



National Rapporteur on Trafficking in
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against Children

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Abbreviations

ACM	Amsterdam Coordination Centre for Human Trafficking
ACVZ	Advisory Committee on Migration Affairs
AIV	Advisory Council on International Affairs
Bibob Act	Public Administration (Probity Screening) Act
BlinN	Bonded Labour in the Netherlands
CCV	Centre for Crime Prevention and Safety
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPOL	European Police College
CGKR	Centre for Equal Opportunities and Opposition to Racism
COA	Central Agency for the Reception of Asylum Seekers
CoMensha	Coordination Centre Human Trafficking
COSI	Coopération Opérationnelle en matière de Sécurité Intérieure
COSM	Categorical Shelter for Victims of Human Trafficking
COSUDOW	Committee for the Support of Dignity of Women
DCC	Dutch Criminal Code
DCCP	Dutch Code of Criminal Procedure
DJI	Custodial Institutions Agency
DT&V	Repatriation and Departure Service
EC	European Commission
ECHR	European Court of Human Rights
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
EHRC	European Human Rights Cases
EMM	Expertise Centre on Trafficking in Human Beings and People Smuggling
EMN	European Migration Network
EMPACT	European Multidisciplinary Platform against Criminal Threats
ENPATES	European NGOs Platform against Trafficking, Exploitation and Slavery
EPICC	Euroregional Police Information and Coordination Centre
EU	European Union
Eurojust	The European Union's judicial cooperation unit
Europol	The European Union's law enforcement agency
Eurostat	European Statistics Office
FIOD	Fiscal Intelligence and Investigation Service
GBA	Municipal Personal Records Database

GGD	Municipal public health service
GRETA	Group of Experts on Action against Trafficking in Human Beings
ILO	International Labour Organization
IND	Immigration and Naturalization Service
Intervict	International Victimology Institute Tilburg
IOM	International Organization for Migration
JIT	Joint Investigation Team
KLPD	National Police Services Agency
KMar	Royal Dutch Marechaussee
LEM	National Expert Group on Trafficking in Human Beings
LIEC	National Centre for Information and Expertise
LJN	National Case-Law Number
LOVS	National Consultative Committee for the Chairmen of Criminal Law Sectors.
NAPTIP	National Agency for Prohibition of Traffic in Persons and Other related Matters
NCP	National Contact Points
NGO	Non-governmental organization
NRM	National Referral Mechanism
NRM1	First Report of the National Rapporteur on Trafficking in Human Beings
NRM3	Third Report of the National Rapporteur on Trafficking in Human Beings
NRM5	Fifth Report of the National Rapporteur on Trafficking in Human Beings
NRM7	Seventh Report of the National Rapporteur on Trafficking in Human Beings
NRM8	Eighth Report of the National Rapporteur on Trafficking in Human Beings
NTA	National Threat Assessment
OHCHR	High Commissioner for Human Rights
OJ	Official Journal of the European Union
OOM	Operational Consultation Group on Trafficking in Human Beings
OSCE	Organization for Security and Cooperation in Europe
PIC	Prostitution Information Centre
PPS	Public Prosecution Service
PTSS	Post-traumatic stress syndrome
PTTC	Profiling, Targeting and Tasking Centre
PVAGM	Programme to Strengthen the Approach to Organized Crime
REAN	Return and Emigration of Aliens from the Netherlands
RIEC	Regional Centres for Information and Expertise
RVK	Aliens Chain Report
SOCTA	Serious Organised Crime Threat Assessment
SRTV	Foundation of the Religious against Trafficking in Women
SZW	Social Affairs and Employment
TIP	report Trafficking in Persons Report
TRAFSTAT	Tools for the validation and utilisation of EU statistics on human trafficking
TRM	Transnational referral mechanism
UAM	Unaccompanied Minors
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

UNODC	United Nations Office on Drugs and Crime
UWV	Implementing Agency for Employee Insurance
VNG	Association of Netherlands Municipalities
VRIS	Aliens in the Criminal Chain
WIA	Work and Income (Capacity for Work) Act
WODC	Ministry of Security and Justice's Research and Documentation Centre

Foreword

One day a ticket inspector at Sittard railway station saw an older man in the company of two young Hungarian women carrying bags containing sexy lingerie. Suspicious, the inspector notified the police that the three individuals had boarded the train to Utrecht, where the police were able to arrest the 41-year-old man on suspicion of human trafficking.

This incident illustrates how everyone can play a part in identifying human trafficking. And that efforts to tackle the problem *must not* be left entirely to the police and the public prosecution service (PPS). Human trafficking takes many forms and occurs in many different places, and that requires an appropriate, collaborative response from the law enforcement agencies, administrative bodies and financial organizations. As stated in the EU Directive on Human Trafficking, a victim-centred approach is required, so it is essential for the agencies responsible for combating human trafficking and helping victims to cooperate and share information. The necessary structures are in place. With the creation of Regional Information and Expertise Centres (RIECs) and Safety Coordination Houses, the Netherlands has outstanding facilities for an integrated effort to tackle human trafficking; however, there must be permanent liaison between them.

The incident mentioned above also demonstrates the potential impact of public-private partnership, accompanied by increased awareness of the phenomenon of human trafficking. Additional steps have also been taken in that regard. One example is the cooperation between the police and the hotel sector and the training provided for hotel staff to help them recognize signs of illegal prostitution and hence identify possible human trafficking situations.

Training and raising awareness are key to being able and *willing* to recognize human trafficking situations and so identify possible victims. One example of the steps taken in this regard is the investment that the Repatriation and Departure Service (DT&V) has made in training its staff to recognize signs of human trafficking and its subsequent success in increasing the number of victims identified during the repatriation phase. The effect has been to enable the DT&V to make a significant contribution to protecting these victims.

Where awareness and training falls short is among youth workers, both in mobile and residential facilities. Underage Dutch victims are too often seen as girls with 'a loverboy problem' rather than as victims of human trafficking. As I said in my report 'Trafficking in Human Beings: Visible and Invisible', this group comprises a substantial number of girls. My earnest desire is for the term 'loverboy problem' to be abandoned altogether and the phenomenon to be referred to by its proper name: human trafficking.

Protecting victims of human trafficking requires awareness of the problem, identification of the victims and adequate shelter and help for them. There is agreement at both the national and international levels that this calls for training and specialization, and that applies no less for underage Dutch victims.

This is not the first time I have made this appeal. The perception of this group, as adolescents with a problem, is persistent. We also see this phenomenon in other countries, although the situation does seem to be changing as it becomes increasingly evident that young girls are easy prey and generate a lot of money for human traffickers. These traffickers must be stopped, and that also calls for greater awareness and cooperation between the agencies responsible for investigation and prosecution, on the one hand, and for providing care on the other, in order to promote an integrated approach to tackling this form of human trafficking as well.

To provide the best possible protection for all victims it is essential for everyone who encounters a human trafficking situation or a (possible) victim to know what he or she is expected to do. It is important for procedures to be documented comprehensively, clearly and accessibly, but they must also be binding. That is not the case at the moment and that has to change, which is the subject of my second recommendation.

My recommendation for such a document, known as a national referral mechanism, applies to every form of human trafficking and every victim at every stage of their victimhood. It must be a comprehensive document, but also a 'living' document that is constantly updated. Human trafficking is fluid, both in terms of the forms it takes and where it occurs; human traffickers are innovative and look for the loopholes. New forms of labour exploitation are emerging, as we have already seen in Belgium and France, for example, and experience teaches us that they will also manifest themselves in this country. Further examples are forced begging and forced shoplifting. We must remain alert to this trend, something that must also be reflected in the referral mechanism.

Most victims are still to be found in the prostitution sector. There has been a lot of fuss recently about the changes to the policy on prostitution as laid down in the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry. To some extent, the introduction of this law will create greater uniformity in the licensing conditions for sex businesses, but in some respects that uniformity will also have to be shaped by municipal policy and cooperation between municipalities. Although I regret that the plan for a national register of prostitutes, which would be the ideal tool for gaining an insight into the licensed prostitution sector and human trafficking practices, will not go ahead, I am also aware that various municipalities have assumed their own responsibility. The recent developments surrounding the withdrawal of the licence of the sex business operator Wegra in Utrecht have demonstrated just how complex prostitution policy is in practice. The importance of municipalities consulting one another and sharing best practices therefore seems evident to me.

I have devoted a lot of attention to developments in the area of prostitution in this report, including the more fundamental discussion that has resurfaced about the correct policy to be pursued in relation to prostitution. Naturally, I have also considered the importance of strengthening the position of prostitutes in that analysis. At the same time, the notion of a stronger position is obviously very relative when it comes to women who are already victims of human trafficking. There is no one to speak for those women, who do not themselves have the possibility of joining a group to represent their interests. The government must offer them protection, and that protection should also extend to the criminalization

of clients who know or should reasonably suspect that the prostitute is being coerced, and is therefore a victim of human trafficking.

This year marks the 150th anniversary of the abolition of slavery in the Netherlands. The commemorations are – rightly – focused mainly on the past. Nevertheless, I feel it is important to note that without recognition of the fact that people are still being kept in servitude, being forced into prostitution or otherwise being exploited – in short that slavery still occurs – we will not learn much from this anniversary. Slavery is not confined to history.

I am grateful to the International Organization for Migration (IOM) and the DT&V for the data they have provided, as well as the other agencies and individuals who contributed to this report.

My special thanks go to the employees, former employees and interns of my office, all of whom made valuable contributions to this ninth report.

C.E. Dettmeijer-Vermeulen

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

Human trafficking is not a static form of crime. A characteristic feature of the offence is in fact the multiplicity of forms it can take, and the variety of its manifestations has been growing in recent years. Furthermore, an increasing number of phenomena are being linked with human trafficking; or perhaps one should say are being seen and understood in the context of the 'human trafficking frame'.

The EU Directive on Human Trafficking in 2011,¹ for example, contains a broader definition of human trafficking than the existing definition in Dutch legislation.² Human trafficking also embraces many actions that are not specifically mentioned in the Dutch legislation, such as illegal adoption or forced marriage 'in so far as they fulfil the constitutive elements of trafficking in human beings'.³ Furthermore, there is a substantive overlap between human trafficking and sexual exploitation of children. For example, a number of criminal offences that are defined in the EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography⁴ are qualified as forms of human trafficking under Article 273f of the Dutch Criminal Code (DCC). Child sex tourism is also classified as human trafficking – particularly at the international level.⁵ The National Rapporteur, whose mandate includes

1 Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, 5 April 2011 (hereinafter referred to as the EU Directive on Human Trafficking).

2 For example, the EU Directive on Human Trafficking also explicitly mentions forced begging and exploitation of criminal activities as forms of exploitation.

3 EU Directive on Human Trafficking, recital §11. In the Resolution of the UN General Assembly, UN Doc. A/RES/67/145 (27 February 2013), forced marriage is also included under the term 'human trafficking'.

4 Directive 2011/93/EU of the European Parliament and of the Council on combating sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA, OJ L 335. EU member states should have implemented the directive by no later than 18 December 2013.

5 See, for example, Resolution A/RES/67/145 on *Trafficking in women and girls*, 23 February 2013, in which countries are encouraged, among other things, 'to take appropriate measures to eliminate sex tourism demand, especially for children, through all possible preventive actions.'

‘sexual violence against children’, recently published a separate report on the efforts being made to prevent child sex tourism.⁶

In the Netherlands itself, various phenomena are connected with human trafficking. As in international definitions of human trafficking, the Dutch law also contains a non-exhaustive list of acts that must *at least* be understood to fall under the definition of ‘exploitation’. The legislature’s aim in using this formulation was to leave room for the courts to flesh out the concept of exploitation. Forcing a person to take out telephone subscriptions is an act that has also been defined as human trafficking by some courts of appeal and district courts. This report discusses whether that is stretching the concept of human trafficking too far.

In addition to the expansion of the concept of human trafficking, internationally the phenomenon of human trafficking is increasingly seen in light of the concept of ‘inhuman or degrading treatment’ as used in Article 3 of the European Convention on Human Rights, for example. Depending on the facts and circumstances, it is sometimes argued that human trafficking could be regarded as torture or another form of cruel, inhuman or degrading treatment within the meaning of the United Nations Convention against Torture.⁷ The question, however, is whether the substance of qualifications such as ‘human trafficking’ and ‘torture’ or a form of ‘cruel, inhuman and degrading treatment’ is not very different in some situations. It is important, in any case, to ensure that none of these terms lose their substantive significance.

The developments outlined above show that human trafficking is a dynamic concept, and that requires us to remain alert to the emergence of new manifestations – and consequently of different types of offenders and victims – and to the question of who bears responsibility for addressing those new manifestations, since if more forms of human trafficking are observed, more parties will become involved in tackling the problem. That is a trend that further underlines the importance of cooperation between these parties. But it is not just professional organizations that need to remain alert. Human trafficking is all around us, so public awareness is equally essential. Journalists play an important role in creating awareness and publicizing abuses, and consequently, at the request of UNESCO, the National Rapporteur has produced a training module on human trafficking specially for them.

Chapter 2 of this report reviews the latest trends and developments with regard to human trafficking – at both the national and international level. The review covers four main themes: human trafficking and prostitution policy, exploitation outside the sex industry (including labour exploitation), the need for a national referral mechanism to protect victims, and the protection of Dutch underage victims of domestic human trafficking. The trends show that human trafficking can only be successfully tackled if two essential conditions are met: awareness of the forms that human trafficking can take and cooperation. Chapter 3 is devoted to measures taken to combat human trafficking in the Netherlands,

6 National Rapporteur on trafficking in human beings and sexual violence against children (2013). *Barriers against child sex tourism*, The Hague: <http://www.dutchrapporteur.nl/current/news/archief/dutch-rapporteur-advises-government-child-sex-tourism.aspx?cp=64&cs=16855> (consulted on 24 April 2014).

7 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*, Ludwig Boltzman Institute of Human Rights, *Part I – Legal Analysis*, 2013.

particularly the multidisciplinary approach adopted in this country, which also forms the backbone of the EU Directive on Human Trafficking. Although criminal law remains an essential pillar, the multidisciplinary approach clearly demonstrates that policy can only really be effective if parties other than those in the law enforcement chain are also involved. Cooperation and liaison are key elements in the multidisciplinary approach.

Human trafficking and prostitution policy

The Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry has not yet entered into force, although the law would actually create a uniform national framework for prostitution policy, which the National Rapporteur has been advocating since 2007. Crucial elements of the original proposal – the registration of prostitutes and a duty for clients to ascertain that the prostitute is not being exploited – have unfortunately been removed from the bill. However, various municipalities have already taken up the gauntlet themselves and are adopting measures to shape their own local prostitution policy.

Utrecht

Special attention is devoted to the policy in Utrecht in this report. The situation in that city serves as a case study exposing the entire array of problems and dilemmas surrounding efforts to create a 'coercion-free' prostitution sector and to tackle human trafficking. In Utrecht, political awareness was heightened by the Zandpad pilot project. The project started in 2008 and ran for two years, and led to closer cooperation between partners in the chain. The results of the project illustrate the impact that a multidisciplinary approach to human trafficking can have.

A noteworthy feature of the debate on the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry was that it coincided with calls by various members of parliament for a fundamental debate on prostitution policy, the desirability of legalizing prostitution and the relationship between prostitution and human trafficking. Whether legalized prostitution leads to more human trafficking is, however, a question that cannot yet be answered on the basis of the available statistics. This discussion is reviewed at length in chapter 2.

There is no place in the current bill for the criminalization of clients of prostitutes who are victims of human trafficking, which the National Rapporteur recommended in 2011 and still does. To combat human trafficking effectively, the demand side of the prostitution sector must also be addressed. I therefore recommend that it should be made a criminal offence for a person to use the sexual services of another person for payment when he knows or should reasonably suspect that the other person is being forced or coerced to provide those services.

As these developments show, a lot of attention has been devoted in recent years to legislation and what the law permits in relation to tackling abuses in the sex industry. This is a crucial issue whose importance cannot be overestimated. At the same time, it must not be forgotten that other measures outside the realm of legislation that are taken to combat abuses are equally relevant. As will become clear later in this report, supervision and enforcement are essential in that context.

Human trafficking outside the sex industry

Various new forms of exploitation outside the sex industry have emerged in recent years. Steps taken by agencies such as the Inspectorate of the Ministry of Social Affairs and Employment (hereinafter referred to as the Inspectorate SZW), the Public Prosecution Service (PPS) and the police to curb labour

exploitation have shown that it can occur in a wide variety of sectors. In addition to labour exploitation, instances of forced services, such as forced begging, and the exploitation of criminal activities ('criminal exploitation') have also been observed. Despite the greater attentiveness, the number of cases of exploitation outside the sex industry heard by courts of first instance is disappointing (only one case in 2012). In the National Threat Assessment on Organized Crime 2012, exploitation in sectors other than prostitution was still described as a 'blank spot', which means that – as in 2008 – there is still too little information available to estimate the phenomenon's implications for Dutch society. Accordingly, although it seems that more is being learned about the various forms that exploitation assumes, there is apparently stagnation in recognizing and effectively prosecuting them. It is to be hoped that the use of the term 'blank spot' will not be a reason for political decision-makers to relax their attention to exploitation outside the sex industry. It is important for the search for forms of exploitation outside the sex industry to continue so that the efforts that have been made in the last few years will not have been for nothing. Another factor that has to be taken into account is that international law and developments in other countries suggest that the Netherlands needs to be alert to emerging high-risk sectors and new forms of exploitation. For example, the EU Directive on Human Trafficking refers to forms of exploitation that are new to the Netherlands and new forms are emerging in other countries that are likely to be seen in this country in the (near) future. This report therefore also discusses the latest manifestations of human trafficking outside the sex industry.

The term 'other forms of exploitation' is no longer used in this report. The term 'other' might suggest that they are less serious than forms of sexual exploitation, a suggestion that must be avoided.

National referral mechanism

Victims should be central to policies on human trafficking. The first priority mentioned in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 is identifying, protecting and assisting victims, and the first action point mentioned is the establishment of national and transnational referral mechanisms. It also refers to the importance of the closest possible cooperation between all relevant government agencies and support organizations for providing optimal protection for the victims of human trafficking. It must be clear who is responsible for doing what and to whom a victim can turn. To ensure that all (possible) victims – Dutch and foreign, adults and minors – are promptly identified and receive protection and assistance, there must be clear agreements between the various relevant government agencies and support organizations, a factor that is also important in view of the fact that the number of identified victims has increased in recent years and is expected to continue growing. That trend will exert additional pressure on the capacity of the various bodies that are responsible for protecting this vulnerable group. To continue guaranteeing that protection, a comprehensive document describing the relevant procedures is needed, the so-called 'national referral mechanism'.

The need to implement a national referral mechanism has recently become more urgent with the amendment of the PPS's Instructions on Human Trafficking and the entry into force of the Modern Migration Policy Act. Descriptions of relevant procedures that were previously accessible and available to everyone are now scattered among different documents, which are, moreover, no longer available and accessible to, or binding on, all of the partners in the chain. A particularly glaring omission is the absence of similar descriptions of procedures relating to underage Dutch victims. Producing a national referral mechanism is the responsibility of the Minister of Security and Justice. The Human Trafficking Task Force could play a role in stimulating the drafting of the document.

Underage victims of domestic human trafficking

The victims of domestic human trafficking are Dutch, a significant proportion of whom are minors. Underage victims are particularly vulnerable. There is still not enough known about the actual number of underage victims. There is also under-reporting of this category of victim. The National Rapporteur has expressed her concerns about the protection of this group in previous reports, particularly when it comes to victims of 'loverboys'; the willingness of victims in this category to report offences is low and the chance of revictimization is high. Domestic human trafficking is not in fact confined to the Netherlands. There have been a growing number of warnings of similar problems in neighbouring countries like Belgium, Germany and the United Kingdom, but also further afield, in the United States for example.

Protection for underage victims of domestic human trafficking must also start from the moment they are identified and extend to after-care. The group must also be covered by the future national referral mechanism. Victims of domestic human trafficking are also entitled to *appropriate* and *safe* shelter. Major steps must be taken in this direction in the coming period. Specialized shelter as part of the programme of care for these victims is essential.

The utility and necessity of a multidisciplinary approach

Although criminal law will continue to play an essential role in efforts to combat human trafficking, there has been a growing realization in recent years that those efforts can only be effective if other instruments are also used. One of the most important developments in the fight against human trafficking in recent years has therefore been the growing number of organizations that have become involved in a joint, multidisciplinary approach to human trafficking by investigative, administrative and tax authorities and the steps taken by the Human Trafficking Task Force to strengthen this integrated approach.⁸ The innovative measures that are being adopted in this context are to be welcomed and have been remarked upon beyond the national borders. The American TIP report,⁹ for example, praised the Netherlands' multidisciplinary approach and recommended developing it further.

High-level meeting on the multidisciplinary approach

At a high-level meeting in 2013, a delegation from the Human Trafficking Task Force discussed ways of further improving the multidisciplinary approach in talks with American colleagues and representatives of the academic community (Harvard University). Using the case method,¹⁰ the parties compared and discussed at length the various methods employed in the fight against human trafficking. Based on a case provided by the Netherlands and on the barrier method developed in the Netherlands, the participants exchanged views on innovative, multidisciplinary methods for the early identification of victims and the erection of barriers to human traffickers. The meeting once

8 Human Trafficking Task Force 2011.

9 <http://www.nationaalrapporteur.nl/actueel/nieuws/2013/20130624-tip-rapport-identificeren-slachtoffers-human-trafficking-eerste-stap-in-bescherming.aspx>.

10 The case method was first used at the Harvard Business School and in recent years has been introduced in a growing number of other universities around the world. In short, every party participating in the case method submits a case study (usually an example from practice) and presents solutions for the problem raised in the case. A central element of the method is the plenary discussion with all of the participants, when the focus is not so much on the 'solution' but mainly on the discussion and presentation of various (innovative) approaches.

again underlined the importance of sharing information and of cooperating with the academic community in the fight against human trafficking worldwide.

However pleasant it is to receive compliments, it cannot be a reason to rest on one's laurels. Especially now that it has produced such good results, the multidisciplinary approach must continue to be followed in the future. What is important to realize is that the multidisciplinary approach provides a framework for tackling every form of human trafficking, including all of the trends identified in this report. In other words, there is no need to keep reinventing the wheel.

Some recent developments

Legislation relating to human trafficking has been evolving recently, under the influence of both national and international factors. As of 1 April 2013, the maximum sentences for human trafficking were increased in the Netherlands.¹¹ The maximum sentence for any human trafficking offence committed from that date, without aggravating circumstances, is a term of imprisonment of 12 years (until 1 April 2013 it had been eight years). Since the law entered into force, the maximum sentence for human trafficking leading to the death of a person is life imprisonment or a prison sentence of up to 30 years.¹² In the bill to amend the criminal law provisions relating to human trafficking in relation to the implementation of the EU Human Trafficking Directive, two new forms of exploitation are explicitly inserted in Article 273f DCC as forms of forced labour or services: forced begging and exploitation in criminal activities ('criminal exploitation'). A definition of one of the means of coercion referred to in Article 273f DCC (abuse of a position of vulnerability) has also been inserted in the bill, and the formulation of aggravating circumstances has been amended. The most striking amendment in that context is that human trafficking committed against children, in other words even if they are sixteen or seventeen years old, will always constitute an aggravating circumstance.¹³ The protection of children is an important underlying principle behind the EU Directive on Human Trafficking. The Upper House of Parliament was debating the bill in the autumn of 2013. The deadline for implementation of the directive had already expired on 6 April 2013.

There have also been a number of major changes in the policy and organizational aspects of the anti-human trafficking effort. One example is the establishment of the National Police on 1 January 2013. This is potentially a positive development, which could help to enhance cooperation and the sharing of information within the police force. At the same time, the National Rapporteur has expressed her concerns about the retention of the expertise that has previously been accumulated within the police organization.¹⁴

The entry into force of the Modern Migration Policy Act and the PPS's new Instructions on Human Trafficking are also worth mentioning. As discussed above, in the new situation the precise tasks and responsibilities of the partners in the chain are laid down in less detail. Although they are described in

11 *Bulletin of Acts, Orders and Decrees*. 2013, 84 and *Bulletin of Acts, Orders and Decrees* 2013, 108.

12 See Appendix 1 (Article 273f DCC as of 1 April 2013).

13 *Parliamentary Documents II* 2011/12, 33 309, no. 2.

14 Letter from the National Rapporteur to the Minister of Security and Justice of 8 November 2012, reference: http://www.nationaalrapporteur.nl/Images/brief-aan-min.venj-nationale-politie-en-bestrijding-mensenhandel_tcm63-464314.pdf (consulted on 13 August 2013).

appendices to the various new documents, it is essential that these sources can be found and accessed if they are to be used in practice. This fragmentation again underscores the importance of the national referral mechanism referred to above.

The PPS's Board of Procurators General has said that it intends to include the fact that a person is a victim of human trafficking as a separate ground for deciding not to prosecute in the Instructions on the application of grounds for dismissal of charges. This is a positive development and is particularly important in cases where victims of human trafficking have been forced to perform criminal acts. It is also in keeping with the spirit of the principle of non-prosecution adopted at international level.

Developments since the studies conducted by the National Rapporteur in 2012

In 2012, the National Rapporteur conducted research into the immigration law and criminal law aspects of the human trafficking cases in which charges were dismissed in 2010. Partly in response to the findings from the study, the former Minister for Immigration, Integration and Asylum decided to withdraw his proposal for an amendment of the B9 regulation as it applied at that time; one of the proposed changes was that the reflection period would no longer be offered to victims who had no longer been in the human trafficking situation for more than three months.

Human trafficking for the purpose of organ removal and forced commercial surrogacy was the subject of a study that was published in September 2012. That report contained a recommendation to the Minister of Health, Welfare and Sport to further investigate the scale of the organ trade and organ tourism and the role played in them by the Netherlands and by Dutch nationals. Meanwhile, the Erasmus Medical Centre has commenced a major survey of all health care providers in the Netherlands that are in contact with kidney patients and kidney donors with the aim of discovering whether the respondents had been in contact with patients who had undergone a kidney transplant operation in another country and/or suspected that the patients had paid for a kidney.

In response to the study *Case law on trafficking in human beings 2009-2012. An analysis* (2012), and following a decision by the National Consultative Body for Presidents of Criminal Sectors of Courts (LOVS) in October 2012, a number of district courts and courts of appeal have started to introduce specialization among judges and legal assistants who handle human trafficking cases.¹⁵ The National Rapporteur has been asked to attend meetings organized by the judiciary to discuss the findings of the case-law study. The Council for the Judiciary has explicitly decided not to adopt orientation points for sentencing in human trafficking cases for the time being. Nevertheless, the National Rapporteur remains convinced of the importance of uniform sentencing and, hence, of a framework of assessment for judges.

The study *Mensenhandel. Effectieve aanpak op gemeentelijk niveau* (2012) [Human Trafficking. An effective approach at municipal level] has already led to changes in local agendas and the adoption of new policy plans by a number of municipalities. The municipalities are and will remain important partners in the fight against human trafficking, both inside and outside the prostitution sector. Local authorities are often the first to be aware of problems that arise within the municipal boundaries. The municipal execu-

15 'Rechterlijke specialisatie mensenhandel in alle gerechten', *Rechtspraak.nl* 13 June 2013, reference: <http://www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/Rechterlijke-specialisatie-mensenhandel-in-alle-gerechten.aspx> (consulted on 13 August 2013).`

tive also possesses a wide range of administrative powers that can be used to frustrate human trafficking processes. It is particularly important for municipalities to coordinate their policies in order to prevent human trafficking from shifting to other, often neighbouring, municipalities.

The report *Trafficking in Human Beings: Visible and Invisible* drew attention to the importance of the proper registration of victims and perpetrators of human trafficking. The key message in the report was that human trafficking must be made visible if it is to be tackled effectively. Partly in response to the National Rapporteur's recommendations, CoMensha is endeavouring to improve the registration of (possible) victims on the basis of a new registration system. The Immigration and Naturalization Service (IND) has also responded to the recommendation to register victims who are entitled to temporary residence according to the type of exploitation they suffered. With the IND's new registration system, it will also be possible to track (possible) victims during immigration law procedures. Another recent development is that Nidos, the institution responsible for acting as guardian to unaccompanied minor aliens, will in future report (possible) victims to CoMensha.

This report

The following chapters describe the latest trends and developments relating to human trafficking and analyse existing efforts to tackle the phenomenon.

Chapter 2 starts with a review of international trends and developments in relation to human trafficking (§2.2). There have been cases related to human trafficking in some European countries where minors have been involved in pickpocketing, shoplifting, burglary and begging. This section also shows that combating human trafficking will remain high on the European agenda in the coming years, with the main priority being the protection of victims. The chapter also discusses developments in combating human trafficking in relation to policies on prostitution in the Netherlands (§2.3), and trends in exploitation outside the sex industry and sectors where there is a need to remain alert to the risk of exploitation (§2.4). The protection of victims in the context of a national referral mechanism is the subject of §2.5. The subsequent sections are arranged according to the different phases and situations that victims of human trafficking can encounter: prevention and identification; criminal proceedings; right to residence, shelter and assistance (including for underage victims); and possible voluntary return (§2.6 to §2.11).

Chapter 3 discusses the measures taken to tackle human trafficking, and the subject of multidisciplinary cooperation in particular. It opens with a review of international developments (§3.2), with the emphasis on international cooperation in law enforcement and developments in international *administrative* cooperation, followed by a description of cooperation at national and regional level (§3.3). The issue of how cooperation is arranged in practice and the forms it takes is discussed in §3.4 to 3.9, including an analysis of the programmatic and integrated approach to human trafficking that has evolved in the last few years. Safety Coordination Houses and the RIECs can play a crucial role in the multidisciplinary approach, which addresses human trafficking with measures, both preventive and repressive, in the administrative, criminal and tax domains, and in which the priority must also be the protection of the victim.

It is becoming increasingly clear that human trafficking is a multifaceted phenomenon and a broader concept than the legislature could have foreseen when it was criminalized. It occurs in practically every economic sector, but also in other areas of society. A constant factor is that perpetrators are concerned with just one thing: economic gain – as quickly and easily as possible. Any infrastructure that can offer those quick and easy proceeds is susceptible to and forms a breeding ground for exploitation. With

the passage of time, during a period when a lot of attention has been devoted to human trafficking, we see human trafficking all around us: still in prostitution and in the 'known' high-risk sectors such as agriculture and horticulture, but now also in activities that seem innocuous at first glance, such as newspaper selling on the street, begging and applications for state benefits. A thorough knowledge and a broad view of the concept of human trafficking and the capacity to study innocent phenomena a human trafficking perspective are essential for properly assessing these phenomena and hence being able to address them effectively. That is the challenge for the coming years.

2 Trends and developments

2.1 Introduction

Human trafficking occurs everywhere and assumes many forms, and that is reflected in policies and legislation, including international law, as well as in practical measures. The following sections describe the latest national and international trends in human trafficking and the steps being taken to address them.

International trends and developments are discussed in §2.2. These trends are also relevant for the Netherlands, since, given the frequently transnational nature of human trafficking, what happens in other countries can also occur in the Netherlands. For example, there have been cases related to human trafficking in a number of European countries where minors have been involved in pick-pocketing, shoplifting,¹ burglaries and begging. Combating human trafficking will remain high on the European agenda in the coming years. The very nature of the offence demands it. It is a violation of physical and psychological integrity and personal liberty – and, as is apparent from the case law of the European Court of Human Rights, among others, it is also seen in the light of torture and other inhuman treatment and punishment.

The main priority in the European approach to human trafficking is to protect victims. Other elements of the European and wider international policy agendas are prevention, the demand side and the role of private actors (particularly businesses), as well as the prosecution and trial of offenders and cooperation among international actors in the criminal law system. The same also still applies for the confiscation of the proceeds of the crime, in part to compensate victims. It is impossible to tell from the registered data on human trafficking (both international and national) whether the number of perpetrators and victims is actually rising or whether more human trafficking is simply being seen and registered.

The relationship between human trafficking and prostitution policy is discussed in §2.3. Since 2007, the National Rapporteur has been calling for a uniform national framework for policy towards prostitution. The proposal for an Act to Regulate Prostitution and to Combat Abuses in the Sex Industry was intended to create that framework; during the discussion of the bill in parliament, however, an important element of the legislative proposal that would have helped to establish that framework – the registration

¹ See also the recent conviction of a man who forced his granddaughter to steal, ECLI: NL: RBMNE:2013: 2679.

of prostitutes² – was removed. Even as parliament was debating the bill, however, a number of municipalities had already taken the initiative to formulate local policies on prostitution (including a duty to register) and to increase oversight of the sector. This section highlights a number of those initiatives. The growing awareness of this problem among municipalities is a positive development. With the delay in formulating a uniform national framework, fundamental questions have now also arisen about the policy towards prostitution in the Netherlands in general. One of those questions is whether legalized prostitution causes more human trafficking, but it is not yet possible to answer that question on the basis of statistics. This section also explains why criminalizing individuals who use the sexual services of a person whom they know or should reasonably suspect to be a victim of human trafficking is a logical step to take.

Exploitation is not confined to the sex industry. Exploitation outside the sex industry has been found in a variety of forms in recent years, even in sectors that have only recently been connected with labour exploitation, such as inland shipping and the mushroom-growing industry. Labour exploitation has also assumed different forms, as in a case where labour migrants were forced to sell newspapers on the street.

The term ‘other forms of exploitation’ is no longer used in this report, in order to avoid creating the impression that they are less serious forms of exploitation than human trafficking in the sex industry. Instead, the phrase ‘exploitation outside the sex industry’ is used. The term relates to more than just labour exploitation and also embraces being forced to provide services, such as forced begging, and the exploitation of criminal activities (‘criminal exploitation’) – forms of exploitation that are explicitly mentioned in the EU Directive on Human Trafficking. These and other trends in exploitation outside the sex industry are examined in §2.4, which includes a discussion of new sectors where the risk of exploitation has recently emerged, as well as the evolution of the concept of human trafficking in relation to exploitation outside the sex industry. The central question in that discussion is *what* constitutes human trafficking, and how can the term – in light of the new forms of exploitation that have been observed – be more precisely defined? In §2.4 there is also a review of the principles of non-prosecution and non-punishment,³ principles that must be taken into account when suspects of crimes are victims of human trafficking.

To ensure that (possible) victims are identified and offered protection and assistance at an early stage, there must be clear agreements between the various relevant government bodies and social organizations that help victims. In that context, the National Rapporteur has recommended creating a national

2 It should be noted here that ‘prostitute’ is a term used in a non-judgmental manner and that ‘prostitute’ and ‘sex worker’ are used synonymously in this report.

3 See Article 8 of 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 (OJ 2011, L 101/1). See also NRM7, Chapter 6; NRM 2012d, §7.5.

referral mechanism,⁴ a recommendation that is in line with the EU Directive on Human Trafficking⁵ and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.⁶ It is all the more necessary now, since amendments to the Instructions on Human Trafficking for the PPS and the entry into force of the Modern Migration Policy Act have resulted in the dispersal of descriptions of the relevant procedures across various documents, not all of which will be available to or binding on all the partners in the chain. Moreover, the population of victims is increasing and becoming more diverse, which means new agreements will have to be made with more partners in the chain. Another reason it is essential to draw up a comprehensive document is the absence of agreements relating to minors who are victims of domestic human trafficking and the failure, partly as a result of this, to hold the responsible partners sufficiently accountable for their role in protecting these victims.

The protection of victims in the context of a national referral mechanism is the subject of §2.5. The subsequent subsections shed light on trends and developments in the protection of victims in general, broken down according to the various stages and situations in which victims of human trafficking can find themselves or which they might experience: prevention and identification, criminal proceedings, entitlement to residence, shelter and assistance (also for underage victims) and, where applicable, voluntary return to their country of origin (§2.6 to 2.11 inclusive). A national referral mechanism would have to encompass at least these phases and should be tailored to the needs of individual victims and the fact that other, perhaps new, chain partners would need to be involved. For example, §2.10 is specifically concerned with underage victims of domestic human trafficking who, although they should actually enjoy special protection by virtue of a number of EU directives,⁷ often do not receive adequate protection when it comes to identification and being provided with shelter.

4 On the national referral mechanism, see §2.5.

5 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 (OJ 2011, L 101/1).

6 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012.

7 See 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 (OJ 2011, L 101/1); Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/86/JHA. (Member states have until 18 December 2013 to transpose this directive) (OJ 2011, L 335).

2.2 International developments

2.2.1 International trends in the nature and scale of human trafficking

Human trafficking is still a low-risk, high-return crime for offenders, a fact that is also acknowledged at international level. Europol believes that changes in the Schengen Zone and the accession of new member states to the EU will lead to new opportunities for organizations engaged in human trafficking.⁸ In its most recent evaluation of the threat from serious organized crime in March 2013 (*Serious Organized Crime Threat Assessment, SOCTA*), Europol said that the economic crisis had driven up demand for illegal labour, a situation that was being exploited by organized groups. Organized networks involved in human trafficking are highly flexible and adapt very quickly to changes in the law and the investigative tactics employed by the police and prosecution authorities.⁹ In SOCTA, Europol mentioned human trafficking as one of the most urgent threats that needs to be addressed.¹⁰ Combating human trafficking will also remain high on the EU agenda in the coming years.¹¹

Human trafficking frequently has a transnational character. There are also similarities in the composition of the groups of offenders and victims in different countries: as in the Netherlands, for example, a large proportion of suspects and victims in Germany come from Central and Eastern European countries

8 SOCTA 2013, p. 15. See also p. 24: ‘The Schengen area provides a comfortable operating area for traffickers in human beings and will continue to be exploited.’ From 1 January 2014 the free movement of workers also applies for Bulgarians and Romanians without further restrictions.

9 In the Netherlands, charges are not often brought under Article 140 DCC (participation in a criminal organization) in human trafficking cases. See NRM 2012d. At the same time, targets have been set for increasing the number of criminal organizations in general that are apprehended, such as a doubling of the number of criminal organizations apprehended in 2014, including those involved in human trafficking. See *Parliamentary Documents II 2012/13*, 29911, no. 79. With an increase of 48% in the number of criminal organizations apprehended in 2012 compared with 2009, the target for 2012 was ‘more than realized’. See the Annual Report of the PPS (2012, p. 11) and the Annual Report of the National Police (Appendix to *Parliamentary Documents II 2012/13*, 29628, no. 395). In 2012, 106 project-driven investigations into criminal organizations in the field of human trafficking and people smuggling were carried out (*Parliamentary Documents II 2012/13*, 32211, M, p. 5). It is not known how many investigations have already led to prosecutions for human trafficking or for participation in a criminal organization.

10 Both human trafficking and people smuggling (‘facilitation of illegal migration’) are referred to in this document as crimes against persons. ‘*Online Child Sexual Exploitation (CSE)*’ falls under the heading of ‘*Cyber-crime*’ (SOCTA 2013).

11 *Parliamentary Documents II*, 2012/13, 32317, no. 173. See also the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee ‘Developing a comprehensive and coherent EU strategy to measure crime and criminal justice: An EU Action Plan 2006 – 2010’, COM (2006) 437 final, 7 August 2006; EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012.

such as Romania, Bulgaria and Hungary.^{12,13} With the levels of internal human trafficking – within the EU – rising (according to Europol’s SOCTA¹⁴), it is essential to remain aware of what is happening in the countries around us,¹⁵ since trends emerging there could also reach the Netherlands at some point. For example, there have been cases related to human trafficking in various European countries where minors have been involved in pick-pocketing, shoplifting, burglary and begging.¹⁶ Human trafficking also occurs in sectors such as the cleaning industry in other countries.¹⁷ The Centre for Equal Opportunities and Opposition to Racism (CGKR) in Belgium has found evidence of exploitation in the construction industry,¹⁸ as well as evidence of organized begging in a human trafficking context by networks of Roma.¹⁹ A growing number of incidents involving human trafficking related to benefit fraud have also been identified at the international level.²⁰

The term ‘human trafficking’

The EU Directive on Human Trafficking from 2011²¹ contains a broader concept of human trafficking than the explicit definition that has been used up to now in the Dutch legislation, because it also includes begging as a form of forced labour or services, as well as exploitation of criminal activities (‘criminal exploitation’).²² Dutch criminal law will be amended accordingly, but the concept of human trafficking is still expanding at international and national levels. In the Netherlands, for example, forcing a person to take out telephone subscriptions has led to convictions for human trafficking.²³ In this context, it should also be noted that international bodies increasingly see the phenomenon of human trafficking in terms of ‘inhuman and degrading treatment’, as for-

12 Bundeskriminalamt 2010.

13 This corresponds to one of the conclusions in the most recent report of the United Nations Office on Drugs and Crime (UNODC), namely that human trafficking often takes place within a region (UNODC 2012, p. 12). See also NRM 2012f.

14 ‘Victims of trafficking in human beings (THB) are increasingly trafficked within the EU by OCGs [organised crime groups] exploiting the free movement of people within the Schengen zone’ (SOCTA 2013, p. 8).

15 On this point, see, for example, the report on organ removal (NRM 2012c), in which the National Rapporteur called for alertness to signs of human trafficking, in view of factors such as the severe shortage of organ donors, internationalization and the Internet.

16 Council of the Baltic Sea States 2013.

17 See §2.4.

18 A small number of (possible) victims have also been reported in the construction industry in the Netherlands. See NRM2012f, Table B3.1.14.

19 CGKR 2012; Council of the Baltic Sea States 2013.

20 SOCTA 2013. See §2.4.6 for more information about benefit fraud in the Dutch context and in the United Kingdom.

21 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 (OJ 2011, L 101/1). The EU Directive on Human Trafficking should have been implemented in Dutch legislation before 6 April 2013. This was not done, however. The relevant bill (33 309, A) is currently before the Upper House of Parliament.

22 See §2.4.6.

23 See §2.4.8.

mulated in Article 3 of the European Convention on Human Rights, for example.²⁴ Depending on the facts and circumstances, it is also sometimes argued that ‘human trafficking’ can be described as ‘torture’ or another form of ‘cruel, inhuman or degrading treatment’ within the meaning of the UN Convention against Torture.²⁵ If this is the case, the principle of *non-refoulement* applies, which provides that no one may be expelled or returned to a country where there is a serious risk that he or she will face the death penalty, torture or other inhuman or degrading treatment or punishment.²⁶

The question, however, is whether the substance of qualifications such as ‘human trafficking’, ‘torture’ or a form of ‘cruel, inhuman or degrading treatment’ is not very different in some situations. It is important, in any case, to ensure that none of these terms lose their substantive significance.

One way or another, human trafficking is a violation of human rights.²⁷ There is also a substantive overlap between human trafficking and the sexual exploitation of children; a number of criminal offences described in the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography²⁸ can therefore also be described as forms of human trafficking on the grounds of Ar-

24 See §2.2.3.

25 Organization for Security and Cooperation in Europe (OSCE) 2013.

26 Article 19(2) of the Charter of Fundamental Rights of the European Union (2000/C 364/01). See also 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 (OJ 2011, L 101/1), recital 10: ‘This directive is without prejudice to the principle of non-refoulement, in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention) and is in accordance with Article 4 and Article 19 (2) of the Charter of Fundamental Rights of the European Union’.

27 In the policy letter *Respect en recht voor ieder mens* [‘Respect and justice for everyone’], the Minister of Foreign Affairs also referred to human trafficking as one of the priority themes of Dutch foreign policy. In it, combating human trafficking is placed in the context of both violence against women and the fundamental labour standards of the ILO, including the prohibition of child labour and of forced labour. Where possible, the Netherlands will intensify cooperation with the countries of origin of victims of human trafficking. The government also announced the intention to publish a national action plan on business and human rights in 2013 (*Parliamentary Documents II* 2012/13, 32735, no. 78). In its annual report on human rights in the Netherlands, the Dutch Council of Human Rights devoted a chapter to human trafficking (Council of Human Rights 2013).

28 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 (OJ 2011, L 101/1). EU member states should have implemented the directive no later than 18 December 2013; see also §2.10. The directive corresponds closely with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25 October 2007), *Bulletin of Treaties*. 2008, 58 (Lanzarote Convention). This Convention was ratified by the Netherlands on 1 March 2010 and entered into force for the Netherlands on 1 July 2010, *Bulletin of Treaties* 2010, 156.

ticle 273f DCC.²⁹ In relation to *organized crime*, in the Netherlands human trafficking is also seen as a form of ‘subversive crime’ – crime that threatens the integrity of Dutch society. ‘Subversive’ can also mean that a person’s fundamental rights have been severely infringed, as in the case of forced prostitution or labour exploitation.³⁰ At the international level, a link is made between transnational crime, including human trafficking, and corruption and instability.³¹ Having been asked by the government to write a report on this subject, the Dutch Advisory Council on International Affairs (AIV) focused mainly on how the profitability of transnational crime could be reduced.³² A number of recommendations made by the AIV related to cooperation, at both the national and international level.³³

Respect for human rights plays an important role in combating human trafficking, since measures adopted against human trafficking can have substantial negative effects on the protection of other human rights.³⁴ It is therefore a positive development that in 2014 the EU Agency for Fundamental Human Rights will develop a tool, such as a handbook or a set of guidelines, to assist member states in addressing fundamental rights issues.³⁵

Scale

In a recent report, the Committee on Migration, Refugees and Displaced Persons of the Council of Europe’s Parliamentary Assembly argued that human trafficking is still increasing on a large scale, can be regarded as the fastest-growing form of organized crime and is the largest source of income for criminals with transnational operations,³⁶ referring in its report to registered human trafficking data. The ILO, in contrast, used an *estimate* of the number of victims of human trafficking – ‘forced labour’, which also

29 The explanatory memorandum to the bill to implement this EU Directive contains a concordance table (*Parliamentary Documents II* 2012/13, 33580, no. 3).

30 PPS 2012, p. 9.

31 The EU Strategy towards the Eradication of Trafficking in Human Beings refers to causes of human trafficking such as (vulnerability to) poverty, lack of democracy, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities for employment, lack of access to education and discrimination (NRM 2012f). In addition, a number of articles have recently been published establishing a connection between human trafficking and (other) forms of organized crime such as terrorism. See, for example, Oppong 2012 and Gonzales 2013.

32 AIV 2013.

33 Among the AIV’s recommendations were ‘expansion of random spot checks for human trafficking, people smuggling, weapons, jewels and precious metals, and identity papers (including checks for tax debts and outstanding fines) in close cooperation with neighbouring countries’ (Ibid, p. 85). Other forms of international cooperation are discussed further in §3.2.

34 Cf. recommendation 47 in NRM7: ‘For the purposes of a human rights approach to combating human trafficking, a strategy should be developed for dealing with the effects these measures against human trafficking can have on human rights and collateral damage should be avoided as far as possible in the implementation of new policy.’ See also NRM8.

35 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012, p. 14.

36 Groth 2013.

included forms of sexual exploitation³⁷ – and arrived at a figure of more than 20 million worldwide between 2002 and 2011.³⁸

On the basis of registered figures for human trafficking, it is impossible to say whether the number of cases of trafficking is actually rising or whether it is simply that more human trafficking is being seen or registered. Data collection, and initiatives to improve data collection, are important for gaining a clear insight into transnational movements of victims and offenders.³⁹

International data

Initiatives for collecting international data are relevant if they provide information that cannot be gathered at the national level, such as cross-border movements of human traffickers or their victims. Two recent large-scale international data-collection initiatives have recently produced results and are discussed in the text boxes below. They are the *Global Report on Trafficking in Persons* from the United Nations Office on Drugs and Crime (UNODC) in December 2012⁴⁰ and *Trafficking in Human Beings*, which was published by the European Commission (EC) in April 2013.⁴¹

Human trafficking statistics on a global level (UNODC)

According to the UNODC's latest report, there has been a significant increase in the data available on human trafficking from various countries.⁴² The UNODC collected data from 132 countries for the period 2007–2010,⁴³ and analysed human trafficking streams on the basis of the dataset of

37 This estimate is discussed in detail in NRM 2012f. The definition of 'forced labour' refers to 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. See Convention concerning forced or compulsory labour (Geneva, 28 June 1930), *Bulletin of Treaties* 1933, 236 (ILO Convention No. 29). This definition corresponds with the definition of human trafficking as laid down in the UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (New York, 15 November 2000), *Bulletin of Treaties* 2001, 69 and 2004, 35 (UN Palermo Protocol). The only difference is that human trafficking for the purposes of organ removal falls under the definition of human trafficking in the UN Palermo Protocol but not under the ILO's definition of forced labour (see also ILO 2012a, pp. 19–20).

38 Although a number of reservations can be expressed about the data and the method adopted, improvements should make it possible to arrive at reliable figures, see NRM 2012f.

39 See also NRM 2012f, Chapter 7.

40 UNODC 2012.

41 Eurostat Methodologies and Working Papers, European Union 2013.

42 UNODC's mandate is to collect data on behalf of the United Nations about human trafficking and to report on it at national, regional and international level. The *United Nations Global Plan of Action to Combat Trafficking in Persons* in 2010 referred to the need to create more knowledge about human trafficking in order to develop and implement 'evidence-based' interventions. See Resolution 64/293 of the General Assembly of the United Nations (12 August 2010), *United Nations Global Plan of Action to Combat Trafficking in Persons*, UN Doc A/RES/64/293. A report by UNODC in 2006 is discussed in §2.3.

43 The data that the UNODC used for this came mainly from national institutions (88%). Other sources of information were inter-governmental organizations (5%) and non-governmental organizations (7%) (UNODC 2012, p. 18).

registered victims.⁴⁴ This showed that inter-regional human trafficking is most prevalent in the Middle East, Central Europe and North and Central America, but most human trafficking streams occur within a region (intra-regional trafficking) and 27% of victims are trafficked within the borders of a single country (domestic human trafficking⁴⁵). Domestic human trafficking is not registered everywhere. Only 83 countries had information about the nationality of victims and only 60 of those had registered domestic human trafficking.^{46,47} Another finding in the report was that in the largest group of the countries studied (25%), there were between 10 and 50 convictions a year.⁴⁸

Human trafficking statistics at the European level (European Commission)

For the first time, the European Commission has collected data on human trafficking.⁴⁹ The study was carried out by the Directorate-General for Home Affairs (hereinafter referred to as 'DG Home') and Eurostat. The results were presented in April 2013. The data covered the period 2008-2010 for all 27 EU member states at the time, plus Croatia, Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey.⁵⁰

In the interests of the availability and quality of the data, the EC formulated a small number of general indicators, which can be built on to produce more advanced registration and improved reporting.⁵¹

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- 44 Ibid. The UNODC's report shows that a number of countries are able to identify victims in their own country, as well as victims from their own country who have been trafficked across borders. In the Netherlands, only human trafficking within the country is known and nothing is known about Dutch victims abroad. Diagrams in the European Commission's report show that Dutch victims were reported exclusively in the Netherlands in the period 2008-2010 (European Union 2013).
- 45 This report uses the term 'domestic human trafficking' for human trafficking that occurs within the borders of a country.
- 46 Map 11 in the UNODC report shows where domestic human trafficking is registered (UNODC 2012, p. 50).
- 47 The UNODC analysed the human trafficking streams on the basis of the information available about victims. To supplement that, the National Rapporteur has said that it would also be relevant to study human trafficking streams on the basis of a dataset of suspects or convicted offenders.
- 48 In the Netherlands, in the period 2007-2010 there were 73, 78, 69 and 79 persons convicted in each year, respectively (see also NRM 2012f, Table B3.3.18; see also *UNODC Country Profiles Europe and Central Asia*, http://www.unodc.org/documents/data-and-analysis/glotip/Country_Profiles_Europe_Central_Asia.pdf (consulted on 9 August 2013)).
- 49 However, the European Commission did finance a significant number of earlier data-collection initiatives. See, for example, Bundeskriminalamt 2009 and NRM 2012f.
- 50 A reservation has to be noted here: not all data could be provided by all the countries. For example, no police data could be supplied from the Netherlands because the police records did not provide reliable information (see also NRM 2012f, recommendation 6).
- 51 See also the National Rapporteur's proposal to adopt the 'less-is-more' principle. After all, if an excessive volume of data has to be collected, the quantity can in practice undermine the quality. See also NRM 2012f; NRM8. The collection of human trafficking statistics by DG Home/Eurostat will be followed up for the period 2011-2015, as part of the EU's new five-year plan to measure crime in the EU: Action Plan for Statistics 2011-2015, COM (2011) 713 final, 18 January 2012; See also the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, §2.5; NRM 2012f.

The report showed that the number of identified and presumed victims had risen by 18% – from 6,309 in 2008 to 7,418 in 2010.⁵² Here too, the figures registered did not represent the actual scale of human trafficking: the increase in the number of registered victims is more likely the consequence of improvements in areas such as notification and registration.⁵³ The EU member states with the highest number of identified and presumed victims per 100,000 inhabitants were Cyprus, Romania, the Netherlands, Bulgaria and Estonia. Hungary, Malta and Portugal reported fewer than 0.2 victims per 100,000 inhabitants in the period 2008–2010. Most victims had been sexually exploited (62%) and the majority (61%) were from EU member states. The latter finding corresponds with one of the conclusions in the UNODC report, namely that human trafficking seems to be predominantly intra-regional.⁵⁴ According to the EC report, a higher percentage of victims than suspects were nationals of one of the EU member states; 45% of the registered suspects were nationals of a country within the EU (principally Bulgaria, Romania, Germany, France and Belgium). It is interesting to note that although relatively few African-born suspects and convicted persons (with the exception of Morocco) appear in the figures for prosecutions in 2009 and 2010 in relation to the total number of non-EU nationals that were convicted in the Netherlands, Nigeria ranked fourth in terms of the number of its nationals that were prosecuted (15% in 2009 and 20% in 2010). Offenders and victims often come from the same region, and Africa is the largest region of origin of registered victims of sexual exploitation.⁵⁵

Designed to assess the usefulness of the data collected by the European Commission, the EU-financed project *Tools for the validation and utilization of EU statistics on human trafficking* (TRAFSTAT) of the *International Victimology Institute Tilburg* (Intervict) is a promising initiative. An important question that it is addressing is to what extent the European statistics on human trafficking are comparable and of practical use for formulating policy at EU level.^{56,57}

Although reports like those of the UNODC and the EC provide greater insight into the phenomenon of human trafficking at the international level, there are still a number of obstacles to the harmonization of international data.⁵⁸ Consequently, there are still some reservations to be expressed regarding the statistics of both the UNODC and the EC:

52 European Union 2013, p. 30.

53 NRM 2012f, Chapter 1.

54 In the period 2007–2010 almost half of all victims detected had been trafficked from a country within the same region as the country of destination (UNODC 2012, p. 51).

55 See also NRM 2012f, Table B3.1.6 (nationality of reported victims), Table B3.3.23 (country of birth of suspects), Table B3.3.24 (country of birth of convicted persons).

56 Tilburg University, *Trafstat – A brief note on objectives and activities* (received from Intervict on 24 October 2012).

57 See NRM 2012f, §7.3.2 for more information about the project *Tools for the validation and utilization of EU statistics on human trafficking* (TRAFSTAT).

58 In addition to the previously noted general reservations about international data-collection initiatives (see NRM 2012f, §7.1.1).

For example, the contents of both reports depend heavily on what countries themselves have registered about victims, suspects and convicted persons,⁵⁹ and that can be influenced by a great many factors that have nothing to do with the actual nature and scale of the problem. As a result, first and foremost, the *volume* of data differs between countries. For example, it is plausible that more identified or presumed victims, suspects and convicted persons will be registered in a country whose registration system is better organized than that of other countries, which could then influence the figures at the international level. The UNODC report referred to this type of difference as a geographical bias, because the availability of data differed greatly from one region to another. The content of the data can also differ, because of discrepancies in the definitions used by different countries, for example.⁶⁰

Besides providing insight into the streams of victims or offenders, international initiatives are also important because lessons can be drawn from them at the national level. For example, the European Commission's report highlighted two aspects of registration in other countries where the Netherlands could make improvements – and concerning which the National Rapporteur has already made a number of recommendations. First, the report showed that, in contrast to the Netherlands, a number of other countries (including Belgium, Germany, Norway and the United Kingdom) were able to provide data on convicted persons broken down by different forms of human trafficking.⁶¹ Furthermore, the Netherlands was unable to provide any information about the number of suspects known to the police but not registered with the PPS because the police often register suspects of human trafficking and people smuggling under the same offence code. As a result, the police records on human trafficking are not fit for purpose.⁶²

To be visible, human trafficking has to be properly registered so that useful data can be collected. This is important for guiding further research, as well as evaluating and, where necessary, revising policy. Proper registration is also necessary at international level. The Netherlands must therefore continue to

59 The National Rapporteur has previously mentioned that the individual countries are the foundations of international data-collection initiatives, See NRM 2012f, §7.1.

60 See also NRM 2012f, §7.1.1.

61 The National Rapporteur has already made a recommendation on this point: 'Parties throughout the chain should register whether a human trafficking case involves sexual exploitation or exploitation in other economic sectors ('other forms of exploitation') or whether it is for the purpose of organ removal. The IND and PPS, in any case, do not currently do so.' (NRM 2012f, recommendation 4). The IND has responded to this recommendation by amending the M55 model, with the result that the IND will now register the form of exploitation involved. The M55 model is employed by the police and the Royal Dutch Marechaussee to request a temporary residence permit for a victim or possible victim of human trafficking. See *Government Gazette* 2013, 19612 (Decree of the State Secretary of Security and Justice of 4 July 2013, no. WBV 2013/15, containing an amendment of the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2013, 19612).

62 The National Rapporteur has already made a recommendation on this point: 'The police should make a distinction between human trafficking and people smuggling in their records' (NRM 2012f, recommendation 6).

press for international cooperation, both with a view to improving data collection and analysis at the national level and in the interests of international data collection.⁶³

2.2.2 Approach – international priorities

Combating human trafficking consists not only of identifying and prosecuting suspects, but also prevention and, not least, the protection of victims. These elements can be found in international legislation and policy documents, and various developments in this respect are relevant for the Netherlands, particularly the adoption and implementation of the EU Directive on Human Trafficking in 2011⁶⁴ and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.⁶⁵ Naturally, these documents relate to human trafficking as defined in the EU Directive – and in Dutch legislation: human trafficking in the sex industry, other forms of forced labour or services and human trafficking for the purpose of organ removal.⁶⁶

In many of the countries that have been investigated by the *Group of Experts on Action against Trafficking in Human Beings* (GRETA),⁶⁷ national activities often seem to focus heavily on sexual exploitation, leaving other forms of human trafficking, such as forced labour and involuntary organ removal, underexposed.⁶⁸ Accordingly, at the beginning of 2013, the Parliamentary Assembly of the Council of Europe adopted a resolution and made specific recommendations with regard to trafficking of migrant workers for forced labour.⁶⁹

Combating human trafficking is still a priority for various inter-governmental organizations, including the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and the European Union. Recent policy documents, action plans and resolutions show that a num-

63 NRM 2012f, recommendation 7.

64 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 (OJ 2011, L 101/1). The directive should have been implemented in Dutch legislation by 6 April 2013. The relevant bill (33309) was passed by the Lower House of Parliament on 2 April 2013 and is now before the Upper House. The plenary debate on the bill in the Upper House was planned for the autumn of 2013.

65 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012.

66 In the EU Directive of Human Trafficking, begging is explicitly mentioned as a form of forced labour or service, as is exploitation of criminal activities ('criminal exploitation'). See also §2.4.

67 GRETA is the monitoring mechanism for the Council of Europe Convention on Action against Trafficking in Human Beings. In 2013, the Netherlands was the subject of an evaluation visit by GRETA, whose findings were due to be published in the spring of 2014.

68 Report of the session of the Parliamentary Assembly of the Council of Europe (January 2013), *Parliamentary Documents II* 2012/13, 20043, no. 92. See also GRETA 2012.

69 Resolution 1922 and Recommendation 2011 of the Parliamentary Assembly of the Council of Europe (25 January 2013), *Trafficking of migrant workers for forced labour*. Another recommendation was to 'examine the problem of obtaining comprehensive and coherent data on human trafficking, including for forced labour purposes, in order to remedy the current lack of reliable statistics, inviting GRETA to assist in this.' The resolution recommended appointing independent national rapporteurs, among other things.

ber of subjects are receiving particular attention in international forums. Some of them are discussed in more detail below. The section ends with an overview of recent case law from the European Court of Human Rights and a brief assessment of where the Netherlands stands in an international perspective.

2.2.2.1 Protection of victims

Identifying, protecting and assisting victims of human trafficking is referred to as a top priority in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. The first action mentioned in the document is to establish national and transnational referral mechanisms, which should contain descriptions of procedures to better identify, refer, protect and assist victims and should embrace all relevant public authorities and civil organizations.

The information that until recently was contained in various regulations in the Netherlands – the former PPS Instructions on Human Trafficking,⁷⁰ the former B9 regulation and the police's reference model – must remain easily accessible for government bodies as well as organizations that provide support for victims.⁷¹ This applies with regard to both Dutch victims and victims of other nationalities, with or without valid residence status. The need for a national referral mechanism is discussed at length in §2.5.

Transnational Referral Mechanism (TRM)

The aim of a transnational referral mechanism is to promote international cooperation in order to ensure that victims are promptly identified, are protected and can be helped. It can also help to prevent secondary victimization. The European Commission intends to develop a model for a transnational referral mechanism by 2015.⁷²

International attention has also focused on specific sectors that are vulnerable to exploitation, one example being domestic work. The ILO Convention concerning Decent Work for Domestic Staff,⁷³ which is intended to improve the legal position of domestic workers in private households, was adopted in 2011. According to the convention, domestic work is undervalued, often invisible to the outside world and is mainly performed by women and children or members of disadvantaged communities who are vulnerable to violation of their human rights.⁷⁴ The Netherlands has not yet made a decision on ratification of the convention.

ILO Convention concerning Decent Work for Domestic Staff and domestic work in the Netherlands

Following an agreement reached between the government and the social partners (employers' organizations and trade unions) in 2012, in May 2013 the Minister of Social Affairs and Employ-

70 The new Instructions on human trafficking entered into force on 1 July 2013, *Government Gazette* 2013, 16816.

71 Cf. 'Since identification is not systematic, many victims remain undetected,' according to the president of GRETA on the basis of the first 10 country reports (GRETA 2012).

72 On this point, see also §3.2.

73 ILO Convention on decent work for domestic worker (Geneva, 16 June 2011), *Bulletin of Treaties* 2012, 193 (ILO Convention No. 189, *Decent Work for Domestic Workers*). The convention entered into force on 5 September 2013.

74 Preamble of ILO Convention No. 189.

ment established the Services at Home Committee⁷⁵ to conduct research into measures that could be taken to improve the position of domestic staff in the Netherlands and the consequences of ratifying the ILO convention in relation to the Services at Home scheme.⁷⁶ The decree establishing the committee stated that if the committee identified a need to improve the position of domestic workers, it would propose various new policy options. The decree explicitly stated that one option would in any case follow the line taken in the ILO Convention, in anticipation of a possible decision to ratify it.⁷⁷ The committee is due to report to the Minister on its findings and activities before 31 December 2013.⁷⁸

In the Netherlands, domestic workers enjoy a special status with respect to social security, labour and tax law⁷⁹ under the Services at Home scheme, which applies to part-time domestic workers. The scheme is intended to make it easier for private individuals to hire another private individual to perform household tasks.⁸⁰ For that reason, the legislature explicitly stipulated that the government would not impose the same obligations on private individuals as employers as it does on companies.⁸¹ For example, part-time domestic staff are exempted from paying employee insurance contributions,⁸² do not accrue a pension and are only entitled to continued payment of their wages for six weeks in the event of illness. The employer also does not require the consent of the Employee Insurance Implementing Agency (UWV) to terminate the contract of employment. The Minister felt that if private individuals were required to comply with the same obligations and administrative burdens as companies, they would be discouraged from hiring domestic workers, which would be detrimental for formal employment and would also cause domestic workers to work illicitly.⁸³ There has been criticism of the special position created for part-time domestic staff in the Netherlands. For example, the Clara Wichmann Institute – Centre for Women and Law has

75 *Parliamentary Documents II* 2012/13, 29544, no. 425, p. 8.

76 Letter from the Minister of Social Affairs and Employment to the speaker of the Lower House of Parliament on the establishment of the Services at Home Committee of 17 May 2013. For more about the committee, see also §2.4.3.

77 Cf. Article 3 under c of the Minister of Social Affairs and Employment's Services at Home Committee (Establishment) Decree of 17 May 2013, 2013-0000056984 (the Services at Home Committee Decree), <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2013/05/17/instellings-besluit-commissie-dienstverlening-aan-huis.html> (consulted on 15 July 2013).

78 Cf. Article 5 of the Services at Home Committee (Establishment) Decree.

79 For a detailed discussion, see Bijleveld & Cremers 2010. Cf. also Heerma van Voss & Holtmaat 2011, p. 1260.

80 Cf. *Parliamentary Documents II* 2010/11, 29544, no. 281, p. 1.

81 *Parliamentary Documents II* 2010/11, 29544, no. 281, p. 4.

82 For example, they have no right to a benefit under the Sickness Benefits Act or the Work and Income (Capacity for Work) Act (WIA) or to unemployment benefit and are not reimbursed for the means-tested health insurance contribution. Part-time domestic staff falling under the scheme can still insure themselves for employee insurance schemes on a voluntary basis. Cf. *Parliamentary Documents II* 2010/11, 29544, no. 281, p. 2.

83 *Parliamentary Documents II* 2010/11, 29544, no. 281, p. 4.

expressed reservations about this special status.⁸⁴ Others have argued that the government should do even more to improve the legal position of part-time domestic staff.⁸⁵

Interestingly, the decree establishing the Services at Home Committee did not mention the relationship between domestic work and human trafficking. The National Rapporteur wrote to the Minister of Social Affairs and Employment asking him to draw the committee's attention to the vulnerability of domestic staff to human trafficking so that it could incorporate that aspect in its advisory report.⁸⁶

2.2.2.2 The demand side

In 2013, the European Commission funded research to learn more about the demand side of human trafficking, including human trafficking in the sex industry.⁸⁷ The findings from this research are important because the policy on prostitution in the Netherlands has sometimes faced international criticism.⁸⁸ The UN General Assembly also called on countries to take account of the demand side in their efforts to combat human trafficking, both as regards the sex industry and other forms of forced labour or services.⁸⁹ The *Special Rapporteur on trafficking in persons, especially women and children*⁹⁰ took the same line in a recent report, saying that:

'measures taken by States to discourage demand have often focused exclusively on demand for commercial sexual exploitation, particularly of women and girls, and neglected other forms of demand, such as demand for exploitative labour and sale of organs'.

The demand side is not the only relevant aspect for preventing human trafficking, however. For example, the OSCE's *Special Representative* specifically places prevention in the context of non-discrimination and

84 See Bijleveld & Cremers 2010.

85 See, for example Heerma van Voss & Holtmaat 2011, p. 1260. The OSCE organised a conference on 8 and 9 October 2013 in The Hague about the problems of private servants employed by diplomats in relation to human trafficking.

86 Letter from the National Rapporteur to the Minister of Social Affairs and Employment of 29 May 2013 on the establishment of the Services at Home Committee, *National Rapporteur*, http://www.nationaalrapporteur.nl/Images/20130529-brief-aan-min.szw-commissie-dienstverlening-aan-huis_tcm63-509700.pdf (consulted on 9 August 2013).

87 For an overview of current EU projects, including those in related policy areas such as forced begging, compensation and human rights, see 'EU Projects and Funding', *European Commission* 25 March 2013, <http://ec.europa.eu/anti-trafficking/section.action?sectionPath=EU+Projects&resetSessionTagsMapping=true> (consulted on 13 June 2013).

88 See §2.3.5.1.

89 Resolution 67/145 of the General Assembly of the United Nations (27 February 2013), *Trafficking in women and girls*, *UN Doc A/RES/67/145*, §9: 'to address, with a view to eliminating, the demand that fosters the trafficking of women and girls for all forms of exploitation and in this regard to enhance preventive measures, including legislative measures, to deter exploiters of trafficked persons, as well as ensure their accountability'; §22: 'to discourage, with a view to eliminating, the demand that fosters all forms of exploitation, including sexual exploitation and forced labour'.

90 Report of the Special Rapporteur on trafficking in persons, especially women and children (18 March 2013), *UN Doc A/HRC/23/48*.

social inclusion of vulnerable groups, such as the Roma, members of other minority groups, homeless children, asylum seekers and refugees.⁹¹ Moreover, raising public awareness remains an important aspect of efforts to prevent human trafficking.⁹²

2.2.2.3 Private actors – NGOs and companies

There is growing international attention to the possibilities that a partnership with private actors can offer in tackling human trafficking. The importance of civil-society organizations in this regard, particularly in providing assistance for victims and potential victims, is also recognized at the European level. In May 2013, more than 100 European NGOs active in domains such as human rights, children's and women's rights, migrant rights and shelters joined the *EU Civil Society Platform against Trafficking in Human Beings*, which was established by the European Commission.⁹³

Companies, such as employment agencies, are also important potential partners. EU member states have been called on to encourage the private sector to participate in the *European Business Coalition against trafficking* that will be established in 2014.⁹⁴ This initiative falls under one of the five priorities in the EU Strategy: step up the prevention of trafficking in human beings.⁹⁵ After all, actors in the private sector also have a responsibility of their own.

Airline Ambassadors International (United States)

The American NGO Airline Ambassadors International (AAI) provides training for airport personnel and the staff of airlines,⁹⁶ groups of employees who might encounter possible victims of human trafficking as they are being transported from one place to another. The aim of the courses given by AAI is to raise awareness of the signs of human trafficking and of actions that can be taken if a possible victim is identified.

The UN's Special Rapporteur on trafficking in persons, especially women and children expressed the responsibility of actors in the private sector as follows:

91 OSCE 2012, p. 8.

92 See §2.6.

93 Another European project is *European NGOs Platform against Trafficking, Exploitation and Slavery* (ENPATES), which was carried out between July 2010 and November 2012. This project was designed to coordinate the activities of a number of NGOs engaged in combating human trafficking. It was in line with the EU Strategy towards the Eradication of Trafficking in Human Beings, which refers to the importance of strengthening transnational cooperation. One of the proposed measures was the creation of an EU Civil Society Platform by the European Commission. See also §2.11.4.

94 'Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016', *Consilium* 25 October 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/press_data/en/jha/133202.pdf (consulted on 8 August 2013).

95 Reducing demand also falls under this heading. The other priorities are: identifying, protecting and assisting victims of trafficking; increased prosecution of traffickers; enhanced coordination and cooperation among key actors and policy coherence; and increased knowledge of and effective response to emerging concerns related to all forms of human trafficking.

96 For more information about the project, see <http://www.airlineamb.org/dctraining.html> (consulted on 31 July 2013).

*'There is wide international consensus that businesses have responsibilities to respect human rights and that they are uniquely positioned to prevent or mitigate any risks of trafficking in their supply chains'*⁹⁷

Accordingly, the most recent resolution of the UN General Assembly called on the business community to consider adopting ethical codes of conduct to ensure decent working conditions and prevent exploitative practices.⁹⁸

2.2.2.4 Prosecution and trial

It still appears to be difficult to secure convictions of human traffickers in many countries. In any case, the UN Secretary-General has observed that the number of prosecutions is low.⁹⁹ The UNODC has also observed that the number of convictions is low, particularly in regions like Africa and the Middle East.^{100,101} According to the European Commission, the number of convictions in Europe actually declined by 13% in the period 2008-2010, from 1,534 in 2008 to 1,339 in 2010.¹⁰²

GRETA concludes from its evaluations of the countries it has visited that there is a substantial discrepancy between the number of victims identified and the number of completed criminal prosecutions and convictions.¹⁰³ In light of the number of identified victims, the number of prosecutions and convictions is manifestly too low. Figures for the number of convicted persons and registered (possible) victims of human trafficking are not directly comparable, however, since a suspect may

97 Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children (7 August 2012), UN Doc A/67/261, p. 17.

98 Resolution 67/145 of the General Assembly of the United Nations (27 February 2013), *Trafficking in women and girls*, UN Doc A/RES/67/145. See also Office of the High Commissioner for Human Rights, 'Guiding principles on business and human rights – Implementing the United Nations "Protect, Respect and Remedy" Framework', OHCHR 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (consulted on 2 July 2013).

99 Report of the Secretary-General (23 July 2012), *Trafficking in Women and Girls*, UN Doc A/67/170.

100 'Progress in convictions remains limited. Of the 132 countries covered in this report, 16% did not record a single conviction for trafficking in persons between 2007 and 2010. However, more countries reported increases than reported decreases in the number of convictions between 2007 and 2010 (UNODC 2012, p. 14).

101 However, the reservation has to be noted here that there is a geographic bias: African countries, in particular, supply less data (and sometimes none at all) than Europe or the United States (UNODC 2012, p. 19).

102 European Union 2013, p. 13.

103 GRETA 2012.

have multiple victims. Nevertheless, the size of the discrepancy between the figures obviously causes surprise in some quarters.¹⁰⁴

Eurojust

According to a survey by Eurojust – on the basis of a questionnaire sent to national governments and an analysis of cases that were registered by Eurojust between 2008 and 2011 – the major obstacles faced by countries in criminal investigations and prosecutions are as follows:

- Gathering evidence
- Identifying human trafficking cases and victims
- The multilateral dimension, or the transnational nature of many human trafficking cases
- A lack of knowledge and experience in relation to human trafficking cases
- The tracing of (illegally acquired) assets in human trafficking cases.

In October 2012, Eurojust presented an action plan with suggestions for possible solutions and priorities,¹⁰⁵ which are also relevant for the Netherlands and are discussed further in §3.2, where special attention is devoted to the need to improve international political cooperation and the exchange of information between police forces and Europol.

There are continuing international calls for training, not only for police, prosecutors and other government representatives, but also for judges.¹⁰⁶ In this context, an initiative by the UNODC to collect case law relating to human trafficking from a range of countries could prove useful.

104 O. Laurell, chairman of the Eurojust Trafficking and Related Crimes Team, intervention, in: *Final report of the Eurojust Strategic Meeting on Trafficking in Human Beings held in The Hague on 26 and 27 April 2012*, <http://eurojust.europa.eu/doclibrary/Eurojust-framework/ejstrategicmeetings/Eurojust%20Strategic%20Meeting%20on%20Trafficking%20in%20Human%20Beings%2C%20April%202012/THBreport-2011-04-26-EN.pdf> (consulted on 9 August 2013). In the Netherlands, 71% of the 153 human trafficking cases dealt with by the courts of first instance in 2012 in fact ended in a conviction: 109 in total. The previous year, the figure was 60%. The proportion of convictions is therefore at the level it was before 2007. (NRM 2013a).

105 Eurojust 2012.

106 For example, see Resolution 20/1 of the Human Rights Council of the United Nations (18 July 2012), Trafficking in persons, especially women and children: access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations, UN Doc A/HRC/RES/20/1, §i; Resolution 67/145 of the General Assembly of the United Nations (27 February 2013), Trafficking in women and girls, UN Doc A/RES/67/145; EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 15; Resolution 1922 of the Parliamentary Assembly of the Council of Europe (25 January 2013), Trafficking of migrant workers for forced labour. See also the remark by J. van Dijk, a member of GRETA: 'What is needed, before anything else, are specialized prosecutors and judges who understand what human trafficking means and does to victims' ('The importance of monitoring', *LaStrada Newsletter* March 2013, <http://lastradainternational.org/documents/newsletters/La%20Strada%20Newsletter%20Issue%2028.pdf> (consulted on 2 August 2013). In response to NRM 2012d, a programme of training for judges has started in the Netherlands.

UNODC Human Trafficking Case Law Database

The UNODC set up the *Human Trafficking Case Law Database* in 2011¹⁰⁷ with the aim, among other things, of providing practising lawyers, including judges and prosecutors, with access to examples of cases from other countries from which they could learn how human trafficking cases are dealt with elsewhere. Since national legislation is largely based on the same international legislation – the UN Palermo Protocol – this source could provide more insight into aspects such as the interpretation of specific elements of an offence.

This database contains hundreds of judgments and summaries of judgments from more than 70 countries. One reservation that has to be expressed is that the number of judgments in the database is not representative of the number of investigations and prosecutions conducted in a country. The database is also not yet complete and is not comprehensive enough to highlight any fixed patterns in the case law in each country.¹⁰⁸ Nevertheless, the database could in time expand into a useful source of information for practising lawyers.¹⁰⁹

2.2.2.5 International criminal cooperation

In its judgment in *Rantsev v. Cyprus and Russia*,¹¹⁰ the European Court of Human Rights stressed that human trafficking is a problem that is often not confined to a single country and that countries therefore have an obligation to cooperate effectively with other countries in a criminal investigation.

According to Europol's SOCTA, the number of transnational investigations against *organized partnerships* remains small, in the EU at least. That also seems to be the conclusion of the OSCE's Special Representative, who has said that international cooperation needs to improve in order to combat organized crime and provide better protection for victims.¹¹¹ Countries in the EU are encouraged to establish more *Joint Investigation Teams* – both between member states and with countries outside the EU – and to involve Europol and Eurojust in all transnational cases of human trafficking.^{112,113}

Eurojust

In 2012, Eurojust organized a meeting to discuss strategies for combating human trafficking. The reason for the meeting was the decline in the number of human trafficking cases that had been registered in Eurojust's *Case Management System* since 2004, which could imply that the possibilities

107 See <http://www.unodc.org/cld/index.jsp> (consulted on 25 July 2013).

108 For example, the database currently contains five judgments from the Netherlands. The translation of NRM 2012d might provide an impulse for expansion of the database.

109 In September 2012, an Expert Group Meeting was held to discuss further expansion of the UNODC Human Trafficking Case Law Database. The Bureau of the National Rapporteur also contributed to this meeting.

110 ECHR 7 January 2010, no. 25965/04.

111 OSCE 2012, p. 8.

112 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012, p. 11; 'Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016', *Consilium* 25 October 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/press-data/en/jha/133202.pdf (consulted on 8 August 2013).

113 On Europol, see §3.2.

offered by Eurojust are not being fully exploited. It is possible that the majority of the cases that are reported to Eurojust are bilateral in nature and involve no more than two countries. It is also at least suggested by Eurojust that international cooperation is not an option but an obligation in relation to this offence.¹¹⁴

2.2.2.6 Financial gains and compensation for victims

Human trafficking has major consequences for victims, but it is also clear that traffickers earn a lot of money from it.¹¹⁵ Analysis of financial streams can make an important contribution to investigations. Furthermore, the confiscation of profits can hit human traffickers where it hurts. The Belgian Centre for Equal Opportunities and Opposition to Racism formulates this pithily:

'A combative police and judicial action will only significantly impact the perpetrators of human trafficking if it effectively removes the profits from the criminal circuits and neutralises the facilitators and resources supporting the entire exploitation process. This particularly highlights the value of seizures and confiscations'.¹¹⁶

Participants at the Eurojust strategy meeting on human trafficking were also in general agreement that financial investigations are one of the most important instruments for combating human trafficking. At the same time, it was generally acknowledged that a change of culture is needed in attitudes towards financial investigations and prosecutions, which are still often seen as secondary to criminal investigations.¹¹⁷ It has now been agreed at EU level that as of 2013 member states will conduct proactive financial investigations in cases of human trafficking. Europol will produce an analysis of the information from the member states about financial investigations in human trafficking cases no later than 2015.¹¹⁸

In international terms, seizures of the assets of human traffickers – for example with a view to confiscating illegally earned profits – still seem to occur only rarely. It also remains difficult for victims to obtain compensation for damage they have sustained.¹¹⁹ The OSCE's Special Representative has argued that the human rights of vulnerable and trafficked persons should receive priority, and that they include the right to compensation.¹²⁰ The OSCE, UNHCR and the Council of Europe have all been recommending for some

114 O. Laurell, chairman of the Eurojust Trafficking and Related Crimes Team, intervention, in: *Outcome Report of the Eurojust Strategic Meeting on Trafficking in Human Beings held on 26 and 27 April in The Hague*, <http://eurojust.europa.eu/doclibrary/Eurojust-framework/ejstrategicmeetings/Eurojust%20Strategic%20Meeting%20on%20Trafficking%20in%20Human%20Beings%2C%20April%202012/THBreport-2011-04-26-AND.pdf> (consulted on 9 August 2013).

115 See, for example, UNODC 2012, p. 34: 'Trafficking in persons happens mostly because of money as some human beings exploit others in order to gain profits'.

116 CGKR 2012.

117 See also §3.8.2.

118 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 11.

119 GRETA 2012. In 2012, LaStrada International in fact presented a Toolkit on Compensation for Trafficked Persons as a result of the project COMP.ACT – *European Action for Compensation for Trafficked Persons*. See www.lastradainternational.org (consulted on 4 April 2013).

120 OCSE 2012, p. 8.

time that the proceeds from crime should be used to compensate victims or to establish funds to help victims.¹²¹ The EU Directive on Human Trafficking also makes the connection between confiscation of the proceeds of crime and compensation.¹²² Similarly, in a resolution in 2012, the UN Human Rights Council expressed its concern about the worldwide lack of effective remedies for victims of human trafficking, including possibilities for securing compensation.¹²³ Countries are therefore encouraged to provide training for the police and for prosecutors in seizing assets related to the offence of human trafficking, and in this context to ensure that the national legal system contains measures that allow victims to secure compensation for any damage they have sustained.

Right to an effective remedy

The UN Special Rapporteur on Trafficking in Persons, especially women and children, has drafted a number of basic principles governing the right to an effective remedy for victims of human trafficking,¹²⁴ which must be seen as more than simply the right to compensation: it also encompasses rehabilitation of victims and – procedurally – the possibility of gaining access to the law. The draft basic principles formulated by the Special Rapporteur are based on ‘adequate reparations for the harms suffered, which may include restitution, compensation, recovery, satisfaction, and guarantees of non-repetition’. The scope of the concept ‘effective remedy’ and the accompanying principles are currently the subject of a consultation process¹²⁵ jointly organized by the UN Office of the High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on Trafficking in Persons, especially women and children. A summary of the comments received will be sent to the UN Human Rights Council in 2014.

2.2.3 European Court of Human Rights

Since the judgment in *Rantsev v. Cyprus and Russia*,¹²⁶ there seems to have been a growing number of cases before the European Court of Human Rights (ECHR) involving complaints against a state for violation of Article 4 of the European Convention on Human Rights. In *Rantsev v. Cyprus and Russia*, the ECHR brought human trafficking within the scope of Article 4 of the Convention, which outlaws slavery, servitude and

121 In this context, see also Article 14 (2) of the UN Convention against Transnational Organized Crime.

122 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 (OJ 2011, L 101/1), recital 13.

123 Resolution 20/1 of the Human Rights Council of the United Nations (18 July 2012), *Trafficking in persons, especially women and children: access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations*, UN Doc A/HRC/RES/20/1.

124 Report of the Special Rapporteur on trafficking in persons, especially women and children (13 April 2011), Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, UN Doc A/HRC/17/35. See also Article 6 (6) of the UN Palermo Protocol: ‘Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered’ (UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000), *Bulletin of Treaties* 2001, 69 and 2004, 35).

125 The first round of consultations was held at the beginning of March 2013 in Geneva.

126 ECHR 7 January 2010, no. 25965/04, *NJCM-Bulletin* 2010, 501, annotated by M. Boot-Matthijssen. See also NRM8 and Van Sasse van Ysselt 2013, p. 1695.

forced labour. The Court also formulated a number of obligations on member states of the Council of Europe relating to tackling human trafficking, with respect to source countries, transit countries and countries of destination. These obligations relate not only to investigation and prosecution, but also prevention, the protection of victims and international cooperation. In its judgment in *M. et al. v. Italy and Bulgaria*, the ECHR then found, among other things, that human trafficking should not only be reviewed against Article 4 of the Convention but should also be regarded as inhuman and degrading treatment within the meaning of Article 3 of the Convention.¹²⁷ A positive obligation to investigate human trafficking therefore ensues not only from Article 4 but also Article 3 of the Convention.¹²⁸ Consequently, both provisions are invoked in situations where the complaint is of exploitation, as occurred in the case of *C.N. and V. v. France*:

*C.N. and V. v. France*¹²⁹

The complainants in this case were two sisters from Burundi, who in 1993 had fled the civil war in that country, during which both of their parents had been killed. Through the mediation of their aunt and uncle, they arrived in France. At that time, C.N. was 16 and V. was 10. Their aunt was appointed as guardian to the two sisters by the family. The aunt and uncle kept them in the cellar of their house and they were forced to perform household work and care for the seven children in the family, including a handicapped son. They were not paid, were given no days off, lived in poor and unhygienic conditions in the cellar and were regularly subjected to physical and verbal abuse. In particular, the uncle repeatedly threatened to send them back to Burundi if they were disobedient. In 1995, the French juvenile social services drew up a report on the situation in response to signs from the sisters, but the public prosecution service did not act on the report.¹³⁰

In 1999, both sisters were able to escape from the house. A new police investigation was conducted and the sisters were given a psychological examination, which showed that they had suffered severe psychological harm during the years they had stayed with the aunt and uncle. The diplomatic immunity of the uncle (who worked with UNESCO) and the aunt was lifted, they were prosecuted and the aunt was ultimately sentenced to pay a fine of € 1,500 and compensation of € 1 for the suffering caused, a sum that was equal to the amount claimed by the sisters.

In December 2009, the sisters filed a complaint with the ECHR, arguing that Articles 3, 4 and 13 (the right to an effective remedy) of the Convention on Human Rights had been violated because

127 Article 3 ECHR reads ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’ See also §2.2.2.1.

128 ECHR 31 July 2012, no. 40020/03. This judgment also contains findings relating to an (alleged) Roma marriage. A dissenting opinion by one of the judges suggested a suspicion of prejudice on the part of the Italian authorities. See M. Boot-Matthijssen, notes to ECHR 31 July 2012, no. 40020/03, *European Human Rights Cases (EHRC)* 2012, 221 (*M. et al. v. Italy and Bulgaria*).

129 ECHR 11 October 2012, no. 67724/09 (*C.N. and V. v. France*).

130 The Court found that the actions of the juvenile social services in 1995 and the failure to bring a prosecution at that time did not constitute failure to comply with the positive obligation to perform a careful investigation since the signs from the sisters at that time were not such as to give rise to a suspicion of very serious abuses. There was therefore no violation of Article 4 ECHR in that respect. Accordingly, the Court felt there was no need to further investigate the complaint under Article 13 ECHR.

there had been no effective investigation following their complaints of assault. The complaint on the grounds of Article 3 was declared unfounded because the aunt had been convicted of assault and ordered to pay the compensation that was claimed. As regards Article 4, the ECHR found that the term ‘forced or compulsory labour’ must also be deemed to include work that is performed involuntarily under the menace of any penalty. The Court found that the aunt and uncle’s threat to send the older sister, C.N., back to Burundi was a form of threatened sanction, because it would have meant her being separated from her younger sister and left to her fate in Burundi.¹³¹ The Court found that forced labour had to be distinguished from work that could reasonably be required in the context of mutual family assistance. In this case, however, C.N. had been forced to perform work without having voluntarily offered to do it and had performed so much work that, without her help, the uncle and aunt would have been required to have recourse to a professional, paid employee. With regard to the younger sister, V., the Court found that there had been no forced labour, since she had been able to go to school and was not kept in isolation as much as her older sister. Apparently – and strangely – the fact that the younger sister was also threatened with deportation to Burundi and lived under the same conditions did not alter that finding.¹³²

The Court ultimately found that French legislation had not provided the older sister with sufficient practical and effective protection against slavery and forced labour, since the conviction by the French court related only to the physical mistreatment of the sisters and not to forced labour, and there had therefore been a violation of Article 4 of the Convention.

In addition to failings by governments to tackle exploitation in the sex industry, therefore, complaints filed with the European Court of Human Rights against countries also concern actual or alleged shortcomings in preventing human trafficking in other sectors, such as domestic work,¹³³ even when that work is performed for family or for diplomats.

2.2.4 International monitoring and coordination

In principle, monitoring involves reflecting on the effectiveness of activities and initiatives that have been undertaken to combat human trafficking. A large number of actors are involved in these efforts, at both the national and international level. Their activities and initiatives need to be coordinated in order to avoid placing undue strain on workers on the ground and duplication of work.¹³⁴ Accordingly, one of the main priorities of the EU Strategy towards the Eradication of Trafficking in Human Beings

¹³¹ ECHR 26 July 2005, no. 73316/01 (*Siliadin v. France*). See also Convention on decent work for domestic workers (Geneva, 16 June 2011), *Bulletin of Treaties* 2012, 193. See also §2.2.2.1.

¹³² ECHR 11 October 2012, no. 67724/09, *European Human Rights Cases* (EHRC) 2013, 54, annotated by B. Barntsen, (C.N. and V. v. France).

¹³³ See also ECHR 13 November 2012, no. 4239/08, *European Human Rights Cases* (EHRC) 2013, 73, annotated by S. Lestrade (*C.N. v. United Kingdom*), a case in which a Ugandan woman complained of a lack of protection in relation to being forced to perform domestic work and provide care. The Court convicted the United Kingdom of a violation of Article 4 of the Convention on Human Rights. Another pending case, *Elisabeth Kawogo v. United Kingdom*, also concerns a complaint based on Article 4 relating to forced domestic work. On the ILO Convention on decent work for domestic workers (*Bulletin of Treaties* 2012, 193), see §2.2.2.1 and §2.4.2.

¹³⁴ See also NRM5.

is to strengthen the coordination of activities and the cooperation between the main actors working in the field of human trafficking.¹³⁵ Another positive development is that an investigation is underway into the coordination of the anti-trafficking activities of UN organizations (UNODC, ILO, IOM, OHCHR and UNHCR), for example.¹³⁶

Coordination is important, for example, in collecting data in order to comply with various treaty and other international obligations. In that context, the Netherlands is required to provide various international regulatory bodies with adequate and accurate information. However, different international bodies regularly ask countries the same questions and request the same information. For example, the national rapporteurs and equivalent mechanisms are required to provide the European Commission's *Anti-Trafficking Coordinator* with information on the grounds of the EU Directive on Human Trafficking. In the Netherlands, the National Rapporteur provides a significant portion of the Dutch statistics on human trafficking. International coordination of various initiatives for data collection and requests for information would be useful.¹³⁷ The Anti-Trafficking Coordinator has an important task in coordinating the EU's anti-human trafficking strategy and is responsible for reporting to the European Commission every two years on the progress made in combating human trafficking,¹³⁸ as well as improving the coherence of EU policies and the coordination among the institutions, agencies, member states and other international actors. This official also monitors the implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.¹³⁹

2.2.5 The Netherlands in an international context

Under international agreements, the Netherlands regularly reports to various international governmental organizations on measures it has taken to address human trafficking. These organizations are generally monitoring mechanisms in the field of human rights, such as the UN Committee on the Rights of the Child,¹⁴⁰ which also monitors compliance with the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹⁴¹ However, the Netherlands also reports to organizations dealing specifically with human trafficking, such as GRETA, which monitors compliance with the Council of Europe Convention on Action against Trafficking in

135 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012.

136 Forss 2012.

137 On the subject of international data-collection initiatives, see §2.2.1 and NRM 2012f.

138 See Articles 19 and 20 of 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 (OJ 2011, L 101/1).

139 On the subject of data collection at EU level, see §2.2.1 and NRM 2012f, Chapter 7.

140 For example, see the report on the Netherlands' compliance with the UN Children's Rights Convention, Committee on the Rights of the Child (27 March 2009), *Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands*, UN Doc CRC/C/NLD/CO/3, including the recommendation to improve cooperation with countries where children are trafficked to or from.

141 For the last report on the Netherlands, see Committee on the Rights of the Child (30 January 2009), *Consideration of reports submitted by States parties under article 12(1) of the Optional Protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography*, UN Doc CRC/C/OPSC/NLD/CO/1.

Human Beings. As already mentioned, GRETA visited the Netherlands in 2013 and is expected to finalize its report on that visit in the spring of 2014.

Reports about the Netherlands

In 2012, the Netherlands was one of the countries that took part in the Universal Periodic Review by the UN Human Rights Council. During that review, the Netherlands was praised by other countries for the steps it had taken to combat human trafficking, including extending the mandate of the Task Force on Human Trafficking and the adoption of an action plan for 2011-2014. A single country expressed concern about the legalization of prostitution.

In the American Trafficking in Persons Report (TIP report) in 2013, the Netherlands was classified as a Tier-1 country.¹⁴² Tier 1 is the highest category, signifying countries whose governments fully comply with the minimum standards in the Trafficking Victims Protection Act (TVPA). That does not mean that a country in that category does not face any problems in relation to human trafficking; rather, it means that the government recognizes human trafficking for what it is and is making sufficient efforts to combat it. The United States praised the Netherlands in particular for its multidisciplinary approach to human trafficking, the growing number of investigations into labour exploitation and the overall increase in the number of convictions for human trafficking. The report was critical, however, of the length of the sentences imposed, which led to the recommendation that convicted human traffickers should receive sentences that fit the seriousness of the offence. This criticism once again underlines the need for a clear framework of assessment for sentencing, which has been lacking up to now.¹⁴³ The TIP report, like other reports, also recommended that the Netherlands should ensure that there is sufficient capacity in shelters to provide comprehensive and specialized help for victims.¹⁴⁴ The report also praised the pragmatic and self-critical approach adopted by the Netherlands to improve anti-trafficking results. The TIP report specifically mentions the appointment of specialized judges: 'the Administrative Office of the Courts announced the appointment of specialized anti-trafficking judges.' The Netherlands is indeed the first country in the world to assign specialized judges to human trafficking cases.¹⁴⁵

The CEDAW Committee – which monitors compliance with the UN Convention on the Elimination of all Forms of Discrimination against Women – was more critical in its reaction to the report submitted by the Netherlands in 2010 on efforts to combat human trafficking. Every victim should

142 The *Trafficking in Persons Report* (TIP report) is published every year by the US State Department. The report is prescribed by the US *Trafficking Victims Protection Act of 2000*, and is intended to encourage countries to increase their efforts to combat human trafficking. The report describes the situation in more than 170 countries. Countries are divided into categories, with *Tier 1* being the highest and *Tier 3* the lowest.

143 See NRM 2012e.

144 The Netherlands Institute for Human Rights has also expressed the need for specialized help for victims of human trafficking, with specific attention for minors, Netherlands Institute for Human Rights 2013.

145 The National Rapporteur's comments in response to the TIP report were posted as a press release on the website ('TIP report: "Identifying victims of human trafficking first step in protection"', *National Rapporteur* 24 June 2013, <http://www.nationaalrapporteur.nl/actueel/nieuws/2013/20130624-tip-rapport-identificeren-slachtoffers-mensenhandel-eerste-stap-in-bescherming.aspx?cp=63&cs=16790> (consulted on 8 August 2013)).

receive protection, regardless of their willingness to cooperate with the investigation and prosecution of offenders.¹⁴⁶ The Committee called on the Netherlands to guarantee that relevant NGOs would be fully integrated as members of the Task Force on Human Trafficking. (This has been the case since March 2011, when CoMensha became a member of the task force.)¹⁴⁷ The Committee also called on the Netherlands to improve the identification of victims of human trafficking by involving relevant NGOs in the process, and to guarantee that women who are victims of human trafficking will not under any circumstances be detained in aliens detention or any other form of custody. The Committee also urged an evaluation of the risks associated with the privacy aspects of the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry in connection with the envisaged mandatory registration of prostitutes, as proposed in 2009.¹⁴⁸ At the request of the CE-DAW Committee, the Netherlands has already responded to a number of the recommendations.¹⁴⁹ The Committee expects to receive the next report from the Netherlands at the beginning of 2014.

In the spring of 2013, the UN Committee against Torture discussed a report from the Netherlands on compliance with its obligations under the UN Convention against Torture. Human trafficking was also an important aspect of the deliberations on this report, which illustrates how, at the international level, the phenomenon of human trafficking is also being addressed in the context of torture.¹⁵⁰ The committee also reiterated a number of earlier recommendations, some of which have already been followed up. For example, it advised the Netherlands to provide training for police, the PPS and the judiciary and to avoid returning victims to their country of origin if there are valid reasons for fearing that they would be exposed to the risk of being exploited, mistreated or tortured.¹⁵¹

These reports indicate that the Dutch approach to human trafficking is being discussed in many international forums, where human trafficking is addressed from different angles: the perspective of fighting organized crime as well as a human rights perspective. What stands out is the praise that the Netherlands

146 See also §2.8.

147 See Article 7 of the Task Force on Human Trafficking (Establishment) Decree, *Government Gazette* 2011, no. 5052. See also *Parliamentary Documents I* 2012/13, 33309, C ('The participation of the Ministry of Health, Welfare and Sport, the National Rapporteur and CoMensha in the task force gives an assurance that problems and wishes relating to the care for and shelter of victims can be effectively addressed').

148 Concluding observations of the Committee on the Elimination of Discrimination against Women (5 February 2010), *The Netherlands, UN Doc CEDAW/C/NLD/CO/5*, §28-31. It has since become clear that the requirement to register will no longer be included in the bill. See also §2.3.

149 Concluding observations of the Committee on the Elimination of Discrimination against Women (24 May 2012), *The Netherlands, Addendum, Information provided by the Government of the Netherlands on the follow-up to the concluding observations of the Committee (CEDAW/C/NLD/CO/5)*, *UN Doc CEDAW/C/NLD/CO/5/Add.1*.

150 The Committee is also positive about the expansion of the National Rapporteur's mandate in 2012 to embrace sexual violence against children. See Concluding observations of the Committee against Torture of the United Nations (20 June 2013), *On the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, *UN Doc CAT/C/NL/CO/5-6*.

151 *Ibid.*

has received for the innovative methods it has adopted to combat human trafficking.¹⁵² The multidisciplinary approach and the trend towards specialization by judges are developments that are being followed with particular interest in other countries. The recommendations made in the reports provide a valuable affirmation of the efforts being made to tackle human trafficking in the Netherlands, while it is also good to know that experts in other countries are closely following the Dutch approach. It is also clear that human trafficking has become an indispensable item on the agenda of many organizations. The growing attention devoted to human trafficking at the international level has led to the priority currently being given to efforts to combat it. The international approach now generates numerous reports, which vary in the effects they have and the extent to which they yield new insights. The capacity available to tackle human trafficking in the Netherlands is limited and must therefore be used as effectively as possible. It is therefore important for the recommendations to be studied critically and for the international organizations that make those recommendations to coordinate them as far as possible. In that way, the focus can remain fixed on finding the most effective and innovative possible approach to eradicating human trafficking.

2.3 Human trafficking and prostitution policy

2.3.1 Introduction

‘Whatever one’s views about prostitution, its existence is a fact, even for the government. That calls for a realistic approach without moralizing.’¹⁵³ This sentence appeared in the explanatory memorandum to the General Ban on Brothels (Abolition) Act 2000 and reflected the pragmatic approach that underpinned a number of objectives of the act, including the decriminalization of the exploitation of prostitution, the effect of which was to legalize the exploitation of prostitution, which until then had been tolerated.¹⁵⁴ Unless prohibited by a municipality’s general local bye-law, exploitation of prostitution is *permitted*. In municipalities where exploitation of prostitution is regulated by a licensing system, operators are required by local legislation to have a permit.¹⁵⁵ At the moment, therefore, there is a legal sector, in which the exploitation of prostitution may or may not be subject to a licensing requirement and licensing conditions, and illegal prostitution, which is carried on in contravention of local rules.¹⁵⁶ The Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry dating from 2009 is based on

152 See, for example, Mattar’s article, in which he discusses the role of the National Rapporteur in addressing human trafficking in the Netherlands: ‘*In the Netherlands, a follow-up on the recommendations made by the Dutch rapporteur resulted in significant policy changes*’ (Mattar 2008).

153 *Parliamentary Documents II* 1996/97, 25437, no. 3.

154 *Parliamentary Documents* 2000, 38. The ban on brothels was lifted on 1 October 2000. Other important objectives of the bill were to prevent and suppress human trafficking, control and regulate the exploitation of prostitution, protect minors against sexual abuse, protect the position of prostitutes and reduce the scale of prostitution involving illegal immigrants; see NRM8.

155 On the grounds of the current legislation a distinction has to be made between legal prostitution (whether licensed or not) and illegal prostitution. At the moment, prostitution that is not subject to licensing cannot be illegal.

156 Exploitation of prostitution for which no local rules have been drawn up, and which is therefore unlicensed, cannot be in breach of regulations and therefore cannot be illegal.

a fundamentally different approach: it would *prohibit* the exploitation of prostitution without a permit.¹⁵⁷ With this model, the exploitation of prostitution would be either prohibited or permitted, and the situation would no longer exist where the exploitation of prostitution could be carried on legally without a permit and therefore not subject to (administrative) oversight or enforcement.

The prostitution sector has always been susceptible to human trafficking.¹⁵⁸ The abolition of the ban on brothels seemed to have created a practical situation – one modelled on the romantic ideal of the articulate prostitute¹⁵⁹ in the Netherlands¹⁶⁰. But it is a long time since that image of a prostitution sector populated exclusively by articulate Dutch prostitutes working behind the windows and in brothels – and the ‘student earning a little extra’ in the escort business – has matched the reality.¹⁶¹ Although more needs to be learned about the composition of the population of prostitutes working in the Netherlands, there is free movement of persons in Europe and many of the prostitutes currently working in window prostitution, for example, are from Central and Eastern Europe.¹⁶² Many of these women come to the Netherlands at a young age, are unable to speak Dutch or any other Western language such as English¹⁶³ and are often unaware of their rights and obligations in the Netherlands.¹⁶⁴ In those circumstances, this group is particularly vulnerable to exploitation. A substantial proportion of the registered possible victims are from Central and Eastern Europe, as is apparent from the most recent statistical report by the National Rapporteur.¹⁶⁵ The analysis of the case law in 2010 also showed that half of the victims of sexual exploitation identified by the PPS had been recruited abroad.¹⁶⁶ The registered human trafficking still shows that, in addition to the Netherlands and Africa, many victims are from Romania, Bulgaria, Poland and Hungary.¹⁶⁷ A national framework for prostitution policy is therefore not only relevant for Dutch prostitutes (articulate or otherwise).

157 See also §2.3.2.

158 In NRM1 it was shown how the term human trafficking has been connected with prostitution ever since it was included in Dutch criminal legislation (NRM1).

159 This report refers to prostitutes with the female pronouns ‘she’ and ‘her’. The term ‘prostitute’ also includes males who are working as prostitutes.

160 In relation to the sex industry, the legislature and the Supreme Court refer to a situation of exploitation if the individual concerned is in a situation that does not match the circumstances that ought to apply for an articulate prostitute in the Netherlands. See Supreme Court 5 February 2002, *LJN AD5235*; NRM 2012e.

161 It is, however, questionable whether this depiction of the situation ever corresponded with reality and whether it is not just a magnification of a small part of the sex industry.

162 In Amsterdam, the majority of the women are from East European and South American countries (Beke 2010, p. 204). For a discussion of figures relating to the size of the Dutch sex industry, see §2.3.5.2.

163 This seems to apply mainly for Hungarians and Bulgarians. See Beke 2010; *Slaven van het systeem* 2010.

164 This seems to apply, for example, for the Bulgarian prostitutes working in Groningen and Leeuwarden (*Slaven van het systeem* pilot, 2010).

165 NRM 2012f.

166 The study of case law in 2010 shows that more than a third of the victims come from the Netherlands; otherwise, mainly from Romania, Hungary, Poland and Bulgaria. (NRM 2012d).

167 Many of the victims and possible victims who are exploited in the sex industry share the same personal characteristics: female (93%), younger than 31 (83%), usually from Africa (35%) and countries that were members of the EU in 1995 (particularly Dutch) (32%) (NRM 2012f).

At the same time, Dutch girls and women are also exploited in the prostitution sector.¹⁶⁸ Appearances suggest, in any case, that some of the Dutch girls are recruited at a very young age and prepared for work in the legal prostitution sector once they reach the age of 18.¹⁶⁹

Within the sector, a shift seems to be occurring away from more visible forms of prostitution, such as window prostitution and brothels, to less visible forms, such as escort services and prostitution in hotels and in private homes.^{170,171} This makes it more difficult to check for abuses and enforce the rules in the sector,¹⁷² adding to the vulnerability of the present-day prostitution sector. In 2007, the National Rapporteur recommended that the legislature should draw up a national framework for prostitution policy, based on the principle that every municipality should have to draw up rules for *all* establishments where commercial sexual transactions are undertaken.¹⁷³ The Sneep case, which demonstrated that human trafficking also occurs in the licensed sector,¹⁷⁴ was an important reason for this recommendation.¹⁷⁵ Despite

168 Respondents in the study into the prostitution sector in Amsterdam mentioned the following vulnerable groups working in the city: 'In the first place, they are prostitutes from Eastern Europe, particularly Hungarians, Romanians and Bulgarians. Secondly, they are native Dutch women in their early twenties. The third group mentioned are women from African countries, often Nigeria, and finally Chinese women' (Beke 2010, p. 171).

169 This is based, *inter alia*, on information from a study by the National Rapporteur into police investigations conducted in 2009 (NRM 2012f, Chapter 5). Seventeen out of a total of 119 victims of sexual exploitation in the study (=14%) were precisely eighteen years of age at the time the human trafficking offence commenced. Roughly a fifth were aged nineteen or twenty when the human trafficking offence commenced (NRM2012f).

170 The deputy chief of the National Police says that because of tighter scrutiny of the regular sector, there has been a shift towards prostitution in private homes, which illustrates the importance of police enforcement not being confined to the licensed sector; the police must also look for abuses in illegal circuits (E. Stoker, 'Uitbuiting van prostituees verschuift naar 'woningen', *De Volkskrant* 17 June 2013, <http://www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3460087/2013/06/17/Uitbuiting-van-prostituees-verschuift-naar-woningen.dhtml> (consulted on 31 July 2013)).

171 Municipality of Utrecht 2012; Beke 2010, p. 191. The research firm Beke expresses the reservation that 'the mobility of prostitutes is less than is sometimes assumed' (Beke 2010, p. 203).

172 For example, it has been found that in Amsterdam, prostitution also occurs at other locations; for example, cafés and pairing clubs have been mentioned as places where prostitution occurs, but also car parks, massage salons, woods, houses in holiday parks, call centres, pizzerias and hairdressing salons. Although the signs are clear and make it plausible that prostitution occurs in such places, at the moment little is known about these forms of prostitution. The prostitutes who work at these places are therefore particularly vulnerable to exploitation (Beke 2010).

173 NRM5, recommendation 2.

174 The Sneep case revealed that there were possibly just under 100 women being exploited by a single network in the licensed sex industry. A total of 120 prostitutes were connected with this network, 78 of whom were regarded as possible victims of human trafficking (on the basis of information from telephone taps, surveillance or statements) (Schone Schijn 2008, p. 11); NRM5. See also §3.1; §3.5.1.

175 This case exposed significant abuses in the prostitution sector. See NRM7; Schone Schijn 2008.

the efforts of many agencies, however, there is still widespread exploitation in the prostitution sector, including the licensed sector, as is also apparent from a number of recent criminal cases.¹⁷⁶

Recent convictions for human trafficking

In November 2012, the Arnhem Court of Appeal imposed an unconditional sentence of five years' imprisonment on a Hungarian defendant who had put four women to work in prostitution. The women were recruited in Alkmaar in the Netherlands and in Hungary, among other places. Violence was used to force the victims to work – three of the victims were assaulted, at least one was raped, one was sold to co-perpetrators or used as a medium of exchange and one was persuaded to have an abortion.¹⁷⁷

A recent case in Utrecht centred on the city's Zandpad area.¹⁷⁸ The suspect was sentenced to seven years in prison for human trafficking of two women. One of the victims had been exploited for more than ten years during her marriage to the defendant. One of the victims was forced to get a tattoo with the defendant's name or initials. The women were also assaulted and the defendant threatened them with a firearm and with serious assault. He also insisted that one of the victims should continue working as a prostitute when she was pregnant.¹⁷⁹

In the *Visdief* case, the Amsterdam District Court convicted seven suspects in June 2013 for offences including human trafficking. The principal suspect received an unconditional prison sentence of nine years, two years more than the PPS had demanded. In this case, there were six victims, from countries including Poland and Romania, who were forced to work in licensed window prostitution, in clubs and on the street.¹⁸⁰

176 The number of human trafficking cases registered by the PPS rose for the third consecutive year in 2012: 311 compared with 257 in 2011. In 2012, 109 suspects were convicted of human trafficking (NRM 2013a).

177 Arnhem Court of Appeal 21 November 2012, *LJN* BY6854.

178 Midden-Nederland District Court 11 April 2013, *LJN* BZ8651. On 28 June 2013, the municipality of Utrecht announced its intention to withdraw the licences of the last remaining operator of window prostitution on the Zandpad and in Hardebollenstraat in Utrecht. The decision was made in response to information from the police that the operator was facilitating human trafficking ('Gemeente Utrecht sluit laatste prostitutieramen', *De Volkskrant* 29 June 2013). The licences of a number of other operators of windows had been revoked earlier because of suspicions of human trafficking, as well as a serious threat to public order and because of poor supervision of the sex establishment (see, for example, Midden-Nederland District Court 11 June 2013, *LJN* CA2738). An official report of the police findings that was submitted to the municipality of Utrecht concerned the *Visdief* investigation. Before the final licence was withdrawn, two-thirds of the licences were in fact owned by a single operator. For more information about prostitution policy in the municipality of Utrecht, see §2.3.4.1.

179 For another case, see ECLI:NL:GHARL:2013:4608. This case also involved the Zandpad in Utrecht, as well as Amsterdam. The case – which lasted almost seven years – involved serious assault (burns caused by an iron and cigarettes), threats, rape and forced abortion, violent acts that the Court of Appeal found to have been instrumental in the human trafficking. The suspect was sentenced to six years in prison and the victim was awarded compensation totalling € 843,500.

180 Amsterdam District Court 17 June 2013, *LJN* CA3399; CA3400; CA3402 (not published); CA3415; CA3742; CA3711; CA3753 (acquittal for human trafficking).

In a case involving five suspects and relating to events in The Hague – including the red light district in Doubletstraat – serious deception and threats were used.¹⁸¹ One of the women exploited in this case had a mild mental disability and was known by the suspects to be living in a care institution. The victim was handed over to co-perpetrators and put to work in window prostitution. She was held under atrocious conditions and threatened for two nights before the exploitation could be ended through the intervention of the police.

On 4 July 2013, the East Brabant District Court sentenced one of three Hungarian suspects of human trafficking in Eindhoven to three-and-a-half years in prison.¹⁸²

Four women were brought to the Netherlands and forced to work in prostitution for three years, in Eindhoven among other places. The case came to light following a police operation on the Baeke-landplein in Eindhoven in March 2012.¹⁸³ The other suspects – two Hungarian men aged 20 – were given prison sentences of twelve and three months, respectively.¹⁸⁴

Multidisciplinary oversight and enforcement of legal forms of prostitution is essential; at the same time, the illegal sector must not be ignored.¹⁸⁵ This calls for a wide range of measures and actions in various fields, which can only help to minimize abuses in the prostitution sector if used in combination. There is no single measure that will provide a panacea for effectively tackling exploitation in the licensed, legal and non-legal sex industry. Robust measures are also needed to make the profession of prostitution less vulnerable to exploitation,¹⁸⁶ so that prostitutes can perform their profession independently and safely.

2.3.2 Criminalization of victims' clients

In addition to the supply side in this sector, it is also important to address the demand side.¹⁸⁷ During the consultation procedure on the bill to implement the EU Directive on Human Trafficking, the National Rapporteur recommended that it should be a criminal offence for clients to use services that are subject

181 The Hague District Court 29 June 2012, *LJN* BX0393; BX0718; BX0466; BX0032; BX1312.

182 ECLI:NL:RBOBR:2013:2697.

183 See also §3.5.3.

184 ECLI:NL:RBOBR:2013:2696; ECLI:NL:RBOBR:2013:2698.

185 The Dutch police have intensified efforts to tackle abuses in the illegal sex industry in recent years. For example, in the first nationwide operation to tackle prostitution in private homes they discovered around 34 prostitutes, 80% of whom came from abroad. More than a third of the prostitutes were under the age of 21 (E. Stoker, 'Uitbuiting van prostituees verschuift naar woningen', *De Volkskrant* 17 June 2013, <http://www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3460087/2013/06/17/Uitbuiting-van-prostituees-verschuift-naar-woningen.dhtml> (consulted on 31 July, 2013)). See also NRM7; NRM8.

186 For example, they have investigated how the position of prostitutes can be improved from the perspective of labour law. They argue that 'if private labour law were applied correctly it could make a major contribution to improving the legal and social position of the prostitute (Zuidema et al. 2006, p. 186). See also the study by Rijken & Krimpen 2007, who investigated whether introducing a quality label in the prostitution sector would help in protecting prostitutes and preventing abuses. This study was included in *EU Quality standards in support of the fight against trafficking in human beings and sexual exploitation of children* (Vermeulen 2007, pp. 205 – 281).

187 On this point, see §2.2.2.2.

to exploitation.¹⁸⁸ This recommendation still applies. The offence should relate to anyone who uses the sexual services of a prostitute when they know or should reasonably suspect that he or she was being forced or coerced into providing those services, i.e., was a victim of human trafficking.

This is not a crime at the moment, although both the EU Directive on Human Trafficking¹⁸⁹ and the Council of Europe Convention on Action against Trafficking in Human Beings¹⁹⁰ stipulate that countries should consider making it a criminal offence. The Minister of Security and Justice has said that he does not intend to follow the recommendation of criminalizing clients, arguing that the Dutch Criminal Code already contains a provision allowing for the punishment of a person who uses the services of a prostitute who is the victim of human trafficking. The Minister refers in that context to Article 273f(1)(6) and (8) DCC,¹⁹¹ which make it an offence, respectively, to wilfully profit from ‘the exploitation of another person’ and from ‘the sexual acts of another person with or for a third party for remuneration’ (the latter in relation to minors). Under these provisions, the intent does not have to be in relation to the exploitation, but refers to the ‘profiting from’. With regard to the criminalization of clients, however, the key to the culpability is different, relating not so much to an intention to profit (to benefit financially from the exploitation) but rather to the fact that a person, although he knows or should know that another person is a victim of human trafficking, *still* decides to use that person’s sexual services and thus makes use of services that another person has not freely chosen to provide and whose fundamental rights (such as physical and mental integrity and personal liberty) are consequently violated.

The criminalization of clients could be inserted separately into the Dutch Criminal Code.¹⁹² The legal amendment would thus be separate from implementation of the EU Directive on Human Trafficking,

188 Letter from the National Rapporteur to the Minister of Security and Justice of 13 October 2011, http://www.nationaalrapporteur.nl/Images/20111013-brief-aan-min-venj-implementatie-EU-Directive-mensenhandel_tcm63-493348.pdf (consulted on 16 August 2013).

189 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 (OJ 2011, L101/1), Article 18(4): ‘In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall *consider* taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2’ (italics by National Rapporteur); see also §2.6.2.

190 Article 19 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99, asks states to consider criminalizing clients if they use the services of a prostitute whom they know to be a victim of human trafficking.

191 *Parliamentary Documents II* 2012/13, 33309, no. 6, pp. 7 ff. The Minister also said that, from the perspective of enforcement, such a form of criminal liability would be objectionable: ‘Apart from the cases where criminal law already applies, it is difficult to furnish the evidence that a client has deliberately used the services of a victim of human trafficking. After all, it is generally not evident whether the person is a victim of human trafficking. In light of that, expanding legal liability would also affect legal certainty, on the grounds of which it is required that accused persons can be sufficiently aware in advance that they are violating criminal law’.

192 Since this criminal offence is not in itself a form of human trafficking, one option might be to insert it in the chapter on serious offences against public morals. See, for example, Article 248b DCC, in which using the services of an underage prostitute is made a criminal offence.

so the Upper House of Parliament would also not have to take the directive into account in its deliberations on the bill.¹⁹³ After all, even without the EU Directive, there is sufficient reason to introduce this criminal offence.

The criminalization of clients concerns just one facet of the prostitution sector, namely the demand side of the sector. The susceptibility of this sector to human trafficking calls for a broader approach, however, which should encompass more than the use of criminal law alone. The following section discusses the need for a national framework for prostitution policy, including a detailed review of the proposed Act to Regulate Prostitution and to Combat Abuses in the Sex Industry.

2.3.3 The need for a national framework for prostitution policy

Until such time as the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry has become law, the uncertainty about when a national framework for prostitution policy will be created will remain. The manifest vulnerability of the prostitution sector, however, calls for measures, in the short term in the form of the bill as it will read following the amendments announced by the Minister of Security and Justice,¹⁹⁴ that will help in effectively combating human trafficking.

When the ban on brothels was lifted in 2000, it was decided that legal forms of exploitation of prostitution would be regulated locally through a licensing system, with the conditions being laid down by local authorities. Local regulation has the benefit of leaving room for local policy, but that can also lead to differences between municipalities and has ultimately resulted in variations in prostitution policy.¹⁹⁵ One of the consequences of this is that human traffickers can take advantage of the discrepancies – the so-called waterbed effect. The need for a national framework is also felt in practice, as is apparent from some recent developments. Whereas some municipalities have deferred making any changes in their policy pending the formulation of a national framework, others have already opted for stricter regulation of the local prostitution sector in anticipation of the creation of that national framework.¹⁹⁶ This magnifies the differences between municipalities and could reinforce existing waterbed effects. These trends further underline the urgency of establishing a uniform national framework for prostitution policy.

Statutory framework

The Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry was published in November 2009.¹⁹⁷

193 The same also applies for the motion by the members of parliament Segers and Hilkens, in which they asked the government, if the Act to Regulate Prostitution and to Combat Abuses in the Sex Industry enters into force, to submit a proposal for an amendment of the criminal law by virtue of which any activity aimed at bringing young people up to the age of 21 into prostitution would be a criminal offence (*Parliamentary Documents II* 2012/13, 33309 no. 9). This motion was stayed by the Lower House of Parliament.

194 See below, under Proposal for an Act to Regulate Prostitution and to Combat Abuses in the Sex Industry.

195 NRM 2012e.

196 See below §2.3.4.

197 *Parliamentary Documents II* 2009/10, 32211, no. 1-2.

‘The bill will create the most comprehensive possible administrative system that, by virtue of the regulatory effect on the sector, could improve efforts to prevent abuses in the sex industry, offer better protection for prostitutes and provide better support for the prevention of human trafficking, prostitution by minors and forced prostitution under criminal law. The proposed legislation therefore creates the framework for a robust approach to combating abuses in the sex industry’, according to the explanatory memorandum.¹⁹⁸ The key to the original bill was the regulation of prostitution and of sex businesses. On that point, the Minister of Security and Justice said, ‘Naturally the concern about abuses forms the background to the bill, but tackling those abuses is not the primary objective of the bill.’¹⁹⁹ Nevertheless, over time the Minister has come to present the prevention of human trafficking as an additional – equal – objective of the bill,²⁰⁰ and has said that regulation of prostitution was never the sole objective.²⁰¹ The following section sets out the main elements of the original bill.

Proposal for an Act to Regulate Prostitution and to Combat Abuses in the Sex Industry (32211)

The bill establishes a uniform national framework for prostitution policy. It prohibits the operation of a sex business without a licence and makes every form of exploitation of prostitution illegal unless a licence has been granted for it; under the proposed regime there will no longer be any such thing as legal, unlicensed prostitution. The bill also sets out the minimum licensing requirements that an operator will have to comply with: only persons entered in the national register of prostitutes will be allowed to work in prostitution and persons under the age of 21²⁰² and persons living or working illegally in the Netherlands will not be permitted to register.²⁰³ On the other hand, signs or suspicions that a person is a victim of human trafficking will not constitute grounds for refusing to register them. Municipalities will – under certain circumstances – be allowed to adopt a zero option, meaning that they can decide not to issue any licences to operate a prostitution business in the municipality.²⁰⁴ The bill also contains

198 Rules to regulate prostitution and to combat abuses in the sex industry (Act to Regulate Prostitution and to Combat Abuses in the Sex Industry) *Parliamentary Documents II 2009/10*, 32211, no. 3, pp. 3-4.

199 *Parliamentary Documents II 2009/10*, 32211, no. 8, p. 3.

200 See Reply to the questions posed during the first reading in the plenary debate on bill 32211, on 30 October 2012 (*Parliamentary Documents I*, Notes 28-7-47, 28 May 2013) in which the Minister formulated the objectives of the bill as ‘regulating the sector and preventing abuses’. See also the letter from the Minister of Security and Justice to the members of the Upper House of the States-General of 25 June 2013, *Parliamentary Documents I 2012/13*, 32211, M.

201 Letter from the Association for Women and Law Clara Wichmann to the members of the Upper House of the States-General of 24 May 2013, <http://www.vrouwenrechv.nl/2013/05/26/brief-aan-eerste-kamer-over-wetsvoorstel-regulering-prostitutie-en-bestrijding-misstanden-seksbranche-24-Mei-2013/> (consulted on 8 August). In this letter regulation is seen as the objective of the law.

202 The rationale behind raising the age limit is that prostitutes aged 21 or older are more resilient; the Minister endorses that assertion for a number of reasons, including the consideration that persons aged 21 and older have more often completed an education and are therefore economically less dependent on the profession of prostitution. See *Parliamentary Documents I 2011/12*, 32211, E. On the raising of the age limit to 21, see §2.3.4.2.

203 This section of the bill will be removed via an amendment, see below.

204 Article 23 of the bill: ‘To protect public order, the residential and living environment or the safety and health of prostitutes or their clients, it may be prescribed by municipal bye-law that no licences will be granted to operate a prostitution business in the municipality.’

further rules regarding measures to be taken by prostitution businesses in relation to hygiene and to protect the health, safety and right of self-determination of prostitutes. These measures will have to be documented in the operator's business plan.²⁰⁵ The bill also includes a number of new criminal offences, including the criminalization of clients who use the services of a prostitute without enquiring whether the prostitute is entered in the national register (duty to ascertain that the prostitute is registered).²⁰⁶ A prostitute who works without being registered, who fails to include her registered telephone number and registration number in advertisements or who works for an operator without a licence to run a prostitution business will also be committing a criminal offence.²⁰⁷

The bill was passed by the Lower House of Parliament on 29 March 2011,²⁰⁸ although the identity card for prostitutes that was originally proposed had been removed from the bill. The bill was still making its way through the Upper House of Parliament in July 2013, after an interruption for a review of the bill by the Minister of Security and Justice,²⁰⁹ two years after the bill had been submitted to the Lower House, a period during which talks had also been held with the National Rapporteur and an information meeting had been organized.²¹⁰

The main concern of the Upper House was still the registration of prostitutes, although there were also doubts about the enforceability of the client's duty to ascertain that the prostitute was registered. At the

205 Article 24 of the bill. For the time being, this would not apply for all sex businesses but would be confined to prostitution. Such measures are, however, also relevant for persons who work in webcam sex businesses or act in porn films. See the letter from the National Rapporteur to the Minister of the Interior and Kingdom Relations of 21 January 2009 in response to the draft bill, http://www.nationaalrapporteur.nl/Images/210109-brief-tk-of-min-bzk-consultatie-wetsvoorstel-regulering-prostitutie_tcm63-510390.pdf (consulted on 16 August 2013).

206 Article 29 of the bill. This is a criminal offence punishable by a custodial sentence of up to six months or a fine in the third category (€ 7,800). The bill does not criminalize clients of *victims of human trafficking*. See §2.3.2.

207 Article 30 of the bill. These are minor offences that are punishable with a fine in the first category (€ 390). The National Rapporteur has previously remarked, however, that criminalization of prostitutes who work for an operator without a licence to operate a prostitution business is inappropriate given the frequent inequality of power between a sex worker and the operator. See the letter from the National Rapporteur to the Minister of the Interior and Kingdom Relations of 21 January 2009 in response to the draft bill, http://www.nationaalrapporteur.nl/Images/210109-brief-tk-of-min-bzk-consultatie-wetsvoorstel-regulering-prostitutie_tcm63-510390.pdf (consulted on 16 August 2013).

208 *Parliamentary Documents I* 2010/11, 32211 A.

209 The plenary debate on the bill was adjourned at the end of May 2013 at the request of the Upper House of Parliament pending receipt of a letter from the Minister of Security and Justice. See also the meeting of the permanent committees for the Interior and the Senior Councils of State / General Affairs and the Royal Household, Security and Justice of 25 June 2013, http://www.eerstekamer.nl/behandeling/20130625/korte_aantekening_6/document3/f=/vjata3wisubu.pdf (consulted on 8 August 2013).

210 *Parliamentary Documents I* 2011/12, 32211 H. On 12 June 2012, the Upper House of Parliament held a meeting with a number of experts from various organizations: De Rode Draad, the registration centre for prostitution policy of the municipal health service in Utrecht, Soa Aids Nederland, the KLPD, the Association for Women and Law Clara Wichmann and the mayor of Amsterdam.

end of May 2013, two motions were submitted during the plenary debate in the Upper House. In the first motion, from Senator Strik, the government was asked to investigate how organizations representing the prostitutes themselves could be engaged in the drafting and implementation of prostitution policy and how they could also be engaged in representing the interests of sex workers and providing information to them about entering and leaving prostitution, as well as directly providing services, mediating in conflicts and advising on policy.²¹¹ This motion was adjourned on 9 July 2013. In a second motion, Senator Strik asked the government to divide the bill by means of an amendment in order to allow the uniform licensing requirement to be introduced as soon as possible.²¹² This motion was dictated by doubts about the need for and usefulness of the requirement for prostitutes to be registered and doubts about whether the requirement would stand up in court. When the debate resumed,²¹³ the Senate adopted Strik's second motion on 9 July 2013, with a request to the government to remove both the requirement for prostitutes to register and the clients' duty to confirm the prostitute's registration from the bill by means of an amendment. In the debate prior to this vote, the Minister said that the draft of the amendment was almost ready and that his intention was that the law would enter into force on 1 July 2014.

Uniform rules and consistent policy are crucial in efforts to combat human trafficking, and municipalities and other partners need to be clear about them. Under the new law, a larger proportion of prostitution would fall under the licensing requirement than is currently the case, requirements would be imposed on operators of prostitution businesses in terms of providing a safe and responsible working environment, and the introduction of a national register of licences would enable mayors to learn about applications that had been refused and licences that had been withdrawn in other municipalities. Supervision and enforcement are crucial elements of the proposed legislation.

The key to the bill, however, was the *combination* of the requirement for sex businesses to be licensed and the registration of prostitutes. It is therefore disappointing that the registration of prostitutes will not be regulated by statute for the time being. Registration of prostitutes is not an end in itself but an instrument for combating human trafficking. It would create an additional opportunity for interaction with prostitutes – an opportunity to identify human trafficking and to provide information to prosti-

211 *Parliamentary Documents I 2012/13*, 32211, K, submitted by members Strik, Scholten, Backer, Witteveen, Quik-Schuit and Vos.

212 *Parliamentary Documents I 2012/13*, 32211, L, submitted by members Strik, Scholten, Backer, Quik-Schuijt and Vos.

213 The plenary debate in the Upper House was adjourned after the first reading on 30 October 2012 at the request of the Minister of Security and Justice and resumed on 28 May 2013. During the debate on 28 May 2013, the Minister said that he was willing to remove Article 29 of the bill, containing the duty for clients to ascertain that a prostitute is registered, now that serious doubts had arisen about its feasibility and effect. See also *Parliamentary Documents I 2012/13*, 32211, M.

tutes – and, at the same time, would generate insight into the nature and scale of the sector.²¹⁴ Naturally, personal details would have to be registered in accordance with the prevailing statutory requirements, which was also the point of departure in the original legislative proposal.

Supervision and enforcement

The Act to Regulate Prostitution and to Combat Abuses in the Sex Industry will also not be a panacea in combating human trafficking, since a licence is not in itself a guarantee against human trafficking and does not by definition mean that there is no exploitation. Supervision and enforcement will therefore remain extremely important. Because the stricter regulation of the prostitution sector could lead to waterbed effects, it will remain essential to address human trafficking in the *illegal* sector, a sector that will in future also include prostitution involving persons below the age of 21 and – as is already the case now – persons who are living and working illegally in the Netherlands. Even the introduction of a zero option does not necessarily mean that there will be no prostitution in municipalities that implement such a policy,²¹⁵ so those municipalities will also have to continue taking effective measures to combat human trafficking in the *illegal* sector.

Work in the home and escort agencies are still sectors where there is a risk of forced prostitution because they are less visible and therefore more difficult to control, and will to some extent remain so. It also has to be noted that the bill still gives municipalities the discretion to impose further requirements on prostitutes working in the municipality by means of municipal bye-laws (mainly with regard to prostitution in private homes). Although the bill provides a national framework within which every municipality must lay down rules for all sex businesses, differences in local prostitution policies – and hence discrepancies in the scope for oversight and enforcement that human traffickers could benefit from – will not be eliminated. That is a cause for concern, especially since the National Police are now also warning that abuses in the prostitution sector seem to be moving to private homes due to the tighter control of the regular sector.²¹⁶ It is good to see that the Minister of Security and Justice has written to the Upper House of Parliament to say that, if necessary, he will offer assistance to municipalities that wish to coordinate

214 In this context, the National Rapporteur has said that those responsible for registration must possess some degree of expertise in identifying victims of human trafficking, and that therefore, also given the sensitivity of these personal details, registration should only be possible at a limited number of locations. See the letter from the National Rapporteur to the Minister of the Interior and Kingdom Relations of 21 January 2009 in response to the draft bill. See NRM7. A provision was then inserted into the original bill that registration would only take place in a small number of municipalities and that an intake interview would be mandatory.

215 In fact, all prostitution, with the exception of non-commercial prostitution in the home, that takes place in municipalities with a zero-tolerance policy is illegal under the proposed Act to Regulate Prostitution and to Combat Abuses in the Sex Industry. At present, all prostitution in a municipality that does not *currently* have a licensing requirement is *legal*.

216 'Prostituees uitgebuit vanuit woning', *Nederlands Dagblad* 18 June 2013, <http://www.nd.nl/artikelen/2013/juni/17/exploitation-prostituees-verschuift-naar-woningen> (consulted on 8 August 2013). According to CoMensha in the same newspaper report, figures show that one in three victims receiving shelter were exploited in a home; see also the reply by the Minister of Security and Justice to questions from member of parliament Segers (ChristenUnie) (Appendix to *Parliamentary Documents II* 2012/13, 2841, 15 July 2013).

their policies towards prostitutes who work in their home so that municipalities can avoid creating a waterbed effect with their own policies.²¹⁷

It is also essential to learn more – and retain the information – about the non-location-bound prostitution sector. Registration of prostitutes could have helped to accomplish that.²¹⁸ With a clearer picture of the sector, the – multidisciplinary – approach to human trafficking could focus more sharply on the movements of human traffickers within the sector.²¹⁹

National day of action on non-location-bound prostitution

Because little is known about non-location-bound prostitution, on 9 April 2013 the National Unit of the National Police organized a nationwide administrative operation²²⁰ targeted at a number of online providers of non-location-bound prostitution. All the other police units cooperated in the operation. The aim of the nationwide inspections was to gather information about possible administrative offences (breaches of licensing conditions, such as the employment of minors, forced prostitution, the employment of illegal prostitutes, etc.) and to identify unlicensed and illegal sex establishments or criminal offences such as human trafficking. During the operation, a public prosecutor was on hand in case criminal proceedings had to be instituted on the day itself.²²¹ The public prosecutor also monitored the transition from the domain of administrative law to criminal law. External partners, including the Regional Centres for Information and Expertise (RIECs) (see §3.3.2.1 for a description of the RIECs) and CoMensha, were also involved during the preparations and on the day itself.²²²

The operation yielded more information about abuses in these more hidden sectors. During an initial evaluation, a week after the operation, at least 29 administrative reports were drawn up and five investigations were launched into human trafficking. In one investigation, there was an under-age victim. In two cases, individuals had called to report a human trafficking situation following an inspection. The National Unit and various other police units – particularly those that had little experience in conducting administrative inspections of non-location-bound prostitution – also

217 *Parliamentary Documents I* 2012/13, 32211, no. M.

218 Naturally, it is necessary to monitor the effects of proposed legislation in practice. This was also planned with regard to registration.

219 The difference with the current registration that is used in some municipalities is that the registration proposed in the bill was to be national and therefore would have provided a larger picture.

220 The statutory basis for an administrative inspection of a sex establishment is provided by, among others, Article 151a of the Municipalities Act (concerning the control of licensing conditions) and the regulators in the controlling unit are designated on the grounds of Article 5:11 of the General Administrative Law Act, pursuant to a mandate based on Article 177 of the Municipalities Act. See also Chapter 5 of the General Administrative Law Act (Articles 5:11 to 5:20 concerning powers).

221 Since if there is a suspicion of human trafficking, the police and PPS are absolutely prohibited from allowing the offence to continue if that could prevent victims being removed from their situation. See also Article 126 ff. of the Dutch Code of Criminal Procedure. For more information about this prohibition, see NRM8, §2.6.4.

222 Researchers for the National Rapporteur were also present during the preparations and on the day itself.

said they had learned a lot from the operation. Issues requiring attention that emerged from the action day were its multidisciplinary nature (could the operation have been expanded to include other partners, and if so, which ones?) and the relationship and transition between administrative powers and the criminal investigation of human trafficking.²²³ In previous reports, the National Rapporteur has referred to the urgency of gaining a clearer picture of the non-location-bound prostitution sector²²⁴ and that still applies, since a better view of the sector is essential for effectively tackling human trafficking. The deputy chief of the National Police has said that similar national operations will be organized more frequently.²²⁵

2.3.4 Local policy initiatives

Since the lifting of the ban on brothels in the Netherlands, municipalities can formulate their own policies on prostitution, and at the moment the approach taken towards prostitution by municipalities varies. A positive trend is that a growing number of municipalities are giving priority to tackling human trafficking.²²⁶

Whereas some municipalities have decided not to amend their prostitution policies pending the establishment of a national framework, others – in anticipation of the Act to Regulate Prostitution and to Combat Abuses in the Sex Industry – have already chosen to regulate the local prostitution sector more strictly. A number of municipalities have introduced or are planning to introduce measures that are also included in the proposed law, such as raising the minimum age for working as a prostitute to 21. A few municipalities also require prostitutes to be registered, and closing times have also been introduced. Other measures have also been introduced that can be seen as supplementing the provisions of the law, such as stipulating the maximum length of a working day and a minimum rental period for a workplace. Some municipalities are also experimenting with entirely new measures, one example of which is the so-called ‘negative work advice’.

223 Written information from the National Unit, April 2013; June 2013.

224 The non-location-bound sectors are difficult to control. The National Rapporteur has previously pointed out that little is known about abuses in these sectors and made a recommendation on this point in NRM7: ‘Non-location-bound prostitution (for example via internet and escort agencies) should also be controlled. This is difficult, since methods that formerly seemed effective now appear to be less successful, and effective control is only possible at national level. New methods should be developed and experts in electronic media should be hired. One instrument that could help in this respect is a multimedia covenant (similar to the covenant on erotic advertisements), requiring sex businesses to give their licence number and the address of their establishment in advertisements. This instrument is only useful, however, if the information can also be verified. Another idea might be to require these sex businesses to have a permanent telephone number, which is also used by clients.’ (NRM7, recommendation 29).

225 E. Stoker, ‘Uitbuiting van prostituees verschuift naar “woningen”’, *De Volkskrant* 17 June 2013, <http://www.volkskrant.nl/vk/nl/2686/Binnenland/artikel/detail/3460087/2013/06/17/Exploitatie-van-prostituees-verschuift-naar-woningen.dhtml> (consulted on 31 July 2013).

226 Besides a number of large and medium-sized municipalities, smaller municipalities are also amending their local agendas in relation to human trafficking.

A number of larger municipalities have been working for some time on measures to tackle human trafficking in the prostitution sector. Pending the introduction of the Act to Regulate Prostitution and to Combat Abuses in the Sex Industry, some municipalities (particularly those with a large licensed window-prostitution sector) already want to fill the existing gaps.²²⁷ In the process, some contradictory trends are emerging, but also a degree of convergence. It is also noteworthy that some municipalities are assigning greater responsibility to operators of sex businesses. These developments are relevant for other municipalities as well, so it is important for the measures that are being adopted to be monitored and evaluated at local level. The Association of Netherlands Municipalities (VNG) could facilitate efforts by municipalities to arrive at a uniform approach.

2.3.4.1 The introduction of a broad package of measures in Utrecht

This section reviews the prostitution policy of the municipality of Utrecht. Apart from the fact that major changes have occurred in the prostitution sector in Utrecht recently, the city provides a case study of the entire range of problems and dilemmas that arise when it comes to creating a 'coercion-free' prostitution sector in the context of combating human trafficking. Political awareness has grown in Utrecht since the Zandpad project, which commenced in 2008 and lasted for two years.²²⁸ This project was designed to promote cooperation between various parties, including the PPS, the police and the municipality.²²⁹ The city's mayor played his part in this multidisciplinary collaboration as the driver of a broad package of measures.²³⁰ The project clearly illustrated the added value of a combination of criminal and administrative law measures.²³¹ Even after the project ended, the city persevered with this multidisciplinary approach. In July 2013, for example, the licences of Wegra, the last remaining operator of window prostitution on the Zandpad and in the Hardebollenstraat in Utrecht, were revoked, and an administrative court recently upheld the municipality's decision to withdraw the licences.²³² The case clearly illustrated the consequences of licences being held by just a few operators,²³³ since the withdrawal of the operator's licences has had an enormous impact.²³⁴ An important point to consider is that, with the closing of the windows, many prostitutes have ended up on the street, highlighting the need to consider the position of these women at an early stage when measures of this type are being taken.

227 See also 'Vergunningenstelsel in plaats van wet tegen mensenhandel', *De Volkskrant* 10 July 2013, <http://www.volkskrant.nl/vk/nl/2/archief/integration/nmc/frameset/archive/archiveDay.dhtml?archiveDay=20130710#> (consulted on 8 August 2013). In this article, the mayor of Alkmaar said that he would hold talks with seven other municipalities about developing their own 'pseudo legislation'.

228 See §3.6.5.

229 For more about this project, see also §3.4.2.

230 See §3.6.5; §3.9.

231 See also §3.9.

232 ECLI:NL:RBMNE:2013:3037.

233 This operator possessed two-thirds of the licences for window prostitution in Utrecht.

234 Utrecht is not the only municipality with an oligopoly in operators of window prostitution. For example, a substantial portion of the licences for window prostitution in cities such as Alkmaar, Groningen, The Hague and Amsterdam are held by a small number of operators or by operators with close (family) connections to each other (written and verbal information from Stichting Geisha, 5 and 6 August 2013; written information for the municipality of Groningen, 6 August 2013).

The events in Utrecht also sparked a discussion about the idealized image of the ‘articulate prostitute’. A number of prostitutes did indeed clearly state that they were independent, were not forced to become prostitutes and would now lose their livelihood. They also said they were satisfied with Wegra as the operator of their windows.²³⁵ However, they only represented a small proportion of the women, and it is highly questionable whether they were speaking on behalf of the entire population of women working on the Zandpad.²³⁶ The notion that all of the women working on the Zandpad were independent and working voluntarily was, in any case, contradicted by the facts.²³⁷

The facts and circumstances in Utrecht illustrate the complexity of the problem of human trafficking. To overcome this complexity by erecting barriers to human trafficking in window prostitution in Utrecht, the experience gained during the Zandpad project in Utrecht (2008-2010) was incorporated into a broad package of measures in 2010.²³⁸ An evaluation of those measures was published in December 2012. Although reservations can be expressed about some of the measures, there were also some positive results. Some of the measures that apply to window prostitution in Utrecht (the requirement for prostitutes to register, the introduction of maximum working hours, and the minimum rental period) are discussed in more detail below. Other measures involved intensification of supervision and enforcement by the city (the number of inspections at the Zandpad was increased from 4 to 40 a year), an increase in the number of hours of care and assistance provided at the Zandpad (for example, the Exit Programme was intensified and the opening hours of the Walk-in Centre for Prostitutes (HAP) on the Zandpad were doubled), and improvements were made to increase (perceptions of) safety with physical measures such as camera surveillance.²³⁹

Municipality of Utrecht withdraws last licences for window prostitution

On 28 June 2013, the municipality of Utrecht announced its intention to withdraw the licences of the largest, and last remaining, operator of window prostitution on the Zandpad and in Hardebollestraat in Utrecht. The licences covered a total of 115 workplaces, 98 windows on the Zandpad

235 See, for example, B. Brassier, ‘Prostituees in actie tegen Aleid Wolfsen’, *Metro* (NL) 26 July 2013, p. 7; I. Pronk, ‘Prostitutieboten Utrecht moeten dicht van rechter’, *Trouw* 25 July 2013; ‘Prostituees boos om sluiten Zandpad’, *Nederlands Dagblad* 25 July 2013; ‘Prostituees Utrecht willen compensatie van gemeente’, *NRC Handelsblad* 31 July 2013, <http://www.nrc.nl/nieuws/2013/07/31/prostituees-utrecht-willen-compensatie-gemeente-na-sluiting-werkplek/> (consulted on 31 July 2013); ‘Prostituees verlaten seksboten Utrecht – vanmiddag protest’, *NRC Handelsblad* 25 July 2013, <http://www.nrc.nl/nieuws/2013/07/25/prostituees-verlaten-seksboten-utrecht/> (consulted on 31 July 2013); E. van Steenberghe, ‘Hij weet niks van mensenhandel’, *NRC Handelsblad* 13 July 2013; *Ibid.*, ‘Wolfsen blij dat ramen dicht zijn. Vijf vragen over XX’, *NRC Handelsblad* 25 July 2013.

236 See I. Pronk, ‘Voortaan baas over eigen boot, lijf en portemonnee’, *Trouw* 19 July 2013, p. 5.

237 See for example ECLI:NL:GHARL:2013:4608; Midden-Nederland District Court 11 April 2013, *LJN* BZ8651; ECLI:NL:RBAMS:2013:CA3400.

238 After identifying the structural presence of human trafficking on the Zandpad in 2008, the municipality of Utrecht, the police and the public prosecution service decided to do everything possible to combat human trafficking in Utrecht. In the period 2008-2010, the parties started a joint, partly experimental, project involving the programmatic approach on the Zandpad in Utrecht (Zandpad pilot project, 2011) (Municipality of Utrecht 2012, p. 3). For more information about the programmatic approach, see §3.4.

239 Municipality of Utrecht 2012, p. 6.

and 17 in the Hardebollenstraat.²⁴⁰ According to the municipality, there were problems with poor supervision, disruption of public order and facilitation of human trafficking.²⁴¹ The roughly 200 women working in window prostitution at these locations lost their jobs due to the closure of their workplace.²⁴²

The operator challenged the municipality's decision,²⁴³ but on 24 July 2013, he lost the legal action he had brought when the administrative court ruled that the municipality was entitled to withdraw the licences.²⁴⁴ The city said its intention was not to end prostitution, but rather human trafficking, and said it was willing to grant licences to operators who met all of the requirements.²⁴⁵ The city also said it was willing to support an initiative by a number of women to start a cooperative.²⁴⁶ One question the municipality faced was how to prevent the closure from leading to the disappearance

240 The impression created in the media suggested that the city of Utrecht wanted to close all the windows. The problem, however, was that the operator of the windows that the municipality had closed down owned two-thirds of the licences (a situation similar to that in other municipalities). If a municipality has evidence that an operator is breaching the terms of the licence, the administrative response is to withdraw all of the operator's licences and not just some of them.

241 See also §2.3.1; 'Vrouwen werden gemarteld en verkracht', *Algemeen Dagblad* 29 June 2013, <http://www.ad.nl/ad/nl/1039/Utrecht/artikel/detail/3467517/2013/06/29/Vrouwen-werden-gemarteld-en-verkracht.dhtml> (consulted on 8 August 2013); 'Utrecht trekt vergunningen in van exploitant raamprostitutie', Municipality of Utrecht 11 July 2013, <http://www.utrecht.nl/nieuws/artikel/utrecht-trekt-vergunningen-in-van-exploitant-raamprostitutie> (consulted on 17 July 2013).

242 'Utrechtse prostituees willen coöperatie', *Trouw* July 2013, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/3469694/2013/07/03/Utrechtse-prostituees-willen-cooperatie.dhtml> (consulted on 17 July 2013).

243 'Wegra legt zich niet neer bij sluiting prostitutieboten', *Utrechnieuws.nl* 4 July 2013, <http://www.Utrecht.nieuws.nl/nieuws/20130704/Wegra-legt-zich-niet-neer-bij-sluiting-prostitutieboten> (consulted on 17 July 2013). Wegra had also said in an earlier letter to the municipality that he found some of the points made in the evaluation report of the measures taken to be suggestive and unfounded and complained that information favourable to the operators had been omitted (letter from the director of Wegra Utrecht B.V. to the members of the Committee for People and Society of the municipality of Utrecht, 6 February 2013 (subject: Comments by operators of windows on the Zandpad to the report *Evaluatie breed maatregelenpakket barrièrevorming mensenhandel* of December 2012).

244 ECLI:NL:RBMNE:2013:3037.

245 'Utrecht trekt vergunningen in van exploitant raamprostitutie', Municipality of Utrecht 11 July 2013, <http://www.Utrecht.nl/smartsite.dws?id=12564&persberichtID=390269&type=pers> (consulted on 17 July 2013).

246 Ibid; a letter from the mayor of Utrecht to the members of the Committee for People and Society of 11 June 2013 (subject: commitments and judicial ruling on licences for Zandpad); 'Utrecht gaat mogelijk prostituees ondersteunen bij oprichting coöperatie', *De Stad Utrecht* 13 June 2013, <http://www.destadUtrecht.nl/politiek/nieuws/5567/utrecht-gaat-mogelijk-prostituees-ondersteunen-bij-oprichting-cooperatie> (consulted on 17 July 2013).

of victims of human trafficking from the view of the police and social services and causing women to fall even more tightly into the grip of human traffickers due to the loss of their workplace.²⁴⁷

Registration

Since April 2011, the municipality of Utrecht has employed a registration system for window prostitutes,²⁴⁸ which includes a mandatory interview with the municipal health service. During the interview, which takes about an hour, the women must produce valid identification and proof of their registration with the chamber of commerce.²⁴⁹ They are then assigned a registration number, which is valid for two years. Registration can be refused if the woman is a minor or is not legally permitted to perform paid work in the Netherlands.²⁵⁰ These criteria correspond with the principles originally proposed in the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry. By mid-May 2012, the municipal health service in Utrecht had interviewed a total of 579 women.²⁵¹ The records for the period from March 2011 to January 2013 show that 731 women had been registered.²⁵²

247 See also questions in parliament from member Kooiman (SP) to the Minister of Security and Justice on the report that prostitution in Utrecht was being curbed, submitted on 1 July 2013 (*Parliamentary Documents II 2012/13, 2013Z13777*).

248 Article 3:16 of Utrecht's General Municipal Bye-law.

249 Municipality of Utrecht 2012, p. 15.

250 See also Article 3:16 of Utrecht's General Municipal Bye-law on the withdrawal of registration: 'The mayor shall remove the prostitute from the register: (a) at the prostitute's own request, (b) on expiry of the duration of the registration as referred to in the fifth paragraph, (c) if the prostitute provided inaccurate or incomplete information to secure registration, or (d) if on the grounds of a change in the circumstances or insights occurring after the registration of the prostitute it must be presumed that removal from the register is required by the interest or interests for whose protection registration is required. The evaluation of the broad package of measures shows that registration can only be withdrawn if there is sufficient evidence of human trafficking. Meanwhile, there have been instances where registrations has been withdrawn because of serious suspicions of human trafficking. The women concerned are no longer permitted to work in window prostitution, but they have been offered help, and the partners in the security domain have tried to convince the prostitutes concerned to report offences (Municipality of Utrecht 2012). See also 'Evaluatie maatregelenpakket barrièrevorming mensenhandel. Betere en snellere signalering van mensenhandel', *Utrecht* 1 February 2013, www.Utrecht.nl/smartsite.dws?id=12564&persberichtID=383776&type=pers (consulted on 21 June 2013).

251 Municipality of Utrecht 2012, p. 39.

252 Letter from the municipal executive to the members of the Committee for People and Society of 31 January 2013, http://www.utrecht.nl/images/Gemeenteraad/ria_2013_03_12/Raamprostitutie_Evaluatiemaatregelenpakketmensenhandelraamprostitutie.pdf (consulted on 15 July 2013).

According to some sources,²⁵³ the registration of prostitutes has a number of advantages. For example, there is at least one moment of contact with every woman working in window prostitution, which could serve to remove them from their possible isolation and gives social workers the opportunity to provide them with information that could increase their resilience and improve their health.²⁵⁴ In January 2013, the municipality announced that the municipal health service had observed clear signs of human trafficking in one in eight of the interviews it conducted.²⁵⁵ These indications were passed on to the police and, according to the municipality, provided useful intelligence for the police. In addition, half of the registration interviews led to prostitutes being referred to specialists for assistance in dealing with medical, socio-psychological or financial problems, or because of less concrete suspicions that they were being coerced.²⁵⁶

The most important drawback of the registration requirement, according to various sources who were consulted (from the police, the social services and the municipality, but also among the operators) is that the women themselves do not fully support it. For example, prostitutes feel that registration threatens their privacy and does not contribute to combating human trafficking. Operators also doubt the usefulness of the measure.²⁵⁷ For example, the operators of window prostitution on the Zandpad said they had regulated the number of prostitutes even before the introduction of the registration system. Consequently, there were fewer East European prostitutes in Utrecht than in other cities with window prostitution. According to one operator, this method of regulation was no longer feasible with the introduction of the registration system: 'The introduction of registration has caused West European prostitutes to disappear into the illegal circuit and, in the absence of sufficient numbers from this group, and because of larger vacancy rates, the operators ultimately submitted to the forces of supply and demand in the market for East European prostitutes.'²⁵⁸ It is difficult to substantiate this assertion, but there is evidence that the composition of the prostitute population has changed since the introduction of registration. The Evaluation of the Broad Package of Measures to Create Barriers to Human Trafficking [*Evaluatie breed maatregelenpakket barrièrevorming mensenhandel*] (2012) refers to a sharp increase in the

253 When the evaluation refers to 'sources' it does not specify who they are. The qualitative section of the study is based on interviews with 39 prostitutes and 45 professionals. Group interviews and in-depth interviews took place with professionals from the municipality, the PPS, the police, the tax authorities, the chamber of commerce (all in Utrecht), Stichting de Tussenvoorziening, the coordinator of Slachtoffers Mensenhandel Utrecht, Centrum Maliebaan, the Centre for Crime Prevention and Safety (CCV), De Rode Draad, as well as operators on the Zandpad and in Hardebollenstraat.

254 Municipality of Utrecht 2012, pp. 15-18.

255 In the first quarter of 2012, the police received 87 signals, compared with 118 in the whole of 2011. See letter from the Municipal Executive to members of the Committee for People and Society of 31 January 2013, http://www.Utrecht.nl/images/Gemeenteraad/ria_2013_03_12/Raamprostitutie_Evaluatiemaatregelenpakkethumantraffickingraamprostitutie.pdf (consulted on 15 July 2013). See also Municipality of Utrecht 2012, p. 16.

256 Municipality of Utrecht 2012, p. 16.

257 Letter from the director of Wegra Utrecht B.V. to the members of the Committee for People and Society of the Municipality of Utrecht of 6 February 2013 (subject: Comments from window operators on the Zandpad in response to the report *Evaluatie breed maatregelenpakket barrièrevorming mensenhandel* in December).

258 Ibid.

number of East European women as one of the most striking developments in window prostitution on the Zandpad. According to the evaluation, almost two-thirds of the registered women were from Eastern Europe, with Romania and Bulgaria, in particular, being heavily represented (28% and 29%, respectively); 17% of the registered prostitutes had Dutch nationality.²⁵⁹ Whether the registration requirement is the principal cause of this shift remains a point of contention, according to the municipality of Utrecht. The members of the Group of Experts on Action against Trafficking in Human Beings²⁶⁰ assert that the growth in the number of East European prostitutes is actually a national trend that had started earlier and has at most been accelerated by registration.²⁶¹

Maximum working hours

Sex businesses in Utrecht do not close at night. A proposal to the effect that they should generate a lot of opposition from operators and prostitutes.²⁶² In 2010, the municipal authorities then instituted maximum working hours for prostitutes of 12 hours a day,²⁶³ in order to create an additional barrier against exploitation in the form of extremely long working days.²⁶⁴ In Utrecht, women can rent a window during the day and in the early evening (9 a.m. to 9 p.m.) or for the evening and night (9 p.m. to 9 a.m.).²⁶⁵ The operator is responsible for ensuring compliance with this rule. The municipality is then required to carry out checks, but in an evaluation, interviewees said they felt the municipality's supervision of working hours was still inadequate.²⁶⁶ Social workers in Utrecht also observed that a 12-hour working day is still very long but, at the same time, argued that prostitutes would not be able to earn enough with a shorter shift given the declining number of clients for window prostitution.²⁶⁷ According to the municipality of Utrecht and the Centre for Crime Prevention and Safety (CCV), for the maximum working day of 12 hours to be effective, national registration of prostitutes would have to be introduced²⁶⁸ to prevent women from travelling to other cities to work in addition to their 12-hour shift on the Zandpad in Utrecht.²⁶⁹

Minimum rental period of four weeks

Human traffickers often quickly move women around from one location to another, so the municipality of Utrecht has tried to curb the pace at which prostitutes can be rotated. To this end, in 2010 a clause was inserted in the General Municipal Bye-Law stipulating a minimum rental period of four weeks on the Zandpad.²⁷⁰ Subsequently, operators and tenants can extend the contract week by week.²⁷¹ This gives the

259 Municipality of Utrecht 2012, p. 42.

260 The CCV facilitates this network by organizing meetings four times a year for the chain directors for combating human trafficking in a number of large cities, at which they share information and discuss problems.

261 Municipality of Utrecht 2012, pp.18-19.

262 Zandpad project, p. 43.

263 Article 3:13 of Utrecht's General Municipal Bye-law.

264 Municipality of Utrecht 2012, p.6.

265 *Ibid.*, p. 19.

266 *Ibid.*, p. 29.

267 *Ibid.*, p. 19.

268 See §2.3.2.

269 Municipality of Utrecht 2012, p. 30.

270 Municipality of Utrecht 2012, pp. 6, 12, 15, 20.

271 *Ibid.*, p. 20.

municipality, the police, the tax authorities and the social services more time to learn about the women working there and to establish contact with them. The evaluation showed that the minimum rental period had helped to reduce the frequency with which the prostitutes were moved around.²⁷² Whereas there were previously around 750 women working on the Zandpad, in 2012 the number had reportedly fallen to about 500.²⁷³

The introduction of a minimum rental period can also have negative consequences for the prostitute. Women now have to rent a window for at least four consecutive weeks and consequently – in order to pay the rent – also have to work for four consecutive weeks, since the rent still has to be paid even if they become ill or are menstruating. Formerly, women would not rent a room under those circumstances.²⁷⁴

Effects of the broad package of measures

The Evaluation of the Broad Package of Measures to Create Barriers to Human Trafficking, which contains an analysis of the effects of the measures taken, shows that significant results have been achieved in Utrecht since the introduction of the package. However, there are a number of reservations to be expressed about the evaluation.²⁷⁵ For example, it is based on interviews with 39 window prostitutes in Utrecht, which is a relatively small sample, since there were more than 200 working on the Zandpad alone. It is therefore questionable whether the 39 women were representative of the group as a whole. What is known is that almost two-thirds of the women interviewed were from Bulgaria or Romania and that one in ten was from the Netherlands.^{276,277}

Nevertheless, the report contains a number of important findings. First, more cases of human trafficking were being identified. According to the authors of the report, insight into window prostitution on the Zandpad seemed to have improved, and the contact with prostitutes had greatly improved.²⁷⁸ Since the

272 Municipality of Utrecht 2012, pp. 7, 20.

273 Ibid, p. 20.

274 Municipality of Utrecht 2012, pp. 7, 18, 29-30, 62-65.

275 The evaluation of the broad package of measures was based on both quantitative and qualitative research. For the quantitative part, administrative data were used from the municipality (municipal health service and urban development department), social services (Stichting de Tussenvoorziening, CoMensha, Centum Maliebaan), the police, the PPS, the tax authorities and the participants at the meetings of the team to discuss specific cases of possible human trafficking (*Casusoverleg Mensenhandel*). The qualitative part of the evaluation involved 22 group discussions and in-depth interviews with a total of 45 professionals and 39 window prostitutes in Utrecht (Municipality of Utrecht 2012, p. 13).

276 Ibid, p. 59.

277 There are a number of other reservations to be made about the evaluation. For example, the effect of a measure on the scale of human trafficking (and any ensuing increase or decline) cannot be measured in figures. It is also very difficult to show the causality between a measure and its impact if there is no baseline measurement, there is no control group and there are no control variables. The study was also based on a brief evaluation period, and a number of interviewees, including professionals, noted that it was still too soon for an evaluation. Most measures were only introduced at the end of 2010 and registration started in April 2011 (Municipality of Utrecht 2012, pp. 5-7, 14). In this context, see also §2.3.5.2 and NRM 2012f, Chapter 2, Chapter 8.

278 Municipality of Utrecht 2012, p.8.

introduction of the package of measures, more partners in the chain had grown alert to signs of human trafficking and the police were also receiving significantly more reports. The registration interviews with the prostitutes had also proved important, since the municipal health service had observed signs of human trafficking in one in eight cases. A second effect of the package of measures, according to the evaluation report, was that cooperation between chain partners had improved, thus enhancing the multidisciplinary approach to combating human trafficking.²⁷⁹

However, various sources had observed a shift from legal to illegal prostitution.²⁸⁰ They had the feeling that a growing number of prostitutes felt compelled to work from home, in hotels or for escort services.²⁸¹ However, the report referred to this as a national trend, in which the Internet played an important role, and said that it was uncertain to what extent that trend was connected with the introduction of registration in Utrecht.²⁸² The movement of prostitutes from Utrecht to other cities was not as severe as expected – in fact, it was more likely that there had been a shift from other cities to Utrecht.²⁸³

The report further underlined the fact that although barriers had been erected, they were not insurmountable. For example, it appeared that ‘the conditions for registration are very easy to meet’ and that ‘the large number of East European women who speak scarcely any Dutch, German or English but are nevertheless able to arrange everything with the social services and the police within a week, creates a strong suspicion of human trafficking’.²⁸⁴ The real strength of the package, according to the interviewees, lay in the coherent nature of the measures – the individual measures reinforced one another: ‘With the entire package, as partners you show that you are working together against human trafficking. The measures require action on the part of various parties. Accordingly, the package represents a genuine chain-wide approach.’

The study also revealed a number of problems with the implementation of the measures. The municipality was already addressing some of them but solutions still had to be found for others, according to the report. For example, the report concluded that the barriers would be more effective if compliance with them was controlled more frequently and offences had consequences more often. This was mentioned particularly in relation to the four-week rental period and the 12-hour shift. In the same context, the police in particular believed that the municipality should intensify its inspections of operators. According to some interviewees, the registration requirement would form a greater barrier if registration could also be refused or withdrawn on the basis of suspicions of human trafficking. Another problem mentioned was that prostitutes themselves did not support registration or the minimum rental period. For example, they felt that the registration system did not include proper safeguards to protect their privacy or

279 Ibid, pp. 6-8.

280 Ibid, p. 32.

281 Ibid. Although home prostitution and escort services are sometimes referred to in terms of the ‘illegal circuit’, this may not be the case, for example if home prostitution and escort services do not fall under a licensing requirement at the local level. If no rules have been drawn up, they also cannot be broken. The distinction between legal (licensed or unlicensed) and illegal (contrary to – in this case local – legislation) is not always clear, however.

282 Ibid, pp. 9, 32.

283 Ibid, pp. 9, 31-32.

284 Ibid, p.7.

contribute to combating human trafficking, while the minimum rental period did not really allow them to take time off for holidays or during periods of illness or menstruation.²⁸⁵ Other points mentioned in the report were that ‘information from different partners is not properly combined, camera surveillance is not used optimally and the *measures will only really be effective if they are introduced nationally* (National Rapporteur’s italics).²⁸⁶ This underscores – once again – the need for a uniform national policy.

2.3.4.2 Initiatives in other municipalities

Other municipalities besides Utrecht have also been developing local policies in relation to prostitution. Some measures have been adopted in a number of municipalities but not in others, such as the raising of the age limit for working in prostitution and the ‘negative work advice’, a concept initiated in The Hague. A number of recent developments in two other municipalities, Alkmaar and Amsterdam, provide evidence of the continuing need for clearer rules and consistent policies.

In 2011, for example, the local authority in Alkmaar took steps towards the introduction of a registration system by tightening up the licensing rules for sex establishments.²⁸⁷ These rules have not yet taken effect, however. The registration of prostitutes has not yet been introduced because of the prospective introduction of a *national* registration system, as envisaged in the original version of the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry. The municipality decided to wait for the completion of the legislative process before introducing its own registration system.²⁸⁸ However, now that it has become clear that there will be an amendment removing the registration of prostitutes from the law, the municipality of Alkmaar now intends to flesh out its plans for local registration of prostitutes, in consultation with other municipalities that have areas devoted to window prostitution.

In July 2013, the municipality of Amsterdam formulated new rules in the city’s General Local Bye-law on Prostitution.²⁸⁹ The city introduced closing hours for window brothels and raised the age limit for working as a prostitute to 21. Another of the rules was that every operator of a prostitution business had to apply for a new licence within 26 weeks. Amsterdam’s bye-law places a heavy emphasis on the responsibilities of the operators themselves. For example, operators (and managers) of sex businesses are obliged to arrange an intake interview with every prostitute, in the course of which they must assure themselves that the prostitute is sufficiently self-reliant.²⁹⁰ The operators are also obliged to enquire whether prostitutes working for them in a self-employed capacity are also registered as such with the

285 Ibid, pp. 7, 18, 29-30, 62-65.

286 Ibid, p. 7.

287 ‘Strengere voorwaarden vergunningen voor seksinrichtingen Achterdam’, Municipality of Alkmaar 31 August 2011, <http://www.alkmaar.nl/?id=48707> (consulted on 16 May 2013).

288 Written information from the municipality of Alkmaar, 1 August 2013.

289 The new General Local Bye-law entered into force on 22 July 2013, but the rules are being introduced in stages to allow the sector and enforcement agencies to prepare for all the changes; see also <http://www.amsterdam.nl/zorg-welzijn/programma/> (consulted on 22 July 2013).

290 Article 3.30(1)(b) Amsterdam’s General Local Bye-law.

chamber of commerce.²⁹¹ If the municipality is not satisfied that the operator has adequately shown that the requirements are being complied with, it can refuse or revoke the licence.

Intake and assessment of self-reliance in Amsterdam

The General Local Bye-law requires operators to hold an intake interview with every prostitute. In its policy memorandum on the self-reliance of prostitutes,²⁹² the municipality states that the purpose of the intake interview is to ascertain that the prostitute concerned is not being subjected to coercion or exploitation. The bye-law also prescribes that operators or managers of a sex business must assure themselves during the intake interview that the prostitute is sufficiently self-reliant.²⁹³ The conclusion that a prostitute is not sufficiently self-reliant might be an indication that she is not working voluntarily. Prostitutes also need to be self-reliant in order to practice their profession safely. In that context, the municipality says that the two pillars of its policy on prostitution are to protect, normalize and strengthen the position of the prostitute, on the one hand, and to curb abuses in the sector, on the other. To ascertain that the prostitute is not being subjected to coercion or exploitation and is sufficiently self-reliant, during the intake interview attention must be devoted to indicators of human trafficking, the prostitutes' knowledge of their rights and obligations, their health (physical and mental), possible addiction and their mental capacity and level of literacy.

An operator who has doubts about a prostitute's self-reliance following an intake interview must refer her for an independent intake interview/consultation with an agency designated by the municipality, which will assess the prostitute's self-reliance. If operators or managers observe signs of human trafficking, they are required to report them to the police. The reference to the police or the agency designated by the municipality can lead to a 'negative work advice'.²⁹⁴

Language proficiency

Language proficiency is one of the criteria in the evaluation of a prostitute's self-reliance. The prostitute must be able to speak and understand at least one of four languages – Dutch, English, German or Spanish – adequately. According to the municipality, this is important because *operators or managers* must be able to communicate with the prostitutes working in their business, since they have to be able to assess whether the prostitute is performing the work voluntarily and explain what her rights and obligations are. And the prostitute must be able to understand them. It is also important for prostitutes to be able to communicate with *officials of supervisory authorities* and with *clients*. The latter is essential for being able to practice the profession safely, according to the

291 Article 3.30 (1) (d) and Article 3.36 Amsterdam's General Local Bye-law. This is primarily an obligation for operators of window prostitution. For example, window prostitutes are usually independent entrepreneurs. See 'Ramen', *SOA-AIDS* (no date) <http://www.prostitutie.nl/index.php?id=34> (consulted on 14 August 2013). See also 'Registration with the chamber of commerce' below.

292 Municipality of Amsterdam, *Memo Notitie zelfredzaamheid*, http://www.amsterdam.nl/zorg-welzijn/programma/algemene-artikelen/vastgestelde-apv/#h3_2 (consulted on 22 July 2013).

293 The operator also has to verify that the prostitute complies with the other requirements for working in prostitution, such as the minimum age of 21, being legally entitled to perform work, possession of a valid residence permit with entitlement to work, and registration in the trade register of the chamber of commerce if the prostitute is working as an independent entrepreneur.

294 For a discussion of the concept of the negative work advice as developed in The Hague, see below.

municipality, since a prostitute must be able to refuse to perform particular sexual acts with clients and must also be able to take appropriate action in emergencies.

Language proficiency is a new requirement that is not yet included in existing policies on prostitution in other municipalities. It does, however, seem to be important for helping to make prostitutes less vulnerable to exploitation and strengthening their position.

Another requirement contained in the new bye-law is that self-employed prostitutes must be registered with the chamber of commerce.

Registration with the chamber of commerce

A new measure adopted by the municipality of Amsterdam is the introduction of an additional licensing requirement that operators of sex businesses (including windows) can only use self-employed prostitutes who are entered in the chamber of commerce's trade register.²⁹⁵ However, for reasons of privacy, self-employed prostitutes – which prostitutes who work behind windows and at home generally are – often use a less revealing description of their profession, such as 'relaxation therapist', 'masseur' or 'personal services', for their entry in the trade register.²⁹⁶ This is due to the fear among many prostitutes of encountering social discrimination if they are described as 'sex worker' or another explicit term like 'prostitute' or 'erotic masseur' in a public register.²⁹⁷ Some prostitutes have reportedly already been turned away by operators of window brothels because they could not provide a copy of their entry in the trade register.²⁹⁸ This has generated a lot of criticism from representatives of prostitutes.²⁹⁹ The municipality of Amsterdam says it is 'aware of the unintended effects of the requirement of registration in the trade register' and is currently

295 Article 3.30 (1) (d) and Article 3.36 (1) (b) of the General Local Bye-law. See also Annette van der Merwe, 'Wanneer gaat welke maatregel in?', *Amsterdam* 23 July 2013, <http://www.amsterdam.nl/zorg-welzijn/programma/algemene-artikelen/wanneer-gaat-welke/> (consulted on 14 August 2013). Operators must verify that prostitutes who are working for the business as independent entrepreneurs are registered with the chamber of commerce. Operators must also be in possession of proof of registration in the trade register for the independent prostitutes in their business administration, *ibid.*

296 Verbal information from Stichting Geisha, 19 July 2013; verbal information from the Prostitution Information Centre, 8 August 2013; B. Blokker, 'Prostituees komen nu in de openbaarheid', *NRC Next* 8 August 2013.

297 *Ibid.*

298 Verbal information from the Prostitution Information Centre, 8 August 2013.

299 B. Blokker, 'Prostituees komen nu in de openbaarheid', *NRC Next* 8 August 2013; verbal information from the municipality of Amsterdam, 23 July 2013; verbal information from the Prostitution Information Centre, 8 August 2013. See also 'Inschrijving Kamer van Koophandel', *Amsterdam* (no date), <http://www.amsterdam.nl/zorg-welzijn/programma/> (consulted on 14 August 2013).

investigating how they can be avoided.³⁰⁰ It has also said it will not start checking registration until it has consulted the chamber of commerce.³⁰¹

Strengthening the position of prostitutes

One of the objectives of lifting the ban on brothels in 2000 was to protect the position of prostitutes.³⁰² At the time, the theory was that prostitutes who worked voluntarily and legally would be better able to stand up for their employment rights and their social development would improve if the permitted forms of exploitation of prostitution could be made subject to clear local regulation.³⁰³

However, the first and second evaluations of the lifting of the ban on brothels both indicated that this objective had not been fully realised.³⁰⁴ In its most recent evaluation in 2007, the Ministry of Security and Justice's Research and Documentation Centre (WODC) reported: 'The legal position of prostitutes is not good. Under the current circumstances, despite the factual existence of employer-employee relationships, the entire risk of being unable to work is shifted on to the prostitutes. It is not to be expected that the sector itself will automatically initiate improvements.'³⁰⁵

Various municipalities also observe that the position of prostitutes is far from ideal. For example, they argue that prostitutes are in a weak negotiating position in relation to operators and consequently have to accept work and rent their workplace on unfavourable terms.³⁰⁶ Prostitutes are also in a weak position in other respects. For example, it is reportedly difficult for prostitutes to open a bank account, secure a loan or gain access to health insurance and other types of insurance.³⁰⁷ A number of municipalities have therefore made improving the position of prostitutes a specific objective of their local policy on

300 'Inschrijving Kamer van Koophandel', *Amsterdam* (no date), <http://www.amsterdam.nl/zorg-welzijn/programma/> (consulted on 14 August 2013).

301 'Voorlopig geen controle op inschrijving Kamer van Koophandel', *Amsterdam*, 20 August 2013, <http://www.amsterdam.nl/zorg-welzijn/programma/> (consulted on 23 August 2013); 'Amsterdam bekijkt KvK-registratie prostituee', *Spits* 23 August 2013; 'Nog geen controles bij prostituees', *Metro* (no date) 2013.

302 *Parliamentary Documents II* 1996/97, 25437, no. 3.

303 *Ibid.*

304 Daalder 2002; *ibid.* 2007.

305 Daalder 2007. The study by Wagenaar, Altink & Amesberger reaches a similar conclusion and refers to repeated abuses of the vulnerable position of prostitutes by operators (Wagenaar, Altink & Amesberger 2013, pp. 13, 34-35, 52-53, 68-70, 77, 90). There are some reservations to be expressed about this study, particularly in terms of how representative it is.

306 Written information from the Dutch Centre for Crime Prevention and Safety (CCV) concerning the consultations of the G4+ municipalities (Alkmaar, Amsterdam, Den Bosch, The Hague, Eindhoven, Leeuwarden, Rotterdam and Utrecht) on the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry, 22 January 2013. See also the study by Wagenaar, Altink & Amesberger 2013.

307 *Ibid.*

prostitution, and have included rules relating to the working conditions of prostitutes in their licensing conditions.³⁰⁸

The municipalities of Utrecht and Amsterdam are currently also assisting with the creation of cooperatives that will enable prostitutes to work without the intervention of third parties.³⁰⁹ Such working structures are expected to enhance the position of prostitutes. The first cooperative was established in Utrecht on 15 August 2013,³¹⁰ while Stichting Geisha is currently making preparations to form a cooperative in Amsterdam.³¹¹

Article 24 of the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry also contains a number of provisions that could strengthen the position of prostitutes, including the requirement that a prostitution business must have a business plan describing at least the measures the operator will take to protect the health, safety and autonomy of the prostitute.³¹² The provision states that further rules

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- 308 See Municipality of Amsterdam, *Oud beroep, nieuw beleid. Nota prostitutie 2007-2010*, 2007, http://www.amsterdam.nl/wonen-leefomgeving/veiligheid/bibliotheek/downloads/n/nota_prostitutie/ (consulted on 8 August 2013); *ibid*, 'Prostituee v/m Amsterdam. Weerbaar en zelfstandig, Amsterdam 2008-2010,' 2008, <http://www.amsterdam.nl/publish/pages/115866/notitieprostitutiebeleid2008-def.pdf> (consulted on 8 August 2013); *ibid*, *Nota of uitgangspunten prostitutiebeleid 2012-2017*, 2012, <http://www.amsterdam.nl/zorg-welzijn/programma/algemene-artikelen/nota-uitgangspunten/> (consulted on 8 August 2013); Municipality of The Hague, *Kadernota Prostitutiebeleid 2009-2012*, 2009, <http://www.denhaag.nl/home/bewoners/gemeente/document/Voorstel-van-de-college-inzake-Kadernota-Prostitutiebeleid-20092012.html> (consulted on 8 August 2013); Municipality of Alkmaar, *Nadere regels van seksinrichtingen ingevolge artikel 3.1.3 jo. 3.2.1 lid 2 van de APV Alkmaar*, http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Alkmaar/121193/121193_1.html (consulted on 8 August 2013).
- 309 Verbal information from the municipality of Amsterdam, 23 July 2013; verbal information from the mayor of Amsterdam during the meeting of the city council of Amsterdam, 4 July 2013; verbal information from Stichting Geisha, 19 July 2013; 'Wolfsen steunt coöperatie prostituees', *NU.nl* 9 July 2013, <http://www.nu.nl/binnenland/3522290/wolfsen-steunt-cooperatie-prostituees.html> (consulted on 16 August 2013); 'Coöperatie vraagt vergunning raamprostitutie', *Utrecht* 15 August 2013, <http://www.Utrecht.nl/smartsite.dws?id=12564&persberichtID=390664&type=pers> (consulted on 16 August 2013).
- 310 'Coöperatie Utrechtse prostituees', *NOS* 15 August 2013, <http://nos.nl/artikel/540449-cooperatie-utrechtse-prostituees.html> (consulted on 16 August 2013); 'Coöperatie Utrechtse prostituees a feit', *Algemeen Dagblad* 15 August 2013, <http://www.ad.nl/ad/nl/1039/Utrecht/article/detail/3492818/2013/08/15/Cooperatie-Utrechtse-prostituees-a-feiv.dhtml> (consulted on 16 August 2013).
- 311 Verbal and written information from Stichting Geisha, 19 July and 7 August 2013.
- 312 The Minister of Security and Justice has said that the requirement for prostitutes to register is also intended to improve the social position of the prostitutes by informing them of their rights and obligations during the two meetings that take place prior to registration (*Parliamentary Documents I*, Notes 28-7-54, 28 May 2013, Reply to the questions submitted during the first session of the plenary debate on bill 32211, on 30 October 2012).

relating to the content of the business plan will be laid down by or by virtue of an Order in Council.³¹³ When these further rules are being drawn up, it would be useful if they also included measures such as those recently adopted in Amsterdam. By virtue of Amsterdam's General Local Bye-law, for example, operators and managers of sex businesses must assure themselves that a prostitute is not a victim of human trafficking and is indeed self-reliant. This could prove to be an effective measure in terms of increasing the responsibility of operators. With regard to other municipal initiatives, such as the various forms of registration and the associated requirements, uniformity and consideration of potential unintended side-effects would be advisable.

Raising of the age limit for working in prostitution to 21

When the Act to Regulate Prostitution and to Combat Abuses in the Sex Industry enters into force, the national minimum age for working as a prostitute will be raised from 18 to 21. The municipality of Amsterdam has already raised the age limit without waiting for the act to take effect.³¹⁴ The reactions in Amsterdam to the proposal to raise the minimum age for prostitutes were overwhelmingly positive, from both operators and prostitutes. In Alkmaar, there are operators who adopt an age limit of nineteen or older.³¹⁵ Operators in window prostitution in Utrecht, and some operators in

313 See an earlier draft Order in Council, Appendix to the letter from the Minister of Security and Justice to the speaker of the Upper House of the States-General of 19 April 2013 (*Parliamentary Documents I* 2012/13, 32211 no. J). This draft contains a number of guarantees that must in any case be included in the business plan of a sex establishment:

- that hygiene meets general requirements
- that sufficient legally approved condoms are available
- that the possibility of an examination for sexually transmitted diseases is regularly afforded
- that there will be no compulsory medical examination
- freedom in the choice of doctor
- the possibility of refusing to perform certain sexual acts, including those without a condom
- that the prostitute determines her own working hours
- the possibility of refusing to consume alcoholic drinks or use drugs with the client
- that agreements on the rent for a room will be made directly with the prostitute
- that the operator will assure himself that the prostitute is not being forced into prostitution.

The prostitute must be informed of the measures in writing and in a language that she understands. A notice relating to the refusal to perform certain sexual acts or to consume alcohol or use drugs with the client must be displayed visibly in the sex establishment.'

314 The proposal for the amendment of the General Local Bye-law was laid for inspection and the reactions to the raising of the age limit were generally positive. A number of prostitutes felt the proposed age limit did not go far enough, however, and advocated a minimum age of 23, or even 25. Some young prostitutes wondered whether they would be able to continue working if the age limit were raised. Partly in view of the positive reactions, the municipal executive retained the age limit of 21, but there will be a transitional arrangement for prostitutes under the age of 21 who are already working in Amsterdam so that they will not have to stop working. Written information from the municipality of Amsterdam, 27 June 2013. See also Municipality of Amsterdam 2013.

315 Written information from the municipality of Alkmaar, 1 August 2013.

The Hague,³¹⁶ adopt their own age limit age of 21.³¹⁷ Several sources in Utrecht have noted, however, that raising the age limit has led to more young women working for escort agencies, from home or in hotels.³¹⁸

Closing times and maximum working hours

To prevent extremely long working hours and create an additional barrier against human trafficking, Amsterdam, in contrast to Utrecht, has introduced closing times for prostitution businesses.³¹⁹ The municipality initially proposed closing prostitution businesses from 4 a.m. to 9 a.m., but during the consultation period it emerged that many operators and prostitutes were opposed to this,³²⁰ because, for example, the proposed closing hours would make it difficult for prostitutes to get home since public transport services would be very limited at the end of their shift. Prostitutes and operators also said that their earnings would decline if they had to work fewer hours. In response to these reactions, the city executive amended the closing times. Under the new General Local Bye-law, prostitution businesses must be closed between 6 a.m. and 8 a.m.³²¹ In order to achieve the aforementioned goals, the maximum period for which a workplace can be rented has been fixed at eleven hours a day, which means that a prostitute cannot work more than eleven hours a day in the operator's business.³²²

Negative work advice

The municipality of The Hague and the Haaglanden police have launched a joint project designed to enable them to react promptly to signs of human trafficking. The project, which involves a concept known

³¹⁶ See NRM7.

³¹⁷ Zandpad project, p. 41. See also Municipality of Utrecht 2012, pp. 16, 43: in Utrecht, operators have agreed among themselves and with the municipality not to rent windows to women under the age of 21. According to the evaluation report, however, two registered women were younger than 21. They were reported to the police.

³¹⁸ Municipality of Utrecht 2012, p. 32.

³¹⁹ The municipality argues that because many victims of human trafficking work at night, it is trying to create a barrier to human trafficking by introducing closing hours for location-bound prostitution businesses. The municipality argues that the lack of social safety at night, in combination with the type of client that visits prostitutes at that time, is a further reason to introduce closing hours. See also Municipality of Amsterdam 2013.

³²⁰ Most of the responses during the consultation procedure came from prostitutes (225 responses) and operators (25). Three city districts and ten other interested parties, including residents, also submitted comments (Ibid, p. 3). See also 'Prostitutieregels aangescherpt na inspraakronde', *Parool* 29 May 2013, <http://www.parool.nl/parool/nl/224/BINNENLAND/article/detail/3449072/2013/05/29/Prostitutieregels-aangescherpt-na-inspraakronde.dhtml> (consulted on 26 June 2013).

³²¹ Municipality of Amsterdam 2013.

³²² Ibid.

as the 'negative work advice', commenced in January 2012.³²³ The initiative arose from the fact that the Haaglanden police were regularly receiving signals of human trafficking that were too 'soft' to warrant launching a criminal investigation.³²⁴ The procedures are still being developed.

The unit of The Hague police responsible for controlling prostitution is composed of officers who are trained and certified to investigate human trafficking and to carry out administrative inspections in the prostitution sector. They have been designated as the sector's regulator by the various municipalities represented in The Hague police unit.³²⁵ A negative work advice can be issued when the police encounter indications of human trafficking during intake interviews with prostitutes but do not regard them as sufficient to launch a criminal investigation. These intake interviews are conducted if the police have observed signs of human trafficking during administrative inspections of licensed sex establishments (in particular window prostitution, but also brothels, private clubs and escort agencies). The intake interviews can also take place at the request of the operator, for example with prostitutes who have just joined the business. An official report of the findings of the intake interview is drawn up and, if there are signs of human trafficking,³²⁶ the operator receives a negative work advice for the woman concerned. This means that the operator of that establishment is advised not to allow the prostitute to work in his establishment. An operator who fails to follow that advice runs the risk of violating a condition of his licence ('no human trafficking in the sex establishment'³²⁷), for which he can face an administrative sanction (temporary or permanent closure of the establishment).

323 In connection with the introduction of the 'negative work advice' procedure, the regulatory arrangements for sex establishments and escort agencies were amended with regard to the presence of victims of human trafficking in licensed and non-licensed businesses. Specifically, the changes mean that if a victim (including an adult victim) of human trafficking is found in a sex establishment or an escort agency, the municipality can immediately close the establishment without prior warning for a month or, if there are aggravating circumstances, for three months, or revoke the licence entirely. Previously, an immediate sanction of this type was only possible if an underage prostitute was found (written information from the Haaglanden police, 3 July 2013). See also the letter from the mayor of The Hague to the chair of the city's Management Committee for the amendment of the regulatory arrangements for sex establishments and escort agencies of 26 June 2012, <http://www.denhaag.nl/home/bewoners/gemeente/document/Wijziging-Handhavingsarrangement-seksinrichtingen-en-escortbedrijven-1.htm> (consulted on 19 August 2013).

324 Verbal information from the Haaglanden police, 12 March 2013; verbal information from the municipality of The Hague, 17 April 2013.

325 The power to grant police officers a mandate to act as regulators is laid down in Article 177 of the Municipalities Act.

326 These are signs of human trafficking that are not sufficient to warrant launching a criminal investigation. If there is a suspicion of human trafficking, the police and the PPS are absolutely prohibited from permitting offences to continue if to do so would prevent victims from being extricated from their situation. For more information about the prohibition of tolerating human trafficking situations, see NRM8, §2.6.4.

327 'The operator and the manager shall constantly ensure that no criminal offences take place in the sex establishment or in the operation of the escort agency ...'. (Article 3:8.2.a. of The Hague's General Local Bye-law).

Operators are not formally required to follow the advice and can still allow the prostitute to work, but if, during an inspection, they are found to have done so, an administrative report³²⁸ is made of the incident and sent to the municipality with a request to take the appropriate steps. Since the changes in the regulation of sex establishments and escort agencies, the municipality can now immediately close a sex establishment if a possible victim of human trafficking is discovered there.^{329,330} In practice, operators do seem to follow a negative work advice issued by the police. In any case, the police have not found any prostitutes with respect to whom a negative work advice had been issued during inspections of the operators concerned.³³¹ To date, there has been no instance of the municipality actually revoking an operator's licence,³³² and consequently there have not yet been any proceedings in which the administrative courts have ruled on this approach.

On the basis of intake interviews with prostitutes that lead to a negative work advice and the official reports of the findings from those interviews, the police are able to capture and register indications of human trafficking at an early stage. An official report of the findings of an interview provides a record of signs of human trafficking that could be relevant for any subsequent investigation.³³³ Up to now, the Haaglanden police have issued a negative work advice to operators in relation to 141 prostitutes. When a negative work advice is issued, the prostitute is offered help by SHOP, an organization that provides assistance, including counselling and shelter, for prostitutes in The Hague.³³⁴ At least eight prostitutes have reported a case of human trafficking following the issuing of a negative work advice.³³⁵

One aspect of the negative work advice that requires attention, however, is the risk of internal and external waterbed effects.³³⁶ For the moment, waterbed effects seem to occur mainly in window prostitution.³³⁷ For example, during administrative controls the Haaglanden police have repeatedly found prostitutes with respect to whom a negative work advice had been issued to *another* operator in the win-

328 On administrative reports, see also §3.7.6.

329 Letter from The Hague's municipal executive of 26 October 2011. See also Article 3:17 of The Hague's General Local Bye-law: 'The competent administrative body may revoke the permit if: the operator or manager commits criminal offences in the establishment or permits or tolerates the commission of criminal offences in his sex establishment.'

330 Written information from the Haaglanden police, 27 June 2013.

331 Verbal information from the municipality of The Hague, 17 April 2013

332 Ibid.

333 Verbal information from the Haaglanden police, 8 June 2013.

334 Verbal information from the Haaglanden police, 12 March, 8 June 2013.

335 Verbal information from the Haaglanden police, 26 June 2013.

336 For more information about a possible waterbed effect, see also NRM2012e; NRM7, Chapter 7.

337 In the vast majority of cases, the negative work advice related to prostitutes who wanted to work in window prostitution (written information from the Haaglanden police, 27 June 2013).

dow prostitution sector.^{338,339} In addition, during inspections by the police in other cities with window prostitution, women have been found for whom a negative work advice had been issued in The Hague.³⁴⁰ No similar waterbed effect has yet been observed in the unlicensed and illegal prostitution sectors,³⁴¹ although it is plausible that such an effect will occur,³⁴² especially if other municipalities with areas of window prostitution were to introduce the system of the negative work advice. Despite the difficulty of gaining an overview of the non-licensed and illegal prostitution sectors,³⁴³ it is nevertheless essential to make constant efforts to increase the oversight of these sectors.

Various municipalities have already expressed interest in the negative work advice method, although they have not yet taken any specific steps to implement it. Some of the cases in The Hague in which a negative work advice was issued are currently being analysed on behalf of the RIEC in the city.

There is a realization in various municipalities that the Act to Regulate Prostitution and to Combat Abuses in the Sex Industry is a necessary first step in tackling sexual exploitation in the sex industry and a number of municipalities are already exploring ways of combating exploitation in the prostitution sector more effectively. But introducing new measures is not enough on its own: administrative measures must be accompanied by supervision and enforcement if they are ultimately to have any effect.

2.3.5 Prostitution policy in the future

Identifying and suppressing abuses in the prostitution sector, and human trafficking in particular, demands constant use of the multidisciplinary approach to human trafficking in both the legal and the illegal sectors. A uniform national policy is essential in that context. The position of the prostitute also needs to be strengthened to make the profession less vulnerable to exploitation. The central question in reflections on the policy towards prostitution should concern the effectiveness of policies in suppressing human trafficking, and the discussion should not be reduced to idealized stereotypes. This section begins with a brief presentation of the key issues in the debate, including the situation in countries with very different policies towards prostitution. The final subsection addresses the question of whether legalized prostitution results in more human trafficking (§2.3.5.2). It is not (yet) possible to reach any conclusions about the effect of legalized prostitution on human trafficking from studies into the effect of policies on prostitution, so it is not yet entirely clear which policies work best.

338 Written information from the Haaglanden police, 27 June 2013.

339 When a prostitute with respect to whom a negative work advice has been issued is found working for an operator (other than the operator to whom the negative work advice was issued), the police will first inform the operator that a negative work advice already applies for her previous operator with respect to that prostitute. In that case, the police will advise the current operator not to allow the woman to work and will issue another negative work advice (verbal information from the Haaglanden police, 8 June 2013).

340 Verbal information from the Haaglanden police, 8 June 2013, 25 June 2013.

341 Ibid.

342 In the study *Doubletstraat sluiten? Een marktonderzoek naar de seksuele dienstverleningsbranche in Den Haag*, the possibility is mentioned that prostitutes will start working illegally if, for example, there are no options in the legal sector (Heuts, Tromp & Homburg 2012).

343 Verbal information from the Haaglanden police, 21 May 2012; verbal information from the municipality of The Hague, 11 November 2012.

2.3.5.1 Core of the discussion and a look at other countries

Discussion about the shape of Dutch policy on prostitution is nothing new and seems to resurface every time there is a major change in the legislation, as at the time of the abolition of the ban on brothels in 2000.³⁴⁴ In that respect, views on prostitution are not confined to consideration of what is the most effective way of tackling human trafficking, but also contain a highly moral dimension. In terms of morality, various attitudes³⁴⁵ can be distinguished.³⁴⁶ For example, some see prostitution as morally unacceptable and therefore as something that should be banned, and in some countries, even criminalized.³⁴⁷ Abolitionists generally do not call for the sale of sexual services per se to be made illegal, but for the criminalization of related activities, such as the *exploitation* of prostitution.³⁴⁸ In Sweden, in particular, prostitution itself is regarded as a form of violence, principally against women. According to this view, working in prostitution can never be voluntary.³⁴⁹ In Sweden, the prostitute is not subject to punishment, but in 1999 the country did choose to criminalize the client.³⁵⁰ Although Sweden itself says that the policy it has chosen is effective in combating human trafficking,³⁵¹ that assertion is disputed both in Sweden and elsewhere.³⁵² For example, critics argue that the successes claimed are not supported by – reliable – statistics. The fact that the perspective from which prostitution is viewed in a country like Sweden is so different from the perspective in the Netherlands makes it difficult to compare the two systems.

There are also countries where prostitution is regarded as an agreement between two adults, for which no special rules should apply and which should not be regulated. In this approach, prostitution is a profession in which prostitutes have the same rights and obligations as other employees, including the payment of tax. From this perspective – the laborist perspective – women make a carefully-considered decision to work in prostitution. In discussions about the policy that should be pursued towards prosti-

344 See NRM1, §2.2, including references to, for example, J. Outshoorn, *Legalizing Prostitution as Sexual Service: the Case of the Netherlands*, European Consortium for Political Research. Copenhagen ECPR Joint Sessions, WS 12, 2000.

345 Halley et al. 2006; Berger 2012.

346 For a further description of the discussion, see NRM3, §1.4. Only a brief description is given here.

347 For example, prostitution and directly related activities are banned in every state of the US, with the exception of Nevada, and both the prostitute and client are subject to punishment. (Vermeulen 2007, pp. 596-598). A similar approach to prostitution is taken in most Islamic countries, including Albania and Morocco, for example (D'Yves Charpenel 2012, pp. 23, 264).

348 In Belgium and the United Kingdom, for example; see D'Yves Charpenel 2012, p. 66; Belgium 2013, p. 23.

349 That prostitution is a violation of human rights is also the view taken by the European Women's Lobby, which made an appeal to rid Europe of prostitution in December 2012. This appeal was presented during the *European Women's Lobby conference on prostitution '10 years of policies on prostitution: outcomes of the Swedish and Dutch options, and ways forward'*, 4 December 2012 in Brussels.

350 Finland and Norway, among others, have introduced similar legislation. See Vermeulen 2007, pp. 528, 552; Träskman 2012, pp. 290-303.

351 According to a Swedish evaluation of the law, which covered the period 1999-2008 and was mainly concerned with street prostitution. An English summary is available at <http://www.regeringen.se/content/1/c6/14/92/31/96b1e019.pdf> (consulted on 20 June 2013).

352 Clausen 2007; Wagenaar, Altink and Amesberger 2013.

tution, the example of New Zealand is sometimes cited as an alternative to Sweden.³⁵³ New Zealand has decriminalized prostitution.³⁵⁴ The country also has so-called ‘sex workers’ collectives’, which represent the interests and rights of prostitutes. This approach could bolster the position of the prostitute, as well as the willingness to report abuses. New Zealand’s policy on prostitution is based on the belief that a combination of improving the position of prostitutes, through sex workers’ collectives, and decriminalization is an effective instrument in the fight against human trafficking. A comparison between this system and the Dutch system seems more logical. Nevertheless, it remains questionable whether this policy would be equally effective in the Netherlands. Prostitutes in New Zealand seem to be mainly New Zealanders, due to the country’s relative isolation, on the one hand, and its strict immigration policy, on the other. There are probably relatively far fewer migrants working in prostitution in New Zealand than in the Netherlands,³⁵⁵ where the prostitute population is far more heterogeneous.³⁵⁶

Nevertheless, the policies of other countries towards prostitution remain relevant for the Netherlands, which must remain constantly aware of the possible effects of alternative policies in combating human trafficking. Moral views differ and the reality is fluid and cannot be captured in a single *desirable or moral* ideal.³⁵⁷ The discussion about the policy on prostitution must therefore not be reduced to desirable or moral ideals. Questions about the effectiveness of measures and moral arguments must be kept separate. Instead of asking ‘*What is a desirable policy on prostitution for combating exploitation?*’, the leading question in the debate should be ‘*What is the most effective policy on prostitution for combating exploitation?*’

A question that is often asked about Dutch policy on prostitution is whether legalized prostitution results in more human trafficking. In an article in *De Volkskrant*, it was even argued that human trafficking cannot be properly addressed because prostitution is legal, and the author called for the introduction of

353 See, for example, H. Wagenaar, ‘Prostitutiebeleid Nieuw Zeeland is wel effectief’, *Trouw* 11 February 2012, <http://www.trouw.nl/tr/nl/6704/Sociale-Vraagstukken/article/detail/3171920/2012/02/11/Prostitutiebeleid-Nieuw-Zeeland-is-wel-effectief.dhtml> (consulted on 20 June 2013); J. Rottier, ‘Met het “Zweedse model” schiet prostituee niets op’, *Trouw* 12 March 2013, <http://www.trouw.nl/tr/nl/4496/Buitenland/article/detail/3447801/2013/05/27/Met-het-Zweedse-model-schiet-prostituee-niets-op.dhtml> (consulted on 20 June 2013).

354 *Prostitution Reform Act 2003*, <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html> (consulted on 20 June 2013).

355 In New Zealand, visas may not be issued to migrants who are intending to work in the sex industry. New Zealand sees the measure of denying visas to migrants who want to work in the sex industry or wish to invest in it as an instrument for preventing human trafficking. A migrant who is in possession of a visa and who does provide sexual services can be deported. See Article 19 of the *Application of Immigration Act 2009*, (<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197871.html> consulted on 20 June 2013).

356 See also the reply of the Minister of Security and Justice (*Parliamentary Documents I 2012/13*, 32211, M) to the motion by member of parliament Strik of 28 May 2013 (*Parliamentary Documents I 2012/13*, 32211, K) asking the government to investigate how self-help organisations of prostitutes could be engaged in the drafting and implementation of policies on prostitution.

357 Kotiswaran 2011, p. 10; Berger 2012, p. 528.

a prohibition on the procurement of prostitution.³⁵⁸ The existence of a link between policies on prostitution and human trafficking is often asserted with great assurance, but that view needs to be nuanced.

2.3.5.2 Does legalized prostitution generate more human trafficking?

There is growing concern about the effects of prostitution policy on the overall scale of human trafficking in the sense of sexual exploitation. However, it is not known how many women are forced to work in the prostitution sector in relation to the number who do so voluntarily. In Amsterdam alone, an estimated 8,000 prostitutes work in the sex industry.³⁵⁹ According to the National Threat Assessment on Organized Crime, an estimated 20,000 people in the Netherlands were working in prostitution in 2012. While a similar estimate has been repeatedly cited,³⁶⁰ it seems to come from a study carried out in 1999, before the abolition of the ban on brothels.³⁶¹ At the moment, there are no reliable figures available for the total number of prostitutes in the Netherlands.³⁶² Evidently, some prostitutes are exploited, but because of the hidden nature of both human trafficking and prostitution, it is difficult to say how large this proportion is. In that context, the National Threat Assessment said: ‘We do find that the figure of 800 victims in 2010³⁶³ is a minimum³⁶⁴ because of a limited willingness among victims to report offences.³⁶⁵ Victims are afraid that their family will be subjected to violence if they report to the police. It is

358 By Lemaire, a justice of the Court of Appeal in Arnhem, in ‘Raadsheer: voer pooierverbod weer in’, *De Volkskrant* 20 April 2013, <http://www.volkskrant.nl/vk/nl/11304/Vonk/article/detail/3428596/2013/04/20/Raadshoevoer-pooierverbod-weer-in.dhtml> (consulted on 31 July 2013). The Minister of Security and Justice said in a reaction in the Lower House of Parliament that the existing provisions of the Dutch Criminal Code contain sufficient grounds to apprehend pimps if there is cause to do so. See also ‘Opstellen: geen herinvoering pooierverbod’, *De Volkskrant* 23 April 2013, <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3430557/2013/04/23/Opstellen-geen-herinvoering-pooierverbod.dhtml> (consulted on 31 July 2013).

359 Centre de Recherches Internationales et de Documentation sur l’Exploitation Sexuelle (CRIDES) de la Fondation Scelles 2012; see also Beke 2010, p. 32.

360 In the evaluation of the lifting of the ban on brothels by the Ministry of Security and Justice’s Research and Documentation Centre (WODC) in 2007, this estimate was mentioned but with the proviso that the precise composition of the total population of prostitutes was not known, since part of the population of prostitutes is fairly invisible (WODC 2007, p. 32); Soa Aids also refers to 20,000 prostitutes in the Netherlands (‘Frequently asked questions’ Soa Aids n.d., www.prostitutie.nl/index.php?id=174#c250 (consulted on 21 June 2013)); see also Centre de Recherches Internationales et de Documentation sur l’Exploitation Sexuelle (CRIDES) de la Fondation Scelles 2012.

361 Mens & Van der Helm 1999.

362 Because of the hidden character of prostitution, like human trafficking, it is also difficult to estimate the total number of prostitutes.

363 This is a reference to the 749 persons who, according to CoMensha’s records, were sexually exploited in 2010. See also NRM 2012f, Table B3.1.14.

364 There probably is a significant dark number with respect to the number of victims. At the same time, there are possibly a number of false positives in CoMensha’s records, meaning that a case registered as human trafficking is in reality not, since possible victims are reported to CoMensha and there is no formal assessment. See also NRM 2012f.

365 As already mentioned, the human trafficking that is registered also depends on a number of factors that are not necessarily related to the total scale of human trafficking; see NRM 2012f.

not known how much higher the actual number of victims is, because of the significant disparity in the views about the size of the dark number in relation to victims of human trafficking.³⁶⁶

The total scale of human trafficking

The total scale of human trafficking is the aggregate of what is visible and invisible.^{367, 368} The ideal situation would be for every instance of human trafficking to be known, in which case there would be no 'dark number' (the number of human trafficking situations that are not known to any agency: the 'invisible' human trafficking). However, because of the hidden nature of human trafficking, in reality there will always be a dark number, which can only be estimated. The problem, however, is not that there are no estimates but that the estimates that have been made are inaccurate or unreliable.³⁶⁹ The report 'Trafficking in Human Beings: Visible and Invisible' contained a critical analysis of three estimates that have been made of the total number of victims,³⁷⁰ with the aim of prompting further discussion of national and international estimates and promoting efforts to improve methods for making a reasonably reliable estimate on which consensus could be reached.^{371, 372}

Figures are used to reinforce viewpoints and can form the basis for intensive policy measures. However, positions are sometimes adopted on the basis of unverifiable, unreliable or inaccurate data. For example, estimates are sometimes taken from earlier studies to demonstrate the alarming scale of prostitution or human trafficking without any enquiry into how the original researchers arrived at their estimates.³⁷³ But 'bad data are worse than no data'.³⁷⁴ As regards the use of statistics for the development

366 National Threat Assessment on Organized Crime) 2012.

367 'The total scale of human trafficking is equal to the human trafficking that is registered (the known human trafficking) minus the false positives (the human trafficking that is registered as such but in reality is not) plus the dark number (the unregistered/unknown human trafficking, including the false negatives (the human trafficking that is known/visible, but has not yet been recognized as such). In short, it is the aggregate of the 'visible human trafficking' and the 'invisible human trafficking'. (NRM 2012f).

368 The visible component of human trafficking (the registered human trafficking) depends to a large extent on developments related to factors such as the attention devoted to human trafficking in society, the priorities that are set and the capacity that is made available within investigative agencies and the PPS ('the more you look, the more you will find' principle), the method of registration by the relevant agencies and changes in legislation; see also NRM 2012f.

369 For the specific reservations regarding the estimates, see NRM 2012f, §2.4.1; §2.4.2.

370 A national estimate of victims of sexual exploitation in the Crime Projection Analysis (CBA), a national estimate of victims of other forms of exploitation by FairWork and an international estimate of forced labour by the ILO; see also NRM 2012f, Chapter 2.

371 The National Rapporteur has recommended the following improvement: 'The government should endeavour to produce adequate estimates of the scale of human trafficking. In addition to complete and reliable data collection, this calls for statistical expertise.' (NRM 2012f, recommendation 1).

372 See NRM 2012f, §2.1.

373 See also Weitzer 2012, pp. 1344-1345.

374 Weitzer 2012, p. 1350.

of ‘evidence-based policy making’, it is essential to be certain of the reliability and validity of the data in order to avoid reaching ‘evidence-thin’ conclusions.³⁷⁵

Investigations of the effects of legalized prostitution

The effect of legalized prostitution in preventing cross-border human trafficking for the purpose of sexual exploitation has been investigated in a number of academic articles. Two recent examples are ‘Does legalized prostitution increase human trafficking?’ by Seo Young Cho, Axel Dreher and Eric Neumayer (2012)³⁷⁶ and ‘The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation’ by Niklas Jakobsson and Andreas Kotsadam (2013).³⁷⁷ The authors of both articles reach the same conclusion: there are more human trafficking situations in countries where prostitution has been legalized. This section describes how such academic studies are still in their infancy because the data and the research methods are not (yet) complete and are insufficiently reliable to support the conclusions drawn or to provide a basis for policy.

First and foremost, the articles are based on cross-sectional quantitative research, which cannot be used to draw the conclusion that the legalization of prostitution results in more human trafficking.³⁷⁸ Cho, Dreher and Neumayer used the report ‘Global Patterns’ (2006) by the United Nations Office on Drugs and Crime (UNODC)³⁷⁹ to investigate the degree of correlation between prostitution legislation in a particular country and the reported stream of human trafficking to that country.³⁸⁰ To verify whether the authors’ conclusions also held true for other data sets, in addition to the data from the UNODC report, Jakobsson and Kotsadam also used data from ‘Globalization and the illicit market for human trafficking: an empirical analysis of supply and demand’, a report produced by the International Labour Organization (ILO).³⁸¹ That report referred to a data set that the ILO compiled for its first estimate in 2005, which was based on a large number of reports containing information about human trafficking in the period 1995-2004.³⁸² Because cross-sectional research provides no indication of the impact of changes in prostitution legislation in a particular period on the total scale of human trafficking, a second method was adopted. Cho, Dreher and Neumayer carried out three case studies on the situation in Sweden, Denmark

375 See also Weitzer 2012.

376 Cho, Dreher & Neumayer 2012.

377 Jakobsson & Kotsadam 2013.

378 Cross-sectional research is research that looks at a single moment in time: in other words, a snapshot. The opposite is longitudinal research, where the study is conducted over a certain period in order to document the process. For longitudinal research, however, there must be a baseline measurement: how much human trafficking was there before the policy change? Such baseline measurements are not always feasible for policy changes that were introduced several years earlier.

379 UNODC 2006. There is now a more recent report on human trafficking by the UNODC, which takes into account some of the reservations discussed here; see also §2.2.1.

380 The UNODC report provides information about the human trafficking reported to and in 161 countries (UNODC 2006). The analysis by Cho, Dreher and Neumayer encompassed 150 countries (Cho, Dreher & Neumayer 2012).

381 Danailova-Trainor & Belser 2006.

382 This information yielded an ILO database that was used for an earlier report by the ILO, which gave an estimate of the minimum scale of forced labour: ‘ILO minimum estimate of forced labour in the world’; see NRM 2012f, §2.4 for more information about the ILO’s estimates (in 2005 and in 2012).

and Germany, countries in which prostitution legislation was amended during the period covered by their study (1996-2003).³⁸³ To assess the effect of changes in prostitution legislation, they used existing estimates of the total number of victims.³⁸⁴ Jakobsson and Kotsadam also stated that there were no reliable longitudinal data for human trafficking. To support the argument that there is a causal relationship between prostitution legislation and human trafficking, they carried out two case studies for Sweden and Norway,³⁸⁵ countries where buying sex was made a criminal offence in 1999 and 2009, respectively.

Although the authors of both articles employed a refined method for the cross-sectional study, there are a number of reservations to be expressed about their conclusions, relating mainly to the quantity and quality of the available data. The most important reservation is that there was very little analysis of the proportion of visible victims of human trafficking in relation to the proportion that is invisible. The authors relied on data concerning human trafficking situations that were known, using the datasets of the UNODC and ILO, which greatly depend on the human trafficking that has been registered in individual countries. What is visible can be influenced by factors such as the attention devoted to human trafficking in society, the priorities that are set and the capacity that is made available within, for example, the investigative services. Accordingly, the surveys in the UNODC report are based, among other things, on the number of times that a country is mentioned in various sources as the country of destination of victims.³⁸⁶ The prominence given to a country in the report is to a large extent determined by the attention devoted to human trafficking in that country.^{387,388} It is also conceivable that legalization of prostitution has an impact in making human trafficking visible. Invisible human trafficking can only be estimated, but, as already mentioned, at the moment there are no reliable estimates of the total scale of human trafficking.³⁸⁹ Jakobsson and Kotsadam do refer – but only briefly – to the distinction between visible and invisible prostitution. They reportedly found no evidence that hidden prostitution had increased in Sweden and Norway, but added that they could not rule out the possibility that it was so deeply hidden that it had not been identified by any agency at all, investigative or otherwise.³⁹⁰

383 Cho, Dreher and Neumayer 2012, p. 22.

384 The estimates are based on different sources for each case study, including an estimate mentioned by Ekberg 2004; Nicola et al. 2005.

385 For this the researchers used information from other published sources.

386 UNODC 2006.

387 See also GAO 2006; NRM5.

388 In NRM5, the National Rapporteur said the following about the UNODC report in 2006: ‘The overviews in the UNODC report are based on the number of times a particular country is mentioned as a country of origin, transit or destination for victims in a range of sources. This means that the part played by a country in the report is determined to a significant extent by the amount of attention paid to trafficking in human beings in that country. [...] Many countries voiced fierce criticism of a draft version of the report at the end of 2005. Apart from the points mentioned above, the National Rapporteur also pointed out the geographical bias (it is, for example, highly incredible that not a single African country is classified as ‘very high’ among destination countries) as well as problems of methodology, such as the absence of information concerning the validity and reliability of the base material (NRM5); see §2.2.1 for more information about the more recent report by UNODC (2012).

389 See NRM 2012f, Chapter 2.

390 Jakobsson & Kotsadam 2013, p. 103.

A second reservation relates to the case studies that the researchers conducted. Two and three case studies are too few to enable judgments to be made at an international level about the effect of specific prostitution policies. More reliable data are needed from a larger number of case studies. Furthermore, making accurate and reliable comparisons of the total number of victims before and after amendment of prostitution legislation in a particular country seems impossible in these countries because there is little or no information available about the human trafficking registered before the changes in the policy towards prostitution were made, never mind the total number of victims of human trafficking (registered and unregistered).

Conclusion

It is not (yet) possible to give an answer, on the basis of statistics, to the question of the extent to which legalization of prostitution leads to more human trafficking. The answer would require an analysis of the human trafficking that is visible compared with the invisible human trafficking and this calls for the collection of more reliable data – both quantitative and qualitative – concerning visible and invisible human trafficking.^{391,392} Research into the effect of the legalization of prostitution is also complicated by the fact that the total scale of human trafficking in the sense of sexual exploitation is not solely dependent on policies towards prostitution. Such research would also have to encompass all other push and pull factors that could have an impact on the prevalence of human trafficking in a particular country, and which can differ greatly from one country to another. Nevertheless, one component of an effective approach to combating human trafficking is to make human trafficking visible.³⁹³ First and foremost, that calls for a clearer picture of the nature and scale of the prostitution sector.

391 The researchers themselves mention the limitations of their article: ‘The problem here lies in the clandestine nature of both the prostitution and trafficking markets, making it difficult, perhaps impossible, to find hard evidence establishing this relationship’ (Cho, Dreher & Neumayer, 2012, p. 76). ‘Although the data do not allow us to infer robust causal inference, the results suggest that criminalizing procuring, or going further and criminalizing buying and/or selling sex, may reduce the amount of trafficking to a country.’... ‘It should be noted once again that the data quality on international human trafficking is far from perfect and we strongly recommend more data collection.’ (Jakobsson & Kotsadam, 2013, abstract).

392 The National Rapporteur has already made a recommendation on how to produce adequate estimates (NRM 2012f, recommendation 1).

393 See NRM 2012f, Chapter 1 and Chapter 8: ‘To tackle human trafficking effectively, it must be made visible. Human trafficking that is hidden must be revealed – and once revealed, it must be better registered.’

2.4 Exploitation outside the sex industry

2.4.1 Introduction

This section focuses on exploitation outside the sex industry,³⁹⁴ which encompasses any form of forced labour or services that does not have a sexual component.³⁹⁵ Examples are exploitation in the agriculture and horticulture sectors, the hospitality industry and domestic work.³⁹⁶ However, to focus unduly on these frequently mentioned sectors would be to ignore the fact that exploitation can occur in every sector. For example, cases of exploitation have also been discovered in the inland shipping sector,³⁹⁷ among

394 In the literature, various terms are used to denote exploitation outside the sex industry. In the Netherlands, the term 'other forms of exploitation' is generally used. At the international level, the ILO's terminology is often used. See, for example, ILO 2012, in which the term 'forced labour for labour exploitation' is used as distinct from 'forced labour for sexual exploitation', both being forms of 'forced labour'. The ILO also uses the term 'forced labour exploitation for economic activities'. The National Police Services Agency (KLPD) (which is now called the National Unit of the National Police) refers to 'other forms of labour exploitation' to emphasize the fact that it concerns work in sectors other than prostitution (National Threat Assessment 2013, p. 72). In previous reports, the National Rapporteur also used the term 'other forms of exploitation', but has now abandoned that term. The new term – 'exploitation outside the sex industry' – is more explicit. Furthermore, the former term suggested that it was a sort of catch-all category, as researchers correctly remarked in the Crime Projection Analysis for Other Forms of Exploitation (2012, p. 23). The impression this could create – that exploitation outside the sex industry is a less serious form of exploitation – must be strenuously refuted. See also §2.4.2

395 However, that does not mean that exploitation outside the sex industry cannot also be accompanied by sexual exploitation. In practice, these two distinct forms of exploitation can overlap.

396 See also Postma & Van Wijk 2012, p. 331. In this study of the files relating to 27 investigations by the Inspectorate SZW, Investigations Directorate (formerly the Social Intelligence and Investigation Department, SIOD) between 2005 and 2011, Postma & Van Wijk concluded that the investigations centred mainly on (Chinese) restaurants, cleaning services, food processing, sales and construction. They also referred to the role of 'rogue intermediaries' as middlemen between employers and employees.

397 In October 2011, a large-scale operation was carried out in the Dutch inland shipping sector by the former KLPD, the Labour Inspectorate (now the Inspectorate SZW), the SIOD (now the Inspectorate SZW, Investigations Directorate), the Financial Intelligence and Investigation Service (FIOD), the aliens departments of the regional police forces, the Rotterdam-Rijnmond Harbour Police and the Royal Dutch Marechaussee. The operation followed inspections by the Labour Inspectorate which led, according to information from the Inspectorate SZW, to suspicions of 'structural' exploitation and forgery in the inland shipping sector'. See 'Grootschalige actie tegen uitbuiting in binnenvaart', *Inspectie SZW* 5 October 2011, <http://www.inspectieszw.nl/actueel/nieuwsberichten/grootschaligeactietegenuitbuitinginbinnenvaart.aspx> (consulted on 8 August 2013); exploitation of crew members and fishermen on fishing vessels has also been discovered in other countries (see also Surtees 2013, regarding the exploitation of Ukrainian sailors). See ILO 2013b on exploitation in the fisheries sector. See also the discussion of inland shipping as a high-risk sector for exploitation in §2.4.5.

toilet attendants³⁹⁸ and in the meat-processing industry³⁹⁹ in the Netherlands in recent years. In other countries also, more has become known about the diversity of locations where exploitation occurs and the sectors where there is a risk of exploitation.⁴⁰⁰

In addition to labour exploitation, the term ‘exploitation outside the sex industry’ also applies to persons who are forced to provide services outside the domain of work and income, for example being forced to beg or to take out telephone subscriptions.⁴⁰¹ Another example is exploitation for criminal activities, such as being forced to commit fraud in order to claim benefits that then have to be surrendered to a third party. This category would also include being forced to trim cannabis plants or steal.⁴⁰² On the ground, signs of exploitation outside the sex industry seem to be observed more frequently. It is precisely because of the realization that exploitation can occur anywhere that instruments, at both the international and national level, contain non-exhaustive lists of types of exploitation.⁴⁰³ The EU Directive on Human Trafficking, for example, explicitly mentions forced begging and exploitation for criminal activities as forms of exploitation.⁴⁰⁴

398 In Belgium, public toilets had earlier been identified as a sector in which exploitation occurred. See CGKR 2011. See also §2.4.5. This case is discussed in more detail in the discussion of the public toilet sector as a high-risk sector for exploitation.

399 Cf. the judgments of Zwolle District Court 28 January 2013, *LJN* BY9733; 9736; 9738, in which the suspects made a man who had difficulty reading financially dependent on them and got him to process meat in the garage at the home of one of the suspects. The court convicted the suspects of human trafficking for these activities.

400 Clark 2013.

401 The question, however, is to what extent the limits of the concept of human trafficking were reached in these cases. See also §2.4.8 where this question is addressed.

402 Verbal information from Anti-Slavery International during the conference on Children trafficked for exploitation in begging and in criminality, Council of the Baltic Sea States, Vilnius 29-30 November 2012.

403 All of the sources of international law relating to human trafficking and relevant for the Netherlands contain a non-exhaustive list of manifestations of exploitation. There is no international definition of exploitation. See, for example, the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006; UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000), *Bulletin of Treaties* 2001, 69 and 2004, 35; Directive 2011/36/EU of the European Parliament and 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 (OJ 2011, L 101/1). In the Netherlands, the legislature has, implicitly left it to the courts to flesh out the definition of the term ‘exploitation’, as evidenced by the insertion of the phrase ‘at least’ in Article 273f (2) DCC. See Borgers 2011, p. 137.

404 As already mentioned, the bill to implement Directive 2011/36/EU of the European Parliament and 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 (OJ 2011, L 101/1) was passed by the Lower House of Parliament on 2 April 2013. The law is currently before the Upper House of Parliament. For the amended bill, see *Parliamentary Documents I* 2012/13, 33309, no. A. See also the original bill, *Parliamentary Documents II* 2011/12, 33309, no. 2.

The number of *registered* possible victims of exploitation outside the sex industry in the Netherlands has risen in recent years. In 2011, CoMensha registered 250 possible victims,⁴⁰⁵ who were working mainly in agriculture and horticulture.⁴⁰⁶ The number of investigations of labour exploitation carried out by the Inspectorate SZW, Investigations Directorate⁴⁰⁷ and passed on to the PPS has also risen. The number of completed investigations ranged from two in 2007 and 2009 to seven in 2010, nine in 2011⁴⁰⁸ and ten in 2012.⁴⁰⁹ As mentioned above, operations have recently been carried out in sectors that had not previously been linked with exploitation.

Public toilets

In the autumn of 2011, the police and the Inspectorate SZW carried out inspections at 13 motorway petrol stations throughout the Netherlands.⁴¹⁰ The investigation was aimed at discovering instances of human trafficking, exploitation, underpayment of employees and illegal labour. The operation was prompted by warnings that Bulgarian men and women were being required to work 14 hours a day, seven days a week in the toilets of the petrol stations. There were also suspicions

405 The National Threat Assessment 2012 estimated that several hundred persons are victims of exploitation outside the sex industry every year. According to the researchers, this number would be a minimum, since a number of police forces had not provided any information about exploitation outside prostitution, many victims do not report offences and at the time the report was written two major operations were underway in cases that reportedly involved hundreds of possible victims (National Threat Assessment 2012, p. 73).

406 NRM 2012f.

407 As of 1 January 2012, the Labour Inspectorate and the Social Intelligence and Investigation Department (SIOD) were merged to form the Inspectorate of the Ministry of Social Affairs and Employment, or Inspectorate SZW. In the new structure, the former SIOD is called the Inspectorate SZW, Investigations Directorate. This division is a special investigative body within the meaning of the Act on Special Investigative Services (the directorate was established by Article 2(d) of that act). The investigations by the Inspectorate SZW are carried out under the auspices of the PPS's Office for Financial and Economic Offences (Inspectorate SZW 2013, p. 17). An investigation by the Inspectorate SZW, Investigations Directorate is therefore always carried out under the authority of a public prosecutor.

408 Crime Projection Analysis for Other Forms of Exploitation 2012, p. 41.

409 Inspectorate SZW 2013, p. 30. The figures relate to completed criminal investigations by the Inspectorate SZW, Investigations Directorate that had been passed on to the PPS's Office for Financial and Economic Offences. In one case, which was not one of the ten investigations, an investigation was launched on the basis of Article 273f DCC, but it gradually emerged that it would not be possible to gather sufficient evidence in the case. Accordingly, there was also no prosecution for human trafficking. In addition to the ten investigations of human trafficking, four cases for confiscation of assets in connection with labour exploitation were also passed on to the Office for Financial and Economic Offences (written information from the Inspectorate SZW, 24 June 2013).

410 'Controle van schoonmakers op tankstations wegens vermoedens van uitbuiting', *Rijksoverheid* 20 December 2011, <http://www.rijksoverheid.nl/nieuws/2011/12/20/controle-of-schoonmakers-op-tankstations-wegens-vermoedens-of-uitbuiting.html> (consulted on 21 June 2013).

that they were working illegally (in breach of the Aliens Employment Act).⁴¹¹ In Belgium, there has already been a conviction for exploitation of women working in public toilets.⁴¹²

That a growing number of sectors are being linked to exploitation seems to indicate a growing awareness that labour exploitation can occur in many different sectors. This could be the result of the efforts made by agencies such as the Inspectorate SZW, the PPS, the police and municipalities to train their officials and raise their awareness of human trafficking.⁴¹³ Knowing what to look for is crucial for properly recognizing human trafficking situations that occur in practice.⁴¹⁴ It is very important for organizations to preserve this knowledge and provide continuous training. The government has a treaty obligation to train public-sector employees who are likely to encounter human trafficking.⁴¹⁵ To tackle labour exploitation effectively, this obligation applies in particular for labour inspectors, a category of officials that is specifically mentioned in the EU Directive on Human Trafficking in the context of training.⁴¹⁶ In deciding which groups of employees should receive training, the main question that organizations should consider is the extent to which they are likely to encounter human trafficking, bearing in mind the emergence of new sectors where exploitation occurs. In this context, begging is discussed further in §2.4.6.

Although positive steps have been taken in terms of combating exploitation outside the sex industry, there have also been some worrying developments. One of them is the continuing difficulty in gaining

411 The investigation in this case is still underway (written information from the Inspectorate SZW, 24 July 2013).

412 ‘Carestel definitief veroordeeld’, *Diversiteit* 22 November 2012, http://www.diversiteit.be/index.php?action=artikel_detail&artikel=823 (consulted on 19 July 2013). For more information about this case, see §2.4.5.

413 For instance, inspectors of the Inspectorate SZW, Labour Market Fraud Directorate, followed a two-day training course on labour exploitation. The directorate’s programme also includes training in recognizing signs of labour exploitation, a subject also covered in the training for staff of the Working Conditions Directorate. Employees of the Investigations Directorate followed the course ‘Key Challenges in Combating Human Trafficking in Other Forms of Exploitation’ at the Police Academy (written information from Inspectorate SZW, 29 July 2013). For more information about how the subject of human trafficking is addressed within the PPS and the police, see §3.3.3. Although there are still major differences between municipalities in their approach to tackling human trafficking, it is clear that more municipalities are adopting policies in that area. The numbers attending awareness-raising meetings also suggests a growing realization of the need to keep combating human trafficking on the political agenda. See also §3.3.3.3.

414 The ILO has referred to the importance of knowledge about human trafficking, most recently in International Labour Organization, *Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation. Conclusions adopted by the Meeting*, Geneva: ILO 2013, recital 7.

415 Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties*. 2006, instructs parties to the Convention to provide their competent authorities ‘with persons who are trained and qualified in preventing and combating trafficking in human beings and identifying and helping victims [...]’.

416 See 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/JBZ (OJ 2011, L 101/1), recital 25.

a clear impression of the nature and scale of labour exploitation, partly because of the small number of empirical studies on the subject.⁴¹⁷ Another serious problem is that it is still difficult to gather reliable data.⁴¹⁸ It is not easy to give a reliable estimate of the prevalence and the possible scale of this form of exploitation, which makes it difficult to formulate appropriate policies.⁴¹⁹ Its low visibility creates the risk that exploitation outside the sex industry will not be regarded as a policy priority. That risk is discussed below.

Another negative development is the decline in the number of cases being brought before the courts. Despite the increase in the number of investigations that have been completed and passed on to the PPS in recent years, there was only a judgment in first instance in one case in 2012.⁴²⁰ In view of the upward trend since 2009, partly due to a landmark judgment by the Supreme Court,⁴²¹ that is a disappointing development.⁴²² Although effectively tackling labour exploitation does not depend entirely on a criminal law approach, it is an essential cornerstone of the strategy.⁴²³

The lack of insight into exploitation outside the sex industry is also apparent from the view expressed in the National Threat Assessment 2012 (which refers to this form of exploitation as 'other forms of exploitation'), in which this form of exploitation was described as a 'blank spot', a term used to describe

417 Postma & Van Wijk 2012, p. 327. This does not apply only for the Netherlands. Clark conducted research into measures taken to combat labour exploitation in nine countries, including the Netherlands, and reached the same conclusion for all of them. He says, 'The International Labour Organization (ILO) estimates the number in forced labour in Europe to be 880,000, but we found few reliable national studies to confirm this; there is hard evidence confirming its presence, however, including data on numbers of cases prosecuted or investigated under trafficking for labour exploitation, or associated classifications. They illustrate the worrying presence of forced labour practices across all the nine countries studied' (Clark 2013, p. 3).

418 NRM 2012f; Crime Projection Analysis for Other Forms of Exploitation 2012; Van Dijk & Ungureanu 2010, p. 13.

419 NRM 2012f.

420 This was a case in which the director of an employment agency had brought female Polish employees into a position of dependency. The victims in this case were dependent on him in multiple ways. Cf. with respect to the principal suspect, Zwolle District Court 14 December 2012, *LJN BY7662*.

421 This judgment is Supreme Court 27 October 2009, *LJN BI7099*; *BI7079 (Chinese restaurant)*. The details of this judgment are discussed below.

422 In fact, the explanation for this sharp decline in the number of judgments (at first instance) is not entirely clear. Professionals refer to the fact that the hearing of labour exploitation cases is not given priority because suspects are often no longer in custody before and during the trial. Priority is given to cases in which they are. Another point mentioned is the complexity of labour exploitation cases. Sources say there are occasions when a lot of additional evidence still has to be gathered after an investigation has been handed over to the PPS. These arguments can only be part of the explanation, however, since the same factors applied in previous years.

423 Alink & Wiarda (2010, p.9) aptly describe the use of criminal law in combating human trafficking (in other words, not just labour exploitation) as a modest, but weighty and essential cornerstone of efforts to combat human trafficking.

a type of crime about which too little is known to reach a well-informed judgment.⁴²⁴ According to the researchers, the limited information available about the number of victims and the absence of a clear impression of the potential scale of the phenomenon made it impossible to express an opinion about the scale of other forms of exploitation and the seriousness of the consequences for Dutch society in future. In his covering letter to the report, the Minister of Security and Justice said that the study provided insight into existing and future *threats* from organized crime, and that the report *therefore* formed the basis for policies to tackle these forms of crime.⁴²⁵ In view of the qualification of exploitation outside the sex industry as a ‘blank spot’, there is a risk of this form of exploitation being regarded as a problem that should receive less priority in formulating policy. However, that qualification merely confirms that too little research is being conducted into this form of exploitation, not that it occurs less frequently or is a less serious offence than sexual exploitation, which is in fact described as a threat. The qualification as blank spot should therefore actually provide a clear incentive, to partners in the chain – such as regulators and investigative agencies – as well as academics, to learn more about exploitation outside the sex industry. Particularly now, when it seems that more cases are being identified, it is important to remain alert to new forms of exploitation, especially since a number of developments can be discerned that suggest the continued existence of a breeding ground for exploitation. An example would be the protracted impact of the economic crisis on certain sectors that have in the past been linked with exploitation. In the Crime Projection Analysis for Other Forms of Exploitation, the researchers also referred to developments such as the ageing of the population, a trend that will lead to growing demand for health care.⁴²⁶ They also mentioned population growth in African countries, expressing the expectation that more people will come to Europe from those countries in search of work.⁴²⁷

Finally, in that context it is also relevant that the transitional regime following the admission of Bulgaria and Romania to the EU has ended, and with effect from 1 January 2014 the free movement of workers applies without further restrictions for nationals of those countries.⁴²⁸ That will make it easier for people from Bulgaria and Romania to work in the Netherlands, since employers will no longer need to apply for work permits for them. Labour migrants from Central and Eastern European countries could find themselves in a vulnerable position, for example because they do not speak Dutch or because they could find themselves in social isolation. In recent years, a relatively large number of possible victims of exploitation outside the sex industry have been from Central and Eastern European countries.⁴²⁹ The

424 National Threat Assessment 2013, p. 22.

425 Letter from the Minister of Security and Justice to the speaker of the Lower House of Parliament of 13 March 2013 concerning the National Threat Assessment for Organized Crime 2012 and the Fourth Report on the basis of the Monitor of Organized Crime, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/03/13/brief-tk-nationaal-dreigingsbeeld-georganiseerde-criminaliteit-2012-en-vierde-rapportage-op-basis-of-the-monitor-georganiseerde-criminaliteit.html> (consulted on 28 June 2013).

426 Crime Projection Analysis for Other Forms of Exploitation 2012.

427 Ibid.

428 The period for which a restrictive transitional regime with respect to the free movement of workers can apply is seven years. For Romania and Bulgaria, which joined the EU in 2007, that period expired on 1 January 2014.

429 NRM 2012f.

possible growth in the number of workers from these countries should therefore be a reason for being even more alert to signs that might suggest exploitation.⁴³⁰

Human trafficking for the purpose of organ removal and commercial surrogacy

Human trafficking for the purpose of organ removal and forced commercial surrogacy are regarded as separate forms of human trafficking. Because the National Rapporteur recently published a study⁴³¹ on this subject, the discussion here is confined to a number of developments that have occurred since that report was published.

Human trafficking for the purpose of organ removal

As regards human trafficking for the purpose of organ removal, the study found that scarcely any information was available about the prevalence of this form of human trafficking in the Netherlands or involvement in it by Dutch nationals. At the same time, a worldwide shortage of organs seems to be driving a global trade in human organs, creating a real risk of human trafficking.⁴³² For this reason, the recommendation was made that the Minister of Health, Welfare and Sport should commission research into the prevalence of human trafficking for the purpose of organ removal in the Netherlands. Since the study was published, various steps have been taken to learn more about this form of human trafficking. For example, the Erasmus Medical Centre in Rotterdam started a large-scale international study into the medical and legal aspects of human trafficking for the purpose of organ removal. The research group includes PhD students in various disciplines. As part of the research project 'Combating Trafficking in Persons for the Purpose of Organ Removal',⁴³³ the Erasmus MC has also commenced a survey of all care providers in the Netherlands who are in

430 The Minister of Social Affairs and Employment has also expressed his concerns about the (possible) increase in the number of labour migrants. He said that '[...] the rapid increase in the number of labour migrants has sometimes led to socially undesirable situations, such as overcrowded accommodation, underpayment and sometimes even exploitation. When the labour market is fully opened to Romanians and Bulgarians on 1 January 2014, there is a legitimate concern that the negative side effects (for the Netherlands and the labour migrants themselves) will increase. (Request for advice on labour migration, p. 3, appendix to the letter from the Minister of Social Affairs and Employment to the Social and Economic Council of 8 July 2013 concerning the request for an advisory report on labour migration, <http://www.ser.nl/-/media/Files/Internet/Adviesaanvragen/2013/arbeidsmigratie.ashx> (consulted on 9 August 2013)). This line was also followed in an opinion piece written by the Minister about the negative aspects of the free movement of workers: L. Asscher & D. Goodhart, 'Code Oranje voor vrij werkverkeer binnen EU', *De Volkskrant* 17 August 2013, <http://www.volkskrant.nl/vk/nl/3184/opinie/article/detail/3493574/2013/08/17/Code-Oranje-for-vrij-werkverkeer-binnen-EU.dhtml> (consulted on 22 August 2013).

431 NRM 2012c.

432 NRM 2012c; see also Ambagtsheer, Zaitch & Weimar 2013; Sándor et al. 2013, p. 149.

433 One of the aims of the project is to learn more about the phenomenon of human trafficking for the purpose of organ removal. Various universities and agencies are involved in the project, which is receiving financial support from the European Commission. For more information, see http://ec.europa.eu/anti-trafficking/entity.action;jsessionid=wMZPRvkGHKNLjQRLIXfLX6WBCotZvq v4h5GsRFPsny3nXTw y6vb!1142670905?path=EU+Projects%2FHOME_2011_ISEC_AG_THB_4000002186 (consulted on 21 June 2013).

contact with kidney patients and kidney donors^{434,435} with the aim of determining whether the respondents had been in contact with patients who had undergone a kidney transplant in another country or suspected that the patients had paid for a kidney.⁴³⁶

A draft version of a Council of Europe Convention against the trade in human organs was published recently.⁴³⁷ The Convention would introduce new criminal offences relating to the (commercial) organ trade.

2.4.2 Awareness-raising, identification and perception

In the last few years, various parties have taken steps to raise awareness and improve the identification of human trafficking victims – and potential victims – outside the sex industry. Generally speaking, the identification of possible victims has improved and various agencies, including divisions of the Inspectorate SZW, are better informed about what they should look for if they encounter a potential human trafficking situation. Nevertheless, there are also signs that possible victims do not always receive the appropriate treatment because the nature and seriousness of the situation are incorrectly assessed. For example, there have been reports that immigrants who may be victims of exploitation outside the sex industry are not always informed of their entitlement to a reflection period under the B8 regulation.⁴³⁸ Possible victims who might be able to provide valuable information for criminal proceedings are sometimes returned to their country of origin without being informed of their entitlement to the reflection period. Van der Leun and Van Schijndel also point out that victims of human trafficking are not always recognized as such.⁴³⁹ Van der Leun observed that there is growing attention to combating illegal work,

434 Although this was an ongoing project, with this study the Minister of Health, Welfare and Sport was responding to the recommendation made by the National Rapporteur in 2012 to develop a clearer picture of the organ trade and organ tourism and the role of the Netherlands and Dutch nationals in it. For the recommendation, see NRM 2012c.

435 These are primarily 320 nephrologists and transplant surgeons. The questionnaire is also being sent to 200 nurses, social workers and transplant coordinators at the eight academic transplant centres, dialysis centres and peripheral hospitals. The results of the survey were expected at the end of 2013 (written information from the Erasmus Medical Centre, 7 March 2013).

436 Undergoing an organ transplant in another country or paying for an organ does not necessarily constitute human trafficking, but it could be seen as evidence of possible abuses.

437 The 'Draft Council of Europe Convention against Trafficking in Human Organs', *Council of Europe* 7 December 2012 can be found at [http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20\(2012\)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf](http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20(2012)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf) (consulted on 14 May 2013). Article 28 of the Convention regulates its entry into force.

438 Pursuant to Chapter B8.3 of the Aliens Act Implementation Guidelines 2000, possible victims of human trafficking are entitled, on the basis of Article 8, under k, of the Aliens Act 2000, to a reflection period of up to three months. The reflection period gives the possible victim time to consider whether he/she wants to report an offence or otherwise cooperate with a criminal investigation against the trafficker; see *Bulletin of Acts, Orders and Decrees* 2010, 290; *Bulletin of Acts Orders and Decrees* 2013, 165 (decree on entry into force). See the detailed discussion in §2.8.

439 Van der Leun & Van Schijndel 2012. Their case study of people smuggling cases showed that indications of exploitation are not always spotted. See also Van der Leun 2013.

accompanied by criminalization of illegal workers, and referred to the risk that this could overshadow efforts to combat human trafficking.⁴⁴⁰ There are also signs that the authorities are more circumspect about offering or granting the reflection period when large groups of (possible) victims are identified. However, possible victims have the right to be informed of the reflection period; it is not a discretionary power of the officials of the competent authority.⁴⁴¹

A threat to the effective suppression of exploitation outside the sex industry is the failure of the authorities to recognize the offence or their underestimation of its seriousness. The phenomenon that exploitation outside the sex industry seems to be regarded in practice as 'less serious' than sexual exploitation was discussed in NRM7.⁴⁴² Despite the growing attention to the various forms of exploitation, and supervisory and investigative agencies in particular are steadily becoming better equipped to recognize them, this attitude still seems to exist, which fails to do justice to the seriousness of the abuses that can occur in situations where labour or services are being provided. The negative effects on the physical and mental health of possible victims, for example, are demonstrated by the study described below.

Health complaints after labour exploitation

Turner-Moss et al. conducted research into the health problems suffered by victims of labour exploitation who had been liberated from a human trafficking situation.⁴⁴³ The exploitation had taken place in domestic work and in the food-processing and building industries, among others. Forty percent of the 30 respondents⁴⁴⁴ reported suffering physical violence during the human trafficking situation and 81% said that at the time of the study they were suffering from physical complaints, ranging from headaches and back pain to tiredness and problems with their eyes and teeth. The majority of the respondents (57%) complained of one or more symptoms associated with Post-Traumatic Stress Syndrome (PTSS).⁴⁴⁵ There has been little research into the effects of situations of labour exploitation on the health of the workers concerned and the needs of victims after the exploitation has ended. There is a need for further research into this subject.

There are a number of complicating factors that contribute to the underestimation of exploitation outside the sex industry. For example, some victims of exploitation do not see themselves as victims be-

440 Van der Leun 2013.

441 See also §2.8.

442 NRM7; FairWork 2012. See also Crime Projection Analysis for Other Forms of Exploitation 2012, p. 22, in which the researchers argued that the term 'other forms of exploitation' might suggest that it is a sort of catch-all category, '[...] as though it is of less substantive importance, the offence is less important in terms of its seriousness and/or scale than sexual exploitation, for example, which can be seriously doubted.' The perception of exploitation outside the sex industry is, one might say, already inherent in the language used to describe this form of exploitation.

443 Turner-Moss et al. 2013.

444 The number of respondents was therefore small.

445 The study did not investigate to what extent there is a correlation between the health complaints reported by participants and the human trafficking situation in which they found themselves.

cause, compared with their own countries, the conditions under which they worked and the wages they earned did not seem objectionable, and were sometimes actually better.⁴⁴⁶

Furthermore, an employer who could potentially be convicted as an exploiter under Dutch law is sometimes actually regarded as a benefactor by compatriots living illegally in the country. Hiah and Staring, for example, found that some of the Chinese restaurant owners they interviewed regarded living and working illegally in the country (phenomena that are mainly associated with vulnerability in a human trafficking context) as perfectly normal, and more a ‘stepping stone to a regular existence than something criminal’.⁴⁴⁷ It is also possible for people who are seen as exploiters by local standards to have no conception that they are doing anything wrong.⁴⁴⁸

These perceptions of possible suspects, and particularly of victims, complicate investigation of the offence.⁴⁴⁹ It is also not inconceivable that the perceptions of victims and suspects influence the estimation of the offence of labour exploitation on the part of the authorities responsible for combating it. In the Netherlands, however, in legal terms the subjective perception and judgment of the victim and offender have no relevance whatsoever in determining whether a particular action involves exploitation. In its landmark judgment in 2009 (the Chinese restaurant case, cited above), the Supreme Court ruled that the question of whether there was exploitation must be assessed on the basis of the normal

446 See Willemssen 2010, p. 25 with respect to Chinese labour migrants. See also *Parliamentary Documents II* 2012/13, Schedule to the Proceedings, no. 1002, p. 1 on this perception amongst possible victims in the mushroom sector. See also Martens & Van den Brink 2013, p. 198.

447 Hiah & Staring 2013, pp. 50-57. The authors point out that this perception of illegal residence and illegal labour exists among the employers interviewed who had themselves once worked or lived illegally in the country. Hiah & Staring find the explanation for this perception of illegal residence and illegal work in the personal history of the employers, or – as the authors put it – the personal ‘biography’ of the restaurant owners.

448 In Council of the Baltic Sea States 2013, p. 7, a case was reported in which Roma parents were suspected of bringing their underage daughter to Sweden in order to exploit her in begging. During an interview with the police, the parents admitted bringing their daughter to Sweden to get her to beg on the street. It also became clear that the parents did not know, and did not understand, that the actual circumstances might constitute exploitation in Sweden. The Swedish courts ruled, in first instance and on appeal, that there was no exploitation. The court of first instance found that the daughter’s living conditions in Sweden were no worse than the conditions in which she had to live in Romania. Since the entire family lived in poverty, begging was a survival strategy. The court also found that the parents had to live in the same conditions as their daughter. Under those circumstances, the Swedish court ruled, it could not be found that the parents had exploited their daughter.

449 Martens & Van den Brink (2013, p. 198) refer to the low level of willingness among victims of human trafficking to report offences, due, among other things, to the fact that victims sometimes do not see themselves as victims. In the case of labour exploitation, this could be mainly due to the fact that the employees are paid well by their own standards. The same applies in the case of foreign prostitutes. The authors point out that the absence of cooperation by a potential victim complicates an investigation.

standards that apply in the Netherlands.⁴⁵⁰ The Supreme Court objectified exploitation and ruled that the frame of reference in the Netherlands is decisive. That ruling has established a firm precedent that is not open to discussion.⁴⁵¹

Awareness-raising campaigns

Although exploitation outside the sex industry receives wider attention in the media, most of the coverage is ad hoc and devoted to specific cases that have come to court.⁴⁵² The structural problems underlying the phenomenon of exploitation outside the sex industry deserve more attention.⁴⁵³ Although there is growing demand for fair trade products,⁴⁵⁴ attention seems to focus mainly on possible exploitation in other countries rather than on exploitation that occurs or could occur in the Netherlands. The government should draw attention to the latter with publicity campaigns targeted at the general public. It is also important to publicize the issue more widely in sectors that have been linked with exploitation or where there is a risk of exploitation. In practice, there is a reluctance to refer to the risk of exploitation in particular sectors in campaigns, since that could harm the sector and consequently the reputation and economic position of companies (see the box below). A study carried out by the National Rapporteur in 2012 showed that the fear

450 The Supreme Court made this ruling in Supreme Court 27 October 2009, LJN BI7097; BI7099 and NJ 2010/598 (*Chinese restaurant* case), with notes by Buruma (advisory opinion by Advocate General Knigge). The significance of this judgment is discussed below.

451 This discussion is conducted in the legal and criminological literature. The clarion call for the discussion was given by Buruma in his notes to the *Chinese restaurant* judgment, in which he said, 'I have ... difficulty regarding people as victims of exploitation for a reason that they themselves do not view as a cause of exploitation...' (Supreme Court 27 October 2009, NJ 2010,598 (*Chinese restaurant* case), with notes by Buruma). See also Lestrade 2011. See also Hiah & Staring (2013, pp. 56-57), who seem to favour a more relativistic approach to exploitation. In their qualitative study of the labour relations between Chinese employers and their illegally resident employees, they argued that too great an emphasis on labour exploitation reduces employers to offenders and their employees to victims. An overly legal perspective does not reflect social reality, according to the authors, who also argue that it hides the underlying causes of the problems of illegal residence and work, namely the demand for cheap products and flexible, motivated labour to perform work that Dutch nationals are unable or unwilling to perform.

452 One example is the case of the asparagus grower in Someren, who was sentenced on appeal to three years in prison by the Den Bosch Court of Appeal (Den Bosch Court of Appeal 6 July 2012, LJN BX0599). This case received a lot of coverage in the media. The *Prawn Cracker* case in The Hague, referred to below, also generated a lot of publicity, mainly because of the inhuman conditions in which the workers in that case had to perform their work.

453 So also Van der Leun 2013, p. 117. See also Postma & Van Wijk (2012, p. 327), who point out that the Dutch literature contains little empirical research into the nature of exploitation outside the sex industry.

454 See, for example, G. Reijn, 'Verkoop van verantwoorde koffie stijgt explosief', *De Volkskrant* 8 May 2013, <http://www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3437913/2013/05/08/Verkoop-van-verantwoorde-koffie-stijgt-explosief.dhtml> (consulted on 10 July 2013).

of ‘stigmatizing’ the agriculture and horticulture sectors had dissuaded some municipalities from launching operations to check for exploitation in those sectors.⁴⁵⁵

Recognizing the existence of exploitation and the sectors in which it might occur is a first, but essential, step in tackling the problem. The role of the media in this, by acting as a watchdog of agencies that are engaged in combating exploitation, but also by constantly drawing attention to the problem of exploitation outside the sex industry, should not be underestimated.⁴⁵⁶

Awareness-raising campaigns

In certain sectors, launching a discussion of the issue of exploitation has proved difficult. In 2011, the Ministry of Social Affairs and Employment launched the campaign ‘*Hollandse asperges met een crème van moderne slavernij*’ [Dutch asparagus with a taste of modern slavery]. A leaflet with text accompanied by a picture of a delicious-looking meal was published to draw attention to abuses in the asparagus sector. Trade association ZLTO felt the campaign generalized and was stigmatizing and offensive to asparagus growers, although it endorsed the campaign’s objective of raising the issue of abuses in the sector.⁴⁵⁷ Similar objections were expressed by some trade associations in the inland shipping sector in response to the reporting by the PPS and the Inspectorate SZW on actions taken to counter exploitation in that sector.⁴⁵⁸

The Ministry of Social Affairs and Employment has meanwhile decided to provide subsidies to help trade associations start their own campaigns to improve standards of good employment practices. It is a positive sign that the Dutch Federation of Agriculture and Horticulture (LTO) has already responded to that initiative. In 2013, the Minister of Social Affairs and Employment also devoted more attention to raising awareness among municipalities and organized and participated in various meetings on the subject.⁴⁵⁹

455 NRM 2012e.

456 The National Rapporteur has produced a special curriculum on human trafficking for investigative journalists on behalf of the United Nations Organization for Education, Science, Culture and Communication (UNESCO). The curriculum covers the subject of human trafficking in depth and devotes attention to a number of topics that might be relevant for investigative journalists when they are writing about human trafficking. See Dettmeijer-Vermeulen 2013, pp. 157-191.

457 ‘Campagne “aspergeslavernij” stopt’, NOS 6 December 2011, <http://nos.nl/artikel/319648-campagne-aspergeslavernij-stopt.html> (consulted on 28 June 2013).

458 See the letter from the Central Bureau for Rhine and Inland Shipping (CBRB) and the Binnenvaart Branche Unie to their members of 7 November 2012, http://www.cbob.nl/files/user/Inzet_Filipijnse_werknemers.pdf (consulted on 8 July 2013).

459 At the request of the Minister of Social Affairs and Employment, the CCV (in association with FairWork and Stichting M.) organizes meetings to raise awareness about labour exploitation. The meetings are intended for safety coordinators of municipalities and other municipal officials engaged with this subject. During the meetings, specific attention is devoted to the perceptions of victims and identification of parties within the municipalities that could potentially report signs of labour exploitation (written information from the CCV, 25 July 2013).

In addition to supporting campaigns targeted at individuals and companies working in certain sectors, it is also important for the general public to be made aware of possible abuses associated with the processing of consumer products. Such a campaign should logically be launched by the Minister of Social Affairs and Employment.

2.4.3 Cooperation and information exchange

Exploitation outside the sex industry is a complex phenomenon because the nature and character of the offence can differ greatly from case to case. For example, the matrix of facts that constitute labour exploitation generally comprises multiple offences that are covered by different legal frameworks. A situation of exploitation might, for example, encompass violations of the Minimum Wage Act, the Working Hours Act, the Aliens Employment Act, fraud, tax offences or violations of national or municipal rules relating to housing and fire safety. By definition, therefore, various actors will be involved in combating this type of exploitation. This underscores how important it is for the parties responsible for supervision, investigation and enforcement in the different legal domains to cooperate and share information. The composition of these partnerships can vary according to the problems that arise in a specific instance.⁴⁶⁰ Regional Information and Expertise Centres (RIECs) can play an important role in coordinating and supporting efforts in this regard.

There have been a number of initiatives in the area of cooperation and information exchange. At an administrative level, for example, intervention teams⁴⁶¹ have been established and pilot projects (called *proeftuinen* in Dutch)⁴⁶² have been started to experiment with a multidisciplinary approach to tackling labour market fraud and labour exploitation.⁴⁶³ The idea behind these initiatives is for all the relevant parties to work together in searching for the most suitable method of frustrating the human trafficking process.⁴⁶⁴ As the National Rapporteur has observed in earlier reports, the multidisciplinary approach is crucial for tackling labour exploitation effectively.⁴⁶⁵

⁴⁶⁰ See §3.3 for a description of national consortia, such as the RIECs and the Safety Coordination Houses.

⁴⁶¹ The intervention teams are made up of representatives from municipalities, the Tax and Customs Administration, the Inspectorate SZW, the UWV, the Social Insurance Bank, the Board of Chiefs of Police and the PPS and focus on specific sectors or on urban problems. The intervention teams' projects are programmed by the National Steering Group for Intervention Teams (LSI), in which all of the teams are represented. The Inspectorate SZW heads the intervention teams in the cleaning and mushroom sectors as well as the intervention team against rogue employment agencies (Inspectorate SZW 2012, p. 16).

⁴⁶² See §3.5.2.

⁴⁶³ See §3.4.

⁴⁶⁴ The barrier model developed by the former SIOD is assigned an important role in this context. It sets out the steps a human trafficker has to take to put persons to work and, in the process, also describes the steps the government should take to frustrate the human trafficking process. For more information about the barrier model and its application in the programmatic approach to human trafficking, see §3.5.2. See also Martens & Van den Brink 2013, p. 197. The barrier model for labour exploitation has now been further developed and updated. The authorities expected to start using the new barrier model in the autumn of 2013. Written information from the Inspectorate SZW, 1 August 2013.

⁴⁶⁵ NRM 2012e.

The case that has become known as the *Prawn Cracker* case provides a good example of effective cooperation.

*Prawn Cracker case*⁴⁶⁶

On the basis of information received from the regional Criminal Intelligence Unit (CIE), a house in The Hague was searched and it was discovered that Indonesians who were living illegally in the country were being exploited by being forced to bake prawn crackers. They worked for 10 to 15 hours a day, sometimes having to work throughout an entire evening and night. Regardless of the number of hours they worked, the workers received 25 euro a day. The working conditions were described by the district court as 'poor' and 'onerous'. The bedrooms were very small and had to be shared and the beds, which were adjacent to the hot workshop, were infested with vermin. The summary of this case highlights various offences, including violations of the Working Conditions Act, the Minimum Wage Act and the Working Hours Act. The Urban Development Department of the municipality of The Hague also found violations of the fire safety and building regulations. After assessing the circumstances as a whole, the district court convicted the suspects of labour exploitation.

Combating (and preventing) labour exploitation calls for policy measures in various domains, since the diverse nature of the offence of labour exploitation means that the phenomenon overlaps with various other policy areas, including labour market policy (unfair competition or displacement of workers, for example) and migration policy (preventing the employment of illegal immigrants, for example).⁴⁶⁷ Another example would be policies designed to prevent social security fraud. In preparing and formulating policies in these domains, the relationship with human trafficking and the effect of a proposed measure on efforts to prevent and suppress human trafficking should be explicitly considered. It is important to guard against allowing objectives in the related policy areas to prevail over measures to prevent labour exploitation.

Services at Home Committee

Following an agreement⁴⁶⁸ between the government and the social partners, in 2013 the Minister of Social Affairs and Employment established a committee⁴⁶⁹ to conduct research into the legal position of domestic workers in the Netherlands.⁴⁷⁰ In view of the fact that the decree establishing the committee made no mention of the relationship between this subject and the prevention of human trafficking, the National Rapporteur wrote to the Minister of Social Affairs and Employment drawing attention to the vulnerability of domestic workers to human trafficking and asking the Minister to point this out to the committee so that it could consider that aspect in its advisory report.⁴⁷¹

466 For the case in which the main suspect was tried, see The Hague District Court, 3 May 2010, LJN BM3374.

467 Van der Leun 2013.

468 *Parliamentary Documents* II 2012/13, 29544, no. 425, p. 8.

469 Decree of the Minister of Social Affairs and Employment of 17 May 2013, 2013-0000056984, establishing the Services at Home Committee (Services at Home Committee (Establishment) Decree).

470 See also §2.2.2.1.

471 Letter from the National Rapporteur to the Minister of Social Affairs and Employment on 29 May 2013 on the establishment of the Services at Home Committee, http://www.nationaalrapporteur.nl/Images/20130529-brief-aan-min.szw-commissie-dienstverlening-aan-huis_tcm63-509700.pdf (consulted on 8 August 2013).

2.4.4 Victims

After their liberation from a human trafficking situation, possible victims of labour exploitation have several important needs, which include finding new work and receiving information about their legal position.⁴⁷² The most important information they need is how they can claim arrears of salary from the former employer. The case-law study by the National Rapporteur in 2012 showed that 30% of possible victims joined criminal proceedings as an aggrieved party, at least in part in relation to the human trafficking offences charged. In some judgments, the claim was not awarded because the judge found that calculating the arrears of salary would unduly burden the criminal proceedings, even though the judgments contained clear pointers for calculating the amount due.⁴⁷³ Accordingly, the National Rapporteur recommended that both the PPS and the judiciary should actively review the possibilities for ensuring that victims of human trafficking receive compensation.⁴⁷⁴ In this context, it is important for possible victims to be promptly and properly informed about their legal position and the steps they can take to secure compensation. At the moment, there is no structural policy guaranteeing that possible victims will be informed of their rights during or after an inspection or an investigation. Fairwork possesses considerable expertise in this area, so it is important for an inspection or investigating agency⁴⁷⁵ to consult FairWork if they suspect workers are being exploited and are planning an inspection or an investigation. If FairWork is not involved in an operation, possible victims who are identified should be referred to it for legal advice and assistance in finding new work.⁴⁷⁶

This section has discussed a number of recent developments in the area of exploitation outside the sex industry. The focus was mainly on labour exploitation (outside the sex industry). Some sectors that have recently been mentioned in connection with the risk of exploitation are discussed in more detail in the following subsection.

2.4.5 High-risk sectors and groups

The question of *why* there is a greater risk of exploitation outside the sex industry in some sectors than in others was raised for the first time in NRM5, where it was shown that susceptibility to situations of this type of exploitation often lies in the nature of the work and the conditions under which the work has to be performed.⁴⁷⁷ In that context, the literature often refers to the ‘three D jobs’: dirty, dangerous and degrading. Abuses are identified most often in labour-intensive production processes in which

472 Willemsen 2010.

473 NRM 2012d.

474 In this context, NRM7 contained a recommendation that the public prosecutor should submit a financial report compiled during an investigation at the hearing of the main case so that the judge can form a clear impression of the situation. Another recommendation was that the public prosecutor should also submit the claim for confiscation of criminal proceeds at the same time as the main case (recommendation 38). See also NRM7, recommendation 3 and NRM 2012d.

475 This is generally one of the inspectorates falling under the Inspectorate SZW or – in the case of an investigation – the Inspectorate SZW, Investigations Directorate.

476 For information about a national referral mechanism, see §2.5.

477 NRM5.

low-skilled workers perform routine work.⁴⁷⁸ The visibility of the work also plays a role. In that regard, De Jonge van Ellemeest says ‘poor employer practices thrive in sheltered circuits and hidden settings.’⁴⁷⁹

Besides these somewhat ‘fixed’ characteristics of work that inherently carries the risk of exploitation – the nature of picking mushrooms and the conditions under which that work is performed are not likely to change any time soon – there are also variable factors, such as the economic climate in which a sector is operating. The current situation in the mushroom sector can serve as an example. The pressure on prices in this sector is so great that employers have a positive incentive to hire personnel through constructions that will keep down their wage costs. The inland shipping sector is another example. The huge demand for personnel in that sector has led to the employment of Philippine sailors, who sometimes seem to have worked under dubious conditions and terms of employment.⁴⁸⁰ In other words, apart from the fact that the work in these sectors can, by its nature, be at least ‘dirty’ and ‘dangerous’, economic factors affecting a specific sector also play a role in making that sector susceptible to situations of exploitation. The degree to which exploitation occurs depends on the economic conditions and therefore the time factor.

A high-risk sector is a sector in which work is performed that inherently carries a risk that it will lead to a situation of exploitation or in which the economic conditions create incentives for employers to take measures that could lead to a situation of exploitation. This section concentrates on four specific high-risk sectors that have received little or no attention in previous reports. All of these sectors have recently come to the attention of regulatory or investigative agencies.

2.4.5.1 Mushroom farming

In 2012, the Minister of Social Affairs and Employment published figures about the mushroom farming sector.⁴⁸¹ Research had shown that more than a quarter of the companies investigated in the sector employed illegal workers, paid workers too little or committed tax fraud. The Mushroom Intervention Team

478 Ibid. See also Lewis et al. 2013, p. 7.

479 De Jonge van Ellemeest 2007, p. 109.

480 ‘Aanhouding voor uitbuiting in de binnenvaart’, *Inspectie SZW* 23 April 2012, http://www.inspectieszw.nl/actueel/nieuwsberichten/aanhouding_voor_uitbuiting_in_de_binnenvaart.aspx (consulted on 2 August 2013).

481 Letter from the Minister of Social Affairs and Employment to the Speaker of the Lower House of Parliament of 27 February 2012 on measures to tackle employment constructions in agriculture and horticulture. These figures were provided by the Inspectorate SZW and were only disclosed in the letter, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/27/brief-van-minister-kamp-over-de-bestrijding-arbeidsconstructies-in-de-land-en-tuinbouw.html> (consulted on 22 August 2013).

had already raised the alarm about the situation in 2010,⁴⁸² when it reached the conclusion that there was 'a great deal wrong' in the mushroom sector.⁴⁸³ In particular, it mentioned abuses such as underpayment and the use of constructions that made it possible to avoid payment of tax and social insurance contributions for workers.⁴⁸⁴ The intervention team also reported observing various forms of exploitation.⁴⁸⁵ A number of reports appeared in the media linking the mushroom sector to exploitation. For example, the KRO television programme *Keuringsdienst van Waarde* devoted two editions to working conditions in the sector.⁴⁸⁶

Part of the explanation for the abuses appears to lie in the growing pressure on prices that is affecting the entire sector^{487,488} and creating an incentive for growers to take measures to cut costs. Mushroom farming has therefore been a priority sector for the Inspectorate SZW in recent years,⁴⁸⁹ as a sector in which the risk of 'too little structural concern for working conditions' has increased.⁴⁹⁰ The pressure on prices makes it difficult for mushroom farmers to survive.^{491,492} The intervention team found that

482 The Mushroom Intervention Team was established in 2007 in response to indications that had been received in previous years (up to 2007) of illegal labour and payment of less than the minimum wage to people picking/harvesting mushrooms. The objectives of the intervention team included promoting compliance with legislation (including the Minimum Wage Act), exercising supervision of the employment of illegal immigrants and tackling abuses related to non-compliance with the law, including exploitation. The intervention team was established under the auspices of the Labour Market Fraud directorate of the former Labour Inspectorate, in association with the Tax and Customs Administration, the SIOD, the aliens police, the relevant Regional Anti-fraud Coordination Centres (RCF), municipalities and the PPS. In 2010 the intervention team published its final report of an investigation covering the period 2007-2009 (IC 2010).

483 IC 2010, p. 13.

484 Ibid; see §2.4.5.5.

485 It remains unclear whether they corresponded with the legal definition of the term 'exploitation' (Ibid, p. 12).

486 See also 'Champignons', KRO 20 and 27 December 2012, <http://keuringsdienstvanwaarde.kro.nl/seizoenen/2012/afleveringen/20-12-2012> (part 1) and <http://keuringsdienstvanwaarde.kro.nl/seizoenen/2012/afleveringen/27-12-2012> (part 2) (consulted on 10 July 2013).

487 See also the letter from the Minister of Social Affairs and Employment to the Speaker of the Lower House of Parliament of 11 April 2013 on measures to address sham constructions: <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/documenten-en-publicaties/kamerstukken/2013/04/11/kamerbrief-aanpak-schijnconstructies.html> (consulted on 9 August 2013), in which the Minister referred to the greater domestic and foreign competition in certain sectors. 'Because of the ensuing smaller margins, for some employers it is appealing to save on labour costs and to test the limits of the law, or go beyond them.'

488 Research voor Beleid 2010b.

489 See Inspectorate SZW 2012.

490 Inspectorate SZW 2011, p. 37.

491 B. de Nijs, 'Strengere aanpak misstanden champignonsector', AGF 28 February 2012, http://www.agf.nl/nieuwsbericht_detail.asp?id=80639 (consulted on 19 July 2013).

492 This also applies for agriculture in general. See Research voor Beleid 2010b, p. 29.

legitimate companies that had gone bankrupt were often acquired by rogue businesses. As a result, part of the sector seemed to be caught in a vicious circle; the risk of abuses could therefore increase.⁴⁹³

Self-regulation

In the meantime, the Fair Produce Netherlands quality label has been introduced. The foundation behind the quality label is managed by the mushroom growers section of LTO Nederland, the platform of fruit and vegetable dealers Fruti Venta and the trade unions FNV Bondgenoten and CNV Vakmensen. The quality label can be acquired by businesses that meet the inspection standards laid down by the foundation.⁴⁹⁴ The objective is to prevent unfair competition and create a market with fair prices.

2.4.5.2 Public toilets

Situations of exploitation in public toilets are still relatively unknown in the Netherlands. At the end of 2011, the Inspectorate SZW conducted an investigation for the first time into the situation in the public toilets at 13 motorway petrol stations.⁴⁹⁵ The investigation was prompted by suspicions that Bulgarian women were sometimes working as many as 14 hours a day, seven days a week, for low wages. There were suspicions that these persons had been recruited in their country of origin.⁴⁹⁶

There has been more experience of exploitation in public toilets in Belgium. At the end of 2011, a case was brought in Ghent against a German company that, as a subcontractor, hired illegal employees to clean toilets for a well-known chain of motorway restaurants. The ‘toilet assistants’ reportedly had to work seven days a week and were paid three euro an hour. As the principal, the motorway restaurant chain was also prosecuted.

The most noticeable feature to emerge from an analysis of this case by the Belgian Centre for Equal Opportunities and Opposition to Discrimination (CGKR) was the variety of constructions used to employ workers. For example, some employees were employed by a subcontractor as self-employed persons on secondment, although in fact they were not self-employed at all (also known as sham self-employed persons). These constructions (the form of the construction changed up to four times) also facilitated social security fraud.⁴⁹⁷ Furthermore, the employees were generally not aware of their legal position and

493 Ibid, p. 13.

494 See <http://www.fairproduce.nl/index.asp?lang=nl&id=88> (consulted on 19 July 2013).

495 ‘Controle van schoonmakers op tankstations wegens vermoedens van uitbuiting’, *Rijksoverheid* 20 December 2011, <http://www.rijksoverheid.nl/nieuws/2011/12/20/controle-van-schoonmakers-van-tankstations-wegens-vermoedens-van-uitbuiting.html> (consulted on 21 June 2013).

496 Ibid.

497 CGKR 2011.

did not know that they were working as self-employed persons.^{498,499} In 2012, the subcontractor and the motorway restaurant chain were convicted of human trafficking.⁵⁰⁰

2.4.5.3 Transport

The transport sector is a classic example of a sector in which a growing number of Central and East European workers are employed. The CNV trade union federation has observed that Dutch companies that hire East Europeans make too little effort to arrange housing for drivers when there is not enough work for them in the Netherlands.⁵⁰¹ Besides the problem of accommodation, the transport sector has also been mentioned in connection with payment of low wages, including reports of underpayment. FNV Bondgenoten, for example, was aware of cases where East European drivers were badly underpaid and had to work far longer hours than their Dutch counterparts.⁵⁰² The FNV has already instituted a number of legal actions against transport companies on this issue.⁵⁰³

The transport sector in the Netherlands was badly hit both during and after the credit crisis. A study in 2010 found that the logistics sector was another sector where the activities of rogue employment agencies needed to be addressed because of the volume of demand for cheaper workers from Central and Eastern Europe.⁵⁰⁴

In 2011, FNV Bondgenoten brought proceedings against a transport company in Milsbeek. According to the trade union, the company was guilty of 'social dumping' by employing Polish drivers under Polish working conditions. The case is briefly discussed below, since the facts are illustrative and the construction employed is not used exclusively in the transport sector, but is also to be found in other sectors such as agriculture and horticulture.⁵⁰⁵

498 Ibid.

499 The temporary committee that conducted research into the effects of labour migration in the Netherlands agreed that the position of employees in regard to information was important in the fight against exploitation. Ignorance of their own legal position, the committee found, could lead to situations of exploitation, see *Parliamentary Documents II* 2011/12, 32480, no. 4, p. 49.

500 'Carestel definitief veroordeeld', *Diversiteit* 22 November 2012, http://www.diversiteit.be/index.php?action=artikel_detail&artikel=823 (consulted on 19 July 2013).

501 'CNV wil aandacht voor chauffeurs Oost-Europa', *Trouw* 26 March 2011, <http://www.trouw.nl/tr/nl/4504/Economie/article/detail/1865765/2011/03/26/CNV-wil-aandacht-voor-chauffeurs-Oost-Europa.dhtml> (consulted on 19 July 2013).

502 FNV 2012, p. 18.

503 See also 'FNV sleept Van den Bosch voor de rechter om "uitbuiten"', *Logistiek* 4 March 2013, <http://www.logistiek.nl/Logistieke-dienstverlening/Praktijk/2013/3/FNV-sleept-Van-den-Bosch-voor-rechter-om-uitbuiten-1189853W/> (consulted on 19 July 2013).

504 Research voor Beleid 2010a, p. 21.

505 See the article by K. Stalenhoef, 'Poolse gedetacheerde vrachtwagenchauffeur valt onder algemeen verbindend verklaarde Cao', *Kennedy van der Laan* (no date), http://www.kvdl.nl/KVdL/nl-NL/_main/Nieuws/Nieuwsbrief/Nieuwsbrief+november-december+2011/Poolse+gedetacheerde+vrachtwagenchauffeur+valt+onder+algemeen+verbindend+verklaarde+Cao/ (consulted on 26 April 2012).

*Polish drivers, Dutch working conditions*⁵⁰⁶

A transport company (A) in Milsbeek in Limburg hired workers from an employment agency in Poland (B). A and B were both owned by the same Dutch person.⁵⁰⁷ The employment contract was concluded between the Polish employees and the Polish company B, so that – according to the owner of A and B – Polish terms of employment applied. Consequently, the Polish drivers earned around 300 euro a month, plus 12 cents for each kilometre they drove.

The district court decided otherwise, and declared that the relevant Dutch collective labour agreement (CAO) was applicable to the employment contracts. For the period during which the CAO had not been declared generally binding, the rules on the minimum wage applied. The court's key finding was that the 'centre of work' was in the Netherlands and therefore, by virtue of the EU's Secondment Directive, Dutch law was applicable to the employment contract between the drivers and the Polish company B.

The case is illustrative of cases in which constructions, often created in the context of the free movement of workers and services, are used to avoid the often stricter Dutch rules on terms of employment and the payment of social security contributions. It clearly shows that employers sometimes assume – honestly or otherwise – that these constructions are legal.

2.4.5.4 Inland Shipping

As mentioned above, poor employment practices thrive in sheltered circuits and hidden settings.⁵⁰⁸ A setting that illustrates this is inland shipping, since, by definition, part of the work is performed on the water, and therefore out of sight, and employees are shut off from the outside world.⁵⁰⁹ At the same time, the inland shipping sector is facing economic difficulties⁵¹⁰ and serious staff shortages.⁵¹¹ Furthermore, a relatively large number of people working in the sector are independent entrepreneurs who, given the nature of the work, incur high costs. There is therefore great demand for cheap labour.⁵¹²

506 Roermond District Court 10 August 2011, *LJN BR4863*. See also *JAR 2011/234* with notes by Franssen.

507 *De Volkskrant* quoted an employee of the company as saying that at the office in Poland 'only plants were given water'. See C. ten Have, 'Vier weken rijden voor 400 euro', *De Volkskrant* 15 August 2011, <http://www.volkskrant.nl/vk/nl/2844/Archief/archief/artikel/detail/2849383/2011/08/15/Vier-weken-rijden-voor-400-euro.dhtml> (consulted on 9 August 2013).

508 De Jonge van Ellemeet 2007.

509 See also Surtees, who conducted research into the exploitation of Ukrainian seamen and fishermen. She observes: 'The very nature of the work – largely out of sight, at sea and, thus, inescapable and moving between various national and international jurisdictions – lends itself to a high risk of abuse' (Surtees 2013, p. 121).

510 'Binnenvaart in moeilijk vaarwater', CBS (no date), <http://www.cbs.nl/nl-NL/menu/themas/verkeervervoer/publicaties/artikelen/archief/2013/2012-omzet-binnenvaart-2012-art.htm> (consulted on 8 July 2013).

511 See letter from the Central Bureau for Rhine and Inland Shipping and the Binnenvaart Branche Unie to their members on 7 November 2012, http://www.cbob.nl/files/user/Inzet_Filipijnse_werknemers.pdf (consulted on 8 July 2013).

512 *Research voor Beleid 2010b*, p. 66.

For a long time, the inland shipping sector was not linked to exploitation, but that seems to have changed, at both the national and international level.⁵¹³ For example, in recent years, the Inspectorate SZW, in collaboration with other organizations, has carried out numerous operations targeted at the inland shipping sector, which have led to a number of arrests for exploitation.

Operations against exploitation on Dutch inland shipping vessels

In October 2011, the former Labour Inspectorate and the former KLPD conducted a major operation against exploitation on inland shipping vessels.⁵¹⁴ During earlier inspections by the Labour Inspectorate, suspicions of structural exploitation in the Dutch inland shipping sector had arisen.⁵¹⁵ In addition to controls on the vessels themselves, the operation also involved a raid on an employment agency that had recruited hundreds of Philippine sailors to work on Dutch inland shipping vessels. Three employees of the employment agency were later arrested on suspicion of exploitation.⁵¹⁶ Various agencies collaborated in the action, including the SIOD, the FIOD, the aliens police, the harbour police and the Royal Dutch *Marechaussee*.

A similar operation was conducted in 2012, this time also with the collaboration of the UWV and the harbour police in Antwerp.⁵¹⁷ In addition to inspections of the vessels themselves, an employment agency was also searched during this operation.

It is noteworthy that during both operations raids were also conducted on the employment agencies that had recruited the Philippine sailors, since the employees of those agencies were suspected of paying the Philippine crew members well below the minimum wage. In effect, the *modus operandi* that was used involved keeping parallel sets of accounts.⁵¹⁸ There were two employment contracts. The first was based on a salary in accordance with the Minimum Wage Act, which was used to secure work permits and residence permits for the Philippine sailors. The employment contract that was actually used was based on a monthly wage of around US\$ 400. In addition to underpayment, the Inspectorate SZW found that the sailors worked days of ten to eleven hours, six or seven days a week. They also had to remain on board the vessel for an unbroken period of eight months. When they had leave, their service books and residence

513 At the international level, reference can be made to the study by Surtees (2013) mentioned above.

514 'Grootschalige actie tegen uitbuiting op binnenvaart', OM <http://www.om.nl/@157237/grootschalige-actie/> (consulted on 8 July 2013).

515 Ibid. The method used to employ Philippine sailors for Dutch inland shipping vessels was described in *Research voor Beleid 2010b*, pp. 66, 78, 89.

516 The investigation was still underway when this report was published. 'Aanhouding voor uitbuiting in de binnenvaart', OM 20 April 2012, <http://www.om.nl/@158757/aanhouding/> (consulted on 8 July 2013).

517 'Controles uitbuiting in binnenvaart afgesloten', OM 3 November 2012, <http://www.om.nl/@159706/controles-uitbuiting/> (consulted on 8 July 2013). The reporting by the PPS and the Inspectorate SZW was criticized by the Central Bureau for Rhine and Inland Shipping and the Binnenvaart Branche Unie. Both organizations described the reporting as unnecessarily negative and lacking nuance. The organizations said the reporting should be careful in order to avoid causing unnecessary damage to the sector. The letter can be found at http://www.cbob.nl/files/user/Inzet_Filipijnse_werknemers.pdf (consulted on 8 July 2013).

518 This *modus operandi* was already referred to in *Research voor Beleid 2010b*, p. 89.

documents were confiscated by the employment agency.⁵¹⁹ The Inspectorate SZW did not specifically mention the sailors' accommodation, but given the location of their work they were dependent on the shipping company for accommodation. In this context, multiple dependency is a logical consequence of the nature of the work and where the work is performed.

One point that needs to be made in the context of possible exploitation in the Dutch inland shipping sector is that it can involve large groups of possible victims.⁵²⁰ Providing help, shelter and legal and other forms of assistance for these groups calls for a coordinated approach by all the relevant parties from an early stage.⁵²¹

2.4.5.5 Sham constructions

As mentioned earlier in this section (particularly in the earlier discussion of the four high-risk sectors), complex legal constructions are sometimes used to avoid legal requirements. These are generally fraudulent constructions designed to mask the actual, clandestine situation in order to achieve cost savings. Essentially, the constructions create a façade intended to hide the reality from enforcement agencies and investigating officers.⁵²² Not only employers or the companies where the work is performed, but more especially intermediaries such as employment agencies, can be guilty of this.

Illegal constructions seem to be used mainly in sectors where the margins are small and labour costs account for a large part of the total costs,⁵²³ as in the mushroom sector, for example. In the report *Lessen uit recente arbeidsmigratie* [Lessons from recent labour migration], a director of a mushroom company said, 'Labour costs make up roughly 45% of the cost-price of mushrooms. If they were to rise by 10%, our margin would be minimal; I would not necessarily say zero. I would then have to think very carefully about where to continue production.'⁵²⁴

A case in which various constructions were used came before the courts in 2013. In that case, the owner of a mushroom farm was convicted of exploiting Polish employees.

519 'Aanhouding voor uitbuiting in de binnenvaart', OM 20 April 2012, <http://www.om.nl/@158757/aanhouding/> (consulted on 8 July 2013).

520 See National Threat Assessment 2013, p. 73, which mentions an investigation that involved more than 300 possible victims.

521 See also §2.9.3.

522 The Minister of Social Affairs and Employment refers to 'sham constructions,' in which, according to the minister, 'the actual situation differs from the situation as it is represented'. Letter from the Minister of Social Affairs and Employment to the speaker of the Lower House of Parliament of 11 April 2013 on the approach to sham constructions, <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/documenten-en-publicaties/kamerstukken/2013/04/11/kamerbrief-aanpak-schijnconstructies.html> (consulted on 9 August 2013).

523 *Parliamentary Documents II* 2011/12, 32480, no. 4, p. 51.

524 On this point, the Minister of Social Affairs and Employment has said, 'Because of the ensuing smaller margins [from the increased domestic and international competition in certain sectors, NR], for some employers it is appealing to save on labour costs and to test the limits of the law, or go beyond them.' (Ibid.)

*Use of sham constructions in the mushroom sector*⁵²⁵

The suspect in this case was the owner of a mushroom farm. To recruit Polish workers, he hired a Dutch co-suspect who had set up a company in Poland to hire and employ workers for Dutch companies. In this case, the method used was the so-called 'Polish construction', where products, in this case mushrooms, are already sold before they are harvested. The 'Polish' company then sends Polish employees to the Netherlands to pick the crop. In this way, the owner of the farm avoids the obligation of applying for work permits.⁵²⁶ The workers were also paid far less than required by Dutch standards and no social security contributions or wage tax were paid in either the Netherlands or Poland. The company also worked with two contracts: a contract in which the wages conformed to the prevailing legislation and which would be used if the authorities checked (for example, during an inspection), and a verbal agreement that the Poles would receive four euro an hour. Later, when the suspect was no longer able to pay the wages, the Polish employees had to work at a piece rate; in other words, they were paid for every kilo they picked and not by the hour. In that new situation, they were no longer able to earn four euro an hour. The judgment revealed a vivid picture of a sector facing severe economic difficulties and in which everything possible was being done to reduce costs. The co-suspect told the court that in order to keep the wage costs as low as possible, the Polish employees did not receive the normal wage. The Polish construction was used because 'mushroom farmers in the Netherlands are under enormous pressure, compelled by the economic situation, to reduce the costs of harvesting in particular.'

This case shows that employment constructions can be part of a situation that culminates in exploitation. Learning more about these constructions is therefore an essential component of efforts to prevent exploitation. In that context, it is particularly important for an audit of a company's accounts to be accompanied by an evaluation of the actual situation; the authorities should always look for discrepancies between the documentation and the actual reality. Here too, cooperation between the relevant agencies is crucial. Key partners with respect to labour exploitation are the Inspectorate SZW, the UWV and the Tax and Customs Administration, but also – and sometimes even especially – international partners and private-sector actors (in relation to the enforcement of CAOs, for example).⁵²⁷ These institutions can only gain an accurate impression of the true situation by sharing their information. It is good to see that the Minister of Social Affairs and Employment seems to be giving priority to tackling sham constructions

525 ECLI:NL:RBLIM:2013:4158. The co-suspect in this case was already convicted in 2010: Roermond District Court 26 October 2010, *LJN* BO4108. Since 28 June 2013, judgments have no longer been referred to with the so-called National Case Law Number (*LJN*). In this report, judgments published up to 28 June 2013 are referred to in the former manner. Judgments subsequent to that date are referred to using the new system, the so-called European Case Law Identifier (*ECLI*).

526 At the time of this case, employers were still required to apply for a work permit for Polish employees. That requirement lapsed with the expiry of the so-called transitional regime relating to the free movement of workers from Poland on 1 May 2007. The obligation continued to apply for workers from Romania and Bulgaria until 1 January 2014.

527 Cf. the previously mentioned letter from the Minister of Social Affairs and Employment of 11 April 2013 on the approach to sham constructions, pp. 5-6, <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/documenten-en-publicaties/kamerstukken/2013/04/11/kamerbrief-aanpak-schijnconstructies.html> (consulted on 9 August 2013).

and in the process is placing the emphasis on promoting (international) cooperation and information exchange.⁵²⁸

2.4.6 New forms of exploitation outside the sex industry

Neither Article 273f DCC nor the EU Directive on Human Trafficking contains a definition of exploitation. They only contain a list of forms of exploitation. As regards exploitation outside the sex industry, they refer to several terms ('slavery', 'servitude' and 'forced labour or services'), each of which has its own legal-historical background. Interestingly, this distinction does not seem to play any role in national case law or the literature. The distinction between slavery, servitude and forced labour or services is not problematized in the case law, for instance.⁵²⁹

In the *Chinese restaurant* case in 2009, the Supreme Court laid down criteria for determining whether a situation involves exploitation.⁵³⁰ First and foremost, the Supreme Court found that the question of whether, and if so when, there is exploitation within the meaning of Article 273f DCC cannot be answered in general terms, but depends heavily on the circumstances of the case. The nature and duration of the work, the restrictions placed on the individual concerned and the economic benefit for the employer are relevant factors, the Supreme Court found. In weighing up these and other relevant factors, the frame of reference to be adopted is the prevailing standards in Dutch society.⁵³¹

The Supreme Court's criteria have proved very important in the case law since that judgment and have contributed to harmonization of judgments in the field of exploitation outside the sex industry. However, the criteria do have limitations. For example, although still relevant, they are less useful in situations where the work and the working conditions are in themselves not so onerous, but substantial coercion has been applied.

Although the legal distinction between the different forms of exploitation seems to have become less relevant, they must still be clearly delineated. In the interests of clarity, in this section three categories of exploitation outside the sex industry are distinguished: (1) labour exploitation outside the sex industry ('labour exploitation'), (2) forced services, and (3) criminal exploitation. This is a dogmatic distinction designed to illustrate the various forms in which exploitation outside the sex industry does or could occur in the Netherlands. There are also forms of exploitation that could occur but do not fall into any of these categories, as well as situations that could fall into two or more categories.

528 As is apparent from the letter on sham constructions and the accompanying action plan to combat them. The action plan can be found at <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/04/11/actieplan-bestrijden-van-schijnconstructies.html> (consulted on 19 July 2013).

529 That was the situation in the first cases of exploitation outside the sex industry to be heard by the courts after it was made a criminal offence in 2005. For example, in the case against one of the suspects in the *Mehak* case in The Hague, the district court found, 'In the opinion of the court, it was therefore a hopeless situation under inhuman conditions, which can be qualified as servitude, as referred to in Article 273a (2) (old) DCC.' The Hague District Court 14 December 2007, *LJN BC1195*.

530 Supreme Court 27 October 2009, *LJN BI7099*; *BI7097* (advisory opinion by A-G Knigge).

531 *Ibid.*

Labour exploitation

Labour exploitation covers exploitation that occurs in the domain of work and income. In these cases there is usually a contract of employment between the employer and employee⁵³² or some other form of relationship between a principal and a service provider. In principle, therefore, the relationship between the exploiter and the worker is commercial in nature. But Article 273f DCC is not confined to formal employment relationships. Labour is also defined as covering other work that represents a financial value and is performed in a context where one individual exercises control over another.⁵³³ By virtue of the work that is performed or is going to be performed, labour exploitation is often associated with a particular sector or branch of industry. Sectors that are frequently mentioned in this context are agriculture and horticulture, hospitality (including Chinese restaurants), domestic work and inland shipping. Specific examples in the case law include exploitation in the kitchen of a Chinese restaurant⁵³⁴ and exploitation on a mushroom farm⁵³⁵ or an asparagus farm.⁵³⁶ There was also a case of exploitation in a coffee house⁵³⁷ and of a person who was forced to sell street papers.

Forced selling of street papers⁵³⁸

In this case, four members of a Romanian family were tried and convicted of exploiting four compatriots. The father and his son persuaded them to come to the Netherlands under the pretext that they could earn far more money here than in Romania, for example by working in construction and by selling street papers. Having arrived in the Netherlands, they were accommodated in the family's home, where they slept on mattresses on the ground. The father bought the street papers every day and brought them to the supermarkets where they were to be sold. The Romanians sold the papers six days a week, regardless of the weather. They often had no breaks and were not allowed to buy food or drink from the proceeds. During the day, the main suspect's sons repeatedly checked whether the street sellers were at their post. The Romanians had to surrender the money they earned to the suspects and had to pay a disproportionate amount for rent and for food, drink, gas, water and electricity. The father said that, after deducting these costs, there was no money left to pay them. They were not free to travel back to Romania because they would first have to pay the transport costs to the suspects. The sellers were also not allowed to leave the house on their own. Only the family members had a key to the home.

Noord-Nederland District Court convicted the suspects of human trafficking and found that 'the sale of street papers, whereby the papers were sold with a profit margin, must be regarded as labour in the aforementioned sense and not as begging. The fact that some members of the public

532 This definition is taken from, among other sources, the Crime Projection Analysis for Other Forms of Exploitation 2012, p. 23.

533 NRM5.

534 For a recent conviction for exploitation of a Chinese chef in a Chinese restaurant in Arnhem and Amsterdam, see Amsterdam District Court 18 March 2013, *LJN BZ9113*; *BZ9115*; *BZ9117*.

535 For a recent conviction, see *ECLI:NL:RBLIM:2013:4158*. See also Roermond District Court 26 October 2010, *LJN BO4108*.

536 Den Bosch Court of Appeal 6 July 2012, *LJN BX0599*.

537 Utrecht District Court 5 October 2010, *LJN BO2835*.

538 Noord-Nederland District Court 25 June 2013, *17/924161-11*; *17/924162-11*; *17/880066-12*; *17/880065-12* (not published).

paid the sellers more than the price of the street paper or gave money without taking a paper does not alter that fact.’

One characteristic of a sector where there is a risk of labour exploitation would be that it involves low-skilled and low-paid work. The work generally also takes place in sheltered circuits and hidden settings, although that is not a requirement (cf. the discussion of the case of the newspaper sellers).⁵³⁹ These are usually sectors where there is a demand for unskilled and cheap labour.⁵⁴⁰ By their nature, certain types of work involve greater risks of leading to situations of exploitation. In assessing whether there is exploitation, however, the sector in which the work takes place is irrelevant. The point is whether the elements of the offence of human trafficking can be proved, not where or how the exploitation occurred.

Forced services

‘Forced services’ is a term that relates to any services that have to be performed under coercion. This might involve being forced to perform odd jobs around the house, being forced to beg or being forced to take out telephone subscriptions, a form of exploitation that has already been categorized as human trafficking and declared proven in a number of cases in the Netherlands.⁵⁴¹ Work that falls into this category cannot be described as falling into the domain of work and income. In other words, it is not ‘regular’ work, but involves the provision of services of various types outside the scope of an employment relationship. Moreover, the work that is performed is not organized in a sector, although that does not mean that this form of exploitation cannot take place in an organized context.⁵⁴² Providing criminal services under coercion (criminal exploitation) does not fall into this category, but is a separate form of exploitation (see below).

Forced begging and the prohibition of begging

Article 2 (3) of the EU Directive on Human Trafficking specifically mentions forced begging as a form of exploitation, regarding it as a form of forced labour or services.⁵⁴³

When the law implementing this directive enters into force, forced begging will also be specified as a form of exploitation in Article 273f (2) DCC.⁵⁴⁴ Although no cases have yet come to court involving forced begging, in the case described above, in which the defendants were convicted of forcing persons to sell street papers, the district court found, unnecessarily, that ‘if the complainants had been forced to beg, it could also have been regarded as a form of forced labour’.⁵⁴⁵ Begging

539 De Jonge van Ellemeet 2007, p. 109.

540 Postma & Van Wijk 2012, p. 331.

541 These cases are discussed in §2.4.8.

542 For example, in the literature, forced begging is often connected with Roma families, who actually function as networks within which children are forced to beg. Cf. Council of the Baltic Sea States 2013 and European Commission 2012.

543 See also recital 11 of the directive, which states that exploitation of begging only falls under the definition of human trafficking if all the elements of forced labour or services are present.

544 In the amended bill, forced begging is regarded as a form of forced or mandatory work or services (*Parliamentary Documents I* 2012/13, 33309, A, p. 2).

545 Noord-Nederland District Court 25 June 2013, 17/924161-11; 17/924162-11; 17/880066-12; 17/880065-12 (not published).

should be regarded as a service because it falls outside the domain of work and income. It is not regular work.

Measures that are currently being taken in relation to begging seem to be aimed mainly at preventing nuisance on the street, particularly for the shopping public.⁵⁴⁶ A number of municipalities are considering introducing a ban on begging through municipal bye-laws, or have already done so.⁵⁴⁷ However, it is known that some beggars have to surrender the money they receive to another person.⁵⁴⁸

It seems that forced begging as a form of exploitation is being encountered more frequently in Europe.⁵⁴⁹ In this context, the international literature focuses mainly on children who are forced to beg. Most of the cases that are mentioned involve children from a Roma background. Since children are particularly vulnerable to exploitation, it is very important to devote attention to this, but it must not be forgotten that adults can also be victims of this form of exploitation.

In taking measures against begging, it is important to bear in mind situations where beggars are exploited. Municipal officials with responsibility for enforcing a ban on begging must be trained to recognize signs of exploitation.⁵⁵⁰ This also follows from the EU Directive on Human Trafficking, which explicitly states in recital 25 that training should also be promoted for groups of public officials, other than those specifically mentioned in the directive, who could, depending on the local circumstances, encounter victims of human trafficking in their work.⁵⁵¹

546 See, for example, the letter of 20 November 2012 from the mayor of The Hague concerning the problems of nuisance in the inner city, <http://www.denhaag.nl/home/bewoners/gemeente/document/Overlastproblematiek-binnenstad.htm> (consulted on 26 June 2013).

547 See, for example, P. Ramesar, 'Van Aartsen schermt deel van stad af voor bedelaars', *Trouw* 22 November 2012.

548 The letter of 20 November 2012 from the mayor of The Hague concerning the problems of nuisance in the inner city mentions twenty new beggars from Central and Eastern European countries, mainly from Bulgaria and Romania. According to the mayor, it had repeatedly been found that these beggars had to surrender their money to people hanging around close to them in the city centre (p. 3). The link with human trafficking is not made in the letter. After the National Rapporteur had pointed this out, that aspect was raised during a meeting of The Hague city council at which the letter was being discussed.

549 Council of Baltic Sea States 2013.

550 See also Council of Baltic Sea States 2013, p. 38.

551 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011, L 101/1), recital 25.

Criminal exploitation

Criminal exploitation refers to forms of forced labour or services where the work or service that has to be performed is a criminal activity.⁵⁵² Examples might include forced shoplifting, forced drug smuggling or trimming cannabis plants under coercion.

In the Netherlands, most cases of criminal exploitation have involved forced drug smuggling.⁵⁵³ Being forced to work in cannabis cultivation is known to be more common in neighbouring countries, including the United Kingdom (UK), but there are reports from professionals in the field that people are also being forced to work in cannabis cultivation in the Netherlands.⁵⁵⁴ There is evidence, again from the UK, that people are forced to apply for benefits they are not entitled to and then surrender most of the money they receive, a practice referred to in the international literature as benefit fraud.

Benefit fraud

In April 2013, it was revealed that some Bulgarians in the Netherlands were committing benefit fraud using third parties. It emerged that several Bulgarian suspects had brought compatriots (so-called 'straw men') to the Netherlands to register as living in the Netherlands in the Municipal Personal Records Database. Having registered, they were assigned a Citizen Service Number and opened a bank account.⁵⁵⁵ After performing these services, the 'straw men' were granted benefits and returned to their own country. The suspects then applied for benefits, such as rent and care allowances, in the names of the 'straw men'.⁵⁵⁶ Telephone subscriptions were also taken out in their names.

Up to now, there have been no firm indications that this form of exploitation occurs in the Netherlands. According to a report by the Rotterdam police that was leaked to the media, the gangs

552 Therefore, whether there is a situation of criminal exploitation always depends on the context, namely whether a particular behaviour is a criminal offence in the country concerned. In some countries, begging is always an offence, so this form of exploitation must be regarded as criminal exploitation.

553 For example, see the cases The Hague Court of Appeal 25 August 2011, *LJN BR5629* and The Hague District Court 18 March 2010 *LJN BL8022*.

554 The first case of exploitation outside the sex industry that came to court in the Netherlands concerned the question of whether Bulgarians living illegally in the country had been forced to cut cannabis and whether they had been exploited (The Hague District Court 21 November 2006, *LJN AZ2707*). Although the district court found that the 'abuse of the vulnerable position' of the Bulgarians had been proved, it did not convict for 'exploitation'. This judgment dates from 2006, in other words before the Supreme Court issued its precedent-setting judgment in the *Chinese restaurant* case (see the description of that case above).

555 Cf. the letter from the State Secretary for Finance to the speaker of the Lower House of Parliament of 4 May 2013 concerning system fraud with allowances, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/05/04/brief-weekers-over-systeemfraude-met-toeslagen.html> (consulted on 22 August 2013).

556 This was reportedly shown by a confidential police report that was leaked to *RTL Nieuws*. See 'Grootschalige fraude Bulgaren met toeslagen', *RTL Nieuws* 21 April 2013, <http://www.rtlnieuws.nl/nieuws/binnenland/grootschalige-fraude-bulgaren-met-toeslagen> (consulted on 4 July 2013).

that engage in this type of fraud have previously been guilty of human trafficking.⁵⁵⁷ According to the Rotterdam police, human traffickers saw benefit fraud as an easier way of quickly earning money.⁵⁵⁸

Other countries have had more experience with benefit fraud, and there the phenomenon is explicitly seen in the context of human trafficking and exploitation.⁵⁵⁹ At the end of 2011, 31 people were arrested on suspicion of this form of human trafficking in the UK. They had allegedly promised work in the UK to more than 200 Poles. When the Poles arrived, they were persuaded to sign documents and open bank accounts. With that information, the suspects then applied for various allowances. The deceived Poles, who included many addicts and individuals with psychiatric disorders, were left to their fate and received none of the illegal proceeds. It has also been observed in the UK that children are used to qualify for allowances. According to a report of several cases, children are sometimes moved from one address to another in order to allow benefits to be claimed several times.⁵⁶⁰

Instead of benefit fraud, the Dutch government sometimes uses the term ‘system fraud’ to describe any attempt to receive a payment from the tax authorities on the basis of incorrect information.⁵⁶¹ Benefit fraud is currently treated solely as an offence against the State, but if a person is forced to apply for allowances and then surrender the income, this type of fraud could also be regarded as a form of human trafficking and exploitation. The legal interest that is violated in that case is primarily that of the individual’s physical and mental integrity and personal liberty.

Attention should be devoted to the possibility of not prosecuting or punishing victims for criminal offences that they have committed under coercion or while in a human trafficking situation, particularly in cases of criminal exploitation.

2.4.7 Principles of non-prosecution and non-punishment

Victims of human trafficking are entitled to protection against prosecution and punishment for criminal acts that they have committed in a human trafficking situation and which they were forced or persuaded to commit as a direct consequence of the fact that they were victims of human trafficking.⁵⁶²

557 In this context, it is illustrative that the benefit fraud emerged during an investigation into human trafficking. This perhaps indicates the context within which the offence can take place.

558 A. van Kampen, ‘Fraude Oost-Europese bendes met Nederlandse toeslagen’, *NRC Handelsblad* 21 April 2013.

559 Cf. for example, the reporting in various media: ‘Police arrest 31 benefit fraud people traffickers’, *Daily Telegraph* 20 November 2011, <http://www.telegraph.co.uk/news/uknews/crime/8865243/Police-arrest-31-benefit-fraud-people-traffickers.html> (consulted on 4 July 2013).

560 The report describes how children are moved from one address to another as a ‘commodity’ (CEOP 2010, p. 23).

561 *Parliamentary Documents II* 2010-2011, 32740, no. 1, p. 47.

562 The principle of non-punishment is also understood to mean that the victim should not be detained. The OSCE, among others, takes that position. Cf. OSCE 2013.

These are the principles of non-prosecution and non-punishment.⁵⁶³ The Netherlands is obliged under international law to include the possibility of applying these principles in the criminal law system; the non-punishment principle is laid down in the Warsaw Convention and the EU Directive on Human Trafficking, which are binding on the Netherlands,⁵⁶⁴ while the non-prosecution principle is only included in the directive. Both principles are based on the idea that victims cannot be blamed for criminal offences they commit because they were not committed voluntarily and thus there is no basis for the application of criminal law. The rationale behind the principles is to provide effective protection for victims of human trafficking, including preventing secondary victimization. One could also point to the importance of these principles for effective investigation: victims of human trafficking will be more inclined to cooperate with an investigation against their trafficker if they have an assurance that they will not be prosecuted or punished themselves.⁵⁶⁵ The principles are therefore explicitly part of the broader positive obligation that states have to investigate and prosecute human trafficking effectively and their responsibilities towards victims of human trafficking.

The Warsaw Convention only mentions the non-punishment principle: *'Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful actions, to the extent that they have been compelled to do so.'* The directive refers to both principles: *'Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.'* In other words, the principles relate to criminal offences committed under compulsion that arises from a human trafficking situation or is directly linked to the human trafficking situation.

These legal instruments leave it to countries themselves to decide how to implement the principles in their own legal systems – through either substantive or procedural criminal law. States are expressly *not* obliged to apply the principles; that decision is left to the public prosecutor or the judge in a specific case. In other words, whether to apply the principles is always a decision to be made in an individual case.

There are various ways in which the principles can be implemented in the Dutch context.⁵⁶⁶ The principle of non-punishment could be applied by means of a judicial pardon,⁵⁶⁷ in which case, although the court finds that the facts have been proven and there are no grounds precluding the application of criminal

563 For a description of a case in which the principle of non-punishment played an important role, see Dettmeijer-Vermeulen & Esser 2013.

564 Other international law instruments also refer to the principles of non-prosecution and non-punishment. An overview of them can be found in NRM 7 (Chapter 6) and OSCE 2013.

565 Cf. Recital 14 of 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 (OJ 2011, L 101/1).

566 Huberts & Ten Kate 2012.

567 Article 9a DCC.

sanctions, it can decide not to impose a sentence.⁵⁶⁸ The principle could also be applied by accepting grounds that preclude the application of criminal sanctions (the ground of ‘psychological compulsion’ seems to be a logical choice) or by mitigating the sentence.⁵⁶⁹ The decision not to prosecute relates to the pre-trial phase. In deciding whether to apply the principle of non-prosecution, the public prosecutor has to take account of the fact that the criminal offences were committed in a human trafficking situation. At the time of writing, the Council of Procurators General was planning to insert the fact of being a victim of human trafficking as a separate ground for dismissing charges in the PPS’s Instructions on the use of grounds for declining to prosecute.⁵⁷⁰

A question that is frequently addressed in the literature is whether the principles also apply if victims of human trafficking have committed serious offences, such as manslaughter or murder. The Convention and the Directive do not rule out their application in such cases. Essentially, the question is whether a person was compelled or induced to commit a criminal act as a direct result of the fact that he or she was a victim of human trafficking, regardless of the seriousness of the offence. In deciding whether the principles should be applied, the seriousness of the offences can be taken into account, as is also the case, for example, in assessing whether psychological compulsion should apply as a ground for exemption from criminal sanctions.⁵⁷¹

With the growing number of situations of criminal exploitation that are being observed, investigative agencies and the courts are likely to face questions relating to both principles more frequently. It must explicitly be noted, however, that the relevance of these doctrines is not confined to cases of criminal exploitation. For example, it is possible to conceive of cases in which criminal activities are committed in a human trafficking situation, but where the compulsion applied by the exploiters is related to the performance of other work or services.

2.4.8 The scope of the concept of human trafficking

2.4.8.1 The broad formulation of human trafficking in the Criminal Code

There is currently no uniformity regarding the scope of the concept of human trafficking in the Dutch case law, i.e., what situations should or should not be treated as human trafficking. This raises the

568 For a case in which the principle of non-punishment was applied via a judicial pardon, see Dettmeijer-Vermeulen & Esser 2013.

569 Cf. Instructions on human trafficking, *Government Gazette* 2013, 16816, p. 4. Cf. also Huberts & Ten Kate 2012.

570 Written information from the General Office of the PPS of 30 July 2013. In NRM7, the recommendation was made that the fact that a person was a victim of human trafficking should constitute a separate ground for declining to prosecute (recommendation 36). Cf. NRM8.

571 Dettmeijer-Vermeulen & Esser 2013, p. 208.

important question of what human trafficking is – in other words, what characterizes the offence of human trafficking.⁵⁷²

The main pretext for this question lies in a number of cases concerning forced services, and more specifically cases in which the court was confronted with the question of whether persuading a person to take out telephone subscriptions through deception (a means of coercion) should be described as ‘human trafficking’.

Telephone subscriptions

In a number of cases, the question facing the court was whether persuading a person to take out telephone subscriptions using deception as a means of coercion should be regarded as ‘human trafficking’ within the meaning of Article 273f (1)(4) DCC.⁵⁷³ The Hague Court of Appeal ruled that it was human trafficking because ‘deception’ as the means of coercion could be proved, and, hence, so could the use of coercion to induce a person to make him- or herself available to perform a service.⁵⁷⁴ In its judgment, the court explicitly interpreted Article 273f (4) DCC in a grammatical and legal-historical sense and found no objection to describing these situations as ‘human trafficking’.⁵⁷⁵ In another case in which the same legal issue arose, the Haarlem District Court reached the same verdict.⁵⁷⁶ But in a similar case, the Amsterdam Court of Appeal arrived at the opposite conclusion.⁵⁷⁷ Although ‘deception’ as the means of coercion could be proved, the Amsterdam Court of Appeal found that there was no human trafficking since the victim in the case was not in a situation of exploitation, which the court understood to be a ‘situation of vulnerability that created the opportunity for exploitation’. Gelderland District Court ruled similarly, using a teleological interpretation of Article 273f DCC.⁵⁷⁸ Here too, ‘deception’ could be proved, but, the court ruled, human trafficking situations must be assessed in the context of the objectives pursued by the legislature with Article 273f DCC: the protection of mental and physical integrity and personal liberty. The court found that

572 Kelk refers in this context to the *Typizität* of the offence. When the actual events no longer go to the typical characteristics, the ‘Wesensschau’ of the offence, the substance of the offence is overstretched (Kelk 2010, pp. 93-94). In other words, although all of the elements of the offence have been fulfilled, what is declared proven does not constitute the typical, punishable offence. In this context, Pompe noted in his annotation to Supreme Court 21 February 1938, *NJ* 1938, 929 that the whole (the qualification) is sometimes greater than the sum of the parts (fulfilling the elements of the definition of the offence).

573 Subsection 4 makes two acts criminal offences. They are (1) Forcing or inducing another person by the means referred to in [Article 273f (1)(1) DCC] to make himself/herself available to perform work or services, and (2) Taking any action in the circumstances referred to under (1) which the perpetrator knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services. Cf. NRM 2012d.

574 Amsterdam Court of Appeal 25 August 2011, *LJN* BR5629. Arnhem Court of Appeal also followed this line in its decision in Arnhem Court of Appeal of 10 June 2011, 21-004189-10 (not published). The judgment was upheld on appeal to the Supreme Court. Cf. Supreme Court 29 January 2013, no. S11/02828 (not published).

575 On appeal to the Supreme Court, the Court of Appeal’s qualification of the proven offences as human trafficking was not challenged. Supreme Court 2 July 2013, S 11/04527 (not published).

576 Haarlem District Court 8 December 2010, *LJN* BO8985.

577 Amsterdam Court of Appeal 7 November 2012, *LJN* BY3257.

578 Gelderland District Court 12 June 2013, *LJN* CA3525.

those interests that were to be protected were not at issue in this case. It also found that the contacts between the suspects and the complainants had been of relatively short duration and ruled that it had not been proved that the complainants were denied a genuinely free choice in whether or not to take out the telephone subscriptions solely by the use of deception as a means of coercion.

The question of whether these cases did involve human trafficking was discussed in the National Rapporteur's study of the case law from 2012. It is legitimate to ask whether it was the legislature's intention to make such situations punishable as human trafficking. The broad formulation of Article 273f (1)(4) DCC raises few obstacles in linguistic terms,⁵⁷⁹ a situation that was created mainly when the Supreme Court confirmed that the 'purpose of exploitation' was not part of the definition of the offence in the fourth subsection.⁵⁸⁰ Furthermore, the legislative history contains scant discussion of the situations that the legislature intended to criminalize by making exploitation outside the sex industry a criminal offence.⁵⁸¹ Another problematic aspect of the legislative history is that there was no discussion of the potential consequences of extending the scope of subsection 4 to criminalisation of situations of exploitation outside the sex industry.⁵⁸² As shown above, Article 273f (2) DCC also limits itself to a 'non-exhaustive' list of different forms of exploitation, but does not contain a definition of exploitation. All in all, the courts have few interpretative instruments available to them for strictly defining the scope of the human trafficking article.

The potentially broad scope of the concept of human trafficking, under the purview of Article 273f (1)(4) DCC, is felt mainly in two situations. First, the discussion seems to arise if the only means of coercion used is 'deception' (situation 1). In these cases, as the Haarlem District Court found, the actual events border on the offence of 'fraud'.⁵⁸³ In such circumstances, it is difficult to make a clear distinction between the two acts.

Alternative offence: fraud under Article 326 DCC

In the case referred to above, Haarlem District Court described the act of inducing a person to take out telephone subscriptions through deception as human trafficking. This was somewhat *à contre*

579 This was argued with respect to Article 273f (1)(4) DCC by Korvinus et al. 2006. Rimmelink also refers to the broadly formulated text of the article. He anticipated which types of situations could be brought under the article with a linguistic interpretation: 'In other words, those who induce another person through fraud or deception to grow asparagus or perform domestic work are also punishable for human trafficking. That is really going very far. One example might be a customer who knows he cannot pay who uses deception to induce restaurant staff to make themselves available to perform services for him or her'. N-L-R, Article 273f, note 6.

580 Cf. Supreme Court 20 December 2011, LJN. The low burden of proof under Article 273f (1)(4), without reading the element of a 'purpose of exploitation' into it, is a problem that judges also refer to. Cf. in this context the grounds for sentencing given by the Haarlem District Court that are discussed below.

581 Little attention seems to have been devoted in the deliberations on the legislation to the potentially wide scope of the concept of human trafficking. Furthermore, attention seems to have been devoted solely to labour exploitation and not to other situations of exploitation outside the sex industry.

582 Logically, the legislative history of Article 250a and Article 250ter DCC (old), from which the text of subsection 4 is derived, did not address this point since those articles did not relate to exploitation outside the sex industry.

583 Article 326 DCC.

coeur, as is apparent from the court's grounds for sentencing, in which it found that the charges 'should all be qualified as "human trafficking", but what actually happened brings to mind more a form of fraud, a term that also corresponds more closely with everyday speech and public perception of the facts in this case.'⁵⁸⁴

Secondly, the limits of the human trafficking article appear to be approached in cases where the emphasis lies on the coercion under which labour or services had to be performed (situation 2). In these cases, instances can occur in which the seriousness of the situation lies not in the work or service actually performed or the circumstances under which they had to be performed, but rather in the coercion under which they had to be performed. In these situations it is not so much the abuses *in* a situation of labour or service that constitute the exploitation, but the coercion that *leads to* the labour or services being performed. This could be seen in the cases about telephone subscriptions, for example, but would also apply in cases where persons are induced or forced to apply for benefits. The emphasis in addressing the question of whether there was exploitation therefore shifts from assessing the situation in which a person performed services to the issue of how that person was induced to make him- or herself available or remain available to perform them. Factors such as the victim's (perceived) lack of freedom and dependency come to the forefront in these types of cases. It might be said that what has to be considered here are the situations surrounding the work or service to be performed that cause a person to more or less subject him- or herself to the wishes of an exploiter.

The limits of the concept of human trafficking also seem to be reached sooner in this case, and situations can occur in which what actually happened more closely resembles an alternative offence. One example would be the offence under Article 284 DCC of unlawfully compelling another person by an act of violence or any other act or by threat of violence or threat of any other act to act, to refrain from acting or to submit to anything.

Alternative offence: (marital) compulsion under Article 284 DCC

The entanglement of the offence of unlawfully compelling another person to act or not act, on the one hand, and human trafficking, on the other, is apparent from the recently published report by the *Verkennergroep Versterking aanpak huwelijksdwang en achterlating*.⁵⁸⁵ The group found that Article 284 DCC forms the main legal basis for prosecuting marital coercion.⁵⁸⁶ At the same time, it pointed

⁵⁸⁴ Haarlem District Court 8 December 2010, LJN BO8985.

⁵⁸⁵ Final report of the *Verkennergroep Versterking aanpak huwelijksdwang en achterlating* 2013. The group was appointed by the Ministers of Health, Welfare and Sport; Security and Justice; Foreign Affairs; and Immigration, Integration and Asylum (since incorporated into Security and Justice) in October 2012 after civil-society organizations had warned that the chain approach to marital compulsion and abandonment was not watertight. The group organized a series of meetings at which experts were consulted. Researchers for the National Rapporteur attended the meetings on 8 February and 8 March 2013, along with representatives of the Child Care and Protection Board, the Council for the Judiciary and the EMM.

⁵⁸⁶ The criminal sanctions for marital coercion were increased by raising the maximum sentence under Article 284 DCC from nine months' to two years' imprisonment as of 1 July 2013. Decree of 14 May 2013 establishing the date of entry into force of the law of 7 March 2013 amending the Criminal Code, the Code of Criminal Procedure and the Criminal Code of the BES islands (Bonaire, Sint Eustatius and Saba) with a view to expanding the possibilities for criminal sanctions against marital coercion, polygamy and female genital mutilation, *Bulletin of Acts, Orders and Decrees* 2013, 95.

out that ‘marital coercion [...] can also be accompanied by a form of human trafficking or even manifest itself as a form of human trafficking. If the victim of marital coercion is sexually exploited or exploited in the household, for example, it can also constitute human trafficking.’⁵⁸⁷

2.4.8.2 Possible solutions

It was noted above that the courts have few interpretative instruments available to help them with a strict definition of human trafficking. The need for a more precise definition appears to arise mainly in two situations: i.e., where the sole means of coercion is deception and the key to the situation of exploitation lies in the coercion rather than the nature of the work and the circumstances under which it is performed. This section considers three suggestions that might help in delineating situations that could be qualified as human trafficking.

First, the criteria laid down by the Supreme Court in the *Chinese restaurant* case could also be used for interpreting the definition of the offence under subsection 4. The fact that ‘purpose of exploitation’ is no longer part of the definition of the offence does not affect that, since the Supreme Court laid down criteria for assessing whether there was *exploitation*; with the insertion of subsection 4, the legislature wanted to make the use of a person in a situation of exploitation a criminal offence: that is the exploitation.⁵⁸⁸ In other words, by referring to ‘exploiting’ rather than ‘purpose of exploitation’ in its definition, the Supreme Court also seems to have been thinking of human trafficking situations that could occur outside the framework of Article 273f (1)(1) DCC. In particular, the economic benefit gained by the employer and the restrictions that the actions of the exploiter entailed for the victim are also relevant considerations under subsection 4.

Second, the scope of the article could also be further delineated using the criterion of excessiveness, which was introduced by the National Rapporteur in NRM5.⁵⁸⁹ In this context, the main question in deciding whether there was exploitation is whether the situation was excessive. The excess might be manifest, but might also be an accumulation of less serious matters, such as multiple dependency and underpayment. A constant factor in relation to exploitation is the absence of freedom, i.e., the question of whether a possible victim could reasonably believe that he or she was unable to extricate him- or herself from the situation. If the situation is excessive, human trafficking is proved and the violation of the individual’s physical and mental integrity and personal liberty is a given.⁵⁹⁰

A third relevant factor in the interpretation of subsection 4 is the advisory opinion of Advocate General Knigge in the *Chinese restaurant* case. According to Knigge, as a minimum exploitation⁵⁹¹ always consists

587 Final report of the *Verkennergroep Versterking aanpak huwelijksdwang en achterlating* 2013, p. 14. There is one known case where suspects were charged with exploiting an imported bride from Morocco (Rotterdam District Court 3 December 2008). The case did not lead to a conviction. An analysis of the case can be found in NRM7.

588 Alink & Wiarda 2010, p. 224. See also N-L-R, Article 273f DCC, note 6, in which it is argued that in subsection 4 the exploiters are made punishable.

589 NRM5. See also Korvinus et al. 2006.

590 NRM 2012d.

591 This is taken to mean all ‘practices comparable to slavery or servitude’, forms of exploitation that do not necessarily fall under the scope of Article 4 of the European Convention on Human Rights.

of two ‘poles’. According to him, the first pole comprises the worker’s dependency and the degree of want of liberty accompanying the work. The second pole consists of the working conditions and the ensuing economic gain. These two poles are connected and balance one another, according to Knigge: the greater the lack of liberty, the less important the economic gain becomes (and *vice versa*). By analogy, it could be said that in situation 2 above, the emphasis is mainly on the first pole. In situations such as those in the *Prawn Cracker* case referred to above or the case of the mushroom farmer discussed in §2.4.5.5, the working conditions did not accord with Dutch standards. In such situations, the focus shifts more to the objectively determined poor conditions under which the work or services were performed.

The definition of human trafficking and exploitation depends on many factors. The ideas set out above provide guidelines for establishing whether a situation involves exploitation, but every specific case has to be decided on its merits. Consequently, judges have a major role to play and, by definition, there will always be discussion about the concepts of ‘human trafficking’ and ‘exploitation’. Case law in this field will help to provide a more complete picture of what constitutes exploitation in the Netherlands. In the context of expanding the concepts of human trafficking and exploitation, the fact that this case law is being elicited is therefore to be welcomed. The same applies for the findings of law and pronouncements by the Supreme Court.

2.5 Protection of victims: a national referral mechanism

2.5.1 Introduction

The latest developments in European legislation indicate that a victim-centred, multidisciplinary approach to human trafficking is regarded as essential. Both the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the EU Directive on Human Trafficking stress the importance of a coordinated approach.⁵⁹² The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 goes so far as to make the recognition, prompt identification and protection of and assistance for victims the first priority, and the establishment of a national and transnational referral mechanism as the first action point.^{593,594}

⁵⁹² Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99; 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 (*OJ* 2011, L 101/1).

⁵⁹³ NRM8; see also §2.2.

⁵⁹⁴ In its action plan in 2003, the OSCE also called on states to formulate national referral mechanisms to protect victims. See Decision 557 of the Organization for Security and Co-operation in Europe of 24 July 2003 containing the *OSCE Action Plan to Combat THB (PC DEC/557)*. In this context, the OSCE’s *Office for Democratic Institutions and Human Rights* (ODIHR) helps countries to draft a national referral mechanism. According to the OSCE’s annual report for 2009, at least 58% of the member states and partner countries had a national referral mechanism in 2008. It is not known how many EU member states have produced a national referral mechanism since then (OSCE 2009).

As regards the protection of victims, in 2013 the European Union produced a clear summary of the rights of victims to protection in *The EU Rights of victims of trafficking in human beings*,⁵⁹⁵ a document that illustrates how the position of the victim has been further strengthened in recent years by means of various EU directives and as a consequence of judgments by the ECHR.⁵⁹⁶ If those rights are to be effectively enforced in the Netherlands, it is important not only to implement them in legislation, but also to specify which agency is responsible for what.

The protection of victims must be guaranteed throughout the chain of responsible organizations and institutions and must be provided from the moment of identification up to and including the period of after-care or – where applicable – the return of victims to their country of origin. Since a large number of agencies are engaged in providing protection for victims, it is important for the responsibilities and procedures for providing that protection to be laid down in a comprehensive document. This is known as a *national referral mechanism*⁵⁹⁷ and should encompass all victims of transnational and national human trafficking, Dutch⁵⁹⁸ and non-Dutch, minors and adults, regardless of the form of exploitation.⁵⁹⁹

Drafting a national referral mechanism is the responsibility of the Minister of Security and Justice as the minister responsible for coordinating measures against human trafficking. The Task Force on Human Trafficking⁶⁰⁰ is ideally placed to play an important role in developing a national referral mechanism, since it already coordinates measures to combat human trafficking and is the consultative body for chain partners, covering the entire spectrum from prevention to the prosecution of human traffickers and improving the position of victims.⁶⁰¹

2.5.2 Urgency of a national referral mechanism in the short term

There are three underlying reasons why a national referral mechanism should be drafted as a matter of urgency. The first is the shortcomings in the protection of minors who are victims of domestic human trafficking.⁶⁰² Whereas rules for the protection of victims of transnational human trafficking have been

595 This publication of the European Union was included as an appendix to the *Revised Draft Council Conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings* (Council of the European Union, Brussels, 13 June 2013, 10966/13), http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Policy%2FRevised_Draft_Council_Conclusions (consulted on 24 July 2013). It follows from priority A, action 4 of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012.

596 For a detailed description, see §2.2.

597 See §2.6 to §2.11 inclusive for a description of current trends in the various aspects of the protection of victims (prevention and identification, criminal proceedings, protection under immigration law, shelter and assistance and possible voluntary return).

598 That the identification and protection of and assistance for Dutch victims should also be covered in this comprehensive document is perfectly obvious, since CoMensha's records show that in the period 2007-2011 a third (32%) of all reported possible victims were Dutch nationals.

599 See §2.4 for forms of exploitation outside the sex industry.

600 On the Task Force on Human Trafficking, see also §3.3.

601 Task Force on Human Trafficking (Establishment) Decree, *Government Gazette* 2008, 47. See also NRM8.

602 See §2.10 for a detailed discussion of the protection of victims of domestic human trafficking.

clearly laid down in various documents, this has never been done for underage victims of domestic human trafficking.⁶⁰³ That is not only contrary to the line taken by the European Commission of providing better protection for children who are victims of human trafficking,⁶⁰⁴ it is also one of the reasons why little is known about this group of victims,⁶⁰⁵ why there is a high risk of revictimization among members of this vulnerable group, and why their willingness to report offences is low.⁶⁰⁶ A national referral mechanism relating to the identification and protection of victims of domestic human trafficking could play an important part in reversing those patterns, since it would create certainty about the procedures to be followed for identifying and protecting victims, for example by making training in recognizing victims mandatory for employees of the relevant agencies.⁶⁰⁷ A national referral mechanism would also set out the specific responsibilities of the various agencies with a view to preventing repeated victimization and increasing the willingness of victims to report human trafficking.

Another factor in favour of producing a national referral mechanism is connected with the growing size of the visible population of victims⁶⁰⁸ and the fact that their number is expected to grow further in the coming years, since more and more agencies are being trained to identify (possible) victims of human trafficking and are also starting to report them more meticulously. This growing number of identified victims will probably increase the pressure on the agencies involved in providing protection for victims. To guarantee continued protection of victims in the coming years, the division of tasks and responsibilities must be clearly laid down in a national referral mechanism.

The last, and most pressing, reason for producing a national referral mechanism in the *short term* is that, until recently, the procedures for protecting victims of transnational human trafficking were laid down

603 For example, none of the documents regulating the protection of victims refers to the Youth Care Agencies or what action should be taken if a minor is admitted to a closed juvenile care institution.

604 It is worrying that in some juvenile care institutions victims are perceived as girls with problems associated with *human trafficking*, or more specifically, *loverboy* problems, rather than as victims. One of the consequences of this is that these girls do not receive the protection they are entitled to under European legislation. This is another reason why it is important for these girls to be treated as victims of human trafficking. See also §2.10.

605 A study by Movisie showed that CoMensha was not well known among youth workers. During training courses, a majority said they were not familiar with CoMensha (Movisie 2013).

606 Other causes are discussed at length in §2.10.

607 For the purpose of recognizing and providing assistance for unaccompanied minor aliens who may be victims, employees of the COA have been offered training by the EMM, in association with CoMensha and Stichting Jade, to raise their awareness of potential signs of human trafficking and inform them of the procedures they should follow to protect possible victims. Staff of the shelters report signs of human trafficking to the COA's Security Information Desk, which collects these reports every month and passes them on to the EMM. See also §2.6.4. See also §2.10 about shelter and assistance for minors (from the Netherlands and other countries) who are victims.

608 In 2011, 1,222 (possible) victims were registered with CoMensha and this number rose to 1,711 in 2012. See also NRM 2012f; Chapter 3; CoMensha 2013.

in a number of separate documents.⁶⁰⁹ Together, these documents described all of the steps that had to be taken to identify and protect victims. However, two recent changes in relation to these documents now make it necessary to develop a national referral mechanism without delay.

On 1 July 2013, a new version of the PPS's Instructions on Human Trafficking entered into force.⁶¹⁰ Like the former version, the new instructions are concerned with the investigation and prosecution of human trafficking, as well as the protection of victims during the criminal procedure.⁶¹¹ However, whereas the former instructions also contained a lot of information about the role of the police and of agencies like CoMensha – which naturally went further than information relating solely to investigations – that is no longer the case.⁶¹² Previously, for example, there was a section on the certification of police officers who interviewed victims of human trafficking and a description of the procedure for reporting (possible) victims to CoMensha, as well as descriptions of the roles of partners in the chain other than investigative agencies and the PPS. Although there are plans to produce a *factsheet* to ensure that this information remains available *within* the PPS, this change does have an impact on the protection of victims.⁶¹³

Another document that contained rules pertaining to the protection of victims has also been amended. This change is connected with the entry into force of the *Modern Migration Policy Act* on 1 June 2013, one of the effects of which was to revise the rules on temporary regular residence for victims of human trafficking (Residency Regulations for Victims of Human Trafficking).⁶¹⁴ The amended regulations now only contain policy rules and no longer include procedural protocols. For example, the residency regulations as laid down in the Aliens Act Implementation Guidelines formerly contained information that was also relevant for chain partners other than the Immigration and Naturalization Service itself. A description of the procedures is still available on the IND's website, however.⁶¹⁵

609 See, for example, the PPS's Instructions on Human Trafficking that applied up to 1 July 2013 (*Government Gazette* 2008, 253) and the former B9 regulation (Aliens Act Implementation Guidelines, 2000, §B9 (April 2001). *Government Gazette Supplement* 2001, 64).

610 *Government Gazette* 2012, no. 26876.

611 See, for example, 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 (*OJ* 2011 L 101/1), Articles 12 and 15.

612 *Government Gazette* 2008, 2718.

613 The policy of the National Police towards human trafficking is laid down in the most recent National Reference Framework for Human Trafficking (2013), which was drafted by the police's National Expert Group on Trafficking in Human Beings (LEM). However, the document only contains additional information (supplementing the PPS's Instructions on Human Trafficking) for the investigative services. See §3.3.3.1 for information about the National Reference Framework for Trafficking in Human Beings (2013). The document is not publicly available.

614 See also §2.8.3.

615 This is an appendix, which, according to the IND, is based on established administrative practice on the basis of the current policy under section 8.3 of the Aliens Act Implementation Guidelines (Residency Regulations for Victims of Human Trafficking), IND (no date) via <http://www.ind.nl/Themas/mensenhandel/verblijfsregelingmensenhandel/Pages/default.aspx> (consulted on 8 August 2013); 'Appendix on Human Trafficking (version of 1 June 2013)', IND (no date), <http://www.ind.nl/Klant-informatie/Documents/bijlage%20bij%20B8.3%20Vc.pdf> (consulted on 28 June 2013).

Although the solutions found by the PPS (an internal factsheet) and the IND (a section on its website) mean that the existing information about responsibilities and procedural agreements has been retained, they cannot prevent the information from losing some of its effectiveness.

In conclusion, the descriptions of procedures are currently fragmented, are not sufficiently accessible, are not binding and are incomplete. This finding demonstrates the need to develop a comprehensive document containing descriptions of the relevant responsibilities and procedural agreements. Such a comprehensive document – a national referral mechanism – is required by European legislation and would establish a basis for a multidisciplinary, *victim-centred* approach.⁶¹⁶

2.5.3 Guaranteeing protection

Some of the subjects that should be covered in a new national referral mechanism are discussed below. It has to be remembered that victims of human trafficking include a variety of categories that can have different needs and with whom different chain partners might be involved. Such differences between victims – for example between underage Dutch victims of loverboys and adult victims of labour exploitation who are living illegally in the country – are extremely relevant for the design of a national referral mechanism, but the need for protection is the same for every group.

Identification

First and foremost, a national referral mechanism should clearly explain the steps that agencies that are likely to encounter (possible) victims can take to protect them. That starts with identification,⁶¹⁷ since a victim can only be helped if he or she is known to the relevant agencies. Knowledge about human trafficking (generated through training, for example) is therefore essential for every agency that could come into contact with (possible) victims.⁶¹⁸ This applies especially for agencies that are involved with minors who might be victims, since they are particularly vulnerable: the Child Care and Protection Board, the Youth Care Agency, social services for juveniles and educational institutions.⁶¹⁹ Measures, also in relation to prevention and identification, are being taken at both the national and international level to reduce the vulnerability of underage victims and provide them with the best possible protection.⁶²⁰

616 For a detailed description of the multidisciplinary approach to human trafficking, see Chapter 3.

617 See, for example, OSCE/ODIHR 2004, p. 59: 'At the heart of every NRM is the process of identifying presumed trafficked persons by different stakeholders and co-operation among stakeholders to ensure the victims' referral to specialized services.'

618 The EU Directive on Human Trafficking (recital 25) says: 'Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work.' See also Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings.

619 See §2.10.

620 See §2.9; §2.10.

Human trafficking is fluid in nature and assumes many different forms; it is therefore essential to constantly review which agencies could play a role in identifying possible victims. One example would be organizations in the health care sector.⁶²¹

Identification by organizations in the health care sector

Health care organizations can play an important role in identifying victims and therefore in the overall effort to combat both sexual exploitation and exploitation outside the sex industry. Since many victims experience physical or mental violence, it is plausible that a large number will come into contact with hospitals, doctors or dentists in the course of their exploitation.⁶²² It is important that organizations in the health care sector know what they can do to combat human trafficking and to whom they can refer (possible) victims for further protection.

When a (possible) victim has been identified, it is important for the relevant partners in the chain to share information so that further steps can be taken, such as conducting an investigation and providing the victim with assistance. Existing protocols for the procedure to be followed when a case of human trafficking has been identified are relevant for the drafting of a national referral mechanism. One example is the protocol of the Repatriation and Departure Service (DT&V) on the procedure for identifying human trafficking when aliens are being returned.^{623,624}

Reporting and registering

A national referral mechanism should also provide that every (possible) victim who is identified must be reported to CoMensha, even by agencies that are not currently required to do so.⁶²⁵ Among other things, this calls for greater awareness of CoMensha's name and its tasks, since it has been found that some organizations are not familiar with it.⁶²⁶

621 See also NRM7 on the role of abortion doctors, for example. See also §3.8.1.

622 See also §2.6.3.

623 See also §2.6.5.

624 See §2.6 for more information about victims and awareness, prevention and identification.

625 The OSCE's handbook mentions a number of elements that should be included in a national referral mechanism. According to the handbook, it should cover forms of cooperation relating first and foremost to identifying suspected victims of human trafficking, but also protection under immigration law, shelter and other forms of assistance, possible return and reintegration and compensation for victims. In addition to the protection of victims and possible victims, a national referral mechanism should also guarantee the protection of witnesses (OSCE/ODIHR 2004, pp. 59-103).

626 See, for example, Movisie 2013.

Duty to report to CoMensha

CoMensha registers all (possible) victims for the purposes of the National Rapporteur's reporting function.⁶²⁷ The police, the Royal Dutch Marechaussee and the Inspectorate SZW have a duty to report a person – at even the slightest indication that he or she is a human trafficking victim – to CoMensha.⁶²⁸ In an earlier report, the National Rapporteur recommended that agencies with a duty to report should comply with it consistently.⁶²⁹ Nevertheless, there are indications that the police, the Royal Dutch Marechaussee and the Inspectorate SZW comply with the reporting requirement in different ways, with the result that (possible) victims are not always reported in the event of similar indications of human trafficking.⁶³⁰ Chapter B8(3.4) of the Aliens Act Implementation Guidelines, for example, provides that the police must report every presumed victim to CoMensha.⁶³¹ The duty to report (possible) victims to CoMensha at even the slightest indication of human trafficking also applies for possible Dutch victims, and also covers cases where CoMensha is not involved in providing shelter or accommodation, so youth care agencies should also have a duty to report. Naturally, Nidos should also be required to report unaccompanied minor aliens to CoMensha.

Cooperation and information exchange

The identification of victims is linked to other aspects of the efforts to combat human trafficking, such as investigation and providing shelter. Coordinated cooperation between agencies that provide shelter and assistance, on the one hand, and investigative services, on the other, is essential.⁶³² After all, a substantial number of shelters and other agencies are involved in protecting victims and consequently play a crucial role in combating human trafficking. The following box text illustrates the close-knit relationship between organizations that provide shelter and assistance and the investigative services.

627 See Aliens Act Implementation Guidelines, 2000, §B8/3.4, *Bulletin of Acts, Orders and Decrees* 2010, 290; *Bulletin of Acts, Orders and Decrees* 2013, 165 (Decree on entry into force): 'The Coordination Centre for Human Trafficking is responsible for the national registration of the number of reported cases of presumed victims to the National Rapporteur on Trafficking in Human Beings for the purpose of the national reporting. Even if the Coordination Centre on Human Trafficking is not involved in providing shelter and accommodation, the police must notify the Coordination Centre on Human Trafficking of the presumed victim for registration.'

628 See CoMensha 2012; Aliens Act Implementation Guidelines, 2000, §B8/3.4, *Bulletin of Acts, Orders and Decrees* 2010, 290; *Bulletin of Acts, Orders and Decrees* 2013, 165 (Decree on entry into force); NRM2012f.

629 NRM2012f, Recommendation 2.

630 CoMensha has also recognized this and mentioned in its 2012 annual report that the duty to report should be more clearly defined (CoMensha 2013).

631 The police's duty to report, for example, was laid down in the PPS's former Instructions on Human Trafficking, *Government Gazette* 2008, 253: 'The chief of police must report victims of every form of human trafficking to CoMensha.' The police's National Reference Framework for Human Trafficking (2013) states: 'Every victim identified by a certified detective shall be reported to CoMensha.' See also CoMensha 2013; NRM2012f,.

632 See, for example, NRM 2012e, which discusses the importance of such coordinated cooperation.

*Victims in the criminal procedure*⁶³³

The victim plays an important role in the criminal procedure and must feel safe and protected before, during and after the procedure. Protecting victims can help to increase their willingness to report offences, and encourage them to make better statements (with more leads for investigations). Another goal of offering protection is to prevent secondary victimization, for example by ensuring that victims are treated correctly by all the agencies they come into contact with.⁶³⁴ In short, close cooperation between agencies that provide shelter and assistance and the investigative services is essential.

Victims must be protected before, during and after the criminal proceedings.⁶³⁵ To guarantee this protection (by providing suitable accommodation and assistance, for example),⁶³⁶ it is important for all the relevant agencies to know what options are available and who they can approach to provide them.

Temporary residence for victims who cannot cooperate with the criminal investigation

One of the purposes of a national referral mechanism is to disseminate knowledge and details of new regulations. For example, foreign victims who are not legally resident in the Netherlands are entitled to temporary residence under Chapter 8(3) of the Aliens Act Implementation Guidelines if they cooperate with a criminal investigation.⁶³⁷ Naturally, the rules on temporary residence (as well as the rules on continued residence) should be incorporated in a national referral mechanism. Since 22 December 2010, victims from other countries who cannot cooperate with a criminal investigation – because of serious threats or for medical or psychological reasons – have also been entitled to a temporary residence permit.⁶³⁸ However, this policy has only been relied on to a limited extent up to now.⁶³⁹ Mentioning this option in a national referral mechanism could increase awareness of the rule among all the chain partners and perhaps lead to it being invoked more often.

633 See also §2.7.

634 See also §2.7. With respect to correct treatment during criminal proceedings, the *Modelregeling inzake passende verblijfsomgeving slachtoffers* [Model rules on appropriate treatment of victims] drafted. See ‘Modelregeling inzake passende verblijfsomgeving slachtoffers’, *Criminal Sector Programme* (no date), <http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-strafrecht/Documents/Modelregeling%20inzake%20passende%20verblijfsomgeving%20slachtoffers.pdf> (consulted on 10 June 2013). This model fleshes out the *Position of Victims in Criminal Proceedings (Further Measures) Act*, which entered into force on 1 January 2011. The treatment of victims is also an issue addressed in the police’s National Reference Framework for Human Trafficking (2013) and the current version of the PPS’s Instructions on Human Trafficking.

635 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 (OJ 2011, L 101/1), Articles 11-16.

636 See also §2.9; §2.10.

637 See also §2.8.

638 In accordance with Chapter B8/3 of the Aliens Act Implementation Guidelines and Article 3.4 (3) of the Aliens Decree 2000. See also NRM 2012f.

639 There were fewer than ten instances in 2011 and 2012 (written information from the IND, 17 July 2012 and 12 October 2012. See also NRM2012f).

A number of measures adopted by the Minister of Health, Welfare and Sport also created uncertainty among organizations that provide shelter for victims about how and when they could provide an interpreter.

Interpreting and translation services

By virtue of Article 12 of the Council of Europe Convention, victims are entitled to an interpreter.⁶⁴⁰ Since 1 January 2012, there has no longer been a central fund for payment of interpreting and translation services.⁶⁴¹ The minister makes an exception for the use of interpreting and translation services for foreign victims in categorical shelters for victims of human trafficking (known as COSM shelters).⁶⁴² Foreign victims who are housed in an institution – not being a specialized shelter – can submit a claim for the costs of an interpreter to the municipality in which the centre is located. The fees of interpreters used for foreign victims who are receiving non-residential care also be reimbursed.⁶⁴³ Nevertheless, the changes that were made and the different rules that apply have caused confusion among organizations that operate non-COSM shelters.⁶⁴⁴

The importance of coordinated cooperation for protecting (possible) victims also extends to after-care, their move to independent accommodation or, in the case of non-Dutch victims, their possible return to the country of origin. Various initiatives have been taken to promote the safe and responsible return of victims. Again, laying down procedures to coordinate these initiatives in a national referral mechanism could further enhance the protection of victims.⁶⁴⁵

The following sections are devoted to trends in the Netherlands relating to the protection of victims, including identification, the position of victims during criminal proceedings, the residency laws, shelter and assistance and the possible return of victims to their country of origin, all of which are subjects that should be covered in a national referral mechanism.

640 Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99, Article 12; 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 (OJ 2011, L 101/1), Article 11 (5).

641 See *Parliamentary Documents II* 2012/11, 32500-XVI, no. 143, in which the minister said, 'Patients/clients (or their representatives) are personally responsible for their command of the Dutch language.'

642 See the letter from the Minister and State Secretary of Health, Welfare and Sport to the Lower House of Parliament of 25 May 2011, *Parliamentary Documents II* 2010/11, reference FEZ-U-3064251.

643 Under certain circumstances, payment can be made by the 'Administrative centre for interpreters for non-resident victims of human trafficking'. See also *CoMensha* 14 January 2013, http://www.menshandel.nl/cms/index.php?option=com_content&task=view&id=492 (consulted on 14 January 2013).

644 See also §2.9.4.

645 See also §2.11.

2.6 Victims and awareness-raising, prevention and identification

2.6.1 Introduction

The three key terms addressed in this section are awareness-raising, prevention and identification.⁶⁴⁶ Prevention refers to measures taken to prevent the occurrence of human trafficking, identification refers to measures taken to ensure the prompt identification of (possible) victims. Both are preceded by the process of awareness-raising, the term that forms a red line throughout this section. Raising awareness of human trafficking has the twin objectives of preventing human trafficking and ensuring that victims of human trafficking are promptly identified so that they can be protected.

The importance of identifying victims, and the relevance of training and education to accomplish this, was discussed in general terms in the previous section. After first discussing various aspects of prevention, this section contains a more detailed review of the possibilities available to specific professional groups or agencies to identify victims, as well as developments in that area, such as the identification of victims by health care agencies and the responsibilities of government bodies to improve the identification of possible victims during the asylum process, from their time in a shelter up to and including possible return to their country of origin. In §2.10, specific attention is devoted to the identification of minors who are victims of domestic human trafficking and the tasks and responsibilities of youth workers.

2.6.2 Prevention⁶⁴⁷

Preventing people from becoming victims of human trafficking will remain on the international⁶⁴⁸ and national⁶⁴⁹ agendas in the coming years.⁶⁵⁰ With regard to the demand side, the EU Directive on Human Trafficking from 2011 provides that member states should establish and/or strengthen policies to discourage demand.⁶⁵¹ It states that member states should consider adopting measures such as making it a criminal offence to make use of services that are the objects of exploitation with the knowledge that

⁶⁴⁶ On the definitions of these terms, see NRM5, §5.3; NRM7, §8.3; NRM8, §2.7.

⁶⁴⁷ The priority given to prevention in national and international efforts to combat human trafficking is described in §2.2.

⁶⁴⁸ 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 (OJ 2011, L 101/1); EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012.

⁶⁴⁹ Task Force on Human Trafficking 2013; *Parliamentary Documents II* 2011/12, 33309, no. 3.

⁶⁵⁰ The National Rapporteur has also devoted attention to prevention in previous reports. This section builds on those findings. See also NRM5, §1.3. That report showed that a lot was already being done in the area of prevention in the Netherlands.

⁶⁵¹ The European Commission plans to produce a report on the legal measures that some member states have taken to criminalize the use of the services of victims of human trafficking pursuant to Article 23 (2) of the EU Directive on Human Trafficking. See EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 9.

the individual concerned is a trafficking victim.⁶⁵² The European Commission also intends to establish a European Business Coalition against human trafficking in 2014, which will concentrate on exploring ways in which companies and other stakeholders can prevent human trafficking, particularly in high-risk sectors.⁶⁵³ Finally, in 2016 the Commission plans to develop models and guidelines on reducing demand for the services of victims, particularly in high-risk sectors such as the sex industry, agriculture, construction and tourism.⁶⁵⁴

Awareness-raising campaign targeted at specific vulnerable groups

To be effective, it is important for prevention projects to take account of the specific characteristics of vulnerable groups. A conference⁶⁵⁵ in Belgrade, which was organized by the Dutch embassy in association with Astra,⁶⁵⁶ and attended by the National Rapporteur and representatives of the National Office of the PPS and the National Police, produced a report containing a recommendation that Serbia should engage the Roma community⁶⁵⁷ and NGOs that work with Roma more closely in the prevention of human trafficking.⁶⁵⁸ A number of inventive measures to prevent human trafficking have been adopted in response to that recommendation. In 2011, for example, a campaign targeted specifically at the Roma community was launched in Serbia. Bearing in mind that some members of the Roma community are illiterate, the Centre for Roma in Belgrade produced a play about human trafficking, which was performed by a Roma theatre group. The play was part of a larger prevention campaign and was performed in both the Serbian and Roma languages. A CD

652 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/JBZ (OJ 2011, L 101/1), recital 25 and Article 18.

653 The role that companies can play is also apparent from examples in the Netherlands. For example, FNV Bondgenoten has called on supermarkets to buy mushrooms from growers with a 'Fair Produce' label. In addition, Rabobank has opted for a sector CAO so that compliance can be monitored more easily by third parties. See J.W. de Groot, 'Supermarkt, koop champignons van kweker met keurmerk!', *FNV Bondgenoten* 14 August 2012, http://www.fnvbondgenoten.nl/nieuws/nieuwsarchief/2012/august/517742-arrestaties_prime_champs/ (consulted on 8 June 2013). Rabobank has also announced that it will make financing of mushroom farms dependent on their possession of the 'Fair Produce' label. A company will only secure financing for expansions or acquisitions if it possesses the label or an equivalent certificate. See 'Minister Kamp overhandigt eerste certificaat Fair Produce', *Fairproduce* (no date), <http://www.fairproduce.nl/index.asp?nieuws=83> (consulted on 4 July 2013).

654 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012, p. 9.

655 This conference was devoted to sharing experiences in raising awareness of human trafficking. The National Rapporteur reported at length on the experiences in the Netherlands.

656 Astra is an NGO engaged in combating human trafficking in South-East Europe (for more information about Astra, see <http://www.astra.org.rs/eng/>) (consulted on 31 July 2013).

657 See EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012, p. 10: 'In 2014 the Commission will launch EU-wide awareness-raising activities targeting specific vulnerable groups, such as women and children at risk, domestic workers, *Roma communities* [italics by National Rapporteur] and undocumented workers.'

658 Astra 2011.

with the songs from the play was used as publicity material during the campaign.⁶⁵⁹ This prevention campaign showed the importance of tailoring measures to specific target groups in the effort to prevent human trafficking.⁶⁶⁰

The EU Directive on Human Trafficking also requires member states to take appropriate action, such as publicity and awareness-raising campaigns and research and education programmes, aimed at preventing people, especially children, from becoming victims of trafficking.⁶⁶¹ However, the EU Strategy towards the Eradication of Trafficking in Human Beings states that little has been done to systematically evaluate the impact of such programmes.⁶⁶² For example, it is not known whether they have achieved their objectives in areas such as bringing about changes in behaviour or attitudes, and thus reducing the risk of human trafficking.⁶⁶³

European Commission and prevention

The European Commission therefore intends to carry out a wide range of prevention projects in the coming years. In 2013, it will conduct a thorough analysis of existing prevention initiatives 'carried out by various actors'.⁶⁶⁴ In the same year, the Commission then plans to formulate EU guidelines on future prevention measures and gender-sensitive information campaigns. In 2014, it plans to launch EU-wide awareness-raising campaigns, targeted mainly at specific vulnerable groups. In 2015, links will also be established with existing awareness-raising campaigns.⁶⁶⁵

659 See 'Third AHT prevention campaign launched', *UN.GIFT Serbia* 21 November 2011, <http://www.ungiftserbia.org/?paged=4> (consulted on 26 June 2013).

660 In February 2012, the film 'Sisters' also premiered in Belgrade. The film tells the story of two Serbian sisters who were victims of sexual exploitation. The campaign was frequently mentioned on television and radio, on Facebook and in various blogs. The film was shown in more than fifteen cities in Serbia and prompted a lot of discussion and debate. The film was also shown during a UN meeting in Vienna in October 2011.

661 Article 18 of 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 (OJ 2011, L 101/1). See also §2.2.2.2.

662 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012, p. 9.

663 *Ibid.*, p. 10: 'Little is also known about the added value, cohesion and consistency of such initiatives and the links between them.' See also Van der Laan et al. 2009, which contains a study into the effectiveness of prevention measures and awareness-raising campaigns in relation to sexual exploitation. According to the study, no substantiated conclusions, positive or negative, could be drawn with respect to the prevention initiatives.

664 The European Commission will perform this analysis as part of the Home Affairs Funding Programme. See EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 10. It is not yet clear what initiatives the European Commission was referring to.

665 *Ibid.*, p. 10.

In the Netherlands, various campaigns and programmes have been launched in relation to sexual and labour exploitation.⁶⁶⁶ Particularly in the area of the loverboy problem, a lot has been done in terms of prevention in the Netherlands.^{667,668} The Netherlands has also been involved in various prevention projects in other regions, including West Africa and Central and Eastern Europe.⁶⁶⁹ However, little is known about the effectiveness of these projects at the moment.⁶⁷⁰

Prevention and labour exploitation

In the area of labour exploitation, an opinion poll carried out among 1,700 people showed that less than 10% of the Dutch population know that human trafficking occurs in the Netherlands.⁶⁷¹ FairWork and the Ministry of Social Affairs and Employment have conducted various awareness-raising campaigns in recent years to highlight labour exploitation in the Netherlands.⁶⁷² Prevention projects are also important for other forms of exploitation, such as forced begging and criminal exploitation.⁶⁷³ Projects to raise awareness about forced begging are particularly likely to generate information, since forced begging takes place in the public domain.⁶⁷⁴

666 See Human Trafficking Task Force 2013; letter from the chair of the Task Force on Human Trafficking to the Minister of Security and Justice of 9 April 2013, http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@160812/taskforce/ (consulted on 9 August 2013).

667 See §2.10 and §3.6.8 for a detailed description of what has been done in the area of prevention in relation to the loverboy problem.

668 The National Rapporteur had earlier recommended that research should be conducted into the effectiveness of prevention projects in the Netherlands and abroad so that a more evidence-based approach could be developed. See NRM5, recommendation 20.

669 See Task Force on Human Trafficking 2013. See also 'Task Force Mensenhandel: Nederland actief in het verder versterking van nationale en internationale aanpak van mensenhandel', OM 17 April 2013, http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@160812/taskforce/ (consulted on 9 August 2013).

670 The report of the UN Committee against Torture recommended that the Netherlands conduct research into the impact of prevention measures in order to further strengthen those measures (UN Committee against Torture (20 June 2013), *Concluding observations on the combined 5th and 6th periodic reports of the Netherlands, adopted by the Committee at its 50th session (6-31 May 2013)*, UN Doc CAT/C/NL/CO/5-6, no. 25 under e).

671 'Consumenten hebben geen idee van moderne slavernij in Nederland', FairWork 18 October 2011, http://www.FairWork.nu/pers/persoverzicht/consumenten_hebben_geen_idee_van_moderne_slavernij_in_nederland.html (consulted on 11 June 2013). According to the same report, 'one in three Dutch people can understand why companies opt to hire the cheapest possible workers.'

672 For example, in 2011, FairWork and the Ministry of Social Affairs and Employment launched the advertising campaign *Hollandse asperges met een crème van moderne slavernij*. In 2010, FairWork also ran a campaign entitled *Buy Responsibly* in association with the IOM, Fairfood and CoMensha. See 'Moderne slavernij, dichterbij dan je denkt', FairWork (no date), http://www.FairWork.nu/actueel/campagnes/moderne_slavernij_dichter_bij_dan_je_denkt.html (consulted on 9 June 2013).

673 See §2.4.6 for a further discussion of these two forms of human trafficking.

674 See also §2.4.6.

One of the risks of initiatives to prevent people from becoming victims is that of stereotyping victims. Awareness-raising campaigns often reinforce the image of the 'stereotypical' victim of human trafficking: that of a young woman who is a victim of sexual exploitation.⁶⁷⁵ Although a great many victims fit that description, stereotyping could mean that persons who do not fit the stereotype are not identified as victims,⁶⁷⁶ with the consequence that a victim fails to receive the protection he or she needs to escape the influence of the trafficker.⁶⁷⁷

Finally, the media play an increasingly important role in raising awareness and preventing human trafficking.⁶⁷⁸ Organizations such as Stichting M.⁶⁷⁹ and FairWork have launched prevention campaigns via social media and elsewhere on the Internet,⁶⁸⁰ and a growing number of television programmes and documentaries are devoted to the subject of human trafficking.⁶⁸¹ In December 2012, the VPRO programme *Keuringsdienst van Waarde*, for example, broadcast a report about workers from Eastern Europe who had been exploited in the Dutch mushroom sector⁶⁸² and *Holland Doc* produced a series of

675 In the study by O'Brien (2012), there is a discussion of three themes that emerge in awareness-raising campaigns and that could lead to the creation of a stereotypical image of a victim of human trafficking. First, the impression is often created that victims of human trafficking are mainly victims of exploitation in the sex industry. Second, the idea is created that all victims are women or girls. A third assumption seems to be that victims of human trafficking are always vulnerable and innocent (O'Brien 2012, p. 316).

676 An additional problem is that the construction of an 'ideal image' of a victim might suggest that there is a hierarchy of different types of victims, and it could also hamper efforts to tackle human trafficking by giving an inaccurate representation of the problem (O'Brien 2012, p. 315). See also Den Bosch Court of Appeal 15 April 2009, *LJN* BI1162, in which the court, apparently basing itself on the stereotype of the victim of a loverboy as a person who no longer goes to school, found that since the victim did go to school she could not have been a victim. See also NRM7.

677 See also §2.7 and §2.8 on the need to see and recognize signs of human trafficking in relation to protection of the victim.

678 Programmes about human trafficking are also made for international audiences. CNN, for example, produces a programme called *The CNN Freedom Project*, which uses various devices to illustrate the manifestations of modern slavery and publicize human trafficking to an international audience; see <http://thecnnfreedomproject.blogs.cnn.com/> (consulted on 9 August 2013). At the request of UNESCO, the National Rapporteur has developed a curriculum on human trafficking for investigative journalists, Dettmeijer-Vermeulen 2013.

679 Stichting M.'s awareness-raising campaign is described in detail in §3.7.4.

680 In 2011, FairWork launched the campaign *goedkopearbeidskracht.nu*. In the most recent campaign, 'bargain hunters are enticed to www.goedkopearbeidskracht.nu via a Boomerang campaign (advertisements on websites such as Speurders.nl and Marktplaats.nl and messages on social media). Visitors are led to believe that they have arrived at the site of an employment agency that pays cleaners 2.50 euro an hour and painters four euro. If they select one of the options for cheap labour, buyers are confronted with a warning that with salaries as low as that there is a threat of modern slavery.'

681 This is a selection from the many programmes and documentaries devoted to human trafficking.

682 See 'Verhalen van Poolse medewerkers in de champignonteelt', *Keuringsdienst van Waarde* [no date], www.keuringsdienstvanwaarde.kro.nl/seizoenen/2012/afleveringen/20-12-2012 (consulted on 11 June 2013).

documentaries about the various manifestations of human trafficking.⁶⁸³ That such programmes can also enhance the identification of victims was illustrated by the documentary about benefit fraud by Bulgarian immigrants in the KRO programme *Brandpunt* in April 2013,⁶⁸⁴ which, among other things, exposed a possible link between this type of fraud and exploitation.⁶⁸⁵

2.6.3 Identification and health care agencies

There is a growing realization that health care agencies could make an important contribution to combating⁶⁸⁶ both sexual exploitation and exploitation outside the sex industry, particularly in terms of identifying victims. Many victims of human trafficking experience physical and mental violence, are required to work long hours and are treated badly, and some are forced to have sex (often unprotected)⁶⁸⁷ and to undergo abortions. It therefore stands to reason that many victims will come into contact with health care providers,⁶⁸⁸ such as hospitals, family doctors, dentists,⁶⁸⁹ etc.,⁶⁹⁰ during their exploitation.

Doctors and identification

The University of Antwerp conducted a small survey into the involvement of family doctors in combating human trafficking. In the survey of 164 doctors, 82% said they had never been confronted with a victim of human trafficking, 67% were not aware of medical complaints that might be related to human trafficking, and 88% were not aware of the existing referral systems.⁶⁹¹

In 2011, an EU project was launched under the leadership of Payoke,⁶⁹² the Belgian shelter organization for victims of human trafficking, to create a system for liaison between the police and health care providers, such as hospitals, family doctors and other physicians, as part of a programme to identify and

683 These programmes can be found at www.hollanddoc.nl (consulted on 4 July 2013).

684 See 'Gratis geld uit Holland', *KRO Brandpunt* 21 April 2013, http://brandpunt.kro.nl/seizoenen/2013/afleveringen/21-04-2013/fragmenten/gratis_geld_uit_holland (consulted on 4 July 2013).

685 See §2.4 for a further description.

686 See the brochure produced by the Belgian government to draw attention to how hospitals can play a role in identifying trafficking victims. The brochure is entitled 'Mensenhandel ... wat te doen', http://justice.belgium.be/fr/binaries/BROCHURE_MENSENHANDEL_NL_tcm421-198794.pdf (consulted on 2 July 2013). See also Zühlke, Kühne & Kirch 2012.

687 A Centre for Sexual Violence has been established in Utrecht to offer medical, psychological and forensic help to victims of sexual violence (see <http://www.centrumseksueelgeweld.nl/> (consulted on 4 July 2013)). There is a similar centre in Nijmegen (see <https://www.umcn.nl/zorg/afdelingen/centrumseksueelenfamiliaalgeweld/Pages/default.aspx> (consulted on 4 July 2013)).

688 Isaac et al. 2011; Chesnay 2013.

689 O'Callaghan 2012; Chesnay 2013; May & Graham 2012.

690 Examples would be abortion doctors, social workers, psychiatrists and psychologists. See also NRM7; NRM 2012f.

691 'Dokters missen te vaak tekenen van mensenhandel', *Mondiaal Nieuws* 31 May 2013, <http://www.mo.be/artikel/payoke-dokters-missen-te-vaak-tekenen-van-mensenhandel> (consulted on 30 June 2013).

692 For more information about Payoke, see its website at <http://www.payoke.be/> (consulted on 30 June 2013). For this project, it collaborated with the Danube University in Krems, Austria. The National Rapporteur was also a partner in the project.

protect victims of human trafficking. The project focused not only on identification of victims by medical professionals, but also evaluated how they could help in protecting victims and combating human trafficking during criminal proceedings, for example. The aim of the project was to develop guidelines for improving the cooperation between the two professional groups.⁶⁹³ For example, during the project a handbook will be written for professionals in the medical and investigative services, as well as for policy makers, on ways of improving cooperation. Members of the professional groups⁶⁹⁴ in a number of member states will also receive training, with the results being used to draft a training module.⁶⁹⁵ A curriculum will also be developed for universities.⁶⁹⁶

The results of the project were expected in the autumn of 2013.⁶⁹⁷ The University of Antwerp and Payoke announced that following this project they would launch a major national research project on human trafficking in November 2013, in which international experts will be consulted about what is needed to create a medical focal point⁶⁹⁸ for doctors on the subject of human trafficking in each country.⁶⁹⁹

It is apparent from both the European project⁷⁰⁰ described above and the needs expressed by health care professionals in the Netherlands⁷⁰¹ that the question they struggle with when they are confronted with victims of human trafficking is when medical confidentiality can and should be violated. In 2012, the foundation SoaAids Nederland⁷⁰² therefore decided to produce guidelines for employees in the health care sector, focusing on the following issues: how to deal with signs of human trafficking, under what

693 Chesnay 2013.

694 Four groups are receiving training: law enforcement professionals, border guards, NGOs and medical professionals.

695 Handy lists of the signs to look for are also being tailored to the specific professional group that might come into contact with victims of human trafficking.

696 It is being developed by the Danube University.

697 For more information about the project, see <http://www.joint-efforts.org/> (consulted on 30 June 2013).

698 This is described by the submitter of the research proposal as a medical information centre that can provide answers to questions submitted by doctors (following e-mail correspondence between the University of Antwerp and researchers for the National Rapporteur on 2 July 2013).

699 Paul van Royen, Dean of the Faculty of Medicine and Health Sciences, University of Antwerp: 'This meshes perfectly with the mission and vision of the faculty, both in its research and its teaching and training of doctors and health care workers, which is to give priority to the quality of care and patient safety, with special attention for the weaker in society and for health and health care in a global context and a multicultural society.' See 'Artsen spelen cruciale rol in strijd tegen mensenhandel', *University of Antwerp* 30 May 2013, <http://www.ua.ac.be/main.aspx?c=.GENEESKUNDE&n=115804> (consulted on 30 June 2013).

700 Payoke advocates the abolition of professional secrecy in Belgium when human trafficking is involved, as has already been done for victims of domestic violence. See 'Dokters missen te vaak tekenen van mensenhandel', *Mondiaal Nieuws* 31 May 2013, <http://www.mo.be/artikel/payoke-dokters-missen-te-vaak-tekenen-van-mensenhandel> (consulted on 30 June 2013).

701 See also M. Ridder-Wiskerke, 'Mensenhandel in de prostitutie en volksgezondheidszorg', *Seksoa* 1 June 2011, <http://www.seksoa.nl/artikelen/mensenhandel-in-de-prostitutie-en-volksgezondheidszorg/> (consulted on 30 June 2013).

702 For more information about SoaAids Nederland, see <http://www.soaaids.nl/> (consulted on 4 July 2013).

conditions can medical secrecy be violated and, finally, what information can or should be shared with whom and when. This project is also designed to create a formal line of communication along which health care professionals and the police can share information about signs of human trafficking. The aim of the project is to advise health care workers who might come into contact with victims of human trafficking about the actions they can take if they encounter signs of human trafficking. The guidelines describe the legal frameworks and provide advice about the steps that should be followed to ensure that a presumed victim receives help and to end the human trafficking situation. According to SoaAids Nederland, the guidelines should be ready for implementation at the end of 2013.⁷⁰³ The guidelines will follow the Model Reporting Code for Domestic Violence and Child Abuse,⁷⁰⁴ which contains a similar step-by-step plan.

2.6.4 Identifying human trafficking in the asylum process

In various reports, the National Rapporteur has expressed her concern about the vulnerability of specific groups, including immigrants (particularly women and children) in asylum centres.⁷⁰⁵ Nevertheless, the identification of human trafficking in the asylum process seems to be limited, as shown, for example, by the number of presumed victims reported to CoMensha by refugee/asylum organizations. On average, only 1% of all reports of presumed victims to CoMensha came from refugee/asylum organizations in the period 2007-2011.^{706,707} This section discusses initiatives to improve the identification of human trafficking at the national level, by the Central Agency for the Reception of Asylum Seekers (COA), and at the international level, by the European Migration Network (EMN).

Identification of human trafficking in the asylum process at the national level

Various organizations work with asylum seekers and would be in a position to observe evidence of human trafficking. With its capacity to identify potential signs of human trafficking during the asylum process at its asylum centres, the COA is one of the principal partners in the chain.⁷⁰⁸ The COA has taken numerous steps to improve the identification of possible victims in order to protect them. In 2005, it published a study entitled *Verbeteren veiligheid vrouwen en meisjes* ['Improving the safety of women and girls']. It followed up this study in 2007 with the project *Veiligheid en weerbaarheid kwetsbare groepen in de opvang* ['Safety and resilience of vulnerable groups in shelters'], in which measures were taken to make the accommodation of asylum seekers safer and to provide training for the residents to increase their resilience. Another objective was to make COA staff members more alert to unsafe situations. In 2006,

703 'The guidelines will be presented at a conference for health professionals, social workers in the prostitution sector, the police, municipalities and the relevant ministries. [...] A focus group will be set up for the purpose of implementation. This should result in an action plan that will be implemented in 2013.' (Ibid.).

704 The Domestic Violence and Child Abuse (Model Reporting Code) Act (*Bulletin of Acts, Orders and Decrees* 2013, 142) entered into force on 1 July 2013 (*Bulletin of Acts, Orders and Decrees* 2013, 247).

705 See NRM7, §4.2.1; §4.2.8; NRM5, Chapter 5.

706 See NRM 2012f, Table B3.1.21.

707 The reports to CoMensha may have been made via an investigative agency such as the police; nevertheless, the National Rapporteur has recommended that every agency (even those that are not required to report possible victims) should report every victim known to them (NRM 2012f, recommendation 2).

708 The National Rapporteur has mentioned the COA as a possible partner in a chain approach to human trafficking for the purposes of identifying victims during the asylum process (see NRM7, §7.2.6).

another project was launched to investigate the role that the COA could play in preventing and suppressing human trafficking.⁷⁰⁹ One of the recommendations to emerge from this project was to increase the knowledge and skills of the COA employees in relation to human trafficking. Others were to improve the process of identifying potential victims and to register signals and report them to the appropriate investigative agencies and to a central reporting centre within the COA. A further recommendation was to improve the chain approach and the sharing of information (in particular the cooperation with the police, the PPS, the Royal Dutch Marechaussee and the IND). The project culminated in the creation of a Safety Reporting Centre in the COA's Placement unit in 2007.⁷¹⁰

In the middle of 2012, the COA introduced a method for recognizing and counselling possible victims of human trafficking. COA employees have received training in learning to recognize signs of human trafficking from the Centre of Expertise for Human Trafficking and People Smuggling (EMM),⁷¹¹ in association with CoMensha and Jade.⁷¹² During the training, the COA employees are also instructed in what they can and should do if they observe signs of human trafficking.^{713,714} Every month, any indications that have been forwarded by the staff of the shelters to the Safety Reporting Centre are collected and reported to the EMM.^{715,716} The EMM says that a significant number of the signals reported by the COA contain information relevant for an investigation.⁷¹⁷ To ensure that the signs continue to be reported, every quarter the contact persons for human trafficking at each COA shelter hold a meeting, where the EMM provides feedback about the quality of the reports and the follow-up to them, including any criminal investigations.⁷¹⁸

709 See also NRM5.

710 Ibid.

711 The EMM is responsible for collecting and analysing strategic and operational information. Coordination and exchange of operational information is arranged in a number of consultative bodies of the police and the PPS, for example during meetings of the National Expert Group on Trafficking in Human Beings (LEM), the Operational Consultation Group on Trafficking in Human Beings (OOM) and meetings of holders of the human trafficking portfolio in the PPS. For information about the EMM, see also §3.3.3.6; NRM8.

712 Although the training was offered to all COA employees, not everyone took up the offer (written information from the COA, 27 June 2013).

713 Written information from the COA, 5 July 2012.

714 See also the TIP Report 2013, p. 279: 'In 2012, the government initiated training for staff working with asylum seekers on ways to identify trafficking victims among this population.'

715 In the context of the disappearance of minors from COA shelters, the State Secretary for Security and Justice mentioned the importance of training for COA staff and of the COA reporting signs of human trafficking to the EMM. See *Parliamentary Documents II* 2012/13, 27062, no. 89.

716 (Possible) victims are also reported to CoMensha. At the moment, the reports are forwarded to CoMensha by the EMM. At the time of writing, however, the possibility of COA sending the reports of possible victims directly to CoMensha was being explored (verbal information from the EMM, 27 June 2013).

717 Persistent signs of human trafficking have been reported by the COA in the last month (reference date: 27 June 2013). They led to one actual case, which was forwarded to the Inspectorate SZW because it involved labour exploitation. At the time of writing, two other cases that might lead to a request for a criminal investigation were being investigated by the EMM.

718 Verbal information from the EMM, 27 June 2013.

The identification of human trafficking in the asylum process calls for intensive cooperation between the organizations that can come into contact with asylum seekers. Special attention should be devoted to identifying human trafficking involving unaccompanied minor asylum seekers, who are particularly vulnerable.^{719,720} Unaccompanied minor asylum seekers who are suspected of being potential victims of human trafficking are placed in protected shelters,⁷²¹ which are provided by a consortium of the COA, the executive organization Stichting Jade Zorggroep and the guardianship agency Nidos. Steps are being taken to improve the chain approach to identifying and providing shelter for unaccompanied minor asylum seekers in protected shelters. Close cooperation between partners that are clear about their role and the optimal exchange of information between the chain partners is essential for the proper functioning of the individual agencies and will ultimately improve the identification and protection of possible victims.⁷²² The chain includes, in any case, the COA, Stichting Jade Zorggroep and Nidos. The measures to improve cooperation within the chain are being directed by Nidos.

Unaccompanied minor asylum seekers

Promising advances have been made in terms of protecting victims and suppressing human trafficking involving unaccompanied minor asylum seekers in the last few years.^{723,724} The National Rapporteur has commenced a study into unaccompanied minor asylum seekers who have been placed in protected shelters because they might be victims of human trafficking.⁷²⁵ This quantitative study covering the period 2008-2012 will also review current developments relating to the protection of unaccompanied minor asylum seekers, such as cooperation between the various partners in the

719 See also NRM7; NRM 2012f.

720 In view of the vulnerability of minors (not exclusively unaccompanied minor asylum seekers), the COA also provides training for children to increase their resilience (written information from the COA, 27 June 2013).

721 The protected shelters accommodate minors from the age of 13. Children up to the age of 12 are placed with a family by Nidos. See also NRM 2012f.

722 This guarantee of the chain approach, for the purposes of identifying possible victims and protecting them, also fits in with the description of the national referral mechanism. See also §2.5.

723 See also pp. 141-144.

724 The aim of the 'protected shelter' project – which is subsidized by the European Refugee Fund and coordinated by the COA in association with various chain partners, such as Nidos, Stichting Jade Zorggroep, the EMM and the police – is to improve the protection of unaccompanied minor asylum seekers. An important result of the project is a new method of counselling for these asylum seekers who might be victims of human trafficking. In addition, COA employees are trained to recognize victims of human trafficking, the protected shelters have been redesigned and the employees of Stichting Jade Zorggroep have been trained in providing support for victims of human trafficking. Finally, a pilot project was carried out at one of the asylum centres to improve the process of transferring residents from protected shelters to regular shelters.

725 There are no statistics about the nature and number of unaccompanied minor asylum seekers who might have been victims between 2010 and the end of 2012. The evaluation of the 'protected shelter' pilot project by the WODC (2010) contained data up to February 2010, and Nidos will report to CoMensha on the figures for 2013.

chain and possible bottlenecks.^{726,727} The need for such a study was underlined by the findings of a UNICEF report in 2013 on the trafficking of children and the protection of underage victims in general.⁷²⁸ Unaccompanied minor asylum seekers were one of the groups covered in the UNICEF survey, but the study did not incorporate the latest developments and no new quantitative study was carried out.⁷²⁹ The National Rapporteur's study is expected to be published in the first half of 2014.⁷³⁰

Identification of human trafficking in the asylum process at the international level

The European Migration Network (EMN)⁷³¹ devoted its third focused study in 2013 to the identification of victims of human trafficking in international residency procedures for aliens. The project was prompted by reports that victims of human trafficking could pass through various phases of the asylum, Dublin and return procedures without the authorities observing potential signs of human trafficking. In the focused study entitled *Identification of victims of trafficking in human beings in international protection procedures*, the EMN investigated whether, and if so how, possible victims of human trafficking are identified and recognized during the immigration procedures in EU member states and in procedures for their forced repatriation (when asylum applications have been rejected). The results of the investigation are intended to help the individual member states implement the EU Directive on Human Trafficking,⁷³² since the directive stresses the importance of prompt identification of victims in the interests of protecting and helping them.⁷³³

726 See NRM8; NRM2012f for more information about unaccompanied minor asylum seekers.

727 The results and recommendations from the European Refugee Fund's 'protected shelter' project were being processed in the second half of 2013. In the middle of 2013, Nidos submitted an application to the European Refugee Fund for a follow-up project designed to create a structure for the cooperation within the chain in relation to the protection of unaccompanied minor asylum seekers. This request was supported by various organizations, including CoMensha, the COA and the National Rapporteur. The project has been approved by the European Refugee Fund (written information from Nidos, 5 August 2013).

728 The report by UNICEF Nederland and Defence for Children-ECPAT Nederland is an update of the 2005 report *Inzicht in uitbuiting; Handel in minderjarigen in Nederland nader onderzocht* ['Insight into exploitation: A further investigation of the trade in minors in the Netherlands'], which described efforts to combat child trafficking and to protect underage victims in the Netherlands (Kaandorp & Blaak 2013).

729 UNICEF used figures provided by CoMensha and the National Rapporteur (NRM 2012f).

730 See also NRM 2012f.

731 The objective of the EMN is to meet the needs for information concerning migration and asylum in the EU member states. It receives financial support from the European Commission, and its network comprises the National Contact Points (NCPs) in addition to the European Commission. The NCP in the Netherlands is part of the IND's Information and Analysis Centre (see also <http://www.emn.nl/Home> (consulted on 9 August 2013)).

732 European Migration Network. Third Focused Study 2013. *Identification of victims of trafficking in human beings in international protection and forced return procedures. Common Template, Draft Final Specifications* (written information from the Netherlands' National Contact Point for the EMN, 26 March 2013).

733 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 (OJ 2011, L 101/1), Article 11 (4).

2.6.5 Identification of human trafficking in return procedures

2.6.5.1 Introduction

This section explains the role of the Repatriation & Departure Service (DT&V) in recognizing signs of human trafficking during the return procedure for aliens who are not living legally in the Netherlands. The DT&V is responsible for arranging the departure (voluntary or forced) of aliens from the Netherlands. As soon as an alien is required to leave the Netherlands, the DT&V conducts a personal interview with that person to draw up a departure plan. In the process, it sometimes encounters signs of human trafficking. If the DT&V determines that there are signs of human trafficking, the so-called D9 procedure starts, the effect of which is to suspend the return procedure until a decision has been made on whether to grant the possible trafficking victim a residence permit.⁷³⁴

This section presents figures on how often the DT&V started the D9 procedure in the period 2009-2012 and the categories of possible victims concerned. The D9 procedure was followed an average of 35 times a year, and the majority of possible victims for whom it was followed (61%) were nationals of African countries, primarily Nigeria, Guinea, Sierra Leone and Ghana. When the DT&V encountered signs of human trafficking, in most cases (65%) a B9 residence permit⁷³⁵ was granted.

In NRM7, the National Rapporteur recommended that the identification – by all the relevant agencies – of human trafficking, particularly of other forms of exploitation, needed to improve. This recommendation also encompassed the DT&V, which can be expected to actively look for signs of human trafficking,⁷³⁶ but in the period from January 2007 (when the DT&V was established) to September 2008, only sixteen possible victims of human trafficking were identified.⁷³⁷ There might have been an improvement in the period 2009-2012, but the identification of human trafficking still demands constant attention. At the end of 2012, the DT&V launched an internal awareness-raising programme with training provided by FairWork,⁷³⁸ which could lead to an improvement in the identification of human trafficking, at least among possible victims held in aliens detention.

2.6.5.2 Policy for identifying human trafficking during the return procedure

The DT&V is the government agency with responsibility for aliens under the following circumstances: when an asylum application has been rejected by the IND, when they are denied permission to enter the Netherlands at the border; when they are living illegally in the country and are placed in aliens detention under the Supervision procedure, when they are living illegally in the Netherlands and are

⁷³⁴ See also NRM7, §8.3.2.

⁷³⁵ The Modern Migration Policy Act entered into force on 1 June 2013, which led to the amendment of the Aliens Decree and the Aliens Act Implementation Guidelines. The rules for victims and witnesses of human trafficking are now laid down in Chapter B8.3 of the Aliens Act Implementation Guidelines (§B8/3); (see *Government Gazette* 2013, 13952). Because the section on identification of human trafficking by the DT&V contains statistics for the period 2008-2012 and the former B9 regulation had not yet been amended, this section refers solely to the B9 regulation.

⁷³⁶ NRM7, recommendation 12.

⁷³⁷ See also NRM7.

⁷³⁸ Written information from the DT&V, 29 May 2013.

placed in detention under criminal law (VRIS⁷³⁹), or when they request the DT&V's mediation with the authorities in their country of origin to secure a replacement travel document. In these situations, the DT&V institutes a procedure intended to result in the alien's departure from the Netherlands, which can be arranged in various ways: they can leave voluntarily without the knowledge of the authorities or they can be deported under supervision (either forcibly or voluntarily), for example after mediation by the DT&V or the International Organization for Migration (IOM).⁷⁴⁰ During the departure procedure, the alien can be placed under the supervision of the Dutch government, in a freedom-restricting location or in aliens detention, for example, in order to prevent their unsupervised departure.

There are occasions when signs of human trafficking are identified during this process. The procedure for identifying human trafficking and the ensuing treatment of possible victims of human trafficking by the DT&V is laid down in the D9 protocol.⁷⁴¹ The DT&V has a human trafficking contact person at all of its locations in the Netherlands.⁷⁴²

Figure 2.1 presents a simplified outline of the D9 procedure.⁷⁴³

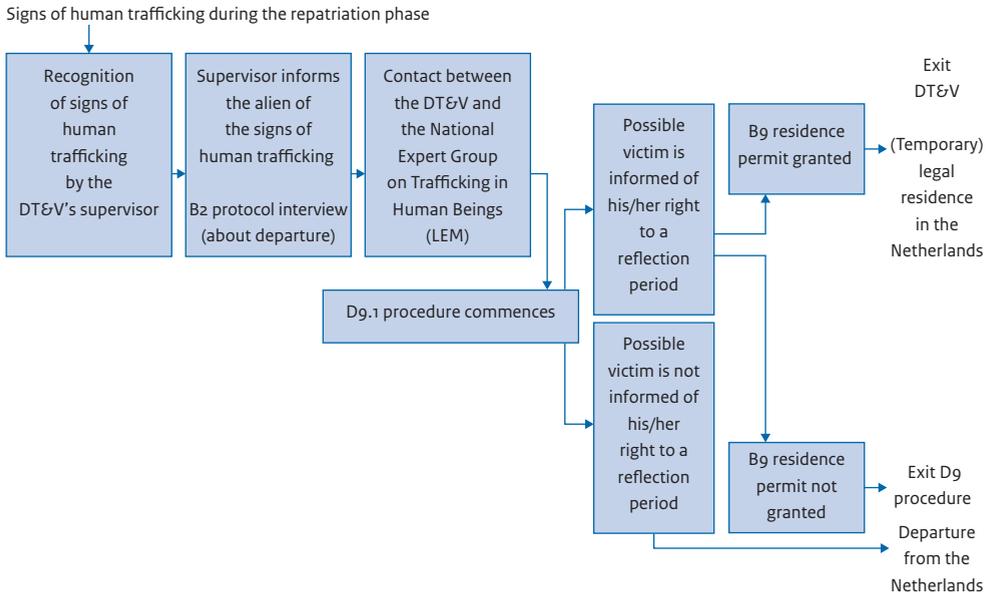
739 VRIS stands for *Vreemdelingen in de Strafrechtketen* [Aliens in the Criminal Law Chain]. VRIS is also the acronym for a unit of the DT&V's Directorate for Expulsion and Detention, which is responsible for deporting illegal aliens who can be expelled from the country and are in detention after being convicted of a crime.

740 See *Rapportage Vreemdelingenketen* [Report on the Aliens Chain] for the period January to December 2012 (Appendix to *Parliamentary Documents II* 2012/13, 19637, no. 1645).

741 The procedure in the D9 protocol is part of an integrated approach to tackling human trafficking. See 'D9 Slachtoffers mensenhandel' protocol, *Repatriation and Departure Service* 1 August 2012, <http://www.dienstterugkeerenvertrek.nl/Kennisbank/Procesprotocollen/#paragraaf5> (consulted on 13 May 2012).

742 Verbal information from the DT&V, 18 March 2013.

743 For a diagram showing a simplified version of the route taken by victims under the B9 regulation, see NRM 2012f.

Figure 2.1 The D9 procedure (victims of human trafficking)⁷⁴⁴

In addition to the DT&V's supervisor, signs of human trafficking of aliens can also be identified by other agencies during repatriation procedures, including officials of the Judicial Custodial Institutions Agency (DJI) responsible for repatriation, medical services, shelters and social services, or they can be reported by the alien personally. Human trafficking can be identified in every return procedure in which the DT&V is involved, including situations where the possible victim is held in aliens detention.⁷⁴⁵ The DJI has adopted 'Working instructions for the identification of human trafficking' to be followed in detention centres. They are designed to ensure that assistance is provided from the moment any suspicion arises that a detainee might be a victim of human trafficking. Since the DJI has contact with the aliens on a daily

744 This figure shows, in simplified form, the possible procedures for aliens who might be victims of human trafficking. In practice, the D9 procedure can be started immediately after the DT&V's supervisor has recognized signs of human trafficking (verbal information from the DT&V, 24 May 2013). For a complete and detailed overview of all the steps that could be taken during the D9 procedure, see the D9 protocol ('D9 Slachtoffers mensenhandel'), *Repatriation and Departure Service* 1 August 2012, <http://www.dienstterugkeerenvertrek.nl/Kennisbank/Procesprotocollen/#paragraaf5> (consulted on 13 May 2013).

745 Since 2005, when it was still called BlinN (Bonded Labour in the Netherlands), FairWork has been helping victims of human trafficking and endeavouring to improve the identification of human trafficking in detention centres. Various reports have indicated that the identification of possible victims in aliens detention needs to be improved. Although a number of steps have been taken to improve the situation since then, nevertheless, the identification of possible victims demands constant attention. The DT&V took an important step when it launched an awareness-raising project in association with FairWork at the end of 2012, involving training in recognizing signs of human trafficking (written information from the DT&V, 29 May 2013); see also NRM7, §4.2.6; NRM8.

basis, with a thorough knowledge of human trafficking its officials are likely to be capable of noticing more indications than an organization like the DT&V.⁷⁴⁶ If the DT&V's supervisor recognizes signs of human trafficking, he discusses them with the alien and makes a report of the interview,⁷⁴⁷ and includes a record of the signs that formed the basis of his suspicions. If it is a human trafficking situation, the regional contact person from the National Expert Group on Trafficking in Human Beings (LEM) is notified. This initiates the D9 procedure, which means that the alien's forced departure is suspended. The alien may decide to make a report of human trafficking. A possible victim is entitled to a B9 residence permit if he or she has reported the offence or has otherwise cooperated with the criminal investigation or prosecution and for as long as the investigation or the trial at first instance continues.⁷⁴⁸ If the possible victim does not report an offence, he or she is entitled to the reflection period of up to three months. If aliens are being held in detention, the IND only offers the reflection period with the approval of the PPS and the police.⁷⁴⁹ During the reflection period, the police are responsible for providing shelter and assistance for the alien concerned (via CoMensha).⁷⁵⁰

If the alien applies for a B9 permit within three months it will generally be granted; a B9 application can only be rejected in exceptional circumstances.⁷⁵¹ The DT&V's departure procedure then comes to an end. If the B9 regulation (or any other application procedure for residence) is not invoked or if legal residence is not granted, a decision has to be made on how to proceed with the repatriation of the alien.

2.6.5.3 Statistics about forced return of victims

This section contains statistics about aliens in respect of whom the DT&V identified signs of human trafficking in the period 2009-2012.

Comments on the figures

At the request of the National Rapporteur, the DT&V delivered the databases for the D9 procedure and they have been analysed. There are a number of reservations to be expressed about the statistics in this section. First, the database on aliens in the D9 procedure is not representative of the total number of possible victims of human trafficking involved in repatriation procedures, since indications of human trafficking might not have been entered in the DT&V registration system. They might have been reported to the police, however, so the reflection period might still have been offered or an alien might still have been granted a B9 residence permit.⁷⁵² It is also possible that signs of human trafficking were not recognized at all during the return procedure. In practice, there are still signs that there is room for improvement in awareness of human trafficking and the identification of possible victims by DT&V's

746 Judicial Custodial Institutions Agency, *Werkinstructie signaleren mensenhandel* [Working Instructions for the Identification of Human Trafficking] (received from the DJI, 10 January 2013).

747 See the 'B2 Vertrekgesprek' protocol, *Repatriation and Departure Service* 1 August 2012, <http://www.dienstterugkeerentvertrek.nl/Kennisbank/Procesprotocollen/#paragraph5> (consulted on 13 May 2012).

748 See also NRM 2012f.

749 Aliens Act Implementation Guidelines, 2000, §B8/3.4, *Bulletin of Acts, Orders and Decrees* 2010, 290; *Bulletin of Acts, Orders and Decrees* 2013, 165 (decree on entry into force).

750 See NRM 2012f, Chapter 4 for more information about the reflection period.

751 See NRM 2012f.

752 Verbal information from the DT&V, 15 March 2013.

supervisors.^{753,754} The DT&V used to work regularly with FairWork, but FairWork has not been present in detention centres for some time. The identification of human trafficking in aliens detention could be improved by providing training for officers employed in detention centres in the recognition of human trafficking. At the end of 2012, the DT&V launched an awareness-raising project, which also included training provided by FairWork.⁷⁵⁵

A second reservation is that the DT&V has limited oversight of the actual return of aliens. It is possible for aliens to disappear and to be living illegally in the country or to return to their country of origin or move to another country independently without the knowledge of the DT&V. Aliens do not always depart under the DT&V's supervision, which makes it impossible to specify the departure category into which some aliens fall.^{756,757}

A third reservation is that these databases provide no basis for reaching conclusions about departure procedures (forced or voluntary) involving possible victims of human trafficking to whom a B9 permit has been previously granted. This section contains only information about the identification of human trafficking during procedures for the forced repatriation of aliens.⁷⁵⁸

753 Ibid.

754 Every government agency is responsible for recognizing signs of human trafficking. See, for example, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011, L 101/1), recital 25: 'Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could, depending in local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work'. See also Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99. The importance of identification by various government agencies is also apparent since the judgment in *Rantsev v. Cyprus and Russia*. The European Court of Human Rights formulated a number of obligations for the Council of Europe's member states in relation to combating human trafficking (investigation and prosecution, as well as prevention, protection of victims and international cooperation). See also ECHR 7 January 2010, no. 25965/04, with notes by M. Boot-Matthijssen, *NJCM-Bulletin* 2010, 501. See also NRM8.

755 Written information from the DT&V, 29 May 2013.

756 See also Figure 2.7.

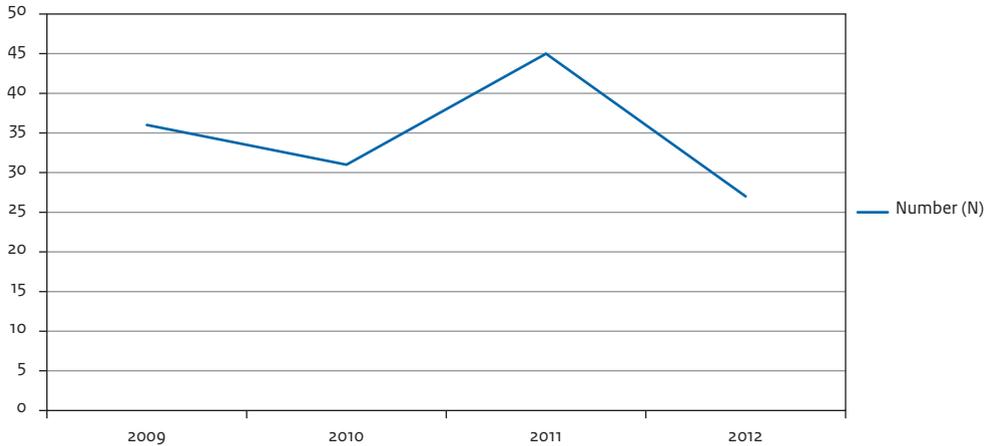
757 Verbal information from the DT&V, 15 March 2013.

758 In theory, this would be possible if information about the B9 regulation (which the National Rapporteur receives) could be linked to the DT&V's registration systems. If the National Rapporteur's recommendation – that it should be possible to monitor possible victims of human trafficking during procedures under immigration law (NRM 2012f, recommendation 5) – is followed, any departure procedures involving these aliens could also be analysed. The IND's new registration system (INDiGO) could perhaps facilitate this.

Number of identified possible victims during the return procedure

The following figure shows how often victims were identified by the DT&V during the return procedure in the period 2009-2012.⁷⁵⁹

Figure 2.2 Number of identified possible victims during the return procedure (2009-2012)



On average, the D9 procedure was followed approximately 35 times a year following the identification of a possible victim of human trafficking. As the figure above shows, the number fluctuates. The number of identifications peaked in 2011 (N = 45) and was smallest in 2012 (N = 27). As mentioned above, the numbers in Figure 2.2 are not representative of the total number of possible victims of human trafficking involved in a return procedure, since not every employee and agency with whom an alien could come into contact during the repatriation procedure recognizes signs of human trafficking, and if they do recognize them, they do not always register them.⁷⁶⁰ There has been a distinct rise in the number of victims identified by the DT&V since it was established in January 2007. In the period up to the end of September 2008, only sixteen possible victims of human trafficking were identified.⁷⁶¹

Gender

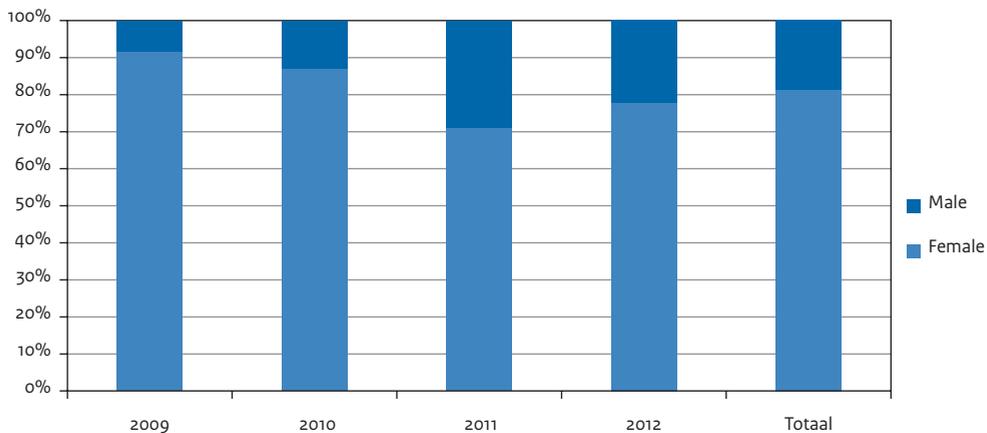
The following figure shows the gender of the aliens for whom the D9 procedure was started in the period 2009-2012.⁷⁶²

⁷⁵⁹ See Table B3.1 for a complete overview of the number of possible victims of human trafficking identified during the return procedure (2009-2012).

⁷⁶⁰ See also the comments on the figures in this section.

⁷⁶¹ All sixteen identified possible victims were women and they came from China (8), Nigeria (5), Armenia (1), Ghana (1) and Sierra Leone (1). See also NRM7.

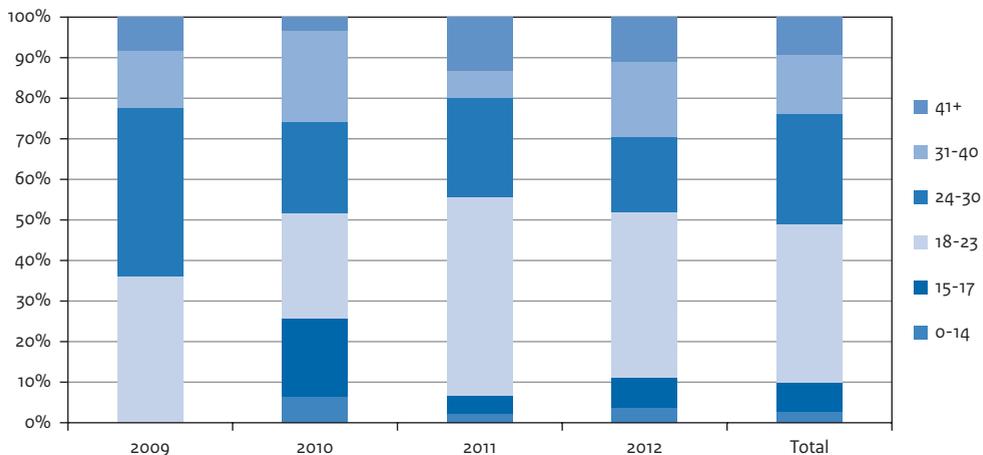
⁷⁶² See Table B3.2 for a complete overview of the proportions of male and female aliens who entered the D9 procedure in 2009-2012.

Figure 2.3 Gender (2009-2012)

The vast majority of the aliens were female, averaging 81% (113) in the period 2009-2012.

Age

The following figure gives a breakdown by age (at the time the D9 procedure started) of the aliens for whom the D9 procedure was followed in the period 2009-2012.⁷⁶³

Figure 2.4 Age categories (2009-2012)

⁷⁶³ See Table B3.3 for a complete overview of the age groups of the persons who entered the D9 procedure in 2009-2012.

The largest group of aliens for whom the D9 procedure was followed were between 18 and 23 years of age. On average, this group accounted for 39% (= 54) of the total in the period 2009-2012. Minors accounted for 10% (= 14), on average. The proportion of minors in the total number of victims reported to CoMensha was generally slightly higher in the individual years.⁷⁶⁴ In 2010, however, a larger proportion (26%) of minors (= 8) entered the D9 procedure than in other years.⁷⁶⁵

Nationality

The following table shows the top three nationalities of aliens for whom the D9 procedure was started in the period 2009-2012.⁷⁶⁶

Table 2.1 Top three nationalities⁷⁶⁷

	2009	2010	2011	2012	Total
Nigerian	2	1 st	2 nd	1 st	1 st
Chinese	1		3 rd	1 st	2 nd
Guinean			1 st		3 rd
Ghanaian		1 st			
Congolese	3				
Mongolian		3 rd			
Ugandan			3 rd		
Sierra Leonean			3 rd	1 st	
Surinamese			3 rd		

There were 38 different nationalities reported during the period 2009-2012. The first three nationalities in order of ranking were Nigerian, Chinese and Guinean. The majority, 61% (85) in the period 2009-2012, were nationals of an African country, primarily Nigerian (17%), Guinean (9%), Sierra Leonean (8%) and Ghanaian (5%). This largely corresponds with the proportion of persons with African nationalities in the data for the reflection period, B9 applications and B9 permits granted.⁷⁶⁸

Figure 2.5 shows the percentages of the three top-ranked nationalities.

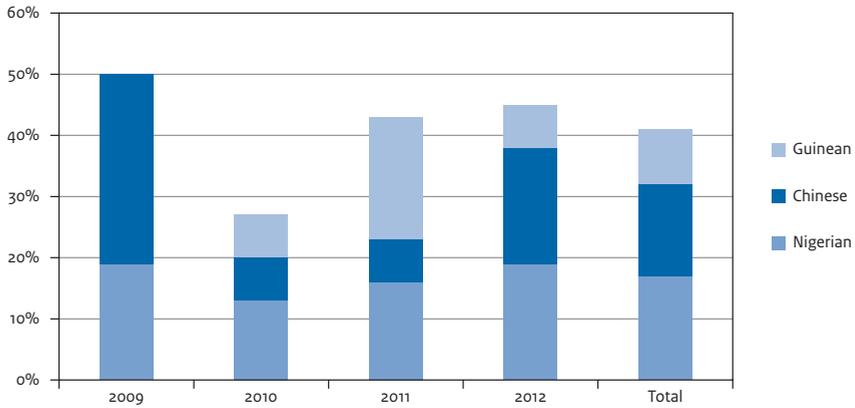
⁷⁶⁴ The proportion of minors in CoMensha's records are as follows in the individual years: 2009: 12% (= 111); 2010: 15% (= 152); 2011: 16% (= 195). See also NRM 2012f.

⁷⁶⁵ These include one person aged one and one person aged three. These were probably children of a suspected victim of human trafficking who entered the D9 procedure.

⁷⁶⁶ See Table B3.4 for a complete overview of the nationalities of aliens who entered the D9 procedure in 2009-2012.

⁷⁶⁷ This is the nationality reported by the alien at the time of registration with the IND (in the case of an asylum history) or when encountered by the police or the Royal Dutch Marechaussee (written information from the DT&V, 23 April 2013).

⁷⁶⁸ See NRM 2012f. These are statistical data for the period 2007-2011. The National Rapporteur does not yet have any data for the B9 regulation for 2012.

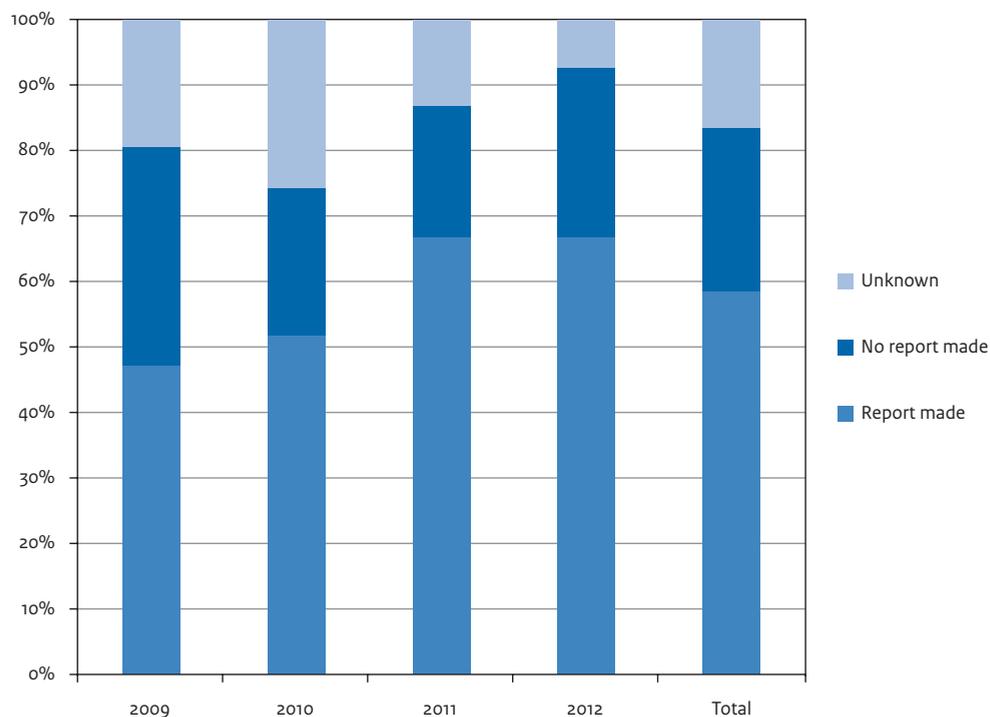
Figure 2.5 Nationality (2009-2012)

On average, Nigerians accounted for 17% of all aliens entering the D9 procedure in the period 2009-2012. The large share of Chinese immigrants in 2009 (31%, = 11) is noteworthy, as is the large proportion of Guinean refugees in 2011 (20%, = 9). It is not known whether this was a single group of possible victims.

Reporting of human trafficking offences by aliens entering the D9 procedure

The following figure shows the extent to which aliens reported offences after they had been admitted to the D9 procedure in the period 2009-2012.⁷⁶⁹

⁷⁶⁹ See Table B3.5 for a complete overview of reports of offences by aliens after they entered the D9 procedure (2009-2012).

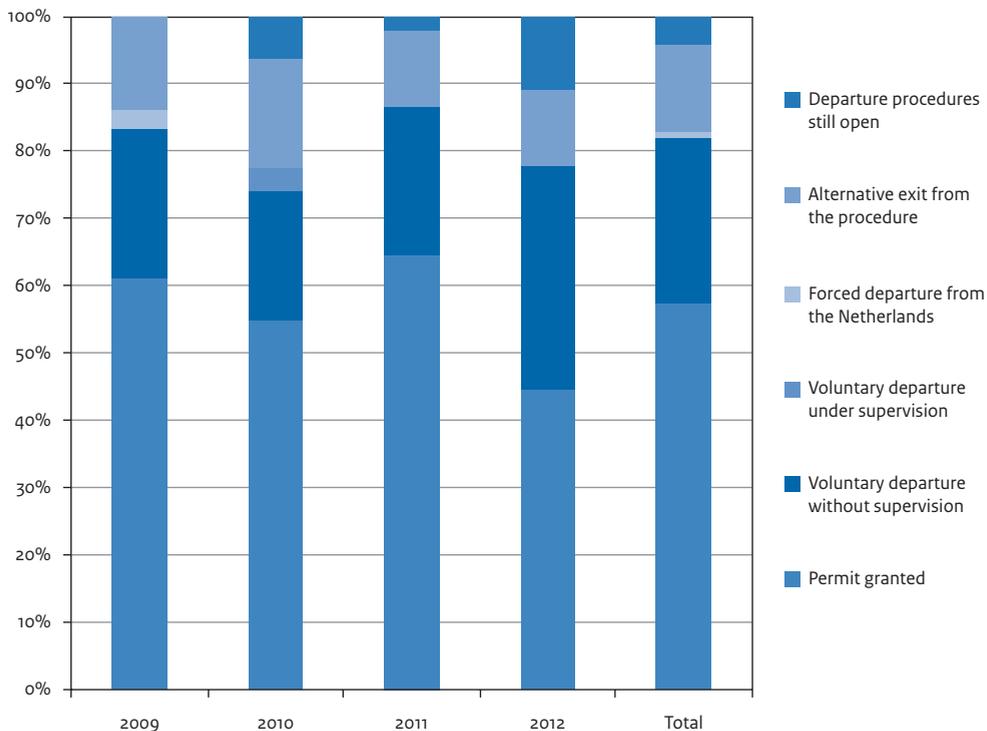
Figure 2.6 Report of human trafficking offence (2009-2012)

There is an evident upward trend in the proportion of aliens who have reported a human trafficking offence. In 2009, at least 47% (= 17) made a report of human trafficking. That figure rose to 67% in 2011 and 2012 (= 30 and 18, respectively). Not everyone who made a report remained in the Netherlands; the possible victims may have decided to return to their country of origin after reporting an offence.

Departure categories of aliens

The following figure shows the departure categories of aliens for whom the D9 procedure was started in the period 2009-2012.⁷⁷⁰

⁷⁷⁰ See Table B3.6 for a complete overview of the departure categories of the aliens who entered the D9 procedure in 2009-2012.

Figure 2.7 Departure categories of aliens who entered the D9 procedure (2009-2012)

Most aliens 58% (= 80) who entered the D9 procedure in the period 2009-2012 were granted a residence permit in the Netherlands. On average, a quarter (= 34) departed voluntarily without supervision by the DT&V, which means that they left for an unknown destination (on checking it was found that they were no longer living at their last known address, but there was no proof of their departure). In 2009, one alien was forced to depart⁷⁷¹ and one left voluntarily with the help of the IOM.⁷⁷² At the time of departure, the DT&V informs aliens of the possibility of receiving assistance from the IOM, which runs special repatriation programmes for victims of human trafficking.^{773,774} If a residence permit is granted, it can be one of several types of regular permits, but the DT&V registers only B9 permits.⁷⁷⁵

771 Forced return occurs when the alien is not entitled to live legally in the Netherlands.

772 The category 'Alternative exit from the procedure' refers to aliens who made a new asylum application or another regular application, whereby they no longer fell under the responsibility of the DT&V (see also Table B3.6).

773 See also §2.11.

774 'D9 Slachtoffers mensenhandel', *Repatriation and Departure Service* 1 August 2012, <http://www.dienstterugkeerenvertrek.nl/Kennisbank/Procesprotocollen/#paragraph5> (consulted on 13 May 2012); verbal information from the DT&V, 15 March 2013; written information from the DT&V, 23 April 2013.

775 The other regular permits are not specified in the DT&V databases (written information from DT&V, 23 April 2013).

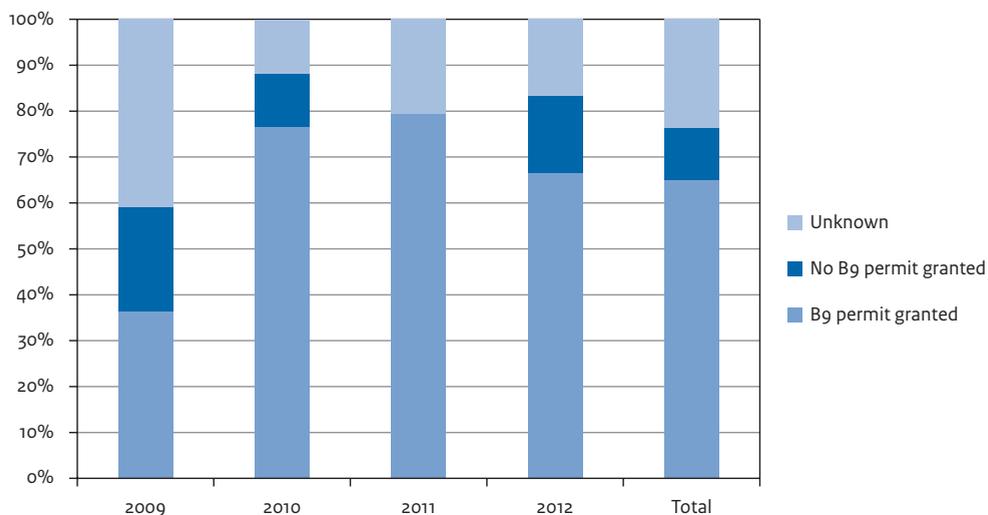
Figure 2.8 Number of B9 permits granted in the departure category 'Permit granted' (2009-2012)

Figure 2.8 shows that if the alien was granted a residence permit, in most cases it was a B9 permit.⁷⁷⁶ On average, in the period 2009-2012, at least 65% (= 52) of the total number of aliens who received a residence permit after following the D9 procedure were granted a B9 permit.

2.7 Victims and criminal proceedings

2.7.1 Introduction

The victim plays an important role in the criminal procedure. To increase the willingness of victims to make a statement and prevent secondary victimization, it is important for victims to feel safe and that they are protected before and during criminal proceedings. This also means that victims must be able to report an offence safely, without fear of being prosecuted.

The protection of victims has improved in recent years with the further anchoring of the position of victims in international and national legislation (§2.7.2). Their rights must also be adequately implemented in practice. The main aspects requiring attention are connected with the reporting of offences, the correct treatment of victims and the prevention of secondary victimization (§2.7.3).

2.7.2 Developments in national and international legislation

Growing attention has been devoted to the position of the victim in recent years, at both the national and international level. The statutory framework for victims in general has been further refined by the Victims' Status (Legal Proceedings) Act (hereinafter abbreviated to the Victims' Status Act) in the Neth-

⁷⁷⁶ It seems that only 36% (= 8) were B9 permits in 2009, but in that year 41% (= 9) were registered as 'unknown', so for that year no reliable conclusions can be drawn about whether or not B9 permits were granted.

erlands, and specifically for victims of human trafficking in the EU Directive on Human Trafficking.⁷⁷⁷ The protection of victims has been further enhanced with the implementation of the European Directive of 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.⁷⁷⁸

It follows from the EU Directive on Human Trafficking that victims of human trafficking must be offered a high degree of protection, regardless of which member state they are in and having regard to the guarantees provided to ensure a fair trial for the suspect. In this context, the Directive on Human Trafficking also refers to the Framework Decision on the standing of victims in criminal proceedings from 2001,⁷⁷⁹ which elucidates what the scope of that protection should be. For example, during the criminal proceedings the victim has the right 'to be treated with respect for their dignity, the right to speak during the hearing and receive information, the right to understand and be understood, and the right to be protected at the various stages of the proceedings.'⁷⁸⁰ This framework decision also formed the basis for the implementation of the Victims' Status Act.^{781,782}

With the entry into force of the Victims' Status Act on 1 January 2011, the victim's standing as an independent participant in legal proceedings was anchored in Dutch criminal procedural law and provisions that had previously only been included in policy rules were codified.⁷⁸³ The act marked a transition from the perception of the victim purely as an instrument in the process of arriving at the truth to that of an independent participant with personal interests in the proceedings.⁷⁸⁴ This has brought about

777 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 (*OJ* 2011, L 101/1). This directive also includes separate provisions on vulnerable victims, in particular children.

778 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (*OJ* 2012, L 315). The directive must be transposed into Dutch legislation before 16 November 2017.

779 Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (*OJ* 2001, L 82/1).

780 See 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 (*OJ* 2011, L 101/1), recital 19, which refers explicitly to Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (*OJ* 2001, L 82/1). See recital 4 in this Framework Decision.

781 *Bulletin of Acts, Orders and Decrees* 2010, 1; Parliamentary Documents on the subject can be found at: <https://zoek.officielebekendmakingen.nl/behandeldossier/30143>.

782 *Parliamentary Documents II* 2004/05, 30 143, no. 3.

783 For example, some provisions that were previously only included in the PPS's Instructions on the care of victims drawn up by the Board of Procurators General have now been codified (*Government Gazette* 2010, 20746).

784 Appendix to *Parliamentary Documents II* 2012/13, 33552, no. 2, p. 18.

changes in the procedures followed by the judiciary and the PPS.^{785,786} For example, the Victims' Status Act contains provisions relating to the rights of the victim to inspect case documents, to add documents to the case file, to be represented by a lawyer and to speak during the trial.⁷⁸⁷ Although the Netherlands complies with the European requirements with this legal amendment, the rights of victims are still not – despite every effort – always properly respected in practice.⁷⁸⁸ The next section discusses this point in more detail.

2.7.3 Developments in practice

A study by the WODC in 2010 showed that the views of public prosecutors and judges concerning the position of victims in general (not specifically victims of human trafficking) in criminal proceedings 'ranged from "the situation is fine and should remain as it is" to "it has to change"'.⁷⁸⁹ The researchers said that this was particularly noticeable in the interpretation of the principle that 'a victim must be regarded as a victim until the opposite has been proved'.⁷⁹⁰ According to the researchers, although judges and public prosecutors were willing to consider the interests of victims, they were still unsure precisely what was expected of them in that regard. 'Particularly among judges, there seems to be no consensus on this point. There also seems to be little or no discussion among judges about the position of victims and their own role in relation to them.'⁷⁹¹

More recent publications, such as the *Black Book* published by Stichting LANZS in 2011 and 2012⁷⁹² and the report by the National Ombudsman, *Spelregels voor het omgaan met victims* [Ground rules for dealing with victims] in 2012, also show that the protection of victims in the course of criminal proceedings still requires attention. For example, according to the Ombudsman's report, the police and the PPS still sometimes fail to show sufficient regard for the victim's interests.⁷⁹³ In a letter to the Speaker of the Lower House of Parliament, the State Secretary for Security and Justice wrote that 'things still too often

785 The explanatory memorandum to the Victims' Status Act states that the requirement of treating victims correctly is not confined to the PPS and judiciary (*Parliamentary Documents II 2004/05*, 30143, no. 3). It was decided to adopt a standard instruction in order to emphasize that the specific responsibility of the public prosecutor for the proper treatment of victims extended to the police during the investigation and to the staff of the PPS office responsible for providing help for victims (Appendix to *Parliamentary Documents II 2012/13*, 33552, no.2, p. 18).

786 To the extent that they had not already changed in practice, since many of the rights were already laid down in policy rules.

787 *Parliamentary Documents II 2004/05*, 30143, no. 3, p. 10.

788 Also according to *Parliamentary Documents II 2012/13*, 33552, no. 2; Appendix to *Parliamentary Documents II 2012/13*, 33552, no. 2; Stichting LANZS (2012); verbal information from the PPS, 22 May 2013.

789 Wijers & De Boer 2010, p. 148.

790 'Nevertheless, in a small number of cases there might be a false report or complaint. However, that is no reason not to assume that the victim is acting in good faith and no reason to automatically treat all victims with reserve' (*Parliamentary Documents II 2004/05*, 30143, no. 3, p. 6); This principle is derived from the 'presumption of innocence' for offenders (Wijers & De Boer 2010, p. 148).

791 Wijers & De Boer 2010, p. 146.

792 Stichting LANZS 2011; 2012.

793 See <http://www.nationaleombudsman-nieuws.nl/nieuws/2012/slachtoffer-voelt-zich-onzichtbaar-in-het> (consulted on 10 June 2013).

go wrong in day-to-day practice'.⁷⁹⁴ According to the State Secretary, a change of culture was needed in the criminal law chain, whereby the views regarding the victim are translated into concrete actions, the effects of which are felt by the victim.

The PPS has made an active effort to enhance the protection of all victims – not specifically victims of human trafficking – during criminal proceedings in recent years. First and foremost, its own internal structure has been organized to accomplish this. A national portfolio holder for Victim Care has been appointed, as well as a public prosecutor responsible for victim care in each of the PPS's offices. In 2011, case coordinators were also appointed,⁷⁹⁵ whose task is to support victims in serious cases such as human trafficking:⁷⁹⁶ The case coordinator is the principal contact person for the victim,⁷⁹⁷ meets the victim at the court and keeps the victim informed about the course of the proceedings.⁷⁹⁸ In principle, a case coordinator is assigned to every human trafficking case. In 2008, the PPS also launched a network of victim support desks, which are run in association with the police and Victim Support Netherlands. There are now eleven victim support desks throughout the Netherlands. In its annual report for 2012, the PPS also said it would continue to endeavour to improve the protection of victims in criminal proceedings on the principle that 'the PPS prosecutes the suspect, but is there to help the victim'.

Specifically with regard to victims of human trafficking, in his 'vision of the victim' the State Secretary wrote that general policy is not enough for this vulnerable group and specific policies are required.⁷⁹⁹

794 *Parliamentary Documents II 2012/13*, 33552, no. 2. See also the two appendices that were attached to the aforementioned letter to parliament, i.e., 'Recht doen aan slachtoffers' [Justice for victims] and 'Reactie op het boek van mr. R. Korver "recht van spreken"' [Reaction to the book "Right to Speak" by |R. Korver] (Appendices to *Parliamentary Documents II 2012/13*, 33552, no. 2).

795 Each office has between three and five case coordinators and for the last two years they have been deployed entirely to provide support and counselling for victims, including victims of human trafficking (verbal information from the PPS, 22 May 2013).

796 Stichting LANZS says that 'there is now a clear point of contact for both the legal advisers and the clients (the victims), which is regarded as positive. The legal profession stresses, however, that direct contact with a public prosecutor should remain possible. This is sometimes prevented' (Stichting LANZS 2012, p. 1).

797 According to the current instructions, victims of serious crimes must be given the opportunity to meet with the public prosecutor prior to the hearing. At that time, the public prosecutor can explain what offences have been included in the writ and what sentence he intends to demand, and will often also explain what will happen during the hearing. Obviously, it will not be an easy conversation. Explanatory Memorandum to the Victims' Status Act (*Parliamentary Documents II 2004-2005*, 30143, no. 3, p. 10).

798 Both legal advisers and victims are positive about the case coordinators. In the LANZS Black Book, however, it is stressed that lawyers must still be able to communicate directly with the public prosecutor (Stichting LANZS 2012, p. 1).

799 In connection with this specific policy, the Ministry of Justice commissioned a leaflet and a website was launched to inform victims of human trafficking about their rights and important procedures (Appendix *Parliamentary Documents II 2012/13*, 33552, no. 2, p. 11).

The PPS has also said that it will devote special attention to victims of human trafficking in the coming period.⁸⁰⁰

In the remainder of this section, two aspects of the protection of victims of human trafficking before and during criminal proceedings (i.e., the correct treatment of victims and prevention of secondary victimization) will be analysed to explore how victims of human trafficking are protected in practice and the latest developments in that area.⁸⁰¹

Correct treatment of the victim

There have been improvements in terms of the correct and respectful treatment of victims by the PPS and the judiciary in recent years. For example, practically every victim who requests it is informed of changes in the custodial status of the perpetrator in their case.⁸⁰² A review is currently underway into how the process of keeping victims informed can be improved further, particularly in the pre-trial stage; it has been found that victims are not always informed of the suspension of a suspect's pre-trial detention, for example.

Victims (and their lawyers) are also not always assigned their own seat at a hearing and there have been reports of victims being confronted with the accused in their case in court.⁸⁰³ Furthermore, victims are entitled to receive a copy of the complaint and/or the official report of the offence but do not always receive them in the correct manner.⁸⁰⁴ It is also sometimes apparent from the formulation of the judgment that the judge was not sufficiently conscious of the fact that a victim would also read it.⁸⁰⁵

An important aspect that calls for improvement is the treatment of victims during the hearing of the case, starting with the reception of the victim at the courthouse. To supplement the Victims' Status Act, the Council for the Judiciary has produced a handbook setting out how the ushers at courthouses

800 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012, L 315), recital 57, which explicitly states that 'particular care should be taken when assessing whether [victims of human trafficking] are at risk of such victimization, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures'.

801 See §2.4.7 for a detailed description of the principles of non-prosecution and non-punishment.

802 The annual report of the PPS's Information Point on the Course of Detention [*Informatiepunt Detentie Verloop*, IDV] shows that victims are informed in 96% of cases. See also the PPS's annual report for 2012 (PPS 2013).

803 §2.1 of the Instructions on Human Trafficking states that visual contact between the victim and the suspect must be avoided (*Government Gazette* 2013, 16816).

804 The examples are taken from the LANZS Black Book (Stichting LANZS 2011; 2012) and the Ombudsman's report (Ombudsman 2012). See these publications for other examples.

805 'Sometimes, for example, the court finds in favour of the defendant that the case involved a "relatively short period of commission", even when that period had endured for several months, or that the suspect had earned "relatively little income" with respect to one or more victims. Without wishing to detract from the merits of these findings, they are sometimes expressed in terms that are, for the reader of the judgment (and hence also for the victim), unfortunate' (NRM 2012d).

should act to ensure that victims are received properly, appropriately and professionally.⁸⁰⁶ This model, according to the Council, would also establish a uniform procedure for the reception of victims at every courthouse in the country. For example, the model also includes a rule that every victim who desires it should have a permanent seat in the courtroom, although, in practice, not every courtroom is designed to allow for that.

Contact between victim and suspect

Proper treatment of victims starts with welcoming them properly at the courthouse, recognizing their names and providing a separate waiting room for them. The usher must then ensure that the victim does not encounter the suspect and should accompany the victim to the pre-agreed permanent seat in the courtroom before other members of the public can enter the courtroom. Every courtroom should have a designated place where the victim and his or her lawyer can sit, which should be positioned in such a way as to avoid any unwanted confrontation between the victim and the suspect. The ushers, the judges, the court clerk and the public prosecutor are all aware of where the victim is seated. The victim should also be informed of the possibility of moving to another seat. Some victims say in advance that they want to avoid eye contact with the suspect, so if the courtroom does not have the facilities to prevent that eye contact the presiding judge can instruct the suspect to avoid it. If the courtroom has an extra public gallery that is partitioned off with a glass screen, the victim should preferably be partitioned off from the accused and his or her sympathizers. In consultation with the victim, it can be decided who will be allowed to sit in the courtroom and who will have to sit in the partitioned-off gallery. If the victim expresses an urgent desire to attend the hearing out of sight of the suspect and the available courtroom does not have the facilities for this, it may be decided to erect a screen around the victim.⁸⁰⁷

On paper, these arrangements seem adequate. Nevertheless, as mentioned previously, there are still indications that they are less so in practice. It is also not clear whether, and if so how, these rules can be applied during the preliminary judicial inquiry. The model regulation provides for an evaluation of the procedures.

Naturally, however, laying down procedures and rules for the proper treatment of victims is not enough. Both the judiciary and the PPS are therefore also devoting attention to raising awareness and changing the culture in court.⁸⁰⁸ Only then can every victim count on correct treatment.

806 On 22 February 2012, the 'Modelregeling inzake passende verblijfsomgeving slachtoffers' [Model Regulation on the appropriate treatment of victims] was presented on the European Day of the Victim. The model can be found at www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-strafrecht/Documents/Modelregeling%20inzake%20pas-sende%20overblijfsomgeving%20victims.pdf (consulted on 2 August 2013).

807 Ibid.

808 On this point, the Council for the Judiciary's Annual Report 2012 said, 'in 2012 there was further discussion among the judges about aspects such as how the principle of correct treatment of victims should be applied in practice and the substantive assessment of a claim submitted by an aggrieved party' (Appendix to *Parliamentary Documents II 2012/13*, 334000 VI, No. 101).

Finally, correct treatment of victims also encompasses protection of their privacy.⁸⁰⁹ Victims of human trafficking are a particularly vulnerable group, for whom disclosure of personal details can have far-reaching consequences. Accordingly, the Dutch media should be circumspect in publishing details about victims of crimes.⁸¹⁰

Secondary victimization

The EU Directive on Human Trafficking also provides that victims of trafficking have the right⁸¹¹ to be protected from ‘further trauma during the criminal proceedings’⁸¹² – secondary victimization, in other words.⁸¹³ The directive also gives a number of examples of actions that could reduce the risk of secondary victimization, one of which is avoiding unnecessary repetition of interviews during the investigation,⁸¹⁴ which can be accomplished by making audio or audio-visual recordings of the questioning of the victim during the trial, and even before if possible.⁸¹⁵ The victim’s personal circumstances, such as physical and psychological consequences of the exploitation, the victim’s age and the fact that a victim is pregnant or

809 See Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99, Article 11(3).

810 In 2012, a specific provision was inserted in the instructions for the spokespersons for the police and the PPS that they should demonstrate prudence in external communication. This certainly applies for more serious offences, such as human trafficking. The PPS and the police contact the victim or the next-of-kin if it is felt to be necessary. See also the PPS’s Annual Report 2012 (PPS 2013 p. 8). See <http://www.jaarberichtom.nl/FbContent.ashx/downloads/PPS-Jaarbericht-2012.pdf> (consulted on 17 June 2013).

811 Although inserted in Article 15 of Council Framework Decision 2001/220/JHA of 15 March 2011 on the standing of victims in criminal proceedings (*OJ* 2001, L 82/1), it is first mentioned explicitly and fleshed out for victims of human trafficking in 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 (*OJ* 2011, L 101/1).

812 According to Wijers & De Boer 2010, p. 17. According to the same report, secondary victimization relates mainly to the victim’s subjective feeling and the sense of being victimized a second time.

813 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 (*OJ* 2011, L 101/1), recital 20. See also NRM8 and NRM 2012d.

814 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 (*OJ* 2011, L 101/1), Article 12(4)(a).

815 *Ibid*, Article 12(4)(b). See also Instructions on Human Trafficking: ‘For reports of human trafficking, the Instructions on audio and audio-visual recording of interviews with complainants, witnesses and suspects apply. The same applies for reports that are made during the informative interview: in such a case these Instructions apply from the moment that the informative interview becomes a report’ (*Government Gazette* 2013, 16816). See also the ‘Instructions on audio and audio-visual recording of interviews with complainants, witnesses and suspects’ (2010A018). The National Rapporteur also referred to the importance of audio-visual recording of interviews in the report ‘Case Law on Trafficking in Human Beings’ (NRM 2012d).

has a disability, must also be taken into account during the trial.⁸¹⁶ Dutch legislation also prescribes that secondary victimization must be avoided, in Article 15 of the Victims' Status Act.⁸¹⁷

In 2010, the WODC investigated whether secondary victimization of victims – not specifically of human trafficking – occurs in criminal proceedings and, if so, to what extent.⁸¹⁸ The most important conclusion was that secondary victimization occurs fairly regularly.⁸¹⁹ The WODC's researchers argued that secondary victimization mainly seemed to involve 'negative psychological effects on their confidence in themselves, the future, the world and the legal system, and was less a question of retraumatization [...]'.⁸²⁰ According to the researchers, secondary victimization must not only be prevented during the questioning of the victim as a witness; it can also be experienced due to other factors such as the imbalance in the positions of the victim and the suspect, the long duration of the trial, a lack of information provided to the victim, the treatment of the victim by officials and dissatisfaction with the outcome of the trial.⁸²¹

WODC study into secondary victimization

The study by the WODC identified four distinct types of secondary victimization:

- (1) negative effects on the victim's self-esteem, faith in the future, faith in a just world and confidence in the legal system, measured on the basis of factors such as their capacity to deal with the crime, self-esteem, faith in the future, confidence in the legal system and faith in a just world;⁸²²
- (2) aggravation of the effects of the original trauma ensuing from the crime (retraumatization), which only relates to victims who have already been traumatized;
- (3) hindering of the process of recovery;
- (4) the occasioning of a second trauma ensuing from the trial, based on whether the victim could experience a new trauma from the criminal proceedings themselves, for instance during the hearing.⁸²³

816 Ibid, Article 11 (7).

817 *Bulletin of Acts, Orders and Decrees* 2010, 1. See also the explanatory memorandum to the Victims' Status Act, which states that the criminal proceedings must not aggravate the trauma experienced by the victim (*Parliamentary Documents II* 2004/05, 30143, no. 3).

818 The study by Wijers & De Boer focuses on whether there are indications that secondary victimization occurs in the Netherlands as a result of a victim's status as a witness in criminal proceedings (Wijers & De Boer 2010).

819 The researchers express the reservation that there are no objectifiable criteria for establishing secondary victimization (Ibid, p. 139).

820 The researchers feel more research is needed into secondary victimization (Ibid, p. 139).

821 On the subject of secondary victimization, see also Winkel et al. 2010.

822 Wijers & De Boer 2010, p.24.

823 Ibid.

The study mentions a number of key factors that could influence the occurrence of secondary victimization: predictability,⁸²⁴ control,⁸²⁵ safety⁸²⁶ and justice.⁸²⁷ The higher the proceedings 'score' on these factors, the smaller the risk of secondary victimization.⁸²⁸

In conclusion, the study says that secondary victimization occurs quite regularly⁸²⁹ and that it appears to mainly involve negative effects on the victim's self-esteem and his or her faith in the future or in the world and confidence in the legal system.⁸³⁰

According to the explanatory memorandum to the bill to implement the EU Directive on Human Trafficking (2011/36/EU),⁸³¹ the provisions on secondary victimization⁸³² and how victims should be interviewed as witnesses can be effected within existing frameworks; amendments of the law are not regarded as necessary. According to the Minister of Security and Justice, the responsibility for implementing the rules lies with both the public prosecutor and the judge.⁸³³

The judge has the responsibility, both in the preliminary inquiry and during the trial, to prevent secondary victimization of the victim as a witness. An exploratory study by Van den Berg showed that victims of

824 'Predictability' is a question of the victim knowing what he or she can expect and being able to adapt to it. In that respect, the closer the events correspond to what the victim expected, the smaller the risk of secondary victimization (Ibid, p.141).

825 The question here is to what extent the victim has the feeling of being able to influence the trial. The central issue is whether the victim feels that the case is being taken seriously and that it matters (Ibid, p.142).

826 'Safety' relates to both physical safety and the social/emotional environment. The victim feels physically unsafe if he or she is afraid of reprisals by the offender or of a confrontation with the offender. Emotional or social safety often relates to the personal integrity of the victim, which is affected, among other things, if the victim's privacy is violated or if he or she is not treated correctly (Ibid, p.143).

827 'Justice' concerns the victim's sense that he or she is being treated fairly and that justice is being done (Ibid, p.144).

828 A reservation has to be expressed about this, however, according to Wijers & De Boer (2010). Whether the victim suffers additional trauma from the criminal proceedings does not depend entirely on factors within the criminal proceedings, but also on other factors such as the seriousness and nature of the crime, the personal characteristics of the victim (particularly personal characteristics that tend to increase the need for predictability and safety, such as previous traumatic experiences or an intellectual disability) and the social context (Ibid, p. 147).

829 The reservation expressed by the researchers about their conclusion is that the study by Orth and Maecker in 2004 showed that among victims with post-traumatic stress disorder (PTSS), the *trauma* was not aggravated by the criminal proceedings. Orth and Maecker's research was an exploratory study and they also called for further research (Orth & Maecker 2004).

830 Ibid, p. 148.

831 *Parliamentary Documents II* 2011/12, 33309, no.3.

832 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 (*OJ* 2011, L 101/1). See Articles 12, 14 and 15 among others.

833 *Parliamentary Documents II* 2004/05, 30143, no. 10.

sexual exploitation face a heightened risk of secondary victimization during questioning by the examining magistrate as a witness.⁸³⁴ For example, he found that victims are sometimes treated incorrectly and unkindly during a hearing, they lose control or experience feelings of powerlessness, suffer psychological and emotional stress and their credibility is questioned.⁸³⁵ Although this was an exploratory study and further research is required, its findings need to be taken seriously.

In its annual report for 2012, the PPS said that ‘care and support for victims are becoming increasingly important for the PPS’.⁸³⁶ The PPS said its intention was not to think for the victim, but to enquire into his or her needs.⁸³⁷ The PPS’s Instructions on Human Trafficking⁸³⁸ also include a section with provisions that correspond with the rules laid down in the EU Directive on Human Trafficking relating to secondary victimization.⁸³⁹ The point of departure is that during an interview with a victim as a witness in the criminal case ‘the interests of protecting the personal life, safety and health of the victim must be weighed against the right of the suspect to a fair trial.’⁸⁴⁰ In accordance with the EU Directive on Human Trafficking, the Instructions state that, wherever possible, victims who are minors should always be questioned by the same persons and the questioning should take place in a room specially designed or adapted for the purpose.⁸⁴¹ If possible, video recordings, which can be used as evidence in the criminal proceedings, should also be made of interviews with victims or witnesses who are minors.⁸⁴² The case coordinators and the victim support desks could also help to prevent secondary victimization.

It is worrying that secondary victimization nevertheless still occurs and that the relevant professionals do not always know what secondary victimization is⁸⁴³ and how it can be avoided. Aspects such as safety, control and predictability for the victim during the criminal proceedings should also be standard considerations for the PPS and the courts and therefore need to be covered in their professional training.

834 Van den Berg 2012. The WODC study into secondary victimization among victims also said that ‘with regard to predictability, the provision of information to the victim, the procedures around the interrogation by the investigating judge or in court, and the length of time of the criminal process are particularly problematic’ (Wijers & De Boer 2010, p. 147).

835 Van den Berg 2012.

836 PPS 2013, p.4. The PPS has also made victim care one of its priorities (‘Perspectief op 2015’, www.OM.nl/publish/pages/167005/OM_perspectief_2015.pdf, consulted on 11 June 2013).

837 Ibid, p. 7.

838 *Government Gazette* 2013, 16816.

839 Ibid, pp. 4-5.

840 Ibid, p. 4.

841 ‘In addition, the underage victim may be accompanied by a representative or an adult of the minor’s choice, subject to exceptions’ (*Government Gazette* 2013, 16816, p. 5).

842 *Government Gazette* 2013, 16816, p. 5.

843 Wijers & De Boer 2010.

2.8 Victims and immigration law

2.8.1 Introduction

The aspects of immigration law relating to the protection of victims are a permanent feature of the National Rapporteur's reports. This review of recent trends considers the latest developments, starting with the EU Directive on Human Trafficking and its purported impact on temporary residence (§2.8.2). There is then a discussion of the entry into force of the Modern Migration Policy Act in relation to the need for a national referral mechanism from the perspective of immigration law (§2.8.3), followed by a description of the latest developments in the debate on the abuse or improper use of the residency regulations for victims of human trafficking (§2.8.4). The section concludes with a discussion of the bill to criminalize illegal residence and its potential impact on the position of victims of human trafficking (§2.8.5).

A number of recent recommendations by the National Rapporteur have been or are in the process of being implemented. For example, a study of case files from 2012⁸⁴⁴ showed that sometimes there is a lengthy period between the granting of a B9 residence permit and the time the residence permit is actually issued.⁸⁴⁵ The IND is currently exploring ways of shortening this period.⁸⁴⁶ Another recommendation was that the type of exploitation and whether the victim had reported an offence or had decided to cooperate with the investigation should be registered.⁸⁴⁷ The State Secretary for Security and Justice has already followed up on this recommendation.⁸⁴⁸

2.8.2 Temporary residence and the EU Directive on Human Trafficking

Article 11(3) of the EU Directive on Human Trafficking provides that the directive applies for all victims of human trafficking, to the extent that the 2004 EU Directive on the residence permit for victims of

844 NRM 2012b.

845 'The study of case files shows that, on average, 48.2 days elapse between the granting of the B9 residence permit and the IND's request to the victim to come and collect the residence permit. In practice, there is no fixed period for issuing the residence permit; the periods in the case files studied ranged from six to 127 days' (NRM 2012b).

846 The IND is also reviewing how this period could be shortened in a pilot project designed to develop procedures for investigating and assessing reports of human trafficking that provide scarcely any leads for further investigation. In the remainder of this report it is referred to as the 'hopeless cases' pilot project. See also §2.8.4.

847 Recommendation 4, NRM 2012f.

848 'The M55 model – Notification of reflection period/report/cooperation with criminal process in human trafficking and appeal to the residency regulations for victims of human trafficking and witnesses who notify the offence of human trafficking as laid down in Chapter B8/3 of the Aliens Act Implementation Guidelines – has been amended' (*Government Gazette* 2013, 19612).

human trafficking⁸⁴⁹ does not apply.⁸⁵⁰ When a temporary residence permit is granted,⁸⁵¹ according to the EU Directive on Human Trafficking, the condition of cooperation with the criminal investigation may be attached.⁸⁵² The EU Directive on Human Trafficking in conjunction with the EU Directive on the residence permit for victims of human trafficking must also be interpreted as meaning that conditions concerning cooperation with an investigation can be attached to the temporary residence permit and that failure to cooperate may have consequences for both an individual's temporary residence status

849 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (*OJ* 2004, L 261/19).

850 Member states must 'take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC' (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 (*OJ* 2011, L 101/1), Article 11 (3)).

851 For example, Directive 2011/36/EC on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA provides, in accordance with Directive 2004/81/EC, that no conditions may be attached to the granting of assistance and support during the reflection period. The situation is different after the reflection period and/or identification procedure, when member states may attach conditions to a residence permit. For a further description of this directive, see NRM5.

852 See also the European Commission's publication, 'The EU Rights of Victims of Trafficking in Human Beings', which also states that support for victims who are not legally resident only has to be unconditional during the reflection period. See §1/1.4 and §5. This publication was included as an appendix to the *Revised Draft Council Conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings* (Council of the European Union, Brussels, 13 June 2013, 10966/13), http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Policy%2FRevised_Draft_Council_Conclusions (consulted on 24 July 2013). This publication is in line with priority A, action 4 of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.

and the associated right to support and assistance.^{853,854} The Netherlands complies with its international obligations pursuant to the provisions of the EU Directive on Human Trafficking.⁸⁵⁵

Since 22 December 2010, victims can – under certain conditions – also qualify for a temporary residence permit without cooperating with the criminal investigation.⁸⁵⁶ This is conditional on the victim being unable or unwilling to cooperate because of serious threats or because of medical or psychological constraints. The final decision is based on a declaration by the police that the individual is a victim of human trafficking and faces a serious threat. The existence of medical or psychological constraints is determined by an appropriate expert. This policy only seems to be relied on to a limited extent.^{857,858}

2.8.3 Entry into force of the Modern Migration Policy Act

The Modern Migration Policy Act entered into force on 1 June 2013.⁸⁵⁹ The act also led to amendments to the Aliens Decree and the Aliens Act Implementation Guidelines. The Modern Migration Policy Act constitutes a revision of the regular immigration policy with regard to third-country nationals. The act introduced a selective migration policy with the aim of making admission procedures for migrants quick and effective.⁸⁶⁰ The stated intention is to retain the existing entitlements for victims of human

853 Rijken (2012) argues that Dutch legislation needs to be amended to comply with the EU Directive on this point. That is incorrect.

854 In this context, see also the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99, Article 14 (1), which provides that countries may decide for themselves whether they will issue an extendable residence permit to victims in either or both of the following situations: (1) the competent authority considers that their stay is necessary owing to their personal situation or (2) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in an investigation or criminal proceedings.

855 The European Commission will consider ‘additional measures increasing the potential of immigration law in combating human trafficking and enhancement of the protection of victims. In this context the Commission may consider the need for amendments to the Directive, including the possibility of issuing a temporary residence permit based on the vulnerable situation of the victim and not necessarily in exchange for cooperation with the competent authorities’ (COM, 2010, 493 Final, p. 13). In her article, ‘Slachtoffers van mensenhandel en de verplechting met de vreemdelingenrecht,’ Koopsen describes the shift at the international and national level from a focus on linking the right of residence to law enforcement to an integrated human rights approach with a greater emphasis on protection of the victim (Koopsen 2013).

856 Pursuant to Chapter B8.3 of the Aliens Act Implementation Guidelines and Article 3.4(3) of the Aliens Decree 2000. See also NRM 2012e.

857 The precise number is not known. The specific applications for and granting of permits cannot be ascertained from the figures on temporary residence pursuant to Chapter B8.3 of the Aliens Act Implementation Guidelines. It is, however, known that there were fewer than ten cases in 2011 and 2012 (written information from the IND, 17 July 2012 and 12 October 2012).

858 NRM 2012f.

859 *Bulletin of Acts, Orders and Decrees* 2010, 290 no. 32 052; *Bulletin of Acts, Orders and Decrees* 2013, 165 (Decree on entry into force).

860 *Parliamentary Documents II* 2008/09, 32052 no. 3, pp. 2-3.

trafficking under the residency regulations. For the time being, the only substantive amendment seems to be that for a possible victim to claim the rights ensuing from the temporary residence regulations under Chapter B8.3 of the Aliens Act Implementation Guidelines, it is no longer relevant where he or she is found.

Aliens Decree and Aliens Act Implementation Guidelines

For third-country nationals who are victims of human trafficking or witnesses who report an offence, the ‘Residency Regulation for Victims of Human Trafficking’ is applicable.⁸⁶¹ The regulation is laid down in Chapter B8.3 of the Aliens Act Implementation Guidelines (which was previously chapter B9, hence the name ‘the B9 regulation’), under the heading ‘Temporary residence for humanitarian reasons’. At the slightest indication that a person is a victim of human trafficking, the police must inform the alien of his or her right to a reflection period of up to three months, during which he or she can recover and consider whether to report an offence or otherwise cooperate with the authorities. A victim who decides to report an offence or otherwise cooperate with the investigation is granted a temporary residence permit by the IND pursuant to Chapter B8.3.

Victims and witnesses of human trafficking who have been granted a temporary residence permit on the grounds of Chapter B8.3 can apply for a residence permit with the restriction ‘non-temporary humanitarian grounds’ (formerly known as ‘continued residence’). Since 1 June 2013, the policy governing this residence permit has been set out in Chapter B9.9 of the Aliens Act Implementation Guidelines (previously in chapter B16).

The categories of aliens who qualify for a residence permit for a specified period under Article 3.48 of the Aliens Decree were expanded from 1 June 2013. The new Article 3.48 is intended to clearly specify the restrictions under which a residence permit for a specified period can be granted.⁸⁶² It was not the intention to change the categories of persons to whom that type of residence permit could be granted.⁸⁶³

Under the new Aliens Decree, the permit for continued residence has been replaced by a residence permit that is subject to a restriction connected with non-temporary humanitarian grounds. The rules are laid down in Article 3.51(1), opening lines and under h of the Aliens Decree.⁸⁶⁴ For victims of human

861 For a consolidated version of this regulation, see also the website of the National Rapporteur, <http://www.nationaalrapporteur.nl/mensenhandel/wetregelgeving/>.

862 The various grounds for granting a residence permit for a specified period as referred to in Article 14 of the Modern Migration Policy Act were amalgamated into a single restriction connected with temporary humanitarian grounds. For example, in addition to a restriction relating to the prosecution of human trafficking, the residence permit can also be granted to (a) aliens who cannot leave the Netherlands through no fault of their own and (b) aliens other than those referred to in the first paragraph (Article 3.48(2) Aliens Decree). As in the ‘old’ Article 3.48(1) and Article 3.56(1) of the Aliens Decree, the first paragraph refers to aliens who are victims, victims who report an offence and/or witnesses who report an offence of human trafficking (Article 3.56 Aliens Decree has lapsed). The Aliens Decree provides that a ministerial regulation can be adopted in this area (Article 3.48(4) Aliens Decree), and that regulation is contained in Chapter 8.3 of the Aliens Act Implementation Guidelines.

863 *Bulletin of Acts, Orders and Decrees* 2010, 307, p. 144.

864 Article 3.52 of the Aliens Decree has lapsed.

trafficking, continued residence is based on exceptional personal circumstances. This criterion is fleshed out in Chapter B9.9 of the Aliens Act Implementation Guidelines.

Residency Regulation for Victims of Human Trafficking

Since the amendment of the Aliens Act Implementation Guidelines, the provisions of the former B9 regulation are now incorporated in Chapter B8, 'Temporary residence for humanitarian reasons', under section 3, 'Victims and witness-notifiers of human trafficking'. Chapter B8 fleshes out the provisions of the aforementioned Article 3.48 of the Aliens Decree. The explanatory memorandum to the Aliens Act Implementation Guidelines (Amendment) Decree states that the policy rules in Chapter B8 are a consolidation of the chapters that formerly set out the policy frameworks on issues such as residence on medical grounds for aliens, residence for victims of honour-related violence, victims and witnesses of human trafficking and aliens who are unable to leave the Netherlands through no fault of their own.⁸⁶⁵

In addition to provisions relating to the right to residence of victims and witnesses of human trafficking, the former B9 regulation also provided a detailed explanation of these provisions, as well as descriptions of the background to the policy and of the procedures to be followed by all the relevant partners in the chain. The current Aliens Act Implementation Guidelines no longer contain those descriptions. However, the explanatory text in the Guidelines does state that no substantive change in policy or procedures relating to victims and witnesses of human trafficking was intended.⁸⁶⁶

Nevertheless, there are some reservations to be expressed about the amendments to the Aliens Act Implementation Guidelines.⁸⁶⁷ In particular, there are concerns about the absence of some important elements relating to the position of victims of human trafficking in the text of the revised Guidelines.⁸⁶⁸ There is also no explanation of the context and purpose of the regulation, although those aspects are extremely relevant for the correct interpretation and application of the rules.⁸⁶⁹ An important point is that the Guidelines no longer serve the purpose of providing instructions⁸⁷⁰ for the relevant partners in the chain. The IND has tried to rectify this by posting an appendix on human trafficking on its website⁸⁷¹ with descriptions of the procedures to be followed by – and the responsibilities of – the

865 *Bulletin of Acts, Orders and Decrees* 2013, 8389, pp. 118-119.

866 *Ibid.*

867 Letter from the National Rapporteur to the Minister of Justice of 23 August 2010 concerning the amendment of the Aliens Act Implementation Guidelines.

868 For example, the exemption from fees, which was previously referred to in the Aliens Act Implementation Guidelines in B9.2, B9.5 and B9/9.5, is now only included in the Aliens Regulations (See also *Parliamentary Documents II* 2012/13, 30573, no. 116).

869 A number of uncertainties have meanwhile been resolved. For example, it is now clear that under the amended Aliens Act Implementation Guidelines, EU nationals can also derive rights from Chapter B8.3.

870 For example, the current regulation no longer states that the police must refer to the rights listed in the Aliens Act Implementation Guidelines when they encounter indications of human trafficking. This rule is also no longer included in the PPS's Instructions on Human Trafficking (*Government Gazette* 2013, 16816).

871 <http://www.ind.nl/Themas/mensenhandel/verblijfsregelingmensenhandel/Pages/default.aspx> (consulted on 25 June 2013).

various partners,⁸⁷² as well as guidelines for the provision of shelter and the protection of victims and witnesses during the reflection period and for those victims who cooperate with the investigation and prosecution. However, the appendix 'reflects established administrative practice on the basis of the current policy in Chapter B8.3 of the Aliens Act Implementation Guidelines'⁸⁷³ and the descriptions of procedures do not have their former mandatory character.⁸⁷⁴ Partly in view of the developments described above, the drafting of a national referral mechanism is not only desirable, but essential.⁸⁷⁵

As regards the rules on the reflection period⁸⁷⁶ and temporary residence, it is no longer relevant where victims of human trafficking are found.⁸⁷⁷ The new Aliens Act Implementation Guidelines no longer contain a list of the categories of aliens who have rights under the B9 regulation.⁸⁷⁸ On this point, the explanatory text in the current Guidelines states that the right to residence and the accompanying facilities apply for every alien who is a victim of human trafficking within the meaning of Article 273f DCC.⁸⁷⁹ It is clear from the explanatory text to the B8.3 regulation that further retrenchment of the descriptions of procedures in the Aliens Act Implementation Guidelines, and particularly in the B8.3 regulation, could follow in the future.⁸⁸⁰

872 See <http://www.ind.nl/Klant-informatie/Documents/bijlage%20bij%20B8.3%20Vc.pdf> (consulted on 25 June 2013).

873 Ibid, p. 1.

874 This applies mainly for external bodies that are not directly bound by the IND's policy rules. These would include CoMensha, the police and the PPS, which are also mentioned in the description of procedures on the IND's website.

875 For a detailed description of the national referral mechanism, see §2.5.

876 Even in the amended Aliens Act Implementation Guidelines, the situation is different for possible victims of human trafficking who are encountered in aliens detention. For example, the reflection period is only granted to aliens who are in aliens detention if the PPS and the police agree to it.

877 The National Rapporteur had said that the categories of aliens who can rely on the B9 regulation should be clarified (NRM7). This amendment has removed the confusion.

878 In Chapter B9.2 of the former Guidelines a distinction was made according to where the victims of human trafficking were encountered; for example, aliens encountered during an administrative or police inspection of a sex establishment or aliens who had been working in prostitution in the Netherlands and/or aliens who did not possess a valid residence permit and who had personally contacted the police.

879 See also 2011 ECLI:NL:RVS:2011:BP5933. In this case, despite the fact that the alien could be regarded as a possible victim of human trafficking, it was decided that the minister was not bound to refrain from detaining the person in custody because the alien did not fall into any of the categories specified in Chapter B9.3.2. Since 1 July 2013, the categories are no longer specified in the Residency Regulation for Victims of Human Trafficking and all aliens who are victims of human trafficking can derive rights from the regulation.

880 For example, it is mentioned that the following passage could in time disappear from the Aliens Act Implementation Guidelines: 'The role of the Coordination Centre for Human Trafficking and the regional coordinator is not laid down in any other regulation. The provisions laid down in the Aliens Act Implementation Guidelines on this point are very important for the shelter and protection of victims and witnesses of human trafficking and can therefore not be removed from the text until they are replaced by another regulation' (Chapter B8.3). See also *Bulletin of Acts, Orders and Decrees* 2013 8389, pp. 118-119.

Rules for continued residence

In the current Aliens Act Implementation Guidelines, continued residence on the grounds of exceptional personal circumstances is regulated in Chapter B9 under the heading ‘non-temporary humanitarian grounds’. The three grounds⁸⁸¹ are the same as in the previous Guidelines.⁸⁸² As was formerly the case, a person reporting human trafficking can also still make an application for continued residence on the basis of exceptional personal circumstances.⁸⁸³ In assessing applications, the IND must, in any case, consider three factors: (1) the risk of reprisals and the level of protection against them that the authorities in the country of origin are able and willing to offer, (2) the risk of prosecution in the country of origin and (3) the possibilities for social reintegration in the country of origin.⁸⁸⁴ These criteria also apply for witnesses who report human trafficking and who can substantiate that they cannot be required to leave the Netherlands because of exceptional personal circumstances.

2.8.4 Abuse/improper use

Previous reports have devoted a lot of attention to the discussion about possible abuse of the regulations on temporary residence for victims and witnesses who report human trafficking.⁸⁸⁵ Statistics show that 988 persons availed of the reflection period or temporary residence in 2010 and 2011.⁸⁸⁶ These are not only victims who were not living legally in the Netherlands; EU nationals also have rights under the provisions of the Residency Regulation for Victims of Human Trafficking, and therefore also appear in the figures.⁸⁸⁷

Improper use and abuse

The terms *abuse* and *improper use* are both used. Although the term ‘abuse’ can be interpreted in different ways in relation to the residency rules, in this context it is often used for a situation where an alien who is not a victim of human trafficking consciously makes up a story in order to invoke the residency regulations and so secure a temporary or permanent residence permit

881 (1) The criminal case has ultimately ended in an irrevocable conviction, (2) the case has not ultimately led to a conviction, but the victim has been living in the Netherlands for three years or longer on the basis of a residence permit pursuant to the Netherlands’ policy on human trafficking at the time of the court’s ruling, or (3) criminal proceedings are still pending and the victim has been living in the Netherlands for three years on the basis of a residence permit pursuant to the Netherlands’ policy on human trafficking (Chapter B9.9 of the Aliens Act Implementation Guidelines).

882 The National Rapporteur has previously recommended that the moment for granting continued residence to victims who cooperate with criminal proceedings should be brought forward to the moment that the public prosecutor makes a decision to prosecute (NRM7, recommendation 4). That recommendation will be included in the review by the State Secretary for Security and Justice following the various studies into improper use of the residency regulations and the ‘Hopeless cases’ pilot project (Task Force on Human Trafficking 2013, p. 19). See also §2.8.4 for more information about these studies and the pilot project ‘Hopeless reports’.

883 Chapter B9.9 of the Aliens Act Implementation Guidelines.

884 Ibid.

885 As laid down in Chapter B8.3 of the Aliens Act Implementation Guidelines.

886 For a detailed statistical background, see the report ‘Trafficking in Human Beings: Visible and Invisible’ (NRM 2012f, Chapter 4).

887 Chapter B8.3 of the Aliens Act Implementation Guidelines.

without actually meeting the requirements. However, it has been found in various investigations that rather than wilfully abusing the residency regulations for personal gain, individuals have been coerced into telling a fictitious story by traffickers.⁸⁸⁸ In that case, it is the traffickers who are abusing the residency regulations, in order to secure the admission of victims to Dutch territory, for example, so that they can later be snatched away and trafficked in prostitution and/or other sectors. Because ‘abuse’ can create an over-simplified impression in practice, the term *improper use* is used wherever possible.

In 2010, the former Minister for Immigration, Integration and Asylum established an interdepartmental working group to investigate the scale of the improper use of the residency regulation.^{889,890} In response to the working group’s findings, in November 2011, the Minister announced a number of measures to discourage abuse of the regulation,⁸⁹¹ including a pilot project designed to shorten the periods taken for procedures under the residency regulation,⁸⁹² the prosecution of individuals who filed false reports⁸⁹³ and the abolition of the right to residence during objection procedures.⁸⁹⁴

Abolition of right to residence during objection procedures

To make abuse of the residency regulations for victims of human trafficking less attractive, the right to temporary residence during an objection procedure was abolished with effect from 1 August 2012.⁸⁹⁵ Applicants can still file an objection to a decision by the PPS not to bring charges under Article 12 of the Dutch Code of Criminal Procedure (CCP), but since the amendment of the Aliens Act Implementation Guidelines, filing an objection is no longer a bar to withdrawing the temporary residence permit.^{896,897}

The ‘hopeless cases’ pilot project was launched on 1 December 2012 and will continue until 1 January 2014. (‘Hopeless cases’ refers to reports of human trafficking that provide few if any leads for an investigation.) The aim of the project was to discourage improper use of the residency regulation by shortening

888 See NRM 7, §5.3 and NRM 2012b.

889 Members of the interdepartmental working group came from the Ministries of the Interior and Kingdom Relations, Security and Justice and Social Affairs and Employment, as well as the police, the Royal Dutch *Marechaussee*, the PPS, the SIOD and the IND. The National Rapporteur and CoMensha were also consulted.

890 *Parliamentary Documents II* 2011/12, 28 638, no. 57.

891 *Ibid.*, p. 4.

892 That the periods could be shortened is also apparent from a study of case files by the National Rapporteur (NRM 2012b). The pilot project known as ‘Hopeless cases’ is described in detail below.

893 Almelo District Court, 26 March 2013, *LJN BZ5555*, in which the suspect was acquitted of making a false report. See also Middelburg District Court 3 April 2007, *LJN BA2128*.

894 For example, in mid- 2012, the Minister for Immigration, Integration and Asylum was also planning reforms in relation to the reflection period but did not proceed after the National Rapporteur had informed him of her concerns (*Parliamentary Documents II* 2011/12, 28638, no. 98).

895 Article 3.88 Aliens Decree 2000 has lapsed (*Bulletin of Acts, Orders and Decrees* 2012, 359).

896 On this point, see also NRM 2012b; NRM7, §5.4.

897 If the objection is upheld, the right to temporary residence is revived on the grounds of Chapter B8.3 of the Aliens Act Implementation Guidelines (*Bulletin of Acts, Orders and Decrees* 2012, 359).

the period taken to handle a report of human trafficking.⁸⁹⁸ The pilot project will not lead to any change in the length of the reflection period or highlight the scale of abuse of the regulation, since the fact that a report of human trafficking contains few leads for an investigation does not necessarily imply abuse of the rules. The pilot project, which was carried out in the regions of Rotterdam, Groningen, Friesland and Drenthe, is solely intended to develop practices designed to accelerate the process of handling reports that offer insufficient prospect of successful prosecution, with a view to increasing the efficiency of the regulation. In pursuing that objective, however, it is crucial that the accelerated procedures are followed with due care.⁸⁹⁹ The aim of the project is to draw up a procedure for the IND, the PPS and the police by March 2014, which can be used nationwide and will discourage improper use of the B9 residency regulation for victims of human trafficking.⁹⁰⁰

During the pilot project, various ways of accelerating the procedure for handling applications for temporary residence permits are being tested. In the first place, the police and the PPS will handle reports of human trafficking with few if any leads for an investigation more quickly. The target is that reports will be investigated within ten working days from the time they are made, culminating in a decision by the PPS either to prosecute, to dismiss the case or not to carry out any further investigation.⁹⁰¹ In addition, the IND will have to handle the procedure for a temporary residence permit and any application for continued residence more quickly. The target is that applications for continued residence should be handled within 35 working days.⁹⁰² The deadline for handling an objection to a negative decision on continued residence is 50 working days. The pilot project is being used to assess the feasibility of these targets and evaluate the length of the various steps in the procedure. An attempt is also being made to ascertain the number of 'hopeless cases' in relation to the total number of reports of human trafficking in the regions concerned.

898 For example, research by the National Rapporteur has shown that the 39 victims (whose case files had been investigated) who had filed an objection had used the temporary residence regulation for an average of 561.7 days (NRM 2012b). This is the period *from the end of the exploitation to the definitive withdrawal of the temporary residence permit* (NRM 2012b).

899 Action Plan for the 'hopeless cases' pilot project, August 2012, p.3.

900 The 'hopeless cases' pilot project is being carried out for the Ministry of the Interior and Kingdom Relations by the IND, which has appointed a project manager. The project is being carried out by the PPS in the North and Rotterdam-Rijnmond regions, the police forces of Groningen, Friesland, Drenthe and Rotterdam-Rijnmond and the IND's gender units in Zwolle and Rijswijk.

901 Research by the National Rapporteur shows that an average of 297.5 days (N=27, SD: 539.4) elapsed between the report and the decision not to prosecute. 'It should be noted here that it was impossible to distill from the case files whether the length of time between the report and the dismissal of the case was mainly attributable to the police or the PPS. After all, the PPS can only dismiss a case after it has received the official report from the police of their findings. In most case files, it was impossible to ascertain the moment at which the police sent the official report of their findings to the PPS' (NRM 2012b).

902 The average period between the dismissal of a case and the notification by the IND of its intention to withdraw the B9 residence permit was 25.8 days (N=41, SD:30.7). On average, victims used the B9 regulation for 541.8 days (N=39, SD: 349.5). The IND took an average of more than five months (155.9 days) to make an initial decision on an application for continued residence (N=38, SD: 90.5). In 63.1% of cases, a decision was made within six months; in one case the decision took longer than a year (NRM 2012b).

Naturally, shorter procedures will provide possible victims with greater certainty about their situation, but that must not be at the expense of the quality and thoroughness of the decision-making process. It is therefore regrettable that the project does not *also* include a qualitative analysis of reports that contain few leads for an investigation.⁹⁰³

Problems and issues encountered during the pilot project

Although the pilot project has not been completed or evaluated yet, various agencies have already raised some problems and issues that need to be addressed. The project is concerned with procedural rather than substantive changes, in other words the desire to shorten the period taken to handle reports of offences. The accelerated procedure seems to make a number of problems and issues more acute and/or cause them to emerge sooner.

The Strategic Platform on Human Trafficking (SOM), in which various organizations that provide shelter and assistance for victims hold frequent consultations,⁹⁰⁴ has found that individuals who reported offences and whose cases fell within the scope of the pilot project frequently had no time to arrange the practical matters necessary to comply with the conditions for the application for continued residence,⁹⁰⁵ such as the passport requirement and the payment of fees. Participants in the SOM also reported that the shorter periods for handling applications leave less time for the applicant to establish a relationship of trust with his or her lawyer and that it is difficult to quickly arrange shelter for applicants when a decision not to bring charges in their case is made within ten days.^{906,907} The Ministry of Security and Justice has said that specific problems faced by individuals falling under the pilot project can be reported to the project manager. With respect to the problems mentioned above, the pilot project's steering group has decided that the period between the decision not to bring charges in a case and the submission of an application for continued residence will be made dependent on an individual's personal circumstances, without the B9 permit being withdrawn. The findings will be considered in the evaluation of the project.

Other warnings from the organizations that provide shelter and assistance are that the police do not always inform possible victims of their right to a reflection period at the slightest indication of human trafficking or, when they do, an appointment is immediately made to report the offence within a period that is shorter than the maximum of three months that possible victims are entitled

903 See also NRM7, recommendation 32.

904 See §3.3 for a further description of the Strategic Platform on Human Trafficking (SOM).

905 This emerges from the minutes of the SOM meeting on 20 November 2012.

906 Ibid.

907 Research by the National Rapporteur does show that 'when a victim has submitted an application for continued residence before the B9 residence permit has been definitively withdrawn, the IND (often) makes a simultaneous decision on both the definitive withdrawal of the B9 residence permit and the application for continued residence. The reason for this policy is that, in practice, there was a problem with victims having to leave the shelter as soon as [the temporary residence permit] expired while an application for continued residence was still pending. In order to allow all the facilities to continue, the IND has decided, from a practical perspective, to allow the B9 residence permit to continue to apply until such time as a decision is made on the application for continued residence' (NRM 2012b).

to.⁹⁰⁸ This is worrying. The Ministry of Security and Justice is taking these warnings seriously and has discussed the problem with the police. The police do not see it as a problem, but do say that there are occasions when aliens do not want to accept the reflection period and wish to make a report immediately.⁹⁰⁹ The B9 permit is then granted on the basis of that report.⁹¹⁰

The Ministry of Security and Justice has told CoMensha to notify the police's National Expert Group on Human Trafficking (LEM) of specific cases where this type of problem is encountered.⁹¹¹ The LEM will then discuss the case with the relevant police force and CoMensha. The Ministry of Security and Justice will be kept informed.

During a debate in the Lower House of Parliament on 12 June 2012, it became clear that there is a need to learn more about improper use of the rules on residency.⁹¹² Two studies were then launched to explore this subject.

The first was a preliminary study to investigate the possibility of qualitatively demonstrating improper use of the rules and of establishing the extent of improper use with a representative quantitative study.⁹¹³ If both of these questions are answered in the affirmative in the preliminary study, the State Secretary intends to carry out a representative study into the scale of improper use.⁹¹⁴ The preliminary study was expected to be completed by the end of 2013.⁹¹⁵

The second was an exploratory study into the residency regulations in three EU member states, Belgium, Italy and the United Kingdom, which also examined the possibility of improper use of those schemes. The study addressed the following question: how have other European countries designed residency regulations for victims of human trafficking and what is their experience in preventing improper use of those schemes? The aim was to use the knowledge gathered in the other countries to

908 SOM meeting, 20 November 2012; verbal information from the Amsterdam Coordination Point Human Trafficking, 4 July 2013 and PMW Humanitas, 1 July 2013.

909 On a number of occasions the police have refused to accept a report of an offence because of suspicions of improper use. In a number of cases, this has led to complaints to the National Ombudsman that have been upheld (National Ombudsman, 2006/279; 2008/289; 2009/227; 2011/178; 2013/090). The police must inform the victim of the right to the reflection period and accept reports of offences at the slightest sign of human trafficking.

910 CoMensha expresses the reservation that persons who are reporting an offence do not always know whether they are attending an intake interview or making a report of an offence. According to CoMensha, they should speak to a lawyer before the intake interview – or making a report – about the consequences of reporting an offence (written information from CoMensha, 22 July 2013).

911 See also §3.3.3.

912 *Parliamentary Documents II* 2011/12, 28638, no. 89. This study was carried out for the WODC by Regioplan (*Parliamentary Documents I* 2012/13, 33309, C).

913 *Parliamentary Documents II* 2011/12 23638, no. 95.

914 *Parliamentary Documents II* 2012/13 28638, no. 95.

915 The announcement of this study can be found at <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2012/12/18/startnotitie-wodc-onderzoek-b9/lp-v-j-0000002299.pdf> (consulted on 2 August 2013).

help formulate an effective approach to improper use in the Netherlands.⁹¹⁶ The study was presented by the State Secretary for Security and Justice to the speaker of the Lower House of Parliament on 9 August 2013.⁹¹⁷ One of the most striking findings was that none of the three countries ruled out the possibility of improper use of the residency regulations for victims, but they also did not perceive it as a structural or urgent problem.⁹¹⁸

The State Secretary for Security and Justice has said that he will await the results of the two studies and the ‘hopeless cases’ pilot project and will use the findings from them in determining whether the residency regulations for victims of human trafficking should be maintained in their current form or whether they need to be amended.⁹¹⁹

2.8.5 Criminalization of illegal residence

The current coalition agreement provides that illegal residence will be made a criminal offence,⁹²⁰ and on 7 January 2013, a bill⁹²¹ was presented to amend the Aliens Act 2000 to criminalize aliens living illegally in the Netherlands. The bill is currently before the Lower House of Parliament and, at the time of writing, was at the stage of written deliberations.

There has been criticism of the bill from various quarters. One argument regularly put forward is that criminalizing illegal residence will have a negative impact on victims of human trafficking.⁹²² Objections raised are that the law will give human traffickers an additional instrument with which to maintain control over their victims and that the police ‘will start hunting’ for illegal immigrants, which would be at the expense of recognizing persons who might be victims of human trafficking. There is generally little or no substantiation of these criticisms.

916 The announcement of this study can also be found on the WODC’s website at www.wodc.nl (consulted on 27 June 2013).

917 The parliamentary document had not yet been classified at the time of writing.

918 The interviewees in the member states where the study was conducted also felt that their systems were sufficiently effective to intercept applications from claimants who were making improper use of the residency scheme for victims before a residence permit was issued (Lettinga, Keulemans & Smit 2013).

919 See also *Parliamentary Documents I 2012/13*, 33309, C; *Parliamentary Documents II 2012/13*, 28638, no. 95. See also §2.9.2 on specialized shelter for victims and right to residence.

920 *Parliamentary Documents II 2012/13*, 28638, no. 95.

921 *Parliamentary Documents II 2012/13*, 33512, no. 2.

922 This is apparent, for example, from the advice of the Council of State (Advisory Report W04.11.0439/I). See also the reports of the Advisory Committee on Migration Affairs (ACVZ) and the Association of Netherlands Municipalities (VNG) (appendices to *Parliamentary Documents II 2012/13*, 33 512, no. 3). This point was also raised in an open letter from the Netherlands Institute for Human Rights, www.mensenrechten.nl, consulted on 2 August 2013). See also the farewell speech ‘grim reflection’ by De Roos on 17 May 2013, <http://www.youtube.com/watch?v=-9YYe9hpPnk> (consulted on 2 August 2013).

First and foremost, the majority of registered possible victims are living legally in the Netherlands⁹²³ and, regardless of where the victims come from,⁹²⁴ human traffickers will tell them anything. Traffickers mislead victims about the journey, the destination and the work they will be doing, as well as their rights with respect to residence in the Netherlands. For example, human traffickers use the victim's fear of deportation as a means of coercion, telling them whatever lies are necessary, for example that the police cannot be trusted and are corrupt. The bill⁹²⁵ and the fines proposed in it will not alter that.⁹²⁶ The problem lies not so much in the legislation as in the lies that human traffickers tell their victims. What victims fear is what the human traffickers tell them.

Naturally, criminalization of illegal residence will not discharge the police from their responsibility to remain alert to signs of human trafficking when they encounter an alien without residence papers. At the slightest sign of human trafficking, the police must inform the possible victim – as has been the rule for years – of the right to a reflection period⁹²⁷ and of the option to report an offence.⁹²⁸ In that respect, the fact that a person is a victim of human trafficking takes precedence over his or her illegal status – whether or not illegal residence is criminalized. The 'Criminalization of illegal residence in the

923 NRM 2012b.

924 Naturally, this does not apply for Dutch victims.

925 In various countries in Europe, including Belgium, the United Kingdom, Sweden, Norway, Denmark and France, illegal residence is already a criminal offence. Victims and offenders generally come from the same region (see NRM 2012f. It is not likely that human traffickers from outside the EU (a) are fully aware of the differences in the residency laws and (b) will share that knowledge with their victims.

926 If the 'Criminalization of illegal residence in the Netherlands' bill becomes law in its present form, an adult alien who is living unlawfully in the Netherlands will be committing a criminal offence punishable by a fine in the second category. See Article 108a of the bill. 'An entry ban may be issued against an alien who is fined twice in connection with illegal residence, including violation of a previously issued entry ban to which the consequences referred to in Article 66a (7) of the Aliens Act are attached (a so-called 'aggravated' entry ban). As with residence after being declared an undesirable alien, residence in defiance of an aggravated entry ban is a crime punishable by imprisonment (Article 197 DCC)' (*Parliamentary Documents II 2012/13, 33512, no. 3, P. 2*).

927 An exception is made for victims who are in aliens detention. The reflection period is then granted by the police after consulting the PPS (see B8.3 of the Aliens Act Implementation Guidelines.)

928 The need to remain alert to signs of human trafficking in the interests of protecting its victims is also apparent from a judgment of the Council of State (ECLI:NL:RVS:2013:BZ3751), which ruled that the State Secretary had not displayed the degree of vigour required to prevent a disproportionately lengthy continuation of detention. Since October 2012 there had been signs that an alien held in detention was a victim of human trafficking, but the alien was only referred to the possibility of reporting an offence on 18 December 2012. See also The Hague District Court 7 March 2013, *LJN BZ6338*.

Netherlands' bill does not alter that.⁹²⁹ What remains important is that the police, particularly the aliens police,⁹³⁰ identify and recognize signs of human trafficking.⁹³¹

If illegal residence is criminalized, however, it will be essential to remain alert for signs that the new law is having a negative effect in terms of the protection afforded to victims of human trafficking. At the moment, however, it is questionable whether the measure will have any impact in terms of the vulnerability of these victims. The concerns relate more to the retention of knowledge and expertise about human trafficking within the National Police.^{932,933}

2.9 Victims: shelter and assistance

Victims are entitled to safe and appropriate shelter. Proper protection can also increase the willingness of victims to report human trafficking so that the offenders and human trafficking networks can be tackled effectively. Both of these aspects call for research⁹³⁴ and consultation with victims in order to learn more about the needs and requirements of this vulnerable group.⁹³⁵

Research has shown that different groups of victims require different types of help, due to factors such as their age, cultural background and residence status, as well as the type of exploitation they have suf-

929 During the reflection period, the expulsion of the presumed victim of human trafficking from the Netherlands is suspended and he or she remains lawfully resident on the grounds of Article 8(1) of the Aliens Act. Under Chapter B8.3 of the Aliens Act Implementation Guidelines, making a report and/or cooperating with the investigation and/or prosecution must lead to an *ex officio* application for a temporary residence permit on the grounds of Article 14 of the Aliens Act. In this way, an alien, with respect to whom the slightest indication of human trafficking has been established, is protected on the basis of the special residency regulation and falls outside the scope of the criminalization of illegal residence.

930 Since the human trafficking teams form part of the aliens police and, provided the bill is passed, it is they who will be responsible for enforcing the criminalization of illegal residence.

931 See NRM7, recommendation 17; NRM 2012b. See also §2.4.7 on the principles of non-prosecution and non-punishment.

932 With the creation of the National Police, the human trafficking teams were assigned to the aliens police (on this point, see §3.3). That this does not detract from the expertise in and commitment to identifying victims of human trafficking is apparent in Groningen and Rotterdam, for example, where human trafficking has for years been assigned to the aliens police. However, it is still not clear how the accumulated expertise will be safeguarded and that is worrying.

933 Letter from the National Rapporteur to the Minister of Security and Justice of 7 November 2012, <http://www.nationaalrapporteur.nl/actueel/kamerbrieven/>.

934 Various publications have appeared on this subject in recent years, including Brunovskis 2012; Brunovskis & Surtees 2007; 2008; 2012; NRM7; NRM8; NRM 2012f; Rijken et al. 2013; Clawson & Dutch 2007; CoMensha 2010; 2011; 2012; Van London & Hagen 2012; Kulu-Glasgow et al. 2012; Craggs & Martens 2010; Goderie & Boutellier 2009.

935 Shelter for Dutch minors who are victims of human trafficking is not discussed here because §2.10 is devoted specifically to that subject.

ferred. According to the Minister of Security and Justice, broadly speaking, shelter should be tailored to three distinct groups of victims.

They are foreign victims, [...] groups of victims of other forms of exploitation who are encountered during operations by the Inspectorate SZW [...] and the PPS in particular, and Dutch victims of human trafficking.⁹³⁶

The focus in the last few years has been mainly on arranging shelter and support for adult victims from other countries. In 2010, a pilot project entitled 'Categorical shelter for victims of human trafficking' (known by the abbreviation COSM) was launched for this group,⁹³⁷ with the aim of learning more about the needs of victims, developing methods and a plan for assisting victims, diagnosing their needs and increasing their willingness to report human trafficking. During the first two years of the project, Dutch women were also admitted to the special COSM shelters, but since 2012 they have only been open to foreign women.⁹³⁸ Adult Dutch victims⁹³⁹ made scarcely any use of the reception facilities during the pilot project.⁹⁴⁰

Although for years CoMensha's records have shown that Dutch nationals make up the largest group of possible victims,⁹⁴¹ it is not sufficiently clear from CoMensha's data where this group of possible victims receive shelter within the juvenile care system and in women's shelters or which institutions provide assistance for them.⁹⁴² To ensure that this group also receives safe and appropriate shelter and treatment and to gain a clearer insight into their willingness to report human trafficking,⁹⁴³ it is important to increase their visibility.⁹⁴⁴ The national referral mechanism, which should also encompass protection for Dutch victims, could help in achieving this.⁹⁴⁵

This section starts with a brief outline of the latest developments in legislation relating to shelter and assistance for victims at the national and international levels (§2.9.1). It then proceeds to explore the

936 *Parliamentary Documents II* 2011/12, 28638, no. 72.

937 In this context, see NRM7, recommendation 21.

938 The criteria for admission to the COSM shelters were tightened up further during the first two years of the pilot project (Van London & Hagen 2012, p. 27).

939 On underage victims, see §2.10.

940 Three reasons were given for this in the WODC's evaluation: (1) Dutch victims have less need of shelter because they often have their own accommodation or can rely on their own network; (2) it is easier for Dutch victims to be placed in regular shelters than for foreign victims; (3) Dutch victims are often young girls who are victims of a 'loverboy' and accommodation can be arranged for this group in shelters for minors (Van London & Hagen 2012, p. 32).

941 NRM 2012f.

942 *Parliamentary Documents II* 2011/12, 28 638, no. 72.

943 Research appears to show that the willingness of Dutch women to report human trafficking is low (Van London & Hagen 2012; Verwijs et al. 2011).

944 According to the study 'Slachtoffers en hun loverboys' [Victims and their loverboys], it is not yet really possible to determine the precise number of victims of loverboys in youth care (Verwijs et al. 2011). See also §2.10.

945 For a detailed description of the national referral mechanism, see §2.5.

advances made in providing shelter and assistance for victims during the COSM pilot project (§2.9.2). The COSM shelters are not open to large groups of victims of labour exploitation, nor are other support organizations equipped to deal with them. Accordingly, a strategy has been drawn up for providing shelter for this category of victims (§2.9.3). Finally, §2.9.4 outlines the latest developments in the area of payment for interpreters, who are crucial for making assistance accessible.

2.9.1 Developments in national and international legislation

Following the example of the Council of Europe Convention on Action against Trafficking in Human Beings, the EU Directive on Human Trafficking also proposes a multidisciplinary approach to protecting victims.⁹⁴⁶ Pursuant to Article 11 of the directive, member states are obliged to ensure that assistance and support are provided to victims, including appropriate and safe accommodation,⁹⁴⁷ which is understood to mean that victims must have the possibility of escaping from the human traffickers and of recovering. In that context, the authorities must enquire what measures are needed on the basis of an individual assessment of the victim's personal circumstances, cultural context and needs. The article also states that victims must, if necessary, be provided with the necessary medical treatment, including psychological assistance, advice and information, and translation and interpretation services.⁹⁴⁸ At the time of writing, the bill to implement this directive in the Netherlands was before the Upper House of Parliament.⁹⁴⁹

In the European Strategy towards the Eradication of Trafficking in Human Beings, protecting victims is the first priority mentioned. In accordance with the provisions of the EU Directive on Human Trafficking, the strategy document opts for an approach in which protection and assistance for victims of human trafficking should be provided on the basis of an assessment of individual risk and needs and that this assessment should be part of the remit of the national referral mechanism.⁹⁵⁰ To further improve the victim-centred approach to providing protection and assistance, the European Commission is also developing a model for a transnational referral mechanism, which is expected to be completed by 2015.⁹⁵¹

946 'Particularly relevant for the substance of the directive is the Council of Europe Convention on Action against Trafficking in Human Beings (*Bulletin of Treaties* 2006, 99). The provisions of the directive were heavily inspired by that convention. The Commission's principal aim with the directive was to bring the level of protection within the European Union into line with the key results that had been achieved under the convention. The convention is characterised by a comprehensive and multidisciplinary approach to combating human trafficking. Furthermore, in addition to obligations in the area of substantive criminal law, it also prescribes measures with respect to prevention, prosecution, protection of and assistance for victims' (*Parliamentary Documents II* 2011/12, 33309, no. 3, p. 3). See also §2.2.

947 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (*OJ* 2011, L 101/1).

948 *Ibid.*, Article 11 (5).

949 The directive had to be transposed into Dutch legislation before 6 April 2013, but it was not. The relevant bill (33 309, A) is currently before the Upper House of Parliament.

950 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 7.

951 See §2.5 for a discussion of the importance of developing a national referral mechanism.

2.9.2 The pilot project ‘Categorical shelter for victims of human trafficking’

Repeated calls have been made in earlier reports for specialized shelter that is appropriate and safe for victims of human trafficking.⁹⁵² The pilot project entitled ‘Categorical shelter for victims of human trafficking’ (COSM) marked a major step in that direction. The establishment of categorical shelters has not only helped to reduce the shortage of places in shelters, but has also provided a greater understanding of the help required by victims of human trafficking and how the shelter and treatment provided can be tailored to those needs. In broader terms, the COSM project has also played a crucial role in the overall effort to combat human trafficking, since the chain partners involved in the project, including the shelters, the police, the PPS and the IND, also collaborate in efforts to increase the willingness of victims to make statements about human trafficking. Accordingly, the COSM project has a dual objective: *protecting victims and prosecuting human traffickers*.

This joint goal creates a bond, and in the last few years the COSM project has made a contribution to both protecting victims and combating human trafficking and, in the process, it has illustrated the impact that a multidisciplinary approach can have. The trust between the chain partners involved has also grown, although constant efforts will be required in the coming years to further strengthen that trust.⁹⁵³

2.9.2.1 The COSM pilot project and its objectives

The Ministry of Security and Justice and the Ministry of Health, Welfare and Sport launched the COSM pilot project in 2010. Between 2010 and 2012, 50 places were created in the COSM shelters for victims of human trafficking, divided among three organizations that provide shelter: Prostitutie Maatschappelijk Werk (PMW), Amsterdams Coördinatiepunt Mensenhandel (ACM) and Zorggroep Jade.⁹⁵⁴ The primary objective of the project is to provide appropriate and safe shelter with specialized counselling for victims of human trafficking,⁹⁵⁵ in the hope of gaining greater insight into the help needed by victims and developing methods to help this group, as well as increasing their willingness to cooperate with the investigation and prosecution of traffickers. The COSM project is also designed to improve the process of admitting victims to shelters and guiding their relocation to alternative shelters or to independent accommodation.

Evaluation by WODC

In an evaluation of the project,⁹⁵⁶ the Ministry of Justice’s Scientific Research and Documentation Centre (WODC) asked the question: ‘To what extent have the goals set for the COSM project been achieved and to what extent are there differences between the COSM shelters and regular shelters in terms of the shelter and assistance provided for victims of human trafficking?’⁹⁵⁷ To answer this question, the WODC analysed CoMensha’s records, conducted semi-structured interviews with employees of organizations participating in the COSM project and of regular shelter organizations

952 NRM5, recommendation 35; NRM7, recommendation 21.

953 See also §3.9.4 for a discussion of the link between investigative agencies and partners in the health care sector.

954 Appendix to *Parliamentary Documents II* 2010/11, 28 638, no. 53, p. 1.

955 Van London & Hagen 2012, p. 9; *Parliamentary Documents II* 2010/11, 28 638, no. 53, p. 1.

956 *Parliamentary Documents II* 2009/10, 28639. No. 47.

957 Van London & Hagen 2012.

and analysed data about victims of human trafficking assembled from counselling plans and questionnaires during the period from the start of the pilot project up to the end of September 2011.⁹⁵⁸

One of the most important findings in the report was that more had been learned about the legal, financial, psychological and physical help that victims need. Second, it emerged that, although the shelter organizations engaged in the COSM project devoted a lot of attention to safety, in practice there was little actual threat from human traffickers.⁹⁵⁹ Third, it was found that half of the female victims had relocated to an alternative shelter or left the COSM shelter within three months, although the proportion was lower for men. The evaluation showed that the main reason why people stayed longer in both the COSM shelters and in regular shelters was usually connected with time-consuming legal and administrative procedures, the limited availability of places in alternative shelters or problems with moving into independent accommodation.⁹⁶⁰ A fourth conclusion was that the large majority of the victims in the COSM shelters had made a report of human trafficking.⁹⁶¹ Fifth, it was found that the staff of the COSM shelters were closely involved in the legal proceedings of the victim, whereas in the regular care system employees did not always possess sufficient knowledge to provide this assistance.⁹⁶² Finally, it was found that the standard assistance provided within the COSM shelters did not include psychological diagnostics and psychotherapy.⁹⁶³

As of 1 July 2012, the pilot project was extended and expanded to 70 places.⁹⁶⁴ If that number proves inadequate, the Minister of Security and Justice can take additional interim measures, possibly including a further expansion of the number of places in the categorical shelters.⁹⁶⁵ In the tender procedure for the extension of the pilot project, it was consciously decided to extend it until 2014 so that the design of the

958 No victims were interviewed for this evaluation (Van London & Hagen 2012, p. 9).

959 Nevertheless, victims often do feel unsafe. They are also concerned about family members in other countries (Van London & Hagen 2012, p. 10). 'On one occasion, 35 clients were swapped between COSM De Lucia and COSM ACM. According to the institutions concerned, nine clients were placed in both COSM ACM and COSM De Lucia during the period covered by the study. It emerged from the interviews that security was the main reason for transferring individuals from one COSM shelter to the other' (Van London & Hagen 2012, p. 54).

960 Van London & Hagen 2012, p. 11.

961 The same applies for victims who were placed in regular shelters.

962 What is mainly lacking is knowledge about the Residency Regulations for Victims of Human Trafficking (the regulations are discussed at length in §2.8).

963 A number of regular institutions can rely on internal services (for example, the shelter's own psychology staff) for diagnostic examination; however, these employees are not all specialized in the target group of victims of human trafficking (Van London & Hagen 2012).

964 *Parliamentary Documents II* 2011/12, 28638, no. 72.

965 See the reply by the Minister of Security and Justice, also on behalf of the Minister of the Interior and Kingdom Relations and the State Secretary for Health, Welfare and Sport, to questions from member of parliament Arib (PvdA) to the Minister of Security and Justice about a shortage of places in shelters for victims of human trafficking, *Parliamentary Documents II* 2012/13, schedule number 176, pp. 1-2; *Parliamentary Documents II* 2011/12, 28 638, no. 90, pp. 1-2.

COSM programme⁹⁶⁶ can be modified in light of the findings from the evaluation of the initial period of the project⁹⁶⁷ as well as the studies being conducted into the improper use of the residency regulations for victims of human trafficking.⁹⁶⁸

2.9.2.2 Numbers admitted and admission criteria

The WODC's evaluation showed that at the start of the pilot project the COSM had to adopt broad entry criteria for victims.⁹⁶⁹ Those criteria were gradually modified and tightened up because it was found that one type of shelter and treatment was not appropriate for all the different groups of victims. It was therefore decided to confine admission to the COSM shelters to the most vulnerable group.

Admission criteria

During the early period of the pilot project, those placed in the COSM shelters by CoMensha included victims who had already spent time at another shelter, had been living for some time in the Netherlands or had already completed an asylum procedure. According to respondents at the COSM shelters, the assistance they provided did not properly match the help those groups required: they were more self-reliant and needed different types of support. The emphasis in the COSM shelters is on the first three months, when victims are being prepared to report an offence and are being familiarized with Dutch society. According to the respondents, the COSM shelters are intended for victims who are emerging from a crisis. In consultation between the shelters and the Ministries of Security and Justice, Health, Welfare and Sport and the Interior and Kingdom Relations, a number of admission criteria were adopted. For example, victims had to be adults and have a foreign nationality, still had to be making use of the reflection period and could not previously have followed an asylum procedure. The evaluation by the WODC also showed that the COSM shelters were felt to be less suitable for victims with psychiatric problems or an addiction.

The effect of these admission criteria was that some adult possible victims were no longer placed in the COSM shelters. In order to ascertain which types of shelters had waiting lists, CoMensha (in consultation with the Ministries of Health, Welfare and Sport and Security and Justice) adopted three categories.⁹⁷⁰

Waiting lists

The first waiting list is for COSM shelters. It contains possible victims who meet the following conditions: the individual is an adult, is still using the reflection period, has not yet reported an offence and is not a Dutch national. The second waiting list is for possible victims who do not meet the conditions for the COSM shelters and for whom a place has to be found in a women's shelter or a social shelter. According to the annual figures from CoMensha, on average there are four persons on the first two waiting lists. The situation with the third waiting list is different. That list includes

966 The categorical shelter can also be modified in the meantime, if necessary (*Parliamentary Documents II* 2011/12, 28 638, no. 72).

967 The evaluation was carried out by the WODC (Van London & Hagen 2012).

968 See §2.8.4 for a description of these studies.

969 'The pilot project was not intended for the shelter of underage victims or occasional large groups of victims. In principle, married couples could also not be accommodated in the COSM shelters (Van London & Hagen 2012, p. 27).

970 Up to week 36 of 2012, CoMensha adopted a single waiting list (CoMensha Annual Report 2012).

possible victims who are staying in an asylum centre and are engaged in an asylum procedure and for whom no place is available in an appropriate shelter.⁹⁷¹ On average, there are eleven possible victims on this waiting list.⁹⁷²

In 2012, the COA made agreements with CoMensha to provide it with better information about possible victims and provide it more quickly to CoMensha. Nevertheless, according to CoMensha there is still considerable uncertainty about how many possible victims of human trafficking are staying in the asylum centres.⁹⁷³ That is worrying. There must be sufficient appropriate and safe shelter available for this group,⁹⁷⁴ with sufficient knowledge and specialization to provide them with the help they need.⁹⁷⁵

2.9.2.3 Diagnostic centres

In previous reports, the National Rapporteur has stressed the importance of good diagnosis in the categorical shelters so that the help victims need can be quickly determined. Whereas the tender procedure for the first phase of the pilot project (2010-2012) did not make the presence of a diagnostic centre a condition,⁹⁷⁶ such a condition was included for the second phase (2012-2014). The COSM shelters are currently establishing or further developing diagnostic centres⁹⁷⁷ with the aim of ensuring that victims of human trafficking receive the appropriate treatment as quickly as possible by means of a correct diagnosis and stabilization.^{978,979}

In association with the Ministry of Health, Welfare and Sport, Equator, a foundation that assists traumatized victims of human trafficking, has started organizing expert meetings on the subject of 'diagnostics

971 During or after the asylum procedure it had been found that there were indications that the individuals were (possible) victims of human trafficking. A client who receives a B9 residence permit should officially no longer be in an asylum centre, first because current legislation provides that a person with regular residence status may not stay in an asylum centre, but also because asylum centres do not have sufficient knowledge or the specialists to provide help for victims of human trafficking. CoMensha looks for a suitable place for them in women's shelters or social shelters (CoMensha monthly report for April-May 2013, available at <http://www.mensenhandel.nl/cms/docs/maandrapportage-april-meiz2013.pdf>, consulted on 2 August 2013).

972 Written information from CoMensha, 30 July 2013. In 2012, the average number of victims was twenty (CoMensha Annual Report 2012, p. 24).

973 CoMensha Annual Report 2012, p. 18.

974 This group could possibly grow in the coming period because of the efforts being made to improve the identification of possible victims in the asylum and repatriation procedure. On this point, see §2.6.3, which details the measures that have been taken to improve the identification of victims in the asylum procedure.

975 CoMensha Annual Report 2012, p. 24.

976 Diagnostic (psychological) examination was originally included as an element in the tender procedure but was later removed (Van London & Hagen 2012, p. 65).

977 *Parliamentary Documents II* 2011/12, 28638, no. 90.

978 *Parliamentary Documents II* 2011/12, 28638, no. 80 (This was a motion by member of parliament Berdsen et al.).

979 See also the CoMensha website: http://www.mensenhandel.nl/cms/index.php?option=com_content&task=view&id=433&Itemid=72, consulted on 24 July 2013).

and treatment', which are attended by staff of the COSM shelters, but also of other shelters. At the first expert meeting at the beginning of 2013, it was found that there are both similarities and differences between shelters in terms of the diagnosis and treatment of victims. The second expert meeting was held in the autumn of 2013 and was devoted to a discussion of what shelters can learn from each other to improve the diagnosis and treatment of victims of human trafficking.

2.9.2.4 Willingness to report an offence

The COSM shelters only accommodate victims who are still using the reflection period and do not have a valid residence permit. One of the objectives of the COSM pilot project is to increase the willingness of victims to cooperate with a criminal investigation, and the evaluation of the project demonstrated that the vast majority of victims in the COSM shelters do report human trafficking.⁹⁸⁰ Two of the most common reasons for foreign victims to report an offence are either with a view to securing the associated residence status and facilities or from a desire for justice.⁹⁸¹

Although there seems to be a great willingness to report human trafficking among this group, at present little is known about the quality of the reports and the extent to which they also contribute to successful prosecutions. A recurring problem is that witness statements by victims are not always perceived as 'reliable'.

Witness statements by victims

A possible obstacle to discovering the truth during legal proceedings is 'unreliable' witness statements by victims of human trafficking. One reason why statements could be 'unreliable' might be difficulty in recalling events. On behalf of the WODC, Intervict is currently carrying out a study into ways of improving the evidentiary value of witness statements by victims of human trafficking. Among the possible solutions being explored are activities during the preparations for the trial (for example, care/diagnosis and treatment), interviewing techniques and the standing and interpretation of witness statements in criminal proceedings (they could, for example, be accompanied by a medical/diagnostic report). During the study, special attention is being devoted to the procedures in the categorical shelters for victims of human trafficking and the training of police officers accredited for human trafficking investigations.⁹⁸² The findings of the study were due to be published in the second half of 2013.

A view that is repeatedly expressed with respect to reports of offences made by victims is that the right to a temporary residence permit should be decoupled from the requirement of the victim's cooperation

980 The same applies for the foreign (possible) victims who are accommodated in regular shelters (Van London & Hagen 2012).

981 An important reservation is that no victims were interviewed for this evaluation (Van London & Hagen 2012).

982 For more information about this study, see http://www.wodc.nl/onderzoeksdatabase/2296-literatuuronderzoek-slachtoffers-als-getuigenaangevers.aspx?nav=ra&l=migratie_en_integratie&l=mensenhandel (consulted on 16 August 2013). On the reliability of witness statements by (presumed) victims, see also NRM7 §11.7.3.

with the criminal investigation.⁹⁸³ In their study of the victim's perspective, Rijken et al. say the following about this:

'A possible fear is that victims will be less willing to appear as witnesses if they are no longer rewarded for doing so with a residence permit. In practice, this negative effect might be less serious than believed.⁹⁸⁴ It is entirely possible that [the decoupling] better reflects the dynamic of the recovery process and that as a result more victims will actually be willing to cooperate with the police.'⁹⁸⁵

There is little or no evidence at the moment to support the view that decoupling might correspond more closely with the victim's recovery process. The evaluation of the COSM pilot project⁹⁸⁶ actually seems to suggest that the great willingness of victims to cooperate with the police can be attributed more to the right to residence and shelter in the Netherlands than to the accommodation and treatment within the COSM shelter.⁹⁸⁷ Nevertheless, research is needed to investigate whether the Residency Regulation for Victims of Human Trafficking can (and should) be geared to the victim's recovery process in order to improve the evidentiary force of statements made by victims of human trafficking. The pilot project provides a perfect opportunity to conduct experiments with issues like this, with the aim of increasing the willingness of victims to report human trafficking and improving the quality of reports to the police.

2.9.2.5 Departure from shelters

At the moment, only victims with a foreign nationality are admitted to COSM shelters. In the COSM project, the objective is to allow these victims to remain in the shelter for the duration of the reflection period – a maximum of three months – and then move to another care institution or into regular housing.⁹⁸⁸ The evaluation of the pilot project revealed that the relocation of victims to other shelters or alternative accommodation is a difficult process. This applies for all victims, although there are differences between males and females.

Differences between male and female victims

The evaluation showed that roughly half of the female victims have left the COSM shelter within three months. The major obstacle involved the relocation to a follow-up shelter, but an additional factor was the other types of help that the women required, for example because of difficulty in functioning independently (in terms of making appointments, for example) and a lack of profi-

983 ACVZ 2009; Rijken et al. 2013; The study by Rijken et al. (2013) failed, however, to mention the additional possibility for victims who are unwilling/unable to cooperate with the criminal investigation (because they are seriously threatened or are not psychologically capable of doing so) to qualify for a temporary residence permit, a possibility that was created in 2010 (for more information about this additional possibility, see §2.8.2).

984 Rijken et al. 2013, p. 140.

985 In §2.8.2 there is a broader discussion of the link between the requirement of cooperating with an investigation and the temporary right to residence under European legislation.

986 Van London & Hagen 2012.

987 Ibid, p. 70.

988 *Parliamentary Documents II* 2011/12, 28638, no. 72.

ciency in the Dutch language. Other problems referred to were a victim's pregnancy or her need for a longer period of care due to poor health.

The majority of the male victims stayed for longer than three months in the shelter; more than half of them stayed for longer than six months.⁹⁸⁹ When they left, most men moved into independent accommodation; they seemed to have less need of longer-term shelter and treatment than female victims. The relatively lengthy period that male victims spent in the initial shelter seemed to be connected mainly with problems in finding new accommodation, particularly independent accommodation.⁹⁹⁰ Another important problem mentioned concerned the immigration and administrative procedures, with delays being primarily due to the late receipt of a B9 residence permit⁹⁹¹ and the waiting times when dealing with various agencies.

The result of the problems with the relocation of victims is that places in shelters are unnecessarily occupied, which can lead to long waiting lists. Possible victims who no longer possess a residence permit can also return to their country of origin with the help of the International Organization of Migration.⁹⁹²

Relocation to another shelter

The evaluation showed that regular shelters are reluctant to take in foreign victims of human trafficking⁹⁹³ because of their uncertain residence status. They cannot and do not want to put victims of human trafficking out on the street. Additional factors are that institutions are unfamiliar with residency procedures and they fear that the place in the shelter will no longer be funded if the PPS decides not to prosecute.⁹⁹⁴ The complex background of victims of human trafficking can also cause delays. In that context, it is important for a proper diagnosis to be made in the COSM shelter, so that victims can be moved to an institution that is equipped to deal with their specific problems. Finally, language is also a problem. For example, it has proved difficult to find a place in a regular shelter for victims who do not speak English or Dutch.⁹⁹⁵ Furthermore, regular shelters do not always have a hotline to an interpretation service.⁹⁹⁶

989 Van London & Hagen 2012, p. 52.

990 'Until January 2012, victims of human trafficking with B9 status did not fall under the responsibility of the municipality. COSM Jade therefore started arranging the departure of clients itself (without intervention by the municipality) through letting agencies and through the housing association' (Van London & Hagen 2012, p. 58). See also §2.9.2.5.

991 See also NRM 2012b. The pilot project on 'hopeless reports' also assessed ways of accelerating this process (on this point, see §2.8.4).

992 The IOM has a specific repatriation programme for this group, which is being brought to the attention of the shelters. In addition, the Ministry of the Interior and Kingdom Relations is reviewing the possibilities of expediting the repatriation process for this group of persons (*Parliamentary Documents II* 2011/12, 28638, no. 92). See also §2.11.

993 'For example, employees are sometimes told that there is a [so-called] "B9 freeze" at an institution' (Van London & Hagen 2012, p. 57).

994 On this point, see also §2.8.

995 Van London & Hagen 2012, p. 58.

996 On this point, see also §2.9.4.

Efforts must be made to improve the relocation of victims of human trafficking to follow-up shelters. The fact that the COSM shelters are themselves responsible for arranging follow-up shelter can also be a cause of unnecessary delay,⁹⁹⁷ since they are not always fully aware of the available capacity in other facilities or whether shelters with spaces are capable of providing the help required by the victim concerned.⁹⁹⁸ The question of how the relocation of victims from categorical shelter to follow-up shelter can be improved should therefore also be addressed in the future referral mechanism.

Relocation to independent accommodation

For victims with a temporary residence permit, the evaluation of the pilot project⁹⁹⁹ showed that there are problems with arranging their transfer to independent accommodation or sheltered housing or assisted living accommodation. It was found that municipalities did not give sufficient priority to this group, so that in practice there was insufficient independent accommodation available.

With effect from 1 January 2012, the responsibility for providing accommodation for victims with a temporary residence permit¹⁰⁰⁰ was delegated to municipalities.¹⁰⁰¹ Every year, municipalities are required to provide housing for a certain number of aliens living legally in the Netherlands,¹⁰⁰² and since that date victims with a temporary residence permit who are offered housing are included in that target. During 2012, 48 clients were registered with CoMensha and six possible victims were offered their own accommodation.¹⁰⁰³ It was decided to start a pilot project in a number of municipalities,¹⁰⁰⁴ which quickly showed that local authorities, housing associations and shelters were unclear about how the targets applied to this particular group.¹⁰⁰⁵

997 The evaluation shows that the new division of tasks has both advantages and disadvantages. 'An advantage is that the COSM shelters know more about the needs of a client. They are therefore better able to determine what the client requires later in the process. A disadvantage is that employees have to spend a lot of time looking for follow-up shelter' (Van London & Hagen 2012, p. 69).

998 The evaluation shows that this seems to have improved because the COSM shelters have invested in the network. Nevertheless, there has to be a place available (Van London & Hagen 2012, p. 57).

999 This applies for victims who are staying both in the COSM shelters and in regular shelters (Van London & Hagen 2012).

1000 In accordance with Chapter B8.3, Aliens Act Implementation Guidelines. See also §2.8.

1001 *Parliamentary Documents II* 2011/12, 28638, no. 72.

1002 Aliens who are living legally in the Netherlands on the grounds of an asylum request as referred to in Article 8 (a) to (d) of the Aliens Act 2000.

1003 Three of them accepted it (CoMensha Annual Report 2012, p. 27).

1004 'Because the inclusion of victims of human trafficking within the target was new to all of the parties concerned, it was decided to start a pilot project' (CoMensha Annual Report 2012, p. 27).

1005 Letter from the Director-General for Housing and Building to the municipal and provincial executives, 2 April 2013 (reference 2013-0000114685).

The pilot municipalities and other organizations involved in meeting the targets reported problems that caused delays in relocating people from shelters into independent accommodation.¹⁰⁰⁶ CoMensha said that one problem it encountered was that mothers with children also had to apply for separate residence permits for the children in order to qualify for their own housing.¹⁰⁰⁷ Those applications can take months, during which time places in shelters remain occupied unnecessarily. According to some of the municipalities that took part in the pilot project, the amount of the benefit paid to victims was often not sufficient for victims between the ages of 18 and 22 to qualify for independent accommodation. However, that is a problem that extends beyond this group, and also applies for other aliens and young Dutch people, and therefore has to be seen in a wider context.

The most common problem reported by various municipalities and organizations taking part in the pilot project is connected with the temporary nature of the Residency Regulation for Victims of Human Trafficking. Housing associations were found to be reluctant to sign tenancy agreements with members of this group for fear that the temporary residence permit could be withdrawn at any moment.¹⁰⁰⁸ To address this problem, the authorities in Rotterdam-Rijnmond and the Amsterdam Urban Region have started introducing a programme known as ‘phased relocation of victims of human trafficking’.

Phased relocation

The idea is to accommodate victims within the region in houses whose registered owners are the COSM institutions PMW Humanitas (Rotterdam) and HVO Querido (Amsterdam). Victims in possession of a temporary residence permit – but who are felt to be sufficiently self-reliant – will initially move into these houses and sign a tenancy agreement with the relevant COSM institution. Agreement has been reached with the housing associations that once a victim has been in possession of a temporary residence permit on the basis of Chapter B8.3 of the Aliens Act Implementation Guidelines for an extended period and has been living in one of the COSM houses, he or she will qualify for relocation to independent housing within the region. The Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations have said that the system of targets for providing housing for aliens does not preclude such a method.

Given the problems arising from the sluggish movement of residents from shelters to independent accommodation, the National Rapporteur stresses the importance of integrating the regional method proposed by PMW Humanitas and HVO Querido into the procedure that has been tested in the pilot municipalities and recommends rolling out the envisaged integrated method throughout the country as quickly as possible in order to improve the process of relocating victims to independent accommodation and thus free up spaces in the shelters.

1006 To clarify the situation, on 21 March 2013, the Ministry of the Interior organized a meeting to inform municipalities and other organizations about the targets. The aim of the meeting was to provide more insight into the Residency Regulation for Victims of Human Trafficking, the shelter of victims and the mediation process in the context of the targets. Municipalities and shelters were also able to discuss their experiences and problems.

1007 CoMensha Annual Report 2012, p. 27.

1008 See §2.8 for the latest developments relating to the right to temporary residence.

2.9.2.6 Categorical shelter in other countries

To promote the objectives of the COSM pilot project, it is also important to look at experiences in other countries. Various EU member states provide categorical shelter and face problems similar to those in the Netherlands.¹⁰⁰⁹ It is therefore interesting to see how they deal with those problems. The differences in the responses to these problems relate to the organization of shelter, the treatment of victims and immigration law, among other things.

A number of comparative studies have been carried out that could help to further shape the system of categorical shelter.¹⁰¹⁰ The WODC is currently researching the residency regulations in three member states (Belgium, Italy and the United Kingdom)¹⁰¹¹ and has also conducted research into the knowledge of and experiences with categorical shelter in Belgium, the Czech Republic, Italy and Spain.¹⁰¹²

The aim of the WODC study is to discover what European countries have learned about categorical shelter for adult victims of human trafficking and what their experience has been and to describe how this form of shelter is organized and implemented in those countries. In all four countries selected for the study (Belgium, the Czech Republic, Italy and Spain),¹⁰¹³ there are government policies in place to protect and assist victims of human trafficking, with implementation of categorical shelter for this group being delegated to specialized NGOs.

Belgium and Italy seem the most relevant countries from the perspective of the Netherlands. The organization of shelter for adult foreign victims in Belgium is similar to the categorical shelter in the Netherlands, but immigration law differs in crucial respects.¹⁰¹⁴

Belgium

In Belgium, victims of human trafficking are offered a reflection period of 45 days, during which they can decide whether they wish to file a complaint against their traffickers; the period cannot be extended. Identification by the police is not a requirement for being offered the reflection period; the three specialist NGOs can themselves apply for a reflection period. This is a unique aspect of the Belgian system.¹⁰¹⁵

1009 For a description of the problems that emerged from the evaluation of the pilot project, see Van London & Hagen 2012.

1010 See, among others, Dottridge 2010; Craggs & Martens 2010; Appelt, Kaselitz & Logar 2004; EMN 2011; Hancilova, Massey 2009; Kulu-Glasgow et al. 2012.

1011 *Parliamentary Documents II* 2012/13, 28638, no. 95. For a description of this study, see §2.8.4.

1012 'These countries were chosen by the WODC with a view to variety in terms of the organization and implementation of categorical shelter and comparability with the Netherlands and the Dutch pilot project in relation to categorical shelter' (Kulu-Glasgow et al. 2012, p. 169).

1013 The study involved a literature review and interviews with representatives of ministries, of NGOs specializing in providing categorical shelter for victims of human trafficking and of other stakeholder institutions in the selected countries; five representatives of these organizations also made written contributions to the study (Kulu-Glasgow et al. 2012).

1014 For a detailed comparison of the structure of immigration law in the Netherlands and Belgium, see the study by Noteboom (2009).

1015 Kulu-Glasgow et al. 2012, p. 170. Making a complaint is also not necessary in the Netherlands.

Italy also has specialized shelters, but its residency regulations are designed differently than in the Netherlands.¹⁰¹⁶

Italy

To secure an 'Article 18 residence permit', victims are not directly required to report human trafficking. They can choose one of two options: the 'judicial path', in which the victims must file a report against the traffickers, or the 'social path', in which they are not obliged to file a report but are expected to provide detailed information to the police.¹⁰¹⁷

It is not possible to draw any firm conclusions from this study because, in the absence of any independent evaluation it is impossible to say anything about the impact of the design of the system of categorical shelter.¹⁰¹⁸ However, the study did produce some interesting findings with regard to further refining the system of categorical shelter in the Netherlands. Belgium and Italy are interesting countries for further research with a view to improving categorical shelter in the Netherlands.

2.9.3 Categorical shelter for large groups

Meanwhile, a strategy has been developed for arranging shelter for large groups of victims who are encountered during inspections at companies.¹⁰¹⁹ The strategy, which sets out which organizations are responsible for doing what,¹⁰²⁰ is designed to ensure that victims who are discovered during such operations do not fall through cracks in the system.¹⁰²¹ After all, these victims cannot be placed in regular shelters but, at the same time, they usually do not require care or assistance and want to return to work with another employer or return to their country of origin as soon as possible.¹⁰²² It is therefore essential to arrange shelter in advance when a major operation is planned.¹⁰²³

Major operations

In consultation with CoMensha, the Ministries of Security and Justice, Health, Welfare and Sport and Social Affairs and Employment have drawn up a strategy for providing shelter for large groups of victims. It has been agreed that CoMensha will be informed well in advance when a major operation is planned and will assume responsibility for providing shelter for any large groups of victims that are encountered. CoMensha has been allocated permanent funding for this.¹⁰²⁴ The strategy

1016 Since 22 December 2010, it has also been possible, under certain conditions, for victims to qualify for a temporary residence permit in the Netherlands without cooperating with the criminal investigation. For a detailed description of this, see §2.8.2.

1017 Kulu-Glasgow et al. 2012, p. 174.

1018 Ibid, p. 178.

1019 NRM7, recommendation 23.

1020 Task Force on Human Trafficking 2013. See also §3.3.1.

1021 For an example of this, see the administrative report 'Other forms of exploitation in agriculture and horticulture' (2012). See also §3.6.

1022 *Parliamentary Documents II* 2011/12, 28638, no. 72.

1023 See §2.4.3 and §3.3.1 for more information about the need to arrange shelter for large groups of victims who are encountered during operations against labour exploitation.

1024 *Parliamentary Documents II* 2011/12, 28638, no. 72.

seems to work in practice. Since it was adopted, the procedures have been set in motion nine times. Shelter was ultimately not needed on five of those occasions, but was on the other four.¹⁰²⁵

2.9.4 Interpreters

Since 1 January 2012, there has been no central funding for interpreting and/or translation services.¹⁰²⁶ On 25 May 2011, the Minister said in a letter to the Speaker of the Lower House of Parliament that ‘patients/clients (or their representatives) [...] are personally responsible for being able to speak the Dutch language.’¹⁰²⁷ However, the Minister did make an exception for the use of interpreting and translation services in women’s shelters.¹⁰²⁸ The costs of using interpreters are also reimbursed for victims of human trafficking who receive a benefit under the Benefits for Certain Categories of Aliens Regulations.¹⁰²⁹ Nevertheless, the rule changes have caused some confusion.

The current rules are as follows. The tender contracts for categorical shelter provide that interpreters for foreign victims of human trafficking will be paid. For foreign victims who are provided with residential accommodation in an institution (not being a categorical shelter), an application for payment of an interpreter can be submitted to the municipality in which the centre is located. Under certain circumstances,¹⁰³⁰ applications can be submitted for foreign victims who receive non-residential care to the ‘administrative centre for interpreters for non-residential victims of human trafficking’. CoMensha has been allocated financing for this facility by the Ministry of Health, Welfare and Sport on a one-year trial basis until 1 January 2014 with a view to establishing the demand for interpreting services among social workers and victims of human trafficking.¹⁰³¹ Arrangements for interpreting services should also be covered in the future national referral mechanism.¹⁰³²

1025 Written information from CoMensha, received on 25 July 2013.

1026 *Parliamentary Documents II* 2010/11, 32500-XVI, no. 143.

1027 *Ibid.*

1028 ‘In the interests of protecting details of their address, an exception is made for the use of interpreters and translators in women’s shelters. Financial compensation for the use of these services there will be provided through the decentralization grant for women’s shelters (*Parliamentary Documents II* 2010/11, 32500-XVI, no. 143, p. 4).

1029 ‘All victims of [...] human trafficking who receive benefits from the COA under the Benefits for Certain Categories of Aliens Regulations are insured against the cost of sickness in accordance with the Care for Asylum Seekers Regulation. The use of the interpreting or translation services of the Tolken Vertaalcentrum Nederland (TvcN) falls under this regulation and the costs will be paid from it’. (See <http://www.opvang.nl/site/item/raamcontract-voor-tolkenregeling-vrouwenopvang>, last consulted on 11 June 2013).

1030 There are five conditions. The conditions and further information are available on the website http://www.mensenhandel.nl/cms/index.php?option=com_content&task=view&id=492.

1031 Written information from CoMensha shows that it was relied on 40 times from the start of the pilot project up until 24 July 2013 (written information from CoMensha on 24 July 2013).

1032 The national referral mechanism is discussed in §2.5.

2.10 Underage Dutch victims¹⁰³³

2.10.1 Introduction

This section is devoted to *domestic human trafficking*,¹⁰³⁴ where victims and offenders are both from the country in which the exploitation occurs.¹⁰³⁵ In the Netherlands, it has been a familiar phenomenon for years¹⁰³⁶ and has even been given the objectionable, but now commonly used, name of ‘the loverboy problem’.¹⁰³⁷ For a long time the Netherlands seemed to be the only country where this problem was recognized, but that is changing. In the United Kingdom, for example, it initially seemed impossible to secure a conviction for domestic human trafficking, but the problem is now also recognized there, and there has been a conviction in one major case.¹⁰³⁸

Whereas sexual exploitation of minors used to be seen mainly in the context of problems relating to puberty, such as running away from home, borderline disorder and truancy, there is a growing realization – also at international level – that young girls can be easy prey and can generate a lot of money for human traffickers.¹⁰³⁹ The following case from the United States illustrates how refined the operations of these human traffickers can be.

Fairfax County, Virginia

A major case in the United States last year centred on the exploitation of more than 150 girls between the ages of eleven and sixteen by a juvenile gang. The victims were not just girls suffering from insecurity or from poor families. On the contrary, many of the girls in this case came from wealthier families in which both parents worked long hours. The girls’ need for love and affection drove them into the clutches of the gang. The gang members used Facebook, Myspace, and other social media to establish contact with the girls. They created profiles on various websites to attract possible victims and picked out girls whose status updates suggested that they had had an argument with their parents, were lonely or were otherwise vulnerable. The gang members would then contact the girl and start the refined recruitment process.

¹⁰³³ The reports also regularly devote attention to underage, foreign victims. As explained in §2.6.3, the National Rapporteur is carrying out research into unaccompanied minor aliens in protected shelters. The findings from that study will be included in the next quantitative report.

¹⁰³⁴ This section relates to underage victims of domestic human trafficking. The terms ‘victims of loverboys’ and ‘underage victims of domestic human trafficking’ are both used. Domestic human trafficking does not necessarily involve the use of the loverboy method. For examples of human trafficking cases in which the loverboy method was not necessarily used, see NRM 2012d.

¹⁰³⁵ See also NRM 2012f.

¹⁰³⁶ Bovenkerk et al. 2004.

¹⁰³⁷ In 2009, the Minister of Justice coined the new term ‘pimp boy’ in a reply to questions in parliament from the members Agema and De Roon (appendix to the proceedings in *Parliamentary Documents II* 2008/09, no. 1424). That name has not caught on.

¹⁰³⁸ For a description of the ‘Derby rape gang targeted children’ case, see the study ‘Loverboys and their victims’ by Verwijs et al. (2011, pp. 28-29).

¹⁰³⁹ See also §3.8.2.

At first the girls were helped with their homework, were welcomed into the warmth of the group and given the attention they did not receive at home. A strong sense of belonging was created by initiating the girls into the gang, which had its own hierarchy and code of conduct. As soon as the girls felt they were part of the group, they were told that everyone contributed to it and that it was normal for girls to prostitute themselves to earn some money. Other girls in the gang confirmed this and said they also did so. More than 150 girls were exploited in this way.

The parents suspected little, because the gang members encouraged the girls to behave and do well at school. They were helped with their homework and the gang members ensured that the girls were home on time. The case only came to light after one girl became suspicious after a few weeks and informed the police. Five people were arrested and eventually sentenced to lengthy prison sentences for human trafficking.

As the detective who investigated the case put it, 'These guys [human traffickers] are very savvy in coercion and brainwashing. They don't want to use violence. Their means of power is to get these girls to fall in love with them because then they can get them to do anything they want.'

This was the first case of this type and calibre in the US, where up to then the problem had also mainly been regarded as one of runaway girls and the connection with human trafficking had not been fully recognized.^{1040,1041}

The problem remains as serious as ever in the Netherlands. The report 'Trafficking in Human Beings: Visible and Invisible' in 2012¹⁰⁴² showed that the largest group of possible victims have Dutch nationality.¹⁰⁴³ In 2011, almost 40% of this group were minors. The fact that CoMensha registers the age of reported victims at the time of the report and not at the time the human trafficking situation commences suggests that this proportion could be even larger.¹⁰⁴⁴ Youth care organizations¹⁰⁴⁵ also do not always report possible victims.¹⁰⁴⁶

1040 In the weekend of 27-28 June 2013, the American police arrested 150 suspects in more than 76 cities. The victims were aged between thirteen and sixteen. D. Ingram, 'FBI arrests 150 in three days in sex-trafficking sweep' *Reuters* 29 June 2013, <http://www.reuters.com/article/2013/07/29/us-usa-crime-prostitution-idUSBRE96SoNC20130729>. This was also a case of domestic human trafficking.

1041 In the autumn of 2013, the National Rapporteur was organizing a meeting of experts on 'domestic human trafficking' to which the US and the UK were also being invited to send representatives.

1042 NRM 2012f.

1043 These are the possible victims who are registered with CoMensha (NRM 2012f).

1044 See also NRM 2012f, recommendation 2.

1045 In the rest of this section, the term 'youth workers' will refer to anyone who is professionally engaged in providing assistance to minors, which would include agencies such as the Child Care and Protection Board, the Youth Care Agency (Bureau Jeugdzorg), youth mental health care services and residential care facilities for young people.

1046 See §2.10.4; NRM2012f, recommendation 3.

Table 2.2 Number of underage victims (2007-2011)

	2007		2008		2009		2010		2011	
	N	%	N	%	N	%	N	%	N	%
Dutch victims	270	100%	320	100%	240	100%	315	100%	337	100%
- of whom minors	100	37%	104	33%	63	26%	89	28%	131	39%
Nigerian victims	104	100%	64	100%	101	100%	130	100%	134	100%
- of whom minors	50	48%	7	11%	10	10%	13	10%	6	5%
Guinean victims	15	100%	20	100%	35	100%	26	100%	58	100%
- of whom minors	3	20%	11	55%	8	23%	10	39%	16	28%
Other victims (including unknown nationalities).	327	100%	422	100%	533	100%	522	100%	693	100%
- of whom minors	46	14%	47	11%	30	6%	40	8%	42	6%
Total	716	100%	826	100%	909	100%	993	100%	1,222	100%
- of whom minors	199	28%	169	20%	111	12%	152	15%	195	16%

Source: CoMensha annual reports and databases (see also NRM 2012f, Table B3.1.12)

Some human traffickers seem to wait until the girls have reached the age of 18 (the age at which voluntary prostitution is legal in the Netherlands¹⁰⁴⁷) before exploiting their victims in legal prostitution.¹⁰⁴⁸ Nevertheless, there are fears that the grooming period, or recruitment phase, and the ensuing sexual exploitation – outside the legal sex industry – has already started at a younger age.¹⁰⁴⁹

Minors who are victims of human trafficking are particularly vulnerable. Measures have been taken at both the national and international level to reduce their vulnerability and provide the best possible protection for them, including prevention and the identification of possible victims. The vulnerable minors covered in this section are children with Dutch nationality,¹⁰⁵⁰ for whom the international agreements on prevention, identification and protection also apply.

1047 For the latest developments in relation to the policy on prostitution, see §2.3.

1048 This is based on information from a study by the National Rapporteur into investigations of suspected offenders in 2009. For this study, 55 investigations that had been completed and sent to the PPS in 2009 were analysed. The study made a valuable contribution to an understanding of how human trafficking is committed, by whom and with what types of victims. The results of the study can be found in the report *Trafficking in Human Beings: Visible and Invisible* (NRM 2012f, Chapter 5). Of the 119 victims of sexual exploitation, 17 (=14%) were precisely eighteen years of age and a fifth were nineteen or twenty years old at the time the human trafficking offence commenced (NRM 2012f).

1049 See also NRM 2012f, recommendation 3.

1050 See also NRM7.

2.10.2 National and international legislation

In 2011, two EU directives were adopted containing specific provisions for the protection of minors who are victims of human trafficking: the EU Directive on Human Trafficking¹⁰⁵¹ and the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography¹⁰⁵² (hereinafter referred to as the EU Directive on sexual exploitation of children). In the context of human trafficking, the EU Directive on sexual exploitation of children supplements the EU Directive on Human Trafficking.¹⁰⁵³

The EU Directive on Human Trafficking contains specific provisions for the protection of minors who are victims.¹⁰⁵⁴ For example, it provides that member states must take the necessary measures to support, assist and protect child victims. It also provides that member states must take the necessary measures to ensure that decisions on specific actions to assist and support child victims in their physical and psychosocial recovery, in the short and long term, are made on the basis of an individual assessment of the special circumstances of each victim.¹⁰⁵⁵ There are also a number of provisions relating to the protection of underage victims during criminal investigations and proceedings.¹⁰⁵⁶ At the time of writing, the bill to implement this directive was before the Upper House of Parliament.

A key provision of the EU Directive on sexual exploitation of children¹⁰⁵⁷ is that it calls for a comprehensive, three-pronged approach that embraces the prosecution of offenders, the protection of underage victims and prevention.¹⁰⁵⁸

The directive also provides that given the nature of the physical and psychological harm suffered by victims, they should receive assistance for as long as necessary for their recovery, and continuing into the child's adulthood if required.¹⁰⁵⁹ According to the directive, professionals who are likely to come into contact with children who are victims of sexual exploitation should be adequately trained to rec-

1051 For a detailed description of the EU Directive on Human Trafficking, see §2.2 and NRM7.

1052 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. (Member states had until 18 December 2013 to implement this directive).

1053 Ibid, recital 7.

1054 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 (OJ 2011, L 101/1), Articles 13, 14 and 15.

1055 Ibid, Article 14 (1).

1056 Ibid, Article 15. In the Instructions on Human Trafficking, explicit attention is devoted to the non-prosecution and non-punishment of victims of human trafficking (the non-punishment principle) and preventing secondary victimization of victims, including minors (*Government Gazette* 2013, 16816).

1057 The directive is heavily influenced by the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention). Lanzarote, 25 October 2007, *Bulletin of Treaties* 2008, 58.

1058 EU Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335/1), recital 6.

1059 Ibid, recital 31.

ognize and deal with such victims.¹⁰⁶⁰ Finally, it refers to the importance of seizing and confiscating the proceeds of sexual exploitation, with states being encouraged to use these funds to assist and protect victims.¹⁰⁶¹ At the time of writing, the bill to implement this directive was before the Lower House of Parliament.¹⁰⁶²

In the EU Strategy towards the Eradication of Trafficking in Human Beings, the European Commission has described its plans for strengthening the position of children who are victims of human trafficking. In this context, the Commission refers to the importance of a referral mechanism to ensure coordination of the actions of relevant agencies and disciplines.¹⁰⁶³ Such a referral mechanism is essential, according to the European Commission, not only because children are particularly vulnerable, but also because of the risk of their becoming victims of human trafficking again.¹⁰⁶⁴

Nevertheless, as explained in §2.5, there is still no description of the procedures to be followed when Dutch child victims are identified. The current documents that describe what has to be done – when, how and by whom – in relation to a victim of human trafficking make no reference whatever to the role of employees of youth care organizations in this regard. In that sense, the Netherlands is out of step with the line taken by the European Commission to further strengthen the position of child victims.¹⁰⁶⁵ It is therefore essential for the future referral mechanism to include rules for the protection of Dutch child victims, protection that should extend from the moment the victim is identified up to and including after-care.

Changes in the system of youth care

Finally, reform of the system of youth care is underway and the bill for a Youth Act was submitted to parliament on 2 July 2013.¹⁰⁶⁶ Briefly, the changes in the system involve delegating responsibility for

1060 '[That] training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work (Ibid, recital 36).

1061 Ibid, recital 23.

1062 Bill to implement Directive 2011/93/EU of the European Parliament and the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335) (*Parliamentary Documents II* 2012/13, 33580, no.2).

1063 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 Final, 19 June 2012, priority A, under (3).

1064 It is apparent from judgments that girls who run away from juvenile custodial institutions or youth care institutions are vulnerable to human traffickers, including loverboys (See NRM 2012d, §4.4).

1065 Research by the Verwey-Jonker Institute seems to suggest there is a need for this. For example, youth workers do not always know which partners in the chain they can turn to for advice. The transfer of victims from one institution to another does not always proceed smoothly and police professionals say that victims sometimes have to spend a night in a 'social cell' because there is no immediate authorization for their placement in a closed institution (Verwijs et al. 2011, pp. 86-87). NRM7 also describes problems with the relocation of victims from closed to open shelters (NRM7, recommendation 22).

1066 *Parliamentary Documents II* 2012/13, 33684, no. 2.

social services for young people to municipalities. ‘The aim of this bill is to simplify the system of youth care and make it more efficient and effective, with the ultimate aim of strengthening the self-reliance of young people and the capacity of their families and social environment to care for them and solve their problems. The reform of the system of youth care should be completed in 2015.’¹⁰⁶⁷ Services such as youth care institutions, closed youth care facilities and mental health care for young people will be decentralized. The point of departure is that support will be integrated and wherever possible provided within the child’s own environment.

A possible benefit of this decentralization is that youth care organizations at the local and regional levels could play an effective role in the efforts undertaken to tackle the loverboy problem by the Security Coordination Houses.

However, it is important that specific attention is devoted to victims of domestic human trafficking, a vulnerable group, during the overhaul of the system.¹⁰⁶⁸ For example, the decentralization of services must not be at the expense of the option of placing victims in shelters outside their own region, which is often necessary to guarantee their safety.¹⁰⁶⁹ It is also important for the treatment and protection of this group that expertise should be concentrated in a few select national youth care institutions. Moreover, as a result of complex traumatization and their experiences as victims, this group seems to have more severe psychiatric problems than other girls dealt with by youth care organizations.¹⁰⁷⁰

In the knowledge that it will not always be possible to place these girls within their own region and it is not financially viable or feasible for each region to devote resources to providing the specialized support they require (partly in view of the planned efficiency targets – budget cuts – for municipalities),¹⁰⁷¹ in reforming the system explicit attention should be devoted to ensuring that the support for this vulnerable group is organized at a national or supra-regional level in such a way that they receive the shelter and treatment they need.

2.10.3 Developments in policies and measures at the national level

Since the publication of NRM8, a number of promising steps have been taken in the battle against the loverboy problem. For example, a strategy has been formulated in the ‘Government-wide approach to the loverboy problem: Action Plan 2011-2014’ (‘the government-wide approach’).¹⁰⁷² This strategy

¹⁰⁶⁷ Ibid, no. 3.

¹⁰⁶⁸ On this point, the explanatory memorandum says the following: ‘For protection and probation for young people and other complex tasks, all municipalities will cooperate at the regional or supra-regional level. Closed youth care will be organized mainly at a supra-regional level’. (*Parliamentary Documents II* 2012/13, 33684, no. 3, p. 25). How this relates specifically to shelter for victims of loverboys is unclear at the present time.

¹⁰⁶⁹ Van Dijke et al. 2012; Verwijs et al. 2011; Van der Wiele & De Ruiter 2011, p. 124.

¹⁰⁷⁰ *Parliamentary Documents II* 2012/13, 31839, no. 261.

¹⁰⁷¹ *Transitieplan Jeugd, Gezamenlijk plan van Rijk, VNG and IPO*, 14 May 2013, p. 9, www.vng.nl/files/vng/20130502_transitieplan_jeugd.doc (consulted on 9 August 2013).

¹⁰⁷² *Parliamentary Documents II*, 2011/12, 31839/28638, no. 166.

underlines the fact that the loverboy problem can only be dealt with effectively by a combination of prevention, investigation and prosecution of offenders¹⁰⁷³ and protection and shelter for victims.¹⁰⁷⁴

Considerable efforts have been made in the areas of prevention, investigation and prosecution in the last few years. Various prevention projects have been started, curricula have been developed for primary and secondary schools, films have been produced and social media have been used for prevention campaigns.¹⁰⁷⁵ Progress has also been made in relation to the investigation and prosecution of offenders. For example, in a two-year pilot project in Rotterdam, the police are developing innovative methods for establishing contact with victims and offenders, such as taking part in online chat sessions to investigate who is initiating contacts with underage girls and how they are doing it.¹⁰⁷⁶

In May 2013, Meld Misdaad Anoniem [Report Crime Anonymously] re-launched the campaign ‘Schijn bedriegt’ [Appearances are deceptive].¹⁰⁷⁷ During the campaign, reports of forced prostitution rose by 76% and a quarter of all the reports of human trafficking concerned child victims.¹⁰⁷⁸ The police have said that 83% of the reports were investigated and that two-thirds of them contained new information that would otherwise not have been received.

Despite the steps that have been taken to track down offenders and identify victims, the successful prosecution of an offender still generally depends to a large extent on the statements made by the victim. It has been found that the willingness to report an offence among this vulnerable group of victims is low,¹⁰⁷⁹ which could be explained by fear of the traffickers, the attachment the victim feels towards the trafficker, or because the girl is not identified as a victim and does not regard herself as such.¹⁰⁸⁰ Revictimization also seems quite common among these girls; in other words, they fall into the hands of human traffickers again, with all the ensuing consequences.¹⁰⁸¹

Revictimization

An exploratory European study by the IOM¹⁰⁸² in 2010, which covered 79 persons¹⁰⁸³ who had become repeat victims of human trafficking, showed that in 84% of the cases, the children or young

1073 In this context, further research is also needed into prevention measures targeted at (young) Dutch offenders (on this point, see also NRM 2012f).

1074 Ibid.

1075 The various prevention projects are described in detail in the letter from the Minister of Security and Justice to the Lower House of Parliament on 4 July 2013 concerning a report on the implementation of the government-wide approach (*Parliamentary Documents II* 2012/13, 31839, no. 306); Task Force on Human Trafficking 2013.

1076 Van de Velde 2012.

1077 See §3.7.4 for a detailed description of Meld Misdaad Anoniem (which now simply calls itself M.).

1078 In 2011, the figure was one in eight reports (*Parliamentary Documents II* 2012/13, 31 839, no 306, p. 4).

1079 Appendix to *Parliamentary Documents II* 2011/12, 31839, no. 166, p. 4.

1080 Van Dijke et al. 2012; Appendix to *Parliamentary Documents II* 2011/12, 31839, no. 166, p. 4.

1081 Verwijs et al. p. 4.

1082 This study was carried out for the IOM by Alison Jobe, who referred in her study to the need for further research. For the limitations of the study, see Jobe 2010, p. 20 ff.

1083 These are only women who have come into contact with the IOM.

adults were under the age of 25. Moreover, in 18% of the cases, the minor again became a victim of human trafficking as an adult.¹⁰⁸⁴ Minors who are victims of human trafficking face the risk of being re-trafficked in adulthood.¹⁰⁸⁵

A study by Van Talhout and Werson into victims of loverboys, based on case files, showed that 87% of the victims who were given shelter by Asja¹⁰⁸⁶ had previously received non-residential support (= 94) and two-thirds had followed more than one non-residential programme (= 94) or had been admitted to residential facilities such as crisis shelters, women's shelters, youth care facilities or boarding schools (= 83). Two-fifths of all the victims in the study (= 83) had spent time in more than one residential institution.¹⁰⁸⁷

To increase the willingness of victims to report human trafficking and to intensify efforts to combat loverboys, the State Secretary for Health, Welfare and Sport¹⁰⁸⁸ has promised to make agreements with the youth care organization *Jeugdzorg Nederland* about the part youth workers can play in increasing the willingness of victims to report human trafficking.¹⁰⁸⁹ The need for this is also apparent from a survey carried out by the Expertise Centre for Youth, Society and Child-raising (JSO), which showed that the police are not always called when possible victims are encountered because there seems to be a certain diffidence about involving the police with this problem.¹⁰⁹⁰

To strengthen efforts to combat human trafficking, investment is needed in the protection of victims in the coming years. The point of departure is that if victims receive the care and shelter they need, the chance of revictimization will decline and the willingness to report human trafficking will increase.¹⁰⁹¹ In the short term, major improvements are needed in two areas in order to strengthen the position of underage victims of domestic human trafficking: (1) identification and registration by *youth care institutions* and (2) *assistance, shelter and treatment*.

2.10.4 Identification and registration

The protection of victims has to start from the moment they are identified.¹⁰⁹² Youth care organizations also come into contact with possible victims of domestic human trafficking, otherwise known as victims of loverboys. It is therefore essential that employees of these organizations possess expertise in identify-

1084 Jobe 2010, p. 26.

1085 Ibid, p. 27.

1086 Asja is a crisis shelter run by Fier Fryslan which treats girls aged between twelve and 23 who have been involved in transgressive sexual behaviour, loverboy problems and juvenile prostitution. Cf. <http://www.fierfryslan.nl> (consulted on 4 August 2013).

1087 Talhout & Werson 2012, pp. 97-98.

1088 In accordance with the motion by Van der Burg/Ypma (*Parliamentary Documents II* 2012/13, 33400 XVI/VI, no. 28).

1089 *Parliamentary Documents II* 2012/13 31839, no. 306; See also the guidelines written to inform care professionals of when they can report suspicions that persons are victims of loverboys to the police (§2.6.3).

1090 De Groot & Tazelaar 2012, p. 23.

1091 *Parliamentary Documents II* 2012/13, 31839, no.306, p. 5.

1092 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012

ing the signs that a person is a victim.¹⁰⁹³ With respect to the identification of victims, the EU Directive on sexual exploitation of children states as follows:

*'Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims.'*¹⁰⁹⁴

Youth care organizations do not appear to possess sufficient expertise in terms of recognizing victims of domestic human trafficking.¹⁰⁹⁵ According to a study by the Verwey-Jonker Institute entitled 'Loverboys and their victims', only 'approximately a quarter of the youth care institutions that participated in the study said they had organized internal activities to promote expertise on the subject of the loverboy problem. They usually took the form of meetings on the subject, and to a lesser extent internal training courses.'¹⁰⁹⁶ An additional problem is that there is uncertainty about precisely what the loverboy problem entails,¹⁰⁹⁷ since various definitions are adopted.¹⁰⁹⁸ Accordingly, the impression could be created that the loverboy problem only affects young Dutch girls, even though adult women and foreign girls, as well as boys and men, can also be victims of loverboys. In addition, there is the erroneous view that a girl must already 'have worked behind the windows' or have been sexually exploited.¹⁰⁹⁹ Too many youth care professionals lack sufficient knowledge of the risk factors and profiles associated with the loverboy

1093 Various other organizations, institutions and agencies that are likely to come into contact with victims of human trafficking have already provided training for their staff in identifying signs of human trafficking, what they should then do and where the signs can be reported.

1094 EU Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335/1), recital 36 and Article 23 (3); in this context, see also 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 (OJ 2011, L 101/1), recital 25.

1095 Movisie 2013; Verwijs et al. 2011, p. 93.

1096 Verwijs et al. 2011, p. 50.

1097 'From the interviews it emerged that the term "loverboy" was interpreted in various ways by our respondents [for the Verwey-Jonker study]. Whereas for some, the sexual abuse or transgressive sexual behaviour was the priority, for others, the dependency and exploitation were decisive. Some see a loverboy as a pimp and a human trafficker, others see him as an exploiter. Some see a loving relationship (with a lot of attention and gifts) being used as a cover to charm the victims, others see a violent relationship (with compulsion and force). Yet others argue that the focus should be mainly on the vulnerable victim, who yearns for attention and is susceptible to influence and abuse' (Verwijs et al. 2011, pp. 20-21).

1098 Verwijs et al. 2011; Movisie 2013; Van der Wiele & De Ruiter 2011; *Parliamentary Documents II* 2012/13, 31839, no.261.

1099 See NRM 2012d for a detailed description of Article 273f DCC on human trafficking.

problem,¹¹⁰⁰ and consequently victims of loverboys are not always seen as victims of human trafficking, with the result that they do not receive the protection they are entitled to.¹¹⁰¹

To increase knowledge about the loverboy problem among professionals, it is important to make the subject a standard component of training programmes designed to enhance the expertise of employees of the youth care facilities.¹¹⁰² Among other things, the training should devote attention to the definition of the loverboy problem, as well as the profiles of offenders and victims and the signs of victimization.

*Training within youth care institutions*¹¹⁰³

Movisie has offered to provide training to increase the expertise of employees of youth care institutions in exchange for the information they can provide about possible victims.¹¹⁰⁴ In 2012, Movisie selected six of the country's fifteen youth care regions and approached 34 organizations, including the Child Care and Protection Board, regional Youth Care Agencies and youth care institutions. Eleven of the 34 organizations turned down the request for cooperation. Some of them said they did not want to take part because, they said, they 'have no victims', while others decided to take part for precisely the same reason, in order to discover whether they were properly equipped to identify victims of loverboys. In the first half of 2012, a total of 129 suspected victims were reported to Movisie,¹¹⁰⁵ which presented its findings in the report 'Registratie slachtoffers loverboys in de jeugdsector' [Registration of victims of loverboys in the youth sector].¹¹⁰⁶

Finally, the youth care institutions that are endeavouring to increase their expertise in this area need more guidelines for identifying victims and confirming suspicions.¹¹⁰⁷

1100 'Registration of victims of loverboys in youth care' *Movisie* 23 August 2012, <http://www.movisie.nl/artikel/registratie-slachtoffers-loverboys-jeugdzorg> (consulted on 5 August 2013).

1101 See §2.9.1 and §2.10.2 for a description of the rights of victims of human trafficking pursuant to international legislation.

1102 Verwijs et al. 2011, p. 93.

1103 Institutions that did participate in the project said they needed better guidelines for identifying victims and confirming suspicions. (Movisie 2013).

1104 This is one of the measures that have been taken in response to recommendations made in the study by the Verwey-Jonker Institute 'Loverboys and their victims' (Appendix to *Parliamentary Documents II* 2011/12, 31839, no. 166, p. 4).

1105 There could be some duplication in these figures since the individuals involved in the case files supplied to Movisie were anonymous. The employees of the institutions were also asked to make their own estimate of cases that involved victims of loverboys. Movisie did not study the files itself and therefore depended on the responses and estimates of the employees of the institutions that were consulted.

1106 *Movisie* 2013.

1107 *Ibid.*

Registration

Improved identification also provides a basis for learning more about the nature and size of the population of victims of domestic human trafficking. Not enough is known about this at the moment, and the phenomenon is under-reported.¹¹⁰⁸

Under-reporting

The statistical report produced by the National Rapporteur showed that 59% of all underage victims registered in the period 2007-2011 had Dutch nationality.¹¹⁰⁹ Although this is already a high percentage, the true extent is under-reported, since the Youth Care Agency do not always report victims to CoMensha.¹¹¹⁰ The figures from CoMensha therefore provide an overly optimistic impression of the proportion of possible victims who are minors.¹¹¹¹

Strengthening efforts to combat the loverboy problem requires insight into the true nature and scale of the problem.¹¹¹² Youth care institutions can play an important role in this, but at present the Youth Care Agency is unable to provide a clear picture of the number of underage victims of domestic human trafficking, including victims of loverboys, that are accommodated in – or receiving counselling from – youth care facilities. There also seems to be little enthusiasm among youth care institutions to report more victims.¹¹¹³

*‘While the prospect of receiving training encourages organizations to supply figures, in our estimation organizations will not increase their reporting on a solely voluntary basis (if there is no duty to report), even after receiving training’.*¹¹¹⁴

1108 See §2.10.1 for a more detailed description of the figures on Dutch victims, including minors. See also NRM 2012f.

1109 In the period 2007-2011, 826 of the 4,617 registered possible victims were minors. This is 18% of the total number of possible victims registered with CoMensha whose age was known. For more information, see table B3.1.10 in the National Rapporteur’s statistical report (NRM 2012f).

1110 NRM2012f. See also Movisie 2013.

1111 The National Rapporteur’s key message in the statistical report was: ‘To tackle human trafficking effectively, it must be made visible. Human trafficking that is hidden must be revealed – and once revealed it must be better registered’ (NRM 2012f).

1112 The best way of tackling a hidden problem is to bring it out into the open, make it visible. This requires the collection and analysis of quantitative data to outline the contours of the problem and expose bottlenecks in attempts to combat it. (NRM 2012f).

1113 On this point, Movisie says: ‘In our estimation, organizations will not report more on a solely voluntary basis (if there is no duty to report), even after receiving training’ (Movisie 2013). In a similar study into the nature and scale of the loverboy problem in the Haaglanden urban region by JSO, 88 (20%) of the roughly 440 social workers with the Haaglanden Youth Care Agency responded to the questionnaire that was distributed (De Groot & Taazelaar 2012, p. 9).

1114 Movisie 2013.

The Movisie report recommended delegating the registration of victims of loverboys to the Child Care and Protection Board.¹¹¹⁵ However, this would cause fragmentation of the registration of victims of human trafficking, which is assigned to CoMensha for all possible victims. CoMensha has the necessary expertise in that area and keeps records on behalf of the National Rapporteur. Furthermore, a new registration centre, such as the Child Care and Protection Board, would not solve the problem of inadequate identification and reporting of possible victims of human trafficking. In addition, minors who are not placed under supervision would not be recorded if registration were delegated to the Child Care and Protection Board.¹¹¹⁶

Nevertheless, to tackle the loverboy problem and to protect victims, it is important that youth care institutions recognize signs of the loverboy problem *and* report them to CoMensha.¹¹¹⁷ Regrettably, the Movisie project also showed that the majority of the employees of youth care institutions who had followed a training course were not familiar with CoMensha.¹¹¹⁸ According to Movisie, CoMensha needs to increase awareness of its tasks among employees within the youth care sector.

2.10.5 Assistance, shelter and treatment

Victims of loverboys often suffer multiple traumas, may suffer from post-traumatic stress syndrome¹¹¹⁹ and also experience specific problems associated with their victimization.¹¹²⁰ This group of victims is vulnerable and their problems and traumas also differ from those of other young people who receive shelter in youth care facilities. For this group, there must be the capacity to provide them with the assistance, shelter and treatment that they require.

While some victims benefit from residential care and, in extreme cases, from placement in a closed facility, for others it would be enough to provide non-residential help. It is also important for victims who have been accommodated in a residential facility to continue receiving assistance (for a longer period if necessary) after they leave residential care.¹¹²¹

1115 The Child Care and Protection Board has said that it could adapt its ICT system to register data about the loverboy problem with relatively little difficulty (Movisie 2013).

1116 On this point, the Child Care and Protection Board says that the group to whom assistance is offered on a voluntary basis is probably not the largest group (Movisie 2013).

1117 Youth care services keep records based on interventions rather than on the nature of the problem, making it difficult to gain an impression of the prevalence of this problem (See also Verwijs et al. 2011, p. 39).

1118 Movisie 2013.

1119 Van Dijke et al. 2012; Van der Wiele & De Ruiter 2011.

1120 In the United Kingdom's *Human Trafficking Handbook*, it is stated that 'Child trafficking needs to be recognised as a highly complex area of child protection that requires an intensive, concerted and resourced response' (Ishola 2011, p. 99).

1121 This also emerged from the expert meeting 'Shelter and treatment for specific groups', which was organized by the Verwey-Jonker Institute (*Parliamentary Documents II* 2012/13, 31839, no.261).

The study by the Verwey-Jonker Institute, ‘*Loverboys and their victims*’, clearly showed that changes are needed in the existing range of shelters and treatment.¹¹²²

Loverboys and their victims

Although various institutions that provide youth care claim that they ‘generally’ succeed in providing adequate assistance for victims of loverboys,¹¹²³ that is questionable. For example, it appears that there is still a relatively high risk of revictimization, which youth care institutions do not yet regard themselves as adequately equipped to prevent.¹¹²⁴ Some victims also say they do not receive sufficient specific assistance. As far as the most vulnerable group¹¹²⁵ (in terms of the seriousness of the exploitation and the underlying problems) is concerned, their willingness to report an offence is also low.¹¹²⁶ Finally, the shelter organizations call for a ‘in-depth and multidisciplinary selection and diagnosis procedure during the intake phase, preferably in a separate categorical shelter, with a view to choosing the subsequent treatment’.¹¹²⁷

Domestic human trafficking, particularly the loverboy problem, has been on the agenda in the Netherlands for fifteen years,¹¹²⁸ but still little is known about what methods are effective in protecting this category of vulnerable victims.¹¹²⁹ It has been a constant topic of discussion amongst organizations that provide shelter and assistance for victims¹¹³⁰ and repeatedly the subject of political debate in recent years.¹¹³¹ The debate has focused mainly on the question of what form of *treatment* and *shelter* would be most effective in preventing revictimization (increasing the victim’s resilience) and in increasing the victim’s willingness to report.

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- 1122 Verwijs et al. carried out a qualitative study into loverboys and their victims on behalf of the Minister of Health, Welfare and Sport. The study comprised a review of the relevant academic literature and documentation on the subject and interviews with experts, social workers and victims, as well as an analysis of case files of victims in youth care institutions. The findings were assessed at a meeting of experts (Verwijs et al. 2011, p. 9).
- 1123 Nevertheless, the study shows that employees working in the youth care Plus programme regard the duration of the treatment – six months – as far too short. A behavioural scientist said in the study that he would often need a year for a proper diagnosis and treatment. (Verwijs et al. 2011, p. 87).
- 1124 For example, girls regularly run away, so their safety can no longer be guaranteed (Verwijs et al. 2011, p. 87).
- 1125 In the study, some victims also said they were satisfied with the help and shelter they were offered (Verwijs et al. 2011, p. 4).
- 1126 Verwijs et al. 2011; Movisie 2013; Van Dijke et al. 2012; NRM 2012f.
- 1127 Verwijs et al. 2011, p. 4.
- 1128 See NRM1.
- 1129 See also Verwijs et al. 2011; Van Dijke et al. 2012; Kaandorp & Blaak 2013.
- 1130 This question was specifically presented to experts from a number of organizations that provide shelter and help for victims, among others, at the expert meeting organized by the Verwey-Jonker Institute (*Parliamentary Documents II* 2012/13, 31839, no. 261).
- 1131 For 2012-2013, see the following: *Parliamentary Documents II* 202/2013, 31839, no. 188; *Parliamentary Documents II* 2012/13, 31839, no. 261; *Parliamentary Documents II* 2012/13, 33400-XVI, no. 28; *Parliamentary Documents II* 2012/13, 334000 XVI, no. 137; *Parliamentary Documents II* 2012/13 31 839, no. 306; *Parliamentary Documents II* 2012/13 31839, no. 275.

Effectiveness

At the meeting of experts on the subject of ‘shelter and treatment for specific groups’,¹¹³² it emerged that only the residential care programme provided by Asja¹¹³³ is currently recognized as an intervention with a good theoretical underpinning for this group of victims.¹¹³⁴ However, the intervention’s effectiveness has not yet been demonstrated.

Asja’s care programme

Asja’s care programme is designed to accomplish three interconnected goals within a period of six to twelve months: (1) to keep the girl safe and protect her from ‘her bad friends’ and the loverboy circuit or criminal network in which she found herself; (2) to enable the girl to function adequately for her age; and (3) to provide the girl with a sound, healthy basis for her physical, socio-emotional, psychological, cognitive and sexual development. The objective is to resolve problems, complaints and handicaps that prevent age-appropriate development or make them manageable. The programme focuses on normally gifted girls and young women aged between twelve and 23 who have ended up in prostitution or in a ‘grey’ prostitution circuit via loverboy constructions.¹¹³⁵

It has been noted that scientific research is needed to learn more about the effectiveness of the interventions and methods employed for this group of victims.¹¹³⁶ In July 2013, the State Secretary for Health, Welfare and Sport will ask the Netherlands Organization for Health Research and Development (ZonMW) and the Verwey-Jonker Institute to carry out a study into the ‘the effective components of existing interventions and arguments for further expansion of those interventions in open and closed youth care institutions’.¹¹³⁷ The results will be published at the end of 2013 and will be disseminated to and discussed among the shelter organizations that work with victims of loverboys.

The State Secretary also announced that he would use the results of this study into the effectiveness of current interventions as guidelines for the planned ‘resources’ component of the ‘effective practices in the youth sector’ programme, in which research will be conducted into the effectiveness of shelter and treatment for victims of loverboys.¹¹³⁸ That study will also review the effects of placing boys and girls

1132 Researchers from the Bureau of the National Rapporteur attended this meeting on 25 September 2013 (*Parliamentary Documents II* 2012/13, 31839, no. 261).

1133 See Van Dijke et al. 2012, pp. 127-150.

1134 For a list of therapies/interventions that are used in Youth Care Plus institutions to treat victims of loverboys, see the appendix to *Parliamentary Documents II* 2012/13, 31839, no. 306.

1135 Database of effective youth interventions of the Netherlands Youth Institute (available at <http://www.nji.nl/eCache/DEF/37/990.cmVjb3JkbnI9NDg3.html>, consulted on 18 July 2013).

1136 *Parliamentary Documents II* 2012/13, 31839, no. 261; De Groot & Tazelaar 2012, p. 24.

1137 The organizations that provide shelter and help for victims will be consulted on the specific terms of the research questions. For a list of existing interventions, see appendix 1 to the letter from the Minister of Justice to the Speaker of the Lower House of Parliament of 4 July 2013 (*Parliamentary Documents II* 2012/13, 31839, no. 306).

1138 Details of the ZonMW programme ‘Effective practices in the youth sector’ can be found at http://www.zonmw.nl/fileadmin/documenten/Jeugd/Programma_effectief_werken_in_the_jeugdsector_Goedgekeurd.pdf (consulted on 18 July 2013).

together in shelters. The entire ZonMW programme is due to run for seven years, from 2013 to the end of 2019, with a final evaluation in 2019.

Type of shelter

Although such research is important, particularly to the extent that it is concerned with the effects of placing girls and boys together in shelters, appropriate shelter and specialized treatment also have been offered to victims of domestic human trafficking in the short term. This is particularly essential for the most vulnerable group of victims, i.e., girls who have to be placed in closed institutions because they have to be protected from the loverboy *and* themselves.

In the past, the National Rapporteur has repeatedly expressed her concerns about victims who are placed in general youth care Plus facilities, because these institutions do not seem to be properly equipped to treat the complex traumas and specific problems associated with being victims of loverboys.¹¹³⁹ It is also questionable whether general youth care Plus facilities provide the 'right' environment, an environment where they feel safe and protected, for victims of loverboys, which can have a major impact on the effectiveness of the specialized treatment.¹¹⁴⁰

Environment

General shelters do not appear to provide a safe and open environment for victims of loverboys. For example, victims in institutions where boys are also given shelter do not always *feel* safe, and do not always seem to *be* safe.¹¹⁴¹ Girls have also said that they are not inclined to tell the (full) story in a general institution/group for fear of acquiring the stigma of 'whore'. Finally, the study 'Loverboys and their victims' showed that youth workers do not always possess sufficient expertise, and victims consequently feel they are misunderstood and not believed.

These problems hamper the creation of a safe and open environment and undermine the chance of success of treatments.¹¹⁴²

1139 See the letter from the National Rapporteur to the Speaker of the Lower House of Parliament on 3 May 2012, <http://www.nationaalrapporteur.nl/actueel/kamerbrieven/index.aspx> (consulted on 24 July 2013).

1140 Van der Helm 2011; Van der Helm & Hanrath 2012.

1141 For example, the State Secretary for Health, Welfare and Sport was asked questions in parliament about the report that a victim of a loverboy was abused by a group leader, <http://www.rijksoverheid.nl/documenten-en-publicaties/Kamerstukken/2013/04/22/beantwoording-kamervragen-over-misbruik-door-groepsleider-instelling-hoenderloo-groep.html> (consulted on 19 July 2013). See also the letter from Fier Fryslan to the State Secretary on 21 January 2013 concerning shelter and treatment for specific groups (available at http://www.fierfryslan.nl/upload/U21301121_Opvang_en_behandeling_specifieke_groepen.pdf, consulted on 19 July 2013); Verwijs et al. 2011; Van Dijke et al. 2012, pp. 146-147.

1142 During the expert meeting on 'shelter and treatment' it also emerged that some youth care institutions say that girls actually feel safe in mixed groups and that this leads to normalization. Within the mixed group, girls learn to deal with boys in a safe setting. This can be questioned, however. It has repeatedly occurred that victims of loverboys, who are extremely vulnerable, were recruited again within the institution and/or sexually abused by members of their peer group.

These concerns have increased recently with the merger of the last youth care Plus facility that accepted only girls, the Lindenhorst, with the youth care Plus facility Almata, which means that boys can now also be accommodated in the Lindenhorst.^{1143,1144} With the merger of the two institutions, there is no longer any youth care Plus facility exclusively for girls.¹¹⁴⁵

Pilot project with categorical shelter and specialized treatment

Three institutions (the youth care facility Horizon,¹¹⁴⁶ Stichting Humanitas and the shelter organization Fier Fryslan) have announced their intention to start a three-year pilot project with categorical shelter and specialized counselling for victims of loverboys. This joint project is based on the idea that the three organizations can complement one another in providing shelter and treatment for this vulnerable group.

This unique alliance will make it possible to offer a comprehensive programme of care, encompassing a continuous process from treatment in a closed shelter up to and including after-care, all provided within a single facility.¹¹⁴⁷ The hiatus that occurs when the victim reaches the age of eighteen, the age limit for this type of shelter, will also be mitigated.¹¹⁴⁸ Since the project is intended for victims between the ages of twelve and 23, victims will be able to remain in the same facility and continue receiving treatment from the same group of specialists beyond that age limit.¹¹⁴⁹

1143 The National Rapporteur had already expressed her concern in a press release on 1 March 2013 (the press release can be found at <http://www.nationaalrapporteur.nl/actueel/nieuws/2013/20130304-rapporteur-reageert-op-fusie-jeugdinstellingen-lindenhorst-en-almata.aspx?cp=63&cs=16790>, (consulted on 19 July 2013).

1144 Parliament was informed by the State Secretary of the decision to merge the Youth Care Plus institutions De Lindenhorst in Zeist and Almata in Den Dolder on 13 April 2011, (*Parliamentary Documents II* 2012/13, 31 839, no. 275).

1145 See the reply by the State Secretary for Health, Welfare and Sport to a question from parliament (number 2013Z04632) about the merger on 27 March 2013 (<http://docs.liigl.nl/officielebekendmakingen.nl/kvr/2013/20130404/ah-217473.pdf> (consulted on 19 July 2013).

1146 Horizon is an organization for youth care and special education that focuses on treating and counselling children and young people up to the age of 23 with behavioural problems by working with the young people themselves and their parents. See also <http://horizon-jeugd zorg.nl/> (consulted on 18 July 2013).

1147 The importance of an intensive programme of care was also underlined by the specialists who attended the expert meeting on 'shelter and treatment for specific groups' organized by the Verwey-Jonker Institute (*Parliamentary Documents II* 2012/13, 31839, no. 261).

1148 The majority of the existing forms of help for young people (including services provided by the provinces, closed youth care and youth mental health care) have an age limit of eighteen, although some types of care can continue up to the age of 23. Children in closed youth care facilities cannot remain there for longer than six months after they have reached the age of eighteen (*Parliamentary Documents II* 2012/13, 33684, no. 3).

1149 See also NRM7, recommendation 22.

The three organizations intend to collaborate with the Asja¹¹⁵⁰ and Metta programmes¹¹⁵¹ and plan to use the method that has been developed in the De Vaart programme.¹¹⁵²

Integrated treatment

The plan is to develop a programme of treatment in which the underlying and manifest problems of girls who have become victims of a loverboy are treated simultaneously in an integrated and coherent manner.¹¹⁵³ The knowledge and expertise of the youth mental health services, remedial education and social shelters will be fully integrated and will complement one another in the treatment programme. The aim is to establish a nationwide organization with ten beds covered by the youth care Plus programme, six beds financed by the Exceptional Medical Expenses Act and eight beds for clinical treatment – combined with education within the closed shelter.

The State Secretary for Health, Welfare and Sport is holding talks with Horizon, Fier Fryslan and Humanitas about the details of the proposal for this pilot project.¹¹⁵⁴

It is important that this pilot project in Rotterdam goes ahead *and* that it is incorporated into the ZonMW programme.^{1155,1156} However, the project should also endeavour to increase the willingness of victims to report offences, in which case the care providers, together with the police, can help the victims to report an offence or make a statement.¹¹⁵⁷ It is also important for the care providers and the police to cooperate

1150 This residential care programme is the only intervention recognized by the Netherlands Youth Institute as having a sound foundation in theory.

1151 Metta (a psychiatric clinic for children and youths) is also part of Fier Fryslan and offers residential treatment for girls between the ages of twelve and 23 who are experiencing the consequences of complex trauma or chronic traumatization in early childhood in combination with serious problems with authority and behavioural problems.

1152 De Vaart has developed a specialized programme for girls with a background of sexual violence using evidence-based interventions. This programme was developed in the former Youth Care Plus institution Alexandra.

1153 *Parliamentary Documents II 2012/13*, 31839, no. 306.

1154 *Ibid.*

1155 The State Secretary for Health, Welfare and Sport has announced that he intends to review whether or not to place girls and boys together in shelters during the ZonMW programme 'Effective practices in the youth sector', which will run from 2013 to 2019. Because the merger of the Lindenhorst and the Almata means that the last youth care Plus facility exclusively for girls has disappeared, it is important for the pilot project to go ahead in order to investigate the impact of placing girls and boys together on the most vulnerable group of victims, namely victims that need to be placed in a closed facility.

1156 The National Rapporteur has already expressed her support for the pilot project. See the press release 'Rapporteur reageert op fusie jeugdinstellingen De Lindenhorst en Almata' of 1 March 2013 (available at <http://www.nationaalrapporteur.nl/actueel/nieuws/2013/20130304-rapporteur-reageert-op-fusie-jeugdinstellingen-lindenhorst-en-almata.aspx?cp=63&cs=16790>, consulted on 19 July 2013).

1157 The trust between investigators and youth workers is very important for an investigation. If an interview takes place in the shelter and the police say that the youth worker may not talk to the victim, she must be able to rely on that. Otherwise, her train of thought will be influenced, which could work against her in the course of the proceedings (Van Der Wiele & De Ruiter 2011, p. 161-162).

in providing the victim with the best possible assistance during the criminal proceedings. Experiences within this pilot project should also be shared with other youth care institutions with a view to preventing revictimization and increasing the willingness of victims to report offences in other regions.

The aim should be to learn more about effective measures for protecting victims of domestic human trafficking, including victims of loverboys – protection that starts from the moment a victim is identified and extends to the after-care. Finally, the protection of underage victims of domestic human trafficking should be part of the future national referral mechanism.¹¹⁵⁸

2.11 Victims and return

2.11.1 Introduction

Victims of human trafficking are entitled to protection and, in some cases, also the right of residence.¹¹⁵⁹ However, not all victims are able or willing to remain in the Netherlands and the rules pertaining to their return to their country of origin (or repatriation to a third country) then come into play.

One aspect of the protection of victims is their safe, and preferably voluntary, return. The Netherlands is obliged by a number of international agreements to arrange the safe return of victims.¹¹⁶⁰ If the Netherlands returns a victim to another country, the return should preferably be voluntary and with due regard for the rights, security and dignity of the individual.^{1161,1162} After all, the return of a victim of human trafficking is not always without risk.¹¹⁶³ Under these agreements, however, it is not enough to arrange the safe return of a victim to the country of origin (or a third country); victims must also be offered facilities

1158 The national referral mechanism is discussed at length in §2.5.

1159 See §2.8.

1160 See, for example, Article 8 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (New York, 15 November 2000), *Bulletin of Treaties* 2001, 69 and 2004, 35 (UN Palermo Protocol); Article 16 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99.

1161 And the status of any legal proceedings relating to the fact that the person is a victim of trafficking, Article 16 (2) of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), *Bulletin of Treaties* 2006, 99.

1162 See also Committee against Torture (20 June 2013), *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, UN Doc CAT/C/NL/CO/5-6. The report included the following recommendation for the Netherlands: 'Prevent the return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of exploitation and torture or ill-treatment.'

1163 In previous reports, the National Rapporteur has drawn attention to the possible risks attached to the return of victims of human trafficking to their country of origin (see, for example, NRM1, recommendation 11; NRM5, recommendation 8).

for their reintegration in the country they are returning to.¹¹⁶⁴ Child victims will not be repatriated to a state if an assessment of the risks and their safety shows that their return will not be in their interests.¹¹⁶⁵ In 2010, the IOM published the results of an exploratory study which showed that women, children and young adults are particularly at risk of being re-trafficked. According to the report, which was based on 79 situations known to the IOM in which a victim had been re-trafficked, victims are often re-trafficked within two years of escaping or being freed from a human trafficking situation. According to the report, victims who are returned to their country of origin are particularly at risk of human trafficking if, for example, the economic and social situation in that country is still underdeveloped. Other underlying factors mentioned in the IOM report include the absence of a family or social network or a lack of appropriate assistance, or factors that make it difficult for victims to reintegrate into the domestic situation, such as drug or alcohol addiction or psychological and psycho-social problems.¹¹⁶⁶

In the Netherlands, various initiatives have been taken to promote the safe and responsible return of victims. The IOM offers specialized programmes for victims of human trafficking who wish to return voluntarily, and in §2.11.2 statistics are presented on the voluntary return of possible victims of human trafficking with the assistance of the IOM in the Netherlands. Between 2008 and 2012, an average of 33 victims a year returned voluntarily to their country of origin. Interestingly, the vast majority (73% on average) of the possible victims who returned voluntarily were nationals of a Central or Eastern European country, mainly Bulgarians, Hungarians and Romanians. Remarkably, only 9% were nationals of an African country, since a substantial proportion of the victims registered by CoMensha (on average 29% in the period 2007-2011) were African nationals.¹¹⁶⁷

1164 In the Council of Europe Convention on Action against Trafficking in Human Beings, Article 16.5 describes the responsibility for reintegration as follows: 'Each party shall adopt such legislative and other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.' See also Article 12 (1) of Council Directive 2004/81/EU of 29 April 2004 on the residence permit granted to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ 2004, L 261/19): 'The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations that have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin'.

1165 Article 16 (7) of the Council of Europe Convention on Action against Trafficking in Human Beings.

1166 Jobe 2010. See also §2.10.

1167 In every year between 2007 and 2011, around 30% of the total number of reported victims were African, and in 2009 and 2011 Africa was the most common region of origin of possible victims registered by CoMensha (see NRM 2012f).

A number of other NGOs also provide assistance in the repatriation of victims of human trafficking, and some of their projects are discussed in §2.11.3. A common feature of these projects is the cooperation with the victim's country of origin.

The successful return and reintegration of victims calls for cooperation between countries and organizations.^{1168,1169} In §2.11.4, there is a review of the activities of ENPATES, a collaborative project involving NGOs in various disciplines (not exclusively those involved with return). National and transnational referral mechanisms would enhance cooperation among all the relevant stakeholders by clearly describing their tasks and responsibilities in relation to the return of possible victims.^{1170,1171}

Monitoring victims after their return is an essential element of the process, for example to prevent re-victimization, and is a responsibility of every organization involved in the return of a victim. However, there is no overarching instrument that specifies the processes that need to be monitored and the roles of the relevant parties.¹¹⁷²

2.11.2 Voluntary return

In the Netherlands, the IOM provides assistance for the voluntary return of aliens, including victims of human trafficking.¹¹⁷³ The assistance is provided as part of the project *Return and Emigration of Aliens from the Netherlands* (REAN), which is designed to enable aliens to return safely to their country of origin or

1168 See also NRM8.

1169 In the NRM5, the National Rapporteur referred to the importance of active cooperation with victims' countries of origin, such as Nigeria and countries in Central and Eastern Europe, in the interests not only of the safe return of victims but also of joint operations by the police and prosecution authorities and the prevention of human trafficking. This cooperation should be arranged by relevant organizations in a coordinated manner (NRM5, recommendation 60; see also NRM8, §2.3.3).

1170 See EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, Action 1.

1171 See §2.2 and §2.5 for more information about transnational and national referral mechanisms.

1172 Such a qualitative monitoring instrument for alien minors who return to their country of origin is currently being developed by the HIT Foundation, in association with Nidos and Micado Migration. The key aspect in this instrument is the minor's relationship with his or her family and the society he or she is returning to. It could also form the basis for a monitoring instrument for all foreign victims (minors and adults) of human trafficking. For more information about this monitoring instrument, see 'Monitoring Mechanism for Returned Minors', *HIT Foundation*, http://hitfoundation.eu/wp-content/uploads/2013/04/130423_MRM-flyer.pdf (consulted on 8 August 2013).

1173 This is regulated in an agreement between the Dutch government and the IOM, in which the IOM is designated as the chain partner responsible for providing assistance for aliens departing voluntarily from the Netherlands (see the Aliens Chain Report for the period January to December 2012 (Appendix to *Parliamentary Documents II* 2012/13, 19637, no. 1645).

to settle in a third country where permanent residence is guaranteed.^{1174,1175} For a specific target group like victims of human trafficking, the IOM works with government agencies, municipalities and various NGOs, including FairWork, the Foundation of the Religious against Trafficking in Women (SRTV) and Co-Mensha.¹¹⁷⁶ Simply arranging the journey¹¹⁷⁷ is often not enough to guarantee the protection of victims (or of their families and the social workers involved). In view of the vulnerable position of victims, the IOM provides personal assistance in the country of origin, with a heavy emphasis on their reintegration. For example, it provides financial assistance in the form of a grant to help with reintegration, which is generally provided before the victim's departure.¹¹⁷⁸ The IOM also offers other forms of support in the country of origin, ranging from tracing family members and arranging shelter (for victims who say they do not wish to return to their family for reasons of safety, for example) to arranging education or help in finding work.¹¹⁷⁹ Where applicable, the IOM also monitors the support victims receive in their reintegration for up to six months after their return to the country of origin.¹¹⁸⁰

2.11.2.1 Statistics on victims who have returned voluntarily

This section contains information about possible victims¹¹⁸¹ who have voluntarily returned to their country of origin with the assistance of the IOM.

Notes to the figures

This is the first time that the IOM has provided requested data on the voluntary return of presumed victims and that it has been possible to analyse them.

¹¹⁷⁴ See also NRM7.

¹¹⁷⁵ Victims of human trafficking might or might not have a residence permit. The IOM assists with the return of both categories. In principle, REAN is not intended for EU nationals, but an exception is made for victims of human trafficking from member states that joined the EU in 2004 or 2007. Victims from any of these countries can therefore avail of the REAN project (written information from the IOM, 17 June 2013).

¹¹⁷⁶ The IOM's semester reports for the period 2008-2012 (not published), received from the IOM on 15 March 2013; written information from the IOM, 21 June 2013.

¹¹⁷⁷ The journey is always by plane, although departure by land is facilitated in exceptional circumstances (an extreme fear of flying, for example). In that case, the IOM only pays the reintegration grant when the person has arrived and has reported to the IOM (written information from IOM, 5 April 2013).

¹¹⁷⁸ Victims who are EU nationals receive assistance *in natura* with a maximum value of 500 euro, which can be used (subject to the IOM's approval) for things the victims considers necessary, such as temporary shelter, education or to purchase materials to help with their reintegration. The budget is generally higher for victims from outside the EU (1500 euro). The idea behind the lower budget for EU nationals is that EU member states should assume responsibility for their own citizens (Verbal information from the IOM, 5 March 2013; written information of the IOM, 21 June 2013).

¹¹⁷⁹ The IOM's semester reports for the period 2008-2012 (not published); Verbal information from IOM, 5 March 2013.

¹¹⁸⁰ Written information from the IOM, 19 June 2013.

¹¹⁸¹ There is no formal assessment. For the reader's convenience, the term 'victims' is used throughout the remainder of this section.

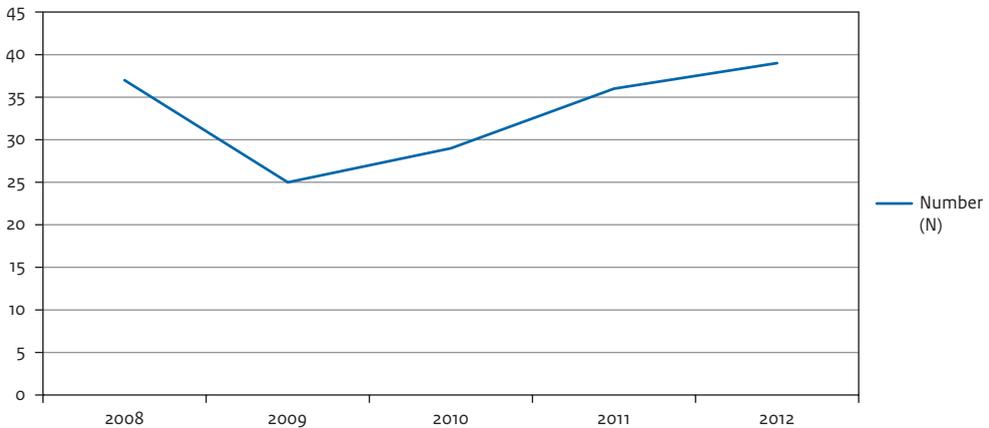
There are two reservations to be made about the IOM's databases. The first is that the statistics in this section do not provide a representative overview of all presumed victims of human trafficking who have returned, voluntarily or otherwise, since victims could also have returned to their country of origin or to another country on their own initiative or with the help of other persons and/or agencies. A second reservation is that the analysis in this section only covers persons who actually returned. The number of *applications* to return was not registered every year, and if it was, the number of applications does not always correspond with the number of victims that actually returned.¹¹⁸²

2.11.2.2 Characteristics of victims who returned voluntarily

Number of victims who returned voluntarily

The figure below shows the trend in the annual number of victims who returned to their country of origin with the assistance of the IOM.¹¹⁸³

Figure 2.9 Victims who returned voluntarily (2008-2012)



An average of 33 victims returned voluntarily every year. The smallest number of victims who returned with the help of the IOM was 25 in 2009, which represents almost 4% of the total number of non-Dutch victims reported to CoMensha in that year (N = 669¹¹⁸⁴). The largest number of victims to return with the

1182 Verbal information from the IOM, 5 March 2013.

1183 See Table B4.1 for a complete overview of the total number of victims who returned voluntarily in the period 2008-2012.

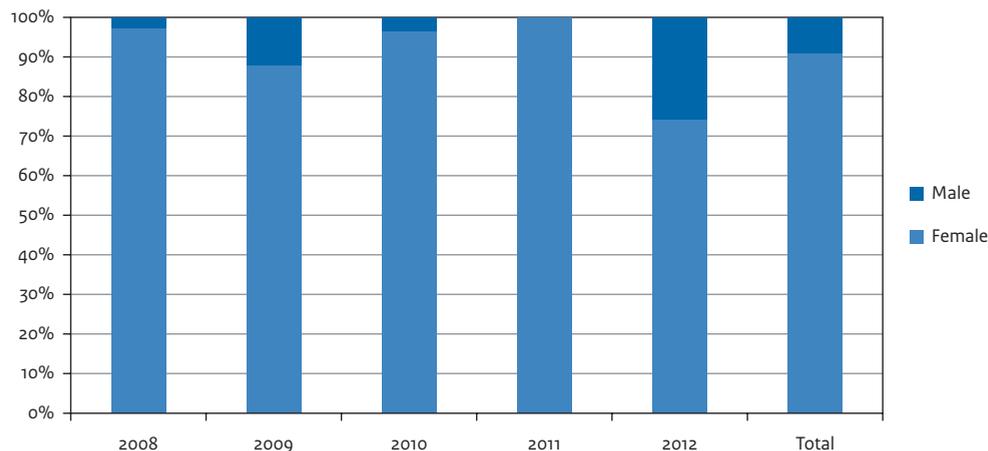
1184 See NRM 2012f.

IOM's assistance was 39 in 2012, which represents 3% of the total number of non-Dutch victims reported to CoMensha in that year (N = 1,283¹¹⁸⁵).¹¹⁸⁶

Gender

Figure 2.10 shows the proportion of men and women among the victims who returned voluntarily in the period 2008-2012.¹¹⁸⁷

Figure 2.10 Gender (2008-2012)



A large majority of the victims who returned were women. Between 2008 and 2012, women accounted for an average of 91% (= 151) of the possible victims who returned with the assistance of the IOM. That percentage corresponds with the proportion of female possible victims in the CoMensha records.¹¹⁸⁸ Interestingly, no men returned with the assistance of the IOM in 2011, although the proportion of men

¹¹⁸⁵ CoMensha 2013.

¹¹⁸⁶ The proportions of the total number of victims reported to CoMensha in the other years were as follows: 2008: 7% (37 victims) of N = 506 (the total number of non-Dutch victims reported to CoMensha); 2010: 4% (29 victims) of N = 678 (the total number of non-Dutch victims reported to CoMensha); 2011: 4% (36 victims) of N = 885 (the total number of non-Dutch victims reported to CoMensha). See also in NRM 2012f.

¹¹⁸⁷ See Table B4.2 for a complete overview of the number of male and female victims who returned voluntarily during the period 2008-2012.

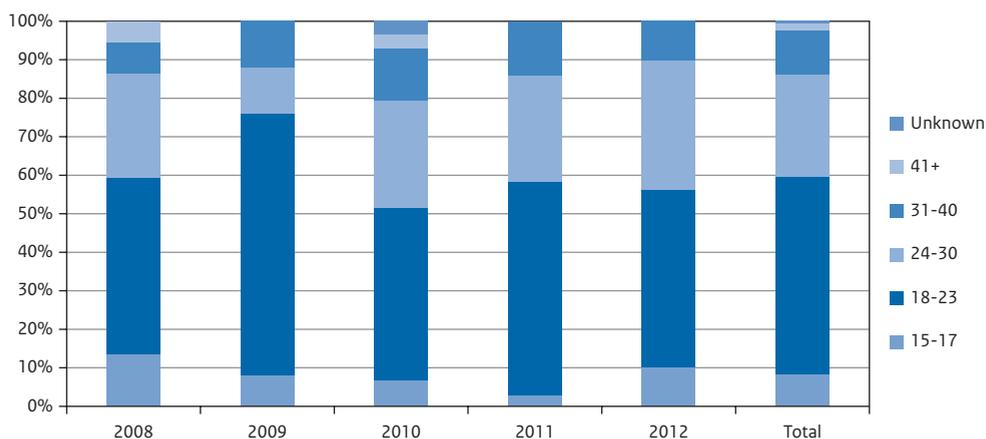
¹¹⁸⁸ See NRM 2012f.

in the CoMensha records was almost three times higher in 2011 than in 2007.^{1189,1190} In 2012, the proportion of men who returned with the assistance of the IOM rose to 26% (= 10).^{1191,1192}

Age

Figure 2.11 shows the breakdown of victims who returned voluntarily in the period 2008-2012 by age group.¹¹⁹³ It is based on the age at the time of departure (apart from 2009, where it is the age at the time of the intake by the IOM).

Figure 2.11 Age (2008-2012)



In the period 2008-2012, on average the largest group of victims that returned voluntarily were aged between 18 and 23, which corresponds with the age structure of the reported victims in the CoMensha records.¹¹⁹⁴

1189 In 2011, almost a fifth, 19% (= 226) of the total number of reported victims were male (NRM 2012f).

1190 Male victims can be accommodated in the men's shelter run by Jade Zorggroep as part of the programme for categorical shelter for victims of human trafficking (COSM). The return of men staying in the men's shelter is always arranged via the IOM (written information from Jade Zorggroep, 18 June 2013).

1191 This increase was mainly attributable to a single case of exploitation involving eight Pakistani victims (written information from the IOM, 21 June 2013). See also Table B4.4.

1192 The proportions of men and women in the CoMensha records for 2012 is not yet known (they were not included in CoMensha's Annual Report for 2012).

1193 See Table B4.3 for a complete overview of the age groups of victims who returned voluntarily in the period 2008-2012.

1194 See NRM 2012f.

Minors

As Figure 2.11 shows, the proportion of minors¹¹⁹⁵ averaged 8% (= 14) of the total number of victims who returned voluntarily in the period 2008-2012 (N = 166).¹¹⁹⁶ If they require additional assistance, minors can claim an extra reintegration grant,¹¹⁹⁷ in addition to the assistance under the REAN project,¹¹⁹⁸ via the project for unaccompanied minors (UAM project).

Nationality

Table 2.3 shows the rankings of the top three nationalities of victims who returned voluntarily in the period 2008-2012.¹¹⁹⁹

Table 2.3 Rankings of nationalities/countries of origin of victims who returned voluntarily (2008-2012)

	2008	2009	2010	2011	2012	Total
Hungarian	1 st	2 nd	1 st	1 st	1 st	1 st
Bulgarian	2 nd	1 st	2 nd	2 nd	3 rd	2 nd
Romanian	3 rd	2 nd	3 rd	3 rd	2 nd	3 rd

The IOM receives most requests to return from victims from Central and Eastern European countries (mainly Hungary, Bulgaria and Romania).

Figure 2.12 shows the proportions of requests from nationals of the three top-ranked countries: Hungary, Bulgaria and Romania.¹²⁰⁰

¹¹⁹⁵ A minor at the time of departure.

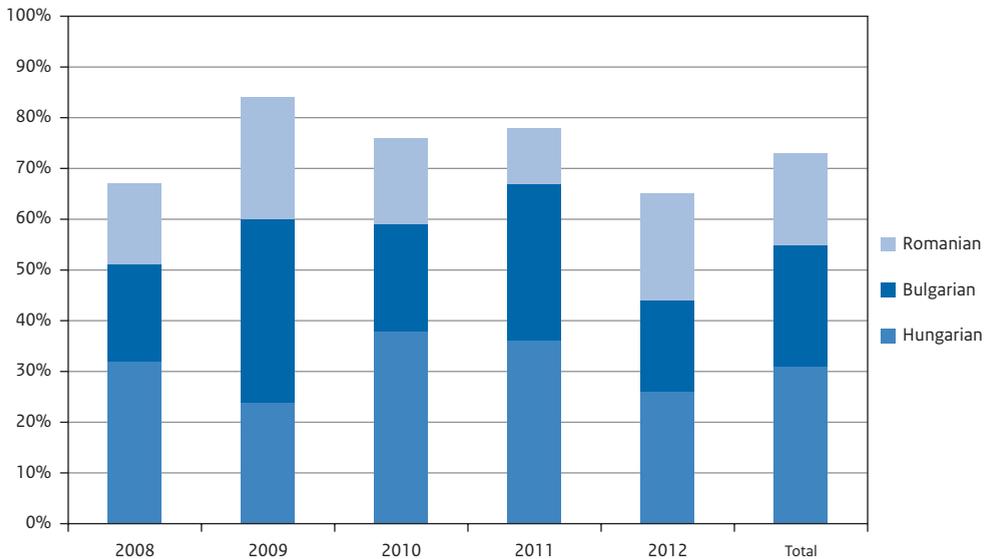
¹¹⁹⁶ In the period 2007-2011, an average of 18% (= 826) of the total number of victims reported to CoMensha (N = 4,666) were minors. This was 11% (= 339) of the total number of non-Dutch victims reported to CoMensha. In 2011, minors accounted for 16% (= 195) of the total number of reported victims and 7% (= 64) of the total number of non-Dutch victims reported. See also NRM 2012f.

¹¹⁹⁷ The precise nature of the additional assistance towards reintegration depends on the child's needs and can therefore differ from one victim to another. It could, for example, be temporary accommodation, education or help in starting a small business (written information from the IOM, 19 June 2013).

¹¹⁹⁸ See §2.11.2.

¹¹⁹⁹ See Table B4.4 for a complete overview of the nationalities of victims who returned voluntarily in the period 2008-2012.

¹²⁰⁰ See Table B4.4 for a complete overview of the nationalities of victims who returned voluntarily in the period 2008-2012.

Figure 2.12 Three top-ranked nationalities (2008-2012)

On average, a large majority (73%, = 121) of the total number of victims who voluntarily returned in the period 2008-2012 (N = 166) were from Hungary, Bulgaria and Romania. It is noteworthy that scarcely any victims who were nationals of an African country returned via the IOM, with the number averaging 9% (= 15)¹²⁰¹ in the period 2008-2012, while according to CoMensha's records a substantially larger proportion of the total number of reported victims were from African countries.¹²⁰² It is also striking that the largest group of victims from Central and Eastern European countries were aged between 18 and 23, while victims from this region registered by CoMensha were slightly older on average. A possible explanation is that most of the victims who returned had been sexually exploited. Victims of sexual exploitation are generally younger than victims of exploitation outside the sex industry.¹²⁰³

Nevertheless, the IOM promotes the voluntary return of African victims. In 2008, IOM Nederland was asked by the Ministry of Foreign Affairs to coordinate the input of Dutch expertise in the project 'Counter Trafficking Initiative: analysis of the evolution of trafficking in persons, grass root social intervention, building social services and networking capacity and promoting direct assistance'. The project is financed by the Dutch and Italian embassies in Abuja (Nigeria), partly with the aim of establishing national referral mechanisms in Benin and Lagos. The objective of the project is to compile a list of the relevant social services and NGOs and make agreements with them on providing shelter for victims (victims who are

1201 The nationalities were: Nigerian (9), Ghanaian (2), Ugandan (1), Sierra Leonean (1), Tanzanian (1) and South African (1). See also Table B4.4.

1202 The figures were 29% (= 1,352) of the total number of reported victims (N = 4,666) in the period 2007-2011 and 43% (= 1,352) of the total number of non-Dutch victims reported (N = 3,184) in the period 2007-2011. See NRM 2012f.

1203 See NRM 2012f.

identified in Nigeria as well as victims who return from Europe).¹²⁰⁴ In Nigeria, the activities to combat human trafficking are coordinated by the National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), which, among other things, provides shelter for victims of human trafficking in safe houses and rehabilitation centres.¹²⁰⁵

Return of Nigerian prostitutes

According to the Norwegian study *Facing return. Perceptions of return among Nigerian women in prostitution in Norway* (2007),¹²⁰⁶ Nigerian prostitutes are often afraid to return to their own country.¹²⁰⁷ This fear is said to be connected with the threat of poverty and a lack of opportunities, but also the risk of stigmatisation by the community, retaliation and reprisals by the human traffickers in Nigeria and the lack of social networks. Distrust of the Nigerian authorities also seems to be a barrier to their return. Some Nigerian prostitutes interviewed for the Norwegian study feared arrest and detention on their return because, under Nigerian law, providing sexual services for payment outside Nigeria is also a criminal offence (as well as being prohibited in Nigeria itself).¹²⁰⁸ The women who were interviewed reportedly said they were aware of specific cases of such arrests. According to the study, such arrests could also be related to corruption because it is a possible source of income for authorities (according to the interviewees, people who were arrested had to pay for their release). Interviewees who said they would return indicated that what they needed most were practical things such as work, education/experience and money. They did not expect the Nigerian authorities to be able to provide these and stressed that the Norwegian authorities could play a role in arranging them. The interviewees said that if they returned and found that their situation had not improved in Nigeria, they would again consider migrating to Europe.

Form of exploitation

A large majority of the victims who returned had been sexually exploited.¹²⁰⁹ In 2012, they accounted for at least 74% (= 29) of the victims who returned voluntarily. However, CoMensha's records show that victims from Central and Eastern European countries are often also exploited in sectors other than the sex industry,¹²¹⁰ but these victims are not reflected in the IOM's figures on voluntary return.

1204 The IOM's semester reports for the period 2008-2012 (not published).

1205 See also NRM7, §9.5.4.

1206 Skilbrei & Tveit 2007.

1207 The study presents the results of research into the attitude of Nigerian prostitutes in Norway towards a return to Nigeria. The study was based in part on 82 interviews (including 12 in-depth interviews) with Nigerian prostitutes working in prostitution zones in Oslo and Stavanger (Norway). They were not necessarily victims of human trafficking.

1208 Edo State Criminal Code (Amendment) Law, 2000, Section 223B. This article criminalizes Nigerian women who engage in prostitution in Nigeria or elsewhere. See also Okojie et al. 2003.

1209 With the exception of 2012, the form of exploitation was not always registered by the IOM (see Table B4.5). Information about the forms of exploitation of victims who returned voluntarily in the period 2008-2012 is therefore also based on the IOM's semester reports for the period 2008-2012 (not published, received from the IOM on 15 March 2013).

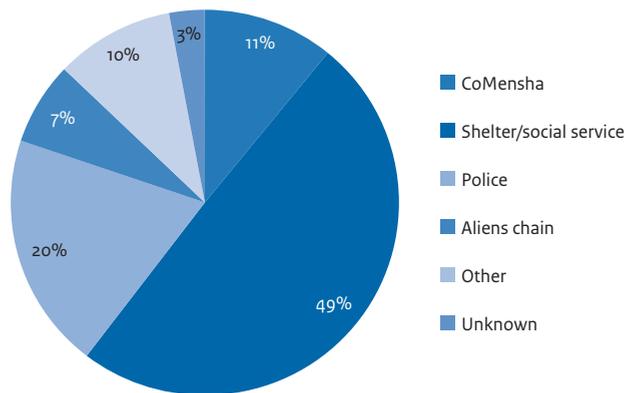
1210 In 2011, 155 of the 356 victims from Central and Eastern European countries (which joined the EU in 2004 or 2007) were exploited in sectors other than the sex industry. In 2011, 185 (possible) victims were sexually exploited. The other victims had not worked (13) or the sector in which they were exploited was not known (3). See also NRM 2012f.

2.11.2.3 Referrals to the IOM

Naturally, the repatriation and reintegration process starts with the identification of possible victims of human trafficking. Only when a victim is visible can measures be taken for his or her protection. Possible victims who wish to return to their country of origin can be referred to the IOM for an application for repatriation by the agency that has identified them.

Figure 2.13 shows which agencies referred victims who returned voluntarily to the IOM.¹²¹¹

Figure 2.13 Referrals to the IOM for voluntary return (total for 2010-2012)



Almost half (49%) of the total number of victims in the period 2010-2012 were referred to the IOM to apply for repatriation by the shelter where they were temporarily accommodated or by another social service.¹²¹² Other agencies that referred victims to the IOM were the police (20%), CoMensha¹²¹³ (11%) and organizations in the aliens chain (7%).

¹²¹¹ See Table B4.6 for a complete overview of the agencies that referred individuals to the IOM for voluntary return (2010-2012).

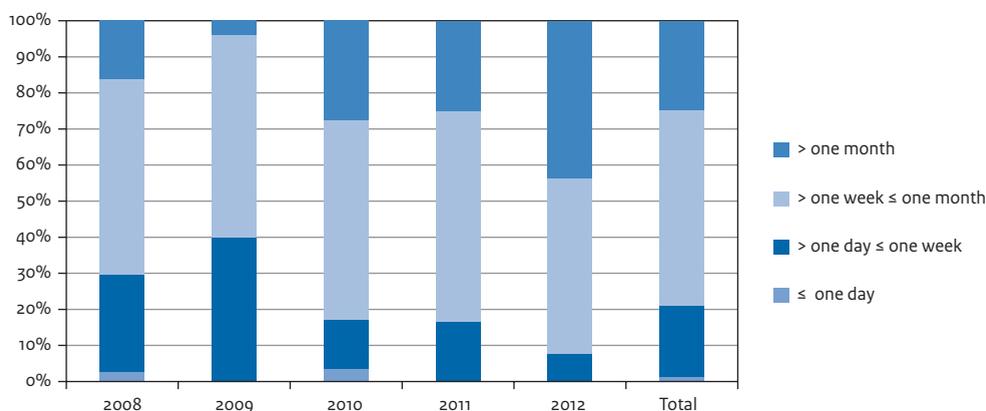
¹²¹² Shelter and assistance is in any case provided by the following organizations: Algemeen Maatschappelijk Werk (AMW); Fier Fryslân, HVO Querido, Prostitutie Maatschappelijk Werk (PMW), and Stichting Hulp and Opvang Prostitutie en Mensenhandel (SHOP). This does not include emergency shelter. To a large extent, the IOM also registers the fact that the presumed victim was referred to it for voluntary return by a shelter or social service, but does not record the actual name of the shelter or social service.

¹²¹³ If the reference to the IOM for voluntary return is not made by CoMensha, the IOM reports its suspicions of human trafficking to CoMensha. The IOM also informs CoMensha (with the written consent of the victim) when victims have returned to their country of origin. Not every victim reported by the IOM to CoMensha was already recorded in CoMensha's registration system (verbal information from the IOM, 5 March 2013).

2.11.2.4 Handling of applications for return

The figure below shows the length of time taken to deal with applications for return.¹²¹⁴

Figure 2.14 Period between intake and departure (2008-2012)¹²¹⁵



Following the intake by IOM, it usually takes between a week and a month for the victim to actually return to his or her country of origin. On average, this was the case for 54% (= 90) of all the victims who returned voluntarily in the period 2008-2012. A significant number, on average 25% (= 41), returned after more than a month. A smaller proportion, on average 20% (= 33), were able to return within a week, and a few, 1% (= 2), within a day.¹²¹⁶ The IOM generally endeavours to arrange departure within 30 days of the date of the application to return.¹²¹⁷ There are a number of reasons why the period before departure can be longer, such as the fact that the individual's travel documents are not yet available or the absence of a medical certificate, or because of the need to investigate the possibilities for reintegration in the country of origin.¹²¹⁸

¹²¹⁴ See Table B4.7 for a complete overview of the intervals between intake and departure from the Netherlands (2008-2012).

¹²¹⁵ In some years (2008 and 2009), the IOM registered the date of the application to return rather than the intake date (initial contact). An application to return is not always made at the time of the intake, since the victim might not have made a decision to return yet. In the years that the date of the application to return was registered rather than the intake date, it is therefore possible that the victim had had an earlier intake interview with the IOM (written information from IOM, 19 June 2013).

¹²¹⁶ Victims of human trafficking can be given priority by the IOM to accelerate their departure. However, some formalities will still have to be arranged (such as the correct residence documents and appropriate shelter in the country of origin). Some victims choose to remain a little longer in order to prepare for their departure (written information from the IOM, 19 June 2013).

¹²¹⁷ The date of the application to return can be later than the date of the intake by the IOM (written information from the IOM, 19 June 2013).

¹²¹⁸ Written information from the IOM, 25 June 2013.

2.11.3 NGO initiatives in relation to repatriation

NGOs in the Netherlands have taken various initiatives to arrange the safe and responsible return of victims of human trafficking. This section describes a number of these initiatives.

The Federation of Shelters is conducting a pilot project entitled 'Safe Return for Victims of Trafficking and Victims of Domestic Violence without or with an Uncertain Residence Permit',¹²¹⁹ which is designed to develop a procedure for raising the question of return to and reintegration in the country of origin with victims of human trafficking (and of domestic violence) from the time of their arrival in the shelter. One of the obstacles to victims returning to their country of origin is that the option of returning is often not raised with them, or only at a late stage. This might be a reason why relatively few victims return to their country of origin. There are also indications from the field that victims usually drop out of sight when they leave the shelter.¹²²⁰ The aim of the Safe Return project is to develop a method of preparing victims for a possible return to their country of origin with the expectation of help in their reintegration there. It is the first attempt to develop and implement a method of promoting return and reintegration specifically for this target group. As part of the project, research is also being carried out into factors that could constitute obstacles or incentives for the return of victims, the most important countries of origin, the procedures for the return of victims and the most relevant partners engaged in this field. In addition to a great many Dutch NGOs, including shelters,¹²²¹ the Committee for the Support of Dignity of Women (COSUDOW)¹²²² in Nigeria and the Animus Association (part of La Strada International)¹²²³ in Bulgaria are also participating in the project. On completion of the pilot phase of the project, the intention is to incorporate the method developed to promote return and reintegration as a permanent element of the assistance provided in shelters for victims of human trafficking (and of domestic violence).

A similar project being undertaken at the same time is the so-called *HOME* project, the purpose of which is to address the lack of knowledge and cooperation among victim support organizations and other NGOs in the countries of origin that provide help for victims on their return (for example, shelters in those countries). By developing and sharing knowledge, the intention is that agencies in the Netherlands and Belgium that are engaged in facilitating the return and reintegration of victims from other countries will be able to improve the process of the return to and reintegration in the countries of origin. The aim of improving the procedures for departure from the Netherlands and the procedures for facilitating reintegration in the country of origin calls for close cooperation between the relevant organizations in order to overcome the fragmentation of knowledge and tasks. The project is building on existing projects and methods and the knowledge already possessed by the organizations involved

1219 This project is financed by the European Return Fund. It will run from 1 January 2013 to 31 July 2014 (written information from CoMensha, 2 July 2013).

1220 Written information from CoMensha, 13 May 2013.

1221 In addition to the Federation of Shelters, the Nigerian *Committee for the Support of Dignity of Women* (COSUDOW) and Bulgaria's *Animus Association*, other organizations involved in the project include three women's shelters, three institutions that provide categorical shelter for victims of human trafficking (COSMs), CoMensha, Pharos, the Foundation of the Religious against Trafficking in Women and Humanitas.

1222 COSUDOW arranges accommodation in Nigeria for returning Nigerian victims of human trafficking.

1223 The Animus Association arranges accommodation in Bulgaria for returning Bulgarian victims of human trafficking.

in the project. The Dutch and Belgian organizations involved in the HOME project include Maatwerk bij Terugkeer (a mediation agency for returnees), FairWork and Fier Fryslân and Caritas International in Belgium. The final results of the project will be shared with the partners in Maatwerk bij Terugkeer's European network, European Return Support Organizations (ERSO). One of the project's deliverables will be a checklist¹²²⁴ for pre-departure assistance in the Netherlands and post-arrival assistance in the country of origin. Maatwerk bij Terugkeer's partners in Nigeria and Sierra Leone are using their involvement in the development of the checklist as a learning process.¹²²⁵ The HOME project will run from 1 June 2013 until the end of June 2014.¹²²⁶

The need to gather and expand knowledge about the return of foreign victims is also stressed in the professional learning community established by Fier Fryslân. This project was launched in response to the small number of victims who return to their country of origin. Return programmes are possibly hampered by difficulties in raising the subject of return with victims, insufficient knowledge of the target group among return organizations and a lack of awareness of the types of assistance that can or cannot be provided in the countries of origin among the support organizations. Accordingly, at the end of 2012 a group of aid organizations¹²²⁷ established a professional learning community to share their expertise in relation to the problems connected with return and with the ultimate aim of improving the counselling for foreign returnees in the Netherlands.¹²²⁸

Prevention and reconnection programmes

Salvation Army International organizes prevention programmes and provides assistance for and arranges the return of victims to their country of origin. At the European level, the Salvation Army has formed a task force comprising its national coordinators for human trafficking¹²²⁹ and it has formed bilateral partnerships with a number of countries. In addition to partnerships between the UK and Nigeria and Sweden and Estonia, the Salvation Army in the Netherlands is collaborating with its sister organizations in Hungary and Switzerland to develop Prevention & Reconnection

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- 1224 The point of departure is the existing 'Bewogen Terugkeer' [Facing Return] method, which is based on psycho-social counselling for (former) asylum seekers and undocumented persons. The method elucidates the complex decision-making and preparation process surrounding return (specifically the return of (former) asylum seekers and undocumented persons) and also addresses ways of raising the issue of return and how psycho-social aspects should be addressed during the preparations for return (Geraci 2011).
- 1225 Victims can be returned to any country where Maatwerk bij Terugkeer operates (written information from Maatwerk bij Terugkeer, 26 June 2013).
- 1226 The European Return Fund is financing the HOME project from 1 June 2013 until the end of June 2014 (written information from Maatwerk bij Terugkeer, 26 June 2013).
- 1227 The following organizations participate in the professional learning community: Centrum Kinderhandel en Mensenhandel, the Repatriation and Departure Service, the IOM, SHOP and Maatwerk bij Terugkeer (written information from Fier Fryslân, 11 June 2013).
- 1228 Pool 2013.
- 1229 The members of Salvation Army International's task force come from the following countries: the UK, Ireland, the Netherlands, the Czech Republic, France, Belgium, Norway, Iceland, Germany, Switzerland, Austria, Hungary, Italy, Greece, Ukraine, Russia, Denmark, Finland, Sweden, Latvia, Spain and Portugal (written information from Salvation Amy Nederland, 21 June 2013).

Programmes, return programmes designed to offer victims a lasting perspective and so prevent their revictimization. The underlying principles of the Prevention and Reconnection Programmes are to offer victims an economic perspective (for example, by providing education and help in starting a business), provide them with information and support and help victims to remain safe and resolve their traumas, as well as the realization that cooperation with chain partners in the Netherlands and Hungary is essential to make the approach successful.¹²³⁰

In addition to these initiatives, there are a number of other return projects organized by NGOs.¹²³¹ In that context, it is essential that projects should be coordinated so that together they can guarantee the safe and responsible return of victims (see also the next subsection).

2.11.4 Coordination of initiatives by NGOs: ENPATES

A great many NGOs are actively engaged in combating human trafficking at the national and international level. To provide effective protection for victims, and to avoid duplication of work, the activities and initiatives of NGOs need to be coordinated. Between July 2010 and November 2012, the European NGOs Platform against Trafficking, Exploitation and Slavery (ENPATES) project was organized to coordinate the activities of a number of NGOs engaged in tackling human trafficking.

The ENPATES project was intended to enhance coordination of the activities of the participating NGOs, with the underlying idea that NGOs are still confronted with obstacles to cooperation with their counterparts and other agencies in other countries. This cooperation often occurs on a case-by-case basis without relying on national coordination and referral mechanisms. As a result, there is little structural cross-border cooperation. Various instruments have been developed to promote transnational cooperation, but they are reportedly not always used on a complete and regular basis.¹²³² ENPATES provides European anti-trafficking NGOs with a platform for effectively coordinating

1230 Written information from Salvation Army Nederland, 21 June 2013.

1231 To illustrate, Scharlaken Koord says that in Hungary, for example, there are no safe shelters, which makes it more difficult to provide proper shelter and counselling for victims on their return. Scharlaken Koord is currently exploring ways of improving the system of shelters in Hungary. Scharlaken Koord, a member of the Christian aid organization Tot Heil des Volks, is an NGO engaged in street work, prevention, providing information and social work in the prostitution sector. The organization operates in Amsterdam (where its head office is), Utrecht, Haarlem and Deventer. One of its social work activities is an Exit Programme for individuals who want to leave prostitution, with whom it draws up an individual plan covering issues such as accommodation, finances, retraining and work. It also provides assistance for victims of human trafficking who want to return to their country of origin (verbal information from Scharlaken Koord, 2 May 2013. See also NRM5; Scharlaken Koord's website, <http://www.totheildesvolks.nl/nl/scharlaken-koord/home.html>; www.hulpuitprostitutie.nl. Another initiative is a project by Fier Fryslân and Terre des Hommes focusing on cooperation with Hungary and Guinea (two countries in which Terre des Hommes has offices). This project is still in the start-up phase (written information from Fier Fryslân, 7 June 2013).

1232 See also the ENPATES Handbook, pp. 47-49.

their initiatives by sharing information and good practices.¹²³³ The Netherlands is a partner in the ENPATES project via *La Strada Nederland*.

The ENPATES project is in line with the EU Strategy towards the Eradication of Trafficking in Human Beings, which refers to the importance of strengthening transnational cooperation. In that context, on 31 May 2013, the European Commission established a Civil Society Platform against trafficking in human beings, which has been joined by more than 100 European NGOs in domains including human rights, children's and women's rights, the rights of migrants and shelter organizations.¹²³⁴

1233 The ENPATES project was promoted and implemented by On the Road (Italy), La Strada International (Netherlands), Anti-Slavery International (Great Britain), ALC (France), ACCEM (Spain), ADPARE (Romania), LEFOE (Austria), KOK (Germany), and PAG-ASA (Belgium), with funding from the Prevention of and Fight against Crime Programme of the European Commission (Directorate-General Home Affairs). See also <http://enpates.org/>.

1234 EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016), priority D. See also §2.2.2.3.

3 Approach

3.1 Introduction

A multidisciplinary approach is key in the EU Directive on Human Trafficking,¹ which ‘adopts an integrated, holistic² and human rights approach to the fight against trafficking in human beings [...]’.³ The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016⁴ states that member states should pursue multidisciplinary cooperation ‘through formalized mechanisms and procedures that create a clear commitment and clarify the roles and tasks of those involved’.^{5,6} It also specifies that one of the priorities should be to establish national, *multidisciplinary law-enforcement units* to promote proactive and innovative methods of investigating and prosecuting human trafficking.^{7,8} The shape and structure of the approach and the law-enforcement teams is left to the member states.

Human traffickers are innovative and in pursuit of financial gain. They know where the weak links are in society, and they have the contacts, money and resources to take advantage of them. Just how lucrative human trafficking can be is apparent from a statement made by a trafficker in one investigation: ‘I can

1 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 (OJ 2011, L 101/1).

2 A holistic approach is a comprehensive approach that encompasses various aspects and factors in a range of areas.

3 Ibid, recital §7.

4 EU-Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, 19 June 2012.

5 The EU Strategy states that ‘a multidisciplinary, coherent policy against trafficking in human beings requires the involvement of a more diverse group of actors than before in policy-making.’ The EU Strategy mentions specific chain partners, including municipalities, the police, public prosecutors, social workers, employment agencies, legal guardians and victim support services (Ibid, p. 6).

6 Ibid. Priority D.

7 Ibid, p. 10.

8 See also §2.2.2; §3.2.

sell drugs only once, but a woman several times'. In 2006, it was discovered that almost 100 women⁹ had possibly been exploited by a single network in the legal sex industry.¹⁰ Throughout the years of their exploitation, an approach based exclusively on law enforcement had proved inadequate.¹¹ The fact is that the willingness of victims to report human trafficking is also low¹² and that victims do not often voluntarily report offences to the police. All of these factors make human trafficking a complex problem, and various human traffickers and their networks are consequently able to avoid apprehension. The PPS came to the realization that combating human trafficking effectively calls for an approach that goes much further than enforcement of criminal law: 'It is a question of breaking up an industry'.¹³

Accordingly, human trafficking has to be tackled not only with criminal law, but also with administrative and fiscal measures, bearing in mind the rights of the victim.¹⁴ Effectively suppressing organized crime calls for a government that cooperates and searches for the weaknesses in the system that are exploited by human traffickers. In the knowledge that traffickers are constantly looking for new opportunities, it is up to the government to constantly search for innovative methods of countering them.

To this end, it is essential for various disciplines to collaborate in developing preventive and repressive measures to combat human trafficking. In that respect, many important and promising steps have been taken in the Netherlands in recent years.

Background to the multidisciplinary approach to human trafficking

Organized crime in the Netherlands was referred to for the first time in the policy paper *Samenleving en criminaliteit* [Society and Crime] in 1985. The document did not attract much attention at first, but that changed with the publication in 1990 of the policy document *Georganiseerd criminaliteit in*

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- 9 The administrative report *Schone Schijn* ['Keeping up Appearances'] – which was produced in the wake of the Sneepe case – showed that 120 prostitutes were linked to the Dürdan group in all, 78 of whom could be described as presumed victims in April 2007 on the basis of information from telephone taps, surveillance and statements (Schone Schijn 2008, p. 11).
- 10 This case exposed substantial abuses in the prostitution sector. See NRM5; NRM7 and, for a detailed description, the administrative report *Schone Schijn* in 2008.
- 11 *Schone Schijn* 2008.
- 12 Around 40% of registered presumed victims report human trafficking (NRM 2012f).
- 13 '*Integraal, tenzij, ...: Samen het criminele ondernemingsklimaat verslechteren*' is a brochure produced by the PPS, the National Police, the LIEC, the municipality of Tilburg, the Ministry of Finance and the Ministry of Security and Justice, which was presented at the national conference '*Integraal veiligheidsbeleid met "high" impact*' on 30 May 2013. For more information about this conference, see *Integraal, tenzij... Samen het criminele ondernemingsklimaat verslechteren*, CCV, http://www.hetccv.nl/diversen/landelijke-bijeenkomst-integraal-veiligheidsbeleid-met-high-impact/menu_workshops/georganiseerde-criminaliteit.html (consulted on 6 August 2013).
- 14 The Minister of Security and Justice said in reply to questions from parliament about the 'transfer of criminal law from the courts to the executive' that the basic principle is that the administrative approach has to be seen as supplementing the law-enforcement approach to human trafficking and other forms of organized crime with a transnational character that lend themselves to it. In other words, *the administrative approach is not a substitute for law enforcement, but actually supplements it* [italics: National Rapporteur]' (*Parliamentary Documents II* 2012/13, 314190, p. 1).

Nederland: Dreigingsbeeld en plan van aanpak [Organized crime in the Netherlands: Threat assessment and action plan], which reported that there were valid reasons for believing that organized crime had actually gained a foothold in the criminal world and in legitimate society in the Netherlands.¹⁵

The government responded to this worrying development by intensifying the repressive approach, which led, among other things, to ‘the creation of the criminal intelligence division and the expansion and regulation of special investigative powers’.¹⁶ The government also identified a role for public administration in preventing the entanglement of the underworld and legitimate society. Over the years, that idea has crystallized due to the efforts of the government and other public authorities. What was particularly noticeable at that time (the early 1990s) was that many municipalities (on the advice of central government or otherwise) started formulating and implementing policies designed to safeguard integrity and prevent undue external influences on the decision-making process. It was also believed that this would prevent municipal bodies from unconsciously playing a role in facilitating the entanglement of the underworld and legitimate society.¹⁷

In the ensuing period, this integrity policy has further evolved into the present-day ‘administrative law weapon’ that is used in the fight against organized crime. This trend was accelerated by one of the recommendations made by the Parliamentary Committee of Inquiry into Methods of Investigation in 1996, which emphasized the need ‘for the police, the PPS and public authorities to be able to share confidential information’.¹⁸ In 2003, this recommendation led to the adoption of the Public Administration (Probity Screening) Act (Bibob Act).

Over the years, public authorities have steadily acquired additional resources to tackle organized crime through administrative instruments. In 1996, the city of Amsterdam had the idea of implementing these instruments and coordinating their use by drafting a plan describing a structure for the administrative approach to organized crime. The essence of the plan was as follows :

‘The existing relations (‘interaction’) between organized crime, some crime-sensitive sectors and the public authorities must be broken. According to the authors of the plan, it was essential to ensure that the authorities did not unwillingly and unconsciously facilitate organized crime, for example by awarding contracts or granting permits, and that the integrity of public administration was not undermined by contacts with organized crime.’¹⁹

There were three main points in the plan. The first was that public authorities had to be protected from negative external influences. The second was that barriers had to be erected to frustrate organized crime’s penetration of legitimate society (a precursor of the ‘barrier model’). The last was the implementation of an integrated approach, which was fleshed out in the so-called ‘Wallen project’ (1997–2001), which later became the ‘Van Traa project’ (2001–2004). These projects marked the first experiments with a multidisciplinary approach, which involved ‘non-criminal law enforcement

15 *Parliamentary Documents II 1992/93, 22838, no. 2.*

16 Van Traa 2005.

17 Struiksma & Michiels 1994.

18 PEO 1996, no. 14

19 Van Traa 2005, p. 8.

agencies having to operate on the basis of – originally – criminal law objectives (tackling organized crime) and using information from criminal law enforcement agencies.’²⁰

The Wallen and Van Traa projects²¹ provided practical underpinning for the view that a multidisciplinary approach could have an impact in combating organized crime. Despite this positive outcome, however, the projects also demonstrated that there were still numerous problems with this approach and it still required considerable refinement.

Then, in 2007, the Minister of Justice said in the Programme to Strengthen the Approach to Organized Crime [Programma Versterking Aanpak Georganiseerde Misdaad, PVAGM] that ‘in 2011 human trafficking should be addressed, both at the national and local/regional level, in a government-wide and integrated fashion. Special attention shall be given to the link between the national level and the local/regional level, but also the international aspects of the phenomenon [i.e. human trafficking]’.²² The PVAGM laid down the policies on which the integrated and programmatic approaches to human trafficking are based.²³

One of the most important developments in recent years has been the growth in the number of investigative, administrative and financial organizations that collaborate in pursuing a comprehensive joint approach,^{24, 25} which embraces not only measures to prevent and suppress human trafficking, but also to protect its victims. This means, among other things, that victims must receive appropriate shelter, must be treated correctly and receive the assistance and help that they are entitled to on the basis of national and international legislation.²⁶ However, a multidisciplinary consortium can only do all of these things effectively if the partners share (and are able to share) relevant information and formulate a joint strategy, based on their individual areas of specialization,²⁷ for tackling this form of crime.²⁸ Key aspects in that context are trust and greater awareness; creating a tangible sense of the partners’ common interest.²⁹ Analysis of the administrative reports of the pilot projects shows that that is not always easy.³⁰ In the Netherlands, Safety Coordination Houses and Regional Information and Expertise Centres

20 Ibid, p. 10.

21 NRM7.

22 See appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10, p. 16.

23 See appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10.

24 See also NRM 2012e and §3.3.

25 The aim, according to Spaan & Van Oosten (2010, p. 34), is ‘that the partners will design a joint and bottom-up intervention programme to frustrate an entire criminal process’.

26 See also §2.7; §2.8; §2.9 and §2.10.

27 ‘The key to the [...] approach is that the chain partners jointly tackle a criminal phenomenon from their own discipline’ (Task Force on Human Trafficking 2009).

28 *Schone Schijn* 2008; appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10; Task Force on Human Trafficking 2009; Van Gestel & Verhoeven 2009; Van der Meij & Van der Leun 2010.

29 A number of good practices for enhancing trust and increasing awareness are described in §3.7.

30 The National Rapporteur has analysed the administrative reports that were produced following the pilots carried out in relation to human trafficking. On this point, see §3.5.

(RIEC) have been established to promote cooperation between the partners in the chain at regional and national level.³¹

There is no limit to the forms in which human trafficking can manifest itself, nor is this type of crime constrained by local, regional and/or national borders. It is therefore also important for partnerships to be created that can respond to those aspects, which means that cooperation is required not only at the local, regional and national level, but also at the European and international level because, whether it occurs in a village, a city or a country, human trafficking is likely to relocate to places where the conditions for traffickers are relatively more favourable.³²

Traffickers and human trafficking networks adapt their modus operandi when obstacles are created. It is therefore necessary to be innovative in tackling human trafficking. To continue innovating, the PPS has been experimenting with the programmatic approach in recent years,³³ developing new methods to combat human trafficking on the basis of new insights into the modus operandi of traffickers and their networks. To learn more about particular forms of human trafficking the PPS collaborates with relevant partners in the chain, such as the police and municipalities, but also, for example, with hotel chains. The knowledge that is gathered and the innovative methods that prove effective can then be disseminated through the Safety Coordination Houses and RIECs, so that *all* of the structured local and regional partnerships can tackle human trafficking effectively. In this way, the programmatic approach can complement the integrated approach.

Although this chapter is mainly concerned with multidisciplinary cooperation, collaboration between agencies in the same discipline cannot yet be taken for granted. An example would be the sharing of information between different investigative agencies. Cooperation at the EU and international level also frequently involves agencies in the same discipline, such as the police and prosecution authorities or NGOs. Here, too, factors such as trust, sharing information and knowledge and providing feedback contribute to the success of the cooperation.

This chapter focuses on cooperation, starting with a description of cooperation at the international and European level (§3.2) and at national level (§3.3). In the latter section, there is also a discussion of the crucial role that Safety Coordination Houses and RIECs can and do play in the multidisciplinary approach to human trafficking. Two multidisciplinary approaches, the *integrated* approach and the *programmatic* approach, are then described (§3.4), followed by a discussion of how the programmatic approach was employed in the pilots (§3.5) and the results that were achieved with those projects (§3.6). In §3.7, a number of good practices that helped produce those results, as well as a number of issues that still require attention are discussed. The importance of innovation is then demonstrated on the basis of existing blank spots in the approach to combating human trafficking (§3.8). The chapter concludes with a review of the latest developments in the integrated approach (§3.9).

31 There are now 25 Safety Coordination Houses and ten RIECs, which have had varying degrees of success in the area of human trafficking. See also §3.3 and §3.9.

32 NRM 2012e.

33 In the programmatic approach, the focus is on assessing (mainly from a criminal law perspective) what administrative, criminal or fiscal interventions could be used – and how barriers can be erected – to permanently strengthen efforts to address a particular form of human trafficking. See also §3.4.1.

3.2 International cooperation

International cooperation is crucial in the fight against transnational human trafficking, not only in prosecuting the crime, but also in terms of prevention and protecting victims – up to and including their possible return to their country of origin. International cooperation in these areas is an obligation for countries.³⁴

Transnational referral mechanism

Obviously, international cooperation is also required to protect victims. In that context, the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 provides for the development of a transnational referral mechanism to link national referral mechanisms.³⁵ The transnational referral mechanism is an instrument that will, in future, enable all of the relevant actors to clearly identify who has to do what, and when, at the international level, and to better identify, refer, protect and assist victims.³⁶ The purpose of a transnational referral mechanism is to ensure that there is also international cooperation in efforts to promptly identify, protect and assist victims. The European Commission intends to develop a model for this transnational referral mechanism by 2015.

Chain partners in the Netherlands are aware of the need for cross-border cooperation, also in areas other than criminal law. Accordingly, the Task Force on Human Trafficking's Action Plan³⁷ embraces a wide range of activities in relation to international cooperation, ranging from intensifying operational cooperation in prosecutions to organizing training and conferences on practical issues relating to the fight against human trafficking.³⁸ The Netherlands is also involved in an international project to develop further guidelines on the identification of victims, with a view to developing training materials. But international cooperation is not only relevant from an operational perspective; it is also important in the context of collecting data in order to learn more about the phenomenon of human trafficking.³⁹

Two specific subjects are discussed below: cooperation in criminal law enforcement (particularly in terms of sharing information relevant for prosecutions) and multidisciplinary cooperation. The exchange of information remains an important issue, especially since the European Commission made a proposal, in March 2013, for new legislation designed in part to improve the information available to

34 This follows from the judgment in *Rantsev v. Cyprus and Russia*, see §2.2.3.

35 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 6: 'In line with a victim-centred approach, by 2015 the Commission will develop a model for an EU Transnational Referral Mechanism which links national referral mechanisms to better identify, refer, protect and assist victims'. On the national referral mechanism, see also §2.5.

36 See also §2.2.

37 Task Force on Human Trafficking 2013.

38 *Putting Rantsev into practice. A conference on strengthening multidisciplinary operational cooperation to fight trafficking in human beings*, organized by Poland, Cyprus and the Netherlands, Amsterdam 16-18 April 2013.

39 NRM2012f, recommendation 7: 'The Dutch government should continue to press for international cooperation, in the interests of improving data collection and analysis at both the national and international level. See also §2.2.1.

Europol.⁴⁰ This proposal might create more far-reaching obligations to supply information than currently exist. It is also gratifying to see that international cooperation is not confined to tackling human trafficking through criminal law alone, but that possibilities are also being explored for international cooperation in other areas, in the form of administrative cooperation, for example.

3.2.1 Cooperation in law enforcement

International cooperation between law enforcement agencies (the police and prosecution authorities) often provides a clearer picture of the human trafficking process as a whole, since victims might be recruited in one country and exploited in more than one other EU member state, for example. It goes without saying that the Netherlands should, in any case, cooperate or seek cooperation with the countries of origin of potential victims and suspects in this country. The Netherlands has arrangements for bilateral cooperation with the authorities in Bulgaria, Hungary, Romania and Nigeria, among other countries,⁴¹ and the exchange of information about human trafficking is most intensive with Bulgaria, Hungary and Romania.

Cooperation with Hungary

In the last year, the Netherlands has invested heavily in bilateral cooperation with Hungary in the field of criminal law enforcement.⁴² For example, the two countries recently drafted an operational action plan under the auspices of the European Multidisciplinary Platform against Criminal Threats (EMPACT).⁴³ Due to be implemented in the second half of 2013, the action plan contains guidelines for the substantive operational cooperation between the two countries and was initiated following

40 *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA*, 27 March 2013, COM(2013) 173 final. 'In order to improve Europol's intelligence picture, so that it can better support Member States and better inform EU policy setting, the proposal seeks to enhance the supply of information by Member States to Europol. This is done by strengthening the obligation for Member States to provide Europol with relevant data' (proposal, p. 6.).

41 After Dutch nationals, Nigerians, Hungarians, Bulgarians and Romanians make up the following top four nationalities of victims and possible victims reported to CoMensha in the period 2007-2011 (NRM 2012f). In addition to Bulgaria, Hungary and Romania, many suspects known to the PPS also came from Turkey, Morocco, Surinam and the former Netherlands Antilles. A noteworthy aspect is the small number of suspects from African countries (with the exception of Morocco) known to the PPS (NRM 2012f).

42 The Minister of Security and Justice has said that, in view of the growing number of Hungarian victims, cooperation between the police in Hungary and the Netherlands has gained considerable momentum since the beginning of 2012 when, for example, the Hungarian police proposed, as part of the EMPACT project on human trafficking, organizing bilateral meetings with the Netherlands two or three times a year to discuss operational coordination and ongoing investigations (*Parliamentary Documents II 2012/13*, Schedule Number 637; *Parliamentary Documents II 2012/13*, 33309, no. 6).

43 See also *Parliamentary Documents II 2012/13*, 32317, nr. 177. EMPACT is described in more detail later in this section.

questions in parliament in 2012⁴⁴ and at the instigation of the Ministry of Security and Justice. In particular, it relates to the exchange of knowledge and insights about the legal systems of the two countries and is intended to lead to more joint investigations of cases involving Hungarian offenders or victims. Also as part of the EMPACT project on human trafficking, Belgium, Hungary and the Netherlands are currently making preparations to set up a trilateral Joint Investigation Team (JIT).⁴⁵

Labour exploitation outside the prostitution sector, particularly in agriculture and horticulture, mainly seems to affect people from Central and Eastern Europe,⁴⁶ but there have also been indications of exploitation of Filipinos, for example.⁴⁷ Cooperation in criminal law enforcement with emerging countries is equally relevant. One aspect of promoting international cooperation in law enforcement is guaranteeing cooperation between police forces,⁴⁸ and the cooperation through Europol and Eurojust is very important in that regard. International cooperation in criminal law enforcement also takes place within the Meuse-Rhine Euroregion⁴⁹ and is also arranged through Interpol and liaison officers in the Netherlands

44 See the questions from member of parliament Hilkens (PvdA) to the Minister of Security and Justice about forced prostitution and human trafficking (submitted on 11 October 2012) (*Parliamentary Documents II 2012/13*, 2012Z17210) and questions from member of parliament Van der Staaij (SGP) to the Minister of Security and Justice about the large increase in the number of Hungarian prostitutes being forced to work for pimps (submitted on 15 October 2012) (*Parliamentary Documents II 2012/13*, 2012Z17450).

45 Verbal information from the EU Commissioner responsible for Executive European Police Cooperation (the coordinator for the Netherlands, EMPACT), 26 July 2013.

46 See also NRM 2012f.

47 See §2.4.5.

48 The need to promote international cooperation has repeatedly been the subject of recommendations by the National Rapporteur. See, for example, NRM 2012f, recommendation 7; NRM8.

49 Cooperation in criminal law enforcement in the Meuse-Rhine Euroregion is organized through the Euroregional Police Information and Communications Centre (EPICC), which comprises Dutch, German, and Belgian police services and provides an important link in the exchange of information between the police forces in the three countries. A report was recently published about cross-border investigations in the Meuse-Rhine Euroregion in the period 2006-2010: *Recherchesamenwerking in the Euregio Maas-Rijn. Knooppunten, knelpunten en kansen* (Nelen, Peters & Vanderhallen 2013).

and other countries. Liaison officers play an important role in bilateral cooperation and are absolutely crucial in the countries of origin of victims and offenders.⁵⁰

Exchange of operationally relevant information: Europol

According to the Council Decision of 6 April 2009 establishing the European Police Office,⁵¹ Europol's objective is to support and strengthen action by the competent authorities of the member states and their mutual cooperation in preventing and combating organized crime and other forms of serious crime, including human trafficking.⁵² Europol explicitly has no powers of investigation, but assists in the sharing of information between member states⁵³ and has a multidisciplinary team⁵⁴ that can supply experts and technical resources for multinational investigation teams.⁵⁵

Europol depends on the information supplied by member states. Information from the Netherlands is usually provided by the Expertise Centre on Human Trafficking and People Smuggling (EMM), the

50 The task of police liaison officers is to share information with the authorities in the countries where they are stationed and neighbouring countries and to assist with requests for legal assistance and other forms of assistance with investigations (see also NRM5). The possible withdrawal of police liaison officers from countries such as Romania was discussed during a plenary debate in parliament. Partly in response to a question from member of parliament Oskam (CDA) about whether liaison officers could remain in countries where they are needed, such as Poland and Romania, the Minister of Security and Justice promised to explore the possibilities with respect to the liaison officers in Bulgaria, Romania and Poland. The Minister said he would send a separate letter to parliament after the summer recess about the organization of international police policy, the status of the liaison officers and the places they will be stationed and the choices that would be made in that regard (Plenary debate of the Permanent Committee for Security and Justice of 4 July 2013 on the letter from the Minister of Security and Justice of 8 May 2013 concerning the progress report on child pornography and child sex tourism of 8 May 2013 (see *Parliamentary Documents II* 2012/13, 31015, nr. 90). At the time of writing, that report had not yet been published. A draft of the report is available at http://www.tweedekamer.nl/ao_repo/vj/20130704_Voortgangsrapportage%20kinderpornografie%20en%20kindersekstoerisme.pdf (consulted on 24 July 2013).

51 Europol's powers had previously been laid down in the Europol agreement (*OJ C* 316 of 27 November 1995). Since 1 January 2010, the Europol agreement has been replaced by the Council Decision establishing the European Police Office (Europol) (*OJ L* 121 15 May 2009), pp. 37 ff.

52 Europol is authorized to assist member states in tackling serious organized crime affecting two or more member states in such a way as to require a common approach by the member states (value for investigation). See Article 4 of the Council Decision establishing the European Police Office (Europol).

53 Information from the Dutch desk at Europol, 10 May, 21 June and 10 July 2013.

54 The Dutch desk at Europol is multidisciplinary and includes representatives of police units, the Royal Dutch Marechaussee, the FIOD and the customs service (information from the Dutch desk at Europol, 20 June and 10 July 2013).

55 Europol can also provide operational support for large-scale controls in the prostitution sector in the Netherlands. For example, Europol was involved in the operation at the Baekelandplein in Eindhoven (Ten Kate 2013, p. 148; see also §3.5.3).

individual police units and the Royal Dutch Marechaussee.⁵⁶ Europol checks the information it receives against existing data from police forces in Europe and provides feedback on any relevant information. The feedback sometimes contains information about other (ongoing) investigations in the Netherlands that some police units say they were not aware of.⁵⁷ In some cases, the suspect is also the subject of investigations in other countries (not necessarily related to human trafficking⁵⁸).

One aspect that is regarded as a problem is that the exchange of information between police forces in member states and Europol is sluggish.⁵⁹ Apart from signs that operational information is still not always supplied to Europol, the Dutch desk at Europol says that it is not only important to report signs of human trafficking, but that substantive information about actual (ongoing) investigations could also enhance Europol's intelligence picture.⁶⁰ Direct feedback from Europol is then important.

Investigative agencies in the Netherlands also sometimes share information directly with a counterpart in another country, for example within a JIT or through bilateral cooperation on the grounds of ad hoc requests for legal assistance. Consequently, the information does not actually reach Europol.⁶¹ Exchanging strategic information and information about criminal investigations, via Europol, with the agency's member countries could also strengthen the intelligence position of the Dutch investigative services.^{62,63}

56 In the Netherlands, the provision of police data to criminal law enforcement agencies in other countries and to Europol and Interpol is regulated in Article 17 of the Police Data Act and Articles 5:1-5:10 of the Police Data Decree. The provision of police data to Europol is regulated in Article 5:7 of the Police Data Decree: 'Europol shall be provided with police data for the purposes of fulfilling that agency's objective and tasks, insofar as that ensues from a directive or regulation on the grounds of chapter 4 or chapter 5 or Title V of the Treaty on the European Union. The police data shall be provided through the mediation of the national unit as referred to in Article 5:1 (3).' The provision of information to Europol can only be refused if fundamental national security interests will be harmed, the success of current investigations or the safety of persons will be endangered, or information will be disclosed relating to specific intelligence services or activities relating to state security (Article 5:7 Police Data Decree).

57 Information from the Dutch desk at Europol, 10 May, 21 June and 10 July 2013.

58 There could be links between human trafficking and other forms of organized crime (National Threat Assessment 2012, p. 69; Appendix to *Parliamentary Documents II* 2012/13, 29911, no. 79; NRM7, §9.4.4. See also §3.8.3.

59 In NRM7, the National Rapporteur recommended that information be supplied to Europol in accordance with the agreements made, with a view to increasing international police cooperation, both operational and in terms of sharing information (NRM7, recommendation 31).

60 Information from the Dutch desk at Europol, 10 July and 11 July 2013.

61 Verbal information from the Dutch desk at Europol, 21 June 2013.

62 The importance of sharing information with the Europol member countries, via Europol, is illustrated by the launch of a Joint Investigation Team (JIT) by the United Kingdom and Romania in 2008, for example. This JIT conducted simultaneous investigations in Great Britain and Romania in connection with the exploitation of hundreds of Roma children by a Romanian criminal organization that was reportedly operating in various EU member states. A list of 1,107 presumed underage victims contained 200 names that appeared in the police records in Great Britain. See also NRM7.

63 See §3.3.3.1 for a review of information management by the National Police.

EMPACT

The EMPACT project on human trafficking⁶⁴ is implementing an Operational Action Plan designed to improve the exchange of information via Europol and Europol's analysis of that information, among other things.⁶⁵ The purpose of the project is to address one of eight priority issues arising from the EU Serious and Organised Crime Threat Assessment (SOCTA) that were adopted at the suggestion of the Standing Committee on Operational Cooperation on Internal Security [*Coopération Opérationnelle en matière de Sécurité Intérieure*, COSI], the advisory body for the EU policy cycle in the field of internal security.^{66,67} The EMPACT project on human trafficking, with the United Kingdom as driver and the Netherlands as co-driver, commenced in 2011. For the Netherlands, the EU Commissioner with responsibility for Executive European Police Cooperation is the coordinator of the EMPACT projects (and the driver of the EMPACT project on human trafficking). In that context, he works closely with the Dutch desk at Europol. The EMPACT project on human trafficking is also exploring possibilities for conducting more joint investigations (by forming JITs, for example) and for confiscating the proceeds of crime.⁶⁸ There are now 21 member states taking part in the human-trafficking project, including the important countries of origin for the Netherlands of Hungary, Bulgaria and Romania, as well as other EU agencies such as Europol, Eurojust, Frontex and Cefpol.⁶⁹

Proposals for improving the intelligence position

At the end of March 2013, the European Commission made a proposal for new legislation to improve the collection, analysis and sharing of operational information by Europol. The proposal would create an extensive obligation for member states to provide information to Europol.⁷⁰

Article 7(5) of the proposal reads as follows:

'[...] supply Europol with the information necessary for it to fulfil its objectives. This includes providing Europol without delay with information relating to crime areas that are considered a priority by the Union. It also includes providing a copy of bilateral or multilateral exchanges with another

64 The EMPACT projects will continue until 2013. A new four-year policy cycle (2014-2017) will then commence, during which a number of projects will continue. Human trafficking is also specified as a priority for the period 2013-2017 in the EU Serious and Organised Crime Threat Assessment (SOCTA) (SOCTA 2013, p. 39). The Justice and Home Affairs Council recently adopted new priorities in relation to organized crime for the period 2014-2017. Human trafficking will remain a priority in the period 2013-2017 (*Parliamentary Documents I* 2012/13, 33309, no. C).

65 *Parliamentary Documents II* 2012/13, 32317, no. 177; *Parliamentary Documents I* 2012/13, 33309, no. C.

66 COSI is a permanent committee established to ensure consistency in Europol's activities (as well as those of Eurojust, Frontex and other European agencies) (Council Decision 2010/131/EU of 25 February 2010 on setting up the Standing Committee on Operational Cooperation on Internal Security (COSI).

67 Information from the Dutch desk at Europol, 10 July 2013.

68 *Parliamentary Documents I* 2012/13, 33309, no. C.

69 *Parliamentary Documents II* 2012/13, 32317, no. 177; *Parliamentary Documents I* 2012/13, 33309, no. C.

70 *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA*, 27 March 2013, COM (2013) 173 final. See also chapter 3, footnote 41.

Member State or Member States in so far as the exchange refers to crime that falls under Europol's objectives.⁷¹

For effective international police cooperation, the management of the flow of information between Europol and operational services must improve. According to the European Commission, the new Europol regulation creates an opportunity to accomplish this by clarifying the existing obligations to provide information to Europol without imposing additional requirements.⁷² Although a majority of the member states are reportedly opposed to a mandatory provision regarding the exchange of information, there is a need for improvement in that area.^{73,74}

In response to the European Commission's proposal, the Minister of Foreign Affairs said in a letter to parliament in May 2013⁷⁵ that the consequences of the regulation for the Dutch police services (National Police, Royal Dutch Marechaussee and the Special Investigation Services) will be carefully reviewed by means of a national impact analysis, which will include a calculation of the effects of the various options, particularly in terms of the administrative burden and the staffing and financial consequences for the police.⁷⁶

Efforts to improve Europol's intelligence position are important, first and foremost because of the assistance that Europol can provide in criminal investigations. For example, Europol has assisted in the formation of a number of JITs concerned with sexual exploitation in which the Netherlands collaborates with Bulgaria, Hungary and Romania.⁷⁷ JITs can also facilitate cooperation with countries of origin of victims and perpetrators. Another important reason to improve Europol's intelligence position is that will enhance the thoroughness of the analyses for the Serious and Organised Crime Threat Assessment (SOCTA) that Europol produces every year.

SOCTA

The SOCTA contains an analysis of current and prospective developments in serious organized crime in the EU. By way of illustration, according to SOCTA, there has been an increase in human trafficking situations related to benefit fraud in the EU.⁷⁸ Incidents have also been reported in the

71 Ibid.

72 *Parliamentary Documents I* 2012/13, 32317, no. CV.

73 Ibid.

74 The Europol regulation also contains a proposal for the merger of Europol and the European Police College (Cepol) with a view to reducing costs. A large number of member states, including the Netherlands, expressed opposition to the merger. In response, the European Commission was called on to reconsider the merger (*Parliamentary Documents I* 2012/13, 32317, nr. CV).

75 *Parliamentary Documents II* 2012/13, 22112, no. 1621.

76 *Parliamentary Documents II* 2012/13, 22112, no. 1621; *Parliamentary Documents I* 2012/13, 32317, no. CV.

77 *Parliamentary Documents II* 2012-2013, 31317, no. 177.

78 On human trafficking in relation to benefit fraud, see §2.4.6.

Netherlands, although not yet on a large scale.⁷⁹ The SOCTA also forms the basis for setting the EU's priorities in the fight against organized crime.⁸⁰

3.2.2 Multidisciplinary cooperation

Eurojust gives high priority to increasing the number of cases of human trafficking that are discovered and prosecuted and to joint investigations. In its Action Plan 2012-2016, Eurojust also describes disrupting criminal money flows and recovering assets in human trafficking cases as a priority.⁸¹ Eurojust does not confine its anti-trafficking activities to promoting international legal assistance in prosecutions, but also focuses on the efforts of actors in disciplines other than criminal law enforcement (the multidisciplinary approach). A particularly important form of multidisciplinary cooperation is collaboration with administrative authorities in combating human trafficking.

Administrative cooperation

Administrative authorities can make a particularly important contribution by preventing the proceeds of crime from being invested in legitimate companies, for example by refusing to grant permits to parties that are or have been the subject of a criminal investigation. Information from criminal law enforcement authorities – including those in other countries – can also be relevant for local administrative decisions, and exchanging information is therefore equally important in that respect. Accordingly, the Netherlands continues to draw attention to the administrative approach to human trafficking at EU level and to advocate the further development of possibilities for administrative authorities and the police and prosecution authorities in the various member states to exchange information.⁸²

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 did not, however, refer specifically to the role that municipalities can play in preventing and combating human trafficking. The Dutch government has said, 'Promoting the administrative approach to organized crime is a priority of the Netherlands' EU policy. This approach is not adequately reflected in the Communication (the EU Strategy).'⁸³ However, the Council Conclusions of 25 October 2012 did say, 'Promote and support innovative, multidisciplinary approaches to tackle trafficking in human beings, e.g. develop, through the informal network of national contact points⁸⁴ on the administrative approach to fight against crimes, a

79 Information from the Dutch desk at Europol, 10 May 2013.

80 The most recent SOCTA was published in 2013. Human trafficking is one of the priorities mentioned in the report.

81 Eurojust Action Plan 2012-2016, December 2012. Two other priorities are to improve coordination mechanisms, in particular for training, expertise and operational activities, and increasing cooperation with countries outside the EU in human trafficking cases.

82 The administrative approach to organized crime is a subject that the Netherlands could emphasise in a follow-up to the Stockholm programme, the EU's current long-term policy framework in the domain of justice and home affairs. The Stockholm programme ends in 2014. On this and other possible future developments in relation to justice and home affairs, see *Parliamentary Documents II* 2012/13, 32317, no. CW.

83 *Parliamentary Documents II* 2011/12, 22112 no. 1443, p. 4.

84 The informal network on the administrative approach was established in 2010 (*Council conclusions on the fight against crimes committed by mobile (itinerant) criminal groups*, 3051st JHA Council meeting, 2 and 3 December, Brussels).

common approach aimed at raising awareness of administrative authorities on their role in preventing and combating trafficking in human beings, as part of a comprehensive approach.’

On 1 January 2013, together with the University of Tilburg, the University of Louvain and Belgium’s Ministry of the Interior, the Dutch Ministry of Security and Justice commenced a two-year study financed by the European Commission’s ISEC programme. There are two parts to the project: the first is a study in ten EU member states (Belgium, the Netherlands, the United Kingdom, Sweden, France, Italy, Germany, Spain, the Czech Republic and Poland) to establish whether and, if so, how these countries use administrative instruments against crime, and on what legal basis, as well as their experiences with them. The results will be presented in ten country reports. The second part of the project is an analysis of existing legal possibilities for, and shortcomings in, the system of sharing information at the EU level for the purposes of applying the administrative approach. The two parts will be consolidated into a single final report, which will also constitute a ‘strategic road map’ with suggestions for improvements.

The findings from this study could make an important contribution to strengthening the position of administrative authorities in tackling crime at the EU level, and hence also tackling human trafficking.

3.3 Cooperation at the national level

3.3.1 Introduction

An integrated approach to human trafficking stands or falls with cooperation. In the Programme to Strengthen the Approach to Organized Crime [*Programma Versterking Aanpak Georganiseerde Misdad, PVAGM*]⁸⁵ in 2007, the Minister of Justice said that ‘by 2011, human trafficking should be addressed in a government-wide and integrated manner, both at the national and local/regional level. Special attention will be devoted to the link between the national level and the local/regional level [...]’.⁸⁶

The task of identifying bottlenecks in the effort to combat human trafficking, promoting cooperation and presenting broad-based solutions lies with the Task Force on Human Trafficking,⁸⁷ which reports to the Minister of Security and Justice⁸⁸ and is chaired by the PPS. It includes representatives from the Ministries of the Interior, Social Affairs and Employment, Health, Welfare and Sport and Foreign Affairs,

85 The Programme to Strengthen the Approach to Organized Crime is part of a broader programme called ‘Veiligheid begint bij voorkomen’ [Security begins with prevention] (*Parliamentary Documents II 2007/08*, 28684, no. 119). This broad-based programme sets out the policy on which the multidisciplinary approach to human trafficking is based. See also NRM7, §7.3.

86 Appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2008/02/18/plan-van-aanpak-programme-bestuurlijke-aanpak-georganiseerde-misdad.html> (consulted on 31 July 2013).

87 The Task Force on Human Trafficking was established in 2008 following a recommendation by the National Rapporteur to establish a ‘high-level’ task force on human trafficking with representatives from all the relevant partners in the chain. See NRM5.

88 The most recent report is the Progress Report of the Task Force on Human Trafficking 2011-2014 (Task Force on Human Trafficking 2013).

the police, the Royal Dutch Marechaussee, the municipalities of Amsterdam, The Hague and Utrecht,⁸⁹ the IND, CoMensha and the judiciary.⁹⁰ In 2013, the task force was expanded to include the chamber of commerce⁹¹ and the Association of Netherlands Municipalities (VNG).⁹²

The Task Force on Human Trafficking and the multidisciplinary approach

The Task Force on Human Trafficking makes an active contribution to developing an integrated and programmatic approach to human trafficking, in both the sex industry and other sectors.⁹³ One example of that contribution was the drafting of a multidisciplinary strategy for arranging shelter for large groups of victims in 2012, following the discovery of large groups of victims during multidisciplinary inspections of agricultural and horticultural businesses in 2011. At the time, it was unclear where shelter could be provided for these victims or which organization was responsible for providing shelter for them.⁹⁴ The problem was raised in the task force, whereupon the Ministries of Health, Welfare and Sport, Security and Justice and Social Affairs and Employment, together with CoMensha, developed a multidisciplinary strategy to address the problem.⁹⁵

Protecting victims is a permanent item on the task force's agenda in the sense that it formulates action points and reports on the progress being made with their implementation.⁹⁶ At the explicit request of the National Rapporteur, it recently adopted the protection of underage victims and the prevention of their victimization as a specific action point,⁹⁷ a step that has sharpened the focus

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- 89 The municipality of Rotterdam was also represented in the Task Force on Human Trafficking until the middle of 2013.
- 90 Task Force on Human Trafficking (Establishment) Decree, *Government Gazette* 2011, no. 5052. The National Rapporteur is also a member of the task force.
- 91 Letter from the chairperson of the Task Force on Human Trafficking to the Minister of Security and Justice of 9 April 2013, http://www.om.nl/algemene_onderdelen/uitbreid_zoeken/@160812/taskforce/ (consulted on 31 July 2013).
- 92 A study by the National Rapporteur showed that municipalities could play a major role in combating human trafficking. The VNG could greatly assist in facilitating that (NRM 2012e).
- 93 See also the Task Force on Human Trafficking (Establishment) Decree, *Government Gazette* 2011, no. 5052; Task Force on Human Trafficking 2013, p. 3.
- 94 This bottleneck emerged in the pilot 'Overige uitbuiting in de land- en tuinbouw' in 2012. See also §3.6.
- 95 See also §2.9.3.
- 96 Article 2 of the Task Force on Human Trafficking (Establishment) Decree states that the task force will make a contribution to (1) creating a more integrated approach to human trafficking, both in the sex industry and in other sectors, (2) preventing abuses in the prostitution sector and other sectors, (3) ensuring that the Netherlands does not become a global hub for human trafficking, and (4) preventing victims from being brought to the Netherlands and improving the position of victims in the Netherlands. *Government Gazette* 2011, 5052.
- 97 The National Rapporteur had repeatedly mentioned the need for this (see recommendation 25, NRM7), but it had become all the more urgent since the task force had assumed much of the responsibility for implementing the action points in the National Human Trafficking Action Plan and the supplementary action plan, including those relating to minors (see also *Parliamentary Documents II* 2005/06, 28638, no. 19).

on this vulnerable group, which is also expected to promote the integrated approach to human trafficking and enhance the protection of this group.⁹⁸

In a letter to the Minister of Security and Justice, the chairperson of the task force wrote that the message that needs to be conveyed is that the government is united in assuring victims that it is there for them and making it clear to human traffickers that it knows what is going on and will not tolerate exploitation.⁹⁹ The task force has been pursuing this objective for a number of years and will continue doing so at least until 2014.¹⁰⁰

3.3.2 Partnerships

There are numerous consortia at both the national and regional level in which partners in the chain collaborate in combating human trafficking, some of which focus specifically on protecting victims.¹⁰¹

The Red Cross and the protection of victims of human trafficking

In Utrecht, the Dutch Red Cross works with various organizations, including Moviera, Stichting de Tussenvoorziening, Vluchtelingenwerk Ex-AMA Team, STIL and the municipality of Utrecht. At the national level, it shares information and collaborates with organizations such as FairWork, CoMensha and the Dutch Council for Refugees (*Vluchtelingenwerk*). Red Cross volunteers help foreign victims of human trafficking to create a situation in which they can live safely and with prospects for the future in their country of origin or in the Netherlands. In the project called 'Support for Victims of Human Trafficking', Red Cross volunteers provide legal and practical assistance for foreign victims of human trafficking during immigration procedures relating to the human trafficking.¹⁰²

There are other consortia that focus mainly on suppressing organized crime in general, of which human trafficking is a form. The Centre of Expertise on Trafficking in Human Beings and People Smuggling (EMM)¹⁰³ and the B5 Task Force are examples of these bodies.

B5 Task Force

The B5 Task Force is a consortium comprising the Ministry of Security and Justice, the five largest municipalities in Brabant,¹⁰⁴ the police,¹⁰⁵ the PPS, the Royal Dutch Marechaussee and the Tax and

98 For more information about child victims and the integrated approach, see §2.10.

99 Letter from the chairperson of the Task Force on Human Trafficking to the Minister of Security and Justice of 9 April 2013, http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@160812/taskforce/ (consulted on 31 July 2013).

100 The second term of the Task Force on Human Trafficking expires in February 2014. See the Task Force on Human Trafficking (Establishment) Decree in 2011 (*Government Gazette* 2011, 5052).

101 The *Centraal Overleg Beschermd Opvang* [Central Consultative Body for Protected Shelter] is another example. For a description of this body, see NRM 2012e.

102 Written information from the Dutch Red Cross, 12 June 2013.

103 In §3.3.3, there is further discussion of the latest developments at the EMM. See also NRM 5 for a detailed description of the EMM.

104 Eindhoven, Breda, Tilburg, Helmond and Den Bosch.

105 National Criminal Investigations Department, Supra-regional Criminal Investigations Unit South Netherlands and three police forces in Brabant, including the police of Brabant South-East.

Customs Administration, whose aim is to fight organized crime in Brabant through the coordinated use of instruments under administrative, fiscal and criminal law.¹⁰⁶

Whereas partnerships formed to combat human trafficking used to operate in isolation, in recent years there has been an evident trend among these partners to organize themselves in a Safety Coordination House and/or an RIEC.¹⁰⁷ The following sections describe the structure of these two forms of cooperation and the latest developments in their activities.¹⁰⁸

3.3.2.1 The LIEC and the RIECs

The Netherlands has ten Regional Information and Expertise Centres (RIECs),¹⁰⁹ through which partners in the chain can develop a joint and coherent approach to tackling organized crime. The RIEC is simultaneously an information hub and a source of expertise that can assist local authorities in the effective use of their administrative powers.¹¹⁰ The RIECs were established to enhance cooperation between the criminal law enforcement agencies – such as the police and PPS – and administrative bodies – primarily the municipalities – and to assist them in developing an integrated approach.¹¹¹

The parties in an RIEC include municipalities, provinces, the PPS, the police, the IND, the Tax and Customs Administration, the Royal Dutch Marechaussee, special investigation services (such as the Inspectorate SZW, Investigations Department) and the FIOD.¹¹² The RIEC develops and supports administrative interventions at the regional level, in combination with penal and fiscal measures where necessary. Human trafficking is one of the principal crimes addressed by the RIECs.¹¹³

106 See <http://www.vdmmp.nl/waar-we-actief-zijn/212.html> (consulted on 31 July 2013).

107 See NRM 2012e; NRM 7. But see also the pilot projects concerned with the loverboy problem in Sittard-Geleen and Rotterdam, which were carried out by Safety Coordination Houses. They are described in §2.10. The administrative reports that were written following these pilots also say that the partnerships are incorporated in RIECs and/or Safety Coordination Houses. On this point, see §3.6.

108 The Safety Coordination Houses, the RIECs and the LIEC are described in detail in NRM7 and in the study carried out by the National Rapporteur in 2012 into the anti-human trafficking strategy adopted by four municipalities (NRM 2012e) and are therefore only briefly described here.

109 <http://www.riecnet.nl> (consulted on 31 July 2013).

110 See *Information about the National and Regional Centres for Information and Expertise (RIEC)*, p. 3. See also <http://www.riecnet.nl/doc/algemeen/brochure%20RIEC.pdf> (consulted on 31 July 2013).

111 *Ibid.*, p. 4.

112 For a list of all the relevant partners, see <http://www.riecnet.nl/over-riec/partners> (consulted on 31 July 2013). With the exception of a few municipalities (97% did sign) and provinces, the chain partners listed here all signed the RIEC/LIEC Covenant. See *Convenant ten behoeve van Bestuurlijke en Geïntegreerde Aanpak Georganiseerde Criminaliteit, Bestrijding Handhavingknelpunten en Bevordering Integriteitsbeoordelingen* [Covenant for an Administrative and Integrated Approach to Organized Crime, Removal of Obstacles to Enforcement and Promotion of Assessments of Integrity], (hereinafter ‘the Covenant’) RIEC Net 2013, <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.pdf> (consulted on 7 August 2013).

113 See also §3.9.4.

To assist the RIECs in the performance of their tasks, the National Information and Expertise Centre (LIEC) was established. It performs tasks that are relevant for all of the RIECs but are too expensive or too specialized for each of the RIECs to perform individually.¹¹⁴ Examples would include specialist support in areas such as the sharing of information (advice on privacy issues, for example). The LIEC is also the national centre of expertise on the administrative approach to organized crime¹¹⁵ and advises the Minister of Security and Justice on issues that demand a national approach, for example.¹¹⁶ Finally, the LIEC maintains a national database of administrative files¹¹⁷ and ensures that they are all followed up properly by the appropriate organizations and departments. Consequently, it is easier to spot patterns emerging from multiple files and the files are easily accessible for the relevant partners.

Since 1 January 2013, the cooperation and exchange of information among the various partners in the RIECs have been based on a uniform covenant, the national RIEC/LIEC Covenant,¹¹⁸ which regulates the organizational structure of the LIEC and the individual RIECs and replaces the separate covenants that had been concluded between the partners in the different regions. Under the national covenant, every RIEC has a Regional Steering Group, chaired by the so-called 'regional mayor',¹¹⁹ whose members are the partners that signed the covenant. The steering group formulates the general strategy for cooperation in the region. At the operational level, an essential role is played by the case meetings, where the partners exchange information and develop strategies for the use of administrative and other instruments, with an emphasis on the coordinated use of those instruments.

Human trafficking and people smuggling are among the principal criminal activities addressed in the RIECs.¹²⁰ Each RIEC appoints an official with responsibility for human trafficking and abuses in the prostitution sector, generally on a full-time basis.¹²¹ One point that demands attention is the fact that, with the entry into force of the national covenant, the partners in the health care sector are no longer directly involved in the case meetings relating to human trafficking organized by the RIECs, because the Personal Data Protection Act does not permit information to be shared with them.¹²² This is connected

114 See Article 4.1 of the Covenant.

115 Ibid, Article 4.2. <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.Pdf>.

116 Ibid, Article 4.4.

117 Administrative files are an important instrument for sharing knowledge about crime because they contain information about new criminal phenomena, new *modus operandi* or structural bottlenecks in fighting crime (written information from the LIEC, 18 July 2013).

118 The Covenant, RIEC Net 2013, <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.pdf> (consulted on 7 August 2013).

119 The regional mayor performs the role of coordinator within the region and initiates the drafting of the regional policy plan, an instrument in which regional priorities are established. Under Article 3.2 of the Covenant, another person can be appointed as chairperson of the regional steering group (Ibid.).

120 Other major themes are organized cannabis cultivation, real estate crime and money laundering.

121 *Parliamentary Documents I 2012/13*, 32211, M, p. 6.

122 Written information from the LIEC, 24 January 2013. See also §3.9.4, where there is a discussion of the importance of involving partners in the health care sector in efforts to prevent human trafficking and how that has been arranged in some places.

with the requirement of Article 7 of the act that personal data may only be collected for specific, explicitly defined and legitimate purposes. The stated objective of the covenant is to combat organized crime, and cooperating and sharing information with partners in the health care sector do not fall under this specific purpose.

3.3.2.2 Safety Coordination Houses

The Netherlands has 25 Safety Coordination Houses in regions corresponding with the existing security regions. The municipalities in which the Safety Coordination Houses are located receive funding for them from the Municipalities Fund.¹²³ They are responsible for coordinating the regional cooperation between the parties in the Safety Coordination House and are required to allow every municipality within the security region access to the Safety Coordination House.¹²⁴

In the Safety Coordination House, partners in the law enforcement chain, administrative authorities and the health care sector¹²⁵ collaborate in tackling complex local security problems. Together, they search for the most appropriate solution for a specific case and assume responsibility for planning and carrying out the measures themselves. They can also develop an approach to address a wider criminal phenomenon that has been observed in their region.

The concept of the Safety Coordination House was outlined in the *Landelijk Kader Veiligheidshuizen* [National Framework for Safety Coordination Houses], which was produced by the Ministry of Security and Justice in February 2013 and describes the objectives, functions and purpose of Safety Coordination Houses.¹²⁶ The problems that need to be addressed by the regional Safety Coordination House are prioritized by a steering group.¹²⁷ As with the RIECs, the case meetings play a key role at the operational level. At these meetings representatives of the various organizations meet to agree on a joint recommendation for the appropriate intervention to address a specific problem.

123 The fund receives an annual 'decentralization grant' of € 7.7 million from the Ministry of Security and Justice. See *Landelijk kader Veiligheidshuizen 2013*, p. 38, <http://www.Veiligheidshuizen.nl/doc/VHH-Landelijk-Kader-definitief.pdf> (consulted on 31 July 2013).

124 Eighty percent of municipalities are currently affiliated with a Safety Coordination House (written information from the CCV, 16 July 2013).

125 The following organizations are regarded as key partners: the police, the PPS, the Child Care and Protection Board, probation services and addict support organizations (Reclassering Nederland, Stichting Verslavingsreclassering, GGZ Nederland and the Salvation Army), the Custodial Institutions Agency, municipalities, the youth care organization Jeugdzorg Nederland and the Association of Health Care Providers for People with Disabilities. See Ministry of Security and Justice 2013, p. 7.

126 Ministry of Security and Justice 2013, p. 7.

127 The regional steering group generally includes representatives of municipalities, municipal health services, the PPS, the police, custodial institutions, the probation service, youth care agencies, the Child Care and Protection Board and organizations that help addicts (written information from the CCV, 16 July 2013).

3.3.3 Developments among chain partners

The national, regional and local consortia comprise partners from the domains of criminal, administrative, immigration and tax law, as well as agencies in the fields of health care and social work. This section describes developments relating to the principal chain partners in these consortia: the PPS, the municipalities, the police, the Tax and Customs Administration, the IND, the Chamber of Commerce, the Inspectorate SZW, the Royal Dutch Marechaussee and CoMensha.

The more ‘traditional’ partners that have been engaged in fighting human trafficking for some time, such as the PPS, the police and the Inspectorate SZW,¹²⁸ regard it as an area of specialization within the organization and seek cooperation with other partners.¹²⁹ The PPS has appointed a national public prosecutor for human trafficking, and specialist prosecutors, known as portfolio holders, have been appointed for human trafficking in each district office and in the Office for Serious Fraud and Environmental Crime.¹³⁰ The national public prosecutor for human trafficking and the portfolio holders play a key role in the cooperation with other chain partners.¹³¹ At the Inspectorate SZW, 35% of the investigation department’s capacity is reserved for tackling labour exploitation.¹³²

128 *Meerjarenplan 2013-2014*. Inspectorate SZW 2012, p. 18. See also Annual Plan 2013. Inspectorate SZW 2012, p. 14, http://www.inspectieszw.nl/Images/Meerjarenplan%202013-2014%20Inspectie%20SZW_tcm335334154.pdf (consulted on 9 July 2013) and https://www.inspectieszw.nl/Images/Jaarplan-2013-InspectieSZW_tcm335-334153.pdf (consulted on 9 July 2013).

129 See also the PPS’s Instructions on Human Trafficking 2013, the police’s National Reference Framework for Human Trafficking (2013) and the Statement of Reply sent by the Minister to the Upper House of Parliament on 1 July 2013 concerning the bill to implement EU Directive 2011/36/EU (*Parliamentary Documents I*, 2012-2013, 33 309, C, p. 8).

130 Developing and safeguarding knowledge and expertise within the PPS are important tasks in this regard.

131 For example, the investigative services and the PPS identify criminal phenomena during investigations and then seek close cooperation with other partners to erect barriers to them (Martens & Van den Brink 2013, p. 197). See also §3.4.1 for a description of the programmatic approach, of which this is an element.

132 *Parliamentary Documents I* 2012/13, 32211, M, p. 6. Inspectorate SZW also heads the Mushroom Intervention Team, whose task is to address abuses in the Dutch mushroom sector, as well as the intervention teams created for the cleaning services and employment agency sectors. The Mushroom Intervention Team includes representatives from municipalities, the Tax and Customs Administration, Inspectorate SZW (to monitor compliance with the Working Hours Act and Minimum Wage Act and help with analysis), the UWV, the SVB, the Board of Chiefs of Police and the PPS. See *Annual Plan 2013. Inspectorate SZW*, p. 16. For one of the final reports of the Mushroom Intervention Team, see http://www.fnvbondgenoten.nl/site/branches/agrarisch_groen/downloadblokken/270264/242085 (consulted on 31 July 2013).

3.3.3.1 Police

The police have also made significant investment in the fight against human trafficking in recent years. The creation of the National Police has brought about substantial changes.¹³³ The 26 former police regions have been replaced by ten police units, together with a single national unit.¹³⁴ The reorganization of the police is intended to create greater unity and closer cooperation and ultimately lead to ‘a more decisive, more effective and more efficient police force’.¹³⁵

The National Police and human trafficking

The Minister of Security and Justice has said that, with the creation of the National Police, the continued performance of the tasks of the police in relation to combating human trafficking will be guaranteed.¹³⁶ Within the National Police, tackling human trafficking will be primarily a task for the aliens police,¹³⁷ whereas formerly – with the exception of the Groningen and Rotterdam regions – it was delegated to other divisions. A substantial effort will be needed to retain expertise in the new structure.¹³⁸ With the creation of the National Police, steps could be taken to increase the uniformity of the approach to human trafficking, including a national information management system.¹³⁹

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- 133 The Police Act 2012 (and the Police Act 2012 (Introduction and Amendment) Act) entered into force on 1 January 2013 (*Bulletin of Acts, Orders and Decree* 2012, 317). See also *Parliamentary Documents II* 2012/13, 29628, no. 401.
- 134 At the time of writing, the National Police force was still in the process of being formed. The experts in the various police units were not yet known. For more information about the establishment of the National Police, see *Inrichtingsplan Nationaal Politie* [National Police Organization Plan] (2012) and *Realisatieplan Nationaal Politie* [National Police Implementation Plan] (2012). The Minister of Security and Justice will report twice a year on progress with the creation of the force (*Parliamentary Documents II* 29628, no. 401). See also the letter from the Minister of Security and Justice to the Speaker of the Lower House of Parliament entitled ‘Aanbieden inrichtingsplan en realisatieplan Nationaal Politie’ [Presentation of the organization plan and implementation plan for the National Police] of 7 December 2012 (*Parliamentary Documents II* 2012/13, 29628, no. 346).
- 135 Netherlands Police Annual Report 2012, p. 10.
- 136 *Parliamentary Documents II* 2012/13, 32211, no. M.
- 137 According to the National Police Organization Plan (2012), the capacity of the aliens police will be 1,184 FTEs. The National Reference Framework for Human Trafficking 2013 referred to the deployment of 31.7% of the capacity of the aliens police to combating human trafficking.
- 138 On 7 November 2012, the National Rapporteur expressed her concerns to the Minister of Security and Justice about the retention of expertise on the subject of human trafficking in the National Police (Letter from the National Rapporteur to the Minister of Security and Justice of 7 November 2012, <http://www.nationalrapporteur.nl/actueel/kamerbrieven/> (consulted on 31 July 2013)).
- 139 The National Police are already taking steps to improve information management. One example is the development of the Summ-IT system, which the police will use nationwide for investigations and from which investigating agencies could be able to gain a clearer picture of the entire investigation process (Information provided at an EMM meeting, 14 August 2013). The EMM’s new data system, the so-called *Recherche Analyse Omgeving* (RAO) could also lead to improvements.

The management of operational information is still fragmented and police units consequently do not always have access to comprehensive operational information from other units.¹⁴⁰

Although there are still questions about the actual positioning and tasks¹⁴¹ of the Expertise Centre on Human Trafficking and People Smuggling (EMM),¹⁴² it will continue to maintain a national register of indications of human trafficking. Every unit of the National Police is required to report to the EMM every month, and the EMM provides feedback on these reports.¹⁴³ The EMM is currently working on a data system, known as the *Recherche Analyse Omgeving* (RAO) [Investigation Analysis Environment], in which indications of human trafficking from various sources (police and non-police) will be collected in order to produce a more complete picture of the phenomenon.¹⁴⁴ For the moment, a national impression of human trafficking at the operational level is still confined to what is reported in the National Threat Assessment¹⁴⁵ and the Police Monitor on Prostitution and Human Trafficking [*Korpsmonitor*].¹⁴⁶ However, it might be possible to use the new RAO data system to produce a national analysis, for nationwide operations, for example.

The National Police's anti-trafficking approach is laid down in the most recent National Reference Framework for Human Trafficking (2013),¹⁴⁷ which, as in previous versions, concisely sets out the framework for the force's tasks, responsibilities and powers and for cooperation (including information exchange) with chain partners such as municipalities, the RIECs and the LIEC, the Royal Dutch Marechaussee, the Inspectorate SZW, the Tax and Customs Administration, chambers of commerce, the hotel sector, CoMensha and others. Accordingly, the national reference framework guarantees a multidisciplinary approach.¹⁴⁸

140 This is due to the absence of an effective national system police registration of (ongoing) human trafficking investigations. The National Rapporteur made a recommendation regarding police registration of human trafficking in her last report (NRM2012f, recommendation 6).

141 The positioning and tasks of the EMM are reserved to the National Police, but are also a matter for other partners of the EMM (written information from the EMM, 10 July 2013); see also NRM 7, p. 341.

142 See also NRM7.

143 National Reference Framework for Human Trafficking 2013.

144 Written information from the EMM, 10 July 2013.

145 National Threat Assessment 2012 (appendix to *Parliamentary Documents* II 2012/13, 29911, no. 79).

146 At the time of writing, the latest Police Force Monitor on Prostitution and Human Trafficking had not yet been published. The monitor of prostitution and human trafficking is carried out every two years under the responsibility of the chairperson of the National Expertise Centre on Human Trafficking (LEM), and – with the creation of the National Police – will in future be produced for the National Police's portfolio holder for the aliens police (see also the National Reference Framework for Human Trafficking 2013). The monitor for 2011-2012 described the organizational structure of the police in relation to human trafficking under the former police system. The new monitor will serve as a baseline measurement for subsequent reports on the situation under the National Police. For more information about previous Police Monitors, see NRM8; NRM7.

147 See NRM7, recommendation 26.

148 See also *Parliamentary Documents* I 2012/13, 33309, no. C.

3.3.3.2 Royal Dutch Marechaussee

The Royal Dutch Marechaussee is currently drafting its own reference framework. One factor perceived as a problem by the Royal Dutch Marechaussee is that combating human trafficking is not one of the force's statutory duties.¹⁴⁹ It therefore passes on relevant information about a possible human trafficking situation to the police. In *Beleidsdoorlichting van de KMar* [Policy Analysis of the Royal Dutch Marechaussee], a report published in 2013, the proposal was made to review whether the force's tasks could be expanded to include carrying out its own investigations of human trafficking in relation to cross-border movements.¹⁵⁰ The other recommendations in the policy analysis mainly concerned issues that are already being addressed by the force, such as effective information exchange with partners in the chain and the adoption of innovative methods for conducting investigations and gathering information. For example, the Royal Dutch Marechaussee recently set up a Profiling, Targeting and Tasking Centre (PTTC) to centralize the collection of relevant strategic and operational information to help in the fight against human trafficking.¹⁵¹

3.3.3.3 Municipalities

There is a growing realization among municipalities that combating human trafficking demands a specific approach.¹⁵² In recent years, for example, some municipalities have adopted a local and regional approach to human trafficking, with the focus on how administrative instruments can be used to frustrate the human trafficking process.¹⁵³ At the same time, there are still major differences in the approaches taken by municipalities towards human trafficking. Particularly smaller municipalities, where there is little or no licensed prostitution, have less knowledge and awareness of human trafficking and have not formulated any specific policies to address it. That remains a source of concern, since previous research has shown that exploitation, in the sex industry and in other sectors, can occur anywhere.¹⁵⁴ For example, companies in the high-risk sectors for exploitation outside the sex industry are generally established in rural areas.¹⁵⁵ Furthermore, there are signs that a shift is occurring from more visible forms of prostitution, such as window prostitution or in brothels, to less visible forms, such as escort services

149 The Royal Dutch Marechaussee takes action to prevent people smuggling and human trafficking during mobile supervision operations in border areas and during border checks (*Beleidsdoorlichting KMar* 2013). There is close cooperation between the Royal Dutch Marechaussee and the police, and in 2012 they agreed to give priority to a number of themes (including human trafficking and people smuggling). On the grounds of Article 57 of the Police Act 2012, the Royal Dutch Marechaussee can provide assistance to the police (*Parliamentary Documents II* 2012/13, 28684, no. 387).

150 Although the tasks and powers of the Royal Dutch Marechaussee are also laid down in the Police Act, they are not explicitly mentioned in the police's National Reference Framework for Human Trafficking. See also NRM7; Article 4 of the Police Act (*Bulletin of Acts, Orders and Decrees* 2012, 317).

151 *Beleidsdoorlichting KMar* (2013); *Parliamentary Documents II* 2012/13, 31516, no. 3; Letter from the National Rapporteur to the Lower House of Parliament of 8 February 2013, <http://www.nationalrapporteur.nl/actueel/kamerbrieven/> (consulted on 7 August 2013).

152 See also §3.9 for examples of municipalities that have adopted a regional and local approach to human trafficking and the study by the National Rapporteur into the municipal approach to human trafficking.

153 See also §2.3.4 and §3.9, which describe the steps being taken by some municipalities to combat human trafficking.

154 NRM 2012e.

155 For information about high-risk sectors for exploitation outside the sex industry, see §2.4.5.

and prostitution in hotels and private homes.¹⁵⁶ It is also likely that human traffickers will move from municipalities with a restrictive policy towards human trafficking and seek sanctuary in municipalities which do not have any such policy or do not enforce it effectively.¹⁵⁷

The VNG can assist local authorities in developing an integrated approach. In light of the need to involve municipalities in the fight against human trafficking, it is positive to note that the VNG has joined the Task Force on Human Trafficking.

3.3.3.4 Tax and Customs Administration, FIU-Nederland and the Chamber of Commerce

The municipalities, the police,¹⁵⁸ the Inspectorate SZW and the PPS regard the Tax and Customs Administration (in particular the Fiscal Intelligence and Investigation Department/Economic Surveillance Department (FIOD-ECD)) and the chamber of commerce as crucial partners in effectively combating human trafficking. The Tax and Customs Administration, for example, can identify cases when they carry out audits in the sex industry and other sectors and can play a role in tackling offenders through tax law. The Financial Intelligence Unit Nederland (FIU-Nederland) can have an important signalling function and provide support for investigating services in the context of investigations of money flows relating to human trafficking. FIU-Nederland is formally part of the National Police but functions independently.¹⁵⁹ It collects reports of unusual financial transactions – from institutions such as banks – but also provides advice and assistance to investigating agencies and can even make proposals to start a criminal investigation.¹⁶⁰

FIU-Nederland and human trafficking

In 2012, FIU-Nederland assisted in an investigation into human trafficking and money laundering that exposed a network with money flows to Hungary. This information was shared with other agencies and the investigating team. According to FIU-Nederland, the information about financial transactions contributed to the gathering of evidence in this case.¹⁶¹

The chamber of commerce can also play an important role in tackling human trafficking.¹⁶²

Chamber of commerce and human trafficking

Anyone who wishes to work as a self-employed person in the Netherlands must be registered in the chamber of commerce's trade register. Until 1 January 2014, that also still applied for Romanians and Bulgarians who wanted to work independently in the Netherlands, in prostitution for example. The chamber of commerce reports signs that could suggest human trafficking to the EMM. Since

156 On this point, see also §2.3.2.

157 NRM 2012e.

158 See also *Parliamentary Documents I* 2012/13, 33309, no. C.

159 FIU 2013.

160 *Ibid.*, pp. 15-16.

161 *Ibid.*, pp. 27-28.

162 The chamber of commerce has been represented in the Task Force on Human Trafficking since 2013. See §3.3.1.

May 2013 it has adopted a uniform procedure for this and has already started organizing training courses for its employees on its use.¹⁶³

The chamber of commerce has no way of ascertaining *directly* that a situation involves human trafficking and is therefore unable to use that fact as grounds for refusing to enter a person in the trade register. The link can be made indirectly by assessing whether the individual concerned is genuinely an independent entrepreneur. With this assessment, it can refuse registration if there are suspicions of human trafficking. The chamber of commerce is currently drawing up practical guidelines for its employees.¹⁶⁴

3.3.3.5 Partners in the health care sector

To protect victims of human trafficking, the Task Force on Human Trafficking encourages municipalities to appoint regional coordinators,^{165, 166} who would play a pivotal role in the chain of care providers and other partners and one of whose tasks would be to help arrange appropriate shelter and care for victims of human trafficking at the regional level. CoMensha is developing a blueprint for regional coordination in relation to the protection of victims.¹⁶⁷

The pilot project Categorical Shelter for Victims of Human Trafficking (COSM) was launched in 2010 and was extended in 2012.¹⁶⁸ CoMensha can place victims in the COSM shelters,¹⁶⁹ where potential victims are also offered a psychosocial diagnosis in order to determine the care they need.¹⁷⁰ The diagnosis can also help to establish whether a possible victim is psychologically capable of making a statement with a view to the prosecution of the offender(s).¹⁷¹ In the project, places have been created specifically for victims of human trafficking in three shelters: Jade, HVO Querido and PMW Humanitas.

3.3.3.6 Other consultative forums

A number of chain partners have their own forums at the national level for internal consultation, to share information, coordinate interventions and look for solutions to problems. For example, the PPS has the meeting of portfolio holders, the police have the Operational Consultation Group on Traffick-

163 Verbal information from the chamber of commerce, 8 July 2013.

164 Letter from the Minister of Economic Affairs to the Speaker of the Lower House of Parliament of 3 July 2013, <http://www.rijksoverheid.nl/documenten-en-publicaties/ParliamentaryDocuments/2013/07/03/beantwoording-motie-segers.html> (consulted on 31 July 2013).

165 Through the VNG, for example (Task Force on Human Trafficking 2013, p. 21).

166 CoMensha uses the term 'regional coordinator' rather than 'care coordinator'. It gives three reasons for this: first, to avoid confusion, since the function of care coordinator already exists within care institutions; second, regional coordinator is a better title because the function involves, among other things, supra-institutional and regional coordination of the provision of care for victims of human trafficking; finally, the name was changed to promote wider cooperation. See also NRM 2012e for more information about regional coordinators.

167 Task Force on Human Trafficking 2013, p. 21.

168 *Parliamentary Documents II* 2011/12, 28368, no. 72.

169 Van London & Hagen 2012, p. 27; see also §2.9.

170 *Parliamentary Documents I* 2012/13, 33309, C. p. 3.

171 More information about the COSM shelters is provided in §2.9.

ing in Human Beings (OOM)¹⁷² and the National Expert Group on Human Trafficking (LEM).¹⁷³ The RIECs also have a national platform in the Expert Group on Human Trafficking, in which the human trafficking portfolio holders meet to discuss problems at the regional level and to share good practices in combating human trafficking.

In the middle of 2012, a number of organizations that provide assistance and shelter for victims formed the Strategic Consultation Group on Human Trafficking (SOM).¹⁷⁴

SOM meetings

The SOM meets every two months to develop a strategy and vision on shelter and assistance for victims of human trafficking and to discuss related topics such as prevention and investigation. Other objectives of the SOM meetings are to form new partnerships and coordinate new activities relating to the provision of care for victims of trafficking.

3.4 Cooperation: a programmatic and integrated approach

There has been considerable investment in – and experimentation with – the multidisciplinary approach in the Netherlands in recent years,¹⁷⁵ through the integration of multidisciplinary partnerships at the regional and local level in RIECs or Safety Coordination Houses at various locations around the country, for example.¹⁷⁶ Within these structural partnerships, private and semi-private organizations, law enforcement agencies and administrative authorities work together to identify situations where exploita-

172 For information about the OOM, see also NRM7; NRM5; NRM3.

173 For more information about the LEM, see also NRM7. The National Rapporteur previously made a recommendation regarding the LEM's function in encouraging and motivating the former police forces to give priority to human trafficking (NRM7, recommendation 30). The various units of the National Police, the Police Academy, the Royal Dutch Marechaussee, the Centre of Expertise on Aliens (*Expertisecentrum Vreemdelingen, ECV*) and the EMM are represented in the current LEM. See also NRM5.

174 The participants are CoMensha, FairWork, PMW COSM (*Prostitutie Maatschappelijk Werk Categoriele Opvang voor Slachtoffers van Mensenhandel*), ACM COSM (*Amsterdams Coördinatiepunt Mensenhandel Categoriele Opvang voor Slachtoffers van Mensenhandel*), Jade COSM (*Categoriele Opvang voor Slachtoffers van Mensenhandel*), SHOP in The Hague, Fier Fryslân and MJD Groningen (a provider of social and legal services). The Bureau of the National Rapporteur attends these meetings as an observer (*Parliamentary Documents I 2012/13, 33309, C*).

175 The Minister of Security and Justice said in a letter to the Lower House of Parliament: 'It is time to anchor the experience that has been gained with the integrated approach in the last few years at the national level. To do that, it is essential for everyone concerned to speak the same language, to adopt the same principles, to pursue the same objectives and to take specific measures' (*Parliamentary Documents II 2011/12, 29911, nr. 55*).

176 See §3.9 and NRM 2012e.

tion occurs, to prevent and combat human trafficking in all its forms, and to protect its victims.¹⁷⁷ They employ what is known as the *integrated approach*.¹⁷⁸

Comprised mainly of the organizations that are responsible for supervision and enforcement,¹⁷⁹ multidisciplinary partnerships have also been established in the criminal law domain of the integrated approach.¹⁸⁰ The key to this approach is that the partners zoom in on a specific form of human trafficking and actively gather intelligence about the modus operandi of the traffickers and the extent and nature of entanglements between the criminal and legitimate worlds. They also conduct experiments with new types of interventions to tackle the specific form of trafficking.¹⁸¹ This is known as the *programmatic approach*.¹⁸²

The separate approaches are discussed in detail later, but the following section first provides a general outline and describes the relationship between them and how they can reinforce one another in the fight against human trafficking.

3.4.1 Programmatic approach

The programmatic approach was first referred to in 2006, in the context of a discussion about how serious crime, and specifically human trafficking, could be tackled more effectively.¹⁸³ It had been found that criminal law alone was not effective enough. To combat human trafficking effectively at a funda-

177 This is in accordance with the EU Strategy towards the Eradication of Trafficking in Human Beings, which states that official mechanisms and procedures should be adopted in which the roles and responsibilities of all those involved in combating human trafficking are clearly defined (*EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, COM (2012) 286 final, 19 June 2012, p. 6). See also §2.5 on the importance of a referral mechanism at national level.

178 The National Rapporteur conducted research into the integrated approach at the local and regional level in 2012 (NRM 2012e).

179 They would include organizations like the Royal Dutch Marechaussee, municipalities, the harbour police, the Tax and Customs Administration and special investigative agencies (e.g. Inspectorate SZW, FIOD-ECD, VROM-IOD) (Ten Kate 2013, p. 140). In fact, partners in the private sector are also involved in the programmatic approach if they could erect barriers to human trafficking.

180 Kiemel & Ten Kate 2007, p. 99 and *Notitie versterking aanpak mensenhandel en mensensmokkel* [Memorandum on strengthening the approach to combating human trafficking and people smuggling], OM 2008, p. 15, http://www.hetccv.nl/binaries/content/assets/ccv/dossiers/mensenhandel/om_notitieversterkingaanpak.pdf (consulted on 9 July 2013).

181 Ten Kate 2013, p. 140.

182 The EU Strategy towards the Eradication of Trafficking in Human Beings stresses that 'law enforcement teams' should be set up to investigate and prosecute human trafficking in a proactive and innovative manner (*EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, COM (2012) 286 final, 19 June 2012, p. 1).

183 Van Gestel & Verhoeven 2009, p. 23.

mental level, the PPS reasoned, bolder and more comprehensive methods were needed. It developed the programmatic approach, which it describes as the criminal process in the integrated approach.¹⁸⁴

The programmatic approach rests on two pillars, i.e., gaining insight into the phenomenon of human trafficking and developing innovative methods, both preventive and repressive, for tackling human trafficking through multidisciplinary cooperation. In the programmatic approach, 'various units of the PPS and the investigative and inspection services operating under their authority, work together (as members of a group) to learn more about the phenomenon and to apprehend specific criminal organizations.'¹⁸⁵

Based on the theory that different partners each possess a piece of the puzzle, the various actors collaborate in unravelling the phenomenon of human trafficking. By piecing together the information, they learn more about the underlying ad hoc structures that facilitate human trafficking. In the process they analyse, from a law enforcement perspective, what administrative, penal and fiscal measures could be employed (and how barriers could be erected) to structurally enhance efforts to address a particular form of human trafficking. The barrier model plays an important role in this approach.

Barrier model

The barrier model is an instrument used in the programmatic approach to highlight preventive and repressive measures that could be taken to combat organised crime. It pinpoints the obstacles that perpetrators have to overcome in order to succeed in the human trafficking process. The five initial 'barriers' are entry, identity, accommodation, employment and finance¹⁸⁶ and they are analysed on the basis of the intelligence that is gathered.

In the last few years, experiments with the use of the programmatic approach have been carried out in dedicated 'pilots', which could be described as innovative, experimental learning environments in which the multidisciplinary approach is used to combat a specific aspect of a wider phenomenon. Pilots have been carried out in relation to various forms of organized crime, including money laundering, cannabis cultivation, child pornography and human trafficking. A characteristic feature of the programmatic approach as it was employed in the pilots is that it focused heavily on a single form of human trafficking, such as sexual exploitation in hotel prostitution or labour exploitation in the agriculture and horticulture sector.¹⁸⁷

184 Kiemel & Ten Kate 2007, p. 99'; 'Notitie versterking aanpak mensenhandel en mensensmokkel' OM 2008, http://www.om.nl/onderwerpen/mensenhandel_en/@148763/notitie_aanpak/ (consulted on 9 July 2013).

185 Kiemel & ten Kate 2007, p. 99.

186 The barrier model is explained in more detail in §3.5.2.

187 See §3.5 for a more detailed description of the various forms of human trafficking that have been the subject of the programmatic approach in pilots or otherwise.

3.4.2 Integrated approach

The integrated approach is broader than the programmatic approach and involves the creation of structural partnerships targeting every form of human trafficking.¹⁸⁸ In the integrated approach, the partnerships comprise not only agencies responsible for supervision and enforcement, such as the PPS, the police, the tax authorities, Inspectorate SZW and municipalities, but also private and semi-private organizations, including chambers of commerce, housing associations and trade unions, as well as and health care organizations such as shelters, victim support organizations and social services. Together, the parties endeavour to prevent and combat human trafficking and protect potential victims on the basis of an agreed structure.¹⁸⁹

Mayors play an important role in these consortia, as drivers of the integrated approach and by bringing together the various partners in the chain. Numerous partnerships have been formed at the regional and local level to develop an effective approach to human trafficking in recent years, many of which have been embedded in RIECs and Safety Coordination Houses.¹⁹⁰

3.4.3 Complementary

The knowledge that is acquired and the innovative methods that are developed to tackle specific forms of human trafficking with the programmatic approach could further reinforce the collaborative efforts at the local and regional level. For example, if the programmatic approach is adopted in a particular region to highlight exploitation in Chinese massage parlours and experiments are conducted with interventions that prove effective, it is essential for the knowledge acquired and the potential interventions to be shared with other local and regional partnerships in order to avoid the waterbed effect and duplication of work. In this way, good practices that have been developed and learned through the use of the programmatic approach can be consolidated and embedded in permanent, existing structures.¹⁹¹

Finally, it is also possible that regional and local partnerships will be able to identify new trends in exploitation¹⁹² or changes in the modus operandi of human traffickers in window prostitution, for example. After all, human traffickers are innovative and adapt their methods if necessary. To anticipate these changes, it might be necessary to use the programmatic approach to learn about new trends for which new forms of multidisciplinary intervention will need to be developed.¹⁹³

188 The Instructions on Human Trafficking state that ‘Criminal law alone is not sufficient to prevent society from being undermined by this serious, and often international, organized crime’. The Instructions also include a separate section on the integrated approach and refers to the integrated approach as a basic principle (*Government Gazette* 2013, 16816). See also *Parliamentary Documents I* 2012/13, 33309, C, p. 4.

189 See §3.9.

190 See NRM 2012e, §3.3 and §3.9.

191 See §3.7; §3.9.

192 See also §2.4.6.

193 See also §3.8.

3.5 Programmatic approach

In the realization that combating human trafficking requires far more than repressive measures alone, the PPS¹⁹⁴ developed the programmatic approach,¹⁹⁵ which entails pursuing ‘a combination of preventive and repressive activities in the law enforcement component of an integrated approach’.¹⁹⁶ In the knowledge that victims are usually reluctant to report to a police station, in the ensuing years efforts have been devoted to exposing criminal networks,¹⁹⁷ analysing how traffickers operate, where the criminal world and the legitimate world become entangled and who, in both of those worlds, facilitates the human trafficking process. The programmatic approach has provided insight into the underlying ad hoc structures, the possibilities for identifying victims and the modus operandi of perpetrators. It has also revealed that bodies such as municipalities, the tax authorities, chambers of commerce, hotel chains, housing associations and various other public and private organizations unconsciously function as facilitators. *These* are the parties that have to work together in the fight against human trafficking, each in their own discipline.

3.5.1 The initial phase of the programmatic approach

In 2008, an administrative report entitled *Schone Schijn* was produced in response to the findings from the Sneep pilot.¹⁹⁸ That report and the evaluation of the Sneep pilot¹⁹⁹ both highlighted the uncertainty that existed about the structure, methods and objectives of the programmatic approach. Nevertheless, the conclusion was that such a joint, proactive approach could play an important role in effectively combating human trafficking.²⁰⁰

194 Van Gestel & Verhoeven 2009; appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10.

195 For a detailed description of the programmatic approach, see ‘Notitie versterking aanpak mensenhandel en mensensmokkel’, *OM 2008*, http://www.om.nl/onderwerpen/mensenhandel_en/@148763/notitie_aanpak/ (consulted on 9 July 2013). See also NRM5; NRM7, §7.6.1; NRM8, §2.6.2.

196 Ibid.

197 Although the figures do not relate exclusively to human trafficking, the police force’s annual report for 2012 says the following: ‘In 2012, criminal organizations were investigated more intensively and dealt with more firmly, as a result of which the number of criminal organizations that were apprehended (mainly in the areas of drugs, money laundering and serious environmental crime) rose by 48% compared with 2009’. A reservation to be made about these figures is that they have not been broken down with a separate figure for human trafficking and have not yet been verified by the National Rapporteur.

198 The *Sneep* case uncovered substantial abuses in the prostitution sector. See NRM5 and NRM7. For a detailed description of the case, see the administrative report (*Schone Schijn 2008*). See also §3.1.

199 The WODC evaluated this pilot project and described the policy theories underlying the programmatic approach, how the approach was employed in practice and what the results had been (Van Gestel & Verhoeven 2009, p. 4).

200 ‘Notitie versterking aanpak mensenhandel en mensensmokkel’ *OM 2008*, http://www.om.nl/onderwerpen/mensenhandel_en/@148763/notitie_aanpak/ (consulted on 9 July 2013); Van Gestel & Verhoeven 2009; *Schone Schijn 2008*.

Evaluation of the planning and process of the pilot²⁰¹

The WODC studied the Sneep pilot to determine whether the programmatic approach had been followed as intended and what the results had been.²⁰² To start with, it explained the underlying theory behind the policy, which led to four *assumptions* concerning the basis of the programmatic approach: (1) sharing concrete information²⁰³ creates awareness and commitment on the part of other agencies, resulting in their becoming aware of a common interest in finding a solution; (2) greater awareness and involvement on the part of other agencies leads to active cooperation in gathering information, through the performance of sub-investigations, for example; (3) the intelligence gathered provides insight into suspects and conscious and unconscious facilitators; (4) intelligence about facilitators in the criminal world leads to the exchange of information between relevant investigative partners²⁰⁴ and the information about facilitators in the legitimate world results in the exchange of information between investigative partners and administrative partners.^{205,206}

The *aim* of the administrative process is to ensure that information about unconscious facilitators leads to structural changes in policy and the erection of barriers to frustrate human trafficking. The purpose of the criminal process is to gather evidence for the prosecution of the offenders and facilitators and so end the trafficking activities.

In its study, the WODC concluded that, although support had been created for the new approach, 'the municipalities were only involved in the programmatic approach at a relatively late stage'.²⁰⁷ Consequently, there was no efficient sharing of information between the administrative and investigative partners.²⁰⁸ It was also found to be essential for the active cooperation to produce results that matched an agency's own objectives. This caused delays in carrying out sub-investigations, a situation that was further complicated by the fact that it was unclear to the partners what an investigation of a phenomenon actually involved and what was expected of them.²⁰⁹ Furthermore, partial investigations did not automatically yield more knowledge about facilitators.²¹⁰ However,

201 See also NRM7.

202 Van Gestel & Verhoeven 2009.

203 'One of the [...] officials from the PPS referred to [...] "letting the board see some blood"' (Ibid, p. 28).

204 In the study, this is referred to as the criminal process (Ibid, p. 28).

205 In the study, this is referred to as the administrative process (Ibid, p. 28).

206 The study said of this distinction: 'Although in reality these processes should constantly influence one another – since that is the key to the programmatic approach – for a proper understanding of the underlying assumptions, we make an analytical distinction' (Ibid, p. 30).

207 Ibid, p. 85.

208 This problem was also identified in NRM 2012e.

209 In the Sneep pilot, the result was that 'as time passed, these partial investigations into 'the general phenomenon' tended to take on the form of concrete investigations into individual suspects' (Van Gestel & Verhoeven 2009, p. 87).

210 'That lack of information about facilitators cannot be attributed solely to operational aspects, but could equally be the result of the modus operandi of the suspects and the assumptions that exist about them' (Ibid, p. 88).

media attention²¹¹ to the administrative report did have a positive impact in terms of accelerating the development of policies (at both local and national level) to combat human trafficking. Another problem was the communication between the professionals at the operational level and supervisors: 'during the implementation of the programmatic approach, there was no single person who could communicate their respective perspectives with conviction and 'visionary leadership' and reduce friction between an investigation and the programmatic method'.²¹² Finally, the pilot demonstrated that changes in the structures of the various organizations could contribute to a successful programmatic approach.

In 2008, the PPS decided that its own organization needed to be restructured in order to apply the programmatic approach. The portfolio holder for human trafficking and people smuggling plays an important role in that context. In each of its regional offices, for example, the portfolio holder is responsible for the more complex cases as well as being assigned a policy-making task,²¹³ which consists of initiating and coordinating the use of the programmatic approach in the region. In that capacity, the portfolio holder plays a role in securing the involvement and cooperation of relevant parties that could play a signalling role and perform interventions. The portfolio holder can also manage 'projects aimed at combating human trafficking and people smuggling', which would include projects using the programmatic approach.

3.5.2 Pilots and the programmatic approach

To experiment further with the programmatic approach, in its Programme to Strengthen the Approach to Organized Crime²¹⁴ launched in 2008, the Ministry of Justice decided to launch a number of pilots dedicated to specific themes, one of which was human trafficking.²¹⁵ These pilots (called *proeftuinen* in Dutch) are learning environments in which experimental and innovative methods of effectively tackling a particular problem can be developed and tested. In addition to further developing the programmatic approach, the emphasis in the pilots was on the use of the barrier model and administrative reports.²¹⁶

211 The researchers do express the following reservation: 'The media attention generated by the PPS is not characteristic of the programmatic approach. Although the "media offensive" by the PPS cannot be regarded as one of the principles of the programmatic approach as described [in this study], it is associated with the programmatic approach by the professionals and supervisors we interviewed' (Ibid, p. 89).

212 Ibid, p. 91. The importance of leadership is also stressed in NRM 2012e.

213 See also NRM7.

214 The Programme to Strengthen the Approach to Organized Crime states: 'An entirely new facet of this programme is the introduction of an innovative operational procedure, the so-called programmatic approach [...]' (appendix to *Parliamentary Documents II 2007/08*, 29911, no. 10).

215 To supplement the criminal law-driven Programme to Strengthen the Approach to Organized Crime, the Administrative Approach to Organized Crime programme was established for the administrative process. In the interests of effective and efficient cooperation between the parties, 'an administrative agreement' on the legitimate exchange of information was drawn up in 2008, together with an accompanying 'regional covenant on an integrated decentralized approach to organized crime'. Source: 'Programma bestuurlijke aanpak georganiseerde misdaad', *Rijksoverheid* 15 February 2008, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2008/02/18/plan-van-aanpak-programma-bestuurlijke-aanpak-georganiseerde-misdaad.html> (consulted on 6 August 2013).

216 *Parliamentary Documents II 2007/08*, 29911, no. 17.

The barrier model

The barrier model²¹⁷ was devised by the Social Intelligence and Investigation Service (SIOD)²¹⁸ in 2005 and was adopted by the National Expert Group on Human Trafficking (LEM) and the Centre of Expertise on Trafficking in Human Beings and People Smuggling (EMM).²¹⁹ It was originally designed to help the authorities learn more about illegal labour and to explain the links that were found. Another objective of the model is to promote cooperation between investigative agencies and to generate insight into what information might be relevant for them to share.²²⁰ A modified version of the model has since also been used against human trafficking, for example by the SIOD in the Sneep investigation.²²¹

It was decided in advance that the programmatic approach in the pilots could best be designed on the basis of the SIOD's barrier model. According to the administrative report *Schone Schijn*, the barrier model (with the help of information gathered about the human trafficking process) was ideally suited to identifying the 'obstacles' that human traffickers have to overcome. Using the barrier model, it is also possible to ascertain which legal²²² and illegal facilitators serve organized crime, what information might be possessed by various agencies and, finally, where and by whom obstacles could possibly be erected to prevent, frustrate or disrupt the trafficking process.²²³ For example, a number of things have to be arranged before a woman can be put to work in prostitution, including an identity card, accommodation and a workplace, all of which could require the intervention of various agencies, including municipalities, housing associations, operators of sex businesses and the chamber of commerce.

In the programmatic approach, the barrier model is used to reveal effective measures for tackling organized crime by highlighting, on the basis of the intelligence gathering, the 'obstacles' that offenders have to overcome during the human trafficking process.^{224, 225} The five initial barriers are entry, identity, accommodation, work and finance.²²⁶

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- 217 The barrier model was inspired by the standard work by Sieber & Bögel (1993) entitled *Logistik der Organisierten Kriminalität*.
- 218 With effect from 1 January 2012, the Labour Inspectorate, the Social Intelligence and Investigation Department (SIOD) and the Inspectorate of Work and Income (IWI) were merged to form the Inspectorate SZW.
- 219 See also NRM5; NRM7; NRM8.
- 220 Ten Kate 2013.
- 221 Schone Schijn 2008, p. 29; Ten Kate 2013.
- 222 The legal facilitators can be regarded as chain partners (Task Force on Human Trafficking 2009).
- 223 Deloitte 2009, pp. 18 and 94; Van Gestel & Verhoeven 2009, p. 26; appendix to *Parliamentary Documents II* 2007/08, 29911, no. 10, p. 2.
- 224 This is possible because 'the barrier model is an application of a logistics approach, whereby organized crime is treated as a business process' (Neve 2010).
- 225 'By recognizing patterns in methods it is possible to erect barriers, throw sand in the machine, in short to frustrate the entire criminal phenomenon' (Spaan & Van Oosten 2010, p. 35).
- 226 Schone Schijn 2008.

The barrier model was used in each of the eight pilots devoted to human trafficking, in each of which the programmatic approach was applied to a distinct form of exploitation, high-risk sector and/or area of prostitution.

Focus of the programmatic approach in the pilots on human trafficking

Whereas the point of departure in the Sneep project was to use the programmatic approach in a single specific criminal case, the concept was expanded during the pilots²²⁷ Eight pilots were launched in relation to human trafficking in the period 2008-2012:²²⁸ Zandpad (Utrecht), Slaven van de Systeem (Groningen and Leeuwarden), Ablak (Amsterdam and Alkmaar), Emergo²²⁹ (Amsterdam), Faciliteerders van de Schone Schijn (Alkmaar), Granaat (national),²³⁰ Samen groeien in samenwerken (Rotterdam and Dordrecht) and Overige uitbuiting in de land- en tuinbouw (South-east Brabant).

The first six of these pilots were concerned with combating sexual exploitation and the other two targeted labour exploitation. The scope of each pilot was further delineated by focusing the multi-disciplinary approach on a particular sector (within prostitution in general, for example), a specific region, a specific group of perpetrators and/or a combination of these. In some cases (Ablak and Slaven van het Systeem, for example), it was decided to start a pilot targeted at a specific group of offenders (in the context of a case against them or otherwise); in others, the decision was made to launch an investigation into the prostitution sector in a particular area, as in the case of the Zandpad (window prostitution on the Zandpad in Utrecht) and Faciliteerders van de Schone Schijn (window prostitution on the Achterdam in Alkmaar) pilots. Finally, in the pilots devoted to other forms of exploitation, the investigations were targeted at a particular sector within a region. Samen groeien in samenwerken focused on Chinese restaurants and the employment agency sector in the so-called Drecht cities region, while Overige uitbuiting in de land- en tuinbouw focused on the agriculture and horticulture sector in the region of south-east Brabant. In addition to – and by

227 The PPS says of this: 'It is not just a question of involving other partners in an investigation or prosecution and informing them (afterwards) in an administrative report, but also genuinely exploring the breadth and depth of the problem with the relevant network of stakeholders and from there developing a joint programmatic approach' (*Perspectief op 2015*, PPS 2011, <http://www.om.nl/actueel/@157877/perspectief-2015/> (consulted on 9 July 2013)).

228 The following administrative reports were produced for the pilots: *Zandpad* 2011; *Slaven van de systeem* 2010; *Ablak* 2009 (not published); *Emergo* 2011; *Faciliteerders van de Schone Schijn*, 2012 (not published); *Samen groeien in samenwerken* 2011; *Overige uitbuiting in de land- and tuinbouw* 2012.

229 Emergo had already started in 2007 and ensued from the Van Traa commission. The Task Force on Human Trafficking designated Emergo as a pilot in 2009. Although that decision could be questioned, Emergo does have added value for the analysis regardless of whether or not it can formally be regarded as a pilot. The Programme to Strengthen the Approach to Organized Crime (appendix to *Parliamentary Documents II* 2007/08, 29911, no. 10, p. 15) expresses this as follows: 'A chain-wide approach to concentrations of criminal power in the centre of Amsterdam will also be launched with the Emergo project'.

230 No administrative report was produced for the Granaat pilot. The results of the project were presented by the PPS, the police and Koninklijke Horeca Nederland (KHN) at a conference on 30 May 2013.

extension to – the pilots, various other projects using the programmatic approach were launched, for example in relation to Chinese beauty parlours²³¹ and the loverboy problem.²³²

These pilots gave the PPS and other chain partners an opportunity to conduct further experiments with the structure and procedures of the programmatic approach. The most important findings from the pilots were recorded in administrative reports, while the projects also generated numerous working documents, flowcharts and analyses of phenomena. In its progress report, the Task Force on Human Trafficking said that the knowledge and good practices generated by the pilots and other projects, as well as other initiatives such as the chain approach developed in a number of municipalities,²³³ must be made accessible and safeguarded.²³⁴

The extent to which the programmatic approach contributes to reducing human trafficking is a question that has not yet been conclusively answered.²³⁵ In an evaluation of three of the pilots,²³⁶ the WODC also concluded that it was impossible to measure the different pilots by the same yardstick,²³⁷ since each one was unique. However, the WODC did propose a common evaluation framework for arriving at an overarching conclusion.²³⁸

Common evaluation framework

The study 'An approach to organized crime in three pilots' evaluated three pilots for the WODC,²³⁹ and showed that the traditional approach of measuring the effect of the pilots in terms of combating organized crime, including human trafficking, was not in itself sufficient. According to the researchers, the evaluation also has to encompass the organisational and operational aspects of the partnership, such as the formulation of a joint objective, the agreements made, and the arrangements for coordination and reporting mechanisms. Human and social aspects would also have to be taken into account, key elements of which are trust, joint responsibility and sharing in successes. Finally, it is important to evaluate whether the approach achieved its goal; in other words, does the approach lead to less human trafficking?

231 Bottenberg & Janssen 2012.

232 There was a pilot devoted to the loverboy problem in Rotterdam. See *Loverboys zijn laffe boys. Beschrijvend onderzoek pilot loverboys* (Van de Velde, 2012), <http://www.hetccv.nl/binaries/content/assets/ccv/dossiers/loverboys/rotterdam---pilot-loverboys.pdf> (consulted on 29 July 2013).

233 See also NRM 2012e.

234 'The PPS has created a special site where these products can be accessed (Task Force on Human Trafficking 2013, p. 8).

235 Flight et al. 2010.

236 The three pilots analysed in the study by Flight, Bogaerts, Korf & Siegel concerned child pornography, the cultivation of cannabis and human trafficking (Flight et al. 2010).

237 Flight et al. 2010, p. 23.

238 Ibid.

239 Ibid.

The researchers concluded, however, that it was still too soon (in the middle of 2010) to measure the impact of the projects in terms of reducing organized crime.²⁴⁰

3.5.3 Programmes in areas of prostitution

The joint, proactive approach has also been used outside the pilots. Major operations have been carried out in which innovative methods were used to discover the scale of human trafficking and combat the problem in prostitution zones in a number of cities. The first operation took place in Doubletstraat in The Hague on 8 April 2011, the second on the Baekelandplein in Eindhoven on 23 March 2012 and the final one was carried out on the Achterdam in Alkmaar on 16 March 2013.

During these operations, intelligence was gathered about abuses in this branch of the sex industry by conducting a major investigation that encompassed premises, pimps, prostitutes and prostitutes' clients (the so-called '4P approach'). The National Office of the PPS²⁴¹ carried out these operations in collaboration with other agencies including the police, the municipality, Europol, the EMM, CoMensha, the IND and the municipal health services.²⁴² During the operations, which involved hundreds of officials from the various organizations,²⁴³ the areas of window prostitution were shut down entirely for an evening, and the prostitutes were then brought to a municipal office to be questioned about their circumstances in a safe and neutral setting and with the assistance of interpreters, lawyers and social workers. Pimps and clients were also questioned separately in an attempt to discover signs of abuses such as the pres-

240 Ibid, p. 24.

241 The National Office deals with national and international organized crime. It leads the investigations of the National Criminal Investigation Department, which focuses mainly on international human trafficking and people smuggling; the smuggling of cocaine, heroin, weapons and explosives; the production and export of synthetic drugs; the laundering of the proceeds of crime; terrorism; and extreme forms of politically-inspired activism. ('Landelijk Parket', OM, http://www.om.nl/organisatie/landelijke/landelijk_parket/ (consulted on 29 July 2013).

242 Ten Kate 2013, p. 148.

243 Roughly 350 police officers and 60 employees of other chain partners were involved in the operation in The Hague; 300 police officers and 50 municipal officials took part in the operation in Eindhoven; and more than 500 employees of the chain partners participated in the operation in Alkmaar. Source: 'Actie mensenhandel Eindhoven', NOS 24 March 2012, <http://nos.nl/artikel/355022-actie-mensenhandel-eindhoven.html> (consulted on 24 May 2013); *Evaluatie en resultaten actie Doubletstraat 8 April 2011 – RIS 181548*, Den Haag 25 October 2011, <http://www.denhaag.nl/home/bewoners/gemeente/document/Evaluatie-en-resultaten-actie-Doubletstraat-8-april-2011.htm> (consulted on 15 May 2013); 'Hoerenbuurt Alkmaar met groot machtsvertoon schoongeveegd', *Noord Hollands Dagblad* 15-17 March 2013, <http://www.noordhollandsdagblad.nl/stadstreek/alkmaar/article21263143.ece> (consulted on 15 May 2013).

ence of illegal workers, forced prostitution and the employment of minors. At the same time, buildings were inspected for compliance with fire safety and public health regulations and licensing conditions.²⁴⁴

A special feature of the 4P approach to window prostitution is that it was a multidisciplinary, proactive and intelligence-driven operation from the outset,²⁴⁵ meaning that various authorities and private organizations had searched their own systems for information and, where possible, passed it on to each other to ensure that everyone shared the same information. That information was used to draw up a joint action plan. The use of the 4P approach in an operation on this scale demonstrated that the trust between chain partners has grown enormously in recent years. The reactions of the participating parties to the operations were positive and they reported that the method yielded a wealth of useful information about abuses and possible national and international networks.

Nevertheless, reservations have also been expressed about the effectiveness of operations on that scale. One question raised was whether the manpower and planning required to carry out such an operation is in proportion to the number of indications of human trafficking that are received before, during and after²⁴⁶ such an operation, which is a question that should be addressed in an evaluation.²⁴⁷

Initial results

In The Hague, 160 women were brought from Doubletstraat to the city hall for questioning. A large number were from East European countries (primarily Hungary and Bulgaria) and South America. The cases of the 160 women were analysed in detail in collaboration with a number of partners. On the basis of the interviews, 54 cases were deemed relevant because of indications of human

244 *Evaluatie en resultaten actie Doubletstraat 8 April 2011 – RIS 181548*, Den Haag 25 October 2011, <http://www.denhaag.nl/home/bewoners/de-gemeente-Den-Haag/Ris/document/Evaluatie-en-resultaten-actie-Doubletstraat-8-april-2011.htm> (consulted on 15 May 2013); *Verslag van de raad van de gemeente Eindhoven*, Eindhoven 8 May 2012, http://eindhoven.notudoc.nl/cgi-bin/showdoc.cgi?action=view/id=326625/type=pdf/Concept_verslag_27_maart_2012.pdf (consulted on 15 May 2013); *Grote actie tegen mensenhandel op Achterdam in Alkmaar*, Alkmaar 15 March 2013, www.alkmaar.nl/?id=63240 (consulted on 15 May 2013); *Grote actie tegen mensenhandel*, Politie 15 March 2013, <http://www.politie.nl/nieuws/2013/maart/15/04-grote-actie-tegen-mensenhandel.html> (consulted on 5 August 2013); 'Hoerenbuurt Alkmaar met groot machtsvertoon schoongeveegd', *Noord Hollands Dagblad* 15-17 March 2013, <http://www.noordhollandsdagblad.nl/stadstreek/alkmaar/article21263143.ece> (consulted on 15 May 2013); *Nieuw slachtoffer meldt zich na actie Achterdam*, Politie 2 April 2013, <http://www.politie.nl/nieuws/2013/april/2/04-actie-achterdam-voorlopige-hechtenis-verdachten-verlengd-nieuw-slachtoffer-meldt-zich.html> (consulted on 15 May 2013); *Resultaten actie mensenhandel*, Politie 16 March 2013, <http://www.politie.nl/nieuws/2013/maart/16/04-actie-mensenhandel-alkmaar.html> (consulted on 15 May 2013).

245 Ten Kate 2013, pp. 140, 148.

246 Tips could still be received after the operations, for example from victims and/or clients who did not immediately make a statement but who later, or during the investigation in response to indications arising from the operation, were willing to make a statement.

247 The National Rapporteur will evaluate the three large operations in prostitution zones on the basis of the administrative reports drawn up by the police.

trafficking, and 25 offences involving violations of The Hague's rules for sex establishments and escort agencies and for the hospitality sector were also discovered.²⁴⁸

In Eindhoven, 45 prostitutes were brought to the city hall to be interviewed in a safe setting. Six people were arrested on the evening of the operation, three of them on suspicion of human trafficking. Two more Hungarians were later arrested in Hungary and Italy on suspicion of human trafficking and both were handed over to the Dutch authorities. The inspections of the buildings on Baekelandplein also revealed many violations of fire safety regulations and licensing conditions, and in five buildings rooms were being illegally occupied.²⁴⁹ The operation has since led to a number of convictions. A Bulgarian suspect was given an unconditional prison sentence of two years in October 2012 (the PPS had demanded two-and-a-half years) for human trafficking and money laundering.²⁵⁰ In July 2013, three Hungarian men were convicted of human trafficking. The main suspect was given an unconditional prison sentence of three-and-a-half years (the PPS had demanded four-and-a-half years) and two other suspects received unconditional prison sentences of twelve and three months, respectively (the sentences demanded were eighteen months and two years, respectively).²⁵¹

During the most recent operation in Alkmaar, 57 prostitutes were questioned. Most of the women came from Bulgaria, Romania and Hungary. The interviews reportedly yielded numerous indications of human trafficking, and two East European men were arrested on suspicion of trafficking.

The desire to innovate and to address the problem jointly has grown in recent years. The trust among the various partners in the chain has increased, and the programmatic approach is being used more frequently and in a wider variety of cases.

248 Letter from the mayor of The Hague to the chairperson of the city's governance committee of 27 October 2011, <http://www.denhaag.nl/home/bewoners/de-gemeente-Den-Haag/Ris/document/Evaluatie-en-resultaten-actie-Doubletstraat-8-april-2011.htm> (consulted on 15 May 2013).

249 This operation also received a lot of publicity in the media. See, for example, 'Aanhouding in Hongarije na actie in Eindhoven', *De Telegraaf* 27 March 2012, <http://www.telegraaf.nl/binnenland/article11796061.ece?cid=rss> (consulted on 8 July 2013); 'Actie Baekelandplein gericht tegen mensenhandel', *ED* 23 March 2012, <http://www.ed.nl/112nieuws/10722608/Actie-Baekelandplein-gericht-tegen-mensenhandel.ece> (consulted on 8 July 2013); 'Actie Eindhoven levert weinig op', *NOS* 29 June 2012, <http://www.nos.nl/artikel/389554-actie-eindhoven-levert-weinig-op.html> (consulted on 8 July 2013); 'Actie mensenhandel Eindhoven', *NOS*, 24 March 2012, <http://www.nos.nl/artikel/355022-actie-mensenhandel-eindhoven.html> (consulted on 8 July 2013); 'Grote politieactie tegen mensenhandel Eindhoven, zes aanhoudingen', *De Volkskrant* 23 March 2012, <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3230255/2012/03/23/Grote-politieactie-tegen-mensenhandel-Eindhoven-zes-aanhoudingen.dhtml> (consulted on 8 July 2013); 'Hongaarse verdachte of mensenhandel in Eindhoven uitgeleverd', *In het Nieuws* 11 April 2012, <http://www.inhetnieuws.nl/go/11683457/?u=aHRocDovL3d3dy5ib2V2ZW52YW5nZW4ubmwwbmlldXdzL2hvbmduYXJzZS12ZXJkYWNoZGUtdmFuLW11bnNlbnhhbmRlbnC1laW5kaG92ZW4tdWloZzVsZXZlcmQ%> (consulted on 8 July 2013). See also NRM 2012e.

250 's-Hertogenbosch District Court 10 October 2012, *LJN* 9522.

251 ECLI:NL:RBOBR:2013:2697; ECLI:NL:RBOBR:2013:2696; ECLI:NL:RBOBR:2013:2698.

3.6 Results from the pilots

An analysis of the administrative reports of the pilots carried out by the National Rapporteur showed that they had produced a number of results at the operational and policy-making level.²⁵² For example, partners that had not previously been identified or involved in the chain are now engaged in the fight against human trafficking. The intelligence position has also improved, which has contributed to a more effective approach across the board – from the perspective of administrative, criminal and tax law. These and other results are briefly described in this section and illustrated with applicable practical examples from the administrative reports. This section also reviews good practices that helped in achieving the positive results.²⁵³ The lessons learned from the pilots will be discussed in more detail in §3.7.

3.6.1 Programmatic approach as a flywheel

The success of a proactive approach depends in part on the existence of structures within which chain partners can cooperate and share information – as is the case with an integrated approach. The analysis of the pilots also illustrated the importance of adopting a structural approach, as was done in each of the pilots. On a critical note, however, in a number of pilots creating a structure was as far as it went, and nothing was done in terms of actually addressing a particular form of human trafficking.²⁵⁴

Samen groeien in samenwerken

According to the administrative report on this pilot, the failure to meet the objective (i.e., three criminal investigations) is not to be seen as a missed opportunity.²⁵⁵ The development of cooperation and information exchange was regarded as an important outcome and most of the participants in the pilot questioned whether there it would even have been possible to carry out the investigations properly.²⁵⁶ ‘With the end of the pilot in sight, the interviewees were also asked whether the pilot had a future, and if so, how it should proceed. Practically every respondent saw a future role for the multidisciplinary approach. They felt it was very important for the case meetings to continue and to expand on the knowledge acquired about the subject of human trafficking / other forms of exploitation.’²⁵⁷

252 See appendix ‘Onderzoeksverantwoording van de analyse van de programmatische aanpak binnen de proeftuinen’ [Research methods used for the analysis of the programmatic approach in the pilots].

253 See also §3.7.

254 See Flight et al. 2010, p. 24: ‘Brinkerhoff (2000) points out that the question that always has to be asked is whether a particular partnership or consortium is a means to an end or a goal in itself. Sometimes cooperation is pursued purely for ideological reasons or the desire to follow a trend.’ In this case, the pilots were launched up with an objective, namely to effectuate measures to tackle human trafficking and learn more about the phenomenon. Nevertheless, it appears that the chain partners involved saw cooperation as a goal in itself.

255 On that point, the PPS has said that ‘although it did not lead to an investigation and prosecution, the pilot did improve the intelligence position regarding the employment agency sector and the Chinese restaurants. And a number of administrative reports were published’ (*Samen groeien in samenwerken* 2011, p. 13).

256 Ibid.

257 Ibid, p. 16.

In some regions, the use of a programmatic approach served as a flywheel for setting up a broader, more structural approach at the regional level.²⁵⁸ In these cases, a project was set up to address a specific form of human trafficking with the programmatic approach and was then gradually expanded. This method creates the possibility for a small number of partners to experiment with a multidisciplinary approach and then – once the basis has been laid and the structure is in place – gradually expand the programme and increase the number of partners involved. In various places around the country, the structured approach at the regional level was then absorbed into an RIEC and/or a Safety Coordination House.²⁵⁹

Practical example of an evolving structural approach

In the pilot that was launched in Utrecht in 2008, it was found that there was a need for a up-to-date, transparent and broadly supported consultative structure on the subject of window prostitution on the Zandpad.²⁶⁰ In response to this, a joint approach was developed between 2008 and 2010.²⁶¹ In an evaluation two years later – in 2012 – the municipality of Utrecht observed that with the use of the programmatic approach and the ensuing broad package of measures adopted in 2010,²⁶² the cooperation among the chain partners had genuinely assumed a structural shape.²⁶³

3.6.2 Multidisciplinary approach in practice

There was a lot of experimentation with the multidisciplinary approach to human trafficking in the pilots, the idea being that in addition to prosecuting traffickers, illegal earnings could also be confiscated, tax debts could be collected, operating licences could be withdrawn and fines could be imposed on the basis of the Aliens Employment Act and the Minimum Wage Act. Accordingly, the perpetrators would be tackled with a combination of preventive and repressive measures by various disciplines.

Joint approach to human trafficking

During the Zandpad pilot, the criminal investigation department of the Utrecht police force set up a human trafficking unit for the purposes of the programmatic approach. It also started making regular use of its ‘prevention’ unit in ongoing investigations into human trafficking, and that unit’s public administration expert supervised the development of the administrative approach. The criminal investigation department and the PPS in Utrecht also made an agreement that a financial

258 That was also the case in Eindhoven, for example. See also NRM 2012e.

259 Structured partnerships at the regional and local level are also discussed in §3.9.

260 Zandpad 2011, p. 59.

261 ‘The second distinctly positive effective arising from the package of measures is the improvement in the cooperation between the parties. Although cooperation dates back to the time of the programmatic approach and the pilots, the package of measures has led to the establishment of genuine chain cooperation’ (Municipality of Utrecht 2012, p. 8).

262 As described in §2.3.4.1, the licence of the last operator on the Zandpad and in Hardebollenstraat was withdrawn, in part because the operator was linked to human trafficking. See also ECLI:NL:RBMNE:2013:3037.

263 See Municipality of Utrecht 2012, p. 8. See also the letter from the mayor, the chief of police and the chief public prosecutor of Utrecht to the members of the city council’s Committee on People & Society (no date) <http://tekstversie.utrecht.nl/CoRa/Diensten/Upload%20Openbare%20Appendix%20ton/447429/03DEFdriehoekreactieopevaluatierapportmaatregelenpakketmensenhandel.pdf> (consulted on 8 July 2013): ‘The chain cooperation that started in 2009 is bearing fruit.’

investigation would be conducted in every human trafficking case with the involvement of the tax authorities. Agreement was also reached with the tax office for Utrecht-Gooi that fiscal sanctions would be imposed on human traffickers wherever possible.²⁶⁴

In addition to their joint efforts to combat human trafficking, the various disciplines also cooperate in learning more about the problem, for example through joint inspections of agricultural and horticulture businesses to investigate possible labour exploitation. These joint, proactive operations have been evaluated and have led to the formulation of strategies that could also be used in other regions.

Multidisciplinary strategy

During the pilot *Overige uitbuiting in de land- en tuinbouwsector*, two multidisciplinary controls were carried out by a range of agencies, including the Labour Inspectorate, the municipality, the aliens police, the PPS, the Tax and Customs Administration and the SIOD.²⁶⁵ 'On the basis of the first operation, a multidisciplinary strategy was developed, which was adapted on the basis of experience for application during the performance of the [second] operation.'²⁶⁶ The strategy document sets out the statutory duties and powers of the individual partners as well as a list of stakeholder organizations whose tasks, responsibilities and capabilities might be relevant. The document provides a basis for coordinating the joint inspections, as well as defining the tipping point between the use of regulatory powers and the use of powers under criminal law.²⁶⁷ Finally, 'the partners all have an operational strategy [for starting a multidisciplinary operation], which can be modified by mutual agreement whenever necessary.'²⁶⁸

3.6.3 Embedding within organizations

As already mentioned in the introduction to this chapter, shortly after the Sneep pilot the PPS decided to anchor the programme-based approach within its own organization: 'A complete package, including training, meetings of professionals and knowledge management is being developed to implement, lock in and continuously develop this method within the PPS.'²⁶⁹ The PPS was not the only organization to do this. Others, including the police, various municipalities and the Inspectorate SZW have devoted capacity, expertise and resources to anchoring and safeguarding the multidisciplinary approach to human trafficking in their organizations, or have announced their intention to do so in the coming years.²⁷⁰ Steps taken during the pilots, for example, included the establishment of local and regional helpdesks, the appointment of chain directors, the signing of covenants, the training of employees and the drafting and implementation of protocols for identifying human trafficking.

264 Zandpad 2011, pp. 48-50.

265 See §2.4.3 for more information about the approach to labour exploitation.

266 *Overige uitbuiting in de land- en tuinbouw* 2012, p. 32.

267 'At the first reasonable suspicion of the criminal offence of labour exploitation during the operation, the partners responsible for carrying out the inspection took a step back and left further coordination of the operation to the aliens police' (Ibid, p. 31).

268 Ibid, p. 31.

269 Task Force on Human Trafficking 2013, p. 7.

270 Ibid.

3.6.4 Insight into human trafficking

Human trafficking cannot be tackled effectively without insight into the phenomenon. It is not just information from investigations that is relevant, but also an understanding of the underlying problem. This realization has prompted research into the phenomenon of human trafficking using the programmatic approach. In some pilots, this phenomenon research was carried out with the help of academics²⁷¹ and was used, among other things, to discover more about the modus operandi of various groups of offenders engaged in sexual exploitation and in labour exploitation in a number of high-risk sectors.²⁷²

3.6.5 Greater awareness

The use of the programmatic approach has created greater awareness among national, regional and local politicians, various chain partners in the Netherlands and abroad, clients of prostitutes and the general public. The following example illustrates how political awareness has grown at the local level.

Mayor as driver

In the Zandpad pilot, the mayor of Utrecht²⁷³ assumed the role of driver of the multidisciplinary approach. He ensured that attention and resources were devoted to the theme of human trafficking, also at a strategic level. He was assisted by the PPS and the police, whose task it was to promote and manage the joint approach to human trafficking in the Utrecht region. With that objective in mind, in October 2008, the annual governance conference, which is attended by the management of the police force, the local office of the PPS and the mayors in the region, was used to inform the participants about the approach to human trafficking, the priority being given to the subject at both the national and regional level, and the plans to adopt a joint approach to tackling human trafficking on the Zandpad. According to the 'Evaluation of the broad package of measures to create barriers to human trafficking' in 2012, 'human trafficking is no longer just a matter for the police and PPS, but increasingly involves a multidisciplinary approach. Many parties are positive about the fact that the municipality of Utrecht is taking active steps to prevent human trafficking. More than ever, the municipality now sees human trafficking as a problem for which it must accept its own responsibility'.²⁷⁴

Numerous chain partners have received training in recognising and reporting signs of human trafficking. There have also been experiments with methods of increasing awareness among conscious or unconscious facilitators, such as operators of sex businesses, clients, consumers, landlords, the real estate sector, operators of hotels and guest houses, taxi drivers and employment agencies that recruit foreign workers.²⁷⁵

271 In §3.7.3 there is a further discussion of the added value of academic research in acquiring insight into a phenomenon.

272 See also §2.4 for more information about insight into the phenomenon of labour exploitation.

273 Many of the victims in the *Sneep* case were sexually exploited in the legal prostitution sector in Utrecht (Schone Schijn 2008). That case was an important factor in the mayor of Utrecht's decision to crack down on human trafficking in the city. Mayors of other cities have also taken measures to tackle human trafficking (including the mayors of Duiven, Alkbut, Rotterdam, Barendrecht, The Hague and Amsterdam) in response to the *Sneep* case or similar cases.

274 This emerges from the municipality of Utrecht's own evaluation (Municipality of Utrecht 2012, p. 9). See also §2.3.

275 See also Task Force on Human Trafficking 2013, pp. 5-6.

3.6.6 Identification of victims

The programmatic approach has also contributed to the identification of possible victims and generated more insight into how victims can be identified by legal facilitators. Improvements in the identification of victims have been realized through the active efforts of various chain partners to gather information and share it with each other²⁷⁶ in order to identify potential victims of human trafficking.²⁷⁷

The information gathered is not only used to identify victims as part of the programmatic approach, but also, using the barrier model, to identify possible points of contact between the criminal and the legitimate world, in other words the obstacles that offenders have to overcome to complete the human trafficking process. The barrier model is fleshed out and expanded on the basis of the information that is gathered. The programmatic approach has also helped in the identification of legal, unconscious facilitators, who can then, for example, be trained to recognize victims and perhaps become involved in the multidisciplinary approach, the idea being that in this way the network of chain partners that are aware of the problem and are used to help identify victims will grow. In that context, it is also essential to think outside the box when contemplating who might be potential partners who could come into contact with possible victims of human trafficking in the course of their work.²⁷⁸ These chain partners are the eyes and ears that increasingly make the difference in practice.²⁷⁹

3.6.7 Information exchange

The administrative reports show that in every pilot there was a free exchange of information between the chain partners within the legal frameworks.²⁸⁰ It was mainly a question of time, experience and *trust* in each other before it really took off. The greatest challenge proved to be creating the legal framework required in connection with privacy legislation. In every pilot, the legal framework was laid down in a covenant, and together those covenants helped shape the RIEC covenant that was signed by various chain partners in January 2013.²⁸¹ Nevertheless, the complexity of the applicable legislation, as well as caution on the part of some chain partners, caused some delay in advancing the exchange of informa-

²⁷⁶ In some regions a system of special case meetings has been established for this purpose, which are generally attended by the same regional chain partners.

²⁷⁷ For a clear example of this, see the *Overige uitbuiting in land- en tuinbouw* pilot (2012).

²⁷⁸ In §2.6.3 and §2.6.4, for example, there is a description of the steps that have been taken to raise awareness of signs of human trafficking among doctors, social workers and employees of the COA.

²⁷⁹ See also the letter from the Utrecht municipal executive to the members of the city council's Committee for People and Society of 31 January 2013, <http://www.utrecht.nl/CoRa/BGS/Commissiebrieven/2013/Evaluatie%20maatregelenpakket%20mensenhandel%20in%20de%20raamprostitutie.pdf> (consulted on 11 July 2013): 'The substantial investment made in providing information about human trafficking to all the chain partners (awareness-raising) is bearing fruit. One of the returns on the publicity is that a conviction for human trafficking was made possible by the testimony of a professional. Furthermore, a growing number of chain partners are reporting suspicions of human trafficking sooner and more frequently due to the intensive cooperation and publicity. To illustrate, the police received 87 tips in the first quarter of 2012, compared with a total of 118 in the whole of 2011.'

²⁸⁰ In the pilots, information was exchanged almost exclusively between law enforcement agencies, administrative authorities and the tax authorities. For information about the exchange of information between these organizations and partners in the health care sector, see §3.3.2 and §3.9.

²⁸¹ See also §3.3.2.1.

tion.²⁸² The reluctance appears to have been due mainly to ignorance of what the law did or did not allow in terms of sharing information or to a lack of trust in other chain partners.²⁸³

3.6.8 Efforts at prevention

One of the aims of the programmatic approach is expressed by the saying ‘prevention is better than cure’.²⁸⁴ The extent to which human trafficking is actually prevented by the use of the programmatic approach is difficult to measure, but there have been numerous experiments in the area of prevention. Prevention can be broken down into measures to prevent the human trafficking process from starting and to erect barriers designed to frustrate the process and measures to enable the prompt identification of victims in order to prevent exploitation actually occurring.

In one pilot, measures were taken to prevent human trafficking in the country of origin itself. The objective of the *Slaven van het systeem* pilot was to prevent girls and women from falling into the hands of traffickers in Bulgaria.

Prevention in an international context

In the *Slaven van het systeem* pilot, a film was made about young Bulgarian women who had been exploited in Groningen. The film was targeted at Bulgarian girls and women with the aim of making them aware of the risk of exploitation in the Netherlands. An informative leaflet was also produced in Bulgarian and Dutch,²⁸⁵ and the possibility of providing information online to prevent new victims was discussed.²⁸⁶ The information gathered during the project about the Bulgarian offenders and victims yielded valuable information in the context of prevention, for example that recruitment started in particular regions and that the women were put to work in Groningen and Leeuwarden.²⁸⁷

282 This problem was also noted in NRM 2012e. On the issue of the exchange of information, see also Deloitte 2009; *Parliamentary Documents II* 2008/09, 29911, no. 23; *Parliamentary Documents II* 2009/10, 29911, no. 36; *Parliamentary Documents II* 2009/10, 29911, no. 40; *Parliamentary Documents II* 2011/12, 29911, no. 55.

283 In the *Emergo* pilot (2011), it took more than a year to create a legal framework for cooperation in terms of sharing information between the various parties in the project. The delay was mainly due to the fact that each organization was bound by a different interpretation of privacy legislation, which, in turn, had an effect on how information was managed and used (*Emergo* 2011). The impression that emerged from the *Slaven van het systeem* pilot (2010) was that the possibilities that do exist for sharing information in the interests of identifying and combating human trafficking, such as the RIEC/LIEC covenant but also existing legislation, are not used sufficiently.

284 See §2.6.2.

285 This leaflet was produced by Fier Fryslân in association with the Bulgarian National Commission against Human Trafficking (NCCTHB). See the document that was produced by the ‘werkgroep Hulpverleningen in het kader van de proeftuin *Slaven van het systeem*’ (2010).

286 According to the document ‘Casus Olga verkorte versie’ (p. 4) from the *Slaven van het systeem* pilot (2010).

287 The administrative report *Slaven van het systeem* (2010) contains a recommendation to conduct research ‘into the extent to which information can be exchanged at administrative level. If such cooperation at an administrative level can be achieved, it will produce, in combination with the international cooperation in law enforcement, a broad view of the entire chain and measures can be taken and coordinated in the source and target countries’ (*Slaven van het systeem* 2010, p. 21).

The aim of the film was not to persuade Bulgarian women who want to work as prostitutes to avoid the Netherlands, but to inform them of their rights and duties in the Netherlands. For example, many Bulgarian women believe that they need a pimp in order to work as a prostitute in the Netherlands and that makes them vulnerable.²⁸⁸

A number of projects using the programmatic approach experimented with methods of frustrating the human trafficking process within a particular prostitution zone or a specific sector or in relation to a specific group of offenders. The efforts to reinforce the barriers produced tangible and less tangible results. In the Zandpad pilot, experiments were carried out for the first time with a wide-ranging package of measures designed to combat abuses in window prostitution.

*Prevention as part of a diverse package of measures*²⁸⁹

The initial results of the Zandpad pilot²⁹⁰ were presented in the report ‘Evaluation of the Broad Package of Measures to Create Barriers to Human Trafficking’,²⁹¹ which also reviewed the impact of the amendment of Utrecht’s General Local Bye-law²⁹² and the introduction of mandatory registration for prostitutes, maximum working hours and a minimum rental period, among other things. The report also assessed the effect of increasing the number of inspections from four to around 40 a year, as well as the expansion of the number of hours of care and assistance provided on the Zandpad, the intensification of the exit programme for prostitutes wishing to leave the profession and the doubling of the opening hours of the walk-in centre for prostitutes, *Huiskamer aanloop prostituees* (HAP).²⁹³ According to the municipality of Utrecht, the principal result was that all of the women were now seen at least once by the municipal health service, and it noted that some of the interviews yielded indications of human trafficking.²⁹⁴ The interviews were also used to provide information to the women. Furthermore, ‘traffickers can no longer make the women

288 Ibid, p. 15.

289 This section only discusses measures relating to awareness-raising, prevention and identification. See §2.3.4.1 for a detailed description of all the measures taken.

290 There were reservations expressed about the findings in the same report: ‘However, the parties do not have the impression that human traffickers regard the barriers as insurmountable at the moment’ (Municipality of Utrecht 2012, p. 7).

291 The Municipality of Utrecht 2012.

292 See ‘Chapter 3 General Municipal Bye-law, Sex establishments, municipality’, which is attached as appendix J to the administrative report *Zandpad* (2011).

293 Municipality of Utrecht 2012, p. 6.

294 See also letter from the Utrecht Municipal Executive to the members of the city council’s Committee on People and Society of 31 January 2013, <http://www.utrecht.nl/CoRa/BGS/Commissiebriefven/2013/Evaluatie%20maatregelenpakket%20omensenhandel%20in%20de%20raamprostitutie.pdf> (consulted on 11 July 2013): ‘From a letter from the Utrecht municipal executive to the members of the city council’s Committee on People and Society of 31 January 2013 (reference 13.001228) the following emerges: “One in eight of the registration interviews by the municipal health services yield signs of human trafficking. All of these signs provide useful information for the police. As a result the police are able to strengthen ongoing human trafficking investigations and provide the police at the national level with (basic) information.’

work extremely long working days on the Zandpad,²⁹⁵ and it appeared that women stayed longer at a single location place than formerly.²⁹⁶

The evaluation of the broad package of measures in Utrecht²⁹⁷ revealed that the joint, experimental approach had provided useful insights into how barriers could be strengthened further to frustrate human trafficking in the window prostitution sector and identify victims at an earlier stage. Nevertheless, the evaluation showed that to be really effective the measures should not be confined to a single city or region, but should be rolled out nationally.²⁹⁸

Finally, the prevention of domestic human trafficking was also addressed in the 'Loverboys zijn laffe boys' pilot.²⁹⁹ The project was targeted at young Dutch girls who are exploited by Dutch boys and young men, generally of ethnic origin.³⁰⁰ The aim of the project was 'to prevent and stop loverboy activities, prevent victimization [...] and develop a media strategy'.³⁰¹ During the project, an informative film was produced and experiments were conducted with various other preventive measures.³⁰² The project also referred to the dangers of sharing private information on the Internet.³⁰³

Loverboys zijn laffe boys

The police created profiles with girls' names on the Internet, accompanied by photos of young women to make the profile appealing. The profiles were complemented with series of snapshots taken at different times. There were four objectives:

- to investigate whether the profiles would be visited by potential loverboys;
- to investigate how people behave on sites with personal profiles;

295 'On the basis of information provided by chain partners in 2010, it emerged that the number of individual women that worked on the Zandpad each year was roughly 750. The current registration data show that, in the period from March 2011 until the end of January 2013 (almost two years), 731 women were registered. The turnover therefore seems significantly lower' (Ibid.).

296 Ibid. See also §2.3.

297 Municipality of Utrecht 2012.

298 Ibid, p.7.

299 Van de Velde 2012.

300 As shown in §2.10, the loverboy method is not confined to the Netherlands but is also used to recruit young girls and women in other countries.

301 Van de Velde 2012, p. 1.

302 In the course of the pilot project (2010-2012), the policy document *Rijksbrede aanpak loverboys* [Government-wide approach to loverboys] (2011) was also published. Whereas the government-wide approach referred to possible measures in theoretical terms, during the pilot there was scope to actually experiment and come up with innovative measures. The aim was to use the project as a learning environment in order to strengthen existing policy. See also §2.10.

303 'It is almost common knowledge that since the introduction of the term 'loverboy' there has been a shift to the Internet and new social media. Whereas supervision could initially be organized in or around the school playground, there is an almost total absence of supervision on the rapidly changing Internet. After all, the motivated offender, like the potential victim, will be found wherever adequate supervision is lacking' (Van de Velde 2012, p. 7).

- to investigate whether there are additional possibilities for finding information with a personal profile;
- to investigate how such profile sites are structured.

The online investigation showed that users are generally naive when it comes to disclosing private information and that more information is revealed if a person has a personal profile. In this way, young people are tempted to create a profile and share information. Prevention campaigns were organized to draw attention to the risks of sharing private information online.³⁰⁴

3.7 Lessons from the pilots

Various lessons have been learned from the pilots, which also provided an opportunity to try out innovations that could contribute to enhancing efforts to combat human trafficking. This section describes the lessons learned from the trials with the programmatic approach³⁰⁵ in the pilots that have been completed.³⁰⁶

3.7.1 Cooperation

What emerges from the administrative reports on the pilots is that the administrative approach is regarded as supplementing measures to combat human trafficking through criminal law.³⁰⁷ By extension, it seems logical for the PPS to assume the role of director in the programmatic approach.^{308, 309} since it is the PPS that ultimately decides whether to prosecute a case. It has to decide how, when and in what manner information from the investigation can be shared with partners in the chain,³¹⁰ which include partners in both the public and private sector.³¹¹ This exchange of information³¹² must not be at the

304 This is the campaign ‘Loverboys 2.0’. For a further description of this campaign, see the report of the ‘Loverboys zijn laffe boys’ pilot (Van de Velde 2012, pp. 17-20).

305 Since a programmatic approach has frequently served as a flywheel for an integrated approach, the points made in this section will often apply equally for the impact of the integrated approach. See §3.4; §3.6.1; §3.9.

306 As described in the administrative reports that were produced following the pilots relating to human trafficking. See also §3.5.

307 *Parliamentary Documents II* 2012/13, 314190, p. 1. See also Chapter 3, footnote 13

308 Since the programmatic approach is described as the criminal process in an integrated approach (§3.4).

309 In the structural approach, it is the mayor who assumes the role of director of the process (see §3.4; §3.9; NRM 2012e).

310 In the Instructions on Human Trafficking, the PPS has stipulated that another of the basic principles is that human trafficking will be addressed integrally (*Government Gazette* 2013, 16816).

311 The broader integrated partnership is discussed in §3.9.

312 See also §3.6.7.

expense of the criminal prosecution.³¹³ Deciding how a human trafficker can be tackled with fiscal and administrative measures, as well as under criminal law, has to be assessed in that context.³¹⁴

Although the PPS takes charge in the programmatic approach, it was also found that in the integrated approach case meetings should be chaired by a 'neutral' partner,³¹⁵ preferably a chain director or the RIEC.³¹⁶ It is also apparent that for the approach to be effective, a steering group should be formed with representatives from the various chain partners who have sufficient authority to make decisions. If problems are encountered that cannot be resolved at the operational level, the steering group must have sufficient authority to resolve them so that unnecessary delays can be avoided. Bottlenecks might, for example, require the deployment of additional capacity or expertise, or perhaps even changes within an organization itself.³¹⁷

International cooperation may be required to tackle cross-border human trafficking effectively,³¹⁸ particularly with countries of origin of victims (and offenders) and with transit countries.³¹⁹ Although, in some projects involving the programmatic approach, the cooperation of foreign partners was sought in identifying victims and offenders, frustrating the human trafficking process, setting up prevention projects and studying the phenomenon, there is room for even more intensive collaboration.³²⁰ It is clear

313 The Dutch system is designed in such a way that victims without a residence permit are largely dependent on the (findings of the) criminal investigation for shelter and assistance. See §2.7; §2.9. A criminal-law approach should also be the first choice in relation to protection of the victim and financial compensation. See NRM 2012d; §2.7.

314 The guideline 'Integraal, tenzij ...: Samen het criminele ondernemingsklimaat verslechteren' [Integrated, unless...: joint action to impair the business climate for criminals] creates the impression that formulating the integrated approach as a basic principle is not enough, but that cooperation in combating organized crime must be based on the motto, *integrated, unless*'. The word 'unless' refers to 'exceptional circumstances, such as a serious risk of failure or risk to security'. The same document also shows that 'in those exceptional situations where [only a criminal investigation] is started, however, it is also necessary to accomplish the most effective possible intervention and this calls for expansion to an integrated approach as soon as circumstances allow'. This guideline was presented on 30 May at the national meeting 'Integraal Veiligheidsbeleid met "High" Impact' [Integrated Security Policy with 'High' Impact].

315 Samen groeien in samenwerken 2012, p. 17.

316 In most of the pilots, the municipality took the lead in the formation of structured partnerships. See also §3.6.

317 This concern was already mentioned in the National Rapporteur's study into the municipal approach to human trafficking (NRM 2012e).

318 This is also an international obligation. See §2.2.

319 See also Task Force on Human Trafficking 2013, p. 23; EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012.

320 This is also one of the objectives of the Task Force on Human Trafficking: 'An effective approach therefore also requires international multilateral and bilateral cooperation, in the latter case particularly with the countries of origin of victims (and offenders) and with transit countries (Task Force on Human Trafficking 2013, p. 23).

from the ‘Slaven van het systeem’ pilot that the programme-based approach could be suitable for this,³²¹ since with a criminal investigation based on international multidisciplinary cooperation, the entire human trafficking process can be uncovered and tackled with a comprehensive range of measures under criminal, administrative and fiscal law. For example, it might be possible to identify whether traffickers have invested their money in the country of origin, and if so, *what* they have invested in, so that those assets can be seized.^{322, 323} To that end, further intensification of the cooperation between administrative authorities at European level is felt to be important.³²⁴

Cooperation at the international level

Because the pilot in Leeuwarden and Groningen targeted a group of Bulgarian offenders, during the project the authorities in Bulgaria were asked to help chart the process of recruiting victims, as well as identifying any accomplices and facilitators. One of the aims of the pilot was to explore the possibility of creating a more structural method of sharing information and improving cooperation with the Bulgarian authorities, particularly with organizations in the regions of Bulgaria where most of the Bulgarian victims found in Groningen and Leeuwarden had come from and had been recruited. Among the successes described in the administrative report were that a lot of information had been shared and that there had been regular working visits between Bulgaria and the Netherlands, and the report concluded that the exchange of police officers between the countries could yield concrete results.³²⁵ For the purposes of the bilateral cooperation, there was also contact with the liaison officer in Bulgaria,³²⁶ who made a valuable contribution to the cooperation between the police in the Netherlands and Bulgaria and to the pilot in general.³²⁷

321 Slaven van het systeem 2010.

322 According to the administrative report on the ‘Slaven van het systeem’ pilot, international cooperation is also useful in terms of seizing financial gains (2010). In Bulgaria, it is not only the prosecuting authorities that have legal powers to confiscate criminal earnings, but also the national Commission of the Establishing of Property Acquired from Criminal Activity (CEPACA), which has powers under civil law to confiscate the proceeds of crime. However, those powers can also be used in criminal investigations and can be an option particularly when the criminal investigation has not produced an estimate of the amount earned illegally or where no assets have been identified against which pre-judgment attachment can be applied (see appendix A of the administrative report Slaven van het Systeem 2010). Information about CEPACA can be found on the website <http://www.cepaca.bg/?act=content&id=65>.

323 Task Force on Human Trafficking 2013, p. 23. See also §3.2.1 where the EMPACT project is described.

324 This is one of the recommendations from the Slaven van het systeem pilot (2010). According to the progress report of the Task Force on Human Trafficking, it is also still drawing attention to this point and that ‘at the end of 2012 the [EU’s] Justice and Home Affairs Council had approved the Council Conclusions on the new EU Strategy on trafficking in human beings, in which, at the suggestion of the Netherlands, a provision was included that the informal EU network would develop “a common approach to raise awareness of administrative authorities on their role in preventing and combating THB”’ (Task Force on Human Trafficking 2013, p. 23). See also §3.2.

325 Slaven van het systeem 2010, p. 21.

326 The liaison officer also plays an important role in cooperation with other countries. See also §3.2.1.

327 Flight et al. 2010, p. 86.

Following the success of projects carried out with Bulgaria in the last few years, four JITs have been set up with Bulgaria to tackle sexual exploitation, the PPS and Romania's prosecutor's office have signed a memorandum of understanding on closer cooperation, and an agreement on closer cooperation has also been concluded with Hungary.³²⁸

An effective approach to human trafficking, which also embraces the protection of victims, requires the involvement of organizations that provide support for victims and partners in the health care sector. These agencies can help to identify victims,³²⁹ gather information that will help to increase insight into the phenomenon of human trafficking and assist in arranging shelter. They could also contribute to increasing the willingness of victims to report human trafficking,³³⁰ and with a proactive approach, more victims might be discovered. If large groups of victims are encountered during a joint operation, for example, it must be clear who will arrange shelter for them and how it will be financed.³³¹ Not only the investigative partners, but also the shelters and victim support organizations must be geared to this. CoMensha plays an important role in that regard.³³²

Shelters and victim support organizations in the programmatic approach

During the operation carried out in the pilot 'Overige uitbuiting binnen de land- en tuinbouw' [Other forms of exploitation in the agriculture and horticulture sectors], the Labour Inspectorate, the municipality and the aliens police³³³ discovered a large group of potential victims. Shelter had to be found for them, but it was unclear who could provide the shelter or who was responsible for arranging it. Following the operation, the municipality [...] ultimately provided temporary shelter (for up to 14 days) for the group of labour migrants. The municipality also paid the costs of this temporary shelter [...].³³⁴ One of the recommendations arising from this pilot was that 'any such multidisciplinary operation should be thoroughly prepared well in advance with the participating partners. An important practical matter to be arranged in advance, for example, is transport for the labour migrants from the workplace to the police station and shelter for victims if necessary. If there is no guarantee of shelter for (possible) victims, the relevant partners are reluctant to carry out the inspections.'³³⁵ In response to warnings about this problem, in the middle of 2012 CoMensha, in association with the Ministries of Social Affairs and Employment, Security and Justice and Health, Welfare and Sport, drew up a strategy for arranging shelter for victims of labour exploitation who are discovered during operations by the Inspectorate SZW.³³⁶

328 Task Force on Human Trafficking 2013, p. 23.

329 See also §2.6.3.

330 See §2.9 and §2.10.

331 This occurred, for example, in the 'Overige uitbuiting binnen de land- en tuinbouw' pilot in 2012.

332 CoMensha is also a member of the Task Force on Human Trafficking (see also §3.3; on the role of CoMensha; see also §2.9).

333 'The SIOD, the Tax and Customs Administration and the PPS had no direct involvement during the on-site inspections' (Overige uitbuiting binnen de land- en tuinbouw 2012, p. 32).

334 Ibid, p. 35.

335 Ibid, p. 38.

336 See §2.9.3; §3.3.1 for more information about the organization of shelter for large groups.

3.7.2 Trust and commitment

A number of administrative reports showed that trust is essential if partners in the chain are to cooperate and exchange information,³³⁷ all the more so in the multidisciplinary approach because of the absence of a hierarchical relationship between the partners. This further underlines the importance of parties being able to rely on the fact that information they provide will not lead to unwelcome actions that are contrary to the objectives for which the information was shared. Although it emerged from various administrative reports that building a relationship of trust can be a struggle, it has not created any (permanent) obstacles.

Mutual trust among chain partners

An evaluation midway through the Emergo pilot³³⁸ produced the conclusion that the exchange of information and the analysis of the combined information had improved the intelligence position of the chain partners that attended the case meetings. The enhanced intelligence position then helped in the collection of more specific information, which in turn further improved the intelligence position. With a strong intelligence position, it is possible to target interventions. This success prompted more intensive communication between the chain partners, they came to trust each other more and became increasingly aware of who possessed what information.³³⁹

One of the findings from the Zandpad pilot was that to involve housing associations as a private actor in a multidisciplinary approach it is crucial for the municipality and the police to share information with them. In this pilot, a covenant was drawn up to that effect. However, the report shows that a covenant alone is not enough; it is also important for the municipality and the housing association to trust one another.³⁴⁰

The management of expectations plays an important role in preserving mutual trust. In an approach where chain partners address a complex problem like human trafficking without a hierarchical relationship, it is essential for the parties to discuss their expectations of each other in advance. For example, it has to be made clear what each organization is expected to provide in terms of capacity, expertise and resources, the powers each party has and what constraints it faces, and what information they possess. Ignorance of each other's position or the absence of agreements can lead to a lack of trust, which can cause delays, or even worse, the premature cancellation of the project. The management of expectations is essential for preserving trust.³⁴¹

Another factor is that where, in addition to gathering operational information, the objective is to analyse the underlying problem and develop innovative investigative methods, for example, the programmatic approach can place additional demands on the capacity, time and expertise of the various partners in the chain. For example, in some of the pilots it was found that it might be necessary to invest in experts

337 See NRM 2012e.

338 Emergo 2011.

339 See also NRM7.

340 See also §3.6.7.

341 See also, for example, the administrative report on the Emergo pilot, where specific attention was devoted to these aspects in the preliminary study and the discussions (Emergo 2011).

and to earmark sufficient resources and capacity.³⁴² The actual release of capacity, expertise and resources remains an issue that requires attention.³⁴³ A number of pilots demonstrated the importance of documenting – at an early stage the partnership’s objectives, what the various chain partners are expected to do and within what time horizon.³⁴⁴

Commitment to cooperation

In the ‘Overige uitbuiting binnen de land- en tuinbouw’ pilot, the chain partners signed a covenant setting out the objectives and the legal framework for their cooperation, the ‘type’ of information that would be exchanged, the duration of the cooperation and the capacity to be provided by each of the parties.³⁴⁵ By signing the agreement, the chain partners accepted specific obligations and responsibilities and committed themselves to the partnership.

Sharing successes with chain partners can also help in establishing and maintaining trust.³⁴⁶ To address that, in various projects involving the use of the programmatic approach the partners discussed in advance which partner would act as spokesperson and what methods of external communication would be used. It has been found that private and public partners are more inclined to cooperate with the police and the PPS if their own interests are also served and they are rewarded for devoting their capacity, expertise and resources to the project.

3.7.3 Conduct of research into the phenomenon

In addition to cooperation between public and private partners, in the programmatic approach cooperation is also sought with the academic community. In a number of the projects with the programmatic approach, the background to the problem was explored in association with universities. Performing a so-called ‘phenomenon study’³⁴⁷ has sometimes led to problems in the programmatic approach because the participating organizations did not know precisely what was required of them or how to carry out such a study. As a result, ‘in practice [phenomenon research] has barely got off the ground’. For example, the conclusion from the *Sneep* case was that ‘[...] Some partners do make an attempt to start research into the phenomenon, but the research does not last long [...] or the studies are quickly transformed into a narrower, more concrete tactical investigation.’³⁴⁸ In various subsequent projects involving the programmatic approach it was decided to outsource some or all of the information gathering and ask

342 For examples of this, see Zandpad (2011) and Emergo (2011).

343 See NRM 2012e.

344 Emergo 2011; Zandpad 2011; Overige uitbuiting in de land- en tuinbouw 2012.

345 Overige uitbuiting in de land- en tuinbouw 2012, p. 12.

346 The Task Force on Human Trafficking has also devoted attention to this in recent years. In appropriate circumstances, joint communication activities are developed. One example of this was during the major operation on the Achterdam in which numerous chain partners were involved (Task Force on Human Trafficking 2013, p. 9).

347 The term ‘phenomenon study’ was coined by the Van Traa Commission, which defined phenomenon research as the analysis of aspects of organized crime within a geographic area or population group, a specific field of crime or a criminal market (Van Gestel & Verhoeven 2009, p. 41).

348 Van Gestel & Verhoeven 2009, p. 42.

universities to perform the phenomenon study as academic research³⁴⁹ and then publish the results in the form of an academic treatise.³⁵⁰

Although there is still a clear distinction between academic research and the operational approach, it seems that science can make a valuable contribution to the programmatic approach.³⁵¹ The added value lies in the fact that researchers can gather information on scientific grounds during an operation,³⁵² are more internationally oriented³⁵³ and possess the expertise to clearly map a sector, a region, a group of traffickers and/or a form of exploitation and expose the underlying problems.³⁵⁴ Operational partners can use this – scientific – information to make innovations and improvements in the approach. This produces valuable cross-pollination between the academic and the operational world and lays the basis for an *evidence-based approach*.

349 This was the case, for example, in the ‘Slaven van het systeem’ pilot (2010), in which a criminological study was carried out under the leadership of the University of Groningen into ‘criminogenic factors and actors in Bulgaria and barriers to prevent and combat human trafficking’ (Slaven van het systeem 2010, p. 4). In addition to universities, the WODC and other research institutes have also been involved in the programmatic approach, for example in the ‘Overige uitbuiting binnen de land- en tuinbouw’ pilot (2012).

350 Academic studies were also carried out in the ‘Emergo’ (2011), ‘Slaven van het systeem’ (2010) and ‘Overige uitbuiting binnen de land- en tuinbouw’ (2012) pilots.

351 This emerged from ‘Emergo’ (2011) and ‘Overige uitbuiting binnen de land- en tuinbouw’ (2012), for example.

352 It was also found, for example, that the neutral environment of an academic study has the advantage of making a victim feel safer and more protected, thus making it easier to build up a relationship of trust so that possible victims are more inclined to speak freely (Bottenberg & Janssen 2012).

353 Various phenomenon studies have been carried out in other countries. For example, the American National Institute of Justice (NIJ) has conducted a number of phenomenon studies. For more information, see <http://www.nij.gov/nij/topics/crime/human-trafficking/international-discussions.htm> (consulted on 29 May 2013).

354 The investigation into the Chinese beauty sector by the National Police Service Agency and the University of Amsterdam, for example, produced a clearer picture of the barriers that Chinese people have to overcome in order to work in the Netherlands. It also yielded insight into the modus operandi of Chinese human traffickers in the Chinese beauty sector and why some people are more vulnerable to exploitation than others (Bottenberg & Janssen 2012, p. 14). Furthermore, according to the report, ‘it is estimated that sexual services are provided in more than half of the massage parlours.’ The research could not establish that human trafficking occurred in the massage parlours in general, but did refer to poor working conditions, such as low wages and long working days, and to the vulnerable position of the masseuses, for example because they were living illegally in the Netherlands or had large debts. Such circumstances can create a breeding ground for human trafficking (*Parliamentary Documents II 2012/13*, 28638, nr. 93).

3.7.4 Increasing awareness

Organizations can facilitate human trafficking consciously and/or unconsciously.³⁵⁵ To tackle human trafficking effectively, investment is needed in efforts to identify these legal or illegal facilitators, to apprehend illegal facilitators and to arrange cooperation with legitimate chain partners.³⁵⁶ Various facilitators and chain partners have been identified in projects using the programmatic approach and have been made aware of and/or involved in the efforts to combat human trafficking.³⁵⁷

Awareness-raising among unconscious facilitators

The PPS had the impression that hotels, as potential facilitators, were not sufficiently involved in the fight against human trafficking.³⁵⁸ In consultation with the trade association of the hotel industry, Koninklijk Horeca Nederland (KHN), and the National Criminal Investigation Department, the PPS decided to launch a campaign to raise awareness of indications of human trafficking among hotel staff.³⁵⁹ The need for such a campaign emerged from a criminal investigation by the National Criminal Investigation Department of the National Police Services Agency (KLPD) into the entanglement of illegal hotel prostitution and human trafficking, which had revealed signs that receptionists accepted reservations even when all the evidence suggested prostitution. With an innovative operation, in which actresses were used to play the part of call girls in hotels, the National Criminal Investigation Department attempted to raise awareness of illegal prostitution and pos-

355 On the basis of information provided by the police, the Task Force on Human Trafficking informs municipalities in writing about legal entities established in their municipality that consciously or unconsciously facilitate human trafficking (Task Force on Human Trafficking 2013, p. 11).

356 On facilitators of human trafficking, see also NRM5 and NRM7.

357 In a future study by the National Rapporteur into investigations of suspects known to the police, one aspect that will be analysed is how legitimate service providers might have facilitated the human trafficking situation. In a previous study in 2009 of police investigations of sexual exploitation, for example, it was found that it was primarily companies or other service providers in the legal prostitution sector that had helped to facilitate exploitation (consciously or unconsciously). These would include operators of windows, escort agencies and sex clubs/brothels, but taxi drivers, hotels, cafés, tattoo shops, web hosts, municipalities, the IND and the chamber of commerce were also mentioned. In investigations of other forms of exploitation, employment agencies and travel agencies were also identified by the police as facilitators. As far as the police could tell, these parties had consciously acted as facilitators of human trafficking roughly as often as they had done so unconsciously. Those who have reported signs of human trafficking to the police have included sex clubs/brothels and operators of window prostitution, the Tax and Customs Administration, a housing association, a hotel, a municipality, an abortion clinic, social services and the EMM. See also NRM 2012f.

358 'Handreiking aanpak mensenhandel en illegale prostitutie in hotels' [Guide to preventing human trafficking and illegal prostitution in hotels] was published on 23 November 2009, http://www.hetccv.nl/binaries/content/assets/ccv/dossiers/mensenhandel/handreiking_hotels.pdf (consulted on 8 May 2013).

359 '[In 2011] the National Criminal Investigation Department gave workshops to provide hotel employees with tips for identifying illegal prostitution and human trafficking. Several hundred hotel receptionists and porters were informed about how to recognize signs of illegal prostitution'. ('Actie Nationale Recherche tegen illegale hotelprostitutie en mensenhandel, OM 18 April 2012, <http://www.OM.nl/?ActLbl=actie-nationale&ActLtmIdt=158740> (consulted on 11 July 2013)).

sible exploitation in hotels.³⁶⁰ This operation generated media publicity and led to the production of an informative film for hotel staff,³⁶¹ which was presented by the police, the PPS and Koninklijke Horeca Nederland at a joint conference on hotel prostitution on 30 May 2013.³⁶²

In 2011, the PPS also decided to shut down the websites of two escort agencies because of their suspected involvement in human trafficking. At the same time, in order to increase awareness of human trafficking among clients of the escort agencies and to seek their help in tackling it, the police sent an ‘SMS alert’ to the mobile telephone numbers of approximately 1300 persons who had contacted those sites. A warning was then posted on the blacked-out websites, together with a link to the police website with information about human trafficking and the possibility of reporting tips anonymously to M. (formerly Meld Misdaad Anoniem).

When legal facilitators become aware of their role and realize how they can help to combat human trafficking, it is possible that traffickers will start using illegal facilitators or other, unwary legal facilitators instead. The programmatic approach can help in identifying those facilitators. One way of doing this is to keep updating the barrier model. For example, the administrative reports of the pilots showed that barriers differ depending on the modus operandi of the traffickers and/or the type of exploitation.³⁶³ A barrier model that responds to these differences appears to be more effective. For example, on the basis of knowledge acquired about a specific group of traffickers, the barrier model could be modified in order to provide the clearest possible impression of parties that might be facilitating them and chain partners that could assist in tackling them.³⁶⁴ Chain partners identified on the basis of potential new barriers could contribute to an effective, multidisciplinary approach.³⁶⁵

360 ‘The actresses hired a room in hotels near Amsterdam and for several days were visited by police officers posing as clients’ (Ibid.)

361 ‘Voorlichtingsfilm gelanceerd om mensenhandel te bestrijden’, *Koninklijk Horeca Nederland* 30 May 2013, https://www.khn.nl/news-template/-/asset_publisher/lo6sZwJvYg3Z/content/id/5211535 (consulted on 6 August 2013).

362 The managing director of Koninklijk Horeca Nederland (KHN) described this as a unique and groundbreaking collaboration that yielded considerable insight for the organization, so that the sector is no longer looking the other way but is taking action to address the problem. (Rik Leonards, ‘KHN director: “Kijken naar Europese aanpak hotelprostitutie”’, *Misset Horeca* 21 June 2013, <http://www.missethoreca.nl/Hotel/Nieuws/2013/6/KHN-directeur-Kijken-naar-Europese-aanpak-hotelprostitutie-1290637W/> (consulted on 8 July 2013)).

363 Pest et al. 2012. The administrative report shows that a Bulgarian human trafficker has to overcome different barriers than a Chinese trafficker, for example. See the administrative reports ‘Slaven van het systeem’ (2010) and ‘The Wall’ (2012).

364 In the United States there have also been studies in recent years into how modern-day technology can be used to combat human trafficking and which chain partners could play a role in that regard (see the project ‘Technology & Human Trafficking’ of the University of Southern California, Annenberg Center on Communication Leadership & Policy, https://technologyandtrafficking.usc.edu/current-research-on-technology-and-trafficking-2012/#_ftn17) (consulted on 27 May 2013).

365 The Inspectorate SZW has been further developing and updating the barrier model for labour exploitation. This version of the model is expected to be put into practice from the autumn of 2013 (verbal information from Inspectorate SZW, 1 August 2013).

New barriers

The original barrier model in 2005 specified five barriers: entry, identity, accommodation, work and finance. Experiments were conducted with the barrier model in the pilots, albeit on a modest scale, with the result that a number of additional barriers were found that could be added to the model. They are psychological attachment,³⁶⁶ spatial/physical, cultural/religious³⁶⁷ and the recruitment phase.³⁶⁸ Barriers could also be erected on the internet.^{369,370} The Task Force on Human Trafficking has said that the new social media are increasingly used for criminal activities, for example to offer illegal escort services and prostitution, to recruit prostitutes and to mediate in finding illegal work.³⁷¹ This trend will continue and criminals will constantly employ the latest technologies and media.³⁷²

Various innovative methods have also been employed to raise awareness among the clients of prostitutes. The Zandpad pilot, for example, included a campaign to make visitors to window prostitutes (but also social workers) aware of the signs of sexual exploitation and to encourage them to report information to M. (formerly Meld Misdaad Anoniem). Figures published by M. suggest that the campaign had a positive impact on the number of reports of signs of human trafficking.

Stichting M.

M. is an independent foundation that operates a nationwide hotline that members of the public can call to provide anonymous information about serious offences. It then passes on the information it receives to the police and/or other investigative authorities. M. receives reports about all sorts of offences, from robberies and threats to insurance and social security fraud, as well as hu-

366 Bottenberg & Holvast 2009.

367 See also NRM7, page 300.

368 KLPD-DNR 2012, p. 94.

369 Google's Director of Giving Jacquelline Fuller said in this context: "The bad guys, the traffickers, are innovating constantly. And we wanted to empower those who are on the front lines to innovate even faster than the opposition." In that context, Google has promised three million dollars to three different organizations to help tackle human trafficking on the web: "With 21st-century technology tools," Fuller said, anti-trafficking groups will be able to "identify trends, how are the traffickers mutating and reformulating and shifting, and how can we respond to that better." (Charlene Porter, *IIP Digital* 25 April 2013, <http://iipdigital.usembassy.gov/st/english/article/2013/04/20130425146426.html> (consulted on 27 May 2013)).

370 For possible chain partners that could play a role in creating barriers, see also the report of the National rapporteur (2011) on child pornography, where she discusses the creation of barriers on the internet and says, among other things, that innovative ideas are likely to come from professional groups such as software developers, internet businesses, online marketers, traffic brokers and security officers (NRM 2011). See also priority E in the EU Strategy towards the Eradication of Trafficking in Human Beings, which says that in 2014 the Commission will support projects aimed at increasing knowledge about recruitment via the internet and social networks (EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012).

371 See also the 'Loverboys zijn laffe boys' pilot (Van de Velde 2012) and §2.10 for a discussion of ways in which the internet is used to groom girls and women with the aim of exploiting them sexually.

372 Task Force on Human Trafficking 2013, p. 32.

man trafficking. Every report is registered without recording the caller's name, address or place of residence or the time of the call.³⁷³

M. regularly runs campaigns to raise awareness about the possibility of reporting offences anonymously. One of its campaigns focused on forced prostitution. The campaign 'Schijn bedriegt' ran from June 2012 to December 2013 and used films and banners on websites to encourage clients to report suspicions of forced prostitution.³⁷⁴ On sex sites such as *Hookers* and *Kinky*, information was provided about how clients could recognize signs of forced prostitution, such as fear, marks of physical abuse, lengthy working hours and the prostitute having to surrender all of the money she earned.³⁷⁵ The campaign was part of the Ministry of Security and Justice's action plan against human trafficking. M. also developed a workshop for professionals to explain dilemmas surrounding the reporting of signs of forced prostitution.

The initial results of the campaign showed that M. had received an average of 10.4 reports of forced prostitution every month since it started,³⁷⁶ a significant increase compared with the average of 5.7 reports a month in 2011.³⁷⁷ Almost one in every four reports of human trafficking concerned possible underage victims.³⁷⁸ The anonymous reports often prove relevant for the investigative authorities and enable the police to carry out more targeted inspections, for example during operations relating to escort agencies and prostitution in the home.³⁷⁹

3.7.5 Commitment

The success of a multidisciplinary approach depends not only on the involvement of chain partners at the operational level, but also on commitment at the administrative level. The *Sneep* pilot, for example, helped to generate political support for trials with the programmatic approach in pilots dedicated to that purpose. It has also been found that where the programmatic approach has been adopted, local politicians have become more aware of the problem of human trafficking in their own municipalities and in the region. Mayors play an important role in this.³⁸⁰

373 See the website of Meld Misdaad Anoniem, <http://www.meldmisdaadanoniem.nl> (consulted on 24 May 2013).

374 'Meer signalen mensenhandel en minderjarige slachtoffers', *Stichting M.*, http://www.meldmisdaadanoniem.nl/campagnes/gedwongen-prostitutie/nieuws_2/ (consulted on 24 May 2013).

375 M. also mentioned the following indications of forced prostitution: he or she very clearly takes no pleasure in the work, may not move freely, works for an unusually low price, speaks no Dutch, English or German, has no accommodation of his or her own, does not know the address of the workplace, or seems unhealthy. For more information, see 'Meer signalen mensenhandel en minderjarige slachtoffers' (ibid).

376 Ibid. This average is calculated over the period from July 2012 to April 2013 (10 months), when 104 reports of forced prostitution were made, which comes to an average of 10.4 per month.

377 Ibid.

378 Ibid. The figures published by M. showed that the tips that were received in 2012 and 2013 contributed to twelve arrests and four resolved cases.

379 According to the police, a significant proportion of the anonymous tips can be used for police investigations (*Parliamentary Documents II* 2012/13, 31839, nr. 306).

380 See also NRM 2012e. See also §3.9 in this report.

To increase the involvement of chain partners, courses lasting one or more days have been organized to train employees of various organizations to recognize and report signs of human trafficking.³⁸¹

Training

During the ‘Samen groeien in samenwerken’ pilot, training was provided for chain partners in order to create support for and commitment to the proactive approach because, apart from the police and the PPS, the partners knew practically nothing about labour exploitation. A two-day course, followed later by a four-day course, was given for chain partners to introduce them to the phenomenon of human trafficking.³⁸² According to the RIEC and the PPS, thanks to the courses, the partners have closer contact with each other and also know which partner to turn to for specific information. In addition, by virtue of the courses all the partners were at the ‘the same altitude’ in terms of capability of identifying signs of exploitation outside the sex industry.

Another challenge to emerge from the pilots was retaining the commitment of the various chain partners. This seems to apply particularly with regard to collecting and gathering information. One measure that proved effective in this context was to create a distinct help desk where signs of human trafficking can be reported and which provides feedback.³⁸³

Help desk and feedback

In several of the pilots, a help desk on human trafficking was created. According to a police employee involved in one of the pilots, an excellent ‘mailbox’ can be created for this purpose with relatively little capacity and funding. Another finding was that it is important to systematically provide feedback to those who supply information. In the pilots where this did not happen, chain partners tended to get the idea that information was ignored and that useful tips were underestimated. Chain partners said they had the feeling that ‘signs had been swallowed up in the events of the day’.³⁸⁴

3.7.6 Knowledge exchange

The cornerstone of the programmatic approach is the sharing of information about problems and good practices at the national, regional and local level. Bottlenecks must also be resolved and good practices must become part of structural programmes throughout the country.³⁸⁵ Human traffickers must not be given the chance of establishing themselves elsewhere in order to continue their trafficking undisturbed.³⁸⁶

381 For the importance of training, see also §2.6.3 and §2.6.4.

382 This course was given by the police academy, the EMM and the RIEC.

383 Overige uitbuiting in de land- en tuinbouw sector 2012.

384 Samen groeien in samenwerken 2012, p. 9.

385 Flight et al. 2010.

386 The Task Force on Human Trafficking: ‘The pilots, as well as other initiatives, such as the chain approach developed in various municipalities, yield a wealth of information and best practices. It is important that they are easily accessible to the professionals in the field’ (Task Force on Human Trafficking 2013, p. 5).

The LIEC has devised two types of documents with fixed formats in which information about the programmatic approach can be recorded and shared – the *administrative file* and the *administrative report*.³⁸⁷ The prescribed formats are by no means superfluous in light of the differences in the quality of the administrative reports that were produced following the pilots.³⁸⁸ Variations in the quality of reporting can undermine efforts to properly share and anchor the results. If information is to be shared effectively, it is important to determine what information must be included as a minimum in the administrative file and the administrative report.

*Administrative file and administrative report*³⁸⁹

Since 2011, the LIEC has maintained the National Database of Administrative Files and has produced two types of documents in which information generated by the programmatic approach can be recorded – the *administrative file* and the *administrative report*. 'An administrative file contains information about systemic bottlenecks and vulnerabilities in social processes that emerge during investigations. It also contains recommendations for addressing these problems. The administrative file is concerned with criminal phenomena and gives policy recommendations for addressing them at the national level.' An administrative report 'is an advisory report on specific bottlenecks or local cases that require action by local and/or regional authorities'.

3.8 Innovation and blank spots

The use of the programmatic approach has already yielded results, but constant endeavour will be needed to develop innovative strategies involving the cooperation of new and existing partners. Human trafficking networks are fluid and are constantly innovating.³⁹⁰ They change their modus operandi or shift their focus to different forms of human trafficking or alternative forms of (organized) crime as required.³⁹¹ They also develop counter-strategies; in other words, they adapt to the strategies of law enforcement agencies or the barriers that are erected and work around them or even use them to their own advantage.³⁹²

To combat human trafficking effectively, the authorities also have to adapt and innovate in accordance with the changes and developments in the methods used by traffickers and their networks. No single

387 In NRM7, the National Rapporteur referred to the administrative report and the administrative file as interchangeable.

388 This follows from an analysis by the National Rapporteur of the administrative reports on the pilots. See §3.6.

389 The formats of these documents and a description of the administrative reporting process can be downloaded from <http://www.liec.nl/loket/formats> (consulted on 15 April 2013).

390 According to a study by the National Unit of the police, there are at least 153 human trafficking networks operating in the Netherlands, a large majority of whom focus on the prostitution market ('Vergunningstelsel in plaats van wet tegen mensenhandel', *De Volkskrant*, 10 July 2013).

391 For more information about counter-strategies, see the National Threat Assessment 2012, pp. 55 ff.

392 'The trends and patterns in human trafficking and the methods of traffickers change, whatever the form of human trafficking, and adapt to the changing patterns of supply and demand' (EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 final, 19 June 2012, p. 15).

strategy is effective against every form of human trafficking; it is a question of establishing the most effective strategy for each specific form.³⁹³ Combating human trafficking therefore calls not just for a well-organized government, but a well-organized government that is constantly innovating, is flexible enough to adapt to changing circumstances and invests in innovative approaches. Despite the success of some creative methods of tackling human trafficking, such as the barrier model, joint interventions and multidisciplinary inspections, in the pilots, it is inherent to innovations that they do not all immediately produce the desired result.

Risk model

The risk model for ‘labour exploitation’ was used for the first time on a large scale in Brabant for the pilot ‘Overige uitbuiting binnen de land- en tuinbouw’ in an attempt to learn more about other forms of exploitation in the agriculture and horticulture sector. This innovative model comprises 117 risk indicators arranged into a series of categories. The idea is that the chain partners can quickly and effectively analyse their systems on the basis of the risk model in order to investigate whether there are indications of human trafficking that can be linked to companies. Ultimately, nine of the 117 indicators were actually tested.³⁹⁴ The researchers concluded that they had too few databases (and those they did have were incomplete and outdated) to conduct reliable and accurate tests of the merits of the risk model.³⁹⁵

In the ‘Samen groeien in samenwerken’ pilot, an attempt was made to use the SIOD risk model, but it quickly emerged that although the model worked well as a checklist it was difficult to use as a functional instrument because the questions were too ‘broad’ and not specific enough. As a result, the partners in the chain did not know what information they were expected to provide.

3.8.1 Blank spots

There are also some forms of human trafficking about which too little is known, such as newly emerging forms, human trafficking in existing high-risk sectors and forms that are still described as a *blank spot*.³⁹⁶

In the new EU Directive on Human Trafficking, for example, both forced begging and criminal exploitation are explicitly mentioned as forms of human trafficking.³⁹⁷ Exploitation in begging is defined as ‘the use of a trafficked dependent person for begging’.³⁹⁸ The directive describes criminal exploitation as follows: “‘Exploitation for criminal activities’ should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which

393 Shelley 2010.

394 Of the sixteen indicators that could in theory be tested [...], there were ultimately nine that could be tested. For more information, see Chapter 5 of the administrative report *Overige uitbuiting in de land- en tuinbouw* 2012.

395 Ibid.

396 National Threat Assessment 2012, p. 15. See §2.4.1 for the meaning of the term ‘blank spot’.

397 See also §2.2 and §2.4.

398 ‘Within the context of this directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour’ (see EU Directive 2011/36/EU, recital 11).

are subject to penalties and imply financial gain.³⁹⁹ Little is known about these forms of exploitation or about the most effective multidisciplinary methods of combating them.⁴⁰⁰

Furthermore, little seems to be known about West African victims⁴⁰¹ and offenders.⁴⁰² According to the National Threat Assessment 2012, police sources have scarcely any information about exploitation by this category of offender, even though a large proportion of possible victims registered by CoMensha are from West Africa.^{403,404}

Finally, the need to intensify efforts to explore the background to the problem of labour exploitation was discussed in §2.4. For example, in the National Threat Assessment in 2008 and 2012, other forms of exploitation were described as a blank spot, underlining the urgency of focusing more on these forms of exploitation in the coming years.

399 See also 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 (OJ 2011, L 101/1), recital 11.

400 See also NRM 2012d.

401 'The contrast between the large number of Nigerian victims in the CoMensha records and their limited representation in the investigations does, however, cause some surprise. It raises the question of whether certain sectors of prostitution – where Nigerian prostitutes are being exploited on a large scale – escape the attention of the investigative services. In that case, it would constitute a blind spot in investigations in the Netherlands' (National Threat Assessment 2012, p. 67, appendix to *Parliamentary Documents II* 2012/13, 29911, no. 79).

402 The National Threat Assessment also warns for Bulgarian and Hungarian gangs, although they have already been the subject of a project using the programmatic approach in the 'Slaven van het systeem' pilot, which was carried out in Groningen and Leeuwarden (National Threat Assessment 2012; appendix to *Parliamentary Documents II* 2012/13, 29911, no. 79).

403 There are few suspects born in Africa (with the exception of Morocco) in the PPS's figures on prosecutions (see NRM 2012f). This is noteworthy because offenders and victims are often from the same region (see NRM 2012f) and Africa is the largest region of origin of registered victims of sexual exploitation. See also NRM 2012f. The UNODC report with statistics on human trafficking at the global level (UNDOC 2012) also mentions that most human trafficking streams are intra-regional. See also §2.2.

404 This form of exploitation is already being addressed in bilateral programmes and at the European level. Under the leadership of the Executive Secretary of NAPTIP, the Netherlands and Nigeria have launched a project designed to develop a practical approach. The training is provided by experts from the EMM, the PPS and, where necessary, the Royal Dutch Marechaussee. The project will run until the middle of 2014. Coordination and the exchange of information between European member states is organized under the umbrella of the EMPACT project and the Analytical Work File (AWF). On this point, see Task Force on Human Trafficking 2013. See also §2.2 and §3.2.

3.8.2 Mapping financial streams

The intention is to employ the joint approach in an effort to map money flows in the coming years,⁴⁰⁵ by exploring the ‘finance’ barrier in more depth.⁴⁰⁶ Traffickers are intent on earning as much money as possible. They can be seen as criminal entrepreneurs who take risks, weigh up the costs and benefits and make use of various legal and illegal facilitators. It is also questionable which they fear more: a prison sentence or the loss of the money they have earned.⁴⁰⁷ Accordingly, one of the principles laid down in the PPS’s Instructions on Human Trafficking is that ‘a financial investigation shall always be part of the investigation and shall be used during the prosecution with the aim of confiscating illegal earnings.’⁴⁰⁸ Financial investigations could also help in the process of gathering evidence against a suspect and thus make the prosecution less dependent on the victim’s statement. Information from the financial investigation could also assist in the proceedings for a confiscation order and support the victim’s claim for compensation.⁴⁰⁹

*Financial investigations*⁴¹⁰

Financial investigations were one of the subjects covered in the ‘Slaven van het systeem’ pilot, with the focus on how financial investigations could be used both to furnish evidence for the trial and in proceedings for the confiscation of illegal earnings. It emerged that the utility and necessity of financial investigations for evidentiary purposes is not always recognized. This gap was filled by providing additional information, not only in relation to the value of financial reports as evidence of human trafficking/exploitation but also in the context of money laundering, financial restitution as a legal remedy, forfeiture and confiscation of illegally earned profits, investigation of ownership and seizure of assets.⁴¹¹ In this way, an attempt was made to inform investigative agencies of the potential role of financial investigations in combating human trafficking/exploitation and in contributing, together with traditional investigative methods, to an integrated approach to human trafficking and exploitation.⁴¹²

3.8.3 Human trafficking and other forms of organized crime

In conclusion, there are links between human trafficking and other forms of organized crime. Human traffickers and their underlying networks probably do not confine themselves to a single form of crime

405 See also §2.2.2.6.

406 National Threat Assessment 2012, p. 68; appendix to *Parliamentary Documents II* 2012/13, 29911, no. 79.

407 In the United States, the National Institute of Justice (NIJ) also focuses on the perspective of the trafficker in the Trafficking in Persons programme. In a current study into human trafficking organizations and facilitators it is investigating the motives of offenders and analysing their perception of risks, exploring how networks are formed and structured and, finally, looking at the part played by facilitators in human trafficking. For the purposes of the study, reports produced for prosecutions are being studied and in-depth interviews are being conducted with convicted traffickers. The intention is to use the findings to help in developing a more effective approach to human trafficking. The results of the study are expected in 2014.

408 *Government Gazette* 2013, 16816.

409 See also section 2 of the Instructions on Human Trafficking (*Government Gazette* 2013, 16816).

410 For more information about financial investigations, see also NRM5; NRM7; NRM8.

411 Appendix A of the report on the ‘Slaven van het systeem’ pilot (2010).

412 *Ibid.*

or a single method of earning money. Knowledge about the links that may exist between human trafficking and other forms of criminal behaviour could help to increase the effectiveness of human trafficking investigations.⁴¹³ In practice, for example, a network may be discovered sooner with an investigation of money laundering rather than human trafficking practices or identifying other illegal activities that criminal groups are using to finance human trafficking.⁴¹⁴ By remaining aware of the entanglement between different forms of criminal behaviour, it might be possible to identify human traffickers and their networks sooner, and hence apprehend them at an early stage.

3.9 Integrated approach

A concise description of an integrated approach to human trafficking is that it is a structural, comprehensive multidisciplinary approach that addresses the phenomenon of human trafficking with a combination of measures under administrative law, criminal law and fiscal law, using preventive and repressive methods, while safeguarding the position of the victim.⁴¹⁵ It is important to guard against the term becoming an abstraction and being presented as the exclusive answer to the problem, however.⁴¹⁶ In creating an integrated approach, therefore, it is always necessary to review critically what method of cooperation will be most effective in practice, the added value that new partners will bring to case meetings and the need for innovation. Nevertheless, an integrated approach is one of the essential methods of tackling human trafficking effectively and efficiently.

The National Rapporteur recently investigated what lessons could be learned from practice to facilitate an integrated approach to human trafficking at municipal and regional level.⁴¹⁷ This chapter builds on that study, with a description of recent developments and a discussion of the most important issues that need to be addressed in the short term. The section starts with a review of the latest developments in the field of local human trafficking policy (§3.9.1), then discusses the waterbed effect (§3.9.2) and the role of the ‘regional mayor’ in preventing the occurrence of waterbed effects between municipalities (§3.9.3). Finally, building on the discussion in §3.3, there is a review of the role of the RIECs and the Safety Coordination Houses in tackling human trafficking at local and regional level (§3.9.4).⁴¹⁸

413 National Threat Assessment 2012, p. 69 (Appendix to *Parliamentary Documents II* 2012/13, 29911, no. 79). See also NRM7; NRM 2012f.

414 Gonzales 2013.

415 See also §3.4.

416 ‘Pieter Tops (2001), professor of public administration at the University of Tilburg, says of this: “No word is used as frequently in public administration as the word integrated. Apparently it is a term that represents an important pattern of meaning. In practice, integrality has generally become a bureaucratic management instrument” (“Wat verstaan we onder een integrale aanpak?”, Platform 31, <http://kennisbank.platform31.nl/pages/28659/Wat-verstaan-we-onder-een-integrale-aanpak.html> (consulted on 20 March 2013)).

417 NRM 2012e.

418 The structures and basic principles of the RIECs, the LIEC and the Safety Coordination Houses are described in §3.3. This section contains a further analysis of the cohesion between these consortia at local and regional level and how they can enhance efforts to combat human trafficking.

3.9.1 Local human trafficking policy

Every municipality has high-risk sectors for human trafficking, such as Chinese restaurants, rogue employment agencies, agriculture and horticulture, construction and the meat industry, but also domestic work.⁴¹⁹ As regards sexual exploitation, it is not only the licensed prostitution sector that can be regarded as a high-risk sector, but also unlicensed escort services, massage parlours,⁴²⁰ prostitution in private homes and hotels and online prostitution.⁴²¹ It is important for municipalities to take account of these high-risk sectors in their local security policy.

Municipalities possess a wide range of administrative instruments⁴²² to combat human trafficking, but to tackle it effectively at the local level they must possess the expertise required to use those instruments. Not every municipality possesses that expertise at present⁴²³ and this is an area in which municipalities could enhance their efforts to combat human trafficking. Experience has shown, for example, that amending the general municipal bye-law⁴²⁴ and/or zoning plans or intensifying the so-called 'enforcement arrangement'⁴²⁵ can have an impact on human trafficking.⁴²⁶ The use of proactive administrative powers, such as anonymous inspections and the use of pseudo clients, is also permissible under certain circumstances.⁴²⁷

The purpose of an enforcement arrangement is to document the responsibilities of the various agencies⁴²⁸ responsible for supervision and enforcement in a coherent fashion,⁴²⁹ thereby creating certainty and increasing the chance of successful enforcement.⁴³⁰ A number of municipalities already have these

419 See also NRM7; NRM 2012e. See also §2.4.5.

420 Bottenberg & Janssen 2012.

421 See also NRM7.

422 For an overview of the administrative instruments, see CCV 2010 (consulted on 12 July 2013). See also NRM7; NRM 2012e.

423 NRM 2012e.

424 This was already described in detail in NRM7. For an example of a general municipal bye-law relating to prostitution, see RIEC Rotterdam-Rijnmond 2010, pp. 39-50.

425 On this point, see also Hendriks & Corsèl 2009; RIEC Rotterdam-Rijnmond 2010; NRM 2012e.

426 Municipalities can explore where the enforcement arrangement with regard to supervision of the legal and illegal prostitution sector can be improved by using the action plan described in Handhaven op Niveau (HoN) [Enforcement at the right level]. For more information about the HoN action programme, see NRM5 and NRM7.

427 On this point, see the reaction of the Minister of Security and Justice to the recommendations from the Emergo pilot (*Parliamentary Documents II* 2011/12, 29911, no. 55). For more detailed information, see also Haarlem District Court, 30 December 2003, *LJN* AO1164.

428 For example, the municipality, the police, the Inspectorate SZW, the PPS and the Tax and Customs Administration.

429 'The bill is a pretext to update, and where possible intensify, existing policy and the associated enforcement arrangement' (RIEC Rotterdam-Rijnmond 2010, p. 26).

430 The CCV has illustrated what municipalities can do to improve supervision and enforcement. The CCV's website contains links to various documents with models and best practices. See 'Toezicht en handhaving', CCV, <http://www.hetccv.nl/instrumenten/Prostitutiebeleid/index?filter=Stappenplan&step=4> (consulted on 6 April 2013).

arrangements.⁴³¹ It is important for these enforcement arrangements to be targeted not only at violations in licensed or unlicensed prostitution, but also other forms of human trafficking.⁴³²

Zoning plans can also be used to tackle human trafficking, for example by drafting them in such a way that they create a barrier to human traffickers and make enforcement strategies more efficient.

Modification of a zoning plan

The city of Amsterdam provides an example of the modification of a zoning plan. In response to 'strong evidence that many women were not working voluntarily in massage parlours', the West city district in Amsterdam designated this sector as criminogenic⁴³³ and announced three measures. The most far-reaching was the adoption of an umbrella zoning plan, whereby twelve separate zoning plans were all amended at once with the intention of preventing the establishment of new massage parlours.⁴³⁴ The city district's underlying reasoning was that practically none of the many new massage parlours that had opened in the preceding years could be regarded as legitimate.

The city district said of the decision to amend the zoning plan: 'Naturally, massage parlours could be regulated by means of inspections and enforcement, but that is a very laborious and intensive process.⁴³⁵ Without a prohibition, the number of illegitimate massage parlours will continue to rise, with every massage parlour being subject to more or less continuous investigation and enforcement, which will impose an enormous strain on the capacity of the authorities.⁴³⁶ Furthermore, the mere fact of discovering a criminal offence would not lead directly to cessation of the activity.'⁴³⁷ The city district further noted that warnings would be issued to existing massage parlours and that integrated inspections would be carried out at (dubious) massage parlours.

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- 431 Cities with enforcement arrangements include Leeuwarden, The Hague, Rotterdam, Amsterdam, Barendrecht Helmond and Eindhoven.
- 432 The four municipalities covered in the study did not have an enforcement arrangement for forms of human trafficking outside the sex industry (NRM 2012e).
- 433 These massage parlours also detract from the appeal of the shopping and residential streets in which they are located. They create a sense of insecurity ('Stadsdeel West verbiedt nieuwe massagesalons', *Gemeente Amsterdam Stadsdeel West* 19 February 2013, <http://www.west.amsterdam.nl/diversen/nieuws/algemeen-nieuws/nieuws-algemeen/stadsdeel-west/> (consulted on 25 March 2013).
- 434 *Government Gazette* 2013, 4254. The umbrella zoning plan was adopted on 25 July 2013.
- 435 The South city district in Amsterdam has not followed the West district's example, saying that it prefers control and enforcement to prohibition and arguing, for example, that there is no comprehensive definition of a massage parlour.
- 436 The South city district has taken the lead in developing a city-wide action plan for massage parlours. The kick-off is expected to take place in April 2014. Before that happens, the South city district will carry out a pilot project for the city of Amsterdam, for which it has already drawn up an action plan (E. Schut 'Plan van aanpak, Stadsdeel Zuid' 2013, <https://documents.notubiz.nl/getdocument/916267/a02fff2f9479bc2807dcb201a91b5de3> (consulted on 08 August 2013)).
- 437 'Bijlagen bij Toelichting op paraplubestemmingsplan verbod massagesalons', *Gemeente Amsterdam Stadsdeel West* 17 December 2012, http://www.west.amsterdam.nl/publish/pages/538422/130215_bijlagenscanpapier.pdf (consulted on 31 July 2013).

3.9.2 Waterbed effect

Human trafficking can occur anywhere. The growing realization of this in recent years has prompted numerous municipalities, cities and provinces to adopt measures to address the problem.⁴³⁸ However, a side effect of a more stringent local approach is the risk that the problem will move to municipalities that are less attentive – the so-called waterbed effect.⁴³⁹ The problem could also shift to other forms of exploitation within the municipality.⁴⁴⁰ Although the chance of waterbed effects is likely to be greater in the prostitution sector, it can also occur with other forms of exploitation, such as exploitation through begging.⁴⁴¹

Differences in the policies adopted at the local, regional and national level create the danger of waterbed effects.⁴⁴² To avoid that risk, it is important for local policies to be coordinated at regional level and, in general terms, at national level. An example of national coordination is the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry.⁴⁴³ The key element of the bill is the introduction of a mandatory and uniform licensing system for the operation of a sex business. Although this system will lead to greater uniformity in local licensing policies, those policies must also be monitored and enforced, which could be coordinated at the regional level in order to prevent the waterbed effect and effectively tackle human trafficking.⁴⁴⁴

3.9.3 Directive role for mayors

In various places throughout the country, it is the municipalities, and in particular the mayors, that have taken the lead in developing an integrated approach at the local and regional level.⁴⁴⁵ This is a positive development that could enhance efforts to combat human trafficking.⁴⁴⁶ The designated ‘regional mayors’, for example, with their large professional network, extensive powers and capacity to coordinate measures, are the ideal persons to give direction to a regional partnership of agencies dedicated to tackling a complex problem like human trafficking.⁴⁴⁷

438 See §3.3.3.3 and Chapter 1.

439 A waterbed effect appears to have occurred following the withdrawal of the last operator’s licence in Utrecht, although it is not really connected with the attention to human trafficking. There are signs that prostitutes, and possibly also victims of human trafficking, who used to work in window prostitution in Utrecht are moving to the Baekelandplein in Eindhoven. (‘Utrechtse prostituees naar Eindhoven’, *ED* 29 July 2013, <http://www.ed.nl/regio/eindhoven/utrechtse-prostituees-naar-eindhoven-1.3934978>, consulted on 20 July 2013). See also §2.3.

440 See CCV 2010; Daalder 2007; Emergo 2011; Municipality of Utrecht 2012; NRM 2012e; Slaven van het systeem 2010.

441 See also §2.4.6

442 NRM 2012e; Slaven van het systeem 2010; Zandpad 2011.

443 See also §2.3.2 for a detailed description of the proposed Bill to Regulate Prostitution and to Combat Abuses in Sex Industry. Since this report was written, an amended proposal was submitted to parliament on 5 March 2014. This bill has still to be debated by the Upper and Lower Houses of Parliament.

444 See NRM 2012e for more information about best practices for municipalities.

445 See NRM 2012e for a detailed description of what the management role of municipalities entails.

446 Ibid.

447 See also §3.6.5 for an example illustrating the role of the designated regional mayor as the driver of an integrated approach.

The mayor's role as regional director also follows from his or her responsibility for maintaining public order.⁴⁴⁸ A bill designed to further strengthen the municipalities' role was submitted to the Lower House of Parliament on 13 August 2010,⁴⁴⁹ but it was withdrawn on 4 June 2013 since it had been found that more than 90% of the municipalities had already assumed the role of director and had already adopted an integrated security plan.⁴⁵⁰ However, municipalities adopt their own integrated security plan and are not required to include the subject of human trafficking in it, although the VNG and the CCV have drawn up a checklist that employees of the public order and security department of municipalities can use as a tool when drafting an integrated security plan.⁴⁵¹ In addition to the checklist, the VNG and CCV have produced a document entitled 'Kernbeleid Veiligheid' [Key Security Policies], which sets out the requirements of a good security plan.⁴⁵² The document specifies human trafficking as the security themes that could be included in the integrated security plan.⁴⁵³

A growing number of municipalities also seem to be addressing human trafficking as a policy issue. For example, according to the study by Van Gaalen for the VNG into 'priorities in security', investments in the area of human trafficking are relatively high compared with other expenditure relating to organized crime, especially in municipalities with populations of 100,000 or more.⁴⁵⁴ The VNG and the Netherlands Association of Mayors⁴⁵⁵ could play an important role in further strengthening efforts to tackle human trafficking at the local level by raising the subject with mayors and municipalities and providing them with tools they need.⁴⁵⁶

The regional approach and the regional mayor

The growing attention to human trafficking has also led to the further development of the local and regional approach to human trafficking.

448 'The signs are clear from all sides: the municipality is in control in the area of integrated safety. This role should be given a statutory basis, and should be strengthened. The SGBO had already concluded in 1998 that all the parties felt that the role of director of an integrated security policy should lie with the municipalities' (*Parliamentary Documents II* 2010/11, 32459, no. 8). See also Article 172 of the Municipalities Act.

449 The bill for an amendment of the Municipalities Act with a view to strengthening the municipality's role as director of local security policy (*Parliamentary Documents II* 2009/10, 32459, no. 2).

450 *Parliamentary Documents II* 2012/13, 32459, no. 13.

451 'Opstellen van integraal veiligheidsplan', CCV, <http://www.hetccv.nl/dossiers/integraal-veiligheidsbeleid/menu-ivp-check/index> (consulted on 1 August 2013).

452 Van Gaalen 2010.

453 See Field 5: *Integrity and Security* in the VNG's 'Kernbeleid Veiligheid' (Van Gaalen 2010, p. 79).

454 *Ibid.*

455 'The Netherlands Association of Mayors is the professional organization of mayors in the Netherlands. Almost all of the mayors are members of the association, which concentrates mainly on the development of mayoral functions, including representing their collective interests, providing an extensive training programme and promoting contacts between the mayors' (www.burgemeesters.nl).

456 Tools for municipalities are described in NRM 2012e.

Developments at the local level

In response to research by the National Rapporteur, the municipality of Assen⁴⁵⁷ is devoting more attention to a local and regional approach to human trafficking, and the National Rapporteur was invited to address Assen city council.⁴⁵⁸ The local authority then adopted a local action plan to tackle human trafficking⁴⁵⁹ and, together with the municipality of Emmen, drew up a regional anti-human trafficking plan in the middle of 2013.⁴⁶⁰ The National Rapporteur also gave a presentation on the local and regional approach to human trafficking to Arnhem city council,⁴⁶¹ since when Arnhem has taken promising steps in tackling the problem, for example by appointing a human trafficking coordinator and providing training for officials in recognizing signs of human trafficking.

Finally, the provincial executive of Limburg has granted the RIEC a subsidy to develop an integrated regional approach to human trafficking during the period 2013-2015. The costs will subsequently be assumed by the municipalities. The organization of the integrated approach will be optimized by appointing a chain director and a regional coordinator, with the latter also maintaining close contact with the Safety Coordination Houses. The province also intends to address the lover boy problem as part of the regional approach.⁴⁶²

Nevertheless, some regions still do not have an action plan on human trafficking. This is a cause for concern, since regional differences can increase the risk of the waterbed effect. Regional mayors⁴⁶³ can play an important role in producing such an approach in those regions, for example by providing the expertise and capacity needed to draw up an action plan against human trafficking, which could form the basis for an integrated approach at the regional level.⁴⁶⁴ They could also use their administrative powers

457 The municipality of Arnhem is also devoting attention to human trafficking. See also B. Hollaardt, 'Arnhem slecht in aanpak mensenhandel', *Arnhem Direct* 20 February 2013, http://www.arnhem-direct.nl/berichten/arnhem_slecht_in_aanpak_mensenhandel (consulted on 20 March 2013).

458 The National Rapporteur addressed Assen city council on 24 January 2013.

459 'Assen gaat mensenhandel bestrijden', *RTV Drenthe* 1 March 2013, http://www.rtvdrenthe.nl/nieuws/assen-gaat-mensenhandel-bestrijden?quicktabs_nieuwsoverzicht=1 (last consulted on 20 March 2013).

460 The status of this regional plan is currently unknown.

461 The meeting took place on 27 May 2013. Arnhem was one of the municipalities investigated by the National Rapporteur (NRM 2012e).

462 'Provincie steunt aanpak mensenhandel', *Limburg* 13 December 2013, http://www.limburg.nl/Nieuwsbrieven/Nieuwsbrief_e_LimburGS/elimburg_13_december_2012/Provincie_steunt_aanpak_mensenhandel (consulted on 20 March 2013).

463 In the new RIEC/LIEC covenant, these mayors are known as 'regional mayors' within the meaning of Article 1(g) of the Police Act 2012. The covenant also refers to the fact that 'the Minister of Security and Justice has granted the mayors who are managers of the police force in their region [the regional mayors] a subsidy to establish and run an RIEC to provide operational support in achieving the goals set out in the Covenant and the envisaged cooperation between the partners to the covenant'. ('Covenant ten behoeve van Bestuurlijke en Geïntegreerde Aanpak Georganiseerde Criminaliteit, Bestrijding Handhavingssknelpunten en Bevordering Integriteitsbeoordelingen', *RIEC Net* 2013, <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.pdf>, (consulted on 8 August 2013)).

464 Hendriks & Corsèl 2009; NRM 2012e.

to bring together the appropriate local and regional partners and to remove policy-related problems in the approach.⁴⁶⁵

3.9.4 Embedding the regional approach in RIECs and Safety Coordination Houses⁴⁶⁶

In the study of the chain, the recommendation was made that the mayors in the Netherlands should anchor the integrated approach in existing partnerships at the regional level.⁴⁶⁷ In various places in the Netherlands, the regional and/or local approach to human trafficking is organized through RIECs and/or Safety Coordination Houses, both of which are equipped to address (organized) crime in a multidisciplinary fashion.⁴⁶⁸ The advantages of these two types of consortia are that they are already in place, have experience with the multidisciplinary approach, can address multiple forms of crime and can regulate the exchange of information among the affiliated chain partners through covenants.⁴⁶⁹

The principal difference between the two consortia is the purpose for which they were established: whereas the RIECs concentrate on combating *organized crime*,⁴⁷⁰ the focus of the Safety Coordination Houses is on ‘*serious local or regional security problems*’.⁴⁷¹ An area of concern in that context is that although, in theory, the regional and local partnerships could reinforce one another in tackling human trafficking, in some regions the necessary links between the RIECs and Safety Coordination Houses have not been established,⁴⁷² creating the risk of work being duplicated and/or forms of human trafficking not being covered by an integrated partnership.

The Safety Coordination Houses and the RIECs have both made efforts to reposition themselves and create greater uniformity in recent years. To that end, the National Intervention and Expertise Centre (LIEC) was established for the RIECs.⁴⁷³ One of the most important results of the repositioning and harmoniza-

465 As the study showed, it is not always necessary for a regional mayor to take the lead. For example, the mayor of Barendrecht assumed the role of director in drawing up an action plan for human trafficking in the Rotterdam-Rijnmond region (NRM 2012e).

466 For more information about the structure of the RIECs/LIEC and the Safety Coordination Houses, see §3.3.2.

467 NRM 2012e.

468 See also §3.3.2.

469 See NRM 2012e and §3.3.2.

470 See also ‘Annual Report of the RIECs 2010’, *RIEC Net* 23 August 2011, <http://www.riecnet.nl/doc/algemeen/Jaarverslag%20RIEC's%202010.pdf> (consulted on 12 July 2013).

471 Ministry of Security and Justice et al. 2013, p. 11. Safety Coordination Houses.

472 This link has not yet been made at the national level. Verbal information from the LIEC, 21 February 2013. This also follows from the document ‘Landelijk kader Veiligheidshuizen’ (Ministry of Security and Justice et al. 2013) and the new RIEC/LIEC covenant ‘Convenant ten behoeve van Bestuurlijke en Geïntegreerde Aanpak Georganiseerde Criminaliteit, Bestrijding Handhavingknelpunten, en Bevordering Integriteitsbeoordelingen’, *RIEC Net* 2013, <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.pdf>, (consulted on 8 August 2013).

473 One of the LIEC’s tasks is ‘to increase uniformity by producing national standards, in consultation with the RIECs, for uniformity in the principal work processes and information exchange’ (*Parliamentary Documents II* 2010/11, 29911, no. 54).

tion of the activities of the RIECs is the drafting of a new covenant on ‘an administrative and integrated approach to organized crime, combating bottlenecks in enforcement and promoting assessments of integrity’.⁴⁷⁴ A similar process has taken place among the Safety Coordination Houses, and their national steering group has overseen the formulation of a national framework for them.⁴⁷⁵ The next step in the process of establishing a comprehensive approach is to link the two consortia⁴⁷⁶ and so reduce the risk of gaps appearing in the effort to combat human trafficking. Those links have been forged in some regions.

Examples of cooperation between RIECs and Safety Coordination Houses

In the Alkmaar region, the two organizations have agreed on a division of tasks. The Safety Coordination House for the north of Noord-Holland province concentrates on local forms of human trafficking (such as the loverboy problem) in the case meetings on pimp boys, while the RIEC Noord-Holland deals with organized and supra-local forms of human trafficking.⁴⁷⁷ Since partners in the health care sector do not attend the RIEC’s case meetings but do attend the meetings of the Safety Coordination House, the latter also liaises between the partners in the health care sector and the RIEC. For example, the RIEC’s adviser and the Safety Coordination House’s chain manager for pimp boys/human trafficking can contact one another to refer cases to each other and to coordinate interventions and help for victims.⁴⁷⁸ The overarching meeting where all cases are discussed

474 ‘Convenant ten behoeve van Bestuurlijke en Geïntegreerde Aanpak Georganiseerde Criminaliteit, Bestrijding Handhavingssknelpunten en Bevordering Integriteitsbeoordelingen’, *RIEC Net* 2013, <http://www.riecnet.nl/doc/zuidwestnederland/Convenant%20Bestuurlijke%20en%20Geïntegreerde%20Aanpak%20Georganiseerde%20Criminaliteit.pdf>, (consulted on 8 August 2013). See also §3.3.2.

475 Ministry of Security and Justice 2013.

476 The CCV organized a meeting dedicated to a discussion of the measures taken by the Safety Coordination Houses to tackle human trafficking and the loverboy problem *and* a discussion of the possibilities for cooperation with the RIECs (the meeting was planned for 3 September 2013). The initiative was in line with the recommendations in NRM 2012e.

477 In 2010, a case meeting on human trafficking was established at the Safety Coordination House Noord-Holland Noord dedicated to combating more organized and supra-local forms of human trafficking. The participants are representatives of the police, the PPS, the municipality of Alkmaar, the Tax and Customs Administration, CoMensha, the municipal health service and the chain director of RIEC Noord Holland Noord (see the covenant, www.veiligheidshuisregioalkmaar.nl/images/1314390367-Privacyreglement_Mensenhandel_VHHR.pdf, consulted on 8 July 2013). According to the current adviser to the RIEC Noord Holland, the case meeting in its current form needs to be reorganized. This is connected with, among other things, the new RIEC/LIEC covenant that entered into force on 1 January 2013, under which private actors such as health care institutions are no longer partners. Because the RIEC and the tax authorities are important partners in tackling organized forms of human trafficking, it has become necessary to include them in the information exchange and case meetings of RIEC Noord Holland and to create a form of indirect cooperation with health care institutions (Verbal and written information from RIEC Noord Holland, 8-9 July 2013).

478 Ibid.

is the Integrated Case Meeting on Human Trafficking,⁴⁷⁹ where the link is made between the cases that are being dealt with under criminal law and the cases that are being dealt with in other ways for the purposes of the meetings of the pimp boy and human trafficking team.

There is also cooperation between the Fryslân Safety Coordination House and the RIEC Noord in relation to human trafficking. For example, a municipal official, who also chairs the case meetings on human trafficking under the RIEC covenant, has been appointed as chain director for human trafficking at the Safety Coordination House. Indications of human trafficking are reported to the chain director by agencies that are partners of the RIEC under the covenant as well agencies that are not. For example, warnings can be reported by health care agencies and by the Safety Coordination House, where case meetings relating to domestic violence and anti-social groups are held.⁴⁸⁰ If the chain director for human trafficking concludes that a tip provides a genuine indication of human trafficking, it is submitted to the so-called 'layered' case meeting, which is divided into two parts.⁴⁸¹ During the first part, the regional care coordinator and other partners that are not parties to the covenant report signs of human trafficking and provide background information, and then leave the meeting. The signs are then discussed by the partners to the RIEC covenant during the second part of the meeting. After the meeting, if necessary the chain director can contact the regional care coordinator to discuss what they will do next. In this way, care, prevention and interventions can be coordinated.

In practice, the RIECs appear to focus on cases of human trafficking that transcend municipal boundaries and demand a multidisciplinary approach, such as a situation where it seems as though various girls

479 This meeting is chaired by the public prosecutor for human trafficking. Participants at the integrated case meeting on human trafficking are the police (from the Regional Intervention and Exploitation Team), the public prosecutor for human trafficking and the representatives of the Safety Coordination House and the RIEC. Decisions are made at these meetings on how a case will be dealt with: under criminal law ('mono-disciplinary'), by the RIEC, or by the Safety Coordination House' (written information from RIEC Noord Holland, 9 July 2013).

480 These case meetings can produce indications of loverboy problems, for example.

481 The RIEC Noord describes the procedure as follows: 'In a "layered" case meeting, during the first part ... indications can be reported and explained by the notifier. The added value of a report by the care coordinator from Fier Fryslân, for example, is that partners under the RIEC covenant gain a clearer picture of the victim and his or her circumstances and, consequently, also of the possible offender and the methods he uses. The indication being discussed therefore assumes "greater weight", as it were. During the second part, the indications and human trafficking cases are discussed in more detail by the partners under the RIEC covenant, who provide their own additional information. In building up a case with this information, interim findings and the recommended intervention can be discussed by the chain director with the care coordinator (with the consent of the covenant partner that provided the information), provided it is in the interests of the victim. The care coordinator refers the covenant partners to the possible consequences of the intervention for the victim and provides advices to the participants at the case meeting. That discussion takes place during the first part of the case meeting, or separately if necessary. The reason for this multi-level discussion is that partners to the RIEC covenant are not allowed to share information with parties that are not under the covenant, such as health care agencies, for privacy reasons' (written information from RIEC Noord, 11, 19 and 30 July 2013).

are being exploited in different places by a network of traffickers. In contrast, the Safety Coordination Houses, which are dedicated to the theme of human trafficking, appear to focus mainly on complex local problems that require a multidisciplinary approach, such as juvenile prostitution and the loverboy problem. This is connected with the nature of the problem, which can involve a victim being exploited within her own municipality by a trafficker/loverboy. The difference in focus illustrates the fact that close coordination between the two consortia can improve the effectiveness *and* efficiency of measures to combat human trafficking. It has been found that chain directors can play an important role in ensuring good liaison.⁴⁸²

A worrying development that highlights the need for effective liaison between Safety Coordination Houses and RIECs is that, in contrast to some of the former regional RIEC covenants (and the ‘model covenant on privacy’ of the Safety Coordination Houses,⁴⁸³ which explicitly embraces care partners), health care agencies are no longer parties to the new national RIEC covenant.⁴⁸⁴ However, it is important that the victims whose cases are being handled by the RIEC are identified and receive the protection they are entitled to.⁴⁸⁵ Partners in the health care sector must therefore also be consulted on these cases and be involved in the approach to human trafficking within the RIEC. The regional coordinator can liaise between the RIEC and the health care partners who are no longer partners under the RIEC covenant.

Nevertheless, human trafficking is still a relatively recent theme in the Safety Coordination Houses, which have traditionally focused on four subjects: combating youth crime, combating domestic violence, providing care for (former) prisoners, and frequent offenders. It is therefore a positive development that a number of Safety Coordination Houses have already invested in efforts to combat human trafficking.

482 For a further explanation of the importance and role of chain directors in the integrated approach, see NRM 2012e.

483 ‘Model Covenant on Privacy for Safety Coordination Houses’ http://www.Veiligheidshuizen.nl/doc/publicaties/model-convenant-Veiligheidshuizen_ob.pdf (consulted on 5 April 2013).

484 ‘The aim of the new covenant is to combat organized crime. Cooperation and the exchange of information do not fall under this objective. In addition, the RIEC covenant is intended to facilitate cooperation and information exchange between government agencies. Partners in the health care sector are, by contrast, private institutions’ (written information from LIEC, 28 January 2013). See also §3.3.2.

485 The Minister of Security and Justice has described providing care and shelter for victims as an important aspect of the integrated approach (*Parliamentary Documents I* 2012/13, 33309, C). See also §2.9 and §2.10.

Human trafficking has generated a lot of attention in recent years, at both the national and international level. For example, prevention projects, awareness-raising campaigns, training programmes and educational curricula have been developed in collaboration with schools, trade unions, municipalities, embassies and other organizations in the Netherlands and other countries. Media coverage of the phenomenon of human trafficking has increased worldwide, and the reporting seems to reflect the realization that human trafficking is a widespread social problem, that it can occur anywhere and can assume many different forms.

The growing awareness at every level of society has led to a process of *reframing*; phenomena that were not formerly associated with human trafficking are nowadays recognized as such. This new view of the problem was needed. It has removed façades and exposed situations that are now seen for what they really are; as instances of human trafficking, instances of exploitation, in the sex industry as well as in other sectors, in window prostitution and in other areas, in agriculture and horticulture, in the hospitality sector, and in relation to begging, street-paper selling, benefit fraud and telephone subscriptions. Human trafficking often transcends national borders, but not always. Victims are often foreign, but a great many are from the Netherlands itself. And the exploiters can also be Dutch.

The reappraisal of human trafficking is also due to the fact that the professional organizations engaged in the fight against human trafficking are better equipped to recognize the different forms that the offence can take. Identification is essential for tackling the problem. Effective action is only possible if organizations are familiar with the various types of human trafficking, and efforts have been made in recent years to improve recognition of signs that might indicate a human trafficking situation. Going forward, it is crucial for organizations to remain alert to the development of new forms of human trafficking.

As the National Rapporteur has concluded in previous studies, and as this report has once again demonstrated, cooperation is an absolute precondition for tackling human trafficking effectively. Human trafficking is a complex offence and can often only be seen and understood – *framed* – if the relevant organizations share information with one another. That is a task of all the organizations, governmental and non-governmental, that share responsibility for preventing human trafficking. Human trafficking can only be successfully addressed in the long term if those parties collaborate on a structural basis, and this type of collaboration is being established in a growing number of places around the country. With varying degrees of success, these partnerships are being absorbed into RIECs and Safety Coordination Houses, which have a regional function. But there is still work to be done when it comes to the liaison

between these partnerships. A hopeful sign is that a growing number of municipalities are using these alliances to play their part in tackling human trafficking. Municipalities are essential actors in the fight against domestic human trafficking in particular, and they occupy a key position in the chain of police and prosecution authorities, administrative authorities and care organizations for victims. The National Rapporteur has already conducted research into how municipalities can fulfil their role, and she presented her findings to the Association of Netherlands Municipalities (VNG). Although the VNG endorses the importance of involving municipalities in efforts to combat human trafficking, that message is not yet being actively conveyed.

This report has investigated the forms of cooperation that have been developed in the last few years in the effort to tackle human trafficking. In the Netherlands, experiments have been conducted with the multidisciplinary approach, the key to which is that human trafficking can only be combated effectively with an approach that involves a range of disciplines. The multidisciplinary approach is an appropriate framework for every form of human trafficking, in the sex industry as well as in other sectors. Criminal law still functions as an essential cornerstone of the approach, but it relies just as much on administrative authorities and private agencies and their powers. Organizations such as the Inspectorate SZW, the Tax and Customs Administration, the chamber of commerce, the IND, the COA and the DT&V, but also hotels and housing associations. The health care sector also has an important role to play in tackling human trafficking. This report shows that there is room for improvement in connecting parties in the health care sector and other partners in the chain. The risk is that a poor connection could cause signs of human trafficking to slip through cracks in the system and mean that the care that is available is not fully utilized, to the detriment of the effective protection of victims of human trafficking.

One element of the multidisciplinary approach is the programmatic approach, in which the focus is on creating a better understanding of the phenomenon in order to identify precisely which organizations can help to frustrate the human trafficking process and the powers and procedures they require to do so. An innovative mindset is essential in that context. Human traffickers have displayed unprecedented resourcefulness in recent years. Wherever there is strict supervision, together with enforcement and investigation, human traffickers develop new strategies to remain beneath the radar, for example by relocating or finding new ways of exploiting people.

Many of the organizations engaged in the battle against these traffickers know what their role, their powers and their limitations are. At the same time, however, the analysis of the programmatic approach in this report also shows that there are other organizations that could also play an important part in identifying and combating human trafficking. A good example is the chamber of commerce, which is alert for signs of human trafficking when companies are being entered in the trade register. The same applies for housing associations and municipal housing services, which could use their administrative instruments to discover overcrowding (which can be a sign of human trafficking). They too should be on the lookout for new types of human trafficking. It is not only important to recognize these new forms of trafficking, but also, by extension, to identify the organizations that could assist in tackling them. If a person is being forced to apply for benefits, for example, it stands to reason that there should be cooperation with the Tax and Customs Administration and its investigations department (FIOD), while in the case of forced begging, there is clearly a task for municipal officials. The Task Force on Human Trafficking could play an important role in mobilizing and activating chain partners in the process of identifying new actors.

A lot of progress has unmistakably been made in recent years, and this report shows that human trafficking is firmly established on the agendas of numerous organizations. But human trafficking deserves our constant attention. It is important to remain alert. In light of the findings set out above, the key message of this ninth report is as follows:

Key message

Human trafficking undermines society. Preventing, recognizing and combating human trafficking, and protecting its victims, requires an innovative approach in which all of the relevant parties cooperate and coordinate their policies and actions.

This key message applies for all of the subjects discussed in this report and ran as a red line through each of the chapters and sections. The findings in the report also prompt five recommendations of varying nature in relation to themes that require special attention in the fight against human trafficking.

1 Underage victims of domestic human trafficking

The Netherlands has been familiar with the phenomenon of domestic human trafficking for years, although it has persistently been known by the objectionable, but now commonly used, term ‘loverboy problem’. For many years, the Netherlands seemed to be the only country faced with this problem, but that seems to be changing. Whereas, in the United Kingdom, for example, it formerly seemed impossible to secure a conviction for domestic human trafficking, the problem is now also recognized there and a major case was brought to court and ended in a conviction. Germany and Belgium have also reported that the phenomenon is increasingly prevalent. Unfortunately, the term ‘loverboy’ has also found its way into the vocabulary in the United Kingdom.

Whereas sexual exploitation of minors used to be connected mainly with problems associated with puberty, such as running away, borderline personality disorder and truancy, there is now a growing realization – also at the international level – that young girls can be an easy prey and can generate a lot of money for human traffickers.

In the Netherlands, the problem remains as serious as ever. According to the report ‘Trafficking in Human Beings: Visible and Invisible’ in 2012, one-third (the largest group) of all victims reported to CoMensha in 2011 had Dutch nationality. Almost 40% of them were minors and, in all probability, the proportion is actually even higher, given the fact that CoMensha registers the age of reported victims at the time of the report and not at the time the trafficking situation commenced. Furthermore, Dutch child victims are not always reported by youth care agencies.

Some human traffickers seem to wait until the girls have reached the age of 18, the age at which voluntary prostitution is legal in the Netherlands, before exploiting their victims in legal prostitution. Nevertheless, there is a fear that the grooming period, or recruitment phase, and subsequent sexual exploitation – also outside the legal sex industry – already starts at a younger age.

Child victims of human trafficking are particularly vulnerable. Measures have been adopted at both the national and international level to reduce their vulnerability and provide them with the best possible protection, including prevention and the identification of victims. In 2011, two EU directives were

adopted that contain specific provisions designed to protect child victims of human trafficking: the EU Directive on Human Trafficking and the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.

A key provision of the latter directive is that the sexual exploitation of children requires a comprehensive approach covering the prosecution of offenders, the protection of victims and the prevention of the phenomenon – three pillars that jointly constitute the approach to sexual exploitation of minors. According to the directive, professionals who are likely to come into contact with child victims of sexual exploitation must be adequately trained to identify and deal with such victims.

Youth care services do not currently appear to possess sufficient expertise in identifying child victims of domestic human trafficking. There is no specialization in this area and there is not enough investment in training. The services also use different definitions and youth workers give their own interpretation to the term ‘loverboy’ rather than adopting the elements of the offence as defined in Article 273f DCC as the yardstick. This creates the erroneous impression that a girl must ‘already have worked behind the windows’ or have been sexually exploited before she can be regarded as a victim of human trafficking.

The question of what form of shelter is most effective for this category of victims has been frequently discussed by institutions that provide shelter and victim support in recent years. It has also been raised repeatedly in the political debate, but unfortunately, it has not gone beyond discussion. Three institutions (the youth care facility Horizon, the shelter Fier Fryslân and social service organization Stichting Humanitas) recently announced their intention of starting a three-year pilot project to provide specialized shelter and counselling for child victims of domestic human trafficking. The project is based on the idea that the three organizations can complement one another in providing shelter and treatment for this vulnerable group. The importance of this pilot is evident. It is time to move beyond merely discussing the issue. The experience gained during this project must also be shared with youth care institutions in other regions to improve the protection provided for these girls, prevent revictimization and increase the willingness of victims to come forward.

Domestic human trafficking, euphemistically referred to as the loverboy problem, has been on the agenda in the Netherlands for more than 15 years. Despite that, little is still known about what measures and treatments are effective in protecting these vulnerable victims. The considerations set out above lead to the following recommendation:

Recommendation 1

The Ministers of Health, Welfare and Sport and Security and Justice should bring the protection of child victims of domestic human trafficking into line with European legislation. Identification, registration and assistance, including safe and appropriate shelter, are crucial elements of that protection. This calls for awareness raising and training, among other things.

2 Protection in a single comprehensive document: the national referral mechanism

The protection of (possible) victims is one of the pillars of the policy against human trafficking. The interests of the victim must take priority. At the same time, protecting the victim also has distinct value

for investigation and prosecution. Effective protection and correct treatment can enhance the willingness of victims to report human trafficking and to make statements, thereby increasing the chances of successfully prosecuting traffickers.

The protection of victims of human trafficking extends from identification to after-care or – in appropriate cases – the return to their country of origin. The protection of victims must be guaranteed at every step in the chain when they come into contact with government agencies and social services. The priority must always be to prevent secondary victimization and revictimization. These interests are underlined in the EU Directive on Human Trafficking and the European Commission's Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.

However, legislation alone is not enough. Precisely because the requirements of protection are so sweeping, the effective enforcement of legislation stands or falls with clarity about who should do what, when and how. To ensure that (possible) victims are promptly identified and receive protection and assistance, agreements made between the relevant government agencies and victim support organizations must be clear. The respective responsibilities and procedural agreements must be laid down in a comprehensive document setting out how the parties concerned can and should cooperate. Such a document is known as a 'national referral mechanism'. The EU regards the establishment of such a mechanism as essential for promptly identifying victims and providing them with protection and assistance.

The Netherlands does not yet have a national referral mechanism. The absence of detailed descriptions of procedures setting out the tasks and responsibilities of the relevant organizations is an urgent problem, particularly when it comes to dealing with minors. The absence of these arrangements is contrary to the line taken in European legislation, in which member states are strongly encouraged to strengthen the position of child victims of human trafficking.

The need to establish a national referral mechanism is even more pressing in light of the steadily rising number of (possible) victims of human trafficking that are being found. New forms of human trafficking are also being discovered all the time, so it is plausible that the number of (possible) victims will grow further. It is therefore reasonable to expect that the strain on the capacity of the agencies responsible for protecting (possible) victims will increase, thus further reinforcing the need for clarity about their tasks and responsibilities.

The urgency of establishing a national referral mechanism is also apparent from the changes that have been made in two documents in which the protection of victims is regulated: the PPS's Instructions on Human Trafficking and the descriptions of the procedures under the regulations on temporary regular residence (formerly the B9 regulation), which are important for many victims of human trafficking. These documents formerly contained detailed descriptions of procedures which were also accessible for other organizations, but that is no longer the case. Because of these changes, the information has lost some of its force. Although efforts have been made to retain the information about these procedures, the only possible conclusion is that at present the descriptions are fragmented, insufficiently accessible, non-binding and incomplete.

A national referral mechanism would relate to every phase in which a victim can come into contact with government agencies or support organizations. It should also cover all (possible) victims – Dutch and non-Dutch, minors and adults. A factor that has to be considered is that victims of human trafficking

fall into different categories, have varying needs and require the involvement of diverse partners in the chain.

Apart from these basic principles, it is also essential for a national referral mechanism to cover a number of other issues. Protecting possible victims starts with identifying them. A national referral mechanism must guarantee that relevant organizations receive the training and education they need to enable them to respond adequately to human trafficking situations and pass on indications to the relevant organizations. A national referral mechanism should also contain a provision stipulating that every possible victim that is identified must be reported to CoMensha, even by organizations that are currently not obliged to do so. The red line running through a national referral mechanism is the need for cooperation and the exchange of knowledge, above all in relation to the question of how, from the victim's perspective, assistance and criminal investigation and prosecution can be most effectively coordinated.

Since many of the organizations involved in combating human trafficking are already represented in the Task Force on Human Trafficking, this body could play a role in coordinating the establishment of the national referral mechanism.

These findings lead to the following recommendation:

Recommendation 2

It is recommended that the Minister of Security and Justice should ensure that a national referral mechanism is established in order to protect victims of human trafficking, regardless of the form of exploitation and regardless of whether they are victims of domestic or transnational human trafficking.

3 Reducing the vulnerability of the legal prostitution sector

Prostitution is not synonymous with human trafficking, but in recent years the impression has been confirmed, in a number of major criminal cases for example, that the prostitution sector is susceptible to human trafficking. The romantic ideal of articulate men and women who choose to work in prostitution entirely voluntarily is refuted by the harsh reality – a reality in which human traffickers deceive, abuse, threaten and exploit the vulnerable position of men and women, minors and adults, Dutch and non-Dutch. There are also other factors that make the prostitution sector vulnerable, such as the shift from visible to more hidden forms of prostitution, like escort services and prostitution in hotels and private homes. When activities are hidden, possible abuses, including trafficking, are also hidden, and that makes the sector particularly vulnerable.

In the course of the public and political debate about the government's Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry it was noticeable that it prompted some politicians to call for a fundamental discussion about prostitution policy, the desirability of legalized prostitution and its relationship with human trafficking. This latter discussion is driven mainly by moral convictions and views regarding the desirability of a particular type of prostitution policy. It is right that consideration is given, and should continue to be given, to the potential effects of a change of policy on efforts to combat human trafficking. At the same time, however, there is a risk of the discussion about the design of prostitution policy being reduced to the question of which ideal type is most desirable, morally or

otherwise. Questions about the effectiveness of measures should not be confused with questions about the moral desirability of measures, however. Instead of asking ‘*what is a desirable prostitution policy for combating exploitation?*’, the discussion should centre on the question, ‘*what is the most effective prostitution policy for combating exploitation?*’

To tackle human trafficking effectively in the vulnerable prostitution sector, it is essential for prostitution to be regulated by municipalities and for municipalities to coordinate their rules. In 2007, the National Rapporteur recommended the creation of a uniform national framework for prostitution policy that would apply for every municipality. There is no such framework yet. As a result, human traffickers still have a huge incentive to search for the weak links in the system: municipalities where there is no regulation or where the rules are not effectively enforced. One of the consequences of the delay in handling the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry is that there is still no uniform national framework, although the revised proposal still contains elements of a uniform national framework. The act should enter into force as soon as possible.

No single measure is a panacea for effectively tackling exploitation in the sex industry. In addition to adequate legislation, it is also very important to strengthen the position of prostitutes. (It should be noted here that ‘prostitute’ is a term used in a non-judgmental manner and that ‘prostitute’ and ‘sex worker’ are used synonymously in this report.) Some municipalities observe that the position of prostitutes leaves a lot to be desired, arguing that they are generally in a weak negotiating position vis-à-vis business operators and consequently have to accept unfavourable working and rental conditions. It is also reportedly difficult for them to open a bank account, take out a loan or gain access to health and other types of insurance. It is good to see that some municipalities have explicitly included measures to improve the position of prostitutes in their policy for the sector. Another important development is that the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry requires prostitution businesses to draw up a business plan specifying the measures they will take to protect the prostitute’s health, safety and right to self-determination. The business plan and its implementation can then be enforced.

Efforts to prevent human trafficking in the sex industry benefit not only from measures on the supply side. It is equally important to increase awareness on the demand side that the prostitution sector is vulnerable to abuses. In light of the sector’s vulnerability, the users of the services in that sector have a greater responsibility. It would therefore be good for clients of prostitutes to be more intensively involved in identifying human trafficking and reporting what they see.

There are occasions when a client knowingly uses the services of a victim of human trafficking. The Minister of Security and Justice has said that these clients can be prosecuted under the existing human trafficking provision in the Dutch Criminal Code. In practice, however, the relevant article is a dead letter in terms of prosecuting clients. A separate criminal offence is required for clients who use the sexual services of a prostitute when they know or should reasonably suspect that he or she is being forced or induced to provide those services, and is therefore a victim of human trafficking.

These considerations lead to the two following recommendations:

Recommendation 3.1

It is recommended that the Ministers of Security and Justice, the Interior and Kingdom Relations and Health, Welfare and Sport reduce the vulnerability of the legal prostitution sector to human

trafficking and reinforce measures to address human trafficking in the entire sex industry. The cornerstones of this approach should be to establish a national uniform framework for prostitution policy and to address and strengthen the position of prostitutes.

Recommendation 3.2

It is recommended that the legislature make it a criminal offence for anyone to use the sexual services of a prostitute when the client knows or should reasonably suspect that he or she is being forced or induced to provide those services, and is therefore a victim of human trafficking.

4 New forms of human trafficking

Sexual exploitation has received a lot of attention recently, but exploitation outside the sex industry has received far less exposure. Only one case was heard by a court of first instance in 2012. In the National Threat Assessment 2012, exploitation outside the sex industry was described as a 'blank spot', meaning that, as was the case in 2008, there was too little information available to make an estimate of the consequences of the phenomenon for Dutch society. Meanwhile, the impression still persists that it is a less serious form of human trafficking. Examples given in this report prove otherwise.

It is time to adopt a more robust approach in combating exploitation outside the sex industry. A growing number of these forms of exploitation are being observed in practice, at both the national and international level. Whereas in the past this category was confined mainly to labour exploitation, many forms of trafficking encountered nowadays occur outside the domain of work and income. Examples are forced begging or coercion of people to apply for benefits or take out telephone subscriptions. The emergence and existence of new forms of human trafficking means that a growing number of organizations will have to become involved in combating it.

Policy and law enforcement cannot and must not lag behind as more and more forms of human trafficking outside the sex industry appear. Like exploitation in the sex industry, exploitation outside the sex industry must receive priority both at a policy level and in law enforcement.

These considerations lead to the following recommendation:

Recommendation 4

The Ministers of Security and Justice and Social Affairs and Employment should devote greater attention to combating exploitation outside the sex industry. Organizations that are confronted with new forms of human trafficking should continuously invest in training and awareness raising in relation to dealing with signs of human trafficking.

5 The approach at the regional and local level and the link between RIECs and Safety Coordination Houses

In various places in the Netherlands, the regional or local approach to human trafficking is organized through Regional Information and Expertise Centres (RIECs) and/or Safety Coordination Houses. RIECs and Safety Coordination Houses were both established to promote a multidisciplinary approach to tack-

ling (organized) crime. Both of these organizations have the significant advantages of already being in place, having experience with a multidisciplinary approach, possessing the capacity to address different types of crime and having already concluded a covenant on the basis of which information can be shared by the relevant partners in the chain.

The main difference between the two consortia lies in their intended objectives: whereas the RIECs concentrate on tackling *organized crime*, the focus of the Safety Coordination Houses is on '*serious local or regional security problems*'. One point of concern is that the necessary liaison between the RIECs and the Safety Coordination Houses has not yet been established in some regions, creating the risk that work will be duplicated and/or that some forms of human trafficking will not be addressed by an integrated partnership.

The Safety Coordination Houses and the RIECs have both endeavoured to reposition themselves and create greater uniformity in recent years. To that end, the *National Intervention and Expertise Centre* (LIEC) was established with a view to repositioning and harmonizing the activities of the RIECs. One of the most important results was the conclusion of a new covenant on an 'administrative and integrated approach to organized crime, removing bottlenecks in enforcement and promoting assessments of integrity'. A similar process has occurred among the Safety Coordination Houses and a national framework has been formulated for them. The next step in the process of establishing a comprehensive approach is to link the two consortia and so reduce the risk of gaps appearing in the efforts to combat human trafficking. Connections have already been established between the two bodies in some regions.

A worrying development that highlights the need for close connections between Safety Coordination Houses and RIECs is that health care agencies are no longer able to be part of the new national RIEC covenant, a development that undermines the inseparable connection between the protection of victims and the investigation and prosecution of human trafficking. Actors in the health care sector, such as youth care services, municipal health services, care institutions and shelters, could have an important task in identifying possible victims and play a key role when it comes to protecting victims.

Whereas actors in the health care sector were parties to the former RIEC covenants and were involved in the cooperation and the exchange of information within the chain, that is no longer the case. Under the new covenant, the health care sector is no longer engaged in talks with regulatory and law-enforcement agencies within these consortia. Consequently, the focus of the RIECs is heavily geared to investigation and prosecution. While this is not incomprehensible in light of the objectives of the RIECs, it is not helpful in terms of protecting victims of human trafficking.

The health care sector should once more have an evident role in combating human trafficking at the local and regional level. After all, it is also important for victims, whose cases are being handled by the RIEC, to be identified and given the protection they are entitled to. Partners in health care should therefore also be consulted on these cases and should be included in the RIEC's approach to human trafficking. In that context, the regional coordinator could liaise between the RIEC and the partners in the health care sector that are no longer parties to the RIEC covenant.

This has become even more urgent following the changes in the youth care system, under which responsibility for the safety of young people has been delegated to the municipalities. Naturally, that extends to preventing their victimization by human traffickers and identifying and protecting victims. It is also

essential for social workers in the relevant areas to be involved in the approach to human trafficking if they are to perform their role properly.

Recommendation 5

It is recommended that the Minister of Security and Justice promote the connection between RIECs and Safety Coordination Houses. The RIECs and Safety Coordination Houses should establish the necessary links between their organizations to guarantee the involvement of partners in the health care sector in combating human trafficking, and hence in protecting victims, at the local and regional level..

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Appendices

Article 273f DCC (as it applied until 1 April 2013)

1. Any person who:
 - 1°. by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
 - 2°. recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
 - 3°. recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
 - 4°. forces or induces another person by the means referred to under (a) to make himself/ herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
 - 5°. induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/ herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
 - 6°. wilfully profits from the exploitation of another person;
 - 7°. wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
 - 8°. wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;

- 9°. forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding eight years or a fifth category fine.
2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.
 3. The following offences shall be punishable with a term of imprisonment not exceeding twelve years or a fifth category fine:
 - 1°. offences as described in the first paragraph if they are committed by two or more persons acting in concert;
 - 2°. offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
 4. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding fifteen years or a fifth category fine.
 5. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding eighteen years and a fifth category fine, or either of these penalties.
 6. Article 251 is applicable *mutatis mutandis*.

Article 273f DCC (as it applied from 1 April 2013)

1. Any person who:
 - 1°. by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
 - 2°. recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
 - 3°. recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
 - 4°. forces or induces another person by the means referred to under (a) to make himself/ herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
 - 5°. induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/ herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
 - 6°. wilfully profits from the exploitation of another person;
 - 7°. wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
 - 8°. wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;

- 9°. forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding twelve years or a fifth category fine.
2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.
 3. The following offences shall be punishable with a term of imprisonment not exceeding fifteen years or a fifth category fine:
 - 1°. offences as described in the first paragraph if they are committed by two or more persons acting in concert;
 - 2°. offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
 4. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding eighteen years or a fifth category fine.
 5. If one of the offences referred to in the first paragraph results in death, it shall be punishable by a term of life imprisonment or temporary imprisonment not exceeding thirty years or a fifth category fine.
 6. Article 251 is applicable *mutatis mutandis*.

1. Any person who:
 - 1°. by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, including the exchange or transfer of control over that person, with the intention of exploiting this other person or removing his or her organs;
 - 2°. recruits, transports, moves, accommodates or shelters a person, including the exchange or transfer of control over that person, with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
 - 3°. recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
 - 4°. forces or induces another person by the means referred to under (a) to make himself/ herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
 - 5°. induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/ herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
 - 6°. wilfully profits from the exploitation of another person;
 - 7°. wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
 - 8°. wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;

- 9°. forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding twelve years or a fifth category fine.
2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities.
3. The following offences shall be punishable with a term of imprisonment not exceeding fifteen years or a fifth category fine:
 - 1°. offences as described in the first paragraph if they are committed by two or more persons acting in concert;
 - 2°. offences as described in the first paragraph if they are committed in respect of a person who is under the age of eighteen or in respect of a person whose position of vulnerability is being abused.
 - 3°. offences as described in the first paragraph if they are preceded by, committed by use of or followed by violence.
4. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding eighteen years or a fifth category fine.
5. If one of the offences referred to in the first paragraph results in death, it shall be punishable by a term of life imprisonment or temporary imprisonment not exceeding thirty years or a fifth category fine.
6. A position of vulnerability includes a situation in which a person has no real or acceptable alternative but to submit to the abuse involved.
7. Article 251 is applicable *mutatis mutandis*.

B2 Notes to tables, figures and statistics

1 Notes to the tables

These notes contain some remarks that are important for the interpretation of the tables in this report. Although the totals and subtotals are given as the relevant percentage (100% in the case of totals), the numbers might not add up accordingly because figures have been rounded off. If a column or a row in a table contains numbers, the letter N is used in the head of the relevant column or row to denote *number*. If a column in a table shows a ranking, the letter R is used in the head of the relevant column to denote *rank*. In the tables, a dash (-) is used to denote the number zero or that the relevant percentage is 0%. If the number is higher than zero but rounding off brings the percentage to 0%, 0% is used instead of a dash.

2 Notes to the figures

Many of the figures in this report are based on additional tables in Appendices 3 and 4. If a figure shows a trend (differences between one period and another) in absolute terms (numbers), a line diagram is used. Comparisons (often relative) of different periods or different groups (or in presenting a total overview) are shown with bar charts or pie charts, depending on which conveys the message most clearly.

3 Notes to the statistics used

Index figure

In sommige tabellen is een indexcijfer gegeven. Het indexcijfer laat zien hoeveel het aantal in een bepaald jaar ten opzichte van een basisjaar is veranderd. Welk jaar als basisjaar is genomen, is vermeld in de kop van de tabel. Dit jaar is op 1,0 gesteld. Een indexcijfer hoger dan 1,0 geeft een stijging weer ten opzichte van het basisjaar en een indexcijfer lager dan 1,0 een daling.

Standard deviations

When an average is given in this report, the number of units on which the average is based (N) is mentioned, as well as the standard deviation (SD). The standard deviation expresses the range of values over which the average is calculated. The higher the standard deviation, the greater the range.

B3 Tables relating to section 2.6.5 'Identification of human trafficking in return procedures'

Table B3.1 Number of possible victims identified during the return procedure (2009-2012)

Year	Number	Index figure (2009 = 1,0)	Percentage growth compared with the previous year
2009	36	1	-
2010	31	0,9	-14%
2011	45	1,3	45%
2012	27	0,8	-40%
Total	139	<i>n.a.</i>	<i>n.a.</i>

Source: DT&V databases

Table B3.2 Gender (2009-2012)

Year	Female		Male		Total	
	N	%	N	%	N	%
2009	33	92%	3	8%	36	100%
2010	27	87%	4	13%	31	100%
2011	32	71%	13	29%	45	100%
2012	21	78%	6	22%	27	100%
Total	113	81%	26	19%	139	100%

Source: DT&V databases

Table B3.3 Age categories (2009-2012)¹

Year	0-14		15-17		18-23		24-30		31-40		41+		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
2009	-	-	-	-	13	36%	15	42%	5	14%	3	8%	36	100%
2010	2 ²	7%	6	19%	8	26%	7	23%	7	23%	1	3%	31	100%
2011	1 ³	2%	2	4%	22	49%	11	24%	3	7%	6	13%	45	100%
2012	1 ⁴	4%	2	7%	11	41%	5	19%	5	19%	3	11%	27	100%
Total	4	3%	10	7%	54	39%	38	27%	20	14%	13	9%	139	100%

Source: DT&V databases

- 1 This is the age at the time of the start of the D9 procedure.
- 2 These are one person aged one and one person aged three, who were possibly children of a possible victim of human trafficking for whom the D9 procedure was initiated. They were therefore included in the database for the D9 procedure (verbal information from DT&V, 29 May 2013).
- 3 This is a person aged twelve who was suspected of being a victim of human trafficking. It is not known whether the minor was a child of a possible victim of human trafficking for whom the D9 procedure was initiated and was included in the database for the D9 procedure for that reason (verbal information from DT&V, 29 May 2013).
- 4 This is a person aged thirteen who was suspected of being a victim of human trafficking. It is not known whether the minor was a child of a possible victim of human trafficking for whom the D9 procedure was initiated and was included in the database for the D9 procedure for that reason (verbal information from DT&V, 29 May 2013).

Tables relating to section 2.6.5 'Identification of human trafficking in return procedures'

Table B3.4 Nationality (2009-2012)⁵

Nationality	2009		2010		2011		2012		Total		Top 5 (R)
	N	%	N	%	N	%	N	%	N	%	
Albanian	1	3%	-	-	-	-	-	-	1	1%	
Angolan	-	-	1	3%	1	2%	-	-	2	1%	
Armenian	-	-	-	-	-	-	1	4%	1	1%	
Beninese	1	3%	-	-	-	-	-	-	1	1%	
Bosnian	-	-	-	-	1	2%	-	-	1	1%	
Cameroonian	-	-	2	7%	-	-	1	4%	3	2%	
Chinese	11 (1 st)	31%	2	7%	3 (3 st)	7%	5 (1 st)	19%	21	15%	2 nd
Congolese	3 (3 rd)	8%	-	-	1	2%	1	4%	5	4%	
Dominican	-	-	1	-	-	-	-	-	1	1%	
Dutch	-	-	1 ⁶	3%	-	-	-	-	1	1%	
Egyptische	-	-	-	-	1	2%	-	-	1	1%	
Equatorial Guinean	1	3%	-	-	-	-	-	-	1	1%	
Eritrean	-	-	1	3%	-	-	-	-	1	1%	
Gambian	1	3%	-	-	1	2%	-	-	2	1%	
Ghanaian	1	3%	4 (1 st)	13%	2	4%	-	-	7	5%	5 th
Guinean	-	-	2	7%	9 (1 st)	20%	2	7%	13	9%	3 rd
Indian	2	6%	1	3%	-	-	1	4%	4	3%	
Iraqi	-	-	2	7%	-	-	-	-	2	1%	
Iranian	1	3%	-	-	-	-	-	-	1	1%	
Ivorian	-	-	-	-	-	-	1	4%	1	1%	
Kosovar	-	-	-	-	-	-	1	4%	1	1%	
Liberian	1	3%	-	-	-	-	-	-	1	1%	

5 These are the nationalities reported by aliens when being registered by the IND (in the case of an asylum history) or on being encountered by the police or the Royal Dutch Marechaussee (in the case of placement under supervision). The registration may be based on documents or on the alien's personal statement. The preferred nationality corresponds with the strongest source document, if there was one. A person might have various aliases, in which case the preferred nationality that is entered is the nationality that is most likely, or the nationality that the alien has personally given (written information from DT&V, 23 April 2013).

6 This is a minor who was probably not correctly registered and therefore appears in the DT&V system. It is possible that the record of the D9 procedure was registered by mistake (written information from DT&V, 29 May 2013).

Nationality	2009		2010		2011		2012		Total		Top 5 (R)
	N	%	N	%	N	%	N	%	N	%	
Madagascan	-	-	1	3%	-	-	-	-	1	1%	
Malaysian	-	-	1	3%	-	-	-	-	1	1%	
Malian	-	-	-	-	2	4%	-	-	2	1%	
Moroccan	-	-	-	-	2	4%	-	-	2	1%	
Mongolian	2	6%	3 (3 rd)	10%	-	-	1	4%	6	4%	
Nigerien	-	-	-	-	1	2%	-	-	1	1%	
Nigerian	7 (2 nd)	19%	4 (1 st)	13%	7 (2 nd)	16%	5 (1 st)	19%	23	17%	1 st
Seychellois	-	-	-	-	1	2%	-	-	1	1%	
Sierra Leonean	2	6%	1	3%	3 (3 rd)	7%	5 (1 st)	19%	11	8%	4 th
Somali	-	-	-	-	-	-	1	4%	1	1%	
Surinamese	-	-	-	-	3 (3 rd)	7%	-	-	3	2%	
Taiwanese	-	-	-	-	-	-	1	4%	1	1%	
Togolese	1	3%	-	-	-	-	-	-	1	1%	
Ugandan	-	-	-	-	3 (3 rd)	7%	-	-	3	2%	
Venezuelan	1	3%	-	-	-	-	-	-	1	1%	
Zambian	-	-	-	-	1	2%	-	-	1	1%	
Unknown	-	-	4	13%	3	7%	1	4%	8	6%	
Total	36	100%	31	100%	45	100%	27	100%	139	100%	

Source: DT&V databases

Table B3.5 Reporting of human trafficking (2009-2012)

Report	2009		2010		2011		2012		Total	
	N	%	N	%	N	%	N	%	N	%
Report made	17	47%	16	52%	30	67%	18	67%	81	58%
No report made	12	33%	7	23%	9	20%	7	26%	35	25%
Unknown	7	19%	8	26%	6	13%	2	7%	23	17%
Total	36	100%	31	100%	45	100%	27	100%	139	100%

Source: DT&V databases

Table B3.6 Exit categories (2009-2012)

Exit category	2009		2010		2011		2012		Total	
	N	%	N	%	N	%	N	%	N	%
Permit granted ⁷	22	61%	17	55%	29	64%	12	44%	80	58%
Independent departure without supervision	8	22%	6	19%	10	22%	9	33%	34	25%
Independent departure under supervision	-	-	1 ⁸	3%	-	-	-	-	-	-
Forced departure from the Netherlands	1	3%	-	-	-	-	-	-	1	1%
Other forms of exit	5 ⁹	14%	5 ¹⁰	16%	5 ¹¹	11%	3 ¹²	11%	18	13%
Departure procedures still ongoing	-	-	2	7%	1	2%	3	11%	6	4%
Total	36	100%	31	100%	45	100%	27	100%	139	100%

Source: DT&V databases

Table B3.7 B9 permits granted within the category 'Permit granted' (2009-2012)

B9 permits	2009		2010		2011		2012		Total	
	N	%	N	%	N	%	N	%	N	%
B9 permit granted	8	36%	13	76%	23	79%	8	67%	52	65%
No B9 permit granted	5	23%	2	12%	-	-	2	17%	9	11%
Unknown	9	41%	2	12%	6	21%	2	17%	19	24%
Total	22	100%	17	100%	29	100%	12	100%	80	100%

Source: DT&V databases

- 7 This category can include different types of status. The status is not specified in the DT&V registration system but it was possible to specify whether it was 'other type of regular status granted' (which is explicitly not always a B9 permit) or 'asylum status granted' (written information from DT&V, 23 April 2013).
- 8 This was a person who left voluntarily with the assistance of the IOM.
- 9 These were four decisions at first instance on asylum applications and one case involving the termination of a request for mediation.
- 10 These were two decisions at first instance on asylum applications and three decisions on applications for regular residence (other than an application for a B9 permit).
- 11 These were one decision in first instance on an asylum application and four applications for regular residence (other than an application for a B9 permit).
- 12 These were one decision in first instance on an asylum application and two applications for regular residence (other than an application for a B9 permit).

B4 Tables relating to section 2.11 'Victims and return'

Table B4.1 Total number of victims who returned voluntarily (2008-2012)

Year	Number (N)	Index figure (2008 = 1,0)	Percentage growth compared with the previous year
2008	37	1	-
2009	25	0,7	-32%
2010	29	0,8	16%
2011	36	1	24%
2012	39	1,1	8%
Total	166	n.a.	n.a.

Source: IOM databases

Table B4.2 Gender of victims who returned voluntarily (2008-2012)

Year	Female		Male		Total	
	N	%	N	%	N	%
2008	36	97%	1	3%	37	100%
2009	22	88%	3	12%	25	100%
2010	28	97%	1	3%	29	100%
2011	36	100%	-	-	36	100%
2012	29	75%	10	26%	39	100%
Total	151	91%	15	9%	166	100%

Source: IOM databases

Table B4.3 Age categories of victims who returned voluntarily (2008-2012)¹

Year	0-14		15-17		18-23		24-30		31-40		41+		Unknown		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
2008	-	-	5	14%	17	46%	10	27%	3	8%	2	5%	-	-	37	100%
2009	-	-	2	8%	17	68%	3	12%	3	12%	-	-	-	-	25	100%
2010	-	-	2	7%	13	45%	8	28%	4	14%	1	3%	1	3%	29	100%
2011	-	-	1	3%	20	56%	10	28%	5	14%	-	-	-	-	36	100%
2012	-	-	4	10%	18	46%	13	33%	4	10%	-	-	-	-	39	100%
Total	-	-	14	8%	85	51%	44	27%	19	11%	3	2%	1	1%	166	100%

Source: IOM databases

¹ This is the age at the time of departure of victims who returned voluntarily, except for 2009, where it is the age at the time of the intake by IOM.

Table B4.4 Nationality or country of origin of victims who returned voluntarily (2008-2012)²

Nationality	2008		2009		2010		2011		2012		Total		Top 5 (R)
	N	%	N	%	N	%	N	%	N	%	N	%	
Albanian	1	3%	-	-	-	-	-	-	-	-	1	1%	
Brazilian	-	-	-	-	1	3%	-	-	-	-	1	1%	
Bulgarian	7 (2 nd)	19%	9 (1 st)	36%	6 (2 nd)	21%	11 (2 nd)	31%	7 (3 rd)	18%	40	24%	2
Colombian	1	3%	-	-	-	-	-	-	-	-	1	1%	
Cuban	-	-	-	-	-	-	1	3%	-	-	1	1%	
Czech	1	3%	-	-	-	-	1	3%	-	-	2	1%	
Estonian	-	-	-	-	-	-	1	3%	-	-	1	1%	
Filipino	1	3%	-	-	-	-	-	-	-	-	1	1%	
Ghanaian	-	-	-	-	1	3%	-	-	1	3%	2	1%	
Hungarian	12 (1 st)	32%	6 (2 nd)	24%	11 (1 st)	38%	13 (1 st)	36%	10 (1 st)	26%	52	31%	1
Indian	1	3%	-	-	-	-	-	-	-	-	1	1%	
Indonesian	-	-	-	-	-	-	2	6%	-	-	2	1%	
Latvian	-	-	1	4%	-	-	-	-	-	-	1	1%	
Lithuanian	1	3%	-	-	1	3%	-	-	-	-	2	1%	
Nigerian	2	5%	1	4%	2	7%	2	6%	2	5%	9	5%	4
Pakistani	-	-	-	-	-	-	-	-	8 ³	21%	8	5%	5
Polish	-	-	-	-	1	3%	-	-	-	-	1	1%	
Romanian	6 (3 rd)	16%	6 (2 nd)	24%	5 (3 rd)	17%	4 (3 rd)	11%	8 (2 nd)	21%	29	18%	3
Russian	-	-	1	4%	-	-	-	-	-	-	1	1%	
Serbian	-	-	1	4%	-	-	-	-	-	-	1	1%	
Sierra Leonean	-	-	-	-	-	-	-	-	1	3%	1	1%	
Slovakian	2	5%	-	-	1	3%	1	3%	-	-	4	2%	
South African	1	3%	-	-	-	-	-	-	-	-	1	1%	
Tanzanian	-	-	-	-	-	-	-	-	1	3%	1	1%	
Thai	1	3%	-	-	-	-	-	-	-	-	1	1%	
Ugandan	-	-	-	-	-	-	-	-	1	3%	1	1%	
Total	37	100%	25	100%	29	100%	36	100%	39	100%	166	100%	

Source: IOM databases

Dark blue shading indicates the top three nationalities or countries of origin of victims who returned voluntarily each year.

- The IOM registers the 'country of origin' or 'nationality' in alternate years. In the interests of readability, the term 'nationality' is used here.
- This was a single case of exploitation that involved eight possible Pakistani victims (written information from IOM, 19 June 2013).

Table B4.5 Forms of exploitation of victims who returned voluntarily (2009-2012)⁴

Risk of exploitation	2009		2010		2011		2012		Total	
	N	%	N	%	N	%	N	%	N	%
Sexual exploitation	22	88%	28	97%	26	72%	29	74%	105	81%
Exploitation outside the sex industry	3	12%	–	–	–	–	8	21%	11	9%
Unknown	–	–	1	3%	10	28%	2	5%	13	10%
Total	25	100%	29	100%	36	100%	39	100%	129	100%

Source: IOM databases

Table B4.6 Notifiers to IOM for voluntary return (2010-2012)

Notifiers	2010		2011		2012		Total 2010-2012	
	N	%	N	%	N	%	N	%
CoMensha	1	3%	2	6%	8	21%	11	11%
Shelters/victim support ⁵	22	76%	15	42%	15	39%	52	50%
Police	4	14%	9	25%	8	21%	21	20%
Aliens chain ⁶	–	–	3	8%	4	10%	7	7%
Other ⁷	2	7%	4	11%	4	10%	10	10%
Unknown	–	–	3	8%	–	–	3	3%
Total	29	100%	36	100%	39	100%	104	100%

Source: IOM databases

4 These data are not available for 2008.

5 The shelters and victim support organisations in any case include the following: Algemeen Maatschappelijk Werk (AMW); Fier Fryslân, HVO Querido, Prostitutie Maatschappelijk Werk (PMW) and Stichting Hulp en Opvang Prostitutie en Mensenhandel (SHOP). This category does not include emergency shelter. For a substantial proportion of possible victims, the IOM does register whether they were referred to the IOM for voluntary return by a shelter or a victim support organisation, but does not register precisely which agency or shelter it was.

6 In this case, the aliens chain consists of the Central Agency for the Reception of Asylum Seekers (COA), Nidos and Vluchtelingenwerk.

7 This category includes referrals by lawyers, embassies or municipal health services. Two cases (one in 2011 and one in 2012) involved suspected victims who wanted to arrange return via the IOM on their own initiative. There were also two occasions (in 2010) when a possible victim was referred to the IOM for voluntary return by an emergency shelter.

Table B4.7 Duration of period between intake and departure from the Netherlands (2008-2012)⁸

	2008		2009		2010		2011		2012		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
≤ one day	1	3%	-	-	1	3%	-	-	-	-	2	1%
> one day ≤ one week	10	27%	10	40%	4	14%	6	17%	3	8%	33	20%
> one week ≤ one month ⁹	20 ¹⁰	54%	14	56%	16	55%	21	58%	19 ¹¹	49%	90	54%
> one month ¹²	6	16%	1	4%	8	28%	9	25%	17	44%	41	25%
Total	37	100%	25	100%	29	100%	36	100%	39	100%	166	100%

Source: IOM databases

8 In some years (2008 and 2009), the date of the application to return was registered instead of the date of the intake (initial contact) by the IOM. An application to return is not necessarily made at the time of the intake interview since the victim might not yet have actually decided to return at that time. In the years that the date of the application to return was registered instead of the date of intake, therefore, it is possible that the victim had had an earlier intake interview with the IOM (written information from IOM, 19 June 2013).

9 A month here is 30 days.

10 For one person in 2008, the period between intake and departure from the Netherlands was 31 days, but the period did not fall within a single month.

11 For four persons in 2011, the period between intake and departure from the Netherlands was 31 days; in two cases the period fell within a single month and in two cases across months (since some months have 30 days and others 31 days).

12 A month here is 30 days.

Explanation of the research method used for the document analysis of the programmatic approach

The objective and research questions

The purpose of the document analysis was to gain an insight into the mechanics and effects of the programmatic approach to combating human trafficking. It focused on the programmatic approach employed in the experimental gardens, with specific attention devoted to the contribution of the approach in revealing the various forms of human trafficking, as well as the structure of the approach, the methods employed, exchange of information, cooperation and results.

The central research questions addressed in this analysis were as follows:

- Does the programmatic approach make a contribution to combating human trafficking?
- What are the underlying critical success factors for the programmatic approach?

Research methods

The study was based on an analysis of the administrative reports that were produced following the experimental gardens, published as well as unpublished. These reports were received from the PPS. In addition, there was a review and analysis of secondary literature, including policy documents, case law, legislation, studies and other relevant literature. The programmatic approach was first discussed in 2006; therefore, most of the documents collected for the analysis date from the period between 2006 and 2013.

Reservations about the research method

The analysis was exploratory in nature. In view of the great many chain partners involved in the programmatic approach in the experimental gardens, it was decided to conduct a document analysis, which has the advantage of being carried out relatively quickly. The major reservation, however, is that because the information is second-hand, it could have been censored or edited, and it is therefore impossible to compile a complete picture of the actual results and impact of the programmatic approach. Further research is therefore recommended.

A further reservation is that differences in the quality of the administrative reports could also have an effect on the findings arising from the analysis.

Furthermore, the focus was mainly on the programmatic approach in the experimental gardens. Because these projects were specifically designed to experiment with a programmatic approach, the findings cannot necessarily be translated directly to the effect of the programmatic approach outside the experimental gardens nor do they indicate that the same results would be achieved in a different setting.

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