualified, according to the Commission, as intentional acts of violence linked to human trafficking. In both affairs, financial aid was granted and they were also given the positive internal qualification of "human trafficking".

It must be underlined that when the secretariat classifies the affairs, the "human trafficking" qualification is sometimes ignored and only the "assault and battery" or "sexual abuse" qualification is retained.

For information purposes:

The Law of 1 August 1985 provides since 9 January 2004 for an intervention for victims without a valid residence permit, provided they are subsequently granted an open-ended residence permit under an investigation into human trafficking.

Article 10a of the Law of 30 December 2009 relating to miscellaneous provisions in terms of Justice (II) deleted the nationality rules/conditions for the victims of deliberate acts of violence.

²⁷ Some data communicated related to human trafficking files.

5.4.3. Sample files

File 1

The plaintiff was forced to work in a night shop where he was exploited: very low salary, fifteen hours of work a day, accommodation on site on a single blanket, etc.

The night shop "boss" was prosecuted and convicted. The verdict by the Criminal Court revealed that the boss used foreign labour without a work permit and made these foreigners live and work in unacceptable conditions.

By its verdict of 22 March 2010, the Criminal Court sentenced the shopkeeper by default to three years in prison and to pay the civil part of the sum of €7,500 + interest. The Court also ordered the closure of the SPRL.

Among the preventions retained, note that:

- having carried out human trafficking with aggravating circumstances, the offence had been committed by abusing the particularly vulnerable situation in which a person finds himself/herself due to the illegal or precarious administrative situation;
- having recruited, transported, transferred and housed a person to put him to work in conditions contrary to human dignity with aggravating circumstances, the offence had been committed by abusing the particularly vulnerable situation in which a person finds himself/herself due to the illegal or precarious administrative situation.

In this file, the conditions for obtaining financial aid were not retained and the request was considered as inadmissible. Note, however, that no medical certificate or report was included in this file.

BASIS FOR THE DECISION

Considering,

- that the "interest" and "legal fees" items do not figure in the limitative listing of Article 32 of the Law of 1 August 1985 and are therefore not taken into account by the Commission;
- that Article 31 1 of the Law of 1 August 1985 stipulates that the Commission can grant aid to people who have suffered major physical or psychological damage following a deliberate act of violence;
- that the plaintiff has been the subject of human trafficking and put to work in conditions contrary to human dignity;
- that the deliberate act must of necessity include a material element that consists of the use of the violence directed against the person and a moral element that consists of the intention of the attacker to commit this act of violence;
- that the acts of exploiting the plaintiff at work, although extremely consequential for him, are not, however, sufficient to establish the existence of a deliberate act of violence in the meaning of Article 31 1 of the Law of 1 August 1985;
- the request is therefore inadmissible. »

As already indicated in the past, the deliberate act of violence is normally more directly taken into account under sexual exploitation that is often accompanied by rape or other behaviour that can establish the violence exercised:

File 2 :

In 2003 and 2004, a victim from an Eastern European country suffered violence at the hands of her "boy-friend". He had brought her to Belgium to force her to exercise activities of prostitution. This is a typical "lover boy" situation, where a victim is seduced by the trafficker, then taken to another country with false promises and then forced into prostitution.

With a verdict handed down on 21 November 2007 by default, the Criminal Court sentenced the person X to five years in prison for miscellaneous acts of violence under human trafficking.

The verdict sentenced the offenders to pay the victim the sum of €25,000 for moral and material damage.

With a verdict handed down on 13 October 2008 by opposition, the Criminal Court sentenced the offender to five years in prison, suspended for five years for anything beyond the sentence served and to pay the sum of €12,500 for moral and material damage.

BASIS FOR THE DECISION

Considering firstly,

- that Article 31 1 of the Law of 1 August 1985 stipulates that "people who suffer major physical or psychological harm as a direct result of a deliberate act of violence can request aid";
- that to grant aid to people targeted under Article 31 1, Article 32 1.1 stipulates that the Commission bases its decision mainly on the damage resulting from the moral harm, taking temporary or permanent invalidity into account;
- that to grant aid to people targeted under Article 31 1, Article 32 1.1 stipulates that the Commission bases its decision mainly on the damage resulting from the temporary or permanent invalidity;
- that the expert retains a permanent invalidity rate of x%;

the Commission ruling *ex aequo et bono* believes that it should grant the plaintiff a principal aid of €6,125, with no part allocated as income replacement.

6. RELATED PHENOMENA

The offence of human trafficking is linked to several other phenomena.

As soon as the National Security Plan mentions uniquely the economic and sexual exploitation as police priorities, the police interventions and initiatives for these special phenomena become part of their routine (reactive) operating framework..

6.1. Human smuggling

The federal police indicates that controls at airports, on trains (and the underground) and motorways and in ports have been incorporated into their everyday work. They do not focus on a single form of criminality. Thus, the airport police officers control travel documents and sporadically control the arrival of at-risk flights.

The Central Human Trafficking Department also had an employee in 2011 and 2012 as a link officer in France to the Border Police and the Central Office for the repression of illegal immigration and employment of foreigners without residence permits (OCRIEST). Information on human trafficking is exchanged bilaterally under the common problem of human smuggling along the length of the E40.

In 2011 and 2012, the federal police also supported the FRONTEX controls at other critical crossover points on the EU borders where human smuggling is creating a problem. In 2011 and 2012, this involved controls at Algeciras.

Representatives of the various forces (airport police, maritime police, railway police (including the Brussels metro) and motorway police) participated permanently in the consultation resulting from circulars 4/2011 and the consultation linked to the Col. 1/2007²⁸, according to whether they were involved actively in combating the trafficking in and smuggling of human beings in a judicial district. They also participated in controls or actions related to human smuggling on a larger scale, which falls under the extension to this consultation.

Thus, regular and large-scale controls and actions were conducted in 2011 and 2012 in the 340 car park at Drogen (VLUCHT) and at the E40 car park from Happeke up to the French border (HASTAPARK, RUNNER). Both the local and federal police (railway police, motorway police, federal judicial police) participated simultaneously in these actions. In addition, the local police also organised targeted actions involving nuisances linked to illegal immigration/human smuggling at Ostend (ZEFIER). There are no determined national figures indicating the number of controls made by the police or actions on a broader scale and incorporated in a specific region.

In the package-programme "human smuggling 2008-2012", the E40 already seemed to be the main problem area for human smuggling.

The following "indices" illustrate the efforts made in set areas :

- Turned back at the border (vague reason for journey): 2,735 in 2011 and 2,402 in 2012.
- Questioning of people residing illegally: 27,820 in 2011 and 28,006 in 2012.
- Investigations into human smuggling: 289 in 2011 and 250 in 2012.

²⁸ The two criminal policy circulars involve the trafficking in and smuggling of human beings, respectively.

- Human trafficking and smuggling joint investigation teams: one human trafficking joint investigation team in 2011 and one human smuggling joint investigation team in 2012.
- In 2011 there were 206 X-ray scan controls, 259 with CO2 multigas detector and 192 with a dog used for immigration controls. With the support of other technical resources, the Zeebruges technical support team worked 11,064 hours in support of local and federal police actions in 2011. In 2012 there were 129 X-ray scan controls, 228 with CO2 multigas detector and 158 with a dog used for immigration controls. With the support of other technical resources, the Zeebruges technical support team worked 8,241 hours in support of local and federal police actions in 2012.
- Belgium is in fourth place (after Germany, Austria and the United Kingdom) of EUROPOL countries that sends the most information about human trafficking to other EUROPOL member States on the Europol analysis platform (CHECKPOINT).

6.2. Sham marriages

6.2.1. Federal police

Sham marriages (relationships of convenience) are not part of human trafficking or smuggling offences. Given that a sham marriage can be linked to human trafficking – exploitation of prostitution or (other forms of) sexual exploitation – and human smuggling (paying intervention for organising a sham marriage for the abuse (organised) of entry or residence modalities), the police is forced to pay attention to this as part of their routine operation. The Central Human Trafficking Department has supported the investigations in a context of human trafficking or smuggling. Combating these phenomena does not, nevertheless, constitute an action point in the "human trafficking or smuggling" package-programmes.

The Central Human Trafficking Department advises the local and federal officers of the existing directive (COL. 10/2009)²⁹. In conjunction with the central department, the police areas organised an additional information session for police officers investigating sham marriages. The human trafficking contact magistrate facilitated these sessions during more detailed information meetings. The problem of sham marriages was addressed systematically during various training courses.

The Gosselies airport police was mainly active in detecting potential sham marriages in 2011 and 2012. It was mainly Moroccan, Tunisian and Algerians with a visa D who attracted their attention because they appear the most frequently in investigations into sham marriages. Where there were signs of a sham marriage, the Immigration Office and the relevant police departments from judicial districts involved were advised. The Central Human Trafficking Department supports the Gosselies airport police in this respect. The central department also monitored systematically the information on sham marriages from other police forces.

The Central Human Trafficking Department updated the brochures on sham marriages. Police officers can download them from the police intranet.

The number of initial reports for sham marriages for 2011 and 2012 was:

Month	2011	2012
January	231	177
February	184	155
March	180	173
April	169	145
May	186	161
June	150	154
July	193	136
August	178	126
September	172	137
October	173	170
November	191	130
December	188	105
	2195	1769

²⁹ Directive from the College of Public Prosecutors about sham marriages

6.2.2. Immigration Office

Measures have been drawn up to combat **irregular family groups**, mainly in terms of age conditions and resources. Up to three years after obtaining a right to residence, the Immigration Office can end this right to residence administratively, when the foreigner no longer satisfies the conditions fixed by law.

In recent years, all the players involved have made an effort toward optimum organisation of combating sham marriage projects in the country, mainly through the exchange of information, consultations and close collaboration. A national manual on combating **sham marriages** has been available since 2009 (written by a working group from the College of Public Prosecutors and the Criminal Policy Department). This rationalises the actions and efforts of different services in the field. These measures have borne fruit but, as a result, the problem has shifted or behaviours have changed: having the marriage abroad to avoid controls in the country, fraudulent declarations of long-term cohabitation to obtain a right to residence and fraudulent recognitions of a child.

Over the years, people are using sham marriages less to obtain a right to residence in Belgium. Uncertainty remains over whether this is a consequence of improved collaboration between the municipal authorities (civil status), the courts and the police and of the directive COL. 10/2009.

6.3. Illegal adoption

6.3.1. General

The competent federal central authority for adoption acts under the Law of 24 April 2003, which reformed the Belgian adoption law in order to implement the principles of the Hague Convention of 29 May 1993 on the protection of children and cooperation in international adoption. Both texts entered into force in Belgium on 1 September 2005.

The legislation features the main principle whereby any adoption must be based on the best interest of the child and the respect of the fundamental rights recognised for him/her in international law.

To guarantee this principle and prevent the abduction of and trafficking in children, the federal central authority and the municipal central authorities at the matching stage are responsible for checking compliance with strict conditions to which international adoptions must respond to be able to be effective in Belgian law, mainly:

- that the adoption is clearly not contrary to the public order, given the best interest of the child and the fundamental rights recognised for him /her by virtue of international law;
- that the competent authorities in the State of origin have established, after examining the possibilities of placing the child in his/her State of origin, that the child was adoptable and that international adoption was in his/her interest;
- that the adopting candidates have obtained a decision stating that they are qualified and fit to adopt a child;
- that the required consents have been given freely without payment or compensation of any kind. That the consent of the mother and father, if required, was only given after the birth of the child. And that the adopted child over twelve years old has consented to being adopted;
- that the adoption has been established by the competent authority, in the form and according to the procedure providing for in the State in question;
- that the adoption has not been entered into as fraudulent evasion of the law.

To ensure at least the authenticity of procedures, the law makes it mandatory for the federal central authority to work on the basis of original documents in the file or copies that are certified conforming, duly authenticated by the Belgian diplomatic and consular authorities.

In its work to assess adoption conditions and reasons, the federal central authority acquires every possible opinion (Immigration Office opinion, police interview conducted by the Public Prosecutor, interviews and opinions by the diplomatic stations) so that it can determine the actual circumstances of the adoption carried out abroad and identify illegal practices when it comes to international adoption.

In 2011 and 2012, the federal central authority recognised and registered 667 foreign decisions relating to the establishment of an adoption and refused to recognise 81.

No cases of human trafficking emerged during the processing of these requests for recognition of foreign decisions relating to establishment of adoption.

6.3.2. Federal police

Illegal adoption was not part of the offence of human trafficking in 2011 and 2012³⁰. Given that illegal adoption can be linked to human trafficking – exploitation of prostitution or (other forms of) sexual exploitation – like the production of images of sexual abuse on minors or prostitution and also the organised abuse of entry or residence modalities, the police is forced to pay attention to this as part of their routine activities.

Illegal adoption has appeared exceptionally during Internet searches in terms of human trafficking. A few advertisements were published on the Internet offering a child for adoption (paying) in 2011 and 2012. It was never clear exactly whether different people were making an offer or whether one person was placing the same offer on several sites by altering the formulation slightly.

In addition, although technically possible, the police are not authorised to monitor "illegal adoption" on the Internet without agreement from the federal prosecution service. It is currently difficult to organise the means to invest in this question, as the scale of the phenomenon is little known. It remains however limited due to the existing adoption controls and procedures.

³⁰ It is not always stated as such, but the 2013 parliamentary reform work indicated that the transfer of control could include illegal adoption provided that there was clearly a purpose of trafficking at stake.

6.4. Slum landlords

As mentioned earlier, a specific workshop on the "slum landlord" phenomenon was held during the plenary session of the "human trafficking and smuggling" expertise network on 21 September 2011. Although the phenomenon does not constitute human trafficking in a legal sense, the fact that cases of this type can also hide economic or sexual exploitation is frequently evoked. Consideration should be given to how to ensure optimum protection of victims under the review of the circular on investigations and prosecutions.

6.5. Identity document fraud

6.5.1. Federal police

Visa, passport and other identity document fraud is not essentially a matter for the police. Other departments and services play a far greater role in this respect. We refer in this respect to the Interior FPS (Immigration Office), the Foreign Affairs FPS, the towns and municipalities (identity documents), the OCGRSP, etc.

The central "false identity documents" department of the federal police is mainly involved in detecting falsified visas, passports and other identity documents. It also supports the towns and municipalities with a technical opinion when someone submits "suspicious" documents (EUROPA project).

When the courts and the police jointly investigated organised fraud of visas, passports and other identity documents, this resulted in information and proceedings in 2011 and 2012. Thus, in 2011 and 2012, suspects produced false/falsified documents on a large scale, which they sold or used as look-alikes in cases of human trafficking or smuggling. Several investigations revealed many people who had lost their identity card or passport. The offenders loaned (against payment) or sold these documents for an illegal entry.

The Foreign Affairs FPS and the Central Human Trafficking Department together prepared a process for monitoring the problem of large numbers of people who lose their passports.

6.5.2. Immigration Office

Under cooperation in combating the use of false or falsified residence documents, the interested parties who contact the Immigration Office are mainly the banks, police forces and all institutions entering into contact with foreigners. The residence permit department has a file in which the numbers of all blank cardboard residence permits that have been stolen in the municipalities, as well as all electronic documents reported stolen or lost by private individuals, are recorded. A significant rise in notifications of loss of theft of these electronic cards has been noted in recent years; they have probably been sent afterwards to other people who have used them fraudulently.

6.5.3. Control of Social Legislation (CLS)

Generally speaking, the problem of fraud linked to visas, passports and other residence documents do not fall under the remit of the CLS but of police forces (specialised).

CLS inspectors of course attempt to intercept potential false residence documents during inspections. But this is not easy given that our inspectors do not have the means and knowledge required to do this. To compensate for this shortcoming, training will be given in 2013 to (some) social inspectors to increase their knowledge of false documents and detection possibilities.

In 2011-2012, the COSF-D of the federal police (central office for the suppression of false documents) was called on several times in files conducted jointly with the social inspectorate. This takes place when it was known in advance that people could be working with false identity documents. In the construction sector, very special attention was paid to the occupation of Brazilians in possession of falsified Portuguese identity documents. Extra attention also seems necessary for workers of African origin. This normally involves investigations conducted with the social inspectorate.

7. CONCLUSION

The different inspection departments or services have continued their efforts to combat human trafficking.

Miscellaneous initiatives have been undertaken. A global awareness-raising campaign was launched in the hospitals. Belgium is one of the only European countries to have developed this type of initiative. In addition, the specialised reception centres themselves develop actions in this sector, which helps to reinforce the messages that can be sent.

New initiatives are also being introduced in institutions that have realised the need to address the problem of human trafficking in a structured fashion. Training courses organised by FEDASIL, the Immigration Office and the reception centres are an example of that.

In terms of prosecutions, dual work will probably have to be initiated in the future, as highlighted by the 2012-2014 action plan. This involves, firstly, an adaptation to the legislation following the adoption of the European directive of April 2011 on human trafficking and, secondly, a review of criminal policy instruments, as the last directive on the topic dates from 2007. This has worked well and has proved effective in relation to prosecutions and convictions obtained, but it does not address some questions such as international collaboration or wealth surveys. Updating is therefore necessary in the aftermath of a review of the law.

The Interdepartmental Unit has continued to operate by developing or supporting some of the initiatives mentioned above. In particular, two areas of discussion have been commenced, firstly the recognition of specialised reception centres and secondly, their integration within the Interdepartmental Unit. Work on this point is well advanced and should be completed during the term of office.

Furthermore, the Interdepartmental Unit Bureau has with its own various departments and institutions assessed the victim protection system as organised by the 2008 multidisciplinary circular. Although the circular has been highlighted as an essential tool, it is not a practical instrument for the players in the field. There is an extensive demand for simplified equipment that can be used directly when controls are taking place, for example. Similarly, some players are still not sufficiently aware and efforts should be made to this end.

Overall, we can say that the work in these last ten years has been performed in concentric circles. The various departments have mainly undertaken to improve the knowledge that the players under their jurisdiction can have of human trafficking. This is logical and important, as they will theoretically be the first people to direct the victims and work on the trafficking files. A next step could no doubt now be to broaden the scope of action to involve players whose work is less directly related to the phenomenon but who, despite everything, can support the fight against human trafficking.

