ACADEMIC NETWORK FOR LEGAL STUDIES ON IMMIGRATION AND ASYLUM IN EUROPE

A NETWORK FOUNDED WITH THE FINANCIAL SUPPORT OF THE ODYSSEUS PROGRAMME OF THE EUROPEAN COMMISSION

RÉSEAU ACADÉMIQUE D'ÉTUDES JURIDIQUES SUR L'IMMIGRATION ET L'ASILE EN EUROPE

UN RESEAU FONDE AVEC LE SOUTIEN FINANCIER DU PROGRAMME ODYSSEUS DE LA COMMISSION EUROPEENNE

DIRECTIVE 2004/81 VICTIMS OF TRAFFICKING SYNTHESIS REPORT by GREGOR NOLL & MARKUS GUNNEFLO

STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
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II. GENERAL INTRODUCTION TO THE STUDY

by

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1. PRESENTATION OF THE STUDY

The study contains different types of reports:

1. Two hundred seventy **National Reports** about the implementation of each of the 10 directives in each of the 27 Member States.

2. Ten **Synthesis Reports** for each of the 10 directives about their implementation in the 27 Member States. The abbreviated names used in the study for the 10 directives concerned by this report are:

- Family reunification
- Long-term residents
- Temporary protection
- Reception conditions
- Victims of trafficking
- Qualification
- Assistance for transit
- Carriers Liability
- Facilitation of unauthorised entry and stay
- Mutual recognition (of expulsion)

Those two kinds of reports are all accompanied by a summary.

Each National report is accompanied by a **National Summary Datasheet**. This Summary underlines the most serious problems related to the transposition of the concerned directive in the concerned Member State. Moreover, translations of the most problematic national provisions have been included in this National Summary Datasheet as requested by the Commission.

Each Synthesis Report is accompanied by a **Summary Datasheet** which underlines the most important conclusions and the main problems related to the transposition of the concerned Directive in the 27 Member States. It contains also some recommendations addressed to the Commission.

There are also 27 **Executive Summaries** about the implementation of the 10 directives in each of the Member States.

Apart of the reports, the **Tables of Correspondence** are very important tools to check the transposition of the directives by Member States. One table has been prepared about the implementation of each of the 10 directives in each of the 27 Member States. They have been included in each National Summary Datasheet. It gives a precise overview of the transposition

of each provision (sometimes even of each sentence) of the concerned directive: the state of transposition (has actually the provision or not been transposed?), the legal situation (in case of transposition, is there or not a legal problem?) and a reference to the national provisions of transposition. Footnotes giving brief explanations have also been included in the tables. The reader who wants to have more information can easily find in column 2 of the tables a reference to the number of the question to consult the national report. Guidelines explain how the national rapporteurs were asked to complete the table and how they had to understand each mention proposed in the table.

The paper version of the reports is accompanied by a website. Apart from an electronic version of all the reports, the website gives also access to the full text of the national rules of transposition.

2. METHODOLOGY OF THE STUDY

The study has been done in the framework of the "*Odysseus" Academic Network for Legal Studies on Immigration and Asylum in Europe* by a very large team of persons organised as following:

1. The 120 national rapporteurs in charge of the national reports and tables in each Member State for one or several directives. A lot of the rapporteurs are members of the Odysseus Academic Network, but the Network has at this occasion been extended to other persons because of the very large scope of the study and the considerable amount of work to be done;

2. The 27 national coordinators in charge of ensuring progress of the work at national level and responsible for the drafting of the Executive Summary per Member State;

3. The six thematic coordination teams in charge of the synthesis reports per directive:
    - Prof. Kees Groenendijck assisted by Ricky Van Oers, Roel Fernhout and Dominique Van Dam in the Netherlands for Long-term residents as well as by Prof. Cristina Gortazar and Maria-José Castano from Madrid in Spain for certain aspects;
    - Prof. Kay Hailbronner assisted by Markus Peek, Simone Alt, Cordelia Carlitz and Georg Jochum in Germany for Assistance in cases of transit for removal, Mutual recognition of expulsion decisions, Carrier sanctions and Facilitation of unauthorised entry and residence;
    - Prof. Henri Labayle assisted by Yves Pascouau in France for Family reunification;
    - Prof. Gregor Noll assisted by Markus Gunneflo in Sweden for Temporary protection and Residence permits for victims of trafficking;
    - Prof. Thomas Spijkerboer assisted by Hemme Battjes and Bram Van Melle in The Netherlands for the part on Qualification of refugees and subsidiary protection & Prof. Jens Vedsted-Hansen assisted by Jesper Lindholm in Denmark for the part on Rights of refugees and of persons under subsidiary protection.

4. The General Coordination team in charge of the overall coordination, methodology and contacts with the Commission as well as for the update of the synthesis report on reception conditions previously done by the Odysseus Academic Network in 2006. Prof. Philippe De Bruycker based in Belgium was therefore assisted by Laurence De Bauche (researcher), Elona Bokshi (manager of the website and also in charge of gathering national rules of transposition) and Nicole Bosmans (administrative and financial secretariat).

The authors are indicated at the beginning of each report with their email address in order to allow the Commission to contact them easily in case of need. The General Coordinator wants to thank warmly all the persons who were involved in this enormous study for their work and in particular their patience because of the many versions of the reports that we exchanged through thousands of emails.

Four meetings were organised: a kick-off and an intermediate meeting with the general and thematic coordination teams, a meeting with the general coordinator and all the researchers assisting the thematic coordinators and a final plenary meeting including almost all national rapporteurs were drafts for the synthesis reports have been discussed.

NGOs were asked to contribute on a voluntary basis by completing the questionnaires or at least part of it. The Member States were given the possibility to comment about the draft national reports (without the table of correspondence). We got only a limited number of contributions and reactions.

The Commission has been closely associated to the study. It was in particular consulted at the beginning on the projects for questionnaires and for tables of correspondence.

All member States are covered by the study, including those not bound by several directives upon the request of the Commission which asked to be informed about the developments in those Member States in comparison with Community law. The reports and tables of correspondence have been completed as if those States were bound by the concerned directives.

3. EVALUATION OF THE RESPECT OF COMMUNITY LAW

The study is about the transposition of 10 directives by Member States. More precisely, it covers extensively the legal measures adopted by the Member States to transpose those directives. As the process of transposition was not finished in some Member States, the authors decided to take into consideration the projects of national norms of transposition when they were accessible. It is important to note that those projects have been analysed like if they had been adopted as standing, which means that subsequent changes at national level are not covered by the study. The cut-off date for the national rapporteurs is in general 1st October; later developments have only been taken into consideration whenever possible.

The practical implementation of the directives is covered as much as it has been possible to do so. The study came indeed early as the directives have just or even not yet been transposed, so that implementation by Member States is just starting and in particular that the jurisprudence available was very limited. The fact that no practical problems are mentioned does not mean that there are none, but that the rapporteurs have not been informed of their existence.

Explanations are given in the 10 synthesis reports about the transposition of the concerned directive. Fore the mandatory provisions which have not been transposed or pose a problem, the explanations are followed by boxes listing the Member States in order to help the Commission to draw clear conclusions and make the report easy to read. They have been built upon the basis of the tables of correspondence included in the national summary datasheets for each directive and Member State. The guidelines given to national rapporteurs to assess the situation in their Member State are reproduced with the tables to help the reader to understand the methodology.

Some important remarks about the way the transposition of directives was assessed have to be made. The research team had to find a way between different priorities: firstly and obviously, the jurisprudence of the Court of Justice which has strict requirements regarding legal certainty and is even quite rigid on some points. Secondly, pragmatism which leads to check if the directives are effectively applied in practice with less attention given to certain aspects of pure legal transposition. The coordinators tried to find a reasonable middle way between these two approaches and agreed together with DG JLS upon the following elements:

- Administrative circulars of Member States have been considered as formal means of transposition. As much as they are binding for the administrative agents in charge of individual cases, they indeed ensure that the directive is implemented in practice despite they might not be considered sufficient to fulfil the requirements of the Court of Justice regarding an adequate legal transposition. They are nevertheless mentioned in the tables of correspondence separately from laws and regulations.

- Pre-existing norms of transposition meaning laws, regulations and circulars which were adopted before the concerned directive and so obviously not to ensure its formal transposition, have been considered as a mean of transposition. Their content may indeed reflect the provisions of the directives in internal law. This is not in line with the jurisprudence of the Court which has considered that "legislation in force cannot in any way be regarded as ensuring transposition of the directive, which, in article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that directive or accompanied by such a reference" (Commission v. Germany, Case C-137/96 of 27 November 1997). All the ten directives covered by the study contain such an inter-connexion clause. A rigid application of this jurisprudence to our study would have led us to conclude that there is no transposition even when pre-existing rules ensure the implementation of the directive. In line with the approach of DG JLS to assess not only the formal transposition but also the application in practice of the directives, we have not done so and considered pre-existing national rules as a mean of transposition. They are nevertheless mentioned in the table of correspondence as pre-existing law, regulation or circular not under the item "Yes formally" but "Yes otherwise" together with general principles of internal law which the Court has accepted to consider under certain condition as a mean of transposition (Commission v. Germany, Case C-29/84 of 23 may 1985).

Despite the fact that we agreed with the Commission about these choices, the authors of this study considered necessary to make them explicit as they might seem inadequate from a purely legal point of view. Moreover, they have also decided to present in the tables of correspondence these possibilities separately from the classical ones. The Commission will so be perfectly informed about the situation regarding the transposition of the directives in the

Member States. The transparency of the information given in the tables will allow it to take a final position which could depart from the choices done at the beginning of this study.

Finally, the provisions about human rights appearing here and there in the ten directives require some explanations. The obligation for Member States to formally transpose provisions like for instance article 20 §4 of the Qualification directive[1], article 15 §4 of the directive on temporary protection[2] or article 3, §2 of the directive on mutual recognition of expulsion decisions[3], gave raise to long discussions between all the rapporteurs involved in the study. It has been impossible to convince the group of 130 lawyers involved in this study to take a common position about the necessity to transpose or not that kind of provisions. The General Coordinator of this study decided in this context to leave the national rapporteurs free to express their own opinion in their report and table. This means that divergent views might be expressed on the same point by the national rapporteurs. This situation reflects the fact that the lawyers involved in the study face obviously very different situations and react sometimes in relation with the context of their Member State by considering that reminding human rights is either superfluous because they are generally respected, either necessary because they care about possible violations.

From a strictly legal point of view, it appears that all the provisions cannot be considered in the same way. Some articles have an added value and are more than repetitions of human rights provisions, like article 10 of the directive on permits for victims of trafficking which after a first clause on the best interests of the child requires specifically an adaptation of the procedure and of the reflection period to the child, or article 17 of the directive on family reunification which refers to the jurisprudence of the European Court of Human Rights on the right to family life and specifies its scope. Others may be considered as redundant with international treaties like article 20 §4 of the Qualification directive or article 15 §4 of the directive on temporary protection. One may consider superfluous to transpose such a provision in the case of Member States which have ratified the Convention on the right of the child and ensure its implementation, for instance by recognising it a direct effect. More in general it appears that references to human rights in secondary legislation require more attention and that their legal value needs to be clarified (see recommendation on this point below).

[1] « *The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this chapter that involve minors* ».
[2] « *When applying this article, the Member States shall take into consideration the best interests of the child* ».
[3] « *Member States shall apply this directive with due respect for human rights and fundamental freedoms*».

4. RECOMMENDATIONS ABOUT THE EVALUATION OF THE IMPLEMENTATION OF DIRECTIVES

This part contains some general recommendations to the Commission about the way of checking transposition of directives by Member States (specific recommendations about the 10 directives are included in the Summary Datasheet of each synthesis report per directive). The following three recommendations are based on the experience acquired during this study covering 10 directives in 27 Member States.

- **Oblige the EU institutions to include tables of correspondence in the final provisions of any directive adopted**

It is clear that the method of checking the implementation of directives still needs to be improved. The increase of the number of Member States and of working languages makes it more and more difficult to check seriously the way they are legally transposed.

There is an absolute need to request the Member States to prepare a table of correspondence (also called concordance or correlation tables) indicating the national norms of transposition for each provision of a directive. The Member States which have prepared the transposition are the best authority to identify precisely these norms of transposition. Leaving it to the Commission or asking external experts to do this part of the job can be considered to large extend as a waste of time and resources. The Member States should be asked only to indicate the rules of transposition and of course not to evaluate its correctness. Even the NIF electronic database of the Commission used by the Member States to notify the rules of transposition is therefore not sufficient. It does not indicate precisely the national norm of transposition for each provision of the directives which might remain difficult to identify in very long national rules. Moreover, Member States send sometimes not only the norms of transposition as some directives require them to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive. If such a more or less standard provision has been included to allow the Commission to understand the general context of the transposition, it makes the search of the precise norm of transposition more difficult as some Member States transmit a lot of texts.

Remarkably, only one of the 10 directives under analysis contains a provision obliging the Member States to prepare a table of correspondence: following article 4 §2 of the directive on the facilitation of unauthorised entry, transit and residence, "*The Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this directive**, together with a table showing how the provisions of this directive correspond to the national provisions adopted**. The Commission shall inform the other Member States thereof*". The reasons explaining why only this directive contains such a requirement are not clear. This directive is the result of a State initiative, namely France. The other instruments proposed during the same period by France regarding carrier sanctions and mutual recognition of expulsion decisions do not contain such a clause. The same is true for the Commission's proposals at the origin of the other directives analysed.

There is a strong and urgent need to request such a table from Member States when they transpose a directive. The Commission should intensify its efforts undertaken since five years so that the European institutions are obliged to include such a clause in any directive adopted as envisaged in its Communication on "A Europe for results: applying Community law"[4].

[4] COM(2007)502 of 5 Septembre 2007.

- **Have a more in-depth debate about the choice of the right instrument instead of favouring directives**

A reflection on the type of instruments of secondary law to be used could also be fruitful. For instance, it seems that a Council decision would have been more appropriate than a directive to regulate the issue of assistance in cases of transit for the purposes of removal by air.

More important, directives should not be automatically chosen for reasons of subsidiarity or proportionality. One may wonder if they are not good reasons for choosing in certain cases a regulation instead of a directive, for example for the qualification of refugees and persons under subsidiary protection in order to ensure a more consistent implementation of the definitions of persons to be protected in the EU by the Member States.

- **Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights**

As underlined above, many references to human rights have been included in directives adopted in the field of immigration and asylum. Their legal value is doubtful when they only repeat or refer to International or European provisions on human rights. As they may create long discussions during the transposition process by Member States about their need to be transposed and can even create confusion about the precise origin of the concerned human right, they could be omitted and included if relevant in the preamble of the instrument. The need to clarify this point will increase with the entry into force of the new Lisbon Treaty transforming the EU Charter of human rights into a legally binding instrument.

III. SUMMARY DATASHEET AND RECOMMENDATIONS

1. MEMBER STATES COVERED AND NOT COVERED BY THE SYNTHESIS REPORT

The norms of transposition in Cyprus, Italy, Luxembourg and Hungary are not analysed in the synthesis report because information on the transposition of the Directive in these Member States were not available at the time of finalizing the synthesis report.[5]

2. MEMBER STATES BOUND AND NOT BOUND BY THE DIRECTIVE

The Directive is applicable to all Member States except Denmark (preambular paragraph 22), Ireland and the United Kingdom (preambular paragraph 21). The situations in these three Member States are therefore described in a separate chapter of the synthesis report.

3. STATE OF TRANSPOSITION OF THE DIRECTIVE

Number of Member States not bound by the Directive: 3

Number of Member States that have transposed the Directive: 22

Number of Member States that have not at all transposed the Directive: 1

Number of Member States where the process of transposition is pending: 1

MEMBER STATES	STATE OF TRANSPOSITION
AUSTRIA	- TRANSPOSED
BELGIUM	- TRANSPOSED
BULGARIA	- TRANSPOSED
CYPRUS	- TRANSPOSED
CZECH REPUBLIC	- TRANSPOSED

[5] For an assessment of the transposition of the Directive in Cyprus, Hungary Italy and Luxembourg (draft legislation), see the national reports.

DENMARK	- NOT BOUND BY THE DIRECTIVE
ESTONIA	- TRANSPOSED
FINLAND	- TRANSPOSED
FRANCE	- TRANSPOSED
GERMANY	- TRANSPOSED
GREECE	- TRANSPOSED
HUNGARY	- TRANSPOSED
IRELAND	- NOT BOUND BY THE DIRECTIVE
ITALY	- TRANSPOSED
LATVIA	- TRANSPOSED
LITHUANIA	- TRANSPOSED
LUXEMBOURG	- IN PROCESS OF BEING TRANSPOSED[6]
MALTA	- TRANSPOSED
NETHERLANDS	- TRANSPOSED
POLAND	- TRANSPOSED

[6] The Bill aiming at transposing the Directive was made public November 7, 2007 (see national report for Luxembourg).

PORTUGAL	- TRANSPOSED
ROMANIA	- TRANSPOSED
SLOVAKIA	- TRANSPOSED
SLOVENIA	- TRANSPOSED
SPAIN	- TRANSPOSED
SWEDEN	- TRANSPOSED
UNITED KINGDOM	- NOT BOUND BY THE DIRECTIVE

4. TYPES OF TRANSPOSITION OF THE DIRECTIVE

A majority of Member States have transposed the Directive mainly by amendments to pre-existing immigration legislation e.g. an Aliens act. Romania, Malta and Latvia have transposed the Directive into an act specifically dedicated to victims of trafficking.

With regard to the legal nature of the norms of transposition of the Directive, all Member States have transposed the Directive mainly in a legislative act except for the Netherlands where the norms of transposition of the Directive are found in a chapter dedicated to victims and witnesses of trafficking in human beings in the Aliens circular. In this context, it should be noted that the provisions regarding the temporary residence permit exist since 1988 and the provisions on reflection period exist since 1991 in the aforementioned Aliens circular.

Spain is reported not to have transposed the Directive formally, but trusts instead that pre-existing legislation is sufficient in order to meet the terms of the Directive. The same is true for Austria with regard to the residence permits for the persons concerned.

A vast majority of the Member States have chosen to apply the norms of transposition of the Directive to both adults and minors. In fact, only two Member States (Lithuania and Slovakia) have chosen not to apply the Directive to minors. In Lithuania as well as in Slovakia, the age of majority is 18 years.

Seven Member States have chosen to apply the norms of transposition of the Directive also in cases of an 'action to facilitate illegal immigration' (Austria, the Czech Republic, Malta, Portugal, Romania, Spain and Sweden).

5. EVALUATION OF THE NUMBER OF PROBLEMS (Quantitative assessment)

Based on a strict quantitative assessment of the reports (counting the occurrences of non-transposition, legal problems and practical problems in the tables of correspondence) it emerges that the transposition of the Directive is more problematic in one group of Member States than in other Member States. This group includes Austria, Belgium, Bulgaria and Spain. On the other hand, there are a couple of Member States where relatively few problems are reflected in the tables of correspondence. Among them are the Czech Republic, France, Germany, Latvia, Malta, Poland, Portugal, Slovakia and Sweden.

A word of caution must accompany a quantitative assessment based on the tables of correspondence. Firstly, the number of problems mentioned in the tables of correspondence does not say anything about the magnitude of the problems. Secondly, with regard to practical problems of implementation, some Member States have a long experience of the prosecution of traffickers and the protection of victims of trafficking while other Member States lack such experience. Quite obviously, more practical problems of implementation will be visible e.g. in the Netherlands, which issued 150 residence permits to victims of trafficking during 2006, than in a Member State where none or only one or two residence permit were granted.

6. EVALUATION OF THE SERIOUSNESS OF PROBLEMS

We have selected four Member States where serious problems concerning the transposition of the Directive are at hand. To be sure, there are serious problems in other Member States as well. These will be laid out in the horizontal overview of serious problems in the Member States under the next section.

As previously mentioned, Austria and Spain have not transposed the Directive formally but rely instead on pre-existing legislation in order to meet the terms of the Directive. However, it appears as the pre-existing legislation indeed fails to meet the requirements of the Directive in several key areas. Neither Spain nor Austria could refer us to a provision reflecting Article 5 of the Directive, laying down the obligation to inform the person concerned of the possibilities offered under the norms of transposition of the Directive in the respective Member State. Moreover, neither of the two Member States have a statutory provision on reflection periods for the persons concerned (Article 6). In Austria, this entitlement is instead based on an internal decree. Further, for the issuance of the residence permit, Austria relies on a provision on the grant of residence permit on humanitarian grounds, which fails to reflect the grounds laid down in Article 8(2) of the Directive. Rather, the criterion used refers to cases ‘worthy to be considered’ which implies wide-ranging discretion for the competent authority.

In Bulgaria, the norms of transposition of the Directive foresee the establishment of centres and shelters dedicated for the protection and assistance to victims of trafficking in human beings. Regrettably, no such shelters exist. Obviously this raises serious impediments for the victims that were supposed to receive protection and assistance through the centres and shelters in accordance with the domestic legislation reflecting Article 7 and Article 9 of the Directive. Also, there is no protection against expulsion decisions during the reflection period in Bulgaria. Its domestic legislation concerning the criteria for the issuance of the residence permit goes beyond the exhaustive list of criteria in Article 8(2) requiring *inter alia* a visa, and an entrance stamp. It is not clear how an illegal entry onto the Bulgarian territory will be judged. It is also required that proof is furnished that accommodation is ensured for the entire stay. It is not apparent if the shelters previously mentioned would be considered ‘accommodation’ within the meaning of the applicable provision.

In Lithuania, Article 1(2-4) of the Framework Decision is not taken into account. This means that Lithuania operates a more narrow definition of trafficking. Hence, the group of persons benefiting from the transposition norms of the present Directive will be *ipso facto* too narrowly defined. Also, there is no provision regarding the obligation to inform the victims of the possibilities offered under the Directive (Article 5). Also, the regulation of the reflection period is scanty to say the least only proscribing the enforcement of expulsion orders during the reflection period while nothing is said concerning for example the length of the reflection period. Further, the treatment granted before the issue of the residence permit is the same as that provided to any illegal immigrant which does not meet 'standards of living capable of ensuring their subsistence' (Article 7(1). Also, there is a public health criterion for withdrawal that is not on the exhaustive list of criteria for withdrawal of the residence permit in Article 14.

7. TYPES OF PROBLEMS (Horizontal approach throughout all the Member States)

7.1 The scope of the Directive – victims of trafficking in human beings (Article 3(1)

The definition of trafficking in the domestic law of the Member States need not be identical with that set out in the Framework Decision. This follows from the choice of the words "such as" in Article 2(c) of the present Directive. While there are no issues arising from a wider definition of the crime of trafficking in domestic law, a narrower definition will logically have consequences for the personal scope of the present Directive. Therefore, transposition will be underinclusive. Substantially underinclusive transposition will raise an issue of infringement. Where the domestic trafficking definition is totally altered in character in comparison to the definition of the Framework Decision, or narrower in a substantial way, it is beyond the relation of equivalence and comparability suggested by the choice of the term "such as" in Article 2(c).

The national legislation in five Member States is underinclusive in its personal scope (Germany, Greece, Lithuania, Malta and Spain).

In Germany, the wording of the definition of "trafficking in human beings" is not identical with the definition of "trafficking in human beings" in the Framework Decision. The wording "payments or benefits are given or received to achieve the consent of a person having control over another person" is not included in the German legislation.

In Greece, there is no transposition of Article 1(2) in the Framework Decision regarding the consent of a victim of trafficking. The same is the case regarding Article 1(3) in the Framework Decision stipulating specific alterations of the definitions where a child is involved in the impugned act. While the content of Article 1(2) is logically self-cancelling, and therefore not crucial for upholding the scope of the definition[7], the loss of 1(3) is serious,

[7] Consider seeing a person being coerced by a gunman. The moment we learn that that the apparent victim actually consents to the situation, we realize that we are faced with a playful imitation of a crime. Therefore, consensus to coercion is self-cancelling in language as much as in law. This legislative fallacy stems from the U.N. Protocol on Human Trafficking, which contains a definition serving as a blueprint for the Framework Decision. See Gregor Noll, "The Insecurity of Trafficking in International Law", in V. Chetail and M. Carlos-Tschopp (eds.), *Mondialisation, migration et droits de l'homme : le droit international en question*, Bruylant, pp. 343-362.

and implies a narrowing of the beneficiary group under the Directive. We believe it to be sufficiently serious to be regarded as an infringement of the Directive.

In Lithuania, Article 1(1) is transposed, while Article 1(2-4) of the Framework Decision is not taken into account. As explained above, we believe the omission of Article 1(3) and (4) to be sufficiently serious to be regarded as an infringement of the Directive.

Malta has not transposed Article 1(2) in the Framework decision regarding the consent of a victim of trafficking. For the reasons explained above, we consider this not to infringe the Directive.

In Spain the application of the norms of transposition of the Directive is circumscribed by the requirement that a criminal network needs to be involved in the action concerned. Apparently, at least three or more participants have to be involved in the network in question.

7.2 Information and identification (Article 5)

Austria, Spain and Lithuania have not transposed the provision on information to the third-country nationals concerned. Furthermore, the fact that the Directive requires the Member States to inform the victims of 'the possibilities offered under the Directive' while the norms of transposition in Swedish legislation merely prescribes that the person concerned shall be informed of the possibility of receiving a temporary residence permit is problematic. Persons concerned might not be properly informed of their rights where this possibility is not made use of. The Romanian transposition might prove to be problematic in practice since the relevant legislation fails to specify the authority obligated to give the information. The legislation further fails to specify the content of the information and the form for providing it (i.e. orally or in writing).

Informing victims of trafficking of their rights naturally presuppose that the victims of trafficking are identified as such. As a number of national rapporteurs emphasised, this is the most pressing issue for securing the interests of the individual. Under almost all cases covered by the Directive, this would necessarily be the case before a court judgment being handed down or even an indictment being filed. However, the wording of the present article gives a certain leeway to the discretion of the authority concerned. Therefore, practical problems do not always raise issues of infringement. We believe, though, that the Directive is infringed where the authority in question can be reasonably expected to have concluded that a person is likely to come under its scope. Absolute certainty cannot be expected, as it would presuppose conviction of the perpetrator in a final judgment.

7.3 Reflection period (Article 6(1))

All Member States except Austria and Spain offer a reflection period to the persons falling within the scope of the national norms of transposition of the Directive. However, the Austrian Federal Ministry of the Interior claims that the third country nationals concerned are entitled to a reflection period of at least 30 days. This entitlement is based on an internal decree ("handbook to SRA"). An explicit statutory provision to this effect is, however, still lacking in Austrian law. The absence of a duty under national law to provide beneficiaries with a period of reflection raises issues of infringement in the case of Austria and Spain.

Lithuanian legislation lacks any indication of the length of the reflection period. Considering that Article 6(1) clearly states that the duration and the starting point of the reflection period shall be determined according to national law the silence on the length of the reflection period in the Lithuanian legislation must be considered an infringement of the Directive.

7.4 Proscription of the enforcement of expulsion decisions (Article 6(2))

A majority of the Member States offering a reflection period for the persons falling under the norms of transposition of the Directive have prohibited the enforcement of expulsion orders during the reflection period. However, in Belgium, Bulgaria and Poland, the enforcement of expulsion decisions during the reflection period meets no legal obstacles. The victims of trafficking in Belgium do not receive a residence permit of any kind during the reflection period, but, instead, an order to leave the territory expiring 45 days after the date of issue. During these 45 days, there is no protection from expulsion; that is, the order to leave prohibits the expulsion before the ending of the 45 days period. In practice, though, the authorities do not enforce an order to leave the territory before the date of expiry. In Poland, there is a similar situation (legal obstacles to expulsion lacking), but nevertheless an administrative practice in conformity with the proscription of enforcing expulsion orders. In Bulgaria there is neither any provision on the protection from enforcement of expulsion orders nor any practice to this effect. The conclusion regarding the above-mentioned Member States is that the situation in Bulgaria raises an issue of infringement, while the situation in Poland and Belgium may do so, if the practice mentioned is not compulsory under domestic law.

7.5 Treatment granted to persons falling within the scope of the Directive

7.5.1 Standards of living capable of ensuring subsistence (Article 7(1) and Article 9(1)

In Bulgaria, the relevant legislation foresees the establishment of centres and shelters for protection and assistance to the victims of trafficking both before and after the issue of the residence permit. The persons concerned are supposed to be accommodated in the shelters where they should be offered support in kind. However, as previously mentioned, such shelters do not exist. After the issue of the residence permit, the persons concerned have access to a number of benefits such as social support in cash or in kind on equal footing with nationals. The Bulgarian Rapporteur concludes that since the social support is minimal for Bulgarian citizens, it is also minimal and insufficient for victims of trafficking holding a permit.

In Lithuania, there are no special rights foreseen for the persons concerned neither before nor after the issuance of a residence permit. Consequently they receive the same treatment as illegal immigrants, which imply assistance in kind. If they lack an abode, they will be detained in the Foreigners Registration Centre where they are provided with food and accommodation. Detention is however only possible before the issuance of the residence permit.

7.5.2 Taking due account of the safety and protection needs of the persons falling under the Directive (Article 7(2) and Article 9(1))

National rapporteurs for Austria, Belgium, Estonia and Romania indicate that there is no formal transposition of the provision in question. Neither is there any pre-existing legislation on the protection of the persons concerned. Given the importance of effective protection of

victims of trafficking to achieve the aims of the Directive, the absence of predictable protection in the named Member States gives rise to serious concern. We believe that the phrase "in accordance with national law" implies that national law must provide for some norm regulating the matter. Therefore, the absence of any pertinent norm raises issues regarding the proper transposition of the Directive in the named Member States.

7.5.3 Issuance and renewal of the residence permit (Article 8(2))

Belgium, the Czech Republic and Bulgaria seem to apply more extensive criteria for issuing residence permits compared to the standard of the Directive. In Belgium the victim of trafficking is required to prove his/her identity with a passport or identity card. Similarly, in the Czech Republic, the person concerned must present a passport (if the person concerned is in possession of a passport), a document confirming that he or she has an accommodation, as well as passport photographs. The criteria for the issuance of the residence permit in Bulgaria are problematic in a number of ways. The applicable provision requires the victim to submit: 1) an application; 2) a document to prove that the fee of 250 euros for the issue of the residence permit is paid; 3) a photocopy of the passport with the photo, personal data, the entrance visa and the entrance stamp (as previously mentioned, it is not apparent how an illegal entry onto the Bulgarian territory will be judged); 4) Evidence to prove accommodation (as previously mentioned, it is not apparent if the shelter that should be provided by the authorities would be considered 'accommodation' within the meaning of the applicable provision); 5) a document issued by the competent authorities authorising the special protection status i.e. the prosecutorial act. The criteria mentioned under points 3 and 4 must be considered infringements of the Directive since they considerably circumscribe the possibility of receiving a residence permit under the Directive. Also, the fee of 250 euros quite obviously will act as a deterrent or even make it impossible for quite a few victims of receiving a permit.

The Spanish legislation contains a provision prescribing that the victim has to cooperate with the authorities in accordance with Article 8(1)(b). However, additional criteria have apparently developed in the administrative practice, i.e. that the victim needs to be able to identify him/herself with a passport or registration certificate. Also, he or she cannot continue exercise prostitution even though this is done outside the network charged for the crime concerned.

The Austrian legislation stands out from the legislation in the rest of the Member States. Austria applies the criterion 'considerable case' for the grant of the temporary residence permit to victims of trafficking. This means that only third-country nationals in situations *worthy of being considered* are entitled to a permit. The legislation does not further specify the definition of the wording "considerable case". The Austrian Rapporteur concludes that this is within the discretion of the competent authority.

Since Article 8(1) merely obliges Member States to consider the opportunity presented by prolonging the beneficiary's stay, the extension of the list of criteria would appear to be within the discretion of the Member States. However, Article 8(2) states that, without prejudice to a specified exception (reasons relating to public policy and to the protection of national security), 'the fulfilment of the conditions referred to in paragraph 1 shall be required'. If this phrase shall not be interpreted as obsolete, it must be taken to suggest that no additional criteria may be imposed. Furthermore it must be concluded that vague criteria implying wide-ranging discretion of the competent authority neither can be considered to be in conformity with Article 8(1). Therefore, it is our contention that Belgium, Bulgaria the

Czech Republic and Austria have not transposed Article 8 properly. Furthermore, the situation in Spain might constitute a problem if the administrative practice is obligatory in the sense that victims are not eligible for the residence permit if the additional criteria mentioned above are not met.

7.5.4 Period of validity of the residence permit (Article 8(3) first sentence)

In a few Member States (Belgium, Bulgaria and Estonia) there is either no minimum period of validity at all or the minimum period of validity is shorter than six months. In Belgium the residence permit is valid for 3 months, but the authorities may renew the residence permit once for another three months. In Bulgaria there is neither a minimum nor a maximum period of validity. The residence permit is instead valid for as long as the criminal procedure continues. In Estonia there is no minimum period of validity. The residence permit is instead issued for the time indicated in the application by the prosecutor. There is, however, a maximum period of validity of one year. Neither of these solutions can be considered in conformity with Article 8(3) stipulating unconditionally "the residence permit shall be valid for at least six months."

7.5.5 Renewal of the residence permit (Article 8(3), last sentence)

In Belgium the residence permit is valid for three months and renewable once, for an additional three months. The stipulation of a maximum period of validity in Belgium gives rise to concern. A situation might arise where prosecution continues after the maximum period has elapsed and the conditions for issuing the residence permit still exists. In this case, it will not be possible to prolong the permit under national law, because the maximum period of validity has been reached. While the purpose of the Directive (as set out in Article 1) is to define the conditions for granting residence permits of *limited* duration, the Directive links it *to the length of the relevant national proceedings.* Therefore, a maximum period of validity without flexibility as regards the proceedings of the criminal trial seems to thwart the objectives pursued by the Directive. Therefore, it would be of utmost importance to follow up on the practice in the future.

The Austrian transposition of Article 8 constitutes a special case. It is left to the discretion of the competent authority to decide if the circumstances meet the criteria "considerable circumstances". The conclusion under that vague criteria implying wide-ranging discretion of the competent authority could not be considered to meet the terms of Article 8(1) i.e. the criteria for the issue of the permit. The same is true concerning the criteria for renewal of the residence permit.

7.5.6 Withdrawal of the residence permit (Article 14)

Five Member States seem to exceed the exhaustive list of criteria for the withdrawal of the residence permit as provided in Article 14 (Finland, Lithuania, Poland, Slovenia and Sweden). In Sweden and Lithuania, the residence permit may be withdrawn if the person concerned is on the list of persons prohibited to enter the respective Member State. Also, in Sweden the residence permit may be withdrawn if the victim has knowingly supplied incorrect information or knowingly suppressed circumstances that have been important for obtaining the permit. Lithuania furthermore operates public health criteria for the withdrawal of the residence permit that are not listed in Article 14. In Poland general rules on withdrawal of residence permits apply. At least one of the criteria exceeds the cases mentioned in Article 14 namely that the permit shall be withdrawn if the holder of the permit has misused the permit i.e. used it for purposes other than those the permit was granted for. In Finland as well as in Slovenia the giving of false or forged information on identity is a ground for withdrawal of the permit. This ground is not listed in Article 14.

7.5.7 Minors (Article 10)

Article 10(a) requires the Member States that have recourse to the option of applying the Directive to minors to take due account of the best interests of the child and to ensure that the procedure is appropriate to the age and maturity of the child.

There are a variety of approaches to this particular requirement among the Member States. In fact, only a few Member States (Romania, Finland, Spain, Estonia and Sweden) have an explicit provision on taking account of the best interests of the child in their national legislation. However, some of the national rapporteurs, for example the national rapporteurs for Poland, the Czech Republic and Germany, considers the principle in force in their respective Member States because of ratification of the convention on the Rights of children and/or general laws or either binding or persuasive precedent.

We believe that treaty obligations under the UN Convention on the Rights of the Child or constitutional provisions do not necessarily create sufficiently precise obligations to address the best interests of the child in the specific contexts of the present Directive. Some detail as to how Member States adapt the handling of residence permits and the reflection period would appear to be necessary.

We find support for this position in the practice of the U.N. Committee on the Rights of the Child in monitoring the Convention on the Rights of the Child. In particular, referral is made to General Comment No. 5 (2003):

> "States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of "self-execution" applies and others where it is claimed that the Convention "has constitutional status" or has been incorporated into domestic law."[8]

[8] Committee on the Rights of the Child, General Comment No. 5 (2003), CRC/GC/2003/5 27 November 2003, para. 19.

As regards the obligation that Member States "shall ensure that the procedure is appropriate to the age and maturity of the child" none of the Member States have introduced a specific provision in their respective legislation reflecting this particular passage in Article 10(a) and only a few rapporteurs report of specific measures taken in order to ensure this end. In Finland, for example, a multidisciplinary team is put together to assist the director of the reception centre and assess the needs of the victim of trafficking. The team shall hear the opinion of child protection specialists in order to be able to decide on appropriate measures for the child. Furthermore, a couple of national rapporteurs report on special procedures for a child witness in the criminal procedure. However, the word *procedure* in Article 10 should probably be understood as referring to the procedure of granting reflection periods, the procedure related to the issue of the residence permit etcetera and not the criminal procedure.

8. IMPACT OF THE DIRECTIVE ON THE MEMBER STATES

8.1 Evolution of Internal Law due to the Transposition (Q.29)

A majority of the Member States have reportedly been operating a very limited legislation on protection of victims, or none at all, before the transposition of the Directive. Most of these Member States have to this date transposed legislation more favourable for the individual than previous national rules and broadly in line with the Directive. However, this rather bright impression is darkened by considerable problems both with the transposition of the Directive and the practical implementation of the norms of transposition of the Directive.

The Finnish rapporteur suggests, that, due to the high threshold for the trafficking crime set in the first criminal trial against a trafficker, indictments will be rare and hence also the application of the norms of transposition of the present Directive. We believe that the described problem is related to difficulties and antinomies contained in the trafficking definition as prescribed in the U.N. Trafficking Protocol, and can thus not be ascribed to the implementation of the Directive.

The rapporteurs for two Member States (Bulgaria and Lithuania) indicate that the transposition of the Directive certainly did imply more favourable standards for the persons concerned but still less favourable than the standard set by the Directive. Also, the norms of transposition of the Directive in Bulgaria are reported not to have had any effect in practice. In Lithuania, the right to a reflection period and the residence permit only formally exist, but are unavailable in reality. Furthermore, provisions on the right to information and rights to specific social rights to ensure subsistence have not been transposed.

In three Member States the legislative position is held to be status quo, providing a protection less favourable than set by the Directive (Austria, Belgium and Spain). In Austria, no formal transposition has been made regarding residence permit. The permit is instead issued on humanitarian grounds. Furthermore, since such a permit is a requirement for access to social care, the Austrian legislation is less favourable in this respect as well. In Belgium, the transposed legislation is less favourable than the Directive in several respects: The length of the first residence permit is set to 3 months only, the issuance of a permit requires a stricter validation of identity and work permits are not granted (since this fall under regional, not federal, competence). In Spain, there is a pre-existing legal regime similar to the one laid

down in the Directive. No further formal transposition has been made, although the current legislation is reported not to meet the standards of the Directive.

Sweden, the Netherlands and Belgium had pre-existing legislation on the protection of victims. The transposition of the Directive in Sweden implied more favourable conditions, in particular a more predictable situation for the persons concerned with regard to *inter alia* the reflection period. There are indeed some gaps in the transposition of the Directive but at the same time the provisions on the access to social benefits and medical care goes further than the Directive. In the Netherlands, the legislation is more favourable in several aspects: the reflection period is longer and a residence permit can be issued also to a non-victim if the witness is valuable in the criminal proceedings. The later is true also in Sweden. In Belgium the transposition reportedly had no significant impact on the pre-existing legislation and the rapporteurs further concludes that the Belgian legislation is more restrictive than the Directive with reference to the fact that the victims have to prove their identity with passport or ID card and that, where the Directive provides a 6 months residence permit, the Belgian law only provides for a residence permit valid for 3 months subject to renewal for an additional 3 months.

8.2 Tendency to copy the provisions of the Directive (Q.31.A)

Four Member States (Belgium, Estonia, Malta and Romania) have reportedly wholly or partially pursued ‘cut and paste’ techniques in the transposition of the Directive. Redrafting or adaptation to national circumstances has been relatively limited and the implementing legislation adopts, in a varying degree, the same or very similar language as the Directive itself. The rapporteur for Estonia holds that this approach might constitute a problem for the practical implementation.

8.3 Problems with the translation (Q.33)

The rapporteur for Lithuania mentions that there seems to be a problem with the translation of Article 12(2) of the Directive. In the Lithuanian language-version of the Directive, Article 12 (2) is phrased as a mandatory and not an optional provision. Following the rapporteur, this may create problems if special programmes for victims were created, since the Lithuanian text seems to make participation in such programs a requirement for the granting of the residence permit.

9. ANY OTHER INTERESTING PARTICULARITY TO BE MENTIONED ABOUT THE TRANSPOSITION AND THE IMPLEMENTATION OF THE DIRECTIVE IN THE MEMBER STATES

After a careful review of the responses, the authors of the present report believe that all interesting particulars related to the implementation of the Directive have been integrated contextually into the report.

IV. EUROPEAN SYNTHESIS OF THE NATIONAL REPORTS[9]

1 Analysis of the content of the norms of transposition

1.1 General provisions (Chapter I)

The first chapter of the Directive contains *inter alia* provisions on the scope of the Directive.

1.1.1 The scope - 'victims of trafficking in human beings' (Article 3(1) Q.5.A-B)

According to the mandatory provision in Article 3(1) the Member States shall apply the Directive to the third-country nationals who are, or have been, victims of offences related to 'trafficking in human beings'. 'Trafficking in human beings' is defined in Article 2(c) of the present Directive. It covers 'cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA'.

Article 1 and 2 of the Framework Decision reads as follows:

> *Article 1*
> 1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
>
> the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
>
> (a) use is made of coercion, force or threat, including abduction, or
>
> (b) use is made of deceit or fraud, or
>
> (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
>
> (d) payments or benefits are given or received to achieve the consent of a person having control over another person
>
> for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
>
> for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.
>
> 2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
>
> 3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking

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offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, 'child' shall mean any person below 18 years of age.

Article 2
Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

The definition of trafficking in the domestic law of the Member States need not be identical with that set out in the Framework Decision. This follows from the choice of the words "such as" in Article 2(c) of the present Directive. While there are no issues arising from a wider definition of the crime of trafficking in domestic law, a narrower definition will logically have consequences for the personal scope of the present Directive. Where the domestic trafficking definition is totally altered in character in comparison to the definition of the Framework Decision or narrower in a substantial way, it is beyond the relation of equivalence and comparability suggested by the choice of the term "such as" in Article 2(c).

The national legislation of the Member States
All Member States have transposed the mandatory provision in Article 3(1). Consequently, the norms of transposition in each Member State are applicable to victims of offences related to 'trafficking in human beings'. However, an identical understanding of the term 'trafficking in human beings' is lacking. This state of disharmony could impact negatively on the proper transposition *ratione personae* of the present directive. Where the law of a Member State operates a more narrow definition of trafficking than the one enshrined in Articles 1 and 2 of the quoted Framework Decision, it follows that the group of persons benefiting from the transposition norms of the present Directive will be *ipso facto* too narrowly defined. Therefore, transposition will be underinclusive. Substantially underinclusive transposition will raise an issue of infringement.

Conversely, where a Member State operates a definition of trafficking broader than the one enshrined in Articles 1 and 2 of the Framework Decision, the group of beneficiaries benefiting from transposition norms related to this Directive will be wider than required by Community law. Obviously, no issues of infringement can arise in the latter type of case, which we choose to term "overinclusive" in the following.

In certain Member States the transposition of the Framework decision (2002/629/JHA) is close or identical to its very text, or, alternatively, features a reference to the Framework decision (Austria, Belgium, Estonia, Latvia, Poland and Slovakia). However, the Belgian Criminal Code feature an offence related to the activities of "sleep merchants". The term refers to owners who rent furnished rooms or mattresses in overpopulated rooms or insalubrious buildings. Victims of these "sleep merchants" can be third-country national who are victims of offences related to trafficking in human beings, but they are not within the scope of the Belgian norms of transposition of the Directive.

In a few Member States, transposition is not replicating the definitions in the Framework Decision, but the content of the applicable national norm is nevertheless, according to the national rapporteurs, equivalent to it (Bulgaria, the Czech Republic, Finland, the Netherlands and Romania). However, the Bulgarian rapporteur mentions the omission of the passage 'even if they have illegally entered the territory of the Member States' in the domestic law as a problem (cf. Article 3(1) of the present Directive). If the fact that a victim has illegally entered the territory of Bulgaria is seen as a pretext for declining that person the residence

permit, the non-transposition of this passage is quite obviously a problem. There is however no indication of such practice. Also, recent case-law in Finland point towards a narrow interpretation of the trafficking crime, which might not only constitute a problem for the implementation of the Framework Decision but also for the implementation of the present Directive.

The national legislation in five Member States is underinclusive in its personal scope (Germany, Greece, Lithuania, Malta and Spain).

The French definition fails to mention the constellation described in article 1(1)(d) of the Framework Decision. It also lacks an equivalent to article 1(2) of the Framework Decision. While the content of Article 1(2) is logically self-cancelling, and therefore not crucial for upholding the scope of the definition[10], the loss of 1(1)(d) is serious, and implies a narrowing of the beneficiary group under the Directive. We believe it to be sufficiently serious to be regarded as an infringement of the Directive.[11]

In Germany, the wording of the definition of "trafficking in human beings" is not identical with the definition of "trafficking in human beings" in the Framework Decision. The wording "payments or benefits are given or received to achieve the consent of a person having control over another person" is not included in the German legislation.

In Greece, there is no transposition of Article 1(2) in the Framework Decision regarding the consent of a victim of trafficking. The same is the case regarding Article 1(3) in the Framework Decision stipulating specific alterations of the definitions where a child is involved in the impugned act. While the content of Article 1(2) is logically self-cancelling, and therefore not crucial for upholding the scope of the definition[12], the loss of 1(3) is serious, and implies a narrowing of the beneficiary group under the Directive. We believe it to be sufficiently serious to be regarded as an infringement of the Directive.

In Lithuania, Article 1(1) is transposed, while Article 1(2-4) of the Framework Decision is not taken into account. As explained above, we believe the omission of Article 1(3) and (4) to be sufficiently serious to be regarded as an infringement of the Directive.

Malta has not transposed Article 1(2) in the Framework decision regarding the consent of a victim of trafficking. For the reasons explained above, we consider this not to infringe the Directive.

In Spain the application of the norms of transposition of the Directive is circumscribed by the requirement that a criminal network needs to be involved in the action concerned. Apparently, at least three or more participants have to be involved in the network in question.

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[10] Consider seeing a person being coerced by a gunman. The moment we learn that that the apparent victim actually consents to the situation, we realize that we are faced with a playful imitation of a crime. Therefore, consensus to coercion is self-cancelling in language as much as in law. This legislative fallacy stems from the U.N. Protocol on Human Trafficking, which contains a definition serving as a blueprint for the Framework Decision. See Gregor Noll, "The Insecurity of Trafficking in International Law", in V. Chetail and M. Carlos-Tschopp (eds.), *Mondialisation, migration et droits de l'homme : le droit international en question*, Bruylant, pp. 343-362.

[11] Cf. the French report and table of correspondence. The French rapporteur is of the opinion that French legislation nevertheless is in line with the Directive.

[12] See the argument and reference *supra*.

The scope of the Swedish norms of transposition of the Directive is much wider than what is required by Article 3(1) and Article 2(c) of the present Directive referring to Articles 1 and 2 of the Framework decision. The norms of transposition of the Directive in Sweden are not only applicable for victims of 'trafficking in human beings' but for any foreigner who is about to give evidence in a criminal action, even citizens of the EEA. Obviously, this raises no issue of infringement.

The legislation in Portugal states that the national legislation will be applicable for victims of 'trafficking in human beings' but there is not yet a more precise definition of 'trafficking in human beings', which means that it is not yet possible to determine if the Portuguese legislation meets the requirements of the Directive.

The crimes of aiding, abetting or attempt to commit trafficking in human beings (Article 2 in the Framework Decision) may trigger the norms of transposition of the present Directive in all Member States. To be sure, the norms of transposition of the Directive are applicable in cases where a perpetrator is charged for instigation of, aiding, abetting or attempt to commit offences concerning trafficking in human beings in all Member States.

Unfortunately, no information is available for the majority of Member States on the number of persons having received residence permits under the norms of transposition of the Directive in 2006. In those Member States where information indeed is available, the numbers are very low (e.g. two persons in the Czech Republic[13], one person in Finland and not a single person in Lithuania). The Netherlands stands out as an exception, where 150 victims of trafficking were granted a temporary residence permit. It should be noted though that there is 20 years of experience of the granting of temporary residence permits to victims of trafficking in the Netherlands which may explain the high numbers. In Greece, 24 persons received a temporary residence permit as victims of 'trafficking in human beings' and there were 27 renewals during the year of 2006. Here, an explanation may in part be sought in the geographical location of Greece along migration trajectories.

Article 3(1) Q.5.B: The scope of the Directive regarding 'victims of trafficking in human beings'	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Belgium, Bulgaria, Finland, Germany, Greece, Lithuania, Spain
PRACTICAL PROBLEM	

1.1.2 The scope - an 'action to facilitate illegal immigration' (Article 3(2) (Q. 5.A and C)

According to Article 3(2), which is an optional provision, the Member States may apply the directive to third-country nationals who have been the subject of 'an action to facilitate illegal immigration (see Article 2(b) referring to Articles 1 and 2 of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence).

Article 1 and 2 of the Directive 2002/90/EC reads as follows:

[13] The relevant provisions came into force in September 2006.

Article 1
1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Article 2
Each Member State shall take the measures necessary to ensure that the sanctions referred to in Article 1 are also applicable to any person who:

(a) is the instigator of,

(b) is an accomplice in, or

(c) attempts to commit

an infringement as referred to in Article 1(1)(a) or (b).

The national legislation of the Member States

Seven Member States have chosen to apply the norms of transposition of the Directive also in cases of an 'action to facilitate illegal immigration' (Austria, the Czech Republic, Malta, Portugal, Romania, Spain and Sweden). With regard to the treatment granted to this group of beneficiaries, all seven countries reportedly apply the same provisions as for victims of trafficking in human beings. In the following only cases where the domestic legislation deviates from Council Directive 2002/90/EC will be mentioned.

In the Czech Republic Article 1(1)(b) has indeed been transposed but the present Directive does not apply in cases where a perpetrator is charged under the equivalent to Article 1(1)(b) in domestic law.

In Spain the application of the norms of transposition regarding cases of an 'action to facilitate illegal immigration' is circumscribed by the requirement that a criminal network needs to be involved in the action concerned. This makes for a narrower scope than the Directive suggests.

As Article 3(2) of the Directive is optional, no issue of infringement can be raised in the named cases.

With regard to the instigation of, accomplice in, or attempt to commit an 'action to facilitate illegal immigration' (see Article 2 of the Directive 2002/90/EC) these are crimes that may trigger the norms of transposition of the present Directive in all the Member States that have transposed optional Article 3(2).

1.1.3 The scope – Adults and minors (Article 3(3) Q.6.A-C)

According to the mandatory provision in Article 3(3) the Directive *shall* apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member Sates concerned. According to the optional provision in Article 3(3) the Member States *may* also decide to apply the Directive to minors under the conditions laid down in the Member States national law.

The national legislation of the Member States
A vast majority of the Member States have chosen to apply the norms of transposition of the Directive to both adults and minors. In fact, only two Member States (Lithuania and Slovakia) have chosen not to apply the Directive to minors. In Lithuania as well as in Slovakia, the age of majority is 18 years.

In most Member States, no specific criteria for the applicability of the norms of transposition of the Directive to minors exist. However, in Estonia the application of the national legislation to minors is subject to the criteria that it is within the interest and for the benefit of the rights of the minor. In Belgium the norms of transposition of the Directive is only applicable to *unaccompanied* minors.

The Latvian legislation provides an opportunity for an accompanying minor of a victim of trafficking to receive a residence permit. The same is true for the Czech Republic with regard to children and spouses already on the territory of the Czech Republic at the time of the victim claims a residence permit on the ground of being a victim of trafficking. The Dutch legislation makes it possible for a victim who has got children in his/her home country to receive a temporary residence permit for the child for the same duration as the temporary residence permit of the victim her- or himself. Further, the Czech legislation allows family members to the victim to seek a residence permit, on condition that they already resided in the Czech Republic at the time when the victim presented a request for protection.

1.2 Procedure for issuing the residence permit (Chapter II)

Articles 5-8 (Chapter II) in the Directive contains provisions on; the duty to inform persons that may fall into the scope of the Directive, the reflection period, the treatment granted before the issue of the residence permit[14] and the issue and renewal of the residence permit.

1.2.1 Information given to the third country nationals concerned (Article 5) (Q.8.A-D)

Article 5 stipulates that when the competent authorities of the Member States take the view that a third-country national may fall into the scope of the Directive, they shall inform the person concerned of the possibilities offered under the Directive. Member States *may* decide

[14] In order to avoid repetition the treatment granted to the persons concerned before the issue of the residence permit will be analysed together with the treatment granted after the issue of the residence permit (see section 2.3 below).

that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

The national legislation of the Member States

All Member States except Austria, Spain and Lithuania, have transposed the provision on information to the third-country nationals concerned. In most of the Member States that have transposed this provision public authorities have been given the responsibility to provide the relevant information such as the police or the prosecutor for the crime concerned or the immigration authorities. In some Member States, notably in Slovenia and in Poland, NGOs are involved in the providing of information. In several Member States (Belgium, Finland, France, Germany, Poland, Slovakia and Slovenia) the information is given both orally and in writing.

The fact that the Directive requires the Member States to inform the victims of 'the possibilities offered under the Directive' while the norms of transposition in Swedish legislation merely prescribes that the person concerned shall be informed of the possibility of receiving a temporary residence permit is problematic. We believe that this creates a risk that the persons concerned are not properly informed of their rights.

The Romanian transposition might prove to be problematic in practice since the relevant legislation fails to specify the authority obligated to give the information. The legislation further fails to specify the content of the information and the form for providing it (i.e. orally or in writing or both).

For certain Member States (notably Poland, Greece, the Netherlands, Estonia and Bulgaria), national rapporteurs indicate the existence of practical problems of implementation related to information duties, even though the respective Member States have indeed transposed Article 5 of the Directive. In Poland, the information routines function satisfactorily as far as the activities of the appointed NGO is concerned. However, the identification of the victims as well as providing them with the necessary information at the moment of the first contact with the public authorities does not function satisfactorily. According to certain Greek NGOs, information leaflets are not always provided, and police officers are frequently inadequately informed. In the Netherlands, the information routines with the police have steadily improved over the last couple of years. Nonetheless, there are indications that at times police officers fail to adequately inform the presumptive victim about the reflection period or put victims put under pressure to press charges immediately. Also, in some cases the victim, despite indications of trafficking, is taken into custody as illegal alien before he/she is informed about his/her rights as a presumed victim of trafficking (information from jurisprudence). This is against the official policy holding that at the slightest indication of trafficking the person should be informed about the possibility of pressing charges and the reflection period.

The Estonian rapporteur believes that it would be a better solution to let an NGO inform the persons concerned, since there is both a problem of trust between the victim and the investigative officers and/or the prosecutor and a risk of the investigative authorities only informing the victims if this furthers the interests of the case at hand.

In Bulgaria, the responsibility to inform victims is shared between the authority responsible for the pre-trial criminal investigation and officials in charge of managing shelters dedicated for Victims of trafficking. The national rapporteur conclude that information routines function satisfactorily with regard to the pre-trial criminal authorities but since there is no shelters

dedicated, as foreseen by the Bulgarian legislation, they obviously cannot take part in the informing of victims.

Informing victims of trafficking of their rights naturally presuppose that the victims of trafficking are identified as such. As a number of national rapporteurs emphasised, this is the most pressing issue for securing the interests of the individual. Under almost all cases covered by the Directive, this would necessarily be the case before a court judgment being handed down or even an indictment being filed. However, the wording of the present article gives a certain leeway to the discretion of the authority concerned. Therefore, practical problems do not always raise issues of infringement. We believe, though, that the Directive is infringed where the authority in question can be reasonably expected to have concluded that a person is likely to come under its scope. Absolute certainty cannot be expected, as it would presuppose conviction of the perpetrator in a final judgment.

Article 5 first sentence Q.8.A-D: Information given to the third-country nationals concerned	
NO TRANSPOSITION AT ALL	Austria, Spain, Lithuania
LEGAL PROBLEM	Romania, Sweden
PRACTICAL PROBLEM	Poland, Greece, The Netherlands

1.2.2 Reflection Period (Article 6(1)) (Q.9.A.)

Member States shall, according to Article 6(1), ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. The duration and starting point of the reflection period shall be determined according to national law.

According to Article 13(1) of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw 2005)[15] the reflection period should be at least 30 days. Following the recommendations of the Experts Group on Trafficking in Human Beings the reflection period should be at least three months. [16]

The national legislation of the Member States
All Member States except Austria and Spain offer a reflection period to the persons falling within the scope of the national norms of transposition of the Directive. However, the Austrian Federal Ministry of the Interior claims that the third country nationals concerned are entitled to a reflection period of at least 30 days. This entitlement is based on an internal decree ("handbook to SRA"). An explicit statutory provision to this effect is, however, still lacking in Austrian law. The absence of a duty under national law to provide beneficiaries with a period of reflection raises issues of infringement in the case of Austria and Spain.

[15] http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG (last access on November 29, 2007)
[16] Report of the Expert Group on Trafficking in Human Beings (December 22, 2004) paragraph 94 p. 106. The report can be downloaded at: http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings (last access on November 29, 2007)

As regards the length of the reflection period, different solutions exist among the Member States.

In a couple of Member States the length of the reflection period is always the same (Belgium, the Czech Republic, Greece, Latvia and Slovakia). In the Czech Republic, France, Greece and Latvia the reflection period is 30 days or one month. In Slovakia, the reflection period is 40 days, while the Belgian reflection period comprises 45 days for adults and 3 months for minors. In the Netherlands, the reflection period is three months, but if the victim decides not to press charges or to return to her/his home country before the reflection period expires it will end with that decision or at the moment s/he leaves the Netherlands.

In a few other Member States a minimum length of the reflection period of 30 days or one month is stipulated (Bulgaria, Estonia, Finland, Germany, Portugal and Sweden). Among these, three Member States (Estonia, Finland and Germany) provide furthermore for a maximum length of the reflection period (In Estonia and Portugal, 60 days; and in Finland, six months).

Malta, Poland, Romania and Slovenia stipulate a maximum length of the reflection period but the applicable provision does not state anything about a minimum length. Malta and Poland stipulate a maximum length of two months; Romania, 3 months; Slovenia, 3 months subject to an extension for another 3 months.

Lithuania stands out from the rest of the Member States in that there is no indication in the Lithuanian legislation of the length of the reflection period. Considering that Article 6(1) clearly states that the duration and the starting point of the reflection period shall be determined according to national law the silence on the length of the reflection period in the Lithuanian legislation must be considered an infringement of the Directive.

The Dutch rapporteur makes mention of the fact that the reflection period does not apply to persons who have not yet entered the Netherlands, e.g. asylum seekers who arrive at the borders of the Netherlands and who indicate that they are victim of trafficking or about whom the border authorities have a suspicion that he/she is a victim of trafficking. These persons have to press charges before they are admitted to the Netherlands and are entitled to the specific provisions for victims of trafficking, including a temporary residence permit.

Article 6(1) Q.9.A: reflection period	
NO TRANSPOSITION AT ALL	Austria, Spain
LEGAL PROBLEM	The Netherlands, Lithuania
PRACTICAL PROBLEM	Finland[17]

1.2.3 Protection from enforcement of expulsion orders (Article 6(2)) (Q.9.B)

During the reflection period and while awaiting the decision of the competent authorities, Article 6(2) proscribes the possibility of enforcing any expulsion orders against the persons concerned.

The national legislation of the Member States

[17] see section 1.2.5

A majority of the Member States offering a reflection period for the persons falling under the norms of transposition of the Directive have prohibited the enforcement of expulsion orders during the reflection period. However, in Belgium, Bulgaria and Poland, the enforcement of expulsion decisions during the reflection period meets no legal obstacles. The victims of trafficking in Belgium does not receive a residence permit of any kind during the reflection period but instead an order to leave the territory entering into force 45 days after the date of issue. During these 45 days there is no protection from expulsion in the sense that the order to leave prohibits the expulsion before the ending of the 45 days period. In practice though the authorities do not enforce an order to leave the territory before the date of entry into force. In Poland there is a similar situation with no legal obstacles but nevertheless an administrative practice in conformity with the proscription of enforcing expulsion orders. In Bulgaria there is neither any provision on the protection from enforcement of expulsion orders nor any practice to this effect. The conclusion regarding the above-mentioned Member States is that the situation in Bulgaria raises an issue of infringement, while the situation in Poland and Belgium may do so, if the practice mentioned is not compulsory under domestic law.

Since there is no reflection period in Austria and Spain (at least not according to law, see section 1.2.2), the persons concerned cannot be protected against expulsion during the reflection period in these two Member States. However, even though there is no legislation regarding reflection periods in Austria, the third-country nationals concerned are protected and the enforcement of an expulsion order would be illegal according to information provided by the Austrian Federal Ministry of Interior. This protection from enforcement is based on an internal decree "(handbook to SRA"). In Spain, the victim of trafficking is protected against expulsion orders during the whole cooperation procedure according to law. We conclude that the situation in Austria and Spain is to be deemed equally problematic as that in Poland and Belgium.

Article 6(2) Q.9.B: Protection from enforcement of expulsion orders	
NO TRANSPOSITION AT ALL	Austria, Bulgaria, Poland
LEGAL PROBLEM	Spain, Belgium
PRACTICAL PROBLEM	

1.2.4 Termination of the reflection period (Article 6(4) (Q.9.C)

According to Article 6(4), Member State *may* terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences at issue or for reasons relating to public policy and to the protection of national security.

The national legislation of the Member States
Less than half of the Member States (Belgium, Estonia, Finland, France, Germany, Greece, Latvia, Malta, Slovakia, Poland and Sweden) have transposed the optional provision in Article 6(4), which provides for the termination of the reflection period where the person concerned has renewed contacts with the perpetrators of the offences, or for reasons relating to public policy and to the protection of national security.

The Netherlands chose not to transpose Article 6(4). There are nevertheless circumstances under which the reflection period will be terminated i.e. if the victim concerned expresses her- or himself not willing to press charges or willing to return to the country of origin. This goes

beyond the exhaustive list of criteria in Article 6(4). In Slovenia, a reflection period will not even be granted, if the grounds of article 6(4) apply.

1.2.5 Reflection period - proper functioning in practice (Q.9.F)

A substantial number of national rapporteurs conclude that there is not enough practice on the granting of reflection periods to assess its proper functioning (c.f. section 1.1.1) Even so, the national rapporteurs for Belgium, Bulgaria, the Czech Republic, Finland, Greece, the Netherlands and Poland point out specific problems related to the practice of granting reflection periods in their respective Member States.

The Belgian national rapporteur stresses that the 45 days reflection period is not long enough considering the trauma and fear the victim goes through. Also, the German rapporteur makes mention of that some NGOs in Germany have pointed out that a reflection period of 30 days is too short and that they recommend a reflection period of three months referring to the Experts Group on Trafficking in Human Beings (cf. section 1.2.2).

The national rapporteur for Bulgaria states that the national legislation regarding the reflection period is vague and does not regulate fundamental issues such as the termination of the reflection period, the participation of NGOs in the process of taking a well-reflected decision and the effect of any expulsion decision during the reflection period.

The Czech Republic national rapporteur comments that some victims may be placed in detention centres for foreigners awaiting expulsion on the ground that they have infringed the law of the Czech Republic. These centres can hardly be considered a suitable environment for the victims to consider cooperation with the investigative authorities. Their decision may be influenced by the mere fact that they are put in detention and they may not see any other solution to be able to leave the detention centres but to cooperate with the authorities. The domestic law in the Czech Republic provides for the possibility of terminating the detention if it is suspected that the victim may be endangered because of her or his cooperation with the police, but if there is no such suspicion, the victim will remain in detention.

The Finnish national rapporteur points out *inter alia* that there are reasons to believe that the granting of reflection periods is underused. This is related to problems with the identification of victims, mentioned in section 1.2.1 above. Furthermore, no information is available on how the length of the reflection period is determined. According to the rapporteur, the victims of trafficking need time, desirably at least three months, to gradually liberate themselves from violent and exploitative relationships, and to empower themselves in a safe environment before they decide whether or not they will cooperate with the authorities. The Finnish national rapporteur further criticises the ground for termination ‘renewed contact with the perpetrators of the offences’, as it is not unusual at all that victims of trafficking return to their traffickers on their own initiative in the beginning of a disengagement process. Due to past experiences the victims of trafficking might often rely more on their traffickers than on the authorities, especially if the residence permit system is unpredictable.

In Greece some NGOs claim that a longer reflection period would possibly allow victims of trafficking to examine their options and decide if they should trust the authorities and NGOs for their protection. This flows from the relatively weak supporting environment for victims of trafficking in Greece.

The Dutch national rapporteur states that the practice of granting reflection periods functions more or less satisfactorily. However, though information routines are improving, the police do not always inform the victim properly on the possibility of receiving a reflection period. It also appears from jurisprudence that in some cases the police only inform the victim after taking the person concerned in aliens' detention, despite indications of trafficking. This is against the official policy as laid down in the Aliens Circular and the Instruction on trafficking in human beings of the Procurators General.

The Polish national rapporteur states that the granting of reflection periods to victims of trafficking functions satisfactorily in practice, and that the introduction of the reflection period was highly appreciated by NGOs involved in protecting and supporting the victims. However, identifying the victims and providing them with the necessary information as well as a rather modest guaranteed treatment during the reflection period form serious impediments.

1.2.6 Issue of the residence permit (Article 8(1)) (Q.11.A)

After the expiry of the reflection period, or earlier, if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion of 'clear intention to cooperate' (cf. Article 8(1)(b) below), Member States *shall*, according to Article 8(1), consider:

(a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
(b) whether he/she has shown a clear intention to cooperate, and
(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions (a)(b) and (c) shall be required.

The national legislation of the Member States (Q.11.A)
Less than half of the Member States apply the same criteria as provided in Article 8(1) i.e. that the beneficiary has shown a clear intention to cooperate with the authorities, and he or she has severed all relations with the suspects of the crime (Finland, Germany, Greece, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Slovenia and Sweden). The exact wording of the respective provisions varies among these Member States. However, national rapporteurs believe that the content of the applicable provisions in the respective Member States are all in accordance with Article 8(1).

Lithuania and the Netherlands apply less extensive criteria for the issue of the residence permit. These Member States do not require that the person falling under the norms of transposition in the respective Member State severed all relations with the suspects. However, in the Netherlands there is a problem. The person concerned will only be eligible for the residence permit if she or he officially presses charges. She or he has to file an official complaint as opposed to the mere making of a "statement". A similar problem is at hand in France where the domestic legislation demands that the person files charges against the presumed perpetrators or witnesses at a criminal trial. The Dutch rapporteur quite correctly point out that whether or not this should be considered a problem depends on an interpretation

of the requisite 'clear intention to cooperate' in the Directive. We consider that the requisite 'clear intention to cooperate' allows also for less clear-cut cooperation than an official complaint filed by the victim. Otherwise put, the requirements in the Netherlands and France are more specific than the requirement of a "clear intention to cooperate" as laid down in the Directive and hence narrow down the scope of persons benefiting from a prolonged stay. It appears as the ambiguity of the applicable provision in Dutch legislation will be dealt with through an amendment to the applicable legislation stating explicitly that also a 'statement' of the victim must be considered a clear intention to cooperate and should be treated as if it were an official report.

Portugal too applies less extensive criteria, since only the severance of relations with the suspects is a mandatory criterion. This implies a more favourable provision for the individual. In accordance with Article 4 of the Directive, the Lithuanian, Dutch and Portuguese definitions do not raise issues of infringement because of them applying less extensive criteria for the issue of the residence permit.

Belgium, the Czech Republic and Bulgaria seem to apply more extensive criteria for issuing residence permits compared to the standard of the Directive. In Belgium the victim of trafficking is required to prove his/her identity with a passport or identity card. Similarly, in the Czech Republic the person concerned must present a passport (if the person concerned is in possession of a passport), and furthermore a document confirming that he or she has an accommodation as well as passport photographs. The criteria for the issue of the residence permit in Bulgaria are problematic in a number of ways. The applicable provision requires the victim to submit: 1) an application; 2) a document to prove that the fee of 250 euros for the issue of the residence permit is paid; 3) a photocopy of the passport with the photo, personal data, the entrance visa and the entrance stamp; and 4) evidence to prove accommodation; 5) a document issued by the competent authorities authorising the special protection status i.e. the prosecutorial act. The criteria mentioned under points 3 and 4 must be considered infringements of the Directive since they considerably circumscribes the possibility of receiving a residence permit under the Directive. Also, the fee of 250 euros quite obviously will act as a deterrent or even make it impossible for quite a few victims of receiving a permit.

Spain constitutes a special case. The Spanish legislation contains a provision prescribing that the victim needs to cooperate with the authorities in accordance with Article 8(1)(b). However, additional criteria have apparently developed in the administrative practice such as that the victim needs to be able to identify him/herself with a passport or registration certificate. Neither may he or she continue to engage in prostitution outside the network charged for the crime concerned.

The Austrian legislation stands out from the legislation in the rest of the Member States. Austria applies a criterion according to which a case needs be 'considerable' for the grant of the temporary residence permit to victims of trafficking. This means that only third-country nationals in situations *worthy to be considered* are entitled to a permit. The legislation does not further specify the definition of what constitutes a "considerable case". The Austrian Rapporteur concludes that this is within the discretion of the competent authority.

Since Article 8(1) merely obliges Member States to consider the opportunity presented by prolonging the beneficiary's stay, the extension of the list of criteria would appear to be within the discretion of the Member States. However, Article 8(2) states that, without prejudice to a specified exception (reasons relating to public policy and to the protection of national security), 'the fulfilment of the conditions referred to in paragraph 1 shall be

required'. If this phrase shall not be interpreted as obsolete, it must be taken to suggest that no additional criteria may be imposed. Furthermore it must be concluded that vague criteria implying wide-ranging discretion of the competent authority neither can be considered to be in conformity with Article 8(1). Therefore, it is our contention that Belgium, Bulgaria the Czech Republic and Austria have not transposed Article 8 properly. Furthermore, the situation in Spain might constitute a problem if the administrative practice is obligatory in the sense that victims are not eligible for the residence permit if the additional criteria mentioned above are not met.

Article 8(1-2) Q.11.A: The Criteria for the issue of the residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Austria, Belgium, Bulgaria, the Czech Republic, The Netherlands
PRACTICAL PROBLEM	

1.2.7 Reasons relating to public policy and to the protection of national security (Article 8(2))

The issue of the residence permit is, according to Article 8(2), without prejudice to the reasons relating to public policy and to the protection of national security. This means that such reasons may be asserted as grounds for refusal to grant the residence permit.

National legislation of the Member States
In a narrow majority of the Member States (Austria, Estonia, Belgium, Finland, Germany, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) there is a possibility to refuse the grant of the residence permit for reasons related to public policy and the protection of national security. In most cases the provision is not a provision applicable only for victims of trafficking but instead a general provision applicable for refusal to grant any residence permit. In Bulgaria, however, the situation is not entirely clear. The national rapporteur concludes that there is no specific provision regarding victims of trafficking, but that the general rules will very likely be applicable.

The legislation in Finland, Lithuania, Portugal and Slovenia operates public health criteria for refusal of the residence permit that are not listed in Article 8(2).

The applicable provision in Estonia overstretches the criteria in Article 8(2) in that the competent authorities may refuse the issue or renewal of the residence permit in case there is reason to believe that the alien staying in Estonia may jeopardize public order, public safety, public morals or the rights or interests of other people. This is clearly an infringement of the Directive.

In the Czech Republic and Slovakia there is no possibility to refuse a residence permit on the grounds of public policy and national security. However, a residence permit may be withdrawn due to such considerations.

In the Netherlands the residence permit cannot be refused on grounds of public policy or national security, if the offences that give rise to considerations of public policy or national security are directly related to the offence of trafficking itself ("non-liability clause").

1.2.8 The period of validity of the residence permit (Article 8(3) (Q.11.B)

According to Article 8(3), the residence permit shall be valid for at least six months.

The national legislation of the Member States
In a majority of the Member States (Austria, the Czech Republic, Finland, France, Germany, Greece, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden) the period of validity is at least six months in accordance with the first sentence of Article 8(3). Four of the named Member States provide for a minimum period of validity of one year (Greece, the Netherlands, Spain and Portugal).

In a few Member States (Belgium, Bulgaria and Estonia) there is either no minimum period of validity at all or the minimum period of validity is shorter than six months. In Belgium the residence permit is valid for three months, but the authorities may renew the residence permit once for another three months. In Bulgaria there is neither a minimum nor a maximum period of validity. The residence permit is instead valid for as long as the criminal procedure continues. In Estonia there is no minimum period of validity. The residence permit is instead issued for the time indicated in the application by the prosecutor. There is, however, a maximum period of validity of one year. Neither of these solutions can be considered in conformity with Article 8(3) stipulating unconditionally "the residence permit shall be valid for at least six months."

Article 8(3) first sentence Q 11 B: Period of validity of the residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Belgium, Bulgaria, Estonia
PRACTICAL PROBLEM	

1.2.9 Renewal of the residence permit (Article 8(3) (Q.11.C)

The residence permit shall, according to Article 8(3) be renewed if the criteria for the issue of the residence permit continue to be satisfied.

The national legislation of the Member States
All Member States provide for the possibility of renewal of the residence permit.

Some Member States have chosen to set a maximum time-period for the renewal of the residence permit of six months at a time (for example Romania and Poland) or one year at a time (for example Estonia, Slovenia, the Netherlands and Greece). Other Member States (Latvia, Lithuania, Portugal, Slovakia, Spain and Sweden) have no maximum time-period for the renewal at all. Presumably, this means that the period of validity of the renewed residence permit may be decided upon on a case-by-case basis.

In the Czech Republic there is an additional criterion for the renewal of the residence permit which do not appear in the Directive, namely that the applicant has to present a document confirming that he or she has some form of accommodation in the Czech Republic and a passport (if he or she is in possession of such a document). The conclusion regarding such additional criteria for the issue of the residence permit (see section 1.2.6) was that they are not

in conformity with the Directive. This conclusion applies for the renewal of the residence permit under the present Article as well.

Belgium stipulates a maximum period of validity. A Belgian residence permit is valid three months and renewable once, for an additional three months. The stipulation of a maximum period of validity in Belgium gives rise to concern. A situation might arise where prosecution continues after the maximum period has elapsed and the conditions for issuing the residence permit still exists. In this case, it will not be possible to prolong the permit under national law, because the maximum period of validity has been reached. While the purpose of the Directive (as set out in Article 1) is to define the conditions for granting residence permits of *limited* duration, the Directive links it *to the length of the relevant national proceedings.* A maximum period of validity without flexibility as regards the proceedings of the criminal trial thwarts the objectives pursued by the Directive. Therefore, it would be of utmost importance to follow up on the practice in the future.

The Austrian transposition of Article 8 constitutes a special case. It is left to the discretion of the competent authority to decide if the circumstances meet the criteria "considerable circumstances". The conclusion under 2.2.6 was that vague criteria implying wide-ranging discretion of the competent authority could not be considered to meet the terms of Article 8(1). The same is true for Article 8(3).

French legislation relevant for the renewal of the residence permit refers to a decree which had not been adopted at the time of writing. As general legislation steps in and fills the void, we believe that this lack raises no issues under article 8 (3).

Article 8 (3) second sentence Q.11.C: Renewal of the residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Austria, Belgium, France, The Czech Republic
PRACTICAL PROBLEM	

1.3 Treatment granted (Chapter II and III)

Chapter II and chapter III in the Directive contain provisions guaranteeing the persons concerned a certain treatment in a number of areas such as; standards of living capable of ensuring subsistence, health care and translation and interpreting services, both before (chapter II) and after (chapter III) the issue of the residence permit.

1.3.1 Standards of living capable of ensuring subsistence (Articles 7(1) and 9(1)) (Q. 10.A-C)

Member States are obliged to ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence.

This obligation applies to situations before (according to Article 7(1)) and after the issue of the residence permit (Article 9(1) read in conjunction with Article 7(1)).

The national legislation of the Member States

A large majority of the Member States do offer the persons concerned some sort of support in either cash or kind both before and after the issue of the residence permit.

It is not possible to compare the levels of support offered by the Member States since some Member State only offer support in kind. Other Member States offer support based on the specific needs of the persons concerned, for example Sweden. That said, it appears that the level of support differs considerably between the Member States. The national rapporteurs for Austria, the Czech Republic and Spain underscore that, albeit support is offered, it might not be enough to reach "standards of living capable of ensuring their subsistence". In the Czech Republic, victims are entitled to accommodation before, but not after the issue of the residence permit and accommodation is certainly the paramount cost for the persons concerned.

Belgium operates a somewhat particular system of granting support to the third-country nationals concerned who do not have sufficient resources. A pre-existing circular states that the victim of trafficking shall be followed up and supported by one of three specialised centres. Before the issue of the residence permit, the person concerned receives support in kind from the appointed centre. After the issue of residence permit, the person concerned is furthermore entitled to claim social benefits. The particularity of the Belgian system is that the registration in a specialised centre is set as a precondition for receiving protection and in order to enter the procedure. This is true both before and after the issuing of the residence permit.

In Poland there is a similar system. Apart from benefits and support offered under the Polish Social Assistance Act, the NGO "La Strada" is entrusted by the Minister of Interior to implement the governmental programme "Support and Protection Programme for Victims of Trafficking in Human Beings". The persons concerned can, both before and after the issuing of the residence permit, above social assistance according to law, receive support in kind through "La Strada".

The Bulgarian and the Lithuanian national rapporteurs point out serious deficiencies concerning the support granted in their respective Member State.

In Bulgaria, the relevant legislation foresees the establishment of centres and shelters for protection and assistance to the victims of trafficking both before and after the issue of the residence permit. The persons concerned are supposed to be accommodated in the shelters where they should be offered support in kind. However, such shelters do not exist. After the issue of the residence permit, the persons concerned have access to a number of benefits such as social support in cash or in kind on equal footing with nationals. The Bulgarian Rapporteur concludes that since the social support is minimal for Bulgarian citizens, it is also minimal and insufficient for victims of trafficking holding a permit.

In Lithuania, there are no special rights foreseen for the persons concerned neither before nor after the issuance of residence permit. Consequently they receive the same treatment as illegal immigrants, which implies assistance in kind. If the persons concerned does not have accommodation they will be detained in the Foreigners Registration Centre where they are

provided with food and accommodation. Detention is however only possible before the issue of the residence permit.

Article 7(1) first sentence Q.10.A: Standards of living capable of ensuring subsistence before the issue of the residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Austria, Lithuania
PRACTICAL PROBLEM	Bulgaria, Spain

Article 9(1) read in conjunction with Article 7(1) Q.10.A: Standards of living capable of ensuring subsistence after the issue of the residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	The Czech Republic, Lithuania
PRACTICAL PROBLEM	Austria

1.3.2 Attendance to the special needs of the most vulnerable (Articles 7(1) and 9(1)

Member States are obliged to attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance. This obligation is valid both before (according to Article 7(1)) and after the issue of the residence permit (Article 9(1) read in conjunction with Article 7(1)).

The national legislation of the Member States on attendance to the special needs of the most vulnerable

It appears as the obligation to attend to the special needs of the most vulnerable has not been particularly well received by Member States. Only a few Member States operate provisions in their national legislation to that effect (Portugal, Malta, and Germany). The situation in Germany concerning assistance to persons with special needs is not entirely clear. There is a provision on assistance to persons with special needs. However, the personal scope of this provision is disputed and must be said to be ambiguous. Interpreted restrictively, it posits no obligation to attend to the special needs of the most vulnerable victims of trafficking. The German rapporteur concludes that it remains to be seen whether the practical implementation, as decided in jurisprudence, will meet the requirements of the Directive or not. We believe that German practice should be closely followed to determine whether there is an issue of infringement. In any case, there is a provision on the attendance to persons with special needs who are disabled. In addition there is reportedly a practice in line with the Directive in a few more Member States (e.g. Belgium, Poland and Finland).

The rapporteurs for a considerable number of Member States refer to the assistance granted to all victims of trafficking. The assistance granted to all, however, obviously varies among the Member States, and it is not possible to judge whether the assistance granted to all in a specific Member State indeed proves sufficient also for the persons with special needs. For example, in the Czech Republic, the Netherlands and Sweden the persons concerned have access to general medical care and they are consequently better protected than the victims in other Member States relying on the assistance granted to all victims of trafficking. We believe, however, that a reference to the treatment granted to all might be problematic in any case given that this does not necessarily generate a positive obligation to create suitable care resources for the group of victims that indeed have special needs.

The national legislation of the Member States on psychological assistance (Q.10.I)
Even though the present Article 7(1) second sentence contains a powerful clawback clause ("where appropriate and if provided by national law"), half of the Member States (Bulgaria, the Czech Republic, Finland, France, Greece, Germany, Latvia, Malta, the Netherlands, Portugal, Romania, Spain and Sweden) provides access to psychological assistance, both before and after the issue of the residence permit either through explicit provisions to that effect or in accordance with general provisions on health or medical care.

As previously contended, Belgium and Poland have developed their own systems of support. In Belgium, psychological assistance is provided in specialised centres, both before and after the issue of resident permit. In Poland, psychological assistance is provided within the framework of the NGO "La Strada", which has been entrusted by the Minister of Interior to transpose the aims of a governmental programme on support to victims of trafficking.

In two Member States (Bulgaria and Germany), there are significant problems. In Bulgaria, victims of trafficking should be granted psychological assistance before the issue of the residence permit in the centres or shelters where they are accommodated. Unfortunately there are no such shelters. The situation in Germany concerning psychological assistance is, as has been explained above, not entirely clear. In Spain, there is a practical problem of implementation related to the fact that the public health care system only offers limited psychological assistance and the assistance provided is not specialised for the potential problems of the persons concerned. This is however presumably a problem also in other Member States that rely on the public health care system for the attendance of the special needs of the most vulnerable. In Estonia, access to psychological assistance is only provided under aggravated circumstances, and is further circumscribed by the fact that the victims will only be reimbursed after having paid for the consultations themselves.

In the remaining Member States (Austria, Lithuania[18], Slovenia and Slovakia), no legal stipulations provide for psychological assistance. As in Slovenia, psychological assistance might, be offered by NGOs which are funded by the authorities. In the alternative, persons concerned may be able to receive psychological assistance through NGOs and receive reimbursement for the costs by the authorities, as is the case before the issue of the residence permit in Slovakia. In Austria psychological assistance is only granted for minors.

Article 7(1) Q.10.I: Access to psychological help before the issue of the residence permit	
NO TRANSPOSITION AT ALL	Austria, Estonia, Lithuania, Slovenia, Slovakia
LEGAL PROBLEM	Germany
PRACTICAL PROBLEM	Bulgaria, Spain

Article 9(1) read in conjunction with art 7(1) Q.10.I: Access to psychological help after the issue of the residence permit	
NO TRANSPOSITION AT ALL	Austria, Estonia, Lithuania, Slovenia, Slovakia
LEGAL PROBLEM	Germany

[18] Unless the persons concerned work and as a consequence of that have access to full medical assistance.

PRACTICAL PROBLEM	Bulgaria, Spain

1.3.3 Safety and protection needs (Articles 7(2) and 9(1) (Q.10.D)

According to Article 7(2) and Article 9(1), read in conjunction with Article 7(2), Member States shall take due account of the safety and protection needs of the third-country nationals concerned, both before and after the issue of the residence permit, in accordance with national law.

The national legislation of the Member States
A limited number of Member States have introduced specific provisions and/or measures to provide for the safety and protection needs of the persons concerned (Bulgaria, Finland, France, Greece, Latvia, Malta and Portugal). Another group of Member States relies on pre-existing witness protection programmes or other measures directed at exposed witnesses that are applicable also for the beneficiaries of the Directive (the Czech Republic, Germany, Lithuania, the Netherlands, Slovakia, Slovenia, Spain and Sweden). The German national rapporteur relates that German NGOs critique what they allege to be a high threshold for the victims of trafficking under German legislation with regard to access to safe accommodation.

As mentioned above, Belgium and Poland provide for the treatment of the persons concerned within the framework of certain programmes. In Belgium, the victims of trafficking are followed up and supported by one of three specialised centres. The rapporteur concludes that these centres sufficiently protect the persons concerned since they see to that the victims are kept away from the perpetrators. However, there is no protection stipulated by law. In Poland shelter and protection are provided within the framework of the NGO "La Strada", who has been entrusted by the Minister of Interior to implement a governmental programme on support to victims of trafficking. Also, certain provisions in the Code of Criminal Procedure concerning witness protection may apply.

National rapporteurs for Austria, Estonia and Romania indicate that there is no formal transposition of the provision in question. Neither is there any pre-existing legislation on the protection of the persons concerned. Given the importance of effective protection of victims of trafficking to achieve the aims of the Directive, the absence of predictable protection in the named Member States gives rise to serious concern. We believe that the phrase "in accordance with national law" implies that national law must provide for some norm regulating the matter. Therefore, the absence of any pertinent norm raises issues on the proper transposition of the Directive in the named Member States.

Article 7(2) Q.10.D: Taking due account of the safety and protection needs of the third- country nationals concerned before the issue of the residence permit	
NO TRANSPOSITION AT ALL	Austria, Estonia, Romania
LEGAL PROBLEM	Belgium
PRACTICAL PROBLEM	Bulgaria, Spain

Article 9(1) read in conjunction with Article 7(2) Q.10.D: Taking due account of the safety and protection needs of the third- country nationals concerned after the issue of the residence permit	
NO TRANSPOSITION AT ALL	Austria, Estonia, Romania

LEGAL PROBLEM	Belgium
PRACTICAL PROBLEM	Bulgaria, Spain

1.3.4 Translation and interpreting services (Articles 7(3) and 9(1)) (Q.10.E-F)

It follows from Article 7(3) and Article 9(1), read in conjunction with Article 7(3), that Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services both before and after the issue of the residence permit.

The national legislation of the Member States
It is obvious from the wording of Article 7(3) that the Member States enjoy a certain leeway as to when and to what extent the persons concerned shall have the right to translation and interpreting services.

Approximately half of the Member States do provide translation and interpreting services both before and after the issue of the residence permit (the Czech Republic, Finland, Germany, Greece, Lithuania, Malta, the Netherlands, Portugal, Romania, Slovakia, Spain, and Sweden). In Poland, translation and interpretation services are provided for by the NGO "La Strada". Relevant rules of criminal procedure may also apply. However, there are differences between the Member States to what extent translation and interpretation is provided as well as how the services are financed. Taking the example of Finland, translation and interpreting services are both arranged and paid for by the authorities. On the other hand, an individual beneficiary present in the Czech Republic will have to cover the costs by her own means. If she does not have the means to pay for the services, there is, however, a support programme.

The Greek national rapporteurs stresses that, notwithstanding the provision of translation and interpreting services by Greek law, there is a practical problem of implementation in that the state avails of few interpreters. According to the same rapporteur, they are usually not properly trained interpreters or translators. The Spanish national rapporteur reports also on practical problems of implementation in rural areas due to the lack of trained interpreters or translators.

There are specific problems in a few Member States (Austria, Belgium, Bulgaria, Estonia, Latvia and Slovenia). These concern the overly narrow provision of services, or an unclear scope of entitlement.

Austria provides translation and interpretation services after a residence permit has been issued, but not before. Conversely, in Slovenia, beneficiaries have the right to interpretation and translation services free of charge before the issue of the residence permit i.e. during the reflection period. However, after the issue of the residence permit the persons concerned are only entitled to translation services in the court procedures.

In Belgium, interpretation and translation services are both organised and financed by the specialized centres for victims of trafficking. There are no provisions in the national legislation on this issue. In Bulgaria, interpretation and translation services are only provided during the criminal proceedings and when the persons concerned are informed of the possibilities offered under the Directive in accordance with Article 5.

In Estonia there is access to interpretation and translation services both before and after the issue of the residence permit, but only under very limited circumstances, described by the rapporteur as 'emergency translation service'.

In Latvia, there is no provision specifically regarding translation and interpreting services for the persons falling under the norms of transposition of the Directive. However there is a provision stating that there is a possibility to receive consultation of 'other specialists' which might include translation, and interpreting services.

France explicitly provides for translation and interpretation services before, but not after the issuance of a residence permit. The rapporteur emphasises, though, that such services can be rendered under the framework of social assistance.

Article 7(3) Q.10.E: Translation and interpreting services before the issue of the residence permit	
NO TRANSPOSITION AT ALL	Austria
LEGAL PROBLEM	Belgium, Estonia, Latvia, Bulgaria
PRACTICAL PROBLEM	Estonia, Spain

Article 9 (1) read in conjunction with Article 7(3) Q.10.E: Interpretation and translation services after the issue of the residence permit	
NO TRANSPOSITION AT ALL	Slovenia, Bulgaria
LEGAL PROBLEM	Belgium, Estonia, Latvia
PRACTICAL PROBLEM	Spain

1.3.5 Free legal aid (Articles 7(4) and 9(1) (Q.10.G)

Member States *may* provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law, both before and after the issue of the residence permit. This follows from Article 7(4) and Article 9(1) read in conjunction with Article 7(4).

The national legislation of the Member States
Approximately half of the Member States provide, at least within certain limits, the persons concerned with free legal aid both before and after the issue of the residence permit (Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Latvia, Lithuania, Malta, the Netherlands, Portugal, Romania, Spain and Sweden). This is ensured in the named states either by specific provisions in alien specific legislation or by general legislation on legal aid and criminal procedure. In Poland, free legal aid is provided for within the framework of "La Strada". In addition, relevant rules in the criminal procedure may apply.

In the Czech Republic, victims of trafficking have access to free legal aid on equal footing with nationals. This is regulated in law, stipulating a means test. Furthermore, the Ministry of Interior may contribute to natural or legal persons providing legal aid to the persons falling under the norms of transposition of the Directive by financial support to cover their expenses.

In Greece, beneficiaries of the Directive shall be provided with "necessary legal aid" during the reflection period. Legal aid and support shall also be provided after the issue of the

residence permit. However, there are no further provisions as to how legal aid, support and counselling are to be provided in practice. The Ministry of Foreign Affairs has occasionally provided funds to the Athens Bar Association and a number of NGOs, supposedly specialized on victims of trafficking, for legal counselling and support to such victims.

Some national rapporteurs (notably Finland, Germany, Lithuania and Portugal) point out that qualified lawyers provide legal aid without quantitative limits neither in costs nor time. The Belgian Rapporteur on the other hand indicates problems regarding the qualifications of the lawyers. Any lawyer enrolled in the system can be assigned, in spite of lacking experience of cases relating to trafficking.

1.3.6 Medical care (Articles 7(1) and 9(1) (Q.10.H)

According to Article 7(1) and Article 9(1) referring to Article 7(1), Member States *shall* ensure the persons concerned access to emergency medical treatment both before and after the issue of the residence permit.

The national legislation of the Member States
All Member States provide the persons concerned with at least emergency medical treatment both before and after the issue of the residence permit.

A few Member States have gone even further and granting the persons concerned access to general medical care both before and after the issue of the residence permit (the Czech Republic, Finland, Greece, the Netherlands and Sweden).

Three Member States provide emergency medical care before the issue of the residence permit and general medical care after the issue of the residence permit (Belgium, Poland and Portugal). However, in Poland the care provided before the issue of a residence permit is ensured only within the framework of the NGO "La Strada", who has been entrusted by the Minister of Interior to implement the governmental programme on support to victims of trafficking.

Austria and Lithuania provide general medical care after the issue of the residence permit only if the person concerned is covered by a health insurance, or fulfils the requirements of national social security legislation.

Slovenia provides for more extensive health care for women, who have access to general medical care regarding contraception, abortion and maternity care.

The Romanian legislation provide for medical treatment, yet fail to specify if this refers to general medical treatment, or if such treatment is restricted to emergency medical treatment only.

1.3.7 Assistance to persons with special needs after the issue of the residence permit (Article 9(2))

The Member States shall, according to Article 9(2), provide necessary medical or other assistance to the third- country national concerned who do not have sufficient resources and have special needs such as pregnant women, the disabled or victims of sexual violence or

other forms of violence. This applies after the issue of the residence permit. If Member States have recourse to the option provided for in Article 3(3), the above-mentioned assistance shall be given to minors as well.

The national legislation of the Member States
There is obviously a certain overlap between the content of Article 9(1) read in conjunction with Article 7(1), relating to the special needs of the most vulnerable (see section 1.3.2), and Article 9(2). This is true even though Article 9(2) provides a non-exhaustive specification of the target group and also uses the expression "necessary" instead of "emergency" for the level of medical care to be provided by Member States. In any case, it appears as none of the Member States have taken any further measures in order to comply with Article 9(2) that has not already been explained under section 1.3.2. This is true also for Member States that have recourse to the option provided in Article 3(3) i.e. applying the norms of transposition of the Directive to minors as well (which all Member States chose, except Lithuania and Slovakia).

1.3.8 Minors – procedural provisions (Article 10(a)) (Q.12.A-C)

Article 10 concerns the treatment of minors. Obviously, this provision only applies for the Member States that indeed have chosen to apply the Directive to minors in accordance with Article 3(3), and is therefore not relevant for Lithuania and Slovakia.[19] The Netherlands have chosen not to implement optional Article 3(3). However, the specific provisions for victims of trafficking apply to all victims of trafficking, including minors.

According to Article 10(a), Member States shall take due account of the best interests of the child when applying the Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they *may* extend the reflection period.

The national legislation of the Member States
There are a variety of approaches to this particular provision amongst the Member States. In fact, only a few Member States have stipulated an explicit provision, applicable in the cases concerned, prescribing that account shall be taken of the best interests of the child in their national legislation (Estonia, Finland, Malta, Portugal, Romania, Spain, and Sweden). National rapporteurs for a number of Member States, as the Czech Republic, Germany and Poland consider the principle in force in their Member State due to its ratification of the UN Convention on the Rights of the Child and/or general laws, of either binding or persuasive precedent.

We believe that treaty obligations under the UN Convention on the Rights of the Child or constitutional provisions do not necessarily create sufficiently precise obligations to address the best interests of the child in the specific contexts of the present Directive. Some detail as to how Member States adapt the handling of residence permits and the reflection period would appear to be necessary.

We find support for this position in the practice of the U.N. Committee on the Rights of the Child, monitoring the Convention on the Rights of the Child. In particular, referral is made to General Comment No. 5 (2003):

[19] See section 1.1.3 above.

> "States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of "self-execution" applies and others where it is claimed that the Convention "has constitutional status" or has been incorporated into domestic law."[20]

Save for France and Malta, none of the Member States have introduced a specific provision in their respective legislation reflecting the second sentence of Article 10(a), stipulating that Member States "shall ensure that the procedure is appropriate to the age and maturity of the child". Only a few rapporteurs report of specific measures taken in order to ensure this end. In Finland, for example, a multidisciplinary team is put together to assist the director of the reception centre and assess the needs of the victim of trafficking. The team shall hear the opinion of child protection specialists in order to be able to decide on appropriate measures for the child. Furthermore, a number of national rapporteurs report on special procedures for child witnesses in the criminal procedure. While this is generally laudable, the word "procedure" in Article 10 shall be properly understood as referring to the procedure of granting reflection periods, the procedure related to the issue of the residence permit and other procedures regulated by the Directive. The criminal procedure is certainly not addressed by the present provision.

We conclude that issues on infringement are raised with regard to the second sentence of Article 10 (a) in all Member States which have extended the applicability of the Directive to minors without offering any specific adaptive measure.

Only three Member States have extended the reflection period for minors in accordance with the optional provision in Article 10(a) (Bulgaria, Greece and Portugal). In Sweden, there is no explicit provision on the extension of the reflection period for minors. It is nevertheless stated in the preparatory works that renewal of the 30-day reflection period will be considered when the victim of a crime is a minor. Belgium provides a three months residence permit for minor victims instead of extension of the reflection period. As the present provision offers no binding obligation on the adaptation of the reflection period, no issues of infringement are raised.

1.3.9 Access to the educational system for minors (Article 10(b)) (Q.12.D)

Article 10 concerns the treatment of minors. Obviously, this Article only applies to Member States having chosen to apply the Directive to minors in accordance with Article 3(3). It is therefore not relevant for Lithuania and Slovakia.[21]

According to Article 10(b), Member States shall ensure that minors have access to the educational system under the same conditions as nationals. However, Member States *may* stipulate that such access must be limited to the public education system.

The national legislation of the Member States

[20] Committee on the Rights of the Child, General Comment No. 5 (2003), CRC/GC/2003/5 27 November 2003, para. 19.

[21] See section 1.1.3 above.

With the exception of Belgium and Finland, all Member States that have chosen to apply the Directive to minors presently provide that minors have access to the educational system under the same conditions as nationals. The situation in Belgium and Finland obviously raises issues of infringement of this particular provision.

According to Romanian and Estonian legislation, foreign minors have access to the public education system on the same conditions as minor nationals if they are considered as having their residence in the respective country. It is unclear whether this is the case with victims of trafficking.

While access to the educational system is guaranteed according to Polish law, Polish rapporteur indicates that the access to education is vastly problematic in practice.

Article 10(b) first sentence Q.12.D: Access to the educational system under the same conditions as nationals	
NO TRANSPOSITION AT ALL	Belgium, Finland
LEGAL PROBLEM	Estonia, Romania
PRACTICAL PROBLEM	Poland

1.3.10 Measures regarding unaccompanied minors (Article 10(c)) (Q.12.E)

Article 10 concerns the treatment of minors. Obviously, this Article only applies for the Member States that have chosen to apply the Directive to minors in accordance with Article 3(3). It is therefore not relevant for Lithuania and Slovakia.[22]

Article 10(c) provides for the case of third-country nationals who are unaccompanied minors. Member States *shall* take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They *shall* make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

The national legislation of the Member States
Nearly all Member States that have chosen to apply the Directive to minors ensure legal representation of the unaccompanied minor. In Malta and Austria, however, the legal representation of unaccompanied minor victims has not been considered in a due manner. Also, in Greece there is a *verbatim* transposition of Article 10(3), while domestic legislation fails to prescribe *inter alia* how legal representation, identification, tracing of family members etcetera should be arranged. This might lead to practical problems of implementation.

The requirement that the Member States shall make every effort to locate the family members as quickly as possible has not been introduced in several Member States (Malta, Austria the Czech Republic, Finland, Latvia, Poland, Slovenia and Sweden). In Estonia, pre-existing legislation obligates the authorities to locate family members. However, the competent authorities rarely initiate tracing of families outside the territory of Estonia.

[22] See section 1.1.3 above.

Article 10(c) Q.12.E: Measures regarding unaccompanied minors	
NO TRANSPOSITION AT ALL	Austria, Finland
LEGAL PROBLEM	The Czech Republic, Estonia, Latvia, Poland, Slovenia, Sweden
PRACTICAL PROBLEM	Greece, The Netherlands[23]

1.3.11 Work, vocational training and education (Article 11) (Q. 13.A –D)

According to Article 11(1), Member States *shall* define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

It follows from the second paragraph of Article 11(1) that such access shall be limited to the duration of the residence permit.

The national legislation of the Member States regarding access to the labour market, vocational training and education (Q.13.A-D)
Save for Romania, all Member States provide for access to the labour market for the persons falling under the norms of transposition of the Directive. In Austria, however, access to the labour market depends on the development of the labour market and other public interests. Also, the provision concerning the issue of work permit is very restrictive in Lithuania, basically only allowing for the issue of a permit if a particular position cannot be filled with a Lithuanian national. In Malta, it is an implied condition that a licence from the Minister for Justice and Home Affairs be obtained. We believe that an implied condition does not satisfy the obligation to "define the rules" and the stipulation that "conditions… be determined" in Article 11.

Save for Belgium, Finland and Romania, all Member States allow access to vocational training and education. Furthermore, in Greece and Poland the access to education only applies to minors. The Maltese legislation provides that when the third country national is a minor, he or she *may* be granted access to vocational training and education. There seem to be no specific criteria for the grant of access, which leaves it within the discretion of the competent authority. We believe that this does neither satisfy the obligation to "define the rules" nor the stipulation that "conditions…be determined" in Article 11. In Slovakia, it appears as access to vocational training is complicated by the temporary nature of the stay.

In Slovenia access to vocational training and education is subject to the principle of reciprocity. This means that the access depends on whether Slovene nationals have access to vocational training in the country of origin of the foreigner. If the criterion of reciprocity is not fulfilled, the persons concerned will have to pay for the training themselves.

Even though the persons concerned have access to education under the same conditions as nationals in the Netherlands, the national rapporteur points out that there are considerable practical problems of implementation related to language problems, criteria for admittance such as previous education and the temporary nature of the stay. To be sure, these problems

[23] See below footnote 310 in the table of correspondence for the Netherlands.

also emerge in other Member States where the persons concerned are not addressed with special remedies concerning education.

Most Member States appear to limit the access to work, vocational training and education to the duration of the residence permit in accordance with the second paragraph of Article 11(1).

Article 11(1), first sentence Q.13.A-C: Access to the labour market, vocational training and education	
NO TRANSPOSITION AT ALL	Romania
LEGAL PROBLEM	Belgium, Finland, Malta, Slovakia
PRACTICAL PROBLEM	The Netherlands

1.3.12 Programmes or schemes (Article 12(1)) (Q.14.A)

It follows from article 12(1) that the persons concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which 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.

The national legislation of the Member States
The present provision requires merely that access to specified programmes and schemes be granted. There is no obligation to introduce such programmes or schemes, or to develop them in any particular way.

Therefore, it is little surprising that there is no clear pattern of transposition emerging. In most Member States, there seems to be some sort of programme or scheme either directed specifically to victims of trafficking or more generally towards immigrants. By way of example, Germany does not provide for cooperation programmes aimed at the recovery of a normal social life arranged in the different federal states ["*Bundesländer*"] as well as repatriation programmes which are open for victims of trafficking as well. None of the Member States seem to have created any obstacles to the participation in such programmes for victims of trafficking. However, in Austria the legal situation is unclear. There is a provision on integration support, but its personal scope is ambiguous. The Austrian rapporteur concludes that victims of trafficking "probably" are accepted to participate.

1.3.13 Specific programmes or schemes (Article 12(1) para. 2) (Q.14.B)

Article 12(1) para. 2 stipulate that Member States *may* provide specific programmes or schemes for the third-country nationals concerned.

Specific programmes or schemes created for the holders of the residence (Q.14.B)

Only three Member States (The Czech Republic, Finland and Latvia) have launched specific programmes or schemes created for the holders of the residence permit after the entry into force of the Directive

In the Czech Republic, the authorities runt two programmes aiming at supporting and caring for victims of trafficking. Furthermore, the authorities cooperate with the NGO La Strada giving support to victims of trafficking (legal aid, social assistance, accommodation, finding work etcetera). In Finland, a special system of victims assistance aimed at recovery was introduced in January 2007. In the asylum reception centres, multidisciplinary teams (police, social workers and health care personnel) make decisions on needed assistance in this aspect in the individual cases. However, there are no courses designed to improve professional skills and no programme aimed at safe returns. In Latvia, a specific programme aimed at social rehabilitation was created in June 2007.

1.3.14 Residence permits' conditionality upon participation in programmes (Article 12(2) (Q.14.C)

Where a Member States decides to introduce and implement the programmes or schemes referred to in paragraph 1, it *may* make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes. This follows from Article 12 (2).

The national legislation of the Member States
None of the Member States have chosen to make the issuing or renewal of a residence permit conditional on participation in programmes or schemes aimed at 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. Interestingly, the Swedish government stated in the preparatory works for the transposition of the Directive that even though there are some benefits for the foreigner, the main interest in having him stay in Sweden for the purposes of a criminal procedure lies with the state. Hence, the Swedish government believed it to be inappropriate to make the residence permit conditional on participation in certain programmes or schemes.

1.4 Non-renewal and withdrawal

Articles 13 and 14 (Chapter IV) contain provisions on non-renewal and withdrawal of the residence permit.

1.4.1 Non-renewal (Article 13) (Q.15)

Article 13(1) stipulates that the residence permit issued on the basis of the Directive shall not be renewed if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.

This provision ensures that residence permits are not renewed without due regard to the realities of the case. It does not stand in the way of granting a residence permit unrelated to the Directive. This follows from Article 8(2).

The national legislation of the Member States

A vast majority of the Member States will renew the residence permit issued on the basis of the norms of transposition of the Directive if the conditions for authorization still apply (see section 1.2.9). Conversely, a majority of the Member States will, in accordance with Article 13(1), not renew the residence permit if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings (see section 1.2.9).

With regard to granting of residence permits unrelated to the Directive, Finland, the Netherlands and the Czech Republic stand out from the rest of the Member States. These three countries feature particular measures for the persons concerned (cf. preambular paragraph 15).

The Finnish Aliens Act provides for the opportunity of a victim of trafficking benefiting from the temporary residence permit of receiving a permanent residence permit. The criteria comprise continuous residence in Finland of two years. A grant presupposes that the circumstances on the basis of which the alien was issued with the previous temporary residence permit are still met.

After completion of the criminal case in the Netherlands, the victim can apply for a permanent resident permit on humanitarian grounds. If the victim has pressed charges and the criminal case has led to a conviction for trafficking, permanent residence on humanitarian grounds will be granted. If the victim has pressed charges and the criminal case did result in a conviction of the fellon but the victim has been in possession of a temporary B9-residence permit for three years or more on the date of the ruling, he/she will also be granted a permanent residence permit. In all other cases, the application will be judged on the basis of the following criteria: 1) the risk of reprisals from the side of the traffickers and the degree of protection the authorities in the homeland are willing and able to offer; 2) the risk of prosecution in the country of origin, e.g. for prostitution; and 3) the possibilities for social reintegration, taking into account the cultural background and, where applicable, the fact that the victim has worked in prostitution, possible disruption of family ties, the social views on prostitution and the government policies on prostitution.

In the Czech Republic, there is a possibility of exchanging the residence permit for a residence permit that is not conditioned by the cooperation with police authorities if the purpose of the stay, i.e. the cooperation with police authorities, has already been fulfilled, or if the person concerned has stayed in the Czech Republic for at least one year.

1.4.2 Withdrawal (Article 14) (Q. 16)

Article 14 stipulates that the residence permit *may* be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of the crimes referred to in Article 2(b) and (c) in the Directive; or
b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
c) for reasons relating to public policy and to the protection of national security; or
d) when the victim ceases to cooperate; or

e) when the competent authorities decide to discontinue the proceedings.

The national legislation of the Member States (Q.16.A-B)

All Member States have introduced criteria for withdrawal of the residence permit. However, the criteria vary among Member States. In a group of Member States, the criteria for withdrawal are close, or identical to the criteria provided in Article 14 of the Directive (Belgium, Germany, Greece, Malta and Romania). Other Member States have introduced less extensive criteria for withdrawal (Bulgaria, the Czech Republic, France, Estonia, Latvia, the Netherlands, Portugal, Slovakia and Spain). The latter group of states provide for more favourable conditions for the persons covered by the Directive in accordance with Article 4.

Six Member States seem to exceed the criteria for withdrawal as provided in the Directive (Austria, Finland, Lithuania, Poland, Slovenia and Sweden). In Sweden and Lithuania, the residence permit may be withdrawn if the person concerned is on the list of persons prohibited to enter the respective Member State. Also, in Sweden, the residence permit may be withdrawn if the victim has knowingly supplied incorrect information or knowingly suppressed circumstances that have been important for obtaining the permit. Lithuania furthermore operates public health criteria for the withdrawal of the residence permit that are not listed in Article 14. In Poland general rules on withdrawal of residence permits apply. At least one of the criteria exceeds the cases mention in Article 14 namely that the permit shall be withdrawn if the holder of the permit has misused the permit i.e. used it for purposes other than those the permit was granted for. In Finland as well as in Slovenia, the giving of false or forged information on identity is a ground for withdrawal of the permit. This ground exceeds the listing in Article 14. Since there is no specific regime for victims of trafficking in Austrian legislation, general criteria unrelated to the criteria mentioned in Article 14 apply.

The Spanish rapporteurs mention that there is no procedure foreseen in Spanish legislation for the withdrawal of residence permits.

Even though the granting of residence permits under the Directive remains to a very large extent discretionary, withdrawal is exhaustively regulated in Article 14. Thus, withdrawal for criteria unrelated to those encompassed by Article 14 in named Member States would in practice raise an issue of infringement.

Concerning the procedure for withdrawal, most Member States have decided to let the issuing authority also be responsible for the withdrawal of the residence permit. However, the investigative authorities (the police or the prosecutor) will in most cases be consulted or otherwise provided with the possibility to influence if the residence permit should be withdrawn or not.

Article 14 Q.16: Withdrawal of residence permit	
NO TRANSPOSITION AT ALL	
LEGAL PROBLEM	Austria, Finland, Slovenia, Poland Spain, Lithuania, Sweden
PRACTICAL PROBLEM	

2 Situation of Member States not bound by the Directive

The Directive does not bind three Member States: Denmark, Ireland and the United Kingdom (see preambular paragraphs (21) and (22)). This notwithstanding, Denmark refers to a recently adopted law covering the substance of the Directive[24] as well as existing norms in combination with a new action plan to combat trafficking. As for Ireland and the United Kingdom, no specific legislation on victims of trafficking exists, although other legislation and practice touches the elements of the Directive to a limited extent. The rapporteurs stress the fact that NGOs are the main actors when concerning the protection and support of victims of trafficking.

2.1 Definitions and scope of relevant legislation

2.1.1 The definition of 'victim of trafficking in human beings' (Q.5.A-B)

In Denmark, the new 'Action Plan to Combat Trafficking of Human Beings' contains strategies that target both trafficking of human beings and the facilitation of illegal immigration. This plan promotes objectives such as strengthening the criminal procedures and strengthening assistance granted to victims. The Danish National Police has further published a Strategy for an Enhanced Police Intervention against the Criminal Networks behind Prostitution, which includes close international cooperation and the utilisation of the Schengen Information System. According to the national rapporteur, there is no verbatim transposition of Article 1 of the Framework decision in the Danish penal legislation but the content of the relevant norms are nevertheless equivalent.

In Ireland, there is very little legislation relating to 'trafficking in human beings'. Existing provisions are directed at the criminalization and prosecution of smuggling of human beings and trafficking in children. The provisions are not similar to the definitions of the Framework decision. Two new bills relating to the issue were drafted in 2007, but it is unclear whether they will be adopted. Ireland has signed but not ratified the Council of Europe Trafficking Convention.

On 11th October 2007 Ireland saw the publication of the Criminal Law (Human Trafficking) Bill 2007. According to the website of the Department of Justice, Equality and Law Reform, the 'enactment of this legislation will bring Ireland into compliance with the criminal law/law

[24] This will be referred to as 'project of legislation' even though it has been adopted. This is due to the fact that the national report was written before the adoption of the law.

enforcement elements of various EU, Council of Europe and UN human trafficking instruments.'

Section 2 of the Criminal Law (Human Trafficking) Bill 2007 defines trafficking in relation to "a person including a child' in very similar terms to the Framework Decision. The Bill also differentiates between trafficking of a child who, for the purposes of the Bill is 'a person under the age of 18 years' and trafficking in relation to persons other than children and criminalizes trafficking for labour and sexual exploitation and removal of body organs in relation to both groups. Section 3 is similar to the Framework Decision in that it criminalizes trafficking of children (persons aged below 18 years) into, through or out of the State for the purposes of labour exploitation or removal of body organs and any acts of causing the trafficking or attempting to commit or cause it. Section 3 also creates the offences of selling and purchasing of children. Section 4 of the Bill which proposes to amend Section 3 of the Child Trafficking and Pornography Act 1998, defines trafficking or taking of children for the purpose of their sexual exploitation. There is no requirement under this provision that the child must have been for example 'coerced', 'deceived' or put in a position where it had 'no real and acceptable alternative but to submit to being trafficked'. This is very similar to the terms of the Framework Decision. In relation to trafficking of persons other than children or mentally impaired persons, the Section 2 definition of trafficking is applied but Section 5 adds the additional criteria stating that a trafficker will be guilty of the offence if he/she has, for example, 'coerced', 'threatened' or 'deceived' the trafficked person or conferred benefits on a third party to ensure their acquiescence in the commission of the offence.

As for the United Kingdom, there is no specific legislation governing the rights of victims of trafficking. However, some protection is provided by the so-called POPPY Project, funded by the Home Office and run by the organisation 'Eaves House'. If certain criteria are satisfied, a maximum of 25 women can obtain accommodation and support from the project at one and the same time. The protection appears to be limited only to women that have been trafficked, sexually exploited, and are willing to cooperate with the authorities. As for the definition of 'trafficking in human beings', various provisions in UK law cover a wide range of elements contained in the Framework Decision. The UK definition is nonetheless far from reproducing it verbatim.

2.1.2 The definition of an 'action to facilitate illegal immigration' (Q. 5.A, Q.5.C)

As for Denmark, the previously mentioned 'Action Plan to Combat Trafficking of Human Beings' contains strategies that clearly target also the facilitation of illegal immigration. Even though there is no verbatim transposition of Article 1 of Directive 2002/90/EC in Danish legislation, the content of the relevant norms are nevertheless seen as equivalent by the national rapporteur. Article 1(2) of Directive 2002/90/EC is not transposed in Danish legislation.

In Ireland, there is legislation criminalising smuggling and further provisions on carriers' liability. A provision with a quite similar definition of 'action to facilitate illegal immigration' as contained in the Directive 2002/90/EC exists in the Irish Illegal Immigrants Trafficking Act 2000.

The United Kingdom has opted into the Facilitation Directive and for that purpose adopted a definition of facilitation in the national law. It is similar to the one laid down in Directive 2002/90/EC, but lacks the requirement of financial gain.

2.1.3 The scope of relevant legislation to adults and minors (Q.6.A-C)

In Denmark, relevant national norms are applicable to both adults and minors. The Danish Penal Code specifically mentions minors under the age of 18. The new 'Action Plan to Combat Trafficking of Human Beings' stresses that its target is women, men as well as. In the plan the specific situation of minors is noted with regard to *inter alia* legal guardians and personal representatives.

In Ireland, there are no laws that provide protection for either adult or minor victims of trafficking.

In United Kingdom, the POPPY Project mentioned previously seems to exclude minors since it refers only to 'women'. However, trafficked children fall under the British Children Act and are thereby entitled to care and assistance. If a child does not qualify for refugee status or humanitarian protection, a discretionary permit may be issued until the child reaches an age of 17 ½ years.

2.2 Procedure for issuing residence permit to third- country nationals concerned

2.2.1 Information given to the third country nationals concerned (Q.8.A-D)

In Denmark, the Ministry of Social Affairs has the main responsibility to provide information to victims of trafficking. In practice, three Danish NGOs give information. These organisations cooperate with the police and are contacted whenever a victim of trafficking is brought to a police station. The organisations provide information on rights and care both orally and in writing. This includes information on special needs assistance, witness-protection programmes, the possibility of suspension of deportation, safe housing, contraceptives etc. In cooperation with the victim, the NGOs draw up a plan for the assistance and for a 'prepared return'. A 'prepared return' implies psychological, social, health and legal assistance in order to prevent a renewed risk of trafficking upon return. The organisations are further responsible to establish contact between the victim and relevant social authorities. According to the rapporteur, the information routines seem to work satisfactorily.

As for Ireland, no legislation covering this aspect exits. However, information and support are principally provided by NGOs. The same is true for the United Kingdom, with the addition that references to the POPPY Project can be made by the police.

2.2.2 Reflection Period (Q.9.A-F)

In Denmark there is no reflection period provided by law. However, a practice has developed implying that victims of trafficking are offered a time limit for departure of up to 30 days. This means a suspension of the immediate order to leave Denmark. The criterion for suspension is that the victim cooperates on the planning of a 'prepared return' to the country of origin. In a project still to be adopted, a reflection period extended up to 100 days is

suggested. However, in the proposal, this is considered to be conceived of as a suspension of departure rather than a residence permit.

There is no protection against expulsion. It is suggested in a draft law yet to be adopted that persons with a criminal record relating to a trafficking situation can be expelled but without a prohibition of entry. In cases of persons with a criminal record not relating to a trafficking situation, or when considerations of public order and security apply, an expulsion order is suggested to be issued regardless of the person being a victim of trafficking.

As for Ireland, there is no legislation providing for a reflection period. Ireland has signed but not ratified the Council of Europe Trafficking Convention, which contains provisions on reflection period. The Criminal Law (Human Trafficking) Act 2007 proposes to create a number of new offences under Irish criminal law in relation to adults and children specifically but significantly there are only very limited provisions in relation to protection of victims in the context of criminal proceedings. According the information released on the website for the Department of Justice, Equality and Law Reform the 'necessary framework for addressing the immigration aspects and treatment of victims of trafficking will be addressed by the (new) Immigration, Residence and Protection Bill which is being drafted at present.' It is said that this framework will include provision for an 'immediate period of recovery and reflection'

The United Kingdom has adopted a negative stance regarding reflection periods for victims of trafficking. The Government considers that such schemes would act as pull factors for perpetrators and victims, and thereby lead to an abuse of the system. This notwithstanding, the United Kingdom has signed the Council of Europe Trafficking Convention. This implies a substantial change of position, but it is not clear when the Convention will be ratified or what this would imply. Furthermore, members of the POPPY project may be granted a leave to remain for an initial four weeks or longer, if they cooperate with the authorities. This is a discretionary leave and each case is considered on its own merits.

2.2.3 Issue of a residence permit (Q.11.A)

In Denmark, as stated previously, no reflection period exists as a matter of law, but there is an informal practice of suspending deportation orders. To have a deportation order suspended, the victim must cooperate with the authorities on prepared return to the country of origin. The suspension can be extended for more than 30 days if necessary with regard to the police investigation of the trafficking/illegal immigration.

As for the United Kingdom, the removal action is held in abeyance for members of the POPPY Project for an initial period of four weeks or longer. As for other victims, the police may decide to delay removal. According to the rapporteur, there is a tension between supporting trafficked women seen as victims and attempts so remove them as illegal immigrants.

This heading is not applicable in Ireland.

2.2.4 The period of validity of a residence permit (Q.11.B)

In Denmark, the suspension of the deportation order is according to current practice up to 30 days. In a project of law yet to be adopted, it is suggested to extend the suspension for up to 100 days.

As for the United Kingdom, the removal action is held in abeyance for members of the POPPY Project for an initial period of four weeks or longer.

This heading is not applicable in Ireland.

2.3 Treatment granted to third- country nationals concerned

2.3.1 Standards of living capable of ensuring subsistence (Q. 10.A-C)

In Denmark, victims of trafficking are under the responsibility of the Danish Immigration Service. There are many aspects that influence the aliens' possibilities to receive support, for example if an application of asylum has been made and at what stage in the asylum process the application is. The alien can receive support in cash (between 92 and 124 EUR per fortnight) for all necessities; or support in kind which means that food is provided and a very limited amount of pocket money (about 15 EUR per fortnight). As for housing, victims of trafficking are in general placed at asylum centres, mainly run by the Danish Red Cross. Under specific circumstances, safe houses are available. The rapporteur considers the support given to victims in this aspect to be scarce. The aliens concerned have means to buy necessary food and requirements, but no means to use public transportation or engage in social and everyday activities.

In Ireland, the need and support of victims of trafficking is for the most part addressed by NGOs on an informal basis. NGOs in Ireland have noted that the financial or other support given to victims of trafficking has an ad hoc character and is given at the discretion of the Community Welfare Officer. NGOs provide for accommodation, but there are no dedicated shelters. The accommodation is concluded to be basic and not necessarily adequately for the needs of the victims. All such assistance, except from community welfare grants, is provided on a pro bono basis.

As for the United Kingdom the POPPY Project provides for food and subsistence allowance. Children receive support under the Children Act. No other support, other than that might be given in limited ways by NGOs or on an informal basis, exists.

2.3.2 The safety and protection needs of third-country nationals concerned (Q.10.D)

In Denmark, the police cooperate with at least three NGOs to supply special needs interventions and to arrange contact with relevant social and asylum authorities. The police further provide witness protection programmes. Social authorities provide safe houses and stay in crisis centres.

Protection for victims of trafficking in Ireland is principally provided by NGOs.

As for United Kingdom, no specific procedures apply. NGOs have stated that the safest way for victims of trafficking to enjoy protection is to apply for asylum.

2.3.3 Translation and interpreting services (Q.10.E-F)

In Denmark, aliens are provided translation and interpretation services according to law. In a report, the Ministry of Refugees, Immigrants and Integration has considered the procedure to be in line with international standards and conventions.

In Ireland, aside from some limited government funding there is no provision of such services at a State level, but NGOs provide for translation and interpretation facilities.

As for the United Kingdom, no provision or practice is known. Services might be included in the package provided under the POPPY Project.

2.3.4 Free legal aid (Q.10.G)

In Denmark, a victim charged for a criminal act has a right to legal representation by a lawyer with no time limit. In other situations a victim has a right of free legal aid only if it concerns an asylum case appealed at second instance. Minor victims have a right to a legal guardian and a representative.

As for Ireland, no free legal aid is granted victims of trafficking on a State level as a matter of course, except if they enter the asylum process. NGOs employ different strategies dealing with victims in need of legal aid, such as pro bono work of legal professionals.

In United Kingdom, members of the POPPY Project may receive legal advice and support through the asylum and immigration processes.

2.3.5 Medical care (Q.10.H)

In Denmark, all persons under the responsibility of the Immigration Service are entitled to emergency medical care. In a draft law yet to be adopted, it is suggested that victims of trafficking shall be entitled to special needs treatment.

In Ireland, non- EU/EEA nationals on a temporary visit must pay for the cost of attendance at ‘Accident and Emergency’. However, NGOs testify that at least undocumented workers use ‘Accident and Emergency’ in practice without being asked to produce a valid permit. Some NGOs refer female victims to the Women’s Health Project which is free of charge. Public Service Information provided by the Citizens Information Board (a government-sponsored agency which gives information on social services) also states, though not with specific reference to third country nationals, that in cases of 'excessive hardship' the HSE may provide this service free of charge.

In the United Kingdom, emergency medical care is offered, which is free if certain conditions are met. Medical treatment is further provided for members of the POPPY Project.

2.3.6 Psychological assistance (Q.10.I)

In Denmark, all persons that are under the responsibility of the Immigration Service are entitled to emergency psychological care. In a draft law yet to be adopted, it is suggested that victims of trafficking shall be entitled to special needs treatment.

As for Ireland, no such support is regulated by law. However, it is provided by some NGOs.

In the United Kingdom counselling is offered only to members of the POPPY Project.

2.3.7 Minors –the best interests of the child and procedural adaptation (Q.12.A-C)

In Denmark, trafficked children and unaccompanied minors are accommodated in special Red Cross houses with extra staff. In the new "Action Plan to Combat Trafficking of Human Beings" and in a project of law yet to be adopted, special regard is made to the preparation of children's' prepared return. The plan and proposal state that in each case an investigation must be made to explore whether family or an organisation in the country of origin can take the responsibility of the child upon return.

Minors have the same right to suspension of the deportation order for up to 30 days as adults. Minors further have an additional access to a residence permit on humanitarian grounds, if the minor is considered by the authorities to be too immature to undergo the standard asylum procedure. This assessment of maturity takes into account the child's understanding of the procedural context and the ability to explain background or grounds of asylum. All minors have a right to a personal representative.

As for Ireland, the only information given is that minors brought within the remit of the asylum process will be guided by staff from the Office of the Refugee Applications Commissioner. These officials have received specific training from UNHCR on how to deal adequately with children with due regard to their levels of maturity.

As for the United Kingdom, the rapporteur merely notes the fact that the UK retains a reservation to the UN Conventions on the Rights of the Child regarding non- citizens. This has been heavily criticised by several NGOs.

2.3.8 Minors – access to the educational system (Q.12.D)

In Denmark, all minors that are under the responsibility of the Immigration Services and accommodated by the Danish Red Cross, have the same access to education as Danish children. In an initial phase, the children are taught in schools run by the Red Cross until they have sufficient language skills. These schools are placed under the same regulations as public education, but provide for additional staff to meet the special needs of the children.

This heading is not applicable in Ireland and in the United Kingdom.

2.3.9 Unaccompanied Minors (Q.12.E)

In Denmark, personal representatives are appointed to all children when such a child is suspected to be a victim of trafficking. The representative will typically support the child in the asylum process and engage in special needs of care or treatment. The Danish Red Cross cooperates with the International Committee of Red Cross to trace family members of minor asylum applicants. A draft law yet to be adopted suggests that this should be extended to all minors, regardless the application for asylum. The proposal further suggests that no consent from the minor shall be needed, if it is in the best interest of the child to find the family. If the family has been involved in the trafficking of the child, the family will not be reunited.

In Ireland, a minor identified as unaccompanied is referred to the Health Service Executive (HSE) that attempts to reunite the child with the family if there is one. The reunification process is informal and has been criticized as lacking in safeguards for the child. If no family is traceable the Child Care Act applies. When appropriate, the HSE is entitled to lodge an asylum application on behalf of the child. Unaccompanied minors are housed in adult reception centres or in hostels for homeless children. In the latter case, there is no care staff available, and the children are supervised only by a social worker that visits weekly. Only a few specialized housing projects exist. Various NGOs have expressed concern on the risk that these minors might again fall into the hands of traffickers.

This heading is not applicable in the United Kingdom.

2.3.10 Work, vocational training and education (Q.13 A-D)

In Denmark, a work permit does not follow the suspension of deportation order. There is no vocational training, but there are limited possibilities of training on work places arranged by the Red Cross. Adult victims of trafficking have access to limited education (mainly language lessons and integration classes) at Red Cross centres.

This heading is not applicable in Ireland and the United Kingdom.

2.3.11 Programmes or schemes for the third-country nationals concerned (Q.14.A)

As for Denmark, the new ‘Action Plan to Combat Trafficking of Human Beings’ states that a ‘Knowledge and Coordination Centre for Human Trafficking’ is to be established in 2007. This centre will provide victims for health related treatment, psychological assistance, legal assistance and social pedagogical assistance. Neither the Plan nor the draft law makes to the Directive.

This heading is not applicable in Ireland and the United Kingdom.

2.4 Non-renewal and withdrawal

2.4.1 Non-renewal and withdrawal (Q.15-16)

As for Denmark, the suspension of deportation order can be withdrawn if the victim no longer cooperates with the authorities on her or his prepared return to the country of origin.

This heading is not applicable in Ireland and the United Kingdom.