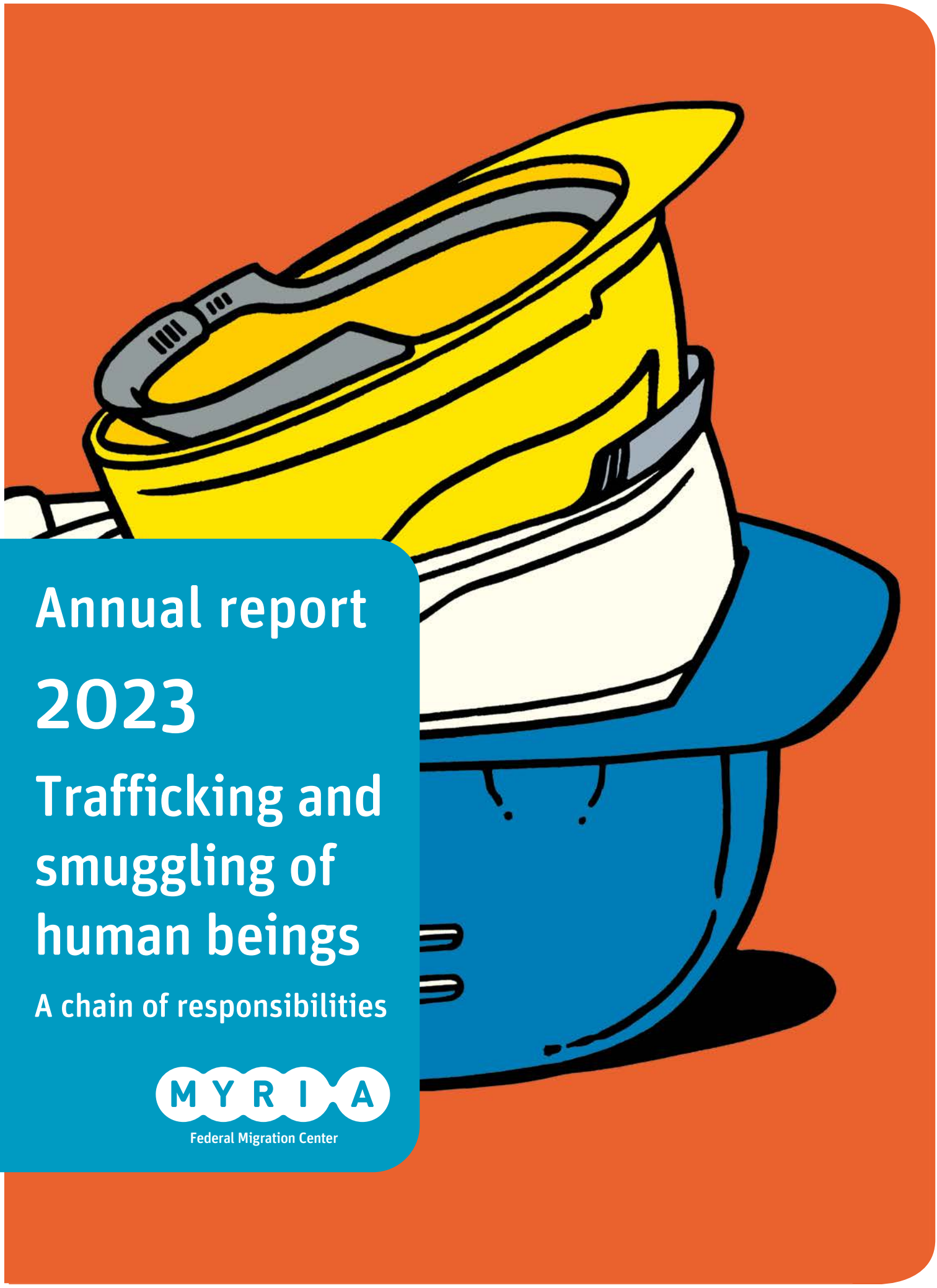


Annual report 2023

Trafficking and smuggling of human beings

A chain of responsibilities

MYRIA

Federal Migration Center

Annual Report 2023

Trafficking and smuggling of human beings

A chain of responsibilities

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Foreword

'A chain of responsibilities' is the title of this annual report on the trafficking and smuggling of human beings. The issue of human trafficking for the purpose of labour exploitation is the report's key theme, and Myria, as the independent national rapporteur, wishes to respond to the need to clarify the phenomenon and develop appropriate instruments.

Before going any further, I would once again like to emphasise Myria's commitment to ensuring that the fight against human trafficking is always conducted with the necessary rigour and determination to detect each and every victim, in particular those lacking agency, those who can neither file a complaint nor flee, regardless of the purpose of the exploitation. Classifying one form of trafficking as more important than another involves the risk of making detection efforts selective. However, numerous cases, here and elsewhere, have taught us that sex workers can also be moved within the European Union and that there are criminal networks operating in this sector with *modi operandi* that are particularly effective owing to deficient transnational referral systems.

Recent developments in the legal and political framework require in-depth analysis, at both European and Belgian level. Our aim is therefore to guide the reader, and not shy away from making critical comments. In this edition, we also cover the major report by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), which once again highlights the problem of compensation and the shortcomings in effective access for victims to compensation. GRETA also queries the low number of identified child victims who receive support in Belgium.

The principal objective of this report is to respond to the relevance of the Borealis case, without making it the main subject. While the shockwaves caused by this case are still rocking the foundations of the Belgian model today, analyses and answers have yet to be provided. Likewise, the judicial outcome of the case and the demands of the victims are still pending.

The phenomenon of human trafficking for the purpose of labour exploitation is the special focus of this report. Within this context, there is an in-depth analysis of the road transport sector, demonstrating the importance of opening an investigation and what we can learn from analysing the victims. Lastly, before turning to best practices and experiences in the fight against trafficking, we draw attention to the development of due diligence and to numerous initiatives in the field of corporate social responsibility.

In the future, the judicial approach to human trafficking will require increasing support, both from developments in responsible and accountable entrepreneurship and by strengthening the role of the administrative approach.

However, despite developments in legislation and tools, the chain of responsibility will only be addressed when the specialised centres are able to provide appropriate support to every victim referred to them. Similarly, the debates surrounding the Borealis case – which were held in more than one special commission – have already highlighted the fragmentation of competences in terms of the reception of potential victims of trafficking, since the organisation and funding of accommodation centres also depend on the communities.

This is why we are calling on the federal government to conduct a thorough review and to take responsibility. Countries must take all appropriate legal and other measures to enable victims to remain on their territory on a temporary or permanent basis. Following international questions about the adequate funding of specialised centres, Belgium has already indicated that it will transfer responsibility for this budget to the federal authorities, with the exception of the responsibility for minors.

The reflection period for victims of trafficking who are not staying in the country legally is intended to guarantee their cooperation in order to improve the quality of criminal investigations.

Myria believes that the federal authorities are best placed to deal with accommodation needs in the event of a larger influx of potential victims. All measures aimed at supporting trafficking victims during the critical detection and referral phase are the responsibility of the federal legislator, as these measures form part of the wider fight against human trafficking. Are there still any ongoing investigations or proceedings? Can the person be considered a victim of human trafficking? Is the person willing to cooperate? Has the person cut ties with the alleged perpetrators of the crime? These are the obvious questions to focus on in this broader framework. The fight against human trafficking cannot be conducted – let alone furthered – in a credible manner if the federal government is not prepared to present its own responsibility as clear, unambiguous and firm.

The status of trafficking victims is so closely linked to the fight against trafficking that it must be considered an integral part of the relevant regulations.

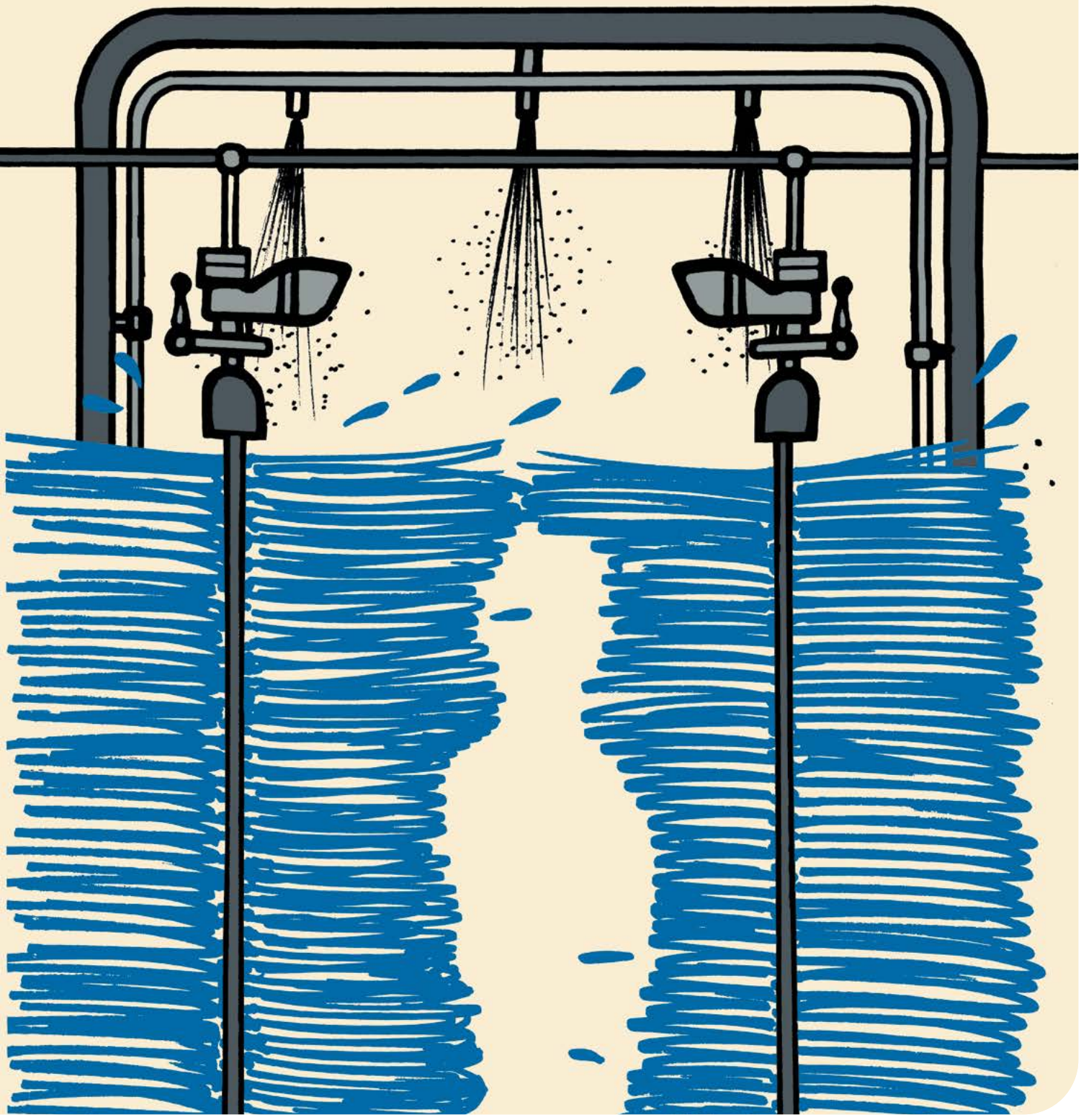
In order to tackle the chain of responsibility, it must be established by a recognised authority and officially recorded.

I hope you will enjoy reading this stimulating report with all the attention it deserves.

Koen Dewulf
Director

Part 1

Focus: Trafficking of human beings for the purpose of labour exploitation



Introduction

More than 10 years have passed since the last report by Myria (then the Centre for Equal Opportunities and Opposition to Racism) devoted specifically to trafficking for the purpose of labour exploitation. It is therefore time to devote another focus to this issue. Events in 2022 also justified this choice. In the Borealis case, a major construction project involving many subcontractors, a large number of potential victims were referred to specialised reception centres, leading to a serious reception crisis in the existing system. This case also had a major influence on the work of the Special Parliamentary Commission on Trafficking and Smuggling of Human Beings[1], which devoted a large part of its work to labour exploitation.

In this focus, Myria begins by outlining the phenomenon of trafficking for the purpose of labour exploitation (Chapter 1). Here, it draws on various written sources, such as the Parliamentary Committee's report, as well as interviews with people working in the field. Myria then illustrates the problem of human trafficking for the purpose of labour exploitation in a case study (Chapter 2).

Given that the issue of corporate duty of care is developing rapidly at European level and could be a tool for preventing trafficking, Myria also devotes a chapter of the report to this subject (Chapter 3). Finally, Myria identifies various experiences and good practices that could help to combat trafficking for the purpose of labour exploitation more effectively (Chapter 4).

This focus also includes an external contribution on the role of the administrative approach in the fight against human trafficking, provided by the coordinators of two District Information and Expertise Centres (CIEAR-ARIEC).

1 A special commission responsible for evaluating legislation and policy on human trafficking and smuggling was set up within Parliament in February 2022. It completed its work on 31 May 2023. Its remit was to take stock of the current situation with regard to the fight against human trafficking and smuggling, to assess the legal provisions in force with regard to both the prosecution of perpetrators and the protection of victims, and to examine international cooperation in the fight against human trafficking. It submitted a voluminous report containing no fewer than 100 recommendations. For an analysis of the Committee's work, see Part 2, Chapter 1, point 2.1 of this report.

Chapter 1

Image of the phenomenon of human trafficking for the purpose of labour exploitation

Introduction

Trafficking in human beings for the purpose of labour exploitation is a highly topical phenomenon that requires an analysis of the latest trends and developments in order to better understand it. For this purpose, Myria spoke to a number of French- and Dutch-speaking stakeholders, including several labour prosecutors and the heads of the National Social Security Office (NSSO) inspection department's specialist ECOSOC teams and their Thematic Directorate for Trafficking in Human Beings. The analysis is also based on information collected from the hearings with various stakeholders within the framework of the last Special Parliamentary Commission on Trafficking and Smuggling of Beings[2]; case law; Myria's previous annual reports; the literature; the reports and action/strategic plans of various bodies (Europol, the Social Information and Research Service (SIRS), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Financial Intelligence Processing Unit (CTIF), the NSSO inspection services and FPS Justice's Criminal Policy Department).

When reading the data relating to the phenomenon, it is important to take into account the different approaches to detecting and tackling the phenomenon of trafficking for the purpose of labour exploitation taken by the authorities and stakeholders in the field, which notably depend on investigative resources and capacity.

The different approaches and resources available may explain the observed differences in the understanding of the phenomenon in the country's various regions.

This may explain the differences in the distribution of the phenomenon according to the Dutch-speaking or French-speaking part of the country, according to the urban or rural nature of the territory or according to the provinces concerned[3]. Furthermore, quantitative data only provide an overview of the authorities' response to a given phenomenon, but cannot in any way be used to assess the scale of this phenomenon.

To draw up a picture of the phenomenon of human trafficking for the purpose of labour exploitation, it is necessary to start from the premise that the difference between this phenomenon and cases of social fraud can be nebulous[4]. This interconnection gives rise to difficulties and differences of approach in the work carried out by staff in the field (particularly within NSSO inspection services, whose role is to detect potential cases of trafficking on the basis of indicators in this area) and magistrates (who are responsible for classifying a situation as trafficking in human beings).

This is due to the fact that, according to the majority of these various players, human trafficking indicators are to be sought in the non-compliance with social regulations[5]: wages that do not comply with Belgian pay scales[6] or a lack of wages; working hours in excess of the rules in force; no declaration of employment allowing the worker to benefit from social security[7]; employment of foreign workers[8]; wage deductions on various pretexts[9].

2 On this subject, also see the chapter in this report on recent developments in the Belgian legal and political framework: Part 2, Chapter 1, point 2.1.

3 On this subject, also see Part 1, Chapter 4, point 4.

4 GRETA, Evaluation Report on Belgium, third evaluation round, Access to justice and effective remedies for victims of trafficking in human beings, 2022, p. 32; Article 433 quinquies of the Criminal Code defines human trafficking as: "the recruitment, transportation, transfer, harbouring or receipt of people, and taking or transferring control over them with the aim of exploitation". There is an exhaustive list of the purposes of exploitation. Regarding labour exploitation, this refers to work or services performed in conditions contrary to human dignity.

5 According to labour prosecutors; see the external contribution of the former labour prosecutor of Hainaut, Charles-Eric Clesse, in Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, pp. 42-45.

6 Workers are often not paid an hourly wage, but a task-related wage, which is more difficult to assess (according to a labour prosecutor).

7 According to a labour prosecutor; see the external contribution of the former labour prosecutor of Hainaut, Charles-Eric Clesse, in Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, pp. 42-45.

8 See the external contribution of the NSSO inspection services in Myria, *Annual Report 2021, Trafficking and smuggling in human beings, Visibly invisible*, pp. 110-119; Report of the Special Report of the Special Committee responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Peter van Hauwermeiren, Director NSSO Anti-trafficking Unit.

9 Myria, *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible*, p. 58

One way of distinguishing between the concepts of social fraud and human trafficking for the purpose of labour exploitation is to identify a human trafficking situation according to the level to which human dignity has been violated: violation of rules relating to housing and work conditions (safety, cleanliness, health and well-being)[10]; lack of contact with others; significant dependence on the exploiter[11]; failure to admit liability for an accident at work[12]. In light of these different approaches, the picturing the phenomenon of trafficking for the purpose of labour exploitation should take into account the general trends within the sectors in which indicators of trafficking have been detected or in which charges of trafficking have been filed. The same applies to high-risk sectors which, given the wide margin of interpretation of the indicators, could possibly be included in the phenomenon of human trafficking, but which, in practice, are often not the subject of formal legal proceedings and are not considered to be cases of human trafficking.

The director of the NSSO's Thematic Directorate for Trafficking in Human Beings explains: "How, during checks, do inspectors distinguish between undeclared work and illegal employment on the one hand, and labour exploitation and human trafficking on the other? As I have already said, findings of human trafficking are often the result of breaches of employment law. Distinguishing between serious breaches of employment law and labour exploitation is not always easy, because it is not an exact science. Labour exploitation is a vague concept for which there is no clear definition in our law. It is a kind of concept for various abuses in work situations. It is sometimes referred to as a continuum ranging from decent work to human trafficking, with the rest in between. The extremes at either end are clear. Everything in between is not, and we sometimes find ourselves in a grey area"[13].

Since 2002, as a number of magistrates point out in a publication[14], the phenomenon of labour exploitation has increased with the emergence of better-organised networks, mainly in the construction, hospitality, domestic work and horticultural sectors: "More cases involve collective recruitment in the country of origin (…) and the modus operandi is linked to the phenomenon of slum landlordism"[15]. The victims and perpetrators were often of Belgian, Chinese, Indian, Turkish, Moroccan and Bulgarian nationality. Iranians, Kosovars and Albanians were also involved. Between 2003 and 2006, Chinese triads appeared on the scene, followed by Pakistani organisations. In 2007, Chinese restaurants and the employment of Romanians in construction and horticulture were in the majority. Between 2007 and the present day, the emergence of specialised practices (use of false documents, sham marriages, bogus self-employment, letterbox companies, illegal postings and social dumping through non-compliance with European rules) and the increase in the number of sectors involving exploitation (renovation, butchery, cleaning, selling textiles at markets) demonstrate a trend towards professionalisation in the trafficking of human beings for the purpose of labour exploitation[16].

A picture of the phenomenon of trafficking for the purpose of labour exploitation is presented below in three parts: general trends, a breakdown according to the most commonly represented sectors, and the geographical distribution of the phenomenon.

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10 See the external contribution of the former labour prosecutor of Hainaut, Charles-Eric Clesse, in Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, pp. 42-45.

11 For instance, confiscation of the person's passport and/or bank card (Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Bruno Devillé, social inspector at the NSSO office in Brussels p. 296, hearing of Christian Meulders, director of Sürya; SIRS, Strategic Plan, Fight against Social Fraud and Social Dumping - De Croo Government 1, 2022-2025, p. 53).

12 According to a labour prosecutor; in particular, the lack of insurance covering accidents in the workplace or the failure to report an accident to the insurance provider *(Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023,* Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 297, hearing of Jan Knockaert, coordinator at FairWork).

13 *Ibid.:* p. 295, hearing of Peter van Hauwermeiren, Director NSSO Anti-trafficking Unit.

14 J. Lorré (Ed.), F. De Ketelaere, F. Demeester and M. Manderick, *"Mensenhandel en -smokkel. De weg naar een eengemaakte vervolging en berechting"*, in Cahiers Antwerpen Brussel Gent, Larcier, 2018, pp. 10-11.

15 *Ibid.*, p. 10.

16 *Ibid.*

1. General trends

As regards human trafficking, Myria has identified an increase in the number of cases of labour exploitation detected in Belgium[17]. This can be explained by the rise in the number of people in vulnerable situations and at risk of exploitation. According to Europol[18], previous Myria annual reports[19] and interviews, this phenomenon can likely be found today in the majority of economic sectors[20], typically in the following high-risk sectors: construction, hospitality, cleaning, domestic work, road transport (national and international), agriculture, horticulture, car washes, bakeries and butchers, corner shops and night shops, second-hand clothing sorting, meat processing industry, riding schools and nail salons. These are generally less regulated bottleneck sectors[21] where a low-skilled workforce in a precarious situation is in demand (especially for seasonal manual tasks)[22]. Other atypical sectors are also involved: logistics, hairdressers, newspaper delivery, travel agencies and football[23].

Trafficking for the purpose of labour exploitation can take the form of debt bondage, where the victim is forced to reimburse travel costs by working for free. This is mainly the case for Asian victims in the context of nail salons[24] or hospitality.

Exploiters often set up complex schemes to avoid responsibility.

In some cases, labour exploitation, human smuggling and sexual exploitation are invertwined[25]. Criminal organisations are sometimes involved in this debt bondage system, as Myria saw in the Essex case[26] (discussed below in the nail salon sector).

Many other situations concern small- or medium-sized cases where the employer takes advantage of the workers' vulnerable situation. In practice, this mainly involves illegal foreign workers, but the phenomenon of trafficking can also target legal foreign workers[27], or even Belgians falling victim to labour exploitation[28]. Reported cases often involve situations where a person with a legal status lends or rents their identity to a worker in an irregular situation.[29]

Exploiters often set up complex schemes to avoid responsibility and hide the exploitation of human trafficking victims. In the context of the free movement of services[30], this may involve cascade sub-contracting, bogus self-employment and/or posting schemes. Postings may involve both employees and self-employed workers, including both EU nationals and third-country nationals (the latter may be seconded to Belgium via a company operating in another EU Member State).

17 NSSO inspectors fill out a checklist as soon as there are sufficiently precise indications that a situation of human trafficking may be involved. The NSSO inspection department drew up 78 checklists in 2018, 120 checklists in 2019, 134 checklists in 2020, 86 checklists in 2021 and 280 checklists in 2022 (Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 164; Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 124; Myria, *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible*, p. 111; Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 130; as well as NSSO's external contribution in Part 3 of this report on data.

18 Europol, SOCTA, *Serious and organised crime threat assessment*, 2021, p. 72; Europol, SOCTA, *Serious and organised crime threat assessment*, p. 52.

19 See Myria's website.

20 Although checks are carried out by social inspectors in the prostitution sector, this chapter does not deal with this sector, which comes under the heading of sexual exploitation.

21 According to a labour prosecutor.

22 Europol, op. cit., 2021, p. 72; Europol, op. cit., 2017, p. 52.

23 For more information on labour exploitation in this sector: see F. Loore and R. Job, Marque ou crève, Avant-Propos, Waterloo, 2014.

24 This concerns mainly Vietnamese victims in Brussels.

25 Some Vietnamese domestic workers in Europe are also sometimes victims of sexual exploitation by their employers. According to one expert, there have been several cases in Brussels, for instance, of the exploitation of domestic workers (mainly women) who accept work in the homes of compatriots in exchange for board and lodging and to finance their onward journey to the UK. In this case, the employers are mainly families from southern Vietnam ('boat people'), who have been living in Europe for decades (D. Silverstone and C. Brickell, Combating modern slavery experienced by Vietnamese nationals en route to, and within, the UK, Independent Anti-Slavery Commissioner (IASC), 2017, p. 14, 32; Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 20).

26 See the analysis of the Belgian part of the Essex case in the focus of the previous annual report on the smuggling and trafficking of Vietnamese nationals in Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 25-44.

27 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 296, hearing of Christian Meulders, director of Sürya.

28 Two cases concerning Belgian victims are presented in the case law overview chapter in this report: Part 2, Chapter 3, points 2.2.3 and 2.2.8. One involves a first decision in the hospitality sector (Antwerp Crim. Court, Antwerpen division, 12 December 2022, ch. AC1 (appeal)) and the other a case in the agricultural sector (Liège, 19 January 2023, 6th ch.; the Liège Crim. Court, Liège division, 15 February 2021, 18th ch. (appeal)); and Myria's website.

29 According to the NSSO inspection department.

30 Criminal Policy Department, "Fight against human trafficking 2021-2025" action plan, pp. 20 and 39.

The advantage of this system is that workers remain subject to the social security system of the sending country for the duration of the posting. However, they are subject to Belgian employment law[31].

In addition, labour exploitation in conditions contrary to human dignity can be an essential element of cascade subcontracting models organised by companies wishing to lower their wage costs in the context of social dumping[32]. Exploited workers often do not know who they are really working for, with operators misusing posting systems. As well as undermining the individual rights of workers in illegal stay, this phenomenon also threatens to undermine the Belgian socioeconomic system.

The activities of criminal organisations linked to social fraud are becoming increasingly complex in Belgium. In particular, these organisations use money laundering services[33]: as the Financial Intelligence Processing Unit (CTIF) says, "These are professional money laundering networks operating on an international scale. They offer their financial services for various criminal activities, such as the exploitation of illegal labour, fraud and tax evasion, but also and above all for drug trafficking. They use corporate structures in different countries that are prepared to receive cash, for example from drug trafficking, but that can also deliver cash via the offsetting technique, for example to pay for illegal work. Initially, these networks focused on social fraud in Brazilian and Portuguese circles, which is why the term 'Brazilian network' is still used. In the meantime, the networks have evolved and, although the front men - the company directors - often still have Portuguese or Brazilian nationality, their activities are no longer limited to money laundering from undeclared work in the construction sector"[34].

Criminal organisations involved in social fraud are increasingly mobile and able to adapt to changing economic circumstances. According to CTIF, "One of the components of the concept of organised crime is the variety of criminal activity in which criminal organisations are involved. Organised crime is a multifaceted phenomenon that manifests itself in multiple criminal activities. Many criminal groups have become increasingly opportunistic, moving from one offence to another for greater operational advantage or profit. According to Europol's SOCTA 2021 report, one of the key characteristics of criminal networks is their ability to adapt to change. This was clearly demonstrated during the COVID-19 pandemic, when criminals quickly adapted their modus operandi to this unprecedented situation"[35].

CTIF notes that in some cases linked to social fraud, in particular concerning the so-called Brazilian network, "(...) links appear with players active in human smuggling. These are intermediaries known to the police as labour suppliers, who bring over Brazilians to come and work illegally in companies in Belgium and other European countries"[36]. For several years now, CTIF has seen Brazilians or Portuguese setting up or taking over companies that are mainly active in the construction and industrial cleaning sectors[37].

Requiring few administrative formalities and financial and legal arrangements, general partnerships[38] are increasingly used by social fraud rings. CTIF notes that this type of company is frequently used in sectors with a high risk of bankruptcy and money laundering, such as construction, transport and hospitality[39].

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31 According to a labour prosecutor; Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 298, hearing of Herwig Verschueren, professor at the University of Anwerp.

32 In a collective work, several magistrates refer to the definition of 'social dumping' given by the author Alexandre Defossez, as follows: "Social dumping is not a legal concept. Defossez recommends the following definition: a form of unfair competition which consists in the use, by an economic player, of a discrepancy between one or more legal rules of social law of the Member States. The aim of this behaviour is to obtain an economic advantage" (A. Defossez, "Le dépassement de la question du dumping social : une condition nécessaire à une meilleure application de la Directive Détachement", in Revue de Droit Social, 2014, Vol. no. 1, pp. 89 ff., in J. Lorré, F. De Ketelaere, F. Demeester and M. Manderick, op. cit., 2018, p. 72).

33 See CTIF's 2021 activity report (p. 6, p. 14 and p. 16). This publication is available on the CTIF website.

34 *Ibid.* (p. 14).

35 See CTIF's 2021 activity report (pp. 15-16). This publication is available on the CTIF website. Europol's SOCTA report is available at: Europol, op. cit., 2021, p. 94.

36 See CTIF's 2021 activity report (p. 24). This publication is available on the CTIF website.

37 *Ibid.* (pp. 5 and 23). This publication is available on the CTIF website.

38 FPS Justice describes this form of company as follows: "General partnerships are entered into by partners who have unlimited joint and several liability. All decisions must be taken unanimously, unless the agreement specifies that decisions are taken by majority vote" (Federal Public Service Justice, "Types of company", available on the FPS Economy website).

39 See the CTIF 2020 activity report (pp. 23-24). This publication is available on the CTIF website.

One of the disadvantages of this form of company is that it entails unlimited joint and several liability for the partners, which motivates networks to use front men. This type of company does not require a financial plan and start-up capital to be set up[40]. As a result, it is easier for organisations to set up a new company quickly when the previous one becomes known to the police.

Generally speaking, the perpetrators of trafficking for the purpose of labour exploitation in Belgium include both small-scale and large-scale cases.

Small-scale cases are particularly common in the domestic work and bakery and butchery sectors. However, Myria has noted that a discrepancy is emerging between the country's linguistic communities: trafficking is increasingly found in small, isolated cases on the French-speaking side, while the cases on the Dutch-speaking side are of a more organised nature[41].

2. Sectors

2.1. | Construction

The phenomenon of labour exploitation is mainly to be found in this sector[42]. This exploitation is generally masked by a system of fraudulent postings and/or bogus self-employment[43]. These practices can be found in cases concerning both small and large companies[44]. This makes it even more difficult to trace the underlying network, especially in the case of self-employed workers.

According to one labour prosecutor, large 'decent' companies with an international reputation that want to reduce their wage costs through social dumping are also involved, with trafficking and social dumping no longer the sole preserve of dishonest companies.

Human trafficking in the construction sector can also involve large companies with an international reputation.

The use of subcontracting chains, with the risks that this entails, is a recurrent feature of the construction sector, as illustrated by a case concerning the partial collapse of a school in Antwerp in June 2022. Five people died and nine were injured, all foreign nationals[45].

According to to information provided within the framework of the Parliamentary commission, more than 200 different subcontractors were involved in the project [46].

In 2022, the NSSO's inspection services found that in the five previous years, 37 presumed victims of human trafficking in the construction sector were of Ukrainian nationality[47]. As it is easy for Ukrainians to obtain a visa in Poland, they generally resort to posting in EU countries[48]. Myria's interviews with labour prosecutors in Flanders revealed that it is mainly Romanian workers and third-country nationals (Ukrainians, Moldovans, Kyrgyz, Macedonians, Belorussians)[49] who are found in human trafficking cases. In East Flanders, indicators of exploitation have also been noted among Turkish, Bulgarian and Polish construction workers[50].

The many years, Brazilian networks, often linked to criminal organisations within the context of social fraud, have continued to be particularly active in this sector[51].

40 *Ibid.*
41 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295,hearing of Eric Garbar, judicial commissioner, head of the Trafficking and Smuggling of Human Beings Unit, DJSOC; See the chapters on case law in Myria's previous annual reports and Myria's website; On this subject, also see the chapter on good practices and experiences in this report's focus: Part 1, Chapter 4, point 6 on the fight against social dumping linked to human trafficking.
42 Over the past five years, almost half of the findings of the NSSO inspection department (ECOSOC units) have occured in the construction and hospitality sectors, with 139 and 118 checklists respectively. On this subject, see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 110.
43 See Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 111 and Myria's website (Case law).
44 According to a labour prosecutor; Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, OC 55 2530/002, Annex 4, p. 298, hearing of Herwig Verschueren, professor at the University of Antwerp.
45 Belga, *'Aannemer al maanden op de hoogte van constructiefouten ingestorte Antwerpse school', stad naar eigen zeggen nooit op de hoogte gebracht"*, De Morgen, 16 June 2022; J. Nuyts, *"Hoofdaannemer loog tegen stad Antwerpen: geen 27, maar 249 onderaannemers op de werf van ingestorte school Nieuw Zuid"*, Het Laatste Nieuws, 16 August 2022; A new fatal accident occurred at a building site in Mechelen at the beginning of October 2022, again within the company involved in this case (see the oral parliamentary question on this subject: Committee on Social Affairs, Employment and Pensions, summary report, Belgian Chamber of Representatives, CRABV 55 COM 183, 3 October 2023).
46 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 298, hearing of Herwig Verschueren, professor at the University of Antwerp.
47 See Part 3 on data in Myria's Annual Report Trafficking and smuggling of human beings 2022, Bound by debt, p. 110.
48 According to a labour prosecutor.
49 According to labour prosecutors.
50 SIRS, Mr. Be*n Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 4.*
51 See the CTIF 2020 activity report (p. 5 and p. 23). This publication is available on the CTIF website.

Cases in this sector can involve a large number of potential victims[52]. For instance, Myria highlights the case that came to light after some forms of exploitation were detected by the inspection services on the site of the petrochemical company Borealis in July 2022. Workers from third countries were employed there illegally[53]. Among them were Bengali and Filipino workers who were allegedly employed without work permits, and whose work was undeclared and seriously underpaid in relation to the sector's wage scales. Turkish workers[54] were also employed, some of whom reportedly had a single permit while others had merely applied for one. Initially, all the Bengali, Filipino and Turkish workers were provisionally recognised as victims of human trafficking by the labour prosecutor's office.

However, following a more in-depth investigation, only some of these workers were awarded this status in the end. At the time of completing this report (August 2023), the investigation was still ongoing.

The nail salon sector is vulnerable to human trafficking within the framework of ebt bondage.

2.2. | Nail salons

Over the past few years, the Belgian authorities have noted an increase in the identification of potential victims of labour exploitation in nail salons[55].

The nail salon sector is highly vulnerable to human trafficking within the framework of debt bondage. In the case of Vietnamese networks, it is generally a combination of smuggling and trafficking in human beings: on arrival in our country, migrants are exploited, often by a criminal organisation, in order to be able to pay back their travel debt or to continue their journey to the United Kingdom[56].

In several investigations, Brussels appears as the place where smuggling is organised, and victims are temporarily accommodated (locked up) in safehouses while waiting for further transportation, or where they are exploited. Some organisations also operate out of the United Kingdom and other Member States of the European Union[57].

The analysis of the Essex case, which came to light in October 2019 following the death of 39 people in a refrigerated lorry, shows that this phenomenon is still present today. This case established the link between an international network of smugglers and the labour exploitation of Vietnamese victims in restaurants and nail salons in Brussels. Most Vietnamese victims are very reluctant to accept the status of victim of trafficking, although several did accept it in the context of this case. They generally feel a strong sense of shame and distrust, and feel indebted to their families who have gone into debt to enable them to make the illegal journey. The family back home is also highly under pressure from the criminal network[58].

Owing to the relatively limited regulations, these businesses are an attractive place for criminal organisations to engage in labour exploitation and laundering the proceeds of crime. According to the experts Myria spoke to, this exploitation mainly takes place in buildings in Brussels, although there are suspicions of human trafficking in nail salons located elsewhere in the country[59].

2.3. | Hospitality

In the hospitality sector, the fierce competition between companies influences the risk of social fraud and labour exploitation[60].

52 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Patrick Bourgeois, federal judicial police of Brussels.
53 *Ibid.*: p. 296, hearing of Patsy Sörensen, founder of Payoke.
54 Ukrainians were employed on the site. It would seem that they were regularly employed there.
55 GRETA, op. cit., p. 9.
56 See the focus of the previous annual report on the trafficking and smuggling of Vietnamese nationals in Myria's 2022 *Annual Report Trafficking and smuggling of human beings, Bound by debt*, pp. 7-51.
57 *Ibid.*; See the external contribution by Hilde Sabbe, strategic analyst at DJSOC Brussels, in Myria's2022 *Annual Report Trafficking and smuggling of human beings, Bound by debt*,
58 See the focus of the previous annual report on the trafficking and smuggling of Vietnamese nationals in Myria's *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 7-51.
59 *Ibid.*
60 SIRS, Strategic Plan, op. cit., p. 60.

This is the second largest sector, after construction, in which trafficking indicators are most commonly identified[61], as Myria has also noted in case law[62].

Just as in nail salons, Vietnamese networks are also present in the hospitality sector (see above)[63].

While Chinese restaurants regularly feature in cases of trafficking for the purpose of labour exploitation, involving debt bondage or not, a new trend is emerging according to one labour prosecutor. Recently, a large number of Hungarians were involved; they were posted to restaurants through labour suppliers. There are also many Chinese victims, who are too terrified to agree to enter the procedure allowing them to obtain the status of victim of human trafficking[64].

Besides Asian restaurants (especially Indian) in the hospitality sector, community cafés, kebab shops, pizzerias, hookah lounges, champagne bars and snack bars are also linked to human trafficking.

2.4. | Agriculture and horticulture

Cases of human trafficking in the agricultural and horticultural sector mainly involve seasonal and flexible workers housed in appalling conditions[65].

In one of its reports, the Council of the European Union presents the results of the Joint Action Days/EMPACT Action Days carried out in various Member States of the European Union in 2020 and, in particular, makes the link between document fraud and trafficking for the purpose of labour exploitation in the agricultural sector[66].

The NSSO inspection services noted that potential victims of trafficking detected in the sector between 2017-2021 were mainly Romanian[67]. Morocco[68] and Poland (in East Flanders)[69] were also often cited countries of origin for victims in the agricultural sector. In addition, there were victims from Eastern Europe who were exploited through complex constructions (postings and/or bogus self-employed workers and/or postings of bogus self-employed workers)[70].

Myria still notes a large number of presumed victims who are detected among staff in the poultry sector[71]. For instance, around 40 Bulgarians were employed on a poultry farm as bogus self-employed workers or through a bogus posting. Through companies, they tried to create a semblance of legitimacy. The workers, who had to pay rent, occupied a property that was subsequently declared unfit for habitation by the housing inspection. The Turnhout Criminal Court convicted the seven defendants of various social and tax offences and of trafficking in human beings for the purpose of labour exploitation. The Antwerp Court of Appeal eventually acquitted one of the defendants of the latter charge[72].

The phenomenon of human trafficking in the fruit-picking sector is still rife, particularly in the province of Namur, where 34 alleged victims were detected in investigations carried out by the NSSO inspection department in 2019. In May 2022, in the context of a tomato plantation, The Dendermonde Criminal Court convicted a Nigerian defendant of human trafficking and identity fraud, as he had twice made other people work under his name. In exchange, the workers, who were in a precarious financial and residence situation, had to pay their wages into his account and give him their payslips[73].

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61 See the figures provided by the NSSO inspection services in Part 3 on data, in Myria's *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 110; Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Peter van Hauwermeiren, Director NSSO Anti-trafficking Unit.

62 See the chapters on case law in Myria's annual reports: Myria's website.

63 See the focus of the previous annual report on the trafficking and smuggling of Vietnamese nationals in Myria's *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 7-51.

64 *Ibid*.

65 According to a labour prosecutor. E.g. see a decision in Myria's *Annual Report 2016, Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 146; and Myria, *Annual Report 2015, Trafficking and smuggling of human beings, Tightening the links*, p. 118: Mechelen Crim. Court, 21 January 2015; Antwerp Appeal Court, 4 February 2016, 14th ch. and Myria's website (Case law).

66 Council of the European Union, General Factsheet – Operational Actions Plans (OAPS), Results 2020, 2020, p. 7.

67 See Part 3 on data in Myria's *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 110.

68 *Ibid*.

69 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 297, hearing of Jan Devriendt, federal judicial police.

70 *Ibid*.: p. 295, hearing of Stef Janssens, Myria.

71 See Part 3 on data in Myria's *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 136.

72 See the analysis of this case in the chapter on case analyses in this report: Part 2, Chapter 2, point 2; also see Chapter 3 on the case law overview of the following previous annual reports: Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, pp. 86-87 ; Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 119-120 : Antwerp, 13 November 2019, ch. C6.; Antwerp Crim. Court, Turnhout division, 20 December 2017, ch. TC1.; and Myria's website (Case law).

73 On this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.8 on the agricultural and horticultural sector (East Flanders Crim. Court, Dendermonde division, 20 May 2022, ch. D13V (appeal)).

2.5. | Road transport

With a few exceptions[74], the number of cases in this sector remains low owing to the difficulty of securing a conviction for human trafficking[75]. The burden of proof is often very complex for the public prosecutor's office, owing to the itinerant nature of international road transport[76]. It is also sometimes difficult to prove that the company is being run out of Belgium[77].

A particular difficulty lies in the indicator relating to inadequate accommodation. This regularly falls into the grey area because the courts generally consider that sleeping in the cab is specific to the profession[78]. Although some rules on drivers' rest periods are in force, some foreign employers make workers sign documents waiving some of their new rights, or a large proportion of drivers are unaware of these rights[79].

In general, drivers have contracts in Eastern Europe[80]. European haulage companies (especially Polish and Lithuanian) no longer use Polish or Lithuanian drivers, opting for other third-country nationals from Ukraine or Belarus instead. These drivers are in an even more precarious economic situation and are even more dependent on their employers than other drivers (in terms of language problems, obtaining visas, work and residence permits)[81].

Filipino, Bulgarian, Romanian, Moldavian, Hungarian82 and Belgian[83] drivers are also concerned. These workers drive for several months at a time[84].

In the international road transport sector, more and more third-country workers are calling on the services of Belgian or foreign trade unions to report acts of exploitation[85].

In this sector, fraudulent practices have also been observed in the form of illegal cabotage[86], social dumping, letterbox companies[87] and bogus self-employed and posting structures. A complex case, discussed in the next chapter of this focus and in the case law section of the previous annual report[88], illustrates this perfectly: it involved a carousel of postings resulting in the manslaughter of two workers and led to convictions for human trafficking in the pallet sector. Several Belgian haulage companies set up an international structure whereby staff were fraudulently employed simultaneously in Poland and Belgium. The Polish workers employed in Belgium did not even know which Polish company they were working for. The so-called Polish subcontractor was in fact merely a conduit for cheap labour employed solely in Belgium and therefore under the authority of the Belgian client[89].

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74 On this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.2 on the road transport sector (East Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17; Ghent, 5 October 2023, 3rd ch.).
75 See the chapter on case law in Myria's annual reports: Myria's website.
76 See the external contribution from the NSSO's inspection services in Myria, *Annual Report 2020, Trafficking and smuggling of human begings, Behind cloed doors*, p. 130
77 According to a labour prosecutor.
78 *Ibid*.
79 See the external contribution from the NSSO's inspection services in Myria, *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisble*, p.116.
80 See the external contribution from the NSSO's inspection services in Myria, *Annual Report 2020, Trafficking and smuggling, Behind closed doors*, p. 40.
81 See the external contribution from the NSSO's inspection services in Myria, *Annual Report 2021, Trafficking and smuggling human beings, Visibly invisible*, p. 116.
82 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 297, hearing of Jan Devriendt, federal judicial police.
83 *Ibid.*: p. 295, hearing of Eric Garbar, judicial commissioner, head of the Trafficking and Smuggling of Human Beings Unit, DJSOC.
84 See the external contribution from the NSSO's inspection services in Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 40.
85 *Ibid*., p. 128.
86 According to the Court of Audit, "Cabotage refers to national transport operations carried out by a foreign carrier. It is subject to a double limitation, in terms of quantity and time. After completely unloading its freight as part of an international transport operation, a foreign lorry may carry out three national transport operations within seven days. After a new international transport operation, the lorry may resume cabotage activities under the same conditions" (Report by the Court of Audit to the Chamber of Representatives, "Transport of goods by road - Application of the regulations", Brussels, February 2015, p. 71).
87 SIRS, Strategic Plan, op. cit, p. 60.
88 See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 82-84 and 88 Myria's website (Case law): Ghent, 20 January 2022, 3rd ch.; West Flanders Crim. Court, Bruges division, 27 November 2020, ch. B17.
89 *Ibid.*

2.6. | Textile sector

In several suburbs of Brussels, and more specifically in large empty warehouses belonging to former factories, many second-hand clothes are recycled. Although the workshops where clothes are sorted are usually located in the provinces, the managers and headquarters are based in Brussels[90].

These illegal economic activities often involve serious forms of labour exploitation and human trafficking[91]. In Flemish Brabant, the presumed victims are often Syrian and Afghan nationals[92].

Myria has mentioned case law decisions in this sector in previous reports, concerning illegal workers responsible for sorting second-hand clothes for export. The victims have to work in extremely precarious conditions with imposed production quotas. This type of sweatshop, often run by Syrians, is usually hidden away in run-down storage facilities or industrial warehouses that have been out of use for a long time. Workshops of this type are sometimes equipped with external surveillance cameras[93]. In the past, child victims were also taken to a centre specialising in victims of human trafficking[94].

2.7. | Night shops

The night shop sector is affected by the phenomenon of human trafficking, generally through the labour exploitation of Pakistani and Indian workers[95]. On several occasions, the NSSO's inspection services have also been confronted with indicators of exploitation of Afghan workers (asylum seekers) in this sector.The exploiters often use schemes to employ people as bogus self-employed workers[96]. According to these services, the employers and workers are increasingly staying here legally[97]. They have observed a decrease in the number of cases and findings of human trafficking in this sector. This can be explained by the fact that exploiters are adapting, in particular by employing fewer workers and working in their night shops themselves[98].

However, CTIF noted that there is a link between funds derived from the polycriminal activities of money laundering networks and night shops, as various criminal organisations are suspected of having interests in the latter[99]. Myria filed a civil suit in several trafficking cases linked to Indo-Pakistani human trafficking networks, in particular criminal organisations that organise sham marriages on an international scale[100].

2.8. | Carwashes

Organised forms of human trafficking for the purpose of labour exploitation are also present in the car wash sector, operated by Indians and/or Pakistanis[101], with victims often of the same origin[102]. The exploiters regularly change managers and company[103].

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90 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 10.

91 *Ibid*., p. 5.

92 According to NSSO's inspection services.

93 See Myria, *Annual Report 2017, Trafficking and smuggling of human beings, Online*, p. 123: Hainaut Crim. Court, Mons division, 24 November 2016, 8th ch. (final)); *Annual Report 2013, Trafficking and smuggling of human beings, Building bridges*, p. 116: Ghent Crim. Court, 19 February 2014; *Annual Report 2020, Trafficking and smuggling of human beings, Behind* closed doors, p. 88: Brussels French-speaking Crim. Court, 9 March 2020 and Myria's website (Case law).

94 See Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, p. 24; ECPAT, Child trafficking in Belgium, Identification and protection of victims, 2026.

95 SIRS, Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 4 ; on this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.5 on the car wash sector and 2.2.6 on night and day shops (East Flanders Crim. Court, Ghent division, 5 January 2022, ch. G29 (final); East Flanders Crim. Court, Ghent division, 7 December 2022, ch. G29 (appeal)); also see the case law decisions in the following annual reports: *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible*, pp. 73-74: the Liège Crim. Court, Liège division, 2 April 2021, 18th ch. (appeal); *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 128-129: Ghent, 28 November 2018, 3rd ch. and West Flanders Crim. Court, Ypres division, 8 January 2018, 19th ch. in Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 117-118 as well as Myria's website (Case law)

96 For instance, see the two Dutch-speaking decisions mentioned in the previous note.

97 According to the NSSO's inspection services.

98 Ibid.

99 See the CTIF 2021 activity report (p. 16). This publication is available on the CTIF website.

100 See the two above-mentioned Dutch-speaking decisions. However, according to a labour prosecutor, this phenomenon is no longer found in West Flanders.

101 On this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.5 on the car wash sector: Antwerp Crim. Court, Mechelen division, 22 April 2022, ch. MC7; West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal); East Flanders Crim. court, Ghent division, 5 January 2022, ch. G29 (final)).

102 According to a labour prosecutor.

103 Ibid.

They apply the same modus operandi as night shops, i.e. the bogus self-employed system. There are sometimes organised networks in this sector, alongside smaller cases[104]. The NSSO's inspection services have found that car wash owners have been adapting following frequent checks and have been better able to conceal the phenomenon: they partly declare staff to give the impression that everything is in order. In fact, some workers, including Afghan workers, must sometimes be available to work all day long and accept very low wages[105].

2.9. | Bakeries

The police and inspection services have also found evidence of human trafficking in the bakery sector. These cases are small-scale. The case law discussed in the Myria reports shows that the phenomenon mainly concerns Moroccan biscuit and bakery shops, mainly to the detriment of Moroccan victims[106]. Turkish bakeries are also sometimes involved[107].

2.10. | Cleaning industry

Illegal work is frequent in the cleaning industry[108]. Frontline services especially come across workers from Morocco, Portugal (or Brazilians with (fake) Portuguese documents)[109] and, more recently, nationals from other South American countries[110]. Human trafficking practices further exist in the cleaning sector through the system of cascade subcontracting.

Human trafficking practices still exist in the cleaning sector through the system of cascade subcontracting.

This is especially the case in certain cases involving subcontractors based in Ghent, Brussels or Antwerp and working in companies in the cleaning sector in West Flanders[111]. In Hainaut, the NSSO inspection department also found Africans sometimes using the 'lookalike' system and identity theft[112]. In addition, the CTIF found that Brazilian and Portuguese networks are still setting up or taking over companies active in the sector[113].

2.11. | Meat processing industry

According to a SIRS survey carried out in 2021, "(…) the meat sector is largely entrusted to dubious subcontractors who alternate between national and foreign companies in fraud networks that have been deliberately set up"[114]. In this sector, the victims of labour exploitation practices are mainly Portuguese, Romanian and Bulgarian[115].

There are many subcontractors (with their head offices in Ghent, Brussels or Antwerp) working in companies in the meat sector in West Flanders[116]. According to a labour prosecutor, it is mainly a question of posting fraud. For instance, some Bulgarians were doing subcontracting work for very low wages[117]. However, human trafficking is sometimes involved, as the Dendermonde Criminal Court found in 2015 when it convicted a defendant and his company of trafficking several Romanian nationals in his meat processing business[118].

104 On this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.5 on the car wash sector: Antwerp Crim. Court, Mechelen division, 22 April 2022, ch MC7; West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal); East Flanders Crim. Court, Ghent division, 5 January 2022, ch. G29 (final)); and Myria's website (Case law).

105 According to the NSSO's inspection services.

106 See Myria, Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors, pp. 87-88: (Brussels French-speaking Crim. Court, 3 February 2020, 69th ch. (final)); Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 130-131: East Flanders Crim. Court, Ghent division, 27 June 2018, ch. G29W (final)) and Myria's website (Case law).

107 On this subject, see the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.4 on the bakeries sector and Myria's website (Case law): West Flanders Crim. Court, Bruges division, 16 November 2022, ch. B17 (final).

108 According to a labour prosecutor.

109 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 297, hearing of Jan Devriendt, federal judicial police.

110 *Ibid.*: p. 295, hearing of Eric Garbar, judicial commissioner, head of the Trafficking and Smuggling of Human Beings Unit, DJSOC.

111 SIRS, Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 3.

112 According to the NSSO's inspection services.

113 See the CTIF 2020 activity report (pp. 5 and 23). This publication is available on the CTIF website.

114 SIRS, Strategic Plan, op. cit, p. 61.

115 Report of the Special Commission for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 297, hearing of Jan Devriendt, federal judicial police.

116 SIRS, Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 3.

117 According to a labour prosecutor.

118 See Myria, *Annual Report 2016, Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 152: East Flanders Crim. Court, Dendermonde division, 27 February 2015, 13th ch. (final) and Myria's website (Case law).

2.12. | Riding halls & stud farms

For many years, Myria has received case law decisions concerning this sector, in which there are indications of human trafficking among maintenance staff, particularly grooms[119]. There are riding halls and stud farms[120] in various provinces but they are particularly prevalent in Walloon Brabant, for the purpose of leisure or sporting and show activities[121]. The NSSO's inspection services have noted the presence of Brazilian presumed victims on several occasions.

For instance, in 2017, Antwerp Criminal Court convicted two Belgian defendants of trafficking for the purpose of labour exploitation of an illegally staying worker who was responsible for looking after the animals and cleaning the stables. He had to ride the horses and was staying in a mobile home on the site, which had no sanitary facilities or heating. The investigation showed that the victim had been employed in inhumane working and living conditions. The victim worked more than 40 hours a week, without any compensation. He was paid €500 a month and had to be available at all times. He was not entitled to any leave or holiday pay, and no work-related insurance had been taken out. The caravan in which the victim was staying did not meet basic safety, health and living requirements. The victim had to shower at the neighbour's house and was subsequently able to do so at the defendants' house, in return for payment. The victim was clearly working in a subordinate capacity under the authority of the first defendant[122].

2.13. | Domestic work

Domestic work takes many forms: cleaning, cooking, gardening, childcare, etc. The worker may work for a single family (in-house or externally) or for different families. Domestic work can also involve very different statuses (domestic worker, domestic staff, service voucher employee, diplomatic domestic staff). There are also young au pairs, who are not workers but are also required to perform certain domestic tasks[123].

People working in the domestic sector are more vulnerable than workers in other sectors: they are often isolated, have no colleagues and frequently live in their employer's home[124]. Moreover, this work is performed in private homes, which can therefore not be entered. Detecting abuse is problematic because it is not possible to establish a direct link with exploitation without a complaint from the victim. Quite often, as mentioned by several of the stakeholders interviewed, people exploited as domestic workers file complaints when the exploitation has ended[126]. Chance sometimes plays a role, as in the case of random checks or information obtained from neighbours or hospital staff.

Domestic workers are a particularly vulnerable group of victims because of their isolation and the difficulties in detecting abuse.

Human trafficking practices are difficult to detect, which was particularly the case during the COVID-19 lockdowns, when victims could not leave their homes and inspection checks were limited.

In these types of cases, the burden of proof is often based solely on the victims' statements. However, this is no straightforward matter; they are made almost exclusively after the victims have been able to flee the home where they were being exploited[127].

119 See the chapters on case law in Myria's annual report and on Myria's website.

120 Riding halls are workspaces where horses are trained whereas stud farms are dedicated to breeding and maintenance.

121 SIRS, Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 11.

122 See Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, p. 121: Antwerp Crim. Court, 13 June 2017, ch. AC1 (final)) and Myria's website (Case Laws).

123 For more information on labour exploitation in this sector, see Myria, *Annual Report 2020, Trafficking and smuggling in human beings, Behind closed doors*, pp. 7-32..

124 *Ibid*.

125 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Peter van Hauwermeiren, Director NSSO Anti-trafficking unit.

126 According to a labour prosecutor; according to NSSO's inspection services.

127 See Myria, *Annual Report 2020, Trafficking and smuggling in human beings, Behind closed doors*, pp. 7-32.

The most serious cases of abuse of domestic staff are sometimes classified as human trafficking. However, there are very few of these cases. The profiles of the victims are also varied. It seems that a significant proportion of domestic work is carried out illegally by domestic staff of foreign origin[128].

Human trafficking practices in the domestic work sector are even more difficult to identify when diplomats or embassy relations are involved. As far as embassies are concerned, many cases concerning domestic work do not lead to criminal proceedings owing to diplomatic immunity (civil, criminal and administrative)[129]. According to the NSSO's inspection services, this phenomenon, which is mainly present in the Brussels region, is less prevalent since FPS Foreign Affairs 'Protocol Directorate suspending the granting of residence documents for domestic staff in embassies with too many previous cases[130].

Various cases of labour exploitation in the domestic work sector can sometimes be linked to forms of sexual exploitation. In Brussels, the domestic work sector is the one in which the most serious cases of detection of trafficking for the purpose of labour exploitation 'involving kidnapping and/or physical and sexual violence' have been reported by the NSSO's inspection services[131].

2.14. | Emerging sectors

Parcel delivery

It is important to remain vigilant regarding the emergence of a new high-risk sector: parcel delivery[132]. Subcontracting chains are often involved[133]. Several investigations are underway, relating to acts of social dumping. It is not yet clear whether human trafficking may be involved[134].

Care sector

Although no victims of human trafficking have been detected in this sector, the NSSO's inspection services and labour prosecutors have noted the emergence of a new phenomenon in the use of medical and/or paramedical staff from third countries in hospitals or nursing homes. According to the NSSO's inspection services, recruitment is carried out in the country of origin by specialised recruitment agencies. This is followed by training in Belgium to obtain diploma equivalence. The NSSO's inspection services have reported the existence of dubious practices, related to the training or the high fees the recruitment agencies are charging the hospitals and/or nursing homes[135].

As part of a case involving the arrival of dozens of Indian nurses between 2014 and 2022, some of them paid the Indian businessman organising the recruitment several thousand euros to obtain a job in Belgium[136]. Myria has since learned that the case is being prosecuted for human trafficking and other social offences.

Similarly, the NSSO's inspection services have noted an increase in the number of dental surgeries in community neighbourhoods in certain cities. Here too, no presumed victims of human trafficking have yet been detected. These practices employ trainee dentists from third countries who sometimes did part of their studies in the European Union. The aim of the traineeship is to obtain recognition of their diploma. Those whose diploma is not recognised are employed as assistants. Both trainees and assistants perform dental procedures. They are self-employed and have to work long hours for little money. As soon as they want to leave the practice, they are threatened. Trainees and assistants are generally of Tunisian, Palestinian (refugees) and Iranian nationality.

128 *Ibid.*; Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 34.

129 See Myria, *Annual Report 2020, Trafficking and smuggling in human beings, behind closed doors*, pp. 7-32.

130 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Bruno Devillé, social inspector at the NSSO head office in Brussels.

131 *Ibid.*

132 A distinction should be made between parcel delivery and food delivery services.

133 According to labour prosecutors.

134 To date, a large multinational company has been prosecuted for human trafficking, social dumping and employing underage couriers within the context of a long chain of subcontracting (*Belga*, "Onderzoek PostNL - Onderzoeksrechter laat CEO van PostNL vrij", 6 April 2023, available at https://www.belga.press/).

135 See the external contribution of the NSSO's inspection services in Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 136.

136 Source: E. Raspoet, "Indiase verpleegkundigen veroveren Vlaamse woonzorgcentra", Knack, 26 January 2021.

3. Geographical distribution

Certain trends in cases of human trafficking for the purpose of labour exploitation can be identified according to their geographical location. Generally speaking, small-scale cases can be found everywhere, while large-scale trafficking cases have been discovered mainly on the Dutch-speaking side[137]. On the French-speaking side, the largest cases are more likely to be treated as organised social fraud, while those relating to human trafficking are generally small isolated cases, with no link to a criminal organisation[138].

The phenomenon of human trafficking is also correlated with metropolitan issues in large cities, where labour exploitation can have links with common-law organised crime, such as drug trafficking and the arms trade.

Unlike rural areas, large cities are governed by legal, informal and illegal economies, and are economic centres subject to greater anonymity and higher levels of migration. Social control is notably weaker.

The phenomenon of human trafficking is also correlated with the metropolitan problem of labour exploitation.

These elements facilitate the organisation of criminal social fraud within the framework of an underground economy, i.e. the use of letterbox companies, false statutes, straw men or even bankruptcy and posting carrousels[139].

Every province also has its own specific characteristics and socio-economic roots, so that the phenomenon of human trafficking for the purpose of labour exploitation varies greatly depending on the province concerned.

West Flanders, which has no large conurbations but is made up of several provincial towns, has a number of high-risk sectors: meat processing (chicken), cleaning, construction and car washes[140]. The province has the largest number of agricultural and horticultural businesses. The coast and the city of Bruges attract tourists, with a large number of night shops, cafes and restaurants (Asian restaurants, kebab shops and pizzerias)[142]. Lastly, its proximity to the United Kingdom attracts many foreign nationals who are vulnerable to labour exploitation, given the human smuggling organised in the region[143].

In East Flanders, the city of Ghent and a number of medium-sized towns are home to vulnerable population groups and various high-risk sectors[144] : car washes, night shops and construction[145]. The road transport sector has a particularly strong presence here as well. Indicators of exploitation have been found among Turkish, Bulgarian, Romanian and Polish workers in the construction, hospitality and bakery sectors; in subcontracting chains in the meat processing industry; and also among Indo-Pakistani workers in night shops and car washes[146].

The city of Antwerp, and the district of the same name, has a great diversity and a high number of inhabitants[147]. The high-risk sectors are bakeries and construction[148], and the police is overloaded with drug trafficking cases[149]. The area is also a transit point for human smuggling. It is the second province, after Brussels, where the most cases of trafficking for the purpose of labour exploitation are identified[150], particularly in connection with several large-scale cases involving numerous presumed victims[151].

The province of Limburg is not to be outdone. According to the NSSO's inspection services, some cases involving indicators of trafficking concern small businesses in the construction sector. Owing to the significant presence of the horticultural sector, indicators of the exploitation of foreign workers have been found[152] , though recently to a lesser extent[153].

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137 On this subject, also see Part 1, Chapter 4, point 4; also see the point on the construction sector above.

138 According to a labour prosecutor; see Part 4 on recommendations in this report: Recommendation 3.

139 SIRS, Strategic Plan, op. cit., p. 26 and pp. 54-56.

140 According to the NSSO's inspection services.

141 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 3.

142 According to the NSSO's inspection services.

143 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 3.

144 *Ibid*., pp. 3-4.

145 According to the NSSO's inspection services.

146 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 4.

147 *Ibid*., p. 4.

148 According to the NSSO's inspection services.

149 According to a labour prosecutor; within the context of the "Sky ECC" case: see C. Verhaeghe, "Megaproces op komst: 128 verdachten doorverwezen in grootste Sky ECC-dossier van Brussel", *VRT NWS*, 5 June 2023.

150 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 4.

151 See above the points on the construction, agricultural and horticultural sectors.

152 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 5.

153 According to the NSSO's inspection services.

The administrative approach applied by the public authorities may have something to do with this[154]. Investigations into labour exploitation have been carried out in recent years in the construction and cleaning sectors[155].

As far as Flemish Brabant is concerned, there has been a shift in criminal activity from Brussels, due to the numerous checks carried out in the capital and regional advantages in terms of employment. The most common sectors are restaurants, domestic work, car washes and textiles[156]. The municipalities on the outskirts of Brussels contain former factory buildings, which are conducive to the development of illegal activities linked to labour exploitation, such as the recycling of used clothing, the illegal manufacture of textiles, the import/export or storage of goods. Numerous investigations have been carried out in Flemish Brabant into large companies on the outskirts in the sectors of logistics (through chains of subcontractors), construction, renovation and cleaning[157]. Other sectors include nail salons (involving Romanians)[158] and massage parlours, hospitality (through illegal posting), saunas, private receptions and newspaper sellers employed by nonprofit organisations. Lastly, the exploitation of illegally staying domestic staff (in the private sector) is typical of the judicial district of Halle-Vilvoorde.[159]

Hainaut is the third province with the largest surface area. It has a sizeable population, given its large towns and cities. For some years now, workers have been posted to the construction industry in appalling conditions. However, to the detriment of other high-risk sectors, checks have mainly been focused on the following sectors: car washes, hospitality, night shops and prostitution[160].

A quarter of Belgium's surface area is covered by the Namur-Luxembourg provincial authority. The towns of Namur and Arlon are located at either end of the province. Economic activity is spread throughout the area, making it difficult to detect situations of labour exploitation[161]. The most common sectors are retail, Asian massage parlours (only parlours involving Chinese people) and hospitality[162].

Liège is the second province with the largest surface area. It includes the city of Liège and other towns affected by precariousness and crime[163]. In terms of human trafficking, night shops, car washes, Chinese restaurants and the construction industry are high-risk sectors[164].

Brussels-Capital is characterised by the diversity of its population (over 180 different nationalities), its large number of inhabitants[165] and the presence of official buildings[166]. The city has a large informal economy. 35% of the population of Brussels is non-Belgian (not including people without legal residency. The city is home to a large number of people who are officially unemployed and on benefits, as well as many migrants and asylum seekers, and foreign students, owing to the presence of the Immigration Office, the Office of the Commissioner General for Refugees and Stateless Persons, Maximilian Park and universities and colleges[167]. Brussels is the starting point for many human smuggling operations[168]. It has various neighbourhoods clustering nationalities that are often vulnerable and socially disadvantaged, victims of trafficking being more likely to be isolated[169].

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154 See also Part 1, Chapter 4, point 3.

155 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 5.

156 According to the NSSO's inspection services.

157 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, pp. 5-6.

158 According to the NSSO's inspection services

159 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, pp. 5-6.

160 *Ibid.*, pp. 6-7.

161 *Ibid.*, pp. 7-8.

162 According to the NSSO's inspection services.

163 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 8.

164 According to a labour prosecutor.

165 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 9.

166 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Patrick Bourgeois, federal judicial police Brussels.

167 SIRS, Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021, p. 9.

168 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC55 2530/002, Annex 4, p. 295, hearing of Patrick Bourgeois, federal judicial police.

169 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, pp. 9-10.

The capital is considered to be a hub for human trafficking[170]. Exposure of migrant workers to exploitation in the domestic work sector (among diplomats and private individuals) is prevalent. The head offices of clothes sorting workshops with operating units in other provinces are generally located in Brussels, but this phenomenon is moving more towards the outskirts of Brussels[171]. Forms of exploitation can also be found in traditional sectors such as construction, cleaning[172], bakeries and butcheries[173]. Brussels also has many hotels, cafes and restaurants, especially in the context of tourism, and districts devoted to the sex industry and prostitution. Lastly, the very specific phenomenon of Vietnamese nail salons, and the head offices of fraudulent companies linked to the Brazilian network, are widely present in the capital[174]. Unaccompanied minors in particular were detected in these networks[175].

On the outskirts of Brussels, Walloon Brabant has a small surface area but a high population density. The province has several towns with a large number of shops and industrial and service sector zones, as well as many eateries (Chinese or Japanese). As household incomes are of a high average level, there is a strong presence of domestic staff in private homes[176]. The province has no embassies, but does have a consulate[177]. There are riding halls and stud farms, as well as numerous farms and agricultural holdings. The latter frequently employ seasonal workers as well as workers from Eastern Europe or third countries[178]. Lastly, a few cases of human trafficking have been found at building sites, which are numerous in the province owing to the high demand for labour[179].

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170 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annexe 4, p. 295, hearing of Patrick Bourgeois, federal judicial police.

171 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, pp. 9-10.

172 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Bruno Devillé, social inspector at the NSSO head office in Brussels.

173 According to a labour prosecutor.

174 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 10.

175 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annexe 4, p. 295, hearing of Bruno Devillé, social inspector at the NSSO head office in Brussels.

176 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 11.

177 According to a labour prosecutor.

178 SIRS, *Mr. Ben Segers' answer to parliamentary question no. 142 of 5 January 2021*, p. 11.

179 According to a labour prosecutor.

Chapter 2
Example of a case in the road transport sector

Introduction

In this human trafficking case, Polish workers were exploited for labour in the context of posting carousels in the road transport sector, resulting in the involuntary manslaughter of two of them. The proceedings were particularly lengthy: the case was opened in 2012 and Ghent Court of Appeal did not hand down its final decision until 20 January 2022[180]. While the coronavirus pandemic is partly responsible for the length of time that elapsed between the two dates, the defence exhausted all possible legal procedures. The appeal to the Court of Cassation was rejected in January 2023.

Six defendants, including the main Belgian defendant, his road transport company and related companies, were charged with various offences. Most of them were convicted of human trafficking, as well as breaches of social legislation, slumlordism, involuntary fire and involuntary manslaughter.

1. Network structure

The road transport company consisted of a network of several companies in Belgium and Poland, which had in fact been set up solely to carry out activities in and out of Belgium, and thus fraudulently escape the application of Belgian law. The main Belgian defendant was responsible for the day-to-day management and ran the company's operations from its headquarters in West Flanders.

The Polish workers were employed in various jobs as drivers, mechanics and pallet repairers. The only reason they were recruited was to make them work under more favourable pay and working conditions, without the employer having to comply with Belgian social security legislation and the associated contribution obligations. Many of the workers had not been the subject of a DIMONA declaration and/or were unable to provide posting documents.

The Polish and Belgian companies' central administrations and head offices were managed from Belgium. In Poland, there was just a letterbox, and no activity was carried out at that address. These elements were evidence of a carousel of postings deliberately set up under the guise of simultaneous employment in Belgium and Poland. It turned out that the same workers had been employed by successive Polish companies in Belgium. This employment always took place at the same location in West Flanders, with invariably the same employer, namely the sixth defendant. The people involved had never worked in Poland, only in Belgium. In the end, the system was such that the Polish workers themselves no longer knew which company they were working for. In reality, the so-called Polish subcontractor was simply a conduit for cheap labour to be employed in and out of Belgium. As a result, these employees were placed under the direct authority of the Belgian client.

180 Ghent, 20 January 2022, 3rd ch. and West Flanders Crim. Court, Bruges division, 27 November 2020, ch. B17. See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 82-83 and Myria's website (Case law).

2. Start of the investigation

a. | Start of the investigation

On 1 April 2012, the local fire brigade was called to a fire in a warehouse in West Flanders. It should be noted that the owner of the warehouse, the first defendant in this case, had not called the police directly. He had first called a friend who was a fireman to ask him what to do. The experts quickly established that there was no suspicion of malicious intent. The investigation was launched on the basis of these facts.

To the local authority's knowledge, the warehouse was used solely as a workshop. However, the investigation revealed that it did not just serve as a hangar for lorry tarpaulins and a cheese factory, but also as a place of accommodation for 16 people. The people housed in the hangar worked for the Polish road transport company.

Eight workers (drivers, mechanics, pallet repairers) and one visitor were on the ground floor at the time of the fire. Two Polish workers died, two were seriously injured, two were slightly injured and the others escaped unhurt. The exact cause of the fire could not be determined. It may have been caused by a fault in the electrical wiring, a lit cigarette or a badly as a place of heating appliance.

The offence of slumlordism was also established. The road transport company had taken advantage of the vulnerable situation of the Polish workers by making the hangar available for them to sleep in, thereby making an abnormal profit. The local authority had not issued a permit for the conversion of the workshop into accommodation.

Approximately three years later, a vehicle travelling on the A3 towards Brussels was intercepted by the police. The vehicle had attracted attention because of its two-part structure and the colours of the Belgian company. The investigation revealed that the individual had been in the vehicle for seven weeks and was being paid EUR 48 a day. Although the events in this social dumping case took place in Verviers, a link could be established with the road transport company based on internet searches. These facts confirmed the suspicions that the company was concealing an underlying carousel of fraudulent postings.

b. | Prior to the events

Before the investigation began, there were already suspicions of a fraudulent network and precarious working conditions. This is clear from the administrative measures taken before the hangar fire. In fact, at the beginning of 2012, the municipal secretary had instructed an official in charge of housing to conduct a quality survey following a suspicion that the building was being over-occupied by foreign workers. The officials present had not obtained permission from the occupants to enter the building and had no legal basis to carry out a search, which prevented them from completing their inspection. The road transport company was therefore able to continue its activities without any administrative measures being imposed.

The road transport company could not plead an error as it had actively taken steps to obtain information before the events occurred. In 2005, the company had asked a consultancy firm about the possibility of working with foreign subcontractors and arrangements for free accommodation and wages for Polish workers. As a result, the consultancy firm's legal expert was called as a witness later in the investigation.

In addition, an audit was carried out by another consultancy firm in 2008, which highlighted serious problems. The report described them as follows:

"Serious anomalies: no systematic and regular checks are planned or carried out on drivers (vehicle condition, completeness of equipment, availability of personal and on-board documents)". The audit called for corrective measures. In response, the company introduced a checklist to be completed by the drivers and checked annually for each lorry. This checklist had four sections: maintenance, safety, documents and maps. The documentation aspect was checked by a quality assurance manager during random checks. Since these checks began in mid-November, some 40 tractor units out of a total of 104 had already been inspected. Both Belgian and Polish lorries were involved. These facts have allowed Myria to establish that it is indeed possible to develop certain control systems within the framework of self-regulation, so that the principal can no longer deny a posteriori their knowledge of abuses.

c. | Criminal investigation

An examining magistrate was appointed shortly after the fire. The investigation was based on internet searches, a neighbourhood enquiry, a letter rogatory, searches and various hearings. First of all, internet searches were carried out to establish the links between the various fraudulent businesses.

At the start of the investigation, a neighbourhood enquiry was carried out, which provided a wealth of information about living conditions inside the warehouse. For the local residents, the presence of several people of foreign origin - probably Poles - in the hangar had attracted attention. Several Polish-registered cars were parked in front of the building. Mornings, afternoons and evenings were the busiest times, confirming the working hours of the Polish workers. The number of people passing through had been much higher in the past six months than previously. The building's doors were open at all times and the lights were always on. It is worth noting that local residents stressed that the Poles never caused a nuisance.

Several databases were consulted. The mailboxes of all the computers belonging to the road transport company were analysed. Most of the workers indicated that their contacts with the company were by phone, e-mail or post. Work contract renewals or adjustments were made by post or even by fax to the road transport company's office. A check of the computer files showed that the day-to-day management, running and operations of the companies were carried out by the Belgian principal defendant and managed from the head office in West Flanders.

The investigating judge, the federal judicial police (FJP) and the various inspection services consulted each other on the next steps in the investigation and agreed on the allocation of roles. It was therefore an integrated approach involving the various bodies. Searches were also carried out as part of the investigation. Payslips for all staff working for the road transport company were seized, as well as Polish vehicle registration certificates.

At the same time, the Belgian inspection services and police requested several investigative measures from the Polish authorities by way of a letter rogatory in 2012. Several searches were carried out and the Polish workers were interviewed. "It's a dog's life. I can not afford to spend a night in a hotel or eat in a restaurant. I have to provide for my family", explained a Polish driver employed by the road transport company. The hearings of the Polish workers confirmed the precariousness of their living conditions.

d. | Financial investigation

The road transport company sought to maximise its profits by hiring Polish workers at minimum rates. The financial investigation revealed that the company had managed to evade Belgian legislation on wages, working conditions and social security, thereby gaining an advantage over its competitors.

The Social Legislation Inspectorate (SLI) played an important role in this investigation. The SLI presented a detailed investigation report, especially concerning the defendants' material benefits with regard to all the workers. Only two employment contracts for lorry drivers were found. However, the FJP had repeatedly requested the employment contracts of all the workers. These contracts mentioned the Polish minimum monthly wage with a possible additional bonus, which depended, among other things, on the quality of their work. As one Polish driver put it, "Nobody knows how this bonus is calculated". The drivers were not paid for the overtime they worked. They were always paid the minimum wage, with no compensation for delays. In 2006, these Polish drivers were paid an average of €1.44 gross per hour. They also received a daily allowance of EUR 46 paid onto another account.

The Polish workers were subject to a work arrangement under which they worked an average of four weeks, followed by two weeks' rest in Poland. The investigation revealed that this regulation was not respected and that not all workers were paid during their rest weeks in Poland.

As part of the financial investigation, the annual balance sheets of the various companies involved were also requested and examined.

In the end, EUR 924,000 were confiscated on appeal.

3. Analysis of the victims

The labour prosecutor's office considered the five Polish workers in the warehouse to be victims of human trafficking owing to the precarious conditions that led to the fire. Several other Polish workers employed by the company also suffered damage.

The five victims of trafficking were housed in undignified conditions in the hangar. Everybody could come and go as they pleased. The doors were always open. The lights remained on at all times. The sanitary facilities were particularly rudimentary. There was only one sanitary block that included one shower, one toilet, one washbasin and two washing machines for 16 people. The hangar's infrastructure was not fire-resistant. When the fire broke out, the Poles had no way out. They were sleeping in a three-bed room with no direct access to the outside. Given the lack of checks by the fire brigade and the lack of permits from the authorities to convert the hangar into accommodation, it seemed almost inevitable that there would be casualties within the road transport company.

Several Polish workers were paid particularly low wages. A mechanic, for example, stated that he earned EUR 465 per month. The authorities revealed that one of the drivers earned an average of EUR 363.17 gross per month. Some Polish workers also stated that they were paid in cash. These low wages were supposed to be compensated by room and board. As mentioned above, accommodation conditions were unfit and substandard. The were also issues concerning food. Despite the company saying it provided sufficient food for its workers, the investigation revealed that the workers brought their own food from Poland and that local residents sometimes provided them with food.

In addition, Polish workers had to return to Poland if they needed medical treatment: "I'm planning to leave for Poland tomorrow. I urgently need treatment for my burns. I'm getting treatment in Poland because I'm insured there, otherwise I have to pay for everything myself here". These were the words of one of the Polish victims, who was burnt in the hangar fire and for whom the main defendant was responsible as his employer.

Lastly, the workers housed in the hangar had to provide their own heating. They said they had gone out and bought their own electric heaters to keep the hangar warm in winter.

The social and living conditions of the workers were appalling. They had to work particularly long days (more than 65 hours a week, six days a week) without compensation and for a miserable wage.

In the end, three protagonists filed a civil suit during the trial: the mother of one of the mechanics who died, Myria and an intermunicipal gas and electricity company.

Chapter 3
Human rights due diligence in the fight against labour exploitation and human trafficking[181]

It was long common belief that companies had little or no social responsibility. This view has changed over the past few decades, and there have been significant developments regarding the role and responsibilities of companies within society. There is a growing consensus that the protection of human rights is a duty of both government and businesses. With globalisation and the growing weight and impact of large companies and complex production chains, the principle of corporate social responsibility (CSR) with regard to human rights, the environment and the climate is gaining in importance worldwide. International organisations such as the Organisation for Economic Cooperation and Development (OECD), the United Nations (UN) and the International Labour Organization (ILO) consider 'human rights due diligence' to be a key element of corporate social responsibility.

In this chapter, Myria takes a closer look at the principle of human rights due diligence. In addition to the current international regulatory framework, it examines existing initiatives in Europe, in our neighbouring countries and the state of play in Belgium. Insofar as it is possible, a link is made with human trafficking and labour exploitation, and there is an analysis of how this principle could also be used in Belgium to combat these phenomena.

Corporate social responsibility: term used to indicate that companies consciously pay attention to social and environmental issues in the context of their activities and their relations with other parties.[182]

Environmental, Social and Governance (ESG) criteria or objectives are used to measure a company's sustainability policy.

Due diligence: a process that organisations must follow to identify the current and potential future negative human rights impacts of their own activities, those of their supply chain and other business relationships, and the means to prevent and mitigate them. They must also report on how they manage all this.

181 In this chapter, Myria discusses the notions of human trafficking and labour exploitation. Human trafficking is the act of recruiting, transporting, harbouring or receiving a person over whom control is exercised with the intention of making that person perform a job or provide services in conditions contrary to human dignity. Labour exploitation refers to 'aggravated labour exploitation', which is broader than human trafficking. It includes social dumping, illegal employment and other social criminal law offences. See Part 1, Chapter 1, point 1.

182 As defined by the European Commission in *A renewed EU strategy 2011-2014 for Corporate Social Responsibility.*

1. International initiatives on business and human rights and the principle of human rights due diligence

There are many CSR and due diligence initiatives at international level. They binding (soft law) but are often of great importance, such as the initiatives of the United Nations and the OECD.

The **OECD** already adopted its **Guidelines for Multinational Enterprises** as far back as 1976[183], which contain recommendations on corporate social responsibility in the areas of human rights, labour relations, the environments, taxation, etc.

Within the **United Nations,** the debate on socially sustainable entrepreneurship gained momentum in the mid-2000s. In 2011, the Human Rights Council unanimously adopted the **United Nations Guiding Principles on Business and Human Rights (UNGP)**[184], a set of 31 principles on business and human rights.

Within the context of their own activities and their supply chain, companies must identify negative impacts on human rights and take measures to combat them.

These guidelines are based on three pillars (Protect, Respect and Remedy):

1. **State duty** to protect people from human rights abused committed by third parties, including companies and the people behind them;
2. **Corporate responsibility to respect human rights;**
3. **Access to effective remedy for victims** of human rights abuses.

To comply with the second pillar of responsibility, companies must demonstrate due diligence with regard to human rights. This is known as **Human rights due diligence** (HRDD). In French, the terms **due diligence obligation, due diligence or supply chain responsibility** are also used.

Due diligence is the process by which companies must identify, prevent or mitigate the current and potential future negative impacts of their activities on human rights and report on how these negative impacts are addressed. This effort must be continuous. Its application depends on the context, the size and nature of the company's activities, the complexity of the chain and the relationships with other players.

Due diligence must be applied in the context of their own activities, but also within their subsidiaries and their supply chain (subcontractors). This includes the regular reporting of financial and non-financial information by companies.[186]

Figure 1[185]

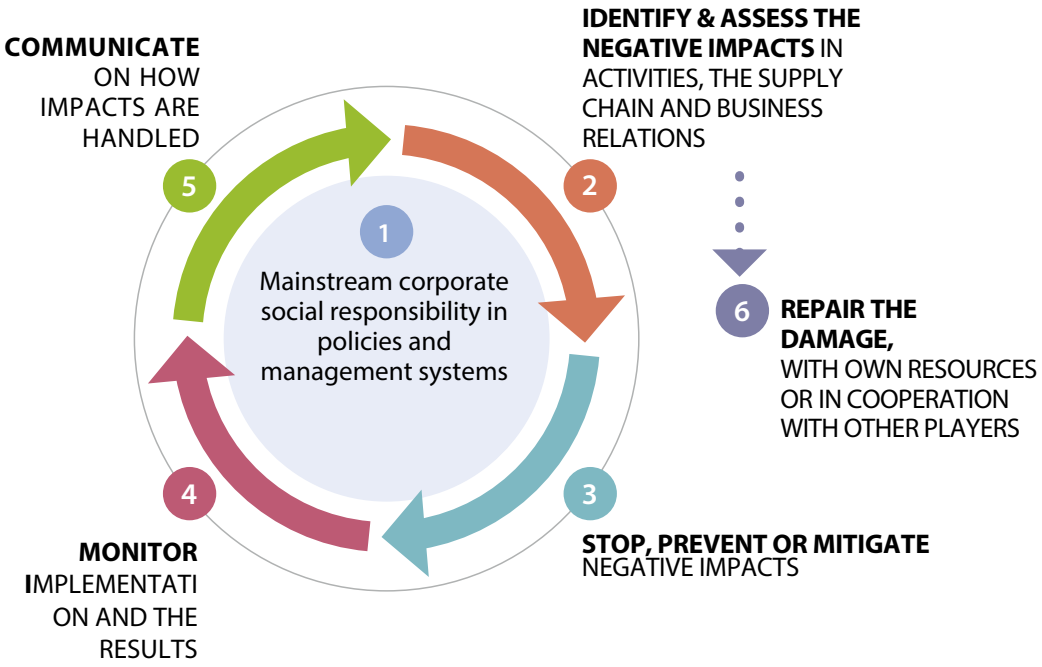
Pillar 1	Pillar 2	Pillar 3
The state duty to **protect**	Corporate responsibility to **respect** human rights	Access to an effective **remedy** for victims
Policy, legislation, regulation	Due diligence to safeguard human rights	Access to judicial and non-judicial remedies

183 OECD, Guidelines for multinational enterprises. The guidelines have already been updated several times, the last time being June 2023.

184 United Nations Guiding Principles on Business and Human Rights (UNGP).

185 Source of the figure: European Parliament, DG External Policies, Implementation of the UN Guiding Principles on Business and Human Rights, 2017.

186 UNGP 17.



Due diligence is a continuous process consisting of six stages, as illustrated above[187].

The United Nations Human Rights Council has set up a working group on business and human rights within the context of the UNGPs. This working group monitors the application of the UNGPs and launched the idea of **National Action Plans** (NAP). Belgium adopted its first **National Action Plan (NAP) Business and Human Rights** in July 2017[188].

The United Nations has been working on a legally binding instrument on business and human rights since 2014. A third draft of this instrument was proposed in 2021[189].

The principle of due diligence is also included in the recommendations of the International Labour Organisation (ILO): 'The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' of 2017[190]. This declaration provides guidance to multinationals, governments, employer and employee organisations on the principles contained in international labour conventions. Among other things, it refers to the ban on forced and compulsory labour, respect for working and living conditions, and compliance with health and safety standards.

2. European initiatives: sustainability reporting and human rights due diligence

The focus has also shifted to CSR and due diligence at European level. Major tragedies involving European companies, such as the Rana Plaza disaster in Bangladesh in 2013 and the ensuing outcry, have accelerated this process.

Over the last decade, the EU has adopted regulations, sometimes binding, to ensure that European companies do not (indirectly) contribute to human rights or environmental violations.

A 2017 study by the Fundamental Rights Agency (FRA)[191] examined incidents of human rights abuses by European companies.

187 This illustration is taken from the OECD Due Diligence Guidance for Responsible Business Conduct, published on 6 June 2019. This document provides practical support to enterprises on how to implement social corporate responsibility.
188 See below for more information.
189 See United Nations draft. Negotiations on a fourth project are currently underway.
190 ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
191 FRA study of 2017 requested by the European Commission: Business-related human rights abuse reported in the EU and available remedies

The data collected in this context showed that poor working conditions were the second most frequent type of offence. Workers represent one of the three categories of victims most affected by violations, whether they are employed directly by companies or are part of the subcontracting chain.

Transparency and the dissemination of information are essential to prevent and reduce the risk of violations and are one of the basic principles of CSR. **The Non Financial Reporting Directive 2014/95 (NFRD)**[192] requires certain large companies to provide information on the impact of their activities on the environment, social and labour issues, respect for human rights and the fight against corruption, and on their related policies, including due diligence procedures. They must also indicate the results of their policies and the risks associated with these issues[193]. This can help investors, consumers, policy-makers and other stakeholders to assess the non-financial performance of large companies. This measure should ensure ongoing monitoring and encourage corporate social responsibility. Belgium has transposed this directive[194].

This directive was still very much optional, leaving companies a great deal of freedom in the way they reported. It was revised in 2022 and gave rise to **the Corporate Sustainability Reporting Directive** (CSRD)[195]. Under this new directive, large companies[196] and certain small and medium-sized[197] companies (except for micro-enterprises) must report. This concerns the 50,000 largest companies in the EU. Essentially, they must report on certain social factors and those relating to human rights, such as working conditions and respect for human rights in the framework of numerous human rights treaties. This information should cover the company's impact on people, including workers and, where relevant, on forced labour and child labour in its value chain.

Large companies must report on social factors related to human rights in accordance with new European standards.

The added value of the new directive is that it introduces a standardised measurement tool based on new European Sustainability Reporting Standards (ESRS). These are the technical requirements that sustainability reports must meet, and consist of 12 standards. These provide a guide for companies on how to report on their activities. One of these standards also covers the working conditions of directly employed workers and those who contribute to the supply chain[198].

The Commission and the European External Action Service (EEAS) published guidance on appropriate due diligence in July 2021 to help EU companies address the risk of forced labour in their own operations and supply chains, in line with international standards[199].

A study carried out by the European Commission in 2020 showed that self-regulation and voluntary initiatives, such as codes of conduct on due diligence in the business world, were not sufficient measures. Scarcely a third of companies voluntarily comply with human rights due diligence[200].

In addition, the EU wants to ensure harmonisation, as more and more Member States are introducing their own due diligence legislation, which can lead to a fragmented market and an uneven playing field for companies within the European single market[201].

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192 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

193 Art. 1 Directive 2014/95/EU.

194 See below.

195 Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting. Member States must have transposed it before 6 July 2024.

196 More than 250 employees, sales of over EUR 40 million and profits of over EUR 20 million.

197 If they have 1) more than 10 employees, 2) a turnover of more than EUR 700,000, 3) a profit of more than EUR 350,000.

198 The ESRS were adopted by the European Commission on 31 July 2023. See EFRAG, Draft ESRS social standards S1: own workers and Draft ESRS social standards S2: workers in the value chain; EFRAG, *First Set of draft ESRS*.

199 European Commission, New EU guidance helps companies to combat forced labour in supply chains.

200 Barely 37 % of them voluntarily comply with due diligence, see *Study on due diligence requirements through the supply chain. Part I, Synthesis report*. This is also the conclusion of KnowTheChain, *Closing the gap, evidence for effective human rights due diligence from five years measuring company efforts to address forced labour*, 2022.

201 The French law on *devoir de vigilance* and the German law *Sorgfaltspflichtengesetz* differ considerably in terms of personal scope, material requirements and the rules governing their application.

This is why the EU is currently negotiating **a Corporate Sustainability Due Diligence Directive** (CSDDD)[202]. The European Commission presented a proposal in February 2022, on which the Council and, more recently in June 2023, the Parliament have taken a stance[203]. The three proposals currently on the table differ in many respects[204]. At the time of writing this chapter[205], trilogue negotiations on the directive were still in progress. The final version of the directive is expected in spring 2024[206].

The directive would require large and certain medium-sized companies to exercise due diligence in relation to human rights and the environment by:

1) establishing a human rights and environment policy framework,
2) identifying potential negative impacts and taking appropriate measures to prevent or mitigate them,
3) monitoring the effectiveness of their policies and measures,
4) setting up an internal complaints procedure, and
5) making information on due diligence measures publicly available.

This particularly concerns the negative impact on human rights and the environment of their own activities or those of their subsidiaries, as well as the business relationships established within their value chain. Due diligence would apply to all internationally recognised human rights[207]. The directive can also have an impact outside the EU, because non-European companies wishing to access the EU market will also have to make adjustments. Several players claim that this directive has the potential to be a global game-changer[208].

The text also provides for one or more national supervisory authorities to be designated to monitor companies' compliance with their due diligence obligations. These authorities could carry out inspections, launch investigations and, if necessary, implement appropriate measures and impose administrative fines. Companies could be held liable if they fail to exercise due diligence.

The EU also introduced **Socially Responsible Public Procurement (SRPP)** into its public procurement regulations in 2014[209]. The key principle is that authorities should not just buy at the lowest price or the best value for money, but should also take into account environmental and social criteria, such as respect for social and labour rights[210].

Many other initiatives also exist, such as those aimed at controlling the trade and imports of certain goods by introducing due diligence, such as the European Commission's proposal to ban products derived from forced labour[211] or the regulations on mineral extraction[212], the chemical sector[213] and deforestation[214]. Other initiatives focus more on due diligence with regard to financial aspects, such as the EU regulation on sustainability-related disclosures in the financial services sector.[215]

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202 This directive is part of the European Green Deal, through which the EU is aiming for a sustainable future. See Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains.

203 The European Commission organised a consultation with a view to drafting the text, which closed on 8 February 2021. Belgium contributed and supported the introduction of such a European framework.

204 In particular, which companies (large and small) must comply with this obligation or not, whether the financial sector is covered, a different interpretation of 'appropriate measures', the extent to which companies can be prosecuted, the different degree of recourse and financial or non-financial redress for victims, the extent to which company directors and management are co-responsible, etc.

205 August 2023.

206 Proposal for a Directive of the European Parliament and of the Council of 23 February 2022 on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937; also see the Council's stance, November 2022 and the European Parliament's stance, 1 June 2023.

207 In particular, it is seen as a complement to the directive on preventing and combating trafficking in human beings and the 'sanctions' directive. See explanation of the proposal, p. 7. The directive is also seen as a complement to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in that it provides for the liability and sanctions of legal persons for offences committed for their benefit by any person who has a leading position within the legal person, or for offences made possible by a lack of supervision or control, and complements the 'sanctions' directive, which prohibits the employment of illegally staying third-country nationals, including victims of human trafficking, and provides for sanctions and measures against employers.

208 See, for instance: KnowTheChain, *Closing the gap, evidence for effective human rights due diligence from five years measuring company efforts to address forced labour*, 2022.

209 See, for instance, Article 18, paragraph 2, of Directive 2014/24/EU; Article 36, paragraph 2, of Directive 2014/25/EU; and Article 30, paragraph 3, of Directive 2014/23/EU. The Member States were supposed to have transposed it before 18 April 2016. The Directive was transposed into Belgian law by the Public Procurement Act of 17 June 2016.

210 See Communication of the Commission: Buying social - A guide to taking account of social consideration in public procurement – 2nd edition of 26 May 2021.

211 Proposal of 14 September 2022 for a regulation on prohibiting products made with forced labour on the Union market.

212 Regulation 2017/821 of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores and gold

212 Regulation 2017/821 of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores and gold originating from conflict-affected and high-risk areas.

213 Regulation 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

214 European Commission, Deforestation-free products.

215 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

3. Existing due diligence regulations in other countries

While in most countries due diligence initiatives were mainly based on self-regulation and voluntary actions by the business community, there has been a trend towards the adoption of more binding regulations. Some countries have introduced a general due diligence obligation for companies (France, Germany, Norway[216]), while in others, regulations have more been limited to a particular sector or issue (Netherlands, United Kingdom, California[217])[218].

The Modern Slavery Act[219] was passed in the UK in 2015. It requires UK companies to produce a statement explaining the measures they have taken to ensure that human trafficking does not occur in their production and supply chains. If a company fails to file a slavery and human trafficking statement, there is in theory a procedure that can lead to the company being fined. Statements are published in an online Slavery Statement Registry.[220]

In **France**, the Due Diligence was passed in 2017221. French companies with more than 5,000 employees on national territory or more than 10,000 employees worldwide are bound by a due diligence within this framework. They must draw up an annual due diligence plan describing the measures they are taking to identify risks and prevent serious infringements of fundamental rights and freedoms, personal health and safety, and the environment.

This concerns their own activities and those of companies under their direct or indirect control, their subcontractors and all companies with which they have business relations. Anyone with a justified interest can take a company to court so that it respects its obligations. Any NGO can also take legal action in its own name to defend its interests[222].

In **Germany**, due diligence has applied since 1 January 2023[223] to German companies employing more than 3,000 people on national territory (and also to companies employing more than 1,000 people as of 2024), as well as to certain foreign companies with a branch in Germany. These companies must implement a form of risk management, apply appropriate and continuous risk monitoring and take appropriate preventive measures against certain environmental and human rights violations (such as child and forced labour, discrimination, violations of labour and health rights or the right to a fair wage, etc.). These include risks associated with their own activities, those of their business partners and those of direct and indirect subcontractors. Companies must disclose their efforts every year on their website and inform the competent authority. No new civil liability mechanism has been introduced, but a new supervisory body has been created to monitor compliance with the obligations. This body can impose sanctions if necessary.

In the **Netherlands**, a Child Labour Due Diligence Act has been in force since 2019[224]. Any company established in the Netherlands that sells or provides goods or services to Dutch end-consumers declares, under this law, that it is exercising due diligence to prevent these goods or services from being produced using child labour. A body is responsible for monitoring compliance. Any person with a justified interest may lodge a complaint with this supervisory authority. The supervisory authority publishes the declarations in a public register on its website and may also impose a fine. In addition, a more general draf bill on due diligence is currently being negotiated[225].

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216 Haavind, 16 March 2022, *The new Norwegian Transparency Act enters into force on 1 July 2022*.
217 In California, the *Transparency in Supply Chains Act* was adopted in 2011. It requires certain companies to be transparent about their efforts to ban human trafficking from their supply chains.
218 For a global overview, see Boris Verbrugge, *Overview of legislative developments in the field of sustainability due diligence*, December 2022.
219 Modern Slavery Act, 2015. Discussions are underway to reform the law and increase corporate responsibility. See Modern Slavery Bill in the Queen's Speech 2022.
220 *Slavery Statement Registry*.
221 *Act 2017-399 of 27 March 2017 on due diligence of parent companies and ordering companies.*
222 For an evaluation of the law, see *Evaluation of the implementation of Law 2017-399 of 27 March 2017 on due diligence by parent companies and originator companies*.
223 *Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz)* of 16 July 2021
224 The Act only entered into force on 1 January 2022.
225 Draft law of 1 November 2022 on responsible and sustainable international trade.

4. Belgium and due diligence: current situation

Belgium is also paying an increasing amount of attention to CSR, and more specifically to ESG criteria. Although Belgium does not yet have a binding law on due diligence, civil society and part of the business world are beginning to debate this issue publicly. Initiatives have also already been taken at a political level.

In the context of the UNGPs, Belgium adopted its first **National Action Plan on Business and Human Rights** (NAP) in July 2017. It includes 33 actions[226]. Since then, an evaluation[227] of the progress made by the Belgian authorities and companies took place in 2021. This evaluation serves as a basis for the current negotiation of a second NAP. During this evaluation, the National Baseline Assessment (NBA) examined the extent to which Belgium complies with the three pillars of the UNGPs and concluded that the implementation of the UNGPs by the authorities and companies is too limited and not sufficiently binding.

The NBA has noted that few companies comply their human rights due diligence obligation[228]. This is partly because Belgium has many small and medium-sized companies that find it more difficult to do so, and partly because the government does not impose a mandatory due diligence test. The Belgian regulatory framework does not provide sufficient incentives for companies to carry out due diligence. Belgium needs to review the balance between voluntary actions and compulsory measures. There should also be more tools to help businesses. In addition, Belgium should do more to ensure that victims have effective access to redress[229].

The NBA also calls on public authorities, employers' organisations, trade unions and civil society to pay more attention to and raise awareness of CSR and due diligence.

In 2017[230], Belgium transposed the European Corporate **Sustainability Reporting Directive**[231]. As a result, some large companies[232] are required to report annually, through a **Non-Financial Information** (NFI) statement, on how they manage environmental, social and human resources issues, respect for human rights and the fight against corruption.

This NFI statement should include the following elements:

1) a description of the company's activities,
2) the policy and due diligence procedures applied,
3) the results of this policy and
4) the risks associated with these matters, and
5) non-financial key performance indicators relevant to the business activities.

Information on due diligence procedures should also cover the company's supply and subcontracting chain[233]. The statement should be included in the company's annual report or in a separate report.

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226 These include strengthening and monitoring respect for human rights in public procurement, evaluating the Belgian socially responsible production label, integrating human rights due diligence into management bodies, promoting social reporting on human rights, promoting socially responsible public companies, stimulating responsible management of supply chains with a sectoral approach, etc.

227 National Baseline Assessment (NBA): *National Baseline Assessment Business and Human Rights in Belgium, main report 2.0.*

228 NBA, Analytical synthesis, pp. 7 ff.

229 That said, the brochure Access to Remedy in Belgium. The United Nations Guiding Principles on Business and Human Rights (UNGP) in Belgium: State-based judicial and non-judicial mechanisms that provide access to a remedy is considered a good practice by the FRA.

230 Act of 3 September 2017 on the disclosure of non-financial and diversity information by certain large undertakings and groups.

231 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. As mentioned above, this directive was recently amended by a new Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No. 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU, as regards corporate sustainability reporting. Member States must have transposed it before 6 July 2024.

232 Art. 3, 4°: A company incorporated under Belgian law is required to make an NFI declaration if it is a public interest body, if it employs on average more than 500 people and if its balance sheet total exceeds EUR 17,000,000 or if its turnover exceeds EUR 34,000,000. The parent company of a group of companies is also required to make an NFI declaration if it has more than 500 employees.

233 Explanatory memorandum to the draft bill on the disclosure of non-financial and diversity information by certain large undertakings and groups, Parl. Doc., Chamber, S.O. 2016-2017, Doc. 54 2564/001, p. 4.

The National Action Plan to Combat Trafficking in Human Beings 2021-2025 states that the law should be amended so that trafficking is explicitly included among the issues on which companies must give account[234]. A recent draft law provides for an explicit report on the risks associated with human trafficking and the publication of the NFI statement on the company's website[235].

According to the NBA, this obligation to publish sustainability information does not yet seem to be having the desired effect, partly because the Belgian transposition is not entirely in line with international standards[236]. Several Belgian companies[237], trade unions and civil society want to go further and are in favour of a national legal framework for due diligence[238]. In the government agreement of 30 September 2020[239], the federal government also committed to playing a key role in this domain on an international level[240].

The current National Action Plan to Combat Trafficking in Human Beings 2021-2025 states that Belgium supports European regulations which ensure that companies implement a due diligence process, helping to prevent labour exploitation and increase the accountability of principals (in the context of supply chains)[241]. The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) also encourages this approach in its latest 2022 report on Belgium[242].

The recent recommendations of Special Parliamentary Commission on Trafficking and Smuggling[243], call on large companies to pay attention to the phenomena of human trafficking and smuggling, exploitation and social dumping among their subcontractors.

A **draft law introducing a due diligence and liability obligation for companies** throughout their value chains was presented in 2021[244]. There is no certainty this law will be adopted, as Belgium is waiting for a European directive. It is important that binding regulations establish qualitative and effective due diligence, accompanied by the necessary guarantees.

For due diligence to be effective and not turn into whitewashing, it must be accompanied by several guarantees. One of these is that not only very large companies have a due diligence obligation, but also smaller ones, in proportion to their capabilities. In addition, the government should monitor compliance with the legislation through constant checks and ensure that, where necessary, there are consequences, such as fines[245]. Some players also argue that companies should be required to be transparent and publish lists of their subcontractors throughout the subcontracting chain[246].

It is essential that the regulations establish effective and qualitative due diligence, accompanied by the necessary guarantees.

Access to an effective remedy for victims is also essential. The European Union Agency for Fundamental Rights (FRA), among others, has confirmed this in a detailed report. An effective remedy must be available through judicial channels, i.e. civil and criminal proceedings, or through administrative procedures, or through non-judicial mechanisms which can be used in the first instance to ensure respect for victims' rights, and which are often quicker, less costly and easier to access. In some cases, the FRA also advocates reversing the burden of proof in cases where there is already prima facie evidence that a company has violated human rights. This would put the onus on the company to prove that there has been no violation. Moreover, it remains very difficult for victims to prove a violation, because it is precisely the company that holds all the information. Some of the information should be disclosed as part of the reporting obligation.

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234 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p. 34.

235 See the draft bill amending the Companies and Associations Code on the disclosure of non-financial information by certain large undertakings and groups, Parl. Doc., Chamber, S.O. 2022-2023, Doc. 55 2977/001.

236 *Belgian National Baseline Assessment (NBA) on Business and Human Rights*, 2021, p. 27.

237 Sixty Belgian companies have sent a letter to the relevant ministers calling for legislation on due diligence.

238 *Memorandum - Essential foundations for a Belgian law on due diligence*, October 2020.

239 See government agreement 2020, p. 89.

240 Resolution of 14 January 2021 in support of a binding United Nations Treaty on 'Business and Human Rights' and a European initiative on due diligence, Parl. Doc., Chamber, S.O. 2020-2021, Doc. 55 0524/005.

241 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p. 32.

242 GRETA, *Evaluation Report Belgium – Access to justice and effective remedies for victims of trafficking in human beings, 20 October 2022*, p. 40.

243 See recommendation 69.1. See Part 2, Chapter 1, point 2.

244 Draft law of 2 April 2021 introducing due diligencece and due diligence for companies throughout the value chain.

245 This is also the conclusion reached by the specialised NGO KnowTheChain following a benchmark study of major multinationals over a five-year period, see KnowTheChain, Closing the gap - Evidence for effective human rights due diligence from five years measuring company efforts to address forced labour, 2022.

246 *Ibid.*, p. 19. See "Filing a complaint with the National Contact Point (NCP) for the OECD Guidelines".

However, the FRA also advocates an obligation to 'disclose' all company documents that are relevant to a particular violation. There should also be the possibility of collective redress or representative actions for victims of corporate offences. In addition, it is preferable for a company's due diligence plan to be drawn up with the participation of all stakeholders (stakeholder engagement), such as civil society and trade unions. Some organisations also advocate the duty of directors[247].

In response to a number of major cases[248] of labour exploitation, Flanders is currently taking the first steps to introduce, within the scope of its powers, **a minimum due diligence** for the (main) contractor with regard to the illegal employment of workers[249]. This minimum due diligence means that the (main) contractor must request certain information from their direct subcontractors to prove that they are complying with legal requirements.If this information reveals illegal employment, or if the data are insufficient, the (main) contractor will be required to call the direct subcontractor to order. If the sub-contractor does not comply with this request, the (main) contractor is obliged to inform the Flemish social inspectorate.

The question of whether the (main) contractor is jointly liable for offences will always be assessed on a case-by-case basis by the social inspectorate on the basis of a number of factors.

The aim is not for companies to take on the inspection role themselves, but rather for them to be able to detect unscrupulous subcontractors more easily thanks to the built-in due diligence test. Currently, the principal or main contractor can be prosecuted for illegal employment offences committed on the building site by the subcontractor, but this possibility has been undermined by the current provision which allows the contractor or principal to exclude liability for illegal employment by the direct contractor by means of a simple contractual clause[250].

5. Other corporate social responsibility initiatives in Belgium

Within the framework of the OECD guidelines, it was decided that each country would set up **a National Contact Point (NCP) for Responsible Business Conduct** to implement the guidelines. The Belgian NCP[251] was set up within FPS Economy and is made up of delegates from the federal and regional governments, employers' organisations and trade unions. The NCP has two main missions: 1) to raise awareness of the guidelines and promote compliance with them and 2) to guarantee an out-of-court mechanism for the impartial resolution of disputes between parties in the event that a Belgian company does not comply with the guidelines. Any organisation or individual may lodge a complaint with the NCP about an alleged violation of the OECD guidelines by a company or organisation. The NCP offers mediation between the parties[252].

Belgium had already introduced **a product label aimed at promoting socially responsible production**[253] in 2002, awarded by the Minister of the Economy to companies that can demonstrate that their products and services comply with the core ILO conventions throughout their production chain. The label is based on a chain approach: core labour standards must be respected throughout the production chain. Companies are then authorised to display the 'Belgian social label' on their products and services. The label is inspected by a certified inspection body. However, the label has never really taken off. Only about 10 companies have applied for it.

247 In particular, see FRA, *Business-related human rights abuse reported in the EU and available remedies* and *Business and human rights – access to remedy*, as well as ENNHRI, *Statement on the proposal for a Corporate Sustainability Due Diligence Directive*.
248 The press release of 20 January 2023 refers to the Borealis case and irregularities identified at *Antwerp Container Transport International* (ACT) and BASF.
249 Draft decree amending the Act of 30 April 1999 on the employment of foreign workers, the Decree of 30 April 2004 standardising control provisions in the regulation of matters of social legislation and the Decree of 22 December 2017 on a premium to stimulate the transition of jobseekers to entrepreneurship, Parl. Doc., Fl. Parl. 2022-23, No. 1.1805/1. The decree was adopted on 25 October 2023.
250 Art. 23 of the Act of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals and Art. 12/4, § 1 of the act on the employment of foreign workers.
251 National Contact Point (NCP) for Responsible Business Conduct.
252 See "Filing a complaint with the National Contact Point (NCP) for the OECD Guidelines".
253 Act of 27 February 2002 to promote socially responsible production.

There are a number of **multi-stakeholder initiatives,** such as 'pacts' in which business, government, trade unions and civil society work together to prevent abuses such as human rights violations[254].

Belgium has also developed a **Human Rights Toolbox**[255] which includes various instruments designed to help companies meet their human rights obligations.

The authorities and state-owned companies are major customers of goods and services. In this respect, the government has a role to play in setting an example when it comes to respecting and protecting human rights, both with regard to its own public companies and when awarding public procurement contracts and granting aid to companies. The **Act on Public Procurement** of 17 June 2016[256] pays particular attention to the issues of labour exploitation and social dumping. It stipulates that contractors are required to observe and enforce all applicable obligations in the field of environmental, social and labour law by any person acting as a subcontractor at any stage, and by any person employing staff for the execution of the contract[257].

In addition, any tenderer who has already been convicted in the past for acts such as child labour and other forms of human trafficking or the employment of illegally staying nationals should be excluded from the procedure at any time[258]. However, Belgium could develop an even more ambitious and effective policy framework on public procurement and human rights[259]. All too often, these obligations are only checked at a given point in the award procedure, which does not have the desired effect of ensuring that sustainable development obligations actually become an integral part of the corporate culture of the company concerned.

6. Is due diligence a tool in the fight against human trafficking and labour exploitation?

Below, Myria examines the extent to which due diligence could be used to combat human trafficking and labour exploitation.

Several major cases of labour exploitation have come to light in Belgium in recent years. Investigations into social dumping and human trafficking often go hand in hand. Larger, decent companies are regularly involved, mainly in labour-intensive sectors[260]. They knowingly or unknowingly use subcontractors committing labour exploitation.

In this respect, subcontracting is often no longer used to entrust specific tasks to another contractor, but as a revenue model by dishonest employers who practise social dumping and exploitation by cutting labour costs as far as possible. Subcontracting allows companies to separate profits from risks and responsibilities, and to circumvent labour rights and social security contributions[261].

Criminal groups are also taking advantage of the growing demand for cheap labour in several Member States and are abusing differences in labour legislation to exploit victims in the grey area between legal employment and labour exploitation. In light of the experience of the Financial Intelligence Processing Unit (CTIF), there are links with social fraud, which consists of setting up fraudulent systems to disguise exploitation.

254 Examples: TruStone and Beyond chocolate.
255 https://entreprises-droitshomme.be.
256 The act came into force on 30 June 2017 and transposes the European directives (see above).
257 Art. 7 of the Act of 17 June 2016 on public procurement.
258 Art. 67.
259 B. Verbrugge, *Mensenrechten in overheidsaanbestedingen: opportuniteiten in regelgeving botsen op realiteiten in de aankooppraktijk*.
260 See Part 1, Chapter 4, point 6.
261 The Left, *Subcontracting: exploitation by design – Tackling the business model for social dumping*, 2022.

As a result, links with organised crime are increasingly being established[262]. A tangle of subcontractors and schemes is created through various companies in the country and sometimes abroad.

Using this system, they attempt to hide or even legitimise certain situations of human trafficking and labour exploitation, whether through illegal employment, fictitious self-employment, abusive postings, 'letterbox' companies in other Member States, etc. In practice, it is difficult to prove that the principal or main contractor was aware of this. Sometimes, principals or contractors are acting in good faith and are unaware of the labour exploitation down the chain. In other cases, they are aware or deliberately keep themselves in the dark because it is often better not to know certain things.

And in other cases, they indirectly contribute to unscrupulous practices by charging such competitive prices. Thus, the principals remain out of reach. The presumption of innocence applies, and it is up to the government or the victims to prove that the principal was aware, which is extremely difficult and time-consuming in practice.

These unscrupulous practices are not only disastrous for the victims who are exploited. They also distort the market and lead to unfair competition with companies acting in good faith[263].

6.1. | Due diligence, a preventive measure above all

Due diligence would above all play **a preventive role** in companies.

Companies are obliged to carry out their own risk assessment (of human trafficking and labour exploitation) of their activities and those of their subcontractors (or business relations), to mitigate any risks and to act accordingly. This means that companies can no longer feign ignorance. They must demonstrate that they have done everything in their power in terms of control and prevention. This helps to raise awareness and make companies act responsibly, especially if they are acting in good faith.

Due diligence can help to raise awareness in companies and make them act responsibly.

If this is the case, these companies will make an informed choice to work with subcontractors who fulfil their obligations.

Making due diligence procedures public also has an awareness-raising effect on consumers and investors. Non-compliance with due diligence can seriously damage a company's reputation.

The effect of raising awareness can be even greater if companies have to publish this information on their website and if the information is collected in an online register (cf. Modern slavery statement registry in the United Kingdom).

In order to have an overview of their chain, the main contractor will also have to call on external (independent and certified) services for controls, in addition to their own internal audits. This means that it is not just the authorities who are responsible for monitoring the chain, but also the companies themselves, through a kind of self-regulation system[264].

262 Financial Intelligence Processing Unit (CTIF), Activity Report 2018, p. 14; See Part 1, Chapter 1, point 1.
263 See Part 1, Chapter 4, point 6.
264 *Ibid.*

During the informal discussions Myria had with various players involved in the fight against human trafficking for the purpose of labour exploitation as part of the preparation of the annual report, one labour prosecutor suggested that some sort of independent external service could be set up to oversee the obligation of due diligence. They likened it to an external service for prevention and protection in the workplace. A similar external service could be set up for due diligence, to help companies monitor compliance with this duty. If the obligations are not respected in the subcontracting chain, the service would inform the contractor or the principal concerned. In this way, principals can no longer feign ignorance. GRETA also seemed to be suggesting something similar[265], notably independent audits in the contractor chain and monitoring of the workplace.

Another labour prosecutor suggested that due diligence could also be useful for social secretariats. If they observe irregularities, they can report them to the relevant services.

In order to facilitate collaboration and communication with supervisory authorities and other external players, large and medium-sized companies could designate a due diligence policy contact point or competent contact person. This department or person could centralise all the information relating to the company's due diligence measures and act as the contact point in this respect, both internally and externally.

However, it is essential that the obligation of due diligence is effectively integrated into company policy. This obligation will not achieve the desired result if companies consider it only as a one shot, as a condition that they have to fulfil annually at a certain moment of the controls. The impact will only be real if due diligence is truly part of the corporate culture.

Due diligence can help to raise awareness in companies and make them act responsibly.

6.2. | The role of due diligence in a law enforcement approach and the gathering of evidence

Due diligence could be an additional tool in the existing systems for detecting and punishing trafficking and labour exploitation.

a. | Linking due diligence to a chain of responsibility in the fight against human trafficking

The due diligence and sustainability reporting obligation could be combined with a chain approach in order to trace things back to those responsible.

In practice, magistrates are especially faced with the heavy burden of proof, which consists of demonstrating that more senior people were aware of the wrongdoing.

In some situations, the law already provides for a **chain of responsibility**, such as joint and several liability for all wage debts in certain sectors[266] or joint and several liability for the illegal employment of foreign workers[267].

However, even in this case, responsibility upstream in the chain is often limited in practice, or principals can be exonerated if they have a written declaration in which the direct subcontractor confirms that they do not and will not employ illegally staying third-country nationals[268]. The current rules on the joint and several liability of the main contractor are often insufficient to hold them liable[269]. Several voices are calling for a tightening of the chain of responsibility[270].

265 GRETA, *Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation*, September 2021, p. 18: Conduct or require independent supply chain audits and workplace monitoring, and ensure that companies are held accountable in case of human rights abuses.

266 The Programme Act of 29 March 2012 introduced the chain of responsibility into the law concerning the protection of workers' pay for certain sectors: cleaning, security, construction, transport, electricians, metalwork, upholstery and joinery, agriculture and horticulture and certain types of work in the food industry and trade.

267 See the Act of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals ('Sanctions' act).

268 The National Action Plan to Combat Trafficking in Human Beings 2015-2019 referred to a draft bill on the joint and several liability of principals who use intermediaries who engage in human trafficking. The law provides for penalties in terms of civil and criminal liability when the principal knew or should have known that their intermediary was exploiting people in working conditions contrary to human dignity. The draft bill was never passed owing to a lack of political agreement. See the Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2015-2019, pp. 11 ff. Also see Myria, *Annual Report 2010, Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 98 ff.

269 See Part 1, Chapter 4, point 6.

270 See the recent question of labour prosecutor Filiep De Ketelaere and the mayor of Ghent following the labour exploitation of Bulgarian workers in Ghent. VRT NWS, *Gent draaischijf voor sociale uitbuiting van Bulgaren: "Echte maffiapraktijken, ik kreeg 50 euro per week"* en VRT NWS, *Gent vraagt regering om bedrijven die meedoen aan sociale uitbuiting via onderaannemers harder aan te pakken*. Also see Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, recommendation 67.

Establishing a link between due diligence and joint and several liability throughout the subcontracting chain could, however, be an interesting additional tool to trace things back along the chain.

Thanks to due diligence and the reporting obligation, a principal can no longer feign ignorance. They must monitor their own activities and those of their chain. They are aware, or should have been aware, of problematic working conditions. Hence, the 'knowingly and intentionally' aspect could be proven and they could be prosecuted for the offence of human trafficking or for other acts of labour exploitation. It would then be up to the principal to prove that they were unaware of the exploitative situation[271].

Informal discussions with the various players conducted to prepare the annual report highlighted the little-known nature of this concept. Nevertheless, some magistrates considered it to be an additional tool. Some labour prosecutors suggested that smaller companies, particularly those closest to the workers actually employed, should also comply with due diligence and sustainability reporting obligations. In practice, it has been observed that it is mainly small companies that pay little attention to working conditions.

The proposed Belgian law on due diligence, unlike the proposed European directive, stipulates that all companies established or operating in Belgium are bound by due diligence. Small and medium-sized enterprises also have due diligence obligation. However, the extent of the obligations must be proportionate to the size of the company, its resources, its ability to be aware of the risks and to take effective measures, as well as the company's potential negative impact. Hence, companies active in high-risk sectors or regions are required to make a greater effort with regard to due diligence. That said, the proportionality of the obligations does not affect responsibility for the impact of business activities[272].

b. | Due diligence in gathering evidence

The information communicated within the context of the due diligence and reporting obligation may also be useful during the investigation carried out by inspectorates, public prosecutors and labour prosecutors within the framework of **gathering evidence** during an investigation[273].

In the road transport case in Bruges, also discussed in this annual report, Myria found that the client had asked a consultancy firm to carry out an audit. This audit revealed serious anomalies, following which corrective measures were requested and implemented[274].

Finally, reporting of qualitative information on sustainability could also prove useful in providing victims with an effective remedy. The information can help victims as evidence to obtain redress and recovery in judicial or extra-judicial proceedings.

c. | Due diligence obligation to detect problematic situations

The information provided in sustainability reporting can also be used to **identify problematic situations**. Principals who discover non-compliance with certain rules and problems with subcontractors during checks, could report them to the competent authorities, a situation similar to the obligation to report to inspection services, included in the draft Flemish decree on the minimum due diligence with regard to illegal employment.

In addition, **a supervisory authority** (currently provided for in the European directive and implemented in Germany) could be responsible for the final control of the due diligence process. In the event of non-compliance, this authority could impose fines or other measures (injunctions or exclusion from public procurement). If the supervisory authority finds irregularities, it can report them to the competent authorities, such as inspectorates, for further investigation.

271 See Part 1, Chapter 4, point 6.
272 Bill of 2 April 2021 introducing due diligence and liability for companies throughout the value chain and Memorandum - Essential foundations for a Belgian law on due diligence, October 2020.
273 One of the labour prosecutors interviewed considered it useful.
274 See Part 1, Chapter 2 and Part 1, Chapter 4, point 6.

d. | Due diligence in the context of administrative measures

According to another labour prosecutor, due diligence could also be of interest in the context of an **administrative approach**. For example, a town or municipality could make its policy on granting business permits subject to compliance with due diligence[275]. Trade federations could also make their policy, and the criteria which companies must meet, subject to compliance with due diligence in order to be authorised to exercise a particular activity.

Conclusions

In this analysis, Myria has sought to give an initial impetus to the issue of knowing to what extent due diligence for Belgian companies could contribute to the fight against human trafficking, since this will happen in the short to medium term as a result of the transposition of the European directive. Although this remedy is not applicable to all situations of human trafficking and labour exploitation, Myria nevertheless believes that it could be a useful means of raising awareness.

For instance, for companies who act in good faith who need to keep an eye on their own activities and those of their chain. This would allow them to select their contractors in a critical manner and encourage them to comply with the rules on proper working conditions. If a supervisory authority imposes fines and other measures for non-compliance with obligations, other companies will also be encouraged to guarantee proper working conditions.

As for the awareness-raising aspect, this has an effect on investors, consumers and the general public by enabling them to make informed choices about the companies with which they wish to engage on the basis of the information provided. From this point of view, companies that fail to meet their obligations can suffer serious reputational damage.

Although this remains highly theoretical, Myria firmly believes that due diligence could be an interesting tool in the fight against human trafficking, even in a repressive context, insofar as it would be linked to the joint and several liability of the principal. The onus is on companies to prove that they were not aware or could not have been aware of working conditions contrary to human dignity within their chain. The information they must disclose in this respect may be useful in investigations into human trafficking.

If due diligence is to contribute to the fight against human trafficking, Myria believes that it must not become a simple 'tick box' for companies. Due diligence must be accompanied by certain necessary guarantees, and above all by an effective remedy for victims. With this in mind, it would be worthwhile for the Belgian authorities, when transposing such an obligation, to check its effectiveness in other countries that already have such legislation.

275 Also see Part 1, Chapter 4, point 3.

Based on this analysis, Myria makes the following recommendations:

- Belgium needs to review the balance between voluntary actions and mandatory measures.
- Belgium needs binding due diligence regulation, in addition to other voluntary initiatives.
- Belgium can play a pioneering role in the negotiations on the European directive and argue for the safeguards needed for an effective directive to prevent greenwashing and whitewashing.
- When transposing the directive, it should be ensured that controls are designed in such a way that companies' due diligence does not j ust become a 'tick box' that they have to comply with every year during audits, but actually becomes part of their corporate culture.
- In preparing its own regulations, Belgium could analyse the effectiveness of other countries' systems in order to choose the best system.
- When transposing the Sustainability Reporting Directive, explicit reference should be made to human trafficking in Belgian legislation as provided for by the National Action Plan to Combat Trafficking in Human Beings. It should also be stipulated that NFI statements be published online on the company's website.
- The Belgian authorities must support companies and provide them with tools to help them comply with their due diligence obligations.
- Magistrates should be made aware of the concept of due diligence and encouraged to use companies' NFI statements in their criminal investigations.
- The due diligence requirement could apply in an administrative context and when awarding public contracts.
- The due diligence requirement could also be applied by trade federations when issuing permits.

Chapter 4
Good practices and experiences

This chapter looks in greater detail at good practices and experiences in terms of combating human trafficking for the purpose of labour exploitation. It is based on interviews with labour prosecutors and frontline services, information drawn from case law and cases, the final report and hearings of the Special Parliamentary Commission on Trafficking and Smuggling of Human Beings (hereinafter the 'Parliamentary Commission') and the relevant literature.

Several interdependent aspects are addressed. The Belgian model is used as a starting point from an international perspective, to explain the importance of inspection service checks in risk sectors and the potential role of the administrative approach in an integrated vision. This chapter also explores how an investigation can be initiated on the basis of a chain and financial approach in large-scale cases. In this respect, the victim's point of view is important. The various players, civil society and the business world need to be made aware of this.

1. The Belgian model

The Belgian model for combating human trafficking has an excellent international reputation for its approach to labour exploitation. Human trafficking is a highly lucrative and low-risk illegal activity, exacerbated in several countries by the lack of prosecution and convictions of its perpetrators. In the context of human trafficking, this is all the more the case for labour exploitation. Belgium is held up as an example at international level in this respect, although there is inevitably room for improvement.

The Belgian multidisciplinary model is based on sophisticated legislation on human trafficking, specialised apparatus for detecting and combating it, specialised reception centres and victim status offering the prospect of a permanent residence permit.

The social inspection services - in addition to the police - play an important role in detecting acts and presumed victims of human trafficking for the purpose of labour exploitation in Belgium. During the hearings of the Parliamentary Committee[276], the director of the NSSO's Thematic Department for Trafficking in Human Beings[277] (hereafter the 'ECOSOC director')[278] explained the impact:

"Only a few countries legally authorise social inspectors to investigate human trafficking. Besides Belgium, there is only the Netherlands and the United Kingdom. This particular legal mandate is a major asset of the Belgian multidisciplinary model to combat trafficking. The Belgian model is highly regarded internationally because many players, such as the judicial authorities, the police, inspection services and reception centres, know how to work together. While shortcomings and areas for improvement are sometimes placed in the spotlight, good practices can also be highlighted. Compared with other European countries, Belgium has an exceptionally high number of prosecutions and convictions for trafficking for labour exploitation. This is not necessarily obvious at first glance if a comparison is not made with other countries.

276 A Special Parliamentary Commission on Trafficking and Smuggling of Human Beings was set up within Parliament in February 2022. It completed its work on 1 June 2023. On this subject, see in this report: Part 2, Chapter 1, point 2.1. The reports of the hearings have been published in full as parliamentary documents and can be consulted online on the Chamber's website.
277 https://www.rsz.be.
278 Within the NSSO, ECOSOC inspection teams are responsible, among other things, for detecting and investigating human trafficking.

The existence of specialised inspection teams and the legal mandate of social inspectors[279] to detect and investigate acts of human trafficking undoubtedly play a major role in this respect"[280].

The specialised teams of the NSSO's inspection department, known as the ECOSOC teams, have acquired a solid reputation among several services and organisations, both nationally and internationally, in the fight against human trafficking. Every year, they play a crucial coordination role in the **'EMPACT Action Days labour exploitation'**[281], a European initiative supported by Europol that was previously called 'Joint Action Days (JAD) labour exploitation', which is part of the EU Action Plan to combat human trafficking. In several EU Member States, the various police and inspection services carry out checks in certain risk sectors over an agreed period of one week in order to detect cases of labour exploitation. Foreign inspection services may participate in these checks in a supporting role.

In addition, throughout the period of the Joint Action Days, a coordination centre is active at the Europol headquarters in The Hague, where a representative of the NSSO inspection department actively collaborates in order to facilitate the coordination of actions and the exchange of information between participating countries. Participating Member States may send 'special requests' to another Member State, in particular to ask foreign inspection services to provide information or to conduct further investigations. As a result, several investigations into labour exploitation are initiated in cooperation with labour inspectorates of other European countries. Furthermore, the exchange of information is not limited to the duration of this Joint Action Days period. Information will continue to be exchanged on cases that are still ongoing afterwards.

During the Joint Action Days in 2020, the various control actions in Belgium (as well as in the Netherlands, France, Germany and the United Kingdom) focused on nail salons. During these checks, the inspectors were able to count on the support of FPS Public Health.

Illegal beauty products were seized at a salon. Joint checks were also carried out in the agriculture and horticulture sector. A drone was used for this purpose, and the drone's images made it possible to pinpoint the exact location of large areas, such as orchards, where workers were busy. This technology brings undeniable added value to this type of inspection. In all, 78 employees and 45 self-employed workers were checked at 39 workplaces in Belgium. The workers were questioned at length about their working and living conditions, with the help of sworn interpreters, given that they were often foreign workers. Ten of the 78 employees checked were working illegally, and four of them were not authorised to work in Belgium[282].

During the Joint Action Days in 2021, the focus was on detecting the labour exploitation of third-country nationals posted in the construction sector[283]. In 2022, joint actions focused on the fight against child trafficking. The Brussels ECOSOC team took part in checks in high-risk sectors likely to involve the labour exploitation of minors[284].

2. Checks

Essential role of the inspection services

Checks carried out by social inspection services in risk sectors (car washes, night shops, hospitality, construction, agriculture, nail salons, textiles, cleaning, domestic work, etc. are the key to the detection of acts of human trafficking and presumed victims of trafficking.

The ECOSOC director explained their role in this respect to the Parliamentary Commission:

"The real work in the field, i.e. detecting and investigating human trafficking for the purpose of labour exploitation, is carried out by our ECOSOC teams, …

279 Besides ECOSOC, the inspectors of the Social Legislation Inspectorate (CLS in French) of FPS Employment, Labour and Social Dialogue are also responsible for combating trafficking in human beings.
280 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Peter Van Hauwermeiren, Director *NSSO Anti-trafficking Unit*.
281 Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 133 and Myria, *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible*, p. 115.
282 Myria, *Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible*, p. 115.
283 Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 133.
284 See ECOSOC's external contribution in Part 3 on data in this report.

They work with the police and labour prosecutors and draw up reports, but in investigations into human trafficking, they pay particular attention to the interests of potential victims of trafficking when gathering evidence of the offence. They inform them of their rights and try to refer them to the specialised reception centres"[285].

Case studies show what happens in practice and the impact on victims. There are examples of good and not so good practices.

Example of good practice: hospitality[286]

During a multidisciplinary inspection of a restaurant by the social inspectorate, it emerged that a Tibetan worker had no valid identity papers and had not been registered by his Pakistani employer. The hearing revealed that he was the subject of labour exploitation, but that he did not consider himself to be a victim. The police drew up an initial report for human trafficking and put him in touch with PAG-ASA, the specialised centre for victims of human trafficking and smuggling in Brussels. The police in Bruges took him to PAG-ASA, which succeeded in gaining his trust[287]. As a result, he was identified as a victim of human trafficking and granted victim status.

Example of bad practice: nail salon

The Essex case288 included a Brussels joint case in which a Vietnamese victim had been intercepted in a nail salon during a multi-disciplinary inspection in October 2018. The victim had stated that she had travelled from Vietnam to England via Belgium and had worked in a nail salon while awaiting her crossing to England. Subsequently, the victim could no longer be interviewed, as she had disappeared after receiving an order to leave the territory (OLT)[289].

Myria emphasised to the Parliamentary Commission **the problem of detecting this group of victims with no agency** by frontline services with insufficient resources to do this:

"The detection of Vietnamese victims working in nail salons or cannabis plantations should set off alarm bells among frontline services. They should see these as indicators of human trafficking ... They should refer presumed victims to centres specialising in human trafficking. The authorities must also be very aware of the essential role of these frontline services. They are the only ones that can detect these particularly vulnerable victims and free them from their disastrous situation. They are often locked up in safehouses or work in exploitative situations. For this reason, it is indeed crucial that frontline services have the necessary resources, which is currently a problem"[290].

Detecting exploitative situations through sufficient checks in high-risk sectors requires resources.

Exploitative situations can only be detected if sufficient proactive checks are carried out in the sectors at risk[291]. The ECOSOC director told the Parliamentary Commission that there was a problem in this respect: Only 25% of the investigations carried out "in 2021 are the result of an ECOSOC initiative, and therefore of a check in risk sectors. This low number can only be increased if more systematic and comprehensive checks can be carried out in these risk sectors"[292].

285 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, audition de Peter Van Hauwermeiren, Director *NSSO Anti-trafficking Unit.*

286 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 106.

287 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims,* pp. 34-35 and Special Commission for Trafficking and Smuggling of Human Beings, recommendation 37.

288 This case was initiated after the tragedy of 22 and 23 October 2019 in Essex (United Kingdom), when 39 Vietnamese smuggling victims were found dead in a refrigerated container. This led to convictions for human smuggling and criminal organisation in Belgium, but the case also contained elements relating to human trafficking. The Belgian part of the Essex case is based on the two safehouses from which many of the victims of the ill-fated illegal transportation departed. These safehouses were run by the Vietnamese criminal organisation. Several smuggling cases involving Vietnamese migrants from Brussels and Bruges, in which these safehouses were discovered with Vietnamese victims, have been attached to the Essex case: Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 25-26; also see the case law overview chapter in this report: Part 2, Chapter 3, point 3.1.

289 Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt,* p. 29.

290 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Stef Janssens, Myria.

291 Ibid., hearing of Peter Van Hauwermeiren, Director NSSO Anti-trafficking Unit.

292 Ibid.

Here, he is referring to the lack of staff resources, which is problematic in any case, but which impact on the fight against human trafficking for the purpose of labour exploitation in Brussels and Wallonia is particularly significant[293]. Hence, his main recommendation was clearly to increase **the resources of the ECOSOC teams**[294]. "The dramatic staffing situation in Brussels has already been highlighted, but the problem is also particularly acute in the other, mainly French-speaking, provinces. Liège currently has only two inspectors and a part-time team leader. This is also the case in Hainaut. I can assure you that labour exploitation and human trafficking do exist there"[295].

Moreover, the continuity of checks is essential if they are to be effective. If a lot of checks are carried out, the situation will improve, whereas if the attention of the inspection services wanes, the problems will resurface. The Parliamentary Commission has understood this and has made it a priority in its recommendations.

Checks should also be geared to changes in the phenomenon. For instance, during their checks, some social inspectors observed a shift from posted salaried workers to a growing number of posted self-employed workers. However, the majority of social inspectors still focus on checking salaried workers. This means they risk missing out on the labour exploitation of people who are in a weaker legal position because they have fewer rights to assert as self-employed workers. **Hence the importance of raising awareness among inspectors so that they are also alert to possible signs of trafficking, such as pay, working and housing conditions among self-employed posted workers.**

This is certainly the case in high-risk sectors such as construction, where problems with safety and work regulations can lead to situations of human trafficking. Interviews with labour prosecutors show that an accident at work involving third-country nationals is considered to be an indicator of human trafficking. The Parliamentary Commission also made a recommendation along these lines in its final report (recommendation 71). In 2018, magistrates in Bruges wrote a book on their approach to human trafficking, which served as a model for the Parliamentary Commission, in particular for recommendation 60. In their view, **the lack of workers' compensation insurance** for these workers is an indicator of trafficking:

"It is worth mentioning that the lack of insurance against accidents at work is one of the social law offences commonly associated with human trafficking. Victims of trafficking are often employed in dangerous working conditions even though no insurance has been taken out to cover them. In these circumstances, Fedris can order the insurance to be taken out automatically"[296].

In the Bruges road transport case, discussed earlier in this focus[297], this was again the problem in 2012 when Polish workers had to return to their home country if they needed medical attention. This was reflected in the statement of one of the Polish victims who had suffered burns during the warehouse fire, for which the lead defendant was responsible as the employer.

Added value of police presence during checks

During multidisciplinary checks, the police provide significant added value for the social inspection services through their support role. The police guarantee the safety of the inspectors, although they each have their own skills and role, which support each other.

293 See Part 1, Chapter 1.

294 The director of ECOSOC gave the Parliamentary Commission further explanations on this subject: "The capacity of the ECOSOC teams is currently limited to 39 level A and level B inspectors, i.e. 35.55 full-time equivalents, spread over 10 teams across the country. These are specialised, highly motivated and very committed inspectors, who have often been carrying out this type of investigation for 10 or even 20 years. These are people who have built up years of expertise. However, to ensure sufficient presence in the field and sufficient capacity to detect exploitative situations, 57 inspectors are needed"; also see ECOSOC's external contribution in Part 3 on data in this report.

295 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Peter Van Hauwermeiren, Director *NSSO Anti-trafficking Unit.*

296 J. Lorré (Ed.), F. De Ketelaere, F. Demeester, M. Manderick, "Mensenhandel en -smokkel, De weg naar een eengemaakte vervolging en berechting", in *Cahiers Antwerpen Brussel Gent,* Larcier 2018, p. 105.

297 See Chapter 2 of this part.

The Bruges federal judicial police (FJP) explained this at its hearing before the Parliamentary Commission, using the following example:

"If the inspectorate goes on site for a company inspection and the employer in attendance influences the workers, we will not receive any statements from the workers. They are afraid of their employer. If the police are also there, we are **authorised to remove the employer** and have them wait in the police waiting room for a few hours. This is a major added value, both for the inspectorate, which knows it can count on the police to exercise its powers of enforcement, and the victims who see the police taking action and removing the employer. This means that the employer is no longer in a position to exert pressure. Furthermore, the inspection services have a wealth of knowledge. What we do not know, they do. By acting together, we increase our skills and knowledge. They are also authorised to take actions that we can't, such as going into workplaces. I can not just walk in, they can. However, we can **go along to lend a hand. Once we have entered legally, we see if we can exercise certain skills**"[298].

3. Administrative approach[299]

In Bruges, magistrates involve various inspection services (social legislation, tax administration, town planning, food agency) in multidisciplinary checks in order to gather as much information as possible[300]. **During the interviews, several labour prosecutors argued in favour of a maximum flow of information from all the inspectorates and public services present in the field.** For the Parliamentary Commission, the exchange of information and coordination between all inspection services is therefore necessary (recommendation 36).

How can an administrative approach help a judicial approach to detect real situations of trafficking? Many inspectorates and public administrative services are not competent in terms of human trafficking, but can act as eyes and ears to detect possible situations of exploitation during their checks and interventions. During their interviews, several Flemish labour prosecutors argued in favour of **a vision of the future in which the administrative approach and the judicial approach would go hand in hand.** The administrative approach must play a role in the exchange of information with as many public services as possible that provide potentially useful data for the detection of human trafficking. In some provinces, the ARIEC301 are involved. At European level, there is the European Network on the Administrative Approach tackling serious and organised crime (ENAA)[302].

According to the magistrates, this has already given results in practice.

Examples of good practices: fire brigade and population department

The fire brigade, which has no expertise in human trafficking, had noticed during one of its interventions that a third-country national was sleeping on the floor in a restaurant and passed this information onto the authorities, which led to a check and an investigation into human trafficking. Another example concerns a population department which found, when registering a group of Moldovans, that the people were accompanied by a possible labour provider. The latter was behaving suspiciously, with an authoritarian attitude. A check and the vigilance of the Flemish labour inspectorate led to the detection of a large-scale case of human trafficking and social dumping.

By carrying out checks and closing down hangars through the administrative intervention of the housing inspectorate, principals or employers can be forced to provide workers with appropriate sleeping facilities. This is why the regional housing inspectorate is closely involved in inspections in several districts, including Bruges[303].

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298 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Bruges federal judicial police.

299 See the external contribution in this focus for a definition of the administrative approach: an administrative approach to serious and organised crime consists of preventing the facilitation of illegal activities, by denying criminals the use of the legal administrative infrastructure, as well as carrying out coordinated interventions ('working separately together') to disrupt and suppress serious and organised crime and public order problems.

300 J. Lorré (Ed.) F. De Ketelaere, F. Demeester, M. Manderick, *op. cit.*, p. 55.

301 See the external contribution in this focus.

302 For more details, see the website: European Network on the Administrative Approach.

303 J. Lorré (Ed.), F. De Ketelaere, F. Demeester, M. Manderick, op. cit., p. 51: "Lastly, during checks, the housing inspectorate is also confronted with housing situations where foreign workers are living together, ... For this reason, the local and federal police regularly opt to carry out checks not only in collaboration with the social inspection services, but also with the housing inspectorate".

Examples of good practices: collaboration with the housing inspectorate

The housing inspectorate has played a role in several cases of human trafficking. In the **Bruges case relating to road transport**, discussed above in this focus[304], the housing inspectorate had taken administrative measures even before the fatal fire. At the beginning of 2012, the municipal secretary had instructed a housing public servant to carry out an investigation into the suspected over-occupation of the building by foreign workers. The main defendant had been playing hide and seek with the municipality on this subject. He lied about who was staying there and had systematically given wrong names.

In **the case concerning poultry farming** discussed further on[305], the investigating judge ordered the search of a property that was sublet by the main defendant to his exploited workers. Together with the FJP, the housing inspectorate entered the building and found several shortcomings, which led the mayor to declare the building uninhabitable.

Raising awareness of the indicators of human trafficking **among regional inspection services can add considerable value to the fight against this phenomenon.** The Parliamentary Commission goes further and recommends that human trafficking should also be within the remit of regional labour inspectors (recommendation 36).

Raising awareness among regional inspectorates can add considerable value to the fight against human trafficking.

The regions are vested with a number of competences, such as housing including inspections. The difference in implementation and regulations has an impact on how the housing inspectorate operate, among other things. For instance, in Wallonia, housing inspection services must inform the person concerned in advance that an inspection is going to take place, which is not the case in Flanders.

According to several labour prosecutors, this awareness-raising can be done on a larger scale, extending to social services (CPAS), doctors, notaries, bailiffs, etc., but also among well-known players such as the traffic police, the housing inspectorate, the fire brigade, neighbourhood police officers, the population department and the economic inspectorate. These people go to many places and come into contact with a lot of people. They sometimes have information that could be of interest. If the information reaches the labour prosecutor's office, the latter can still judge whether or not human trafficking is involved and take the necessary measures. This is what happened in a case that was opened following the identification of a suspicious situation of exploitation by bank counter staff, who informed the police.[306]

For some labour prosecutors in Flanders, this administrative approach can also be an important weapon in the fight against human trafficking as part of the permit policy. Antwerp and Limburg have a policy on permits and policing, which can be applied there. According to the magistrates, this system works well, enabling many cases to be dealt with in a preventive manner so that the labour prosecutor's office does not have to resort to a repressive approach. Protocols have been concluded on this subject between the labour prosecutor's office, the public prosecutor's office and the municipality. In Antwerp, authorisation to open a car wash is subject to conditions, which are also closely monitored. If necessary, the permit is withdrawn or the business placed under seal. In Limburg, there is also an administrative approach policy with regard to horticulture, which works very well with housing checks carried out by the municipalities, the housing inspectorate and the fire brigade. If there is any suspicion of human trafficking, the ECOSOC team is called in.

In West Flanders, the administrative approach is always applied in consultation with the judicial authorities:

"But even in the context of human trafficking, the approach can go beyond traditional criminal investigations and prosecutions. First there is the administrative approach ... for which we can cite in particular Article 134 quinquies of the New Municipal Law[307].

304 See Chapter 2 of this part.
305 See the analysis of this case in the chapter on case analyses in this report: Part 2, Chapter 2, point 2.
306 See the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.3: West Flanders Crim. Court, Bruges, 8 April 2022, 17th ch.
307 This article gives the mayor special police powers. They can temporarily close an establishment where there are serious indications that it is being used for smuggling and trafficking in human beings. See Myria, *Annual Report 2010, Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, p. 27.

It is important to note that a consultation with the judicial authorities had been set up: in order not to hamper the criminal investigations, the mayor will communicate intention to close down a particular establishment to the public prosecutor and ask them if they have any objections to its closure. In West Flanders, for instance, several establishments have already been closed by the respective mayors after consultation with the public prosecutor's office.

In addition, a permit policy (which is also administrative) can ensure that establishments in certain sectors are in order before they start operating"[308].

The multidisciplinary presence and the expertise of the different services during the checks allow the labour prosecutor to put together all the pieces of the puzzle so that they can make their strategic choice in terms of prosecution.

4. Integrated approach

In terms of vision and partnerships between the different police forces and the various federal and regional inspectorates, major differences exist between the regions of Belgium. In West Flanders, cooperation is highly integrated, and this is also largely the case in Antwerp, according to the magistrates.

In recommendation 60, the Parliamentary Commission refers to the **West Flanders model as best practice of an integrated approach by the labour prosecutor's office, the public prosecutor's office and frontline services w**ith joint checks and simultaneous evaluation of legislation on human trafficking and social criminal law. If necessary, the FJP must be able to take immediate enforcement measures during these inspections, such as seizures - after immediate calculation of the financial benefits by the inspectorate - so that salaries that have not been paid properly can still be taken into account.

The West Flanders model implies that the police and inspection services consider both the prosecuting magistrate and the labour prosecutor as potential interlocutors in a case of labour exploitation[309]. For instance, the trafficking and smuggling section of Bruges FJP also specialises in labour exploitation. This multidisciplinary approach enables frontline services to verify different options depending on the indicators present. All the services have their own expertise and their own possibilities. They know each other and agree to work together in the field. Hence, there are enough staff on site which means that this problem does not really arise in West Flanders.

Momentum is very important in gathering evidence, and this multidisciplinary approach helps. At the labour prosecutor's office, all these elements are brought together, which gives us a much broader view of the investigation. Then, all the pieces of the puzzle are put together and the labour prosecutor's office makes its strategic choice in terms of prosecution on the basis of the information obtained.

In several regions, such as Liège and Brussels, the FJP does not have sufficient capacity to play a role in combating human trafficking for labour exploitation. In Charleroi, there is not even a human trafficking unit within the FJP any more. The political choices made by public prosecutors' offices and labour prosecutors' offices are also relevant in this respect. All this leads to a different approach and a different result in picturing the phenomenon in these regions.[310]

Brussels FJP's testimony to the Parliamentary Commission spoke for itself:

"What initiatives have been taken in terms of labour exploitation? For years, I did not have a fixed capacity dedicated to this issue. As a makeshift solution, these cases were entrusted to other teams, but that's not how you build up knowledge, specialise or forge a link with the inspection services or the labour prosecutor's office. And yet this cooperation is very important"[311].

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308 J. Lorré (Ed.), F. De Ketelaere, F. Demeester, M. Manderick, op. cit., p. 50.

309 *Ibid.* p. 49.

310 See Part 1, Chapter 1.

311 *Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling*,12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295: hearing of the Brussels federal judicial police.

In order to carry out in-depth investigations into major cases of human trafficking, labour prosecutors also need the cooperation of police forces that have the capacity to do so. If this does not happen in certain regions, the result will be mainly - if not exclusively - small-scale cases[312].

As in West Flanders, a team from Antwerp FJP normally also works for the labour prosecutor's office. There is currently a capacity problem due to the major investigation into the 'Sky ECC' drugs case. In **Ghent, MOTEMs[313] (multidisciplinary investigation teams) are set up for large-scale cases, which is an example of a good practice**. MOTEMs are multidisciplinary investigation teams in which the federal judicial police (FJP) and the social inspection services work together to tackle major cases of organised social fraud. The various aspects of the investigation that concern everyone are then the subject of a MOTEM investigation. For this purpose, meetings are held regularly with the various departments to review the progress of these cases.

5. Opening the investigation

In addition to checks, an investigation can also be opened on the basis of complaints from potential victims and reports from local residents to the police or persons involved in the specialised centres, or to the 'human trafficking' point of contact or the Social Information and Research Service (SIRS), through its central point of contact for fair competition. On this basis, the magistrate will attempt to gather the necessary information through the inspection (and police) services. Depending on the type of case, different investigative steps are taken. According to the magistrates, it is important to gather evidence at the right time, otherwise the momentum can be lost. In this respect, interpreters play a role that should not be underestimated, as victim hearings are crucial in these cases. An interpreter can reassure victims. They do not wear uniforms and often share the same roots, which can instil trust among victims. The problem is that interpreters are not always available.

In cases of posting and/or social dumping, short-term observations are initiated by certain labour prosecutors to check, for instance, where workers are sleeping. An operation is then planned so that the services can intervene in several places at the same time, thereby achieving a maximum effect of surprise against the exploiter. In cases of this magnitude, the FJP's cooperation is also essential in investigations involving social media. Mobile phone photos and messages are analysed to gather information about those responsible. In one particular case, the police even flew over the scene with a helicopter (a special search method) to check whether people were sleeping in a van.

It is also important to **pay attention to possible indicators of trafficking in the context of other criminal offences**.

Examples:

The case involving **a mushroom farm**[314] was opened after several incidents of shoplifting were reported. It should also be noted that the discovery of criminal offences can give rise to subsequent checks. In a case involving **day and night shops** where the police were investigating a theft, it turned out that a person was illegally employed in a shop. This is what the initial database searches revealed. Other checks were carried out about a year later[315].

The interviews also revealed that a search of the land registry established that the owner of a night shop who exploited his staff owned other shops and places to sleep. The checks moreover showed that this shop owner had set up a system whereby he transferred his staff from one shop to another in order to exploit them there. Since then, the land registry has been systematically searched for this type of scheme.

Database searches can therefore lead to the opening of an investigation. For instance, a case concerning road transport was initiated after the FJP gathered additional information on a foreign company from public sources, government databases and its own checks[316].

312 See Part 1, Chapter 1.

313 VRT NWS, Gent vraagt regering om bedrijven die meedoen aan sociale uitbuiting via onderaannemers harder aan te pakken.

314 Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, p. 82; Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 29; Ghent Court of Appeal, 19 January 2017, 3rd ch.; West Flanders Crim. Court, Kortrijk division, 10th ch., 16 February 2015, *Annual report 2015, Trafficking and smuggling of human beings, Tightening the links*, pp. 117-118. The decisions are also available on Myria's website.

315 See the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.6: East Flanders Crim. Court, Ghent division, 7 December 2022, ch. G29; and Myria's website (Case law).

316 See the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.2: West Flanders Crim. Court, Bruges division, 10 March 2022, ch. B17; and Myria's website (Case law).

Database searches can also **provide an additional tool for an analysis of the network**. By linking information from different databases, it is possible to uncover a criminal network from what appeared to be just a few small cases in the beginning. For instance, the analysis of **a large-scale car wash case**[317] enabled the identification of fraudulent schemes behind which certain key figures from criminal organisations were hiding. On several occasions, the companies' headquarters were moved to other regions using straw men. The same Afghan-Pakistani business owners were involved in various businesses, each time in a different combination, such as car washes, petrol stations, telephone shops or nightclubs. After a while, these businesses were the subject of a fraudulent bankruptcy. An analysis of the case law shows that one of the car wash cases also involved a tangle of companies, but this case ended in an acquittal[318]. The case involving the poultry sector, which is examined as part of the case file analysis, also involved such company structures[319].

6. Chain approach

According to several labour prosecutors, social dumping and human trafficking can go hand in hand. Some are putting a great deal of effort into investigations into social dumping, allowing the possible link with human trafficking to be identified. Several major investigations involving well-known international companies are currently underway in this domain. In its report, the Parliamentary Commission makes a number of recommendations to combat posting fraud (66) and social dumping (67) and to raise awareness of this issue among large companies (69.1).

Social dumping social and human trafficking can go hand in hand and can be fought through the chain approach.

Some magistrates have warned that certain apparently decent construction companies and companies in labour-intensive sectors are also guilty of social dumping linked to human trafficking by using posting constructions, subcontractors and 'letterbox' companies. The number of subcontractors is so high that it becomes impossible to know who is responsible for what. It is currently possible to save on accommodation and labour costs, but not on construction materials. In the most serious cases, this job comes with accommodation in conditions contrary to human dignity[320].

The magistrates explained how these companies can become involved in human trafficking:

"For the perpetrators, this is often no more than a cost-benefit economic analysis, in which the expenses or costs associated with the labour production factor are reduced as much as possible in favour of turnover or profit margins. Not only does this distort the market, it also leads to unfair competition that excludes genuine companies from the market. It is not unusual for cases of social dumping to also reveal aspects of human trafficking, in particular when ignorance of or non-compliance with the protective rules of labour or social security law, or the context of work and housing, verges on or crosses the limits of human dignity"[321].

For the magistrates, **the chain approach can be an important tool** in this respect. They do not want to focus solely on the small fry. Their aim is to climb as high as possible up the chain of responsibility, which means increasing the burden of proof. The further up the chain you go, the heavier the burden of proof, and the more often the principal is legally better covered. Pricing is particularly important. If there is underpayment, it is clear, but often, there is no hourly wage and the work is done taks-based, which is more difficult to trace.

317 Myria, *Annual Report 2010, Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 49-51.
318 See the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.5: East Flanders Crim. Court, Ghent division, 5 January 2022, ch. G29; and Myria's website (case law).
319 See the analysis of this case in the case analysis chapter in this report: Part 2, Chapter 2, point 2.
320 J. Lorré (Ed.) F. De Ketelaere, F. Demeester, M. Manderick, op. cit, p. 8, "This divergence (wage gap with Central and Eastern Europe) prompts certain (Belgian) companies to juggle, in a figurative sense, company law constructions, registered offices and place of business addresses, post office boxes and minimum infrastructures, as well as the social security regime. As a result, foreign workers are sometimes employed in Belgium through artificial constructions or outright fraud, without respecting the applicable labour law, the right to social security and the resulting protection. In the most serious cases, such social fraud goes hand in hand with employment and housing in conditions contrary to human dignity, which can also constitute trafficking in human beings through labour exploitation".
321 Ibid., p. 73.

Several magistrates are calling for more legal regulation on the subject of the joint and several liability of principals. This issue has also been addressed in the recommendations of previous annual reports and in the Action Plan to Combat Trafficking in Human Beings[322]. This could be combined with due diligence regulations[323].

According to several labour prosecutors, **the concept of co-perpetration**[324] in the context of human trafficking is essential in order to be better able **to go back up the chain**. The principal must act 'knowingly and intentionally'. Case law already exists in this respect thanks to cases of human trafficking in the toilet sector[325], where the principal was informed of the exploitative situation thanks to checks carried out by the social inspectorate. The court's interpretation of the concept of co-perpetration in this case was essential: "co-perpetration within the meaning of Article 66 of the Criminal Code simply requires the co-perpetrator to knowingly and intentionally cooperate in the offence intended by the perpetrator. The intent required for participation is also present when the perpetrator knowingly and intentionally engages in conduct without intending to participate in a specific offence, but is aware of the inherent risk and accepts it"[326].

Although magistrates do not always succeed in proving the unscrupulous role of the principal, they must try to prove that the principal was well aware of the poor conditions. The labour prosecutor's office must therefore establish that the principal was aware (of the salaries, accommodation, abnormally low prices). According to one magistrate, the fact that one business concerned has already been convicted for posting companies and 'letterbox' companies, may constitute evidence of the 'knowingly and intentionally' aspect.

A s**ystem of mandatory self-regulation** coupled with reporting obligations[327] could help to prove this aspect of 'knowingly and intentionally' in the context of correlation in any subsequent findings of human trafficking. Audits could play a role in this respect. In the case involving the road transport sector in Bruges, given as an example in this focus[328], the principal asked a consultancy firm to carry out an audit. The audit revealed serious anomalies and corrective measures were demanded and implemented. This may serve as inspiration for setting up a self-regulation system.

It might therefore be possible to develop certain control systems through self-regulation, so that the principal can no longer deny knowledge of malpractice after the event. Under a compulsory self-regulation system, a principal wishing to appoint a subcontractor would have to ask a consultancy firm to carry out a full audit of the subcontractor. This audit would consist of checking the subcontractor in the light of existing regulations on safety, accommodation, annual reports and minimum rates. In this case, consultancy firms would also be responsible for preparing thorough audits.

Several countries already have regulations on due diligence, with various reporting systems available on websites[329]. In this context, publication of these audits on the website of the principal or the supervisory authority may be required. If the subcontractor is found to be involved in human trafficking and the principal ignored this at the time of the audits or related reports/publications, the principal's correlation could be proved on the basis of the aspect of 'knowingly and intentionally'.

The chain approach must also include a financial investigation based on the follow-the-money principle. This often makes cases more complicated, because large companies will exhaust all possible procedures to protect their assets. According to one magistrate, the principals are often Belgian companies. If the investigation goes far enough up the chain, assets can generally be found and seized. This also sends a signal to other Belgian companies. This encourages them to check the subcontractors they work with.

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322 Myria, *Annual Report 2010, Trafficking and smuggling in human beings, Combating social fraud to prevent trafficking in human beings*, p. 131; *Annual Report 2011, Trafficking and smuggling in human beings, The money that matters*, pp. 72-73 and 145; Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2015-2019, p.11.

323 See Part 1, Chapter 3.

324 Myria, *Annual Report 2005, Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, p. 29.

325 Myria, *Annual Report 2015, Trafficking and smuggling in human beings, Tightening the links*, pp. 81-82: Ghent Crim. Court, 5 November 2012; for further explanations on the case, see Myria, *Annual Report 2010, Trafficking and smuggling in human beings, Combating social fraud to prevent trafficking in human beings*, pp. 47-49.

326 Ghent Crim. Court, 5 November 2012. The court summed this up in its ruling: "The court found that a number of items in the case showed that the principal had knowingly turned a blind eye to the way in which its subcontractor employed its staff. The court found that the principal's knowledge that their subcontractor was employing foreign workers on a self-employed basis, without verifying whether this status was in order, and without any assurance that the correct working conditions in terms of working hours and pay were being applied, implied that they were deliberately taking a risk and accepting that their cooperation with the subcontractor would lead to the employment of foreign workers without compliance with the applicable rules (such as those relating to work permits and social security), and without compliance with the minimum rules on working hours and pay".

327 See the *California Supply Chain* Act and the impact studies on this subject in A.A. Aronowitz, Regulating business involvement in labor exploitation and human trafficking, Labor and Society, 2019:22, pp. 145–164, https://onlinelibrary.wiley.com/doi/full/10.1111/wusa.12372.

328 See Chapter 2 in this part.8.

329 See Part 1, Chapter 3; A.A. Aronowitz, op. cit., pp. 145–164, https://onlinelibrary.wiley.com/doi/full/10.1111/wusa.12372.

7. Financial approach

In Myria's 2019 annual report, the importance of a financial investigation was already widely discussed in relation to victim compensation, network analysis and the financial clean-up of criminal networks[330]. The Parliamentary Commission is also looking into this and has recommended the follow-the-money principle and an international approach (recommendations 13 and 23).

The chain approach must also include a financial investigation based on the follow-the-money principle.

The ECOSOC director reported the following to the Parliamentary Commission: "During their checks, our inspectors are attentive to the presence of assets that could be seized. Labour prosecutors also regularly ask us to be vigilant so that if there are clear indications of trafficking for labour exploitation, assets, i.e. goods of value, can be seized at an early stage. During checks, the inspectors leading the action and the labour prosecutor often communicate with each other on this subject"[331].

Some magistrates stress the importance of cooperation with the police's kaalplukcel[332], which is systematically deployed from the outset in larger cases. In West Flanders[333], this is part of the basis of their approach, as also indicated by the Parliamentary Commission (recommendation 60). A financial investigation is also carried out, by means of letters rogatory aimed at 'financial plundering' abroad[334]. This makes the case more complex, with lengthy procedures, and care must be taken not to exceed the reasonable time limit.

In addition, calculating the financial benefit is an important aspect of any financial investigation. The ECOSOC director explained this to the Parliamentary Commission:

"In the same context, inspectors regularly calculate financial benefits at the request of labour prosecutors. They calculate the financial benefit obtained by the employer through illegal employment and exploitation of victims, in particular unpaid wages and undeclared and unpaid social security contributions"[335].

The ECOSOC director gave an example of the importance of a financial investigation for victim compensation, which was also highlighted in an evaluation study of the National Action Plan (NAP) on Business and Human Rights[336]:

"In this context, it is interesting to refer to a recent court decision in the Brussels ECOSOC case concerning the exploitation of a domestic worker by a senior European Commission public servant. The perpetrator's house was confiscated and the criminal court ruled that the proceeds of the sale should be used first and foremost to compensate the victim. This is a highly exceptional judgment, both nationally and internationally. However, it was a decision handed down at first instance, and can therefore still go to appeal. Its reasoning is nevertheless particularly interesting. It mentions, for instance, that the offence, the exploitation, took place on this property and that this could lead to the confiscation of this property"[337].

330 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 68.

331 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 295: hearing of Peter Van Hauwermeiren, Director *NSSO Anti-trafficking Unit*.

332 The term 'kaalplukcel' comes from the Dutch word 'kaalplukken', which literally means 'to fleece criminals financially'. The term originates from the legislation of the same name, which deals with the seizure and confiscation of criminal assets. The 'plukteam' is responsible for making an inventory of criminal assets with a view to subsequent seizure.

333 J. Lorré (Ed.), F. De Ketelaere, F. Demeester, M. Manderick, *op. cit.*, p. 91.

334 See the analysis of this case in the case analyses chapter in this report: Part 2, Chapter 2, point 2.

335 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002 Annex 4, p. 295: audition de Peter Van Hauwermeiren, D *NSSO Anti-trafficking Unit.*

336 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p. 22; available on the Criminal Policy Department website; Final report of the NBA on Business & HR - Belgian NBA Business and Human Rights (nationalbaselineassessment.be).

337 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295: hearing of Peter Van Hauwermeiren, Director NSSO Anti-trafficking Unit; more explanations on this ruling in Myria *Annual Report Trafficking and smuggling of human beings 2022, Bound by debt*, pp. 87-88; Brussels French-speaking Crim. Court, 20 April 2022, 69th ch.

8. COL meetings

In its recommendations, the Parliamentary Commission calls for the organisation of a COL meeting on human trafficking[338] in all judicial districts (recommendation 19). COL meetings are no longer being organised in some districts. Interviews revealed that some stakeholders regretted this, as they are important for personal contact. Others pointed out that they could make sufficient contact at other district meetings[339].

In addition, there is little or no cooperation between the labour prosecutors' offices in Flanders, Brussels and Wallonia, which has been openly criticised by some French-speaking magistrates. **An exchange of best practices** at national level could provide added value in this respect. The Parliamentary Commission already recommends the creation of a national network of labour prosecutors' offices (recommendation 69).

9. Sometimes contradictory initial victim statements

Victims of human trafficking sometimes make incoherent statements at an initial hearing out of fear or mistrust[340]. If they are then supported by a specialised reception centre and their trust is gained, they correct or complete their statements at subsequent hearings, on the basis of objective evidence. However, this does not mean that these victim statements lack credibility, which is something that the reference magistrates and frontline services must be aware of from the start of the detection phase.

In fact, the magistrates from Bruges make this clear to their colleagues in a collective work:

"The criminal judge seeks the material truth, but in doing so sometimes comes up against witness and victim statements that, at first glance, present a somewhat shaky truth. In 2014, an 'international exploratory study' on the 'treatment of traumatised victims of human trafficking in favour of consistent or concordant witness statements' was published, ordered by the Centre for Scientific Research and Documentation (WODC) of the Dutch Ministry of Justice and Security. Belgian researchers and public prosecutors were also interviewed as part of this[341]. Within the scope of their work, they were all aware of the pressure and fear that these victims face, which may make their statements inconsistent or contradictory. A judge should be aware, in human smuggling and trafficking cases, that using 'intrinsic logic' as a touchstone for statements can sometimes prove problematic because external verification is impossible. In other words, while judges generally tend to be wary of inconsistent statements, intrinsic inconsistency may in fact be a sign of veracity. Victims of human smuggling and trafficking say one thing one minute, then something else the next, and there are often very good reasons for this. Discrediting them by describing their statements as implausible would lead to errors"[342].

338 The COL meetings on human trafficking are organised in each judicial district under the direction of the reference magistrate for human trafficking, in accordance with the (confidential) joint circular on human trafficking (COL 01/15) issued by the Minister of Justice, the Minister of Employment, the Minister of the Interior, the Secretary of State for Combating Social Fraud and the College of Prosecutors General. The COL meetings bring together the departments responsible for investigating human trafficking within the district.

339 For example, through the district units. The district unit is a body set up for each judicial district and chaired by the labour prosecutor. Each unit brings together representatives of the various inspection services, the public prosecutor's office and the federal police. The regional inspection services responsible for employment matters may also be part of the district units. The main task of the unit is to organise and coordinate, at local level, checks on compliance with the various social legislation relating to illegal employment and social fraud. See Articles 13 and 14 of the Social Criminal Code and the FPS Employment website.

340 Myria, *Annual Report Trafficking and smuggling in human beings 2022, Bound by debt,* p. 43 and p. 146 (recommendations).

341 INTERVICT, Bejegening van getraumatiseerde slachtoffers van mensenhandel ten behoeve van coherente of consistente getuigenverklaring — Een internationaal verkennende studie, Tilburg, International Victimology Institute Tilburg, 2014.

342 J Lorré (Ed.), F. De Ketelaere, F. Demeester, M. Manderick, op. cit., pp. 51-52.

10. Application of the multi-disciplinary circular

The Parliamentary Commission questioned the correct and complete application of the multidisciplinary circular[343]. This circular defines the national (referral) mechanism for presumed victims of trafficking and the roles of the various players. It is sometimes mistakenly believed that the victim is always required to make statements. To what extent may it be sufficient for a victim to simply provide relevant information, such as the password to a smartphone containing the phone numbers of the exploiters, and to what extent is this already being applied?

The multidisciplinary circular must be correctly and fully applied.

The federal prosecutor's office gave the Parliamentary Commission the following answer:

"[it is] not that victims have to make a relevant statement. They only have to have the intention to cooperate with the police. This is also in the 2016 circular, to which I have already referred. This is sometimes misinterpreted as meaning that the victim must make statements. This is not the case, because the victim must have the intention to collaborate. The period of reflection then begins and we can examine whether or not we need the statements. In particular, it is necessary to ensure that the investigation is conducted with sufficient objectivity and that the statements are consistent with the objective findings"[344].

The interviews with the labour prosecutors revealed that most of them applied the circular widely and correctly. However, this was not always the case, as not everyone was aware of the correct interpretation of the circular. This means that greater awareness can still be raised among magistrates on this subject.

11. Specialisation of frontline services for groups of disempowered victims

Greater specialisation is needed within frontline services (ECOSOC and FJP teams) to gain the trust of certain groups of victims who are often located in high-risk sectors. These are often vulnerable disempowered groups, such as the Vietnamese. Particular attention should therefore be paid to illegally employed Vietnamese who have been intercepted in nail salons. To gain their trust, frontline services need to take into account and be sensitive to the cultural particularities of Vietnamese victims of human trafficking or smuggling in order to establish a relationship of trust, as stated in a recommendation made by Myria in the previous annual report[345]. The training of players, including frontline services, by NGOs familiar with Vietnamese culture - as has already been done in the past - is an example of a best practice that should be continued.

To what extent, in this respect, could we envisage setting up a team specialising in Vietnam/Asia within a frontline service in order to acquire expertise in Vietnamese culture and thus better gain the trust of Vietnamese victims? A similar analogy can be drawn with the 'Africa' team of the Brussels FJP, which was able to reach several Nigerian victims thanks to its familiarity with the Nigerian voodoo culture.

343 Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *M.B.*, 10 March 2017.
344 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, DOC 55 2530/002, Annex 4, p. 298, hearing of Ann Lukowiak, federal prosecutor's office.
345 See recommendation 4 in Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 145.

12. Observatory during large-scale checks

The Borealis case often came up in the Parliamentary Commission. This case led to an unprecedented crisis in the centres specialised in the reception of human trafficking victims during the summer of 2022.

To avoid such problems in the future, the specialised centres have launched a proposal on how to deal with a large number of victims following a wide-scale check:

"We consequently thought of setting up some sort of 'observation centre' or 'waiting room', where victims could stay for 45 days. This would give the reception centres time to assess the situation and determine whether or not the story told by the people concerned include aspects linked to human trafficking. If these aspects are present, support can be offered. In other cases, people may be referred to other authorities. This would give the police, inspection services and magistrates time to do their work and analyse the case"[346].

This proposal could serve as a basis for further reflection. Labour prosecutors reacted differently to this issue during the interviews. Some suggested drawing up a roadmap, while others feared that this would increase the feeling of insecurity among potential victims.

The Parliamentary Commission made a very general and somewhat ambiguous reference to this in recommendation 43, by also associating it with human smuggling.

The Parliamentary Commission would also like to offer the possibility of extending the reflection period to three months (recommendation 47). This could prove important in situations involving large-scale checks and interceptions of potential victims. However, this would require the agreement of the reference magistrate. This last point may still raise some questions among some people, as it is in fact somewhat contradictory to the basic principles of the reflection period[347].

13. Waiver of social security contributions debts

Among the victims of labour exploitation are many sham self-employed people, who were unaware that they were working on a self-employed basis. When these people acquire the status of victim of human trafficking, they run the risk of unwittingly accumulating heavy debts and then being unable to pay their social security contributions.

Myria's 2012 annual report[348] had already identified this problem and made relevant recommendations. Subsequently, this point was included and developed in the Action Plan to Combat Trafficking in Human Beings 2015-2019[349] but it was never put into practice. Nevertheless, this problem is still a burning issue[350] and was included in the Action Plan to Combat Trafficking in Human Beings 2021-2025[351].

Labour prosecutors' offices and inspection services still need to be made aware of this issue. In such cases, labour prosecutors should inform the National Institute for the Social Security of the Self-Employed (INASTI) that the person has been identified as a victim of human trafficking - and is therefore a bogus self-employed person - and ask the NSSO to carry out an investigation at the employer's premises. In addition, INASTI should designate a contact person who can waiver debts once the public prosecutor's office or the labour prosecutor's office has recognised the person as a victim of trafficking.

The social security contribution debt of bogus self-employed workers who are trafficking victims should be waivered.

346 Report of the Special Committee responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, Annex 4, p. 295, hearing of Sarah De Hovre, PAG-ASA.

347 On this subject, see the part on Special Parliamentary Commission on Trafficking and Smuggling of Human Beings in this report: Part 2, Chapter 1, point 2.1.

348 Myria, *Annual Report 2012, Trafficking and smuggling of human beings, Building bridges*, pp. 23, 29 and 104-105.

349 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2015-2019, p. 24.

350 *VRT NWS*, Gent draaischijf voor sociale uitbuiting van Bulgaren: "Echte maffiapraktijken, ik kreeg 50 euro per week".

351 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p. 24.

14. Awareness-raising

Raising awareness among frontline services

Several magistrates and frontline services stated that raising awareness among all frontline services was necessary to ensure better detection of presumed victims of trafficking. Within this context, the interests of presumed victims of trafficking must come first.

The ECOSOC director told the Parliamentary Commission that the number of victims detected could be a good indicator for measuring the impact of awareness-raising:

"A second point concerns awareness-raising and training on human trafficking for as wide a group of frontline players as possible, and certainly for all social inspectors, not just specialised inspectors, but all inspectors in all social inspectorates, because they have an equally strong presence in the field … In the past few years, the NSSO's inspection department has already taken a number of initiatives, such as awareness-raising and training our own inspectors and those from the Social Legislation Inspectorate, INASTI, the Brussels inspectorate, etc. – whom we have been training since 2018 – but also the Flemish Social Inspectorate.

However, this would have to be repeated on a regular basis. I think the initiative has indeed had a positive impact, but for this impact to be lasting, it needs to be repeated regularly. To determine the impact, we could use the number of victims detected as a measure … The ECOSOC inspectors are now far more attentive to the interests of potential victims than they were a few years ago."

In recommendations 40 and 41, the Parliamentary Commission urges awareness-raising among federal and regional inspection services and a training course on human trafficking.

In several districts, local police forces are not always well informed about the multidisciplinary circular either. Several magistrates would like more continuing training and basic classes on this subject for the police. The Parliamentary Commission attaches great importance to the training and awareness-raising of police forces (recommendations 29 and 32). During the meeting with the NSSO inspection department's ECOSOC units, a good Swiss practice was mentioned: that of having a list of indicators with a precise explanation and boxes to tick.

Raising awareness among magistrates

In several districts, the labour prosecutor's office does not have on-call services. The district of Liège is an exception and therefore an example of good practice in this domain. According to some frontline services, this problem mainly occurs when a presumed victim is detected at night and has to be referred to a specialised centre.

Furthermore, in some districts, the magistrates on duty have little or no knowledge of human trafficking. There is an example **of good practice in Liège,** where the magistrate responsible for trafficking in human beings within the labour prosecutor's office has prepared **a sheet on human trafficking** for magistrates on duty. This sheet lists the legal provisions, the indicators of trafficking, the correct response and the specialised centres to contact for victims of trafficking.

The Action Plan to Combat Trafficking in Human Beings 2021-2025 includes this in its objectives[352]. Lastly, the Parliamentary Commission attaches great importance to compulsory basic and continuing training on human trafficking for magistrates (recommendation 20).

Raising awareness in hospitals

Patients are sometimes detected in hospitals as being presumed victims of trafficking and are referred to specialist centres. Thanks to various campaigns, hospital staff have been made aware of the need to contact the specialised centres, with which they have close contact, when they discover presumed victims of human trafficking[353].

Case studies show the importance of raising awareness in hospitals for the detection of presumed victims of human trafficking[354].

352 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p. 16.

353 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, pp. 35-36; Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2015-2019, p. 34; brochure "What can be done about human trafficking? Advice for hospital staff ".

354 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 32.

In **a case relating to an accident at work in the construction sector**[355], a nurse at the hospital had informed the police after the disappearance of their patient. The victim, an undocumented Algerian worker, was found and referred to a specialised centre According to his statements, he had fallen from badly installed scaffolding while carrying out cement work on a house, sustaining serious injuries. He suffered multiple skull fractures. The victim, who subsequently filed a civil suit, was awarded a provisional sum of EUR 10,000 in damages out of an estimated EUR 250,000.

One **example of good practice** is the organisation by labour prosecutors' offices, in particular that of Walloon Brabant, of a one-day training course on human trafficking for hospitals, CPAS employees, youth centres, local police, etc., in collaboration with the political authorities, the police, social inspectorates and specialised centres.

Raising awareness among trade unions and civil society and empowering victims

Victims can be informed of their victim status through the trade union[356] or following a social action, or through the intervention of a foreign NGO, and be referred to a specialised reception centre. Victim empowerment can also play a role in this respect. This is generally done through the frontline services contacted by civil society organisations or institutions. The importance of raising awareness has been highlighted in a number of cases. For instance, in a case in **the construction sector involving posted bogus self-employed workers**[357], an investigation into human trafficking was launched following a collective protest by Bulgarian and Bosnian workers, during which one of the embassies intervened and advised them to lodge a complaint with the police. The victims were informed and referred to a specialised centre. Five victims filed a civil suit.

Social media can play a decisive role in the empowerment of victims[358]. For instance, this was observed in a case concerning a pallet company where two Bulgarian victims, who had lodged a complaint with the local police in Belgium, set up websites to warn other workers against the false promises and abuses of the company and the subcontractors involved[359].

International awareness-raising by NGOs can also be important in labour exploitation cases. For instance, in a case in **the road transport sector**[360], PAG-ASA was contacted by a Serbian NGO that assists victims of human trafficking to inform them that anonymous complaints had been lodged against a Belgian defendant who had set up several foreign letterbox companies in Bulgaria for road transport activities in Belgium and neighbouring countries.

Raising awareness among trade unions can have a positive impact on cooperation with the labour prosecutor's office in defending victims' interests. For instance, in one road transport case, the magistrate arranged with the Dutch trade union FNV for the lorry drivers to be able to recover their personal belongings from the lorries that had been seized and to be able to return to Lithuania at their request[361].

355 Myria, *Annual Report 2016, Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 143.
356 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 32.
357 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 32 ; Myria, *Annual Report 2017, Trafficking and smuggling of human beings, Online*, p. 114.
358 Myria, *Annual Report 2016, Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 143.
359 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 32.
360 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 32 ; Myria, *Annual Report 2017, Trafficking and smuggling of human beings, Online*, p. 114.
361 See the case law overview chapter in this report: Part 2, Chapter 3, point 2.2.2: West Flanders Crim. Court, Bruges division, 11 March 2022, ch. B17 (opposition) and West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17.
362 See Part 1, Chapter 3.
363 A.A. Aronowitz, op. cit., pp. 145–164, Regulating business involvement in labor exploitation and human trafficking.

15. Raising awareness of social entrepreneurship[362]

Governments can also take other measures by supporting multi-stakeholder approaches such as the 'fair trade' label or the 'Harkin-Engel' protocol (combating child labour in the cocoa industry among pickers in countries of origin), which can in turn encourage companies to self-regulate through voluntary certification schemes[363].

Professor Aronowitz gave the example of a cross-sector initiative, KnowTheChain[364] which, through the benchmarking study and best practices, can serve as a tool for companies to combat forced labour in global supply chains in the ICT, food, beverage, clothing and footwear sectors. In its latest report, KnowTheChain reviewed the food industry[365].

Finally, the action plans to combat trafficking in human beings[366] have looked into social entrepreneurship by referring to an evaluation study of the National Action Plan (NAP) on Business and Human Rights[367].

364 https://knowthechain.org.
365 KnowTheChain, 2023 Food & Beverage Benchmark findings report.
366 Criminal Policy Department, Action Plan to Combat Trafficking in Human Beings 2021-2025, p 22; Criminal Policy Department Action Plan to Combat Trafficking in Human Beings 2015-2019, p. 33.
367 NBA final report on business and human rights.

External contribution

Role of the administrative approach in the fight against human trafficking

Annemie De Boye, coordinator ARIEC Limbourg[368]
Kevin Libioul, coordinator CIEAR Namur[369]

What are ARIEC/CIEAR?

The various existing district information and expertise centres - ARIEC (Arrondissementeel Informatie en Expertisecentra) and CIEAR (Centres d'Information et d'Expertise d'Arrondissement) - are the result of the ARIEC/PAALCO pilot projects[370].

In their work of 2015, entitled Administrative measures to prevent and tackle crime[371], A.C.M. Spapens, M. Peters and D. Van Daele define the administrative approach as follows: "An administrative approach to serious and organised crime consists of preventing the facilitation of illegal activities by denying criminals the use of the legal administrative infrastructure, as well as conducting coordinated interventions ('working separately together') to disrupt and suppress serious and organised crime and public order problems".

As part of this integrated fight against increasingly complex and organised crime, the federal police received European funding in 2018 to launch administrative approach projects. Three initiatives were launched in the provinces of Antwerp, Limburg and Namur.

Although various formulas have been tested (a centre within the federal police, a partnership with the province or with the governor), the ARIEC/CIEAR are above all structures operating in a network. In other words, they function thanks to internal partnerships (federal and local police), but also and especially thanks to external partners (public prosecutor's office, labour prosecutor's office, federal public services[372], regional[373] or local[374] inspection services, etc.).

The ARIEC/CIEAR are entrusted with a number of important tasks as part of the administrative approach. They play a key role in gathering information and expertise, as well as in coordination and strategy. They also ensure the efficient management of relevant information.

In terms of information and expertise, the ARIEC/CIEAR are responsible for collecting and analysing data in order to understand criminal phenomena, identify the people and organisations involved, and provide the necessary expertise to the competent authorities.

As regards coordination and strategy, the ARIEC/CIEAR play a coordinating role between the various players such as the administrative authorities, the federal police, the local police, the public prosecutor's office, the labour prosecutor's office, the inspection services, etc. They ensure a coordinated and effective approach to the fight against serious and organised crime, by promoting collaboration and the exchange of information between these players.

Finally, the ARIEC/CIEAR are also responsible for information management. They ensure the collection, secure storage and appropriate dissemination of information relevant to investigations and enforcement actions. This rigorous information management helps to make interventions more effective and to ensure compliance with the rules of confidentiality and data protection.

At the end of 2021, following various audits favourable to the administrative approach, the federal police decided to maintain the existing centres and to create new ones in the other districts. In June 2023, coordinators for the districts that did not yet have a point of contact for the administrative approach had normally been recruited.

368 https://www.arieclimburg.be.
369 https://ciear-namur.wixsite.com/ciear.
370 *For an Administrative Approach to Combat Organised Crime*, since renamed CIEAR.
371 Peters, M., & Spapens, A. (2015), "The administrative approach in England & Wales", in A. C. M. Spapens, M. Peters, & D. Van Daele (Eds.), *Administrative measures to prevent and tackle crime* (pp. 91-149), Eleven International Publishing.
372 For instance, FPS Finance, Economy, Customs and Excise, Immigration Office, ONEM (national employment office), NSSO, etc. For instance, FPS Employment, Environment,
373 Territory, etc.
374 Departments such as Town Planning, Environment, CPAS (social services), etc.

The draft bill on the municipal administrative approach

The draft bill relating to the municipal administrative approach, the introduction of a municipal integrity investigation and the creation of a Directorate for Integrity Assessment for Public Authorities (DEIPP)[375] initiated by the Minister of the Interior in parallel with the development of ARIEC/CIEAR, aims to provide local authorities with the tools they need to fight crime more effectively. It also aims to legally establish the ARIEC/CIEAR and clearly define their missions for the benefit of the authorities.

Among the changes introduced by this bill is the possibility for administrative authorities to conduct integrity investigations. These investigations will relate to the operation or installation of establishments accessible to the public. They will make it possible to refuse, suspend or revoke an operating permit and/or to close a problematic establishment.

The new Directorate for Integrity Assessment for Public Authorities (DEIPP)[376] will be responsible for carrying out risk analysis in economic sectors and activities where subversive crime may occur. It will also be responsible for managing and developing the Central Register of Integrity Investigations and will provide, at the request of the local authorities concerned, advice in the context of the integrity investigation.

This draft bill also aims to combat the extremely complex phenomenon of straw men and women. Let's take the example of the owner of a hostess bar convicted of human trafficking. Under the legislation on public houses, she would no longer be able to obtain a licence to operate a public house. However, by using a front man she could get round this ban by opening new establishments using vulnerable people posing as the real owners, but in reality acting for the convicted owner.

This phenomenon is particularly worrying because it allows those involved in illegal activities to continue their activities by exploiting the vulnerability of others. This reinforces the cycle of exploitation and human trafficking, since these vulnerable people are often forced to accept degrading work conditions and are deprived of their fundamental rights.

The draft bill therefore proposes specific measures to combat this problem. It strengthens controls and checks when licences are granted, ensuring that the real owners and operators are identified and are not just straw men or women. The draft bill aims to break the vicious circle of exploitation and trafficking in human beings. It can thus contribute to better protection of the rights and dignity of everyone, especially the most vulnerable members of our society.

Cooperation with the public prosecutor, labour prosecutor, the authorities and partners

Collaboration with the public prosecutor's office, the labour prosecutor's office, the authorities and partners takes different forms, depending on the district. Here are a few examples:

- On a case-by-case basis: in individual situations, ad hoc contacts are established with the reference magistrate designated as part of the administrative approach. This may involve the drafting of an administrative report (a document in which judicial information is made available to the mayor with the agreement of the public prosecutor) or during an application for a permit (for instance, under a municipal bylaw on car washes or for brothels).

- At district meetings chaired by the crown prosecutor: participation is aimed at integrating the administrative approach as a methodology into specific phenomena or cases. This may involve cases of human trafficking (as part of a COL - coordination meeting), criminal motorcycle gangs or ongoing criminal investigations.

375 Draft bill DOC 55 3152/013 of 18 July 2023 on the municipal administrative approach, setting up a municipal integrity investigation and creating a Directorate for Integrity Assessment for Public Authorities. Adopted by the House Committee on the Interior, Security, Migration and Administrative Matters, the draft bill is expected to come into force by the end of 2023.
376 DEIPP operates autonomously and is placed under the joint authority of the Minister of the Interior and the Minister of Justice.

- At district meetings: these meetings, chaired by the labour prosecutor, are used to strategically coordinate all the actions and investigations that are being conducted or will be conducted by the social inspection services (sometimes in collaboration with other partners). So-called 'flex' or 'multidisciplinary' actions are discussed.

- In consultation with the authorities: this may take the form of internal police meetings (in particular with police zones or the judiciary), consultation platforms such as provincial security consultations, the Conference of Mayors chaired by the governor, or bilateral or other meetings with local, regional or federal authorities. Following these meetings, control actions may be undertaken.

- By involving associative and academic partners: the involvement of these partners strengthens the understanding of the issues and helps to develop effective strategies. By sharing information, resources and expertise, it is possible to identify the most appropriate actions to prevent problem situations and take targeted action. By working with associations, we learn from their expertise and their in-depth knowledge of the reality in which victims live. Their experience in the field and their relationships with the communities concerned give us a better understanding of the problems and specific needs.

These different forms of cooperation ensure effective coordination between the various players so that the administrative approach can be implemented in a coordinated manner.

Good practices - Case

Cross-border case of Linne EURIEC-ARIEC Limburg[377-378]

In May 2021, a control operation between the Dutch Aliens Police, the Social Affairs and Employment Inspectorate and the municipality of Maasgouw took place in Linne (Netherlands). More than 50 Romanian migrant workers were found working on an asparagus farm in 'deplorable and dangerous' living and working conditions. The living conditions were considered particularly disgraceful: the accommodation (containing around 70 beds and bunk beds) appeared to be very decrepit, dirty, neglected and dangerous, according to the local authority. The bunk beds sometimes touched the ceiling. There appeared to be insufficient ventilation and some of the windows were barred. Fire safety hazards were also present, such as hobs with gas bottles and gas burners near spaces where four to six people slept, missing or barricaded exit routes, poor smoke detectors and a lack of fire extinguishing equipment. Violence against migrant workers was also reported.

The mayor demanded that the migrants leave the dangerous site within 24 hours. The workers left, but without knowing exactly where they were going. There were suspicions that they would be heading for Dilsen-Stokkem or Oudsbergen in Belgium, as they had indicated during the check that their partners were housed in Dilsen-Stokkem and that living conditions there would not be ideal either.

The information was immediately passed on via EURIEC[379] to ARIEC Limburg and to the Belgian Social Legislation Inspectorate (CLS). Indicators were also shared between the inspection services of the two countries.

Following this information, the CLS organised a control operation in Dilsen-Stokkem, in collaboration with the local police. The Flemish housing inspectorate had already carried out a check the previous month. These inspections did not reveal any additional problems. The local police did not notice any new presence of migrant workers. The Belgian company's employment declarations also showed a sharp drop in the number of people declared. Subsequently, the mayor also organised an additional visit with his services to check that everything was functioning correctly.

377 AD.nl, Migranten "met noorderzon vertrokken" na vondst op Limburgse boerderij: "We weten niet waar ze zijn".

378 De Limburger, Fikse boete voor aspergeteler uit Linne die Roemeense arbeidsmigranten in erbarmelijke omstandigheden liet werken en wonen.

379 www.euriec.eu. The aim of EURIEC is to strengthen administrative cooperation between Belgium, Germany and the Netherlands in the fight against organised crime. This is done by establishing networks and platforms for dialogue, raising awareness of administrative approaches to cross-border crime and providing support on concrete cases. It also provides ongoing information products that increase knowledge about the possibilities for cross-border information exchange.

With regard to suspicions linked to the municipality of Oudsbergen, the local police monitored a campsite and a fruit company. They did not find anything of concern. The company had a good reputation and the workers slept in a building which, according to the police, fully met their needs.

The various inspections in Belgium did not reveal any situations comparable to those in the Netherlands.

Research is still underway to determine how, in the event of a similar situation in the future, the flow of information to the municipality could be improved. In the case of Linne, information was shared through communication channels: between the various inspection services; between EURIEC and the inspection department (open sources), but also between EURIEC, ARIEC and the municipality.

Good practice: regulation of prostitution establishments in Genk

The city of Genk wanted to give the sector greater support and combat excesses such as public nuisance and human trafficking by means of a new regulation on prostitution establishments. The regulation was approved by the municipal council on 21 June 2022. Among other things, it will provide better medical and social support for sex workers, as well as additional assistance for any victims of sex work.

"From now on, prostitution establishments will have to comply with certain conditions relating to living and working conditions, exploitation and public health," explains Mayor Wim Dries. "The premises must be fully compliant, both inside and out. The main aim is to combat social fraud and exploitation, and to guarantee a decent working environment."

Operators who are in full compliance can obtain an operating licence by submitting an application. "A thorough administrative investigation is carried out beforehand, in which we check the tax situation, among other things, and ensure that the fire safety, layout and hygiene regulations for the premises are complied with," explains Mayor Dries. "This approach enables us to identify rogue operators and prevent nuisance and crime". The city of Genk drew up these regulations in collaboration with ARIEC Limburg and the Limburg public prosecutor's office, and drew inspiration from the city of Antwerp, which has long had a strong policy on sex work.

An important aspect of the new approach is the help provided, as Mayor Wim Dries points out: "Our services have held exploratory talks with a number of expert organisations in order to develop a network. In future, we want to set up a preventive and recovery process with them. On the one hand, to provide better medical and social care for sex workers, but also to offer the necessary support to potential victims, for example of human trafficking".

Genk hopes that its new policy will inspire other towns and cities. "Various administrative checks and flexible operations in recent years have taught us that this sector is vulnerable and requires special attention," explains Mayor Wim Dries.[380]

Good practice: obtaining a clear view of the prostitution sector in Namur

We are regularly faced with questions about the scale and nature of a phenomenon, particularly when it comes to prostitution. To answer these questions and shed light on the situation, CIEAR was asked by the labour prosecutor's office to carry out an in-depth analysis of the prostitution sector in the Namur district.

The aim of this initiative goes beyond a simple repressive approach. Above all, it is about being able to objectify a reality that can often be surrounded by tenacious stereotypes and prejudices. Through this analysis, we hope to deconstruct preconceived ideas and gain a clear and nuanced view of the situation.

Thanks to the analysis, it will be possible to answer key questions, such as the true scale of the phenomenon in the district and its impact on society. It will also enable us to determine whether there are any problematic situations or forms of exploitation, and to identify areas that require particular attention.

To carry out this in-depth analysis, we are working closely with police districts, local authorities, social stakeholders, specialist associations and other relevant partners. This partnership approach will enable us to obtain a more complete and accurate picture of the prostitution sector, by cross-referencing data and information from different sources.

380 Source: press release from the city of Genk, available at https://www.tvl.be/nieuws/genk-bindt-de-strijd-aan-met-illegale-ontuchthuizen- en-misbruik-in-het-sekswerk-140131.

The results of this analysis are invaluable to all the players involved. They will provide a more relevant and targeted input into actions and interventions, identifying the specific needs of the people concerned and adapting support and prevention measures accordingly. Thanks to this collaborative approach, the various stakeholders can work together more effectively and in a coordinated manner, implementing concerted actions tailored to local realities.

Good practice: regulation of hand car washes in Genk and Sint-Truiden

Following a 'flex action' carried out in February 2021 in 14 car washes across four municipalities, the local authorities concerned have worked with ARIEC to introduce a municipal bylaw requiring car washes to obtain a licence to operate. This authorisation is issued after a thorough administrative investigation aimed at preventing subversive crime and labour exploitation, as well as ruling out any unjustified financial benefit. The bylaw also enables the car wash sector to be monitored on an ongoing basis. This bylaw has been implemented in Genk and Sint-Truiden. In Genk, it led to the closure of the last of the city's five car washes.[381]

In the past, Genk has been the scene of numerous checks due to problems relating to human trafficking, labour law and environmental legislation. Two of the five car washes have even been convicted of human trafficking.

Good practice: closure of a car wash known to have harboured human trafficking

During a previous check of a car wash type establishment in the province of Namur, the labour prosecutor's office discovered a worker in an irregular situation. In addition, this check revealed problems that were more worrying than more 'traditional' fraud: inadequate pay in relation to the hours worked, as well as the deplorable living conditions of this person, forced to live on the floor in a corrugated iron shelter, without windows or ventilation, and under constant camera surveillance. Although criminal measures were taken, the establishment continued to operate, allowing the managers, and then the buyers, to continue an activity that was suspicious in many respects.

However, thanks to a new check which revealed other problems that were certainly less alarming, but still worrying, the local authority was able to take the decision to officially close this establishment, based on the advice provided by the CIEAR. This coordinated action, based on a quality exchange of information between the various players, put an end to a dubious activity, in economic and environmental terms, as well as for the well-being of the workers involved.

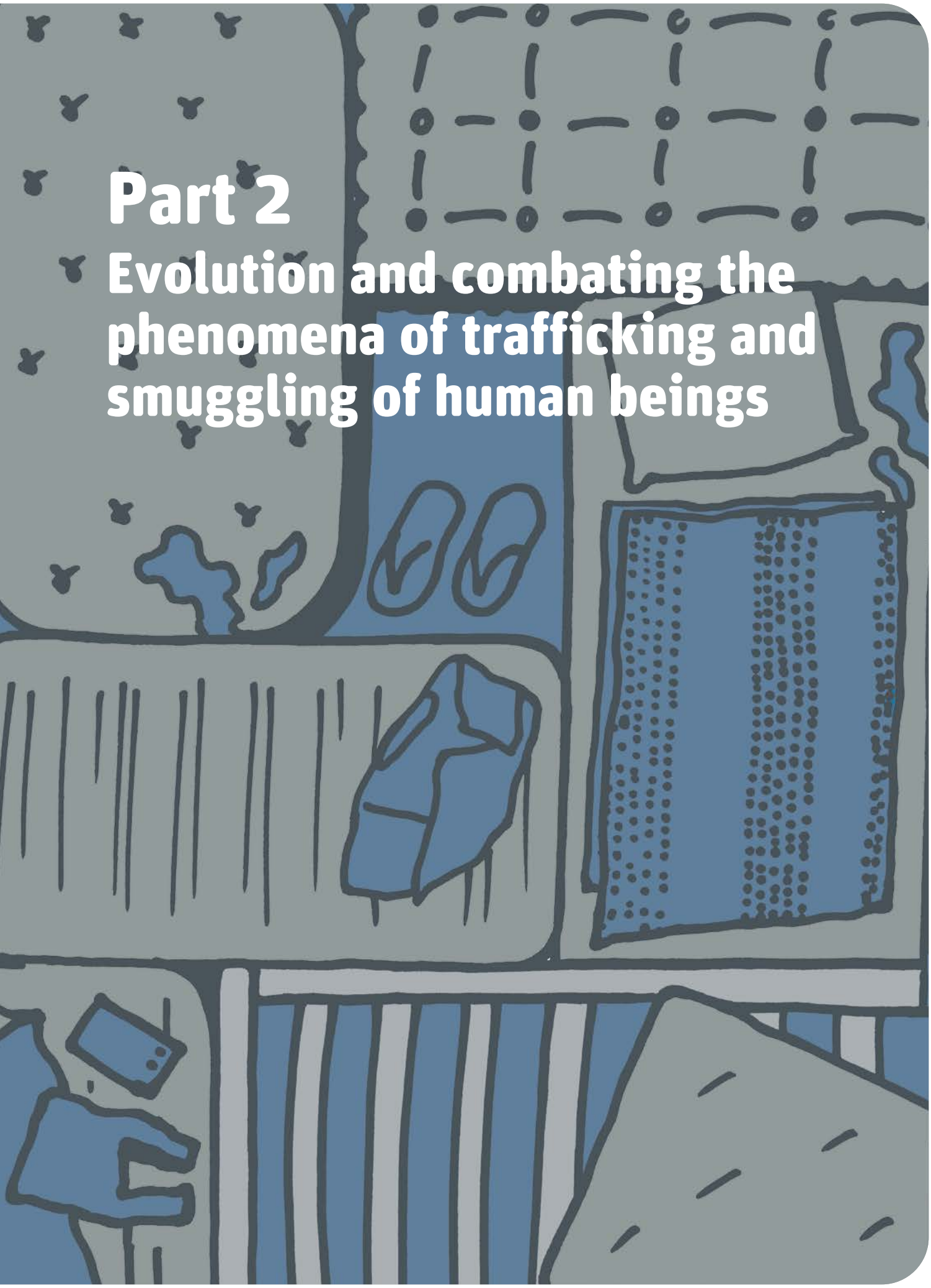
This situation highlights the importance of close collaboration between the various authorities and players involved, as well as the need to share relevant information effectively. Thanks to this cooperation, it is possible to take concerted action and set up appropriate measures to combat trafficking in human beings and guarantee decent working conditions that respect everyone's rights.

381 VRT NWS, *Laatste handcarwash in Genk blijft voorlopig gesloten, Raad van State fluit uitbater terug*

Conclusion

Over the past few years, a great deal of experience has been gained in the administrative approach to human trafficking. Various good practices have been developed, some of which have also been subjected to judicial scrutiny. The results are encouraging: using administrative channels, local authorities manage at least to obtain better visibility, and often better control, over the most vulnerable sectors in their area.

However, the work is not over yet. Municipalities that introduce regulations on certain farms or carry out on-the-spot checks are still in the minority. It is therefore important to raise awareness and (continually) increase responsibility at local level. The phenomenon of human trafficking is not confined to the big cities; it represents a real risk for every Belgian municipality. Owing to the complex nature of the phenomenon, a collective and multidisciplinary approach is required.



Part 2
Evolution and combating the phenomena of trafficking and smuggling of human beings

Chapter 1
Recent developments in the legal and political framework

1. Developments in the European legal and political framework

1.1. | Human trafficking

Two major events took place in 2022 at European level: the first concerns the publication of the third evaluation report by the Council of Europe's Group of Experts (GRETA) on Belgium's implementation of the Anti-Trafficking Convention. The second concerns the tabling by the European Commission of a proposal to revise Anti-trafficking Directive 2011/36/EU.

1.1.1. | GRETA's report concerning Belgium's implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings

On 20 October 2022, GRETA published its third evaluation report on Belgium[382], dedicated to access to justice and effective remedies for victims of human trafficking.

The emphasis is on the implementation of the Convention's provisions establishing substantive and procedural obligations as regards access to justice for victims. This report assesses the progress made by Belgium in the fight against human trafficking since the previous evaluation report, published on 16 November 2017[383].

With this third evaluation cycle in mind, Myria devoted the focus of its 2019 annual report to access to legal aid and victim protection[384]. GRETA welcomes Myria's thorough and comprehensive reports, which are an important tool for study and action in the field of human trafficking[385].

GRETA commends a number of positive changes since its last evaluation report, in particular the adoption of the Law of 22 May 2019, which enshrined the principle of non-punishment of victims of trafficking in the Belgian Criminal Code[386]. However, it considers that the authorities should take additional measures to ensure that this principle is implemented in practice, especially with regard to child victims who have committed offences under coercion[387].

Nevertheless, GRETA notes that there are still challenges ahead. The report stresses that presumed victims should be better informed of their rights, the steps to be taken to benefit from them and the consequences of their identification as victims of trafficking, in particular by further developing information tools for child victims[388].

382 GRETA, Evaluation Report on Belgium, third evaluation round, Access to justice and effective remedies for victims of trafficking in human beings, 20 October 2022.
383 For a brief summary, see Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-71.
384 Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, Part 2.
385 GRETA, Evaluation Report on Belgium, §17.
386 This principle is set out in the new §5 of Article 433 quinquies: "The victim of trafficking in human beings who takes part in offences as a direct consequence of his or her exploitation shall not incur any penalty for these offences". For a brief analysis, see Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 97-99.
387 GRETA, Evaluation Report on Belgium, §§113 to 122
388 Ibid., §§ 31 to 46..

Another area of concern is effective access to compensation[389]. GRETA believes that additional measures are needed, including revising and simplifying the criteria for access to legal aid and ensuring adequate funding for specialised centres that provide legal representation for victims of trafficking who do not qualify for legal aid. Similarly, the criteria for access to the Financial Assistance for Victims of Intentional Acts of Violence should be reviewed.

GRETA also urges the Belgian authorities to allocate sufficient human and budgetary resources to the police units responsible for combating trafficking, and to the labour inspectorate to enable it to fulfil its mission effectively and proactively.

Lastly, GRETA is concerned about the low number of children identified as victims of trafficking and calls on the authorities to improve the training of professionals in the field and to step up the assistance provided to unaccompanied minors.[390]

1.1.2. | Proposal for a directive on trafficking in human beings amending Directive 2011/36/EU

On 19 December 2022, the European Commission presented a proposal to revise the 2011 anti-trafficking directive[391].

It carried out an evaluation of the 2011 Directive[392] and an impact analysis[393], as well as various consultations.

In its evaluation, the Commission noted that the directive had made an effective contribution to the fight against trafficking in human beings within the European Union, in particular by contributing to greater harmonisation of criminal law in the Member States. However, it noted that difficulties remained at several levels: the interpretation of offences related to human trafficking in the Member States was not always identical, but it was above all the implementation of the directive that posed problems, particularly for the assistance and support to be provided to victims[394]. In addition, shortcomings were also noted in investigations and prosecutions, particularly when it came to strengthening the capacity of law enforcement and judicial authorities to conduct financial investigations, or to cope with the challenges posed by the increasing digitisation of human trafficking.

Lastly, and this is a sensitive issue, the Commission also noted that the effectiveness of the directive was limited in terms of reducing demand through legislation, due to non-transposition or the very different approaches taken by Member States

to the optional provision aimed at making it a criminal offence to knowingly use the services of victims of human trafficking. The evaluation showed that stakeholders were divided on the effectiveness of this measure in reducing demand[395].

The impact assessment conducted showed that a combination of legislative and non-legislative measures would be the most effective way of improving the current framework.

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389 *Ibid.*, §§ 73 to 93.
390 *Ibid.*, §§ 195 to 210.
391 Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, COM(2022) 732 final.
392 Commission staff working document, *Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims,*19 December 2022, SWD(2022) 427 final. A summary of the evaluation (SWD(2022) 428 final) is also available (in French, English and German).
393 Commission staff working document, Impact assessment report accompanying the document proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, SWD(2022) 425 final. A summarised version is also available.
394 In particular regarding the application of the principles of non-prosecution and non-punishment, the provision of targeted assistance and support services to meet the specific needs of particularly vulnerable victims, including children, and access to compensation.
395 The evaluation revealed that it is often difficult to prove knowledge, even if the data does not allow us to conclude that removing the knowledge requirement leads to a higher number of prosecutions and convictions.

The Commission's proposal addresses a number of points. Here are the main ones:

- inclusion of an explicit reference to the online aspect of trafficking offences in the directive;
- introduction of a mandatory system of penalties for legal persons: measures such as exclusion from entitlement to any public benefit, aid or subsidy, and temporary or permanent closure of establishments used to commit the offence could be imposed;
- formal creation of national referral mechanisms and national focal points responsible for referring victims: at national level, these take very different forms. The aim is to improve victim referrals, particularly in cross-border cases;
- make it a criminal offence to use the services of victims of human trafficking in the knowledge that the person concerned is a victim of such an offence. The aim is to discourage demand and thus increase the effectiveness of preventing and combating human trafficking[396];
- annual obligation to collect data and report on indicators in the field of human trafficking: data collection, led by Eurostat, would be much broader and more frequent (annually instead of every two years at present).

At the time of finalising this report (August 2023), the Council had approved the proposal but the European Parliament had not yet taken a stance.

Commission's fourth report on Member States' progress in the fight against trafficking in human beings

On the same day as the tabling of its proposal to revise the anti-trafficking directive (19 December 2022), the European Commission published its fourth report on the progress made by Member States in the fight against trafficking in human beings[397]. It covers developments between 2019 and 2022 and provides an analysis of statistics for the period 2019-2020[398]. Following on from the previous one, this report highlights the impact of the COVID-19 pandemic on human trafficking. For instance, the restrictions associated with this period and the lockdowns contributed to further isolating the victims, sometimes together with their traffickers. The identification of victims and their referral to assistance, support and protection services, as well as their access to justice, have become more complex. In addition, the COVID-19 pandemic considerably accelerated the shift of criminal activities towards the digital arena.

Lastly, the reference period was also marked by Russia's military aggression against Ukraine, which began on 24 February 2022 and led to a massive influx of people fleeing the war into the EU, 90 % of whom were women and children. The risks of human trafficking were considered to be very high from the outset.

Between 2019 and 2020, 14,311 victims of human trafficking were recorded in the EU, slightly more than in the previous two-year period (14,145). While women and girls still represent the majority (63 %) of all victims recorded in the EU, the proportion of male victims (33 %) has increased. Of these victims, 53 % were EU citizens and 43 % were third-country nationals. Finally, it should be noted that 37 % of all registered victims were citizens of the country in which they were registered (internal trafficking).

Sexual exploitation remains the most widespread form of trafficking in the EU (51 %). The report notes that technology is widely used as a means of recruiting, advertising and sexually exploiting victims. While Nigeria remains one of the main countries of origin of trafficking for sexual exploitation, there has been an increase in the number of women and trans(gender) people from South America trafficked for sexual exploitation[399]. The 'loverboy' method has frequently been cited as a means of recruiting victims.

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396 During the Commission's public consultation on the subject, Myria expressed its reservations about the adoption of such a measure, which would be counterproductive in the fight against traffickers. See also Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 39-40. Others have also questioned the effectiveness of such a measure in the fight against trafficking. See in particular *La Strada International*, The Impact of Criminalising the 'Knowing Use' on Human Trafficking, policy paper, December 2022.

397 Report from the Commission to the European Parliament, the Council, the European Economic and Social Commission and the Commission of the Regions on the progress made in the fight against trafficking in human beings (fourth report), 19 December 2022, COM(2022) 736 final.

398 These statistics are available in the staff working document accompanying the report.

399 This is an observation also made by Myria in this part, Chapter 3, point 2.1.2.

Trafficking for the purpose of labour exploitation increased considerably during the reference period (15 %)[400] and mainly concerns men (66 %). The activities of criminal networks are thus mainly channelled through businesses that operate with a large volume of cash and employ a high proportion of low-paid workers, as well as seasonal workers. There are many high-risk sectors including agriculture, construction, forestry, food processing, assembly lines, hotels, retail, car washes, beauty and cleaning services, transport, housekeeping and home help. Here too, there has been an increase in the online recruitment of victims by traffickers. Member States underlined the particular vulnerabilityof migrants to this form of exploitation.

As for other forms of exploitation, cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, in which women are recruited to give up their newborn babies on the promise of compensation or to take part in illegal surrogacy programmes, have been reported.

On a positive note, law enforcement cooperation intensified considerably over the period 2019-2022, both at EU and international level. However, despite the progress made in cross-border police and judicial cooperation, the number of prosecutions and convictions of traffickers remains low.

However, progress has been made on a number of fronts. For instance, to detect cases of human trafficking facilitated by the use of technology, Member States have put in place various strategies. These include monitoring the internet (both the surface web and the dark web), combined with real-time open-source intelligence analysis, the creation of a dedicated cyber unit to combat human trafficking, and the deployment of 'cyber patrols'.

Member States have also taken measures to increase and improve the use of financial investigations in cases of human trafficking, as well as initiatives to improve informal and formal national referral mechanisms for victims.

1.1.3. | Other measures

Other measures likely to have an impact on the fight against human trafficking have also been adopted or proposed at European level.

Legislation on digital services

A comprehensive set of new rules401 regulating the responsibilities of digital services that act as intermediaries within the EU to connect consumers to goods, services and content have been adopted by the European Union. In this context, digital services include online platforms.

In particular, this legislation on digital services[402] is a tool for identifying, monitoring and removing online content linked to human trafficking. It introduces due diligence obligations for intermediary service providers, such as online platforms, with the aim of reducing illegal and harmful content online.

Proposal for a new directive on the recovery and confiscation of assets

The Commission proposed a new directive on asset recovery and confiscation[403]. It should strengthen the ability of competent authorities to identify, freeze and manage assets, and strengthen and extend the ability to confiscate so as to cover all relevant criminal activities carried out where appropriate by criminal organisations. It would particularly apply to human trafficking.

400 The report emphasises that this form of exploitation is under-reported, which means that the actual number of victims is probably much higher.

401 https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package.

402 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (O.J., L 277 of 27.10.2022, p. 1). This regulation came into force on 16 November 2022. It shall apply to the whole of the EU from 17 February 2024.

403 Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation of 25 May 2022, COM/2022/245 final.

Corporate responsibility[404]

In line with the EU Strategy on Combating Trafficking in Human Beings[405], the Commission has adopted several measures addressing the responsibility of companies to reduce demand and detect potential cases of human trafficking in their activities and supply chains.

In July 2021, the Commission and the European External Action Service published guidelines to help EU companies take appropriate measures to address the risk of forced labour in their activities and supply chains[406].

In addition, the Non-Financial Reporting Directive (NFRD)[407] was revised in 2022, giving rise to the Sustainability Reporting Directive[408]. Under this new directive, large companies in the EU must report on the effects of their activities on the environment and respect for human rights.

The Commission has also proposed a directive on corporate sustainability due diligence[409]. This establishes a horizontal framework to encourage companies operating within the EU to contribute to the respect of human rights and the environment in their own operations and throughout their value chains. This will be achieved by identifying, preventing, mitigating and addressing their negative impacts on human rights, including human trafficking.

On 14 September 2022, the Commission presented a proposal for a regulation banning products produced using forced labour from the EU market[410].

1.2. | Human smuggling

There are a number of measures relating to human smuggling at European level that should be mentioned[411]. At the end of 2022, the European Commission presented two action plans in response to the increase in illegal migration along the Central Mediterranean and Western Balkans routes. Structured around 20 operational measures, the action plan for the Western Balkans[412] sets out four priority pillars to: improve border management; combat migrant smuggling; promote cooperation on readmission and return; and align visa policies. The action plan for the Central Mediterranean[413] gives priority to strengthening cooperation with partner countries andinternational organisations, and to improving the coordination of search and rescue operations. Furthermore, as part of the EU's global partnerships on migration with countries located along irregular migration routes to the EU, the European Commission launched tailor-made operational partnerships against migrant smuggling with Morocco, Niger and the Western Balkans in 2022[414].

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404 For more details on this subject, see Part 1, Chapter 3.

405 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Commission and the Commission of the Regions on the EU Strategy on Combating Trafficking in Human Beings 2021-2025, 14 April 2021, COM (2021) 171 final.

406 European Commission, New EU guidance helps companies to combat forced labour in supply chains.

407 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, *O.J.*, L 330 of 15.11.2014, pp. 1-9.

408 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, *O.J.* L 322 of 16.12.2022, pp. 15-80. It must be transposed by the Member States by 6 July 2024.

409 See Part 1, Chapter 3, point 2.

410 Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, 14 September 2022, COM (2022) 453 final.

411 Source: European Migration Network (EMN), Annual Report on Migration and Asylum 2022, July 2023.

412 European Commission, EU Action Plan for the Western Balkans, 5 December 2022.

413 European Commission, EU Action Plan for the Central Mediterranean, 21 November 2022.

414 European Commission, EU working together with African partners on migration: Launch of Team Europe initiatives, 12 December 2022.

2. Developments in the Belgian legal and political framework

In Belgium, the work of the Special Parliamentary Commission on Trafficking and Smuggling of Human Beings is the main focus of attention.

2.1. | Special Parliamentary Commission on Trafficking and Smuggling of Human Beings

2.1.1. | Context and missions

As mentioned in the previous annual report[415], a special commission responsible for evaluating legislation and policy on human trafficking and smuggling was set up within Parliament in February 2022. It was composed of 13 full members and as many alternates, appointed by the Chamber of Representatives from among its members, according to the rule of proportional representation of the political groups. The creation of the Commission was a response to one of the points in the government agreement, which was to make these criminal phenomena a priority and to step up the fight against them[416].

The Parliamentary Commission was tasked with taking stock of the current situation in the fight against human trafficking and smuggling, assessing the legal provisions in force both for the prosecution of perpetrators and the protection of victims, and examining international cooperation in the fight against human trafficking. It was also asked to pay particular attention to the plight of minors and other vulnerable profiles. Lastly, it was also tasked with submitting a report[417], containing conclusions and possible recommendations.

The Parliamentary Commission began its work on 9 March 2022 and completed it on 31 May 2023, receiving two extensions[418].

It was assisted in its work by two experts, one Dutch-speaking and one French-speaking. It also organised 23 sessions at which it heard from numerous experts and departments[419]. Besides the Minister of Justice, the bodies and individuals heard came from a variety of backgrounds (federal, local and international): institutional players, including the body coordinating policy on human trafficking[420], the police[421], labour inspection services[422], magistrates, specialised reception centres for victims of trafficking and minors, civil society players[423] and those working with minors[424], lawyers, trade unions, academics, European and international organisations[425], and a Dutch player involved in the in the fight against human trafficking[426]. As an independent national rapporteur on human trafficking, Myria was heard on two occasions[427]. At the end of the hearings, the experts submitted their report to the Parliamentary Commission with around 30 recommendations[428]. However, on 31 May 2023, on a proposal from the majority, the members of the Commission adopted their own set of recommendations, based on a new structure and, in terms of content, on the reports of both the hearings and the experts. They were approved by the plenary session of the Chamber of Representatives on 15 June 2023[429].

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415 Myria, Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt, p. 56.

416 Government agreement of 30 September 2020, point 6.2.2.: "The fight against human smuggling and trafficking will be stepped up. (...) To this end, the strategy and legislation will be evaluated by the Parliamentary Commission or working group".

417 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, session 2022-2023, Doc. 55-2530/002.

418 The mandate of the Special Commission was initially eight months. It twice asked the Conference of Presidents, which accepted the request, to allow its work to continue. The mandate was extended for the first time until 31 March 2023 and then until 1 June 2023: see Report of the Special Commission, *op. cit.*, Doc 55-2530/002, p. 7.

419 Sixty-three individual experts were heard, representing a total of 46 organisations or institutions. The full reports of the hearings made available by the authorities/persons heard are attached to the Committee's report and can be accessed online on the Chamber of Representatives website: see Annex 4 to the Special Committee's report, *op. cit.*, pp. 295-297. Criminal

420 Policy Department, Fedasil, Immigration Office.

421 The following were heard: the THB section of the Central Directorate for Combating Serious and Organised Crime within the federal judicial police (DJSOC), members of the federal judicial police, the local police (Brussels and Liège), maritime and river police, railway police, road and highways police, airport police, and border control police. It should be noted that no member of the local or federal judicial police in a major district such as Antwerp was heard.

422 Only the NSSO's inspection services were heard.

423 Fairwork, ECPAT, Conseil des Femmes francophones de Belgique, Fondation Samilia, UTSOPI (representing sex workers), Sister's House (refuge for migrant women), Klaprozen vzw.

424 Delegate-General for children's rights in the Wallonia-Brussels Federation and Child Focus.

425 European Co-ordinator for Combating Trafficking in Human Beings, Council of Europe, Eurojust, ILO.

426 Comensha (Netherlands).

427 On 25 April 2022, during the first session of hearings, and on 6 February 2023, during the last session, to present, together with the stakeholders providing it with data, a summary report with figures on the phenomena of trafficking and smuggling of human beings over the last 10 years.

428 The experts' report and recommendations form an annex to the Committee's report: see Annex 3 to the Committee's report, op. cit., pp. 166-294.

429 Motion adopted at plenary session, Parl. doc., Chamber, session 2022-2023, Doc 55-2530/004.

2.1.2. | Analysis of the main recommendations

The Parliamentary Commission adopted no fewer than 100 recommendations[430], far more than those initially proposed by the experts. Moreover, many of those proposed by the experts were not taken up by the Commission: in particular, the absolute priority of the fight against trafficking for the purpose of labour exploitation, with a redistribution of available resources and capacities[431]; and a series of measures proposed to deal with begging by Roma families[432].

The Committee's recommendations cover both structural and operational aspects (in terms of investigations and prosecutions, as well as victim support). Special attention is also paid to minors. Measures have also been formulated to improve the fight against human trafficking. Lastly, recommendations that reach beyond human trafficking have been proposed too. The Borealis case, named after the company on whose site more than a hundred presumed victims were found, came to light during the work of the Parliamentary Committee[433]. It is therefore not surprising that it had a major influence on the Committee's work, which shone a light on labour exploitation.

However, the Committee's main recommendation is the creation of a new structure to monitor and combat human trafficking and smuggling. Myria examines the report's main recommendations below.

a. Main structural recommendation : creation of a national coordination centre to combat human trafficking and smuggling

The main structural recommendation of the Parliamentary Commission is the creation of a national coordination centre for the fight against human trafficking and smuggling, an institution placed under the authority of the Minister of Justice, involving a revision of the Royal Decree of 16 May 2004[434].

This structure would incorporate the current coordinating body (the interdepartmental coordination unit) and the centre for information and analysis on human trafficking and smuggling (CIATTEH), which, despite being provided for in the Royal Decree of 2004, was never set up[435]. It would also be given new tasks.

The new coordination centre, inspired by the Dutch model[436], would have an operational role (central contact point for victims), information and analysis (in particular to identify the nature and the extent of acts of trafficking[437]), and an intra-federal coordination role (recommendations 1 and 2). On reading the Committee's other recommendations, it would appear that it also has a scientific research role (recommendation 4), a training and awareness-raising role (recommendation 87), and a role as a centre for reporting child victims (recommendation 92), or even their disappearance (recommendation 93[438]).

The aim is to restructure and unify the landscape of the fight against human trafficking, especially by involving the federated entities to a greater extent. Major cases such as the Borealis case have demonstrated the limits of the current system, which prevented a large number of presumed victims from being dealt with quickly. This new structure would therefore play a central coordinating role in terms of registration, reception and information[439]. It would also have the power to place victims in the centres.

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430 See Chapter 3 of the Committee's report, *op. cit.*, pp. 104-128.
431 See experts' recommendations 2 and 9, *ibid.*, pp. 276 and 281.
432 See experts' recommendations 28 to 30, *ibid.*, pp. 288-289.
433 On this subject, see also Part 1, Chapter 1, point 2.1 and Part 1, Chapter 4, point 12 of this report.
434 Royal Decree of 16 May 2004 on combating trafficking and smuggling in human beings, *M.B.*, 28 May 2004.
435 For an analysis of the problems observed at the time, see Myria, *Annual Report: Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights,* November 2005, pp. 66-68.
436 See the explanation of Mr. Ben Segers on this subject: Commission report, op. cit., p. 30.
437 See the motivation of recommendation 1.
438 This recommendation provides for the strengthening of procedures for reporting the disappearance of unaccompanied foreign minors by implementing a national protocol on the disappearance of minors, including the central contact point.
439 See the motivation of recommendation 1.

While Myria agrees with the idea of the need to unify and coordinate the landscape of the fight against human trafficking, as well as a continuous and evolving improvement of the image of the phenomenon[440], it is cautious about the implementation of such a large-scale structure. It also wonders whether it will be a real solution to the coordination problems observed in the field.

Given the wide range of tasks assigned to this national coordination centre, a number of questions arise regarding its deployment:

1. **As a central point of contact for victims of trafficking and aggravated forms of smuggling**[441]:
   this central point of contact, accessible 24/7, which is already in place[442], would be integrated into the national coordination centre. Among other things, it would be responsible for receiving reports (through an online form, chat, phone or a central number) and coordinating the transport of detected victims to a specialised reception centre (recommendations 2 and 37). It would act as a centre for the uniform recording of notifications and the actions taken. In this respect, one of the recommendations on victim support (recommendation 48) states that the aim is even to make the national coordination centre the official and central body for notification, not only of the start and end of support, but also of placement, planning of centre occupancy rates and the possible activation of an emergency plan.

It would also act as an information centre to help improve the image of the phenomenon, for the benefit of all players and in particular the national rapporteur (Myria). It would also include the labour exploitation hotline[443] and the guardianship department.

Myria supports the idea of centralisation with regard to potential victims, which would guarantee them uniform treatment, as well as a better understanding of the phenomenon.

It also sees the fact of having a central contact point to obtain up-to-date data on the image of the phenomenon as a step forward. Another positive point is the possibility for this central contact point to organise the transportation of victims[444].

Nevertheless, a number of questions remain: what will happen in terms of cooperation and the possible reinforcement of reception centres? How would such a central contact point organise the transportation of victims and with what resources, bearing in mind that when the question of transportation arises, it is often frontline services (police and inspection services) that are primarily concerned? In addition, this central contact point would be responsible for coordination and even for placing victims in the centres. Does this mean that it would have some sort of hierarchical or injunction power over the reception centres?

As for the most vulnerable victims (illegally staying third-country nationals without agency[445]), they can very often only be detected through the intervention of frontline services, whether specialised or not, whose awareness must continue to be raised. There is a risk that such a central contact point could create the illusion that active and proactive detection by frontline services – on the basis of human trafficking indicators – is less important, which must be avoided at all costs.

Myria also wondered whether the guardianship department should be integrated into this central coordination point. This department has a specific role to play in relation to unaccompanied foreign minors (UAM). Its remit is therefore broader than just victims of human trafficking, but also narrower since such victims may be Belgian. It therefore seems preferable to develop ways of collaborating with this department rather than considering integrating it.

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440 In particular, see the motivation of recommendations 3 and 5.

441 See recommendation 2 and its motivation.

442 On 30 July 2022, World Day Against Trafficking in Persons, the Minister for Justice launched a new website entitled Stop Human Trafficking. Available in 13 languages, it provides information on the forms and indicators of human trafficking, as well as contact details for the three specialised reception centres. This human trafficking contact point (meldpunt) acts as a helpline for victims or people wishing to report a potential case of trafficking.

443 It is not clear to Myria hich hotline this is. Does it refer to the contact point for fair competition, which has a much broader scope and purpose than trafficking in human beings?

444 This was one of the problems raised during the Committee's work and was highlighted by Myria in a previous report: see Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, pp. 34-35.

445 The detection of these most vulnerable victims was not the subject of a specific point in the Committee's recommendations. On this subject, see also Part 1, Chapter 4, point 11 and, for an example of victims with no agency, the focus of Myria's *Annual Report 2022, Trafficking and smuggling of human beings*, dedicated to Vietnamese victims of human trafficking and smuggling and entitled "Bound by debt".

Finally, Myria has worked with the three specialised reception centres to develop a common database to store victims' files (MyEldo). This electronic file management system includes a series of data, including information on the start and end of support for victims. It would be counterproductive to duplicate databases or analyses. Myria is therefore at the disposal of the authorities to consider effective ways of working together.

2. **As an operational information and data analysis center:**

   the aim is to obtain an up-to-date picture of the phenomena of human trafficking and smuggling. The following are envisaged within this context: structural links and automatic data sharing between the central contact point and the information and data analysis centre (recommendation 3); and giving the latter a scientific research mission, by forging various collaborations (National Institute of Criminalistics and Criminology (NICC), universities, Myria, etc.) (recommendation 4).

   While the aim is laudable, Myria also questions the feasibility of such a project, given that the databases of the various services (police, inspectorates, judiciary, Immigration Office) are not 'linked' and the data recorded is not comparable. However, an integrated analysis centre of this kind would be very worthwhile, provided that the mistakes of the past are not repeated. The information and data analysis centre provided for in the 2004 royal decree never saw the light of day, in particular for reasons linked to the lack of clarity and agreement on its objective (strategic or operational), budget, and data processing linked to the protection of privacy.

3. **As an "intra-federal" interdepartmental coordination unit**: multi-year 'rolling' action plans would be adopted, with quantitative and qualitative criteria to be determined in order to evaluate them (recommendation 6), as well as an internal dashboard listing the staff resources allocated to combating these phenomena (recommendation 8). An annual report should also be submitted each year to the Chamber for public debate, containing statistical information and a progress report on the action plan and recommendations of the Parliamentary Commission (recommendation 7).

   The unit's current office would be responsible for setting up and coordinating thematic working groups with the relevant authorities.

   Myria supports a continuous updating of the resources allocated to the fight against trafficking. However, this presupposes constant input from the services concerned. It will therefore be essential for this new coordination centre to have sufficient leverage over the various players. Effective collaboration will also have to be put in place.

4. **As a central coordination body** with highly diverse missions: how will existing justice departments that currently perform this role (in part) be integrated? Are there any plans to increase the number of staff? How will the centre be run? In this respect, Myria notes that in parallel with the Committee's work, the Minister of Justice announced on 21 June 2023, in response to a parliamentary question, the creation of a post of national operational coordinator within FPS Justice[446]. In fact, it was one of the Parliamentary Committee's two experts who was appointed to this role. This recruitment procedure, which lacks transparency[447], and the exact role of this coordinator[448] gave rise to another parliamentary question[449].

446 See the Minister of Justice's answer to Mr. Ben Segers' question, Verbatim Report, Chamber Commission on Justice, 21 June 2023, Parl. Doc., Chamber, CRIV 55 COM 1130, pp. 30-32.
447 The job offer was only published in Dutch and the position was that of Policy Officer (level B) and not Operational National Coordinator, which implies a different level of responsibility.
448 Their main task will be to draw up a crisis plan to avoid a repeat of the problems of insufficient reception capacity that came to light with the Borealis case.
449 See the oral questions of Mrs. Vanessa Matz and the Minister of Justice's answer, Verbatim Report, Chamber Commission on Justice, 5 July 2023, Parl. Doc., Chamber, CRIV 55 COM 1152, pp. 7-9.

b. Operational recommendations

Many of the recommendations deal with operational aspects and aim to improve the flow of information and the specialisation of those involved. In particular, as regards **investigations and prosecutions**:

- make large-scale financial investigations part of a chain approach to dismantling major international networks (follow the money) (recommendation 13), a recommendation also made several times by Myria in its annual evaluation reports[450];
- develop the specialisation of investigating judges, by entrusting certain investigating judges in one division with all investigations into human trafficking (recommendation 16), and set up specialised chambers in the courts (recommendation 15);
- ensure that coordination meetings are actually held between those specialising in human trafficking in each judicial district, in accordance with the circular issued to public prosecutors ('COL' meetings)[451] (recommendation 19);
- introduce an obligation for public prosecutors' offices to provide information to the federal public prosecutor's office (recommendation 22);
- involve specialised reception centres more during (major) control operations, in order to guarantee a quality first interview (recommendations 49 and 50).

Many recommendations aim to strengthen the training of those involved, even if this exists already in practice. Besides staff at the Immigration Office (recommendation 56) and Fedasil (recommendation 54), these recommendations mainly concern magistrates (reference and youth magistrates) (recommendations 20, 21 and 91), the police (recommendations 29 and 32), inspection services (recommendations 40 and 41), at both federal and regional level. Concerning the police in particular, they must be trained to distinguish between victims and perpetrators (recommendation 82.1).

While Myria supports the idea of harmonised training, particularly for federal and regional inspectorates, it nevertheless has reservations about the coordination of such training. Is it the role of the new coordination centre to organise such training? One of the recommendations (recommendation 42) provides for the reporting of inspections carried out and victims reported to the national coordination centre, and for these figures to be communicated as indicators for evaluating the inspectorate's training programme.

Numerous recommendations are also aimed at strengthening resources[452], both as regards the police (recommendation 26), especially through the creation of multidisciplinary teams within the federal judicial police, including profiles specialising in combating online crime (recommendations 27, 31 and 75) and the introduction of a system for appointing reference persons within local police areas, and the inspection services (recommendation 35), in particular by empowering regional labour inspectors to investigate human trafficking[453] (recommendations 36 and 42/1). As regards the last point, Myria primarily considers that this is an avenue that should be explored, and that it would be preferable to also discuss it at the level of the Interdepartmental Coordination Unit, not only in terms of the tools to be developed, but also in terms of the objectives to be achieved. It should also be noted that other recommendations aim to increase the resources allocated to the fight against human trafficking: investment in computer software for the police (recommendation 30) or in appropriate equipment for inspection services (recommendation 38).

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450 See, in particular, Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*; *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims.*

451 Also see Part 1, Chapter 4, point 8 of this report.

452 Also see recommendations 80 and 81 for forms of crime other than sexual or labour exploitation.

453 At present, only certain federal social inspectors are authorised to investigate human trafficking: inspectors from FPS Employment and Labour, FPS Self-employed and the National Social Security Office (ECOSOC teams): see article 81 of the Act of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.

Victim support

Around ten recommendations concern victim support. Some of them are positive. For instance, keeping a list of lawyers specialised in human trafficking and smuggling through the legal aid offices and ensuring the immediate appointment of a lawyer[454] (recommendation 24).

Myria also welcomes other legislative recommendations, such as the introduction of a simplified procedure for granting victim status when victims have complied with the conditions of the procedure but their status is terminated for reasons beyond their control (discontinuation of proceedings, dismissal of the case, amicable settlement) (recommendation 57), and an effective mechanism for compensating victims by amending the Act of 1 August 1985 (recommendation 52). The same applies to the proposed amendment to Article 61/2, § 2 of the Act of 15 December 1980 (Aliens Act) on the reflection period, which would be extended to three months in certain situations where 45 days would not be sufficient (recommendation 47)[455]. However, Myria notes certain ambiguities or contradictions regarding this point, since this extension would be possible 'when undeniable progress has been made' and 'by decision of the reference magistrate'. Myria has doubts about the type of progress this refers to. It should also be noted that for the moment, the reflection period does not require any cooperation from the victim who, in principle, is not yet been reported to the authorities. Myria therefore questions how this kind of recommendation will be implemented.

Furthermore, as already mentioned, since the Borealis case came to light during the Commission's work, it is not surprising that some of its recommendations attempt to respond to the problems raised by this emblematic case: for instance, the office of the Interdepartmental Unit drawing up an action plan for forecasting and crisis management for the reception of victims (recommendation 44); the possibility of setting up one or more observation centres for people identified as potential victims of trafficking or smuggling, where they could stay for a maximum of 45 days (recommendation 43); or the personalisation of support programmes taking into account the specific profile of the victim (recommendation 46).

Minors

Several recommendations aim to improve the detection and protection of child victims, which Myria welcomes. For instance, the following are all steps inthe right direction: encouraging the reception of UFM in small structures while guaranteeing specific security measures (recommendation 53); providing a single point of contact (SPOC) in all Fedasil reception centres, at partners' premises, and adequately training them (recommendation 55); and strengthening interaction between youth prosecutors and magistrates responsible for human trafficking and awareness-raising (recommendation 91).

On the other hand, Myria is not in favour of making the central contact point for victims the reporting centre for child victims instead of the guardianship department[456], which has a much broader role than that of pure reporting, even though it is not responsible for Belgian victims. Myria believes it would be preferable to examine how effective collaboration can be achieved in terms of reporting, placing and registering persons as potential victims, and strengthening the resources of this department.

It should be noted that Myria has been given a specific task in this domain: it has been asked to produce a supplement to its annual report, dealing specifically with (statistics relating to) child victims (recommendation 94). This is a major challenge, requiring the cooperation of many players. It also requires careful consideration and an appropriate framework. Myria will initiate a dialogue on this subject.

454 These are recommendations that Myria also made in a previous report: see Myria, Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims, pp. 170-171. This is also one of GRETA's points of attention within the framework of the focus of its third evaluation cycle.

455 On this subject, also see Part 1, Chapter 4, point 12.

456 The main reason given for this is that the guardianship department isn't available 24/7.

c. Recommendations specific to the purposes of exploitation, human trafficking, prevention, awareness-raising and evaluation

As already mentioned, the Parliamentary Commission's attention was largely focused on labour exploitation. Other forms of exploitation received little attention and few recommendations.

Regarding sexual exploitation, the Commission focused in particular on the legal and regulatory frameworks that are still lacking following the sexual criminal law reform (recommendations 72, 73 and 74)[457], paying greater attention to hidden forms of sexual exploitation, including stepping up the fight online (recommendation 75) and awareness-raising, particularly in the hotel sector and among clients (recommendations 76 and 77). However, Myria regrets that the Commission has not paid more attention to this form of trafficking and, for instance, to the international approach of criminal organisations, who trade victims (of prostitution) themselves on an international level, or to the proactive detection of various profiles of victims of sexual exploitation in a vulnerable position (e.g. those without documents).

As regards **human smuggling**, the Commission stresses the importance of improving coordination between the administrative and judicial sides (recommendation 84), developing an operational guide (recommendation 86) and ensuring an effective channel of communication between frontline services and the federal judicial police in each district (recommendation 89).

Finally, prevention and awareness-raising are the subject of a number of recommendations, as is evaluation. A national prevention plan should therefore be drawn up and awareness campaigns continued (recommendation 98).

In addition, the office of the National Coordination Centre (and in the meantime the Interdepartmental Unit) is tasked with drawing up an operational action plan based on the recommendations of the Parliamentary Commission, and for following up and monitoring the progress made. However, the question arises as to the extent to which this body is best placed to carry out this work, given that a series of recommendations is not limited to human trafficking but related more broadly to other themes (see below) and potential players.

d. Recommendations broader than human trafficking: focus on labour exploitation

A number of recommendations aim to take advantage of the Belgian Presidency of the EU to focus greater attention on human trafficking and labour exploitation: play an active role in the evaluation of the European Labour Authority (recommendation 9), or advocate a strict European framework against social dumping and better organised migration to prevent exploitation (recommendation 14).

Two recommendations concern legislative aspects, namely the ratification of Convention 143 of the International Labour Organisation (ILO) on migrant workers (recommendation 12) and the concrete examination of the transposition of Article 13, § 4 of the 'sanctions' directive (i.e. the granting of temporary residence to third-country nationals concerned who are victims of particularly abusive working conditions)[458], while taking care to avoid the erosion of the system for combating human trafficking.

Points of attention broader than human trafficking

As already mentioned, the Borealis case came to light during the Commission's mandate. Much of the members' (and experts') attention has subsequently been focused on aspects related to labour exploitation, but far more broadly than human trafficking. Several recommendations deal with issues such as the creation of a new offence of aggravated labour exploitation (recommendation 61). However, Myria wonders how this could be defined in a zone between 'simple labour exploitation' and 'human trafficking'. The priority, in this context, is to offer alternatives and support to people in such situations, but without risking legal uncertainty or eroding the system of victim status in human trafficking.

457 In the wake of the Committee's work, a draft bill laying down provisions on the employment of sex workers was adopted by the Council of Ministers on 23 June 2023. The employment contract would be subject to the usual regulations, with the exception of certain specific aspects relating to the four freedoms commonly recognised for sex workers (right to refuse a sexual partner, right to refuse specific sexual acts, right to interrupt or stop the activity at any time, right to impose one's own conditions on sexuality). The draft bill also defines the conditions that an employer must meet in order to be approved, with approval subject to strict requirements in order to prevent the abuse and exploitation of sex workers. In addition, a person of trust must be appointed. The draft bill has been sent for consultation to the National Labour Council, the Management Committee of the National Social Security Office (NSSO), the Social Information and Research Service (SIRS), the Data Protection Authority (DPA), the Council for Equal Opportunities between Men and Women and members of the academic world specialising in the areas concerned.

458 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, O.J., L168 of 30 June 2009, p. 24. This paragraph provides that Member States shall define, within the framework of their national law, the conditions under which they may issue residence permits of limited duration to interested third-country nationals, on a case-by-case basis, depending on the length of the corresponding national procedures.

Some of the recommendations relate to cases of exploited workers in precarious residence situations. The Parliamentary Commission recommends that workers be better informed about the possibility of claiming any wage arrears and that consideration be given to how to make the 'sanctions' directive operational, without jeopardising the systemof support for trafficking victims (recommendations 62 and 63).

A single secure frontline point of contact should be set up, in conjunction with the central contact point on human trafficking, where potentially exploited and illegally residing workers can anonymously report this exploitation and assert their rights (recommendation 64).

Various recommendations also touch on the issue of preventing work-related abuse[459], by making workers less dependent on their employers (recommendation 65), combating fraudulent postings (recommendation 66) and stepping up the fight against social dumping (recommendations 67, 68 and 71).

Lastly, Myria has been asked to examine the possibility of using the methodology and tool for estimating the number of victims developed by the ILO[460] to assess the extent and nature of labour exploitation in Belgium (recommendation 70).

2.2. | Other measures

A new website entitled Stop Human Trafficking has been up and running[461] since the World Day Against Trafficking in Persons, 30 July 2022. Available in 13 languages, it provides information on the forms and indicators of human trafficking, as well as contact details for the three specialised reception centres. This human trafficking contact point operates as a helpline for victims or people wishing to report a potential case of human trafficking.

It should also be noted that, in connection with human trafficking, following the sexual criminal law reform, the College of Prosecutors General adopted a new circular analysing the new provisions, including the abuse of prostitution[462].

459 On this subject, also see Part 1, Chapter 3 and Chapter 4.

460 On this subject, also see the Committee's report, op. cit., p. 224: the suggestion to develop a tool to estimate the number of victims of labour exploitation was specifically formulated by the two experts in their report.

461 www.stophumantrafficking.be/fr.

462 Circular No. 05/2022 of 9 June 2022 of the College of Prosecutors General at the courts of appeal on the Law of 21 March 2022 amending the Criminal Code with regard to sexual criminal law, published in the Moniteur belge on 30 March 2022 and coming into force on 1 June 2022 (COL 05/2022). The circular is available on the website of the public prosecutor's office.

Chapter 2
Case analysis

In this chapter, Myria analyses two court cases involving human trafficking in which it acted as a civil party, thus giving it a full view. This analysis provides a clear image of how an investigation is initiated and carried out in the field. Furthermore, for the main forms of exploitation, this part provides an illustration of the phenomenon of human trafficking. The analysis is based on the cases' police reports (PR) and focuses on the criminal system and the victim's perspective. We first take an in-depth and critical look at the summaries of the reports, in which the investigators summarise the case. A great deal of attention is also paid to the initial reports, which indicate the basis on which the case was actually initiated and whether any victims were intercepted and detected. In addition, the case file includes the reports of the hearings of the victims, suspects and witnesses, the informative reports, the files containing the transcripts of the phone taps, the observation reports and, finally, the reports of the letter rogatory. Studying specific cases is a cornerstone of policy evaluation. It provides a better understanding of the implementation of the investigation and prosecution policy in the field, as well as the thorny issues involved. Once compiled, these findings are also an important source of information for the focus of the annual reports and an indispensable basis for formulating recommendations.

1. Sexual exploitation: Nigerian case – Meccano, and the victim Eunice

Introduction

This Nigerian case mounted in Brussels, relating to events that took place between 2016 and 2018, resulted in convictions for human trafficking for the purpose of sexual exploitation, exploitation of debauchery, criminal organisation and illegal stay[463].

Four defendants were prosecuted, three of whom were convicted in absentia. Only the Nigerian defendant residing in Belgium was arrested. A European arrest warrant had been issued for the other defendants, but they remained unaccounted for and rested arrested. Three Nigerian victims of prostitution and Myria filed a civil suit.

What is important in this case is that the Nigerian woman Eunice, who was murdered by a client, was one of the victims of this network. Since then, Eunice has come to symbolise the precarious position of Nigerian sex workers in Brussels. A documentary was made about her and a street in Brussels was named after her.

463 Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 61-62: Brussels Dutch-speaking Crim. Court, 12 January 2021, 26th ch. (final): see Myria's website (case law).

1.1. | Network

1.1.1. | Structure of the network

The criminal organisation was based on the main defendant's family network in Nigeria. His father is a powerful tribal chief in Benin City and holds a prominent position there. They carried out their criminal activities in Nigeria, Niger, Libya, Italy, France and Belgium.

The family was known in the criminal underworld for its human smuggling and trafficking activities. They smuggled Nigerian girls into Europe to exploit them in prostitution. It also operated on the orders of 'madams' in Belgium and France, in collaboration with other Nigerian families such as 'mama M'[464]. According to the phone taps, there seemed to be a certain amount of competition between these families. Each one boasted of having made the most money.

P., the main defendant, lived mainly in Italy where he had obtained a residence permit on humanitarian grounds. He had a reputation in the criminal underworld as an expert on the Libyan route and maintained close links with contacts along this illegal migration route. He was also the owner of one of the safehouses in northern Italy where Nigerian smuggling victims had to stay during their transit.

His father, the tribal chief, is a voodoo priest who subjected the victims to a voodoo ritual, in Nigeria, that required them to swear never to speak to the police and never to run away. In addition, they were never allowed to reveal the names of their smugglers or exploiters, and had to swear that they would pay the debt incurred for their illegal journey. He played an important role in the network in Nigeria. He was not prosecuted in this case but he never actually entered Europe.

The sister of the main defendant, who features among the other defendants, housed the victims of smuggling in her flat in northern Italy, a major staging post for Nigerian girls smuggled in after having been recuperated from the camps in southern Italy. She then sexually exploited them in Belgium and France. At the same time, she sent victims to the co-defendant K. in France for sexual exploitation. In Brussels, the victims were first assigned to street prostitution and later worked in windows. The victims were under the control of the co-defendant M., who was arrested and convicted. She organised prostitution in Brussels, collected money from the victims and also managed the victims' safehouse in Vilvoorde.

The 'Yemeshe' system was used for prostitution. This is a Nigerian prostitution modus operandi that allows a girl who does not have a regular place of prostitution to use the window of a contract prostitute for a few hours. In return, the girl has to hand over 50 % of her income from prostitution. The girls had to charge customers EUR 20 for 15 minutes of sex work.

As for the brother of the main defendant, he was probably one of the managers of a camp in Sicily (Italy) where the smuggled Nigerian victims arrived and were lodged.

1.1.2. | Link with human smuggling

The smugglers' camps are located in Valderice, near Palermo (Sicily) and its 'hotspots' where Nigerian victims from Libya arrive by boat before being placed in 'camps'. Based on statements from current and former victims, and thanks to contacts with the Italian authorities, the police know that this region is home to a large number of Nigerian criminal networks.

On the orders of the Nigerian madams, their gang members extract the smuggled Nigerian girls from the 'camps' and transport them to northern Italy, more specifically to Ferrara, Jesolo, Varzi and Rovigo where the Nigerian networks operate. The girls are 'parked' in the safehouses of the defendants or family members of the Nigerian 'madams'. The victims are then taken to their final destination, in France or further afield in Belgium, in particular, where they are sexually exploited.

The Nigerian victim F. explained in her statement how she, Eunice and the victim H. had taken the illegal migration route from Nigeria to Italy:

"We left by bus for Kano State. There were more than 50 of us on the bus. From Kano, we travelled overland to Libya in several vehicles. The journey to Libya took about two weeks. We arrived in Sabah and were made to stay in a neighbourhood known as 'Prince Ghetto'. Here, we were housed by a Nigerian called 'Prince', who ran the ghetto of the same name. We had to stay in this ghetto for about a week. Then, we were all put into a kind of jeep called a Hilux and taken to the coast. It took three weeks to cross the desert. A few dozen people died during the journey because they were physically exhausted and fell out of the jeeps. It was certain they would die in the desert. I managed to hold on and that's how I was able to get to the coast".

464 Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 74-82.

"Once we arrived at the coast, we were housed in a ghetto where we had to wait for a week. One Sunday night, we were suddenly told that we would be crossing the Mediterranean. Boats known as 'lappa-lappa' were used for this crossing. They're large inflatable boats, and about 150 people had to get into each one. When we left, five of these 'lappa-lappa' boats were used, and I think there were about 600 of us in total. We left on these boats around midnight. The next day, around 07:00, we were rescued by the Italian coastguards".

In her statement, the Nigerian victim H., who was accompanying her with Eunice, gave more details about the crossing, especially about a kidnapping:

"When the boat was about to leave, we were intercepted by some Arabs and transferred to a building. They asked to contact the smugglers or the people we were destined for. They then asked for money for our release. A smuggler came to the building to buy us back, after which we were taken back to his ghetto".

The victims' statements also mentioned attempted rapes. For instance, in the absence of his girlfriend, smuggler A. attempted to rape victim H. in an Italian safehouse:

"I'd like to point out that A.'s girlfriend was normally always present in the house. However, one day she was absent and A. tried to rape me. I stayed in that house for about 10 days".

1.2. | Asylum

Several Nigerian victims had sought asylum in Lille, France. The defendants had forced them to do so. Phone conversations revealed that one of the suspects had acted as a facilitator. According to the police, this is a typical modus operandi for these networks: "Based on our experience, we know that Nigerian human smugglers use this modus operandi to avoid forced repatriation of their victims to Nigeria after a police check in Belgium. If they apply for asylum in France, they end up on the other side of the Franco-Belgian border and quickly return to work in the Brussels prostitution scene".

These findings led the police to suspect that the network was not only involved in the smuggling and sexual exploitation of its victims, but was also initiating asylum procedures in France for them.

In addition, the defendants used black taxis[465] to further exploit their victims within the context of their asylum applications. The victims were transported from France to Belgium in these black taxis, which dropped them off at the suspects' home in Brussels. In addition, the findings showed that these black taxis also drove to France to collect money with the victims' Mastercards. These cards were given to the victims in France after they sought asylum there. A Mastercard represents a monthly amount of EUR 320 per victim.

1.3. | Start of the investigation

On 19 January 2017, the Nigerian victim F. filed a civil party complaint with the Brussels investigating judge against the main defendant for trafficking and smuggling in human beings, from the Bruges detention centre, through her lawyer specialising in asylum law. The Brussels federal judicial police (FJP) then went to the detention centre to hear her. On the basis of her detailed statements, the police contacted the Brussels reference magistrate for human trafficking, who recognised her as a victim of trafficking. She was then referred to a specialised reception centre for victims of human trafficking, where she was looked after.

465 An unregulated taxi company that allows its drivers to work illegally.

The Nigerian victim F. had been found by local police working the streets in the red-light district of Sint-Josse-ten-Noode on 5 November 2016. During the check, the police noticed that she did not have a residence permit and she was transferred to the detention centre in Bruges. She applied for asylum there, but was refused, including by the Commissioner General for Refugees and Stateless Persons (CGRS). During the appeal against this decision by the CGRS before the Council for Alien Law Litigation (CALL), her lawyer referred to her statements to the effect that she had been forced to prostitute herself on the street and had been transported illegally to Belgium. She risked her life if she refused. According to her lawyer, the CGRS knew that she had been arrested by the police when she was working the streets. She had not given concrete answers to questions about her prostitution activities, her itinerary, her smugglers or her stay in Belgium because she was too scared, according to her lawyer. The CALL confirmed the negative decision of the CGRS, which had found her asylum narrative to lack credibility. The victim had told her lawyer that there was no way she could return to Nigeria. The asylum lawyer then spoke with the victim, convincing her to lodge a complaint with the investigating judge against the main defendant, to provide all the necessary information to the public prosecutor and the investigating judge, and to cooperate if necessary. This proves how important it is for asylum lawyers to be aware of the status of victim of trafficking. At a later stage, victims may be assisted by a lawyer specialising in criminal law and familiar with human trafficking, who may be appointed by a specialised reception centre, as was the case here.

In this respect, it is important to be aware that the perpetrators contact their victims in the detention centres in order to manipulate them. For instance, victim F. stated at her hearing that the main defendant had phoned her at the detention centre with one and the same message:

"Since I've been at the Bruges detention centre, P. has called me several times. He assured me that I should not worry. Even if I was sent back to Nigeria, he would make sure that I was brought back to Europe. Within a month".

1.4. | Criminal investigation

Investigative actions

The investigation was based on a retroactive phone investigation ('retro-zoller') on phone numbers known to the defendants and victims - including the deceased Eunice -, consultation of the 'mama M.' case file with information from phone taps, interviews with victims and witnesses, searches in the windows of the Gare du Nord neighbourhood in Brussels and a bank investigation.

Social media

During their hearings, the victims showed the investigators the defendants' Facebook profiles and identified them on the basis of their photos. This is how victim H. identified defendant K., who was active in Belgium and France: "When you ask me whether K. has a Facebook profile, I can tell you that their Facebook pseudonym is X. You show me a photo of this Facebook profile. I recognise K. in it".

Financial investigation

The majority of the Nigerian victims had to pay off an illegal migration debt of EUR 30,000. Several of them had already repaid most of this debt by prostituting themselves. One of them said that she handed over between EUR 400 and EUR 600 a week.

Every Monday, the victims had to bring the money from their prostitution to an 'Africa Shop'[466], i.e. an African hairdresser's. The manager acted as a Nigerian money courier who then transferred the proceeds of prostitution to the perpetrators' families in Nigeria via Western Union.

A banking investigation was carried out into the receipts and payments made with the Western Union card and other bank cards.

On the basis of a zoller phone investigation and the hearing of a defendant, the investigators were also able to uncover a strategy within the criminal organisation to counter money laundering investigations. It transpired that the defendant had contacts in the port of Antwerp to have cars sent to Nigeria. Proceeds from prostitution were used to buy second-hand cars in Belgium in order to conceal the criminal origin of the income. The cars were then sold at full price in Nigeria.

466 Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 75 and 77.

1.5. | Analysis of the victims

1.5.1. | Recruitment of the victims

In this case, the police were able to trace 13 Nigerian victims, although they were not always able to locate them. However, five victims were identified by the police, three of whom were granted the status of victim of human trafficking.

The victims were not aware of their final destination. However, several of them knew that they would have to work in prostitution. Some had received a vague promise of employment.

It is clear from the victims' statements that they were in a particularly vulnerable position. All the victims were in a very precarious financial and/or family situation, because they needed financial resources to (help) support their family, to pay for the care of a sick family member or because they were orphans.

On their departure from Nigeria, they were forced to undergo a voodoo ritual at the home of the father of the main defendant, promising to obey their exploiters and repay in full the EUR 25,000 to 30,000 in smuggling debts they had incurred. The families of the perpetrators and victims knew each other well, which made it possible to exert pressure.

1.5.2. | Detection of the victims

Several Nigerian victims who had been traced through phone data and digital messages could not be located. Some had initially shown no interest in the status of victim but, it was possible to win their trust in the end.

Eunice, who was later killed by a client, was one of the five victims intercepted by the police. During a police check of a window in Brussels, Eunice ran off and hid in the toilets. She was in possession of an asylum application attestation issued in Lille, France, which led to her identification. Eunice explained that she had been in Belgium for a few months and that she had spent around six months in Lille before that. She said she was prostituting herself of her own free will. She wanted to earn money to support her seriously ill mother in Nigeria. As a result of her illegal stay, her fingerprints were taken and the Immigration Office (IO) issued her an order to leave the territory (OLT).

Eunice had been indirectly incited by the victim F. to contact a specialised reception centre for trafficking victims. This is an excellent example of victims' awareness being raised by their peers. However, this approach proved unsuccessful, as the victim with whom she was in direct contact was not interested herself at the time.

Victim F. explained that she had encouraged victim H. and Eunice to do so. At the time, victim F. was already being supported by Payoke and maintained phone contact with victim H., who was staying in the same safehouse as Eunice, in Vilvoorde:

"I suggested to H. that we meet at Antwerp Central station to go to Payoke together and tell them that they too were victims. H. told me that she was working on a project at the time, without going into details. Once the project was finished, she was going to contact me so that we could go to Payoke together. Contact between H. and I was cut off on the orders of P. (the main defendant), who began to monitor her smartphone. H. risked serious problems if she did not obey."

Finally, victim H. explained to the police how she had ended up at PAG-ASA through a hospital, which demonstrates the importance of making hospitals aware of the indicators of human trafficking:

"After being violently assaulted by a client, my injuries were so serious that I had to be hospitalised. I was then transferred to PAG-ASA. That's when I realised how precarious my situation was. So I contacted your services, where I declared myself a victim of human trafficking for the purposes of sexual exploitation".

In the case of victim R., trust was built up step by step thanks to the specialised Africa team of the federal judicial police (FJP) in Brussels and the interpreter, a former victim of Nigerian prostitution who is familiar with voodoo culture and hence a real-life expert.

After the magistrate ordered the FJP to hear the victim, they found her in the window. She complied with the police officers' request to follow them to the station without protesting. The police described the hearing as follows:

"Initially, R. made no effort to explain her situation to us. However, when confronted with all the clues and evidence in the case file, and with the help of the interpreter, R. quickly made us understand that she was indeed a victim of human trafficking and sexual exploitation and that she had been smuggled into Belgium by the defendants' network and forced to work as a prostitute in Brussels".

Some Nigerian victims in detention centres were not granted victim status because they had not been referred to a specialised reception centre in time. For example, the police wanted to hear the fifth identified victim of the network, who was being held in the Bruges detention centre following a police check for street prostitution.

When the police arrived, they learned that she had already been transferred to the 127bis detention centre in Steenokkerzeel and was in the process of being repatriated to Rome, Italy.

1.5.3. | Victim status

Victim F. was at the heart of the investigation. She had lodged a complaint against the defendants with the investigating judge through her lawyer while she was in a detention centre.

She stated that when she was recruited in Nigeria in August 2016, the main defendant made false promises to her about a job offer as a mechanic in Italy. For this, she owed him EUR 25,000 and would have to repay him the sum with what she was going to earn in Italy.

When she arrived at the defendant's safehouse in Italy at the end of her perilous illegal journey (see above), she asked him where she was going to work as a mechanic. The main defendant laughed at her and told her that the place was in Belgium and that she had to go there.

Once in Belgium, she was confronted with the harsh reality of being transported to a residence in Brussels' North district. The same day that she was forced to prostitute herself in the street under threat, she was arrested by the local police and detained at the Bruges detention centre.

Victim F. was then heard three times and questioned about new evidence in the investigation. It emerged that she had received death threats and that a curse had been placed on another victim:

"There was a girl, I., who had been smuggled in by P. (the main defendant). I learned that I. had run away. P. cursed this girl and told me that I would never be able to escape. If I tried, he would kill me".

She also told the police that the main defendant had tried to contact her at the reception centre and that she had informed the centre's caregivers. This was to avoid breaching the conditions of support: no contact with the presumed exploiters.

If a victim stopped paying before her debt was paid in full, pressure was put on both the victim and her family by the defendants or their families, in particular by harassing the victim in person or by phone to get her to go back to work and resume payments. In the days following her arrest, victim F. was called several times by the main defendant and later by the latter's brother.

The families of the victims living in Nigeria were also threatened. On the basis of e-mails from victims H. and R., the police were able to establish that their families were being sought by the perpetrators' families. The police were also able to deduce that all the people involved in the network, both in Nigeria and in Italy, were kept closely informed of events in Belgium. This gave them the opportunity to react in a particularly threatening manner towards the victims and thus to exert enormous pressure on them, both physically and psychologically.

Thanks to her contact with her family, victim H. informed the police in October 2018 via PAG-ASA that the family of the arrested defendant intended to approach the Oba (king of Benin City)[467]:

467 In Nigeria, the Oba is a person with a very important religious function and great moral authority. The Oba is the religious leader of the Edo culture and can be considered the king of Edo State. The Oba in office at the time of the events (2018) had worked at the United Nations between 1981 and 1982, and then served as Nigeria's ambassador to several countries, including Italy. During his time as ambassador to Italy, he had witnessed the trafficking of Nigerian nationals for the purpose of sexual exploitation, with Italy acting as a transit country.

"They said they wanted to go to his palace to lay a curse. They want the person responsible for M.'s arrest to be cursed, to go mad or something like that".

It is not known whether this happened or whether it had any effect. On the other hand, the Oba had previously made it known, at a specially organised ceremony on 18 March 2018, that he was putting a voodoo curse on anyone facilitating illegal migration. At the same time, he had lifted all the curses that human traffickers had placed on victims[468].

2. Labour exploitation: poultry farming case in Turnhout

Introduction

This case concerns human trafficking for the purpose of labour exploitation involving the use of fraudulent postings, bogus self-employment and illegal employment. The events took place between December 2004 and July 2012 in the poultry farming sector. Seven defendants appeared in court, including a Belgian of Bulgarian origin, four Bulgarians and two legal entities. In addition to the charge of human trafficking, they were charged with other offences including money laundering and social and fiscal offences. The Turnhout Criminal Court[469] found that the charges against all the defendants had been established. Following his appeal, the main defendant was acquitted by the Antwerp Court of Appeal in 2019[470].

2.1. | Network

2.1.1. | Structure of the network

Around 40 Bulgarian workers had been employed since 2005 as poultry catchers in one of the companies run by the main defendant and his brother (co-defendant). The workers were either illegally employed, fictitiously posted from Bulgaria, or employed as bogus self-employed workers. Their exploitation can be divided into two phases.

The first phase included exploitative situations involving fraudulent postings and illegal employment. Through a posting, the main defendant had set up a fraudulent structure with members of his family to avoid paying social security and tax in Belgium. None of the posted workers had been registered for social security in Bulgaria or had a work permit in Belgium. The Bulgarian workers had to carry out physically demanding work for a derisory salary and without any social security protection for many hours at night. The temporary accommodation arranged by the main defendant for several workers was totally inadequate. The first phase also involved illegal employment, whereby the workers had to work on a trial basis without being declared.

The second phase was characterised by bogus self-employment within Belgian companies run by the main defendant and his family. The situation of the bogus self-employed workers concerned was, in principle, no different from that of their colleagues, with an equivalent income. The bogus Bulgarian self-employed workers received shares (without having to pay for them), signed a number of documents in a language they did not understand, were unaware of their status, received an hourly wage and did not know that they were self-employed.

The main defendant and his family had made substantial profits from these schemes. Despite the various inspections and the arrest of the main defendant, the family continued its activities without being troubled. They were invariably chosen by customers for being the cheapest, leaving few opportunities for other companies in the market.

This social and economic disruption of the sector allowed the organisation to operate below the market price, creating unfair trade practices and eliminating all fair competition.

468 Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, p. 55.

469 Antwerp Crim. Court, Turnhout division, 20 December 2017, see Myria, *Annual Report 2018, Trafficking and smuggling of human beings, Minors in major danger*, pp. 119-120. This decision is available on Myria's website.

470 Antwerp Court of Appeal, 13 November 2019, see Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, pp. 86-87. This decision is available on Myria's website.

2.1.2. | Multi-purpose criminal structure

According to a police report, the file shows that offences were committed over a long period of time and in a planned manner, suggesting the existence of a criminal organisation. Greed and power are clear from the statement of the main suspect, who expressed his desire to become President of Bulgaria through the Muslim party he had founded. The main defendant stated that in addition to his investments in real estate, he mainly used the proceeds to finance his political party and his activities inside and outside Bulgaria. He regarded the years of financial fraud as an advance from the State in his bid for power.

The main defendant added that most of the workers were members of his party, which was confirmed by the fact that the majority of Bulgarian workers had a membership card. This card could be bought in Antwerp for EUR 5. It is therefore not inconceivable that the many Bulgarian workers were linked in one way or another to his party, thus creating, according to the police, a certain form of debt bondage, and reinforcing the position of power and dependence.

The main defendant had set up 'straw women' within his companies to pursue his criminal activities. The organisation exerted influence on politics, the media, public life, the judiciary and the business world. This was reflected in the Bulgarian media coverage of their arrest and the attention of the Bulgarian authorities and Belgian security services.

Further analysis revealed that the defendants' empire was not limited to the poultry sector, and that there were also links with the prostitution scene. For instance, several Bulgarian workers were posted by the main defendant to Belgian companies that also ran cafés and were known to the police for human trafficking. It is worth noting that one of these cafés was officially an outlet for the sale of jewellery and precious stones. However, findings revealed that this company was also active in the poultry sector. At the same time, one of the company heads was already known to the police for prostitution, human trafficking, threats and fraud.

In addition, the main defendant held shares in Belgian cafés, several of which had gone bankrupt and were also involved in prostitution. Among the co-defendants, one woman was known to the police for prostitution and had declared that she had switched from the hospitality to the poultry sector. Documents relating to the takeover of a café in the Netherlands were also found, indicating an (international) expansion of their criminal empire.

Following this critical analysis, the question arises as to the extent to which there has been a conversion from the prostitution sector to the poultry industry.

2.2. | Start of the investigation

In February 2011, the federal judicial police (FJP) in Turnhout were informed by colleagues in Antwerp of the use of illegally employed workers in the poultry sector. They noted that the person was already known within the framework of two earlier cases, in Antwerp and Hasselt, for human trafficking for the purpose of labour exploitation, as well as aggravated theft. They then notified the reference magistrate at the public prosecutor's office and proposed planning a multidisciplinary control operation. The magistrate agreed. The investigation began with a brief, discreet observation by the police, which gave them an idea of the layout of the premises and the scope of the check to be carried out. The multidisciplinary check was carried out by members of the FJP, the local police, the Social Legislation Inspectorate (CLS), the Immigration Office (IO) and the Antwerp Social inspection service (now the NSSO inspection department (ECOSOC teams)). Following this check, the main defendant was interviewed and an initial outline of his network was drawn up. Twenty-three Bulgarians were also intercepted and subsequently repatriated. A month later, a second multidisciplinary check took place, during which nine other Bulgarians were intercepted and repatriated. A year later, another multidisciplinary check took place in Hasselt. This shows that the practices continued and that repeated checks were necessary.

2.3. | Criminal investigation

2.3.1. | Investigative actions

Four searches were carried out, three with consent and one on a warrant from the investigating judge. During the search of the main defendant's home, USB sticks containing lists of Bulgarian party members were found. More than 21,000 Bulgarians were on the lists, illustrating the size of the party. A document relating to one of the Bulgarian companies was also found. This made it possible to establish the first links between the poultry farming business and the prostitution ring mentioned earlier, along with the cafés in Antwerp. Copies of identity cards were also found.

In May 2011, the investigating judge in Turnhout ordered a search of a property sublet by the main defendant. The housing inspectorate, in collaboration with the Turnhout FJP, entered the property and found a number of shortcomings, including damp in the roofing, poor air quality and an unsecured entrance. A request for a declaration of uninhabitability was sent to the mayor of Beringen.

Internet searches were also carried out. This proved to be an important source of information on the political activities of the main defendant.

2.3.2. | International cooperation

In 2012, a letter rogatory was sent to Bulgaria, against the defendants, in search of: evidence of human trafficking, money laundering and tax fraud through witness interviews; evidence for the financial investigation, such as money transactions and bank accounts with money transfer agencies or banks; and information on the land registry and legal entities involved. During the financial audit of the main defendant, the Bulgarian authorities discovered that he owned 35 properties in Bulgaria. These properties formed part of the main defendant's money laundering activities. Thirty-three of these Bulgarian properties were seized and confiscated.

2.3.3. | Financial investigation

Following the initial multidisciplinary check, a financial case was opened in parallel for money laundering, in collaboration with the FJP's money laundering unit, the special tax inspectorate (STI) and the deputy public prosecutor specialising in tax matters. Investigations were carried out on the bank account and financial transactions.

The investigation led to the conclusion that during the period from 2005 to 2011, the main defendant had embezzled more than EUR 1,400,789.73 in income from his activities, which was not recorded in any account.

The investigating judge also took into account the strategy of financial draining and ordered the following: "Please take all necessary measures to seize the real estate of X., his family and his companies".

The majority of the Bulgarian workers said they earned EUR 10 to 12 an hour and were paid in cash. One of the poultry company's clients denied this, saying: ”In addition, I’d like to point out that they’re the best poultry catchers and the cheapest. […] As to how much the catchers earn per hour, I can say that I once heard the figure of EUR 6 per hour. Certainly not EUR 12 per hour”.

2.4. | Analysis of the victims

2.4.1. | Evidence of human trafficking

Many of the victims employed belonged to a severely discriminated minority, namely the Roma, as the main defendant himself stated. During recruitment, the defendants took advantage of their vulnerable situation. Several of the victims were staying illegally in Belgium.

The victims spoke only Bulgarian and came from the poorest part of Bulgaria. Several of them stated that they had signed documents in a foreign language (namely Dutch), and were thus unaware of their status within the company.

They were the subject of labour exploitation and completely at the mercy of their boss, the main defendant. Working hours were not fixed in advance; the team leader called them when there was work and they had to be available at a moment's notice. In addition, the Bulgarian workers were totally financially dependent on their employer. They had to do physically demanding work for many hours at a time, often at night. In practice, the poultry catchers had to work more than 14 hours a day, only part of which was paid. In addition, the working conditions were unacceptably unhygienic. All the workers were working without any protection in the hen houses, even though they were exposed to ammonia. They also had to hand over part of their wages to the employer for accommodation. During a hearing, the main defendant indicated that he had housed the Bulgarians in a house that had subsequently been declared uninhabitable. Finally, according to the police, it is also possible that, because the workers belonged to his Muslim political party, religious motives contributed to the voluntary nature of the work.

2.4.2. | Victim statement

Several statements made by victims revealed the precarious situation in which the Bulgarian workers found themselves. Some workers had come from Spain to work here. One of the victims, who had to work illegally during their trial period, said: "I can start working on a trial basis. I do not know how long this trial period will last. If I do well, I might get a contract. For the moment, I have not signed anything yet". Another victim said that they had no residence documents, even though this is what they had been promised.

Thirty-two Bulgarians were repatriated following the multidisciplinary check. It should be noted that eight of them returned. One victim with a bogus self-employed status said at their hearing: "Then, after being questioned by the Immigration Office, I was repatriated to Bulgaria. I was only in Bulgaria for two days. I then took the bus back to Belgium. Several other repatriated Bulgarians were with me". The victim also said that on his return, the son-in-law had taken over the role of the main defendant after the latter's arrest.

2.4.3. | Victim status

Very few of the victims wanted to obtain victim status. Owing to the precarious living conditions in Bulgaria and cultural affinities, the workers did not consider themselves to be victims. "I know what it means to be a victim of human trafficking. I do not consider myself a victim of human trafficking", said several Bulgarian workers. Two Bulgarian workers nevertheless obtained this status. The first victim worked as a bogus self-employed person in the poultry farming business and had to do physically demanding work for very long periods of time. The second worked as a waitress in a café founded by the main defendant, where she was unknowingly the unpaid manager ("straw woman"). As she could not make ends meet, she also worked in the poultry farm. She said: "This week, we worked on several other farms. After Herentals, we had to go to Brussels. There, we worked from 10:00 in the morning until 05:00 the next morning. That week, I worked on different farms from those in Herentals and Brussels. I only received EUR 50 for that week". After being informed by the FJP that she was a victim of trafficking, she was referred to a specialised reception centre for victims of human trafficking.

In the end, two protagonists filed a civil suit during the trial: the second victim and Myria.

Chapter 3
Case law overview 2022 - start 2023

1. Trends

What were the main trends in human trafficking and smuggling cases in 2022 and early 2023? In this report, the case law analysis is based on cases in which Myria filed a civil suit, on decisions Myria received from the three specialised victim reception centres and on the decisions provided by magistrates or other partners.

Like last year, Myria was informed of a particularly high number of decisions rendered by the judicial authorities: 100, 84 of which were Dutch-speaking and 16 French-speaking.

The 50[471] most interesting and most relevant decisions are presented below. They relate to 46 cases in the country's various jurisdictions[472].

- Among the decisions in this selection, 35 concern **human trafficking** and 15 **human smuggling**.
- It should be noted that in a number of French-speaking and Dutch-speaking cases this year, prosecutions by the public prosecutor's office or the labour prosecutor's office were brought for human smuggling (and not for human trafficking) even though they involved labour exploitation or sexual exploitation. Some of these decisions are described below[473].
- 19 decisions concerned acts of **sexual exploitation.** They were handed down within the jurisdiction of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (Brussels [French-speaking, Dutch-speaking], Leuven and court of appeal), Ghent (East Flanders [Ghent] and West Flanders [Bruges] and court of appeal), Liège (Liège division and court of appeal) and Mons (Charleroi division and court of appeal).

Once again, a large proportion of the decisions relating to sexual exploitation concerned Nigerian prostitution networks, with the acts occurring mainly in Antwerp and Brussels, in addition to one case in Liège.

Furthermore, many decisions involve the **loverboy method**. The victims are both adults and minors, often particularly young Belgian victims either from precarious family situations or who have run away from an institution for minors. When the victims are minors, this can also be referred to as pimping of teenagers.

In a French-speaking decision, a victim of a loverboy had been forced to adopt a lovergirl attitude in order to recruit other victims. The court acquitted her on the basis of **the non-punishment clause**[474].

Myria also noted a trend in the number of victims of sexual exploitation from **Latin American countries**, as much on the French-speaking side of the country as on the Dutch-speaking side. Those concerned are often **trans(gender)**.

471 For a number of cases, the judgment handed down at first instance was already mentioned in previous reports.

472 These decisions will also be published on Myria's website.

473 Myria discusses these decisions in the chapters on human trafficking for the purposes of sexual exploitation and labour exploitation. See West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal); West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal); Mons, 5 October 2022, 4th ch.

474 On the basis of Article *433quinquies*, § 5 of the Criminal Code.

When reading the various decisions relating to sexual exploitation, Myria noted that sexual services are increasingly offered online through a dating site, whether in the 'loverboy' cases or in the Nigerian cases in Antwerp. In addition, sexual services are often offered in private homes, hotels and Airbnb accommodation, which was especially the case during the coronavirus period.

A decision was reached concerning an **early marriage** that took place within the Roma community in Antwerp. The judgment and ruling date back to 2021, but Myria was only notified of them this year. Due to the exceptional nature of this case, it was decided to include it in this annual report.

A number of decisions relating to trafficking for the purpose of exploiting prostitution or other forms of sexual exploitation show that judges often refer to the new Criminal Code on sexual offences. When the public prosecutor's office brought charges of recruitment for prostitution, exploitation of prostitution and/or running a brothel[475], the courts examined the question of the application of the law over time. They specifically checked whether the acts in question were still punishable after the change in the law and, if so, reclassified them on the basis of the new article criminalising procuring[476], as provided for in the Act of 21 March 2022 amending the Criminal Code[477].

- 18 decisions relate to **labour exploitation** in various sectors. The reason why this number is remarkably high this year is because Myria also asked certain labour prosecutors for relevant decisions as part of its focus on labour exploitation. These are presented below by sector: construction, transport, hospitality industry, bakery, car wash, day and night shops, second-hand clothes sorting, agriculture and horticulture, domestic work, a football club and also atypical sectors (animal shelter). These decisions were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp and Mechelen divisions and court of appeal), Brussels (Brussels (French-speaking and Dutch-speaking), Walloon Brabant and court of appeal), Ghent (West Flanders (Bruges division), East Flanders (Ghent and Dendermonde divisions) and court of appeal), Liège (Liège and Namur divisions and court of appeal).

Myria was not informed of any French-speaking decisions concerning trafficking for the purpose of labour exploitation in the road transport sector. There are two Dutch-speaking decisions in this sector, one of which resulted in a conviction for trafficking in human beings.

Also worth noting are the decisions dealing with the complex set-up of companies established to employ people as bogus self-employed workers in day and night shops, car washes or, in one case, in the road transport sector.

Two decisions relating to labour exploitation concerned Belgian victims. In one case, an intellectually disabled person had been exploited in a café.

It should be stressed that Myria received a few decisions concerning labour exploitation in the construction sector this year. There was no information about any French-speaking decisions in this sector.

To determine the existence of working conditions contrary to human dignity - an essential element of human trafficking - Myria noted that judges take into account various factors such as working conditions and the working environment (excessive working hours, excessively low wages, lack of rest days), poor accommodation, withholding of wages on various pretexts and dependence on the employer (for instance, the use of surveillance cameras).

475 Formerly criminalised under Article 380 of the Criminal Code.

476 On the basis of new Article 433 quater/1 of the Criminal Code. In accordance with Article 2, §2 of the Criminal Code, "if the penalty established at the time of the judgment differs from the penalty that was imposed at the time of the offence, the lesser penalty shall be applied". In light of the moral component, the new provision should be considered as a more lenient criminal law, since a specific intent is now required; in fact, the acts must be committed with the aim of obtaining a benefit.

477 With regard to these charges, the various courts also took into account the fact that the aggravating circumstance of 'fraudulent tactics, violence, threats or any form of coercion', punishable under the former Article 380, § 3, 1° of the Criminal Code, had not been included in the new provision criminalising procuring. However, the aggravating circumstance of abuse of a vulnerable position was included in the new Article 433 quater/4 of the Criminal Code. A Dutch-language decision also took into account the legislative amendment decriminalising advertising for the prostitution of adults where measures have been taken to protect the sex worker and prevent the abuse of prostitution and trafficking in human beings (see the new Article 433 quater/2 of the Criminal Code).

- A decision concerning human trafficking for the purpose of **begging** was taken in 2022.
- The decisions on **human smuggling** originate from the jurisdictions of the courts of appeal of Ghent (West Flanders [Bruges division and court of appeal]) and Antwerp (Antwerp division and court of appeal).

Human smuggling often involves well-structured, even criminal, organisations such as the Vietnamese, Albanian and Iraqi Kurdish networks. Based on the decisions sent to Myria, it appears that these organisations sometimes cooperate with other nationalities. This is the case for Vietnamese smuggling networks that join forces with Kurdish smuggling networks to send boats across the North Sea, or Vietnamese smugglers who cooperate with Belgian and British taxi and lorry drivers. Myria is not aware of any decisions concerning Ethiopian, Eritrean or Sudanese smuggling networks this year.

A major case concerning the smuggling of Vietnamese nationals into the United Kingdom, which led to the deaths of 39 victims in 2019, was heard on appeal in early 2023. A total of 25 defendants were initially prosecuted in this case - in which Myria filed a civil suit - including Vietnamese smugglers and several Brussels taxi drivers who transported smuggling victims to lorries in West Flanders and northern France. A number of small Dutch-language rulings also concerned the smuggling of Vietnamese nationals, either by getting them into lorries or by taking them across the North Sea in makeshift boats. The modus operandi already observed in recent years of smuggling human beings aboard small inflatable boats, yachts and sailing boats is continuing. In addition, a large proportion of the decisions reached on smuggling involved logistical support for the crossing by small boat. Here, logistical equipment is transported from abroad via Belgium to Calais in France, where the majority of small boat crossings take place, as this is the shortest stretch of the North Sea separating Europe and the United Kingdom. These cases mainly originate from West Flanders. In particular, they concern vehicles containing equipment intended for illegal crossings: inflatable boats, outboard motors, life jackets and jerry cans of petrol. These vehicles are very often registered in Germany, and sometimes in the Netherlands or France. The defendants generally live in Germany, but are of Iraqi, Iranian and Syrian origin.

One major case involved a smuggling organisation which operations involved both small boats in the North Sea and lorries.

In addition, a decision was rendered on appeal concerning humanitarian visas, in a case where a politician had abused his position to allow Syrian Christians to come to Belgium in return for the payment of large sums of money, despite the fact that this administrative procedure is almost free of charge. The court of appeal partly upheld the judgment for the acts of human smuggling.

Furthermore, Myria was made aware of a striking decision concerning a travel agency that smuggled Surinamese nationals into Belgium under the guise of sham family reunification, fictitious marriages or cohabitation, bogus asylum procedures or bogus employment contracts.

It should be noted that, in almost all the decisions relating to smuggling, the defendants were prosecuted as perpetrators or co-perpetrators on the basis of Article 66 of the Criminal Code, which does not require proof of the existence of a personal financial benefit on the part of the defendant. It is often sufficient for the co-perpetrator to have been aware that they were helping to obtain a financial benefit through their actions, without having obtained it themselves.

Lastly, it should be noted that, in various cases, the charge of human smuggling[478] was reclassified as aiding illegal migration.

In several decisions, Myria found that the defendants were repeat offenders. At least six decisions related to sexual exploitation (loverboy cases and a decision relating to a Nigerian prostitution network), one related to labour exploitation and four related to human smuggling.

478 West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal); the Liège Crim. Court, Liège division, 2 November 2022, 19th ch.; Liège, 14 September 2022, 4th ch.

2. Human trafficking

2.1. | Sexual exploitation

2.1.1. | Nigerian networks

As in the case law overviews in previous annual reports, several decisions concern Nigerian networks. One of the judgments relates to a major case concerning an international network discussed last year. It should also be noted that one of the decisions concerns a case in which one of the perpetrators was Belgian.

Child victims in an international Nigerian network

The **Brussels Dutch-speaking criminal court delivered a judgment on 10 December 2021**[479] in a large-scale case involving a vast Nigerian prostitution network.

At first instance, five defendants of Nigerian and Belgian nationality were prosecuted for trafficking in human beings for the purpose of sexual exploitation, with aggravating circumstances including the fact that the victims were minors. Other charges included directing a criminal organisation, acquiring criminal financial benefits and possession of child pornography.

This was an international organisation that brought women from Nigeria to Europe to exploit them for prostitution. When the women arrived in Italy, they were distributed throughout Europe via the Turin organisation. The women were subjected to voodoo practices. According to the court, the dozens of girls involved in this case were just the tip of the iceberg. They had to repay debts of between EUR 30,000 and EUR 45,000. And if they slipped up, their debts were increased.

The defendants received harsh sentences ranging from three to ten years. One victim filed a civil suit and was awarded EUR 55,500 in compensation.

A defendant who had played a minor role and who had been sentenced in absentia lodged an appeal. This decision was reviewed by the court, which largely upheld the decision[480]. Three other defendants appealed against the judgment of 10 December 2021 and the **Brussels Court of Appeal** gave its ruling in a **judgment dated 30 June 2022**[481]. The court also assessed the acts in light of the new sexual criminal law that came into force on 1 June 2022.

The court largely upheld the judgment. Sentences were increased for several charges. One of the defendants was acquitted of certain offences against certain victims due to insufficient evidence. The defendants received prison sentences ranging from four to eight years and fines ranging from EUR 16,000 to EUR 64,000. The civil party's claim for compensation was confirmed.

Nigerian prostitution network in which the defendant exploited her own sister

In a **judgment of 11 October 2022**[482], **the Antwerp criminal court** ruled on a case in which a defendant was prosecuted for smuggling and trafficking in human beings for the purpose of sexual exploitation of two young Nigerian women, one of whom was the defendant's own sister.

The investigation was opened after Antwerp local police heard one of the girls who was giving evidence as part of another investigation. During this hearing, she stated that she herself was a victim of human trafficking and that she had been forced into prostitution.

The defendant had brought the two girls to Belgium on the pretext that they could work there as cleaners or nursery nurses. In Nigeria, they both had to take a voodoo oath. Once they arrived in Antwerp, they had to prostitute themselves to pay off their travel debt by working in windows in Brussels and cafés in Antwerp. One of the victims paid the defendant EUR 1,500 over several months, in addition to the rent for the flat. She repaid EUR 12,000 overall.

479 Brussels Dutch-speaking Crim. Court, 10 December 2021, ch. 23N: see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 64-66 and Myria's website (Case law).
480 Brussels Dutch-speaking Crim. Court, 10 June 2022, ch. 23N (final) (unpublished).
481 Brussels, Dutch-speaking, 30 June 2022, 15th ch.
482 Antwerp Crim. Court, Antwerp division, 11 October 2022, ch. AC10 (appeal).

She only stopped paying when the Oba (king)of Benin City[483] declared that victims of trafficking no longer had to pay. The other girl, the defendant's sister, had to pay less but was put under pressure by the voodoo priest who phoned her. The victims were also threatened by the defendant and her entourage during the investigation.

According to the court, the acts of human smuggling and trafficking were proven in view of the police officers' findings, the victims' statements, consultations with money transfer companies and the statement of a witness. The aggravating circumstance of the victims' vulnerability was also deemed to be proven, given their precarious social situation in Nigeria. The young women, who had no command of the Dutch language, were also staying illegally in Belgium and were therefore in an illegal administrative situation. They were in the country without any network and without any form of regular income or means of subsistence, which made them totally dependent on the defendant.

It emerged from the victims' statements that the defendant had played a coordinating role in their crossing to Belgium. She had recruited them by creating false expectations and had then called on numerous contacts in Libya and Italy to provide them with accommodation and accompany them to Belgium. When they arrived, the defendant picked them up and offered them shelter. She did this with a view to obtaining financial benefits.

The victims' statements were sufficiently similar and were sufficiently supported by objective evidence in the criminal file for the court to give them credence and consider them as essential evidence.

In the court's view, however, the reasonable time limit had been exceeded and this was taken into account in sentencing. The defendant was first heard in December 2020.

The defendant received a three-year suspended prison sentence and a partially suspended fine of EUR 16,000. She appealed against this decision.

The Antwerp Court of Appeal ruled on this appeal in a **decision of 9 March 2023**[484]. It also considered the facts to be true. The statements made by the two victims, who presented themselves separately to the police, were credible, detailed, coherent and supported by objective evidence in the case file.

The criminal case revealed that when the two victims were in Italy with a member of the smuggling organisation, the defendant made several payments to a person in Italy known to the police for their involvement in the smuggling of human beings. These payments were clearly intended to smuggle the two victims and bear witness to the international ramifications of the smuggling network. According to the court, this also enabled the charge of human smuggling to be retained. The fingerprints of the two victims were found in Italy and France. It also emerged that the girls had received money indirectly from the defendant during their stay in Libya.

The court found that the first judge had applied the criminal law too leniently. The acts of trafficking had been committed against two vulnerable victims over a particularly long period of time. The defendant was sentenced to four years in prison and a fine of EUR 16,000, half of which was suspended.

Sexual exploitation of a young Nigerian woman by a couple of Belgian and Nigerian nationality

The Liège criminal Court handed down a judgment on 2 November 2022[485] concerning the facilitation of residence, trafficking for the purpose of sexual exploitation and the exploitation of prostitution of a young woman of Nigerian nationality, by a husband and wife who were of Belgian and Nigerian nationality respectively. In January 2017, the victim, who filed a civil suit, was taken in by a French association specialising in supporting people in prostitution.

In 2016, the victim, who was in Benin City, was offered the opportunity of a better life in Europe by the defendant's sister, who was looking to bring over people leading a hard life in Nigeria. After crossing the desert starting in Niger and staying in a camp in Libya, the victim embarked on a crossing to Italy in a 'lappa-lappa' type boat with 150 migrants. An Italian ship came to their rescue. After the victim had spent two weeks in a refugee camp, the defendant picked her up and flew her to Belgium. She was asked to pay back EUR 15,000 to cover her travel costs.

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483 In Nigeria, the Oba is a person with a very important religious function and great moral authority. The Oba is the religious leader of the Edo culture and can be considered the king of Edo State.

484 Antwerp, 9 March 2023, ch. C6.

485 The Liège Crim. Court, Liège division, 2 November 2022, 19th ch. (appeal).

The victim was forced to prostitute herself in the street, in hotels, at clients' homes or in cars, until she was raped during a paid sexual service. Multiple threats of reprisals were made against the victim and her family. She lived with the couple for four months before they rented her a flat in Liège. She then stayed with friends before finally being taken in by a reception centre specialising in victims of human trafficking.

The defendants' home was searched. Based on an analysis of the defendants' phones showing that they had paid a smuggler in Italy following the arrival of the victim, the judge found that their statements were not credible. However, the judge considered that there was still some doubt as to whether they had initially intended to enrich themselves at the expense of the victim or her family, as the analysis of the defendants' bank accounts did not show any transfer of large sums of money. The court therefore reclassified the charge of smuggling as facilitation of residence, finding that the couple were guilty of knowingly helping the victim to enter Belgium.

The judge found that the victim's statements were accurate, coherent and corroborated by the investigation. The defendant had organised the victim's prostitution by dictating the rates and the repayment of her debt. The judge found the defendants guilty of exploitation of prostitution, having rented the flat to the victim so that she could continue to prostitute herself, with the sole aggravating circumstance of abuse of vulnerability[486].

The defendants were also convicted of trafficking for the purpose of sexual exploitation with aggravating circumstances. Analysis of some of the text messages showed that the defendant had taken control of the victim's schedule and productivity, with the aim of exploiting her prostitution. The court took account of the fact that the reasonable time limit had been exceeded. It sentenced the defendants to two and four years in prison respectively, and a fine of EUR 8,000 (both suspended in part), and ordered them to pay the plaintiff EUR 7,500 in non-pecuniary and pecuniary damages.

Sexual exploitation of a Nigerian victim as part of a larger case involving Nigerian sex networks

In a judgment of **16 February 2023, the Brussels French-speaking Criminal Court**[487] examined a case of smuggling and trafficking for the purpose of the sexual exploitation of a young woman born in Nigeria, in which two defendants were prosecuted[488]. The victim had been taken in by a human trafficking coordination centre in Amsterdam in 2018. The centre contacted the Belgian federal judicial police, which enabled the victim to be taken in by a specialised reception centre for victims in Belgium.

Fingerprints revealed that the victim had a false identity and was already known to the police for prostitution. As a civil party in the trial, she stated that she had been forced to use this false identity and to prostitute herself in a window in the Gare du Nord area from 2013 onwards, before fleeing to Holland in 2018. The court found that the victim's statements were consistent, concordant, detailed and credible. A medical certificate was drawn up by a psychologist describing the post-traumatic stress experienced by the victim.

The first Nigerian defendant was already known to the authorities[489] in connection with a large case in Antwerp involving the smuggling and trafficking of young Nigerian women[490]. The modus operandi of the Antwerp case corresponded to the one used in the present case. The defendant, an acquaintance of the victim's family, offered her a job in Europe before transporting her to Belgium and handing her over to the second defendant. According to the victim, the defendant had demanded EUR 45,000 for the transport and was putting pressure on her family by demanding more than the initial sum. The defendant denied receiving any money and travelling with the victim to Italy and Portugal to obtain false passports, before finally admitting to the charge of smuggling.

According to the hearings of the victim and the first defendant, the second Nigerian defendant exploited the prostitution of the victim. However, she denied the facts and denied knowing the first defendant, despite the fact that they were registered at the same address and that they had been in romantic relationship for many years. In view of her contradictory statements, the court convicted her of trafficking for the purpose of sexual exploitation, with the aggravating circumstance of abuse of vulnerability.

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486 Following the reform of sexual criminal law (Law of 21 March 2022 amending the Criminal Code), the aggravating circumstances of use of coercion, threats and violence provided for in the former legislation and applying to the acts in question are not included in the new article criminalising procuring.

487 Brussels French-speaking Crim. Court, 16 February 2023, 47th ch. (final).

488 One of the defendants had already been convicted in the past: twice for human trafficking and once for human smuggling.

489 The Payoke centre informed Myria of the fact that the defendant had already been convicted four times for human trafficking.

490 In particular, in a judgment handed down on 18 January 2017 by Antwerp Crim. Court.

Both defendants were convicted of smuggling with aggravating circumstances and ordered to pay EUR 5,000 in pecuniary and non-pecuniary damages to the young Nigerian woman. Considering that this case and the Antwerp case were linked by a single intention, the court referred to the sentence handed down to the defendant in the Antwerp case. It also sentenced the defendant to 200 hours of community service and a fine of EUR 8,000. Another victim filed a civil suit, but did not appear at the trial.

2.1.2. | Latin American victims

There were several decisions concerning mainly trans(gender) victims from Latin America.

South American victims in a massage parlour and a private brothel

In **a judgment of 6 December 2022**[491], **the Leuven Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation of several women from South America. Three defendants were prosecuted in this case, naemly two women of Belgian nationality but of South American origin (Dominican Republic and Cuba), and a Belgian company. They were prosecuted for a number of offences, including running a brothel, exploiting prostitution and advertising prostitution. Only the first defendant was prosecuted for human trafficking, selling cocaine and money laundering. A victim of Dominican nationality filed a civil suit.

The criminal investigation revealed that a 'massage parlour' had been operating in a commercial building in Diest between 2016 and 2020. Initially, it was operated by a company, the third defendant. After the company declared bankruptcy, the first defendant took over the business in her own name. Statements from clients and the women who worked there showed that the parlour was used for illegal prostitution. Online platforms were used to advertise the business.

Between 2017 and 2020, prostitution also took place in a flat in Aarschot. The defendant rented it and clients were able to enjoy the sexual services of the girls in a bedroom.

The second defendant was involved in the practical organisation of the prostitution.

According to the court, the acts of human trafficking concerned 36 people. The sex workers had to be available every day of the week (7/7), from 9 or 10 in the morning until after midnight to receive clients, which meant that they could very rarely leave the premises. If they wanted to take a day off or leave the building for a few hours, they had to ask permission.

The sex workers were not obliged to perform any specific sexual acts, but were required to be sexually flexible. When a customer expressed dissatisfaction, the first defendant would get angry and shout. The proceeds from the services provided were shared equally between the first defendant and the sex worker concerned. The sex workers also had to pay a lump sum of EUR 20 for the placement of advertisements and ancillary costs (in particular sex toys and condoms). In the flat in Aarschot, the system changed to a fixed rent per room after a certain period, ranging from EUR 300 to EUR 400 per week. This enabled the defendant to collect an amount that far exceeded the cost of renting the flat (EUR 600 per month).

According to one estimate, the defendant's weekly income averaged EUR 6,000 from the massage parlour and EUR 1,800 from the flat. A 'successful' sex worker earned between EUR 1,000 and EUR 1,500 a week from their activities. In addition, the defendant provided board and lodging for many of the sex workers who had to pay for this which, in practice, left some of them with only a meagre income from their activities.

The defendant also closely monitored the performance and diligence of the sex workers. She collected payments from the clients herself. In her absence, this task was entrusted to someone she trusted. She was also able to exercise remote control through a system of cameras.

491 Leuven Crim. Court, 6 December 2022, ch. C2 (final).

Nor did she hesitate to use personal circumstances, such as a sex worker's virginity or pregnancy, to attract clients. She also supplied clients with cocaine. In addition, she used the sex workers' accounts to transfer illicit funds abroad. As she received a lot of cash, she could not carry out all the transactions in her own name.

One of the girls, who filed a civil suit, was the niece of the first defendant, and was clearly a victim of human trafficking. Her aunt had arranged a sham marriage in the Dominican Republic for her to come to Belgium, where she was almost immediately forced into prostitution, evidently against her will. She had to pay an alleged debt of EUR 8,500 to her aunt, on whom she was entirely dependent, both administratively and financially.

The court also ruled that the acts remained punishable after the entry into force of the new law on sexual criminal law. The acts could be considered as 'organising the prostitution of others with the aim of obtaining a benefit'. The exception to the criminalisation of the organisation of prostitution provided for by the law was not applicable.

The charge of advertising for prostitution remains punishable following the entry into force of the new law. The new regulations provide for a few exceptions to the ban on advertising, in particular where a person of legal age advertises their own sexual services on an online platform specifically designed for this purpose. However, according to the court, this provision was not applicable in this case, as the defendant was acting as an intermediary between the sex workers and the platform, and there were no guarantees to reduce the risk of abuse and exploitation.

The court sentenced the first defendant, for human trafficking and other offences, to five years in prison and a fine of EUR 288,000. She was deprived of her rights for five years and banned from working for five years. A substantial sum was confiscated on the basis of the calculation of the financial benefit obtained illegally, amounting to a total of EUR 602,330. Part of this sum was awarded to the plaintiff.

The victim was awarded compensation of EUR 60,583. The company was ordered, jointly and severally with the first defendant, to pay damages worth EUR 18,805.

Prostitution of trans(gender) persons in Flanders — exploitation by a former victim

In **a ruling of 10 June 2022, the Ghent Court of Appeal**[492] reviewed a case of human trafficking involving Latin American trans(gender) persons in West Flanders. The decision at first instance was discussed in a previous annual report.

Initially, nine defendants, including one company, were prosecuted for several offences. Four defendants, of Belgian, Dominican and Thai nationality, were charged with trafficking in human beings under aggravating circumstances. The first defendant and the fifth defendant were married. The second and third defendants were also in a relationship. In addition to these charges, the four defendants were prosecuted along with other defendants for other offences such as running a brothel and prostitution, pimping and child pornography.

The acts took place in various villas in West Flanders. Sexual services were offered on a sex dating website by Latin Americans (usually transgender), often staying illegally. The investigation revealed that the second defendant acted as an intermediary between the young girls and the first defendant. She was responsible for renting out the rooms, placing the advertisements, collecting the rent and answering the clients' phone calls. The girls had to pay a daily rent for the room. For some, it was EUR 30 and for others EUR 80 per day. If the second defendant supplied the client, the girls had to give up part of their earnings, up to 50 %. She collected the money for the first defendant. A bank investigation revealed that the first defendant's accounts showed large cash deposits and other transactions suspected of being income from prostitution. The second defendant had arrived in Belgium in 2010 and had been sexually exploited herself. She had obtained victim status through Payoke.

492 Ghent, 10 June 2022, 10th ch.

In its **judgment of 5 November 2021**[493], **the Bruges Criminal Court** had acquitted the fifth defendant at first instance, as she was in Thailand. The second and third defendants were found guilty of human trafficking. The first defendant died during the proceedings. The court found the second defendant guilty, even though she had to collect the proceeds for the main defendant and therefore did not make a large profit herself. She acted as a co-perpetrator in making an abnormal profit for the first defendant, even though the financial benefit she received as a result was rather small. In addition, the bank investigation showed that she benefited from a significant flow of income through cash deposits, at least for a certain period of time.

They received prison sentences ranging from 30 months to three years, some of which were suspended, as well as fines. Sums of money were also confiscated. The other defendants were sentenced for the other acts. An appeal was lodged and the court re-examined the case.

The court found the fifth defendant guilty as a co-perpetrator of human trafficking. Although she had been in Thailand permanently from May 2019, she had previously exploited several women. She was a sex worker herself and, moreover, co-responsible for the accommodation and control of the sex workers, along with the first defendant who was also her husband. The court found that the sex workers were clearly in a vulnerable situation because of their illegal or precarious administrative situation, or because of their precarious social status. Most of them were staying illegally in Belgium. As a result, they could not sign regular employment contracts in Europe and were at the mercy of pimps. They were not declared or registered anywhere and were therefore not entitled to social rights and protection. Some of them were trans(gender) and particularly vulnerable for this reason alone. All the sex workers had to pay a fee that was not in line with the market for prostituting themselves in places of prostitution: they either had to pay EUR 80 a day to rent a room (EUR 560 a week), or hand over half the income they earned from their sexual activities. Some of them even said that they paid the rent and also handed over half their income. The sex workers were not allowed to choose their own working hours or the price of their services. The defendant was aware of their vulnerability.

The second and third defendants were again found guilty of human trafficking.

The three defendants were sentenced to three years in prison and fines ranging from EUR 120,000 to EUR 304,000, some of which were suspended. Sums of money were confiscated. The other defendants, including the company, were convicted of the other charges. However, the confiscation of the two properties was annulled by the court on the grounds that their value was disproportionate to the calculated financial benefit.

The two victims who had filed a civil suit were once again awarded compensation of EUR 1,500 and EUR 3,000 respectively for pecuniary and non-pecuniary damages.

Sexual exploitation of trans(gender) victims in private rooms and champagne bars

In another case involving the sexual exploitation of several trans(gender) persons, it should be noted that the public prosecutor initiated proceedings for human smuggling and not human trafficking.

In this case, **the Bruges Criminal Court** convicted a couple of Belgian defendants in a **judgment rendered on 8 February 2023**[494] for procurement and smuggling with the aggravating circumstance of usual activity, in Ostend and Lede.

During a routine check of advertisements on the 'Redlights' website, Ostend police noticed a significant increase in the number of South American trans(gender) persons receiving people at a private address in order to offer them sexual services in return for payment. After making an appointment with one of them in a flat in Ostend, the police met a trans(gender) sex worker. They only spoke Spanish and were in possession of a Colombian passport and an order to leave Belgium. They had almost always worked as a prostitute since arriving in Belgium in 2019. They worked alone and independently. They had found the address through a Spanish friend and rented an apartment there for EUR 350 a week, handing over the money to the defendant.

493 West Flanders Crim. Court, Bruges division, 5 November 2021, ch. B15 (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 71-72 and Myria's website (Case law).
494 West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal).

When the flat was inspected by the police, two illegal African women were also present. They were working as prostitutes through 'Redlights'. The lease contract signed provided for a daily rent of EUR 50. The defendant collected the rent from the first woman every week and from the second woman every day.

The phones of the victims and the defendants were examined (including WhatsApp conversations). A check carried out in the champagne bar in Lede belonging to the couple, revealed two illegal Thai trans(gender) people who were receiving their clients there. They managed the publication of their advertisements themselves and were allowed to keep the money from their prostitution.

During a search of the bar in Lede, another illegal immigrant was discovered. She had a residence permit valid only for Italy. She was renting a room for EUR 50 a day and working as a prostitute. She had found the address through an advert on 'Redlights'. She received her own clients and shared half of the profits with the defendant when the latter sent her clients who had come to her bar without using the advertisements.

A phone investigation revealed that one last person worked in the bar. She stated that she had been recruited by the defendant and worked as a prostitute there from 18:00 to 06:00. She earned 40 % of what the client ordered in drinks. For sexual contact, she charged EUR 100 for half an hour and EUR 150 for one hour. She kept half the money for herself. On one occasion, she provided an escort service for the defendant in Aalst. She received EUR 200 and gave EUR 50 to the defendant. It was the defendant who set the prices and the money was given to her by the clients.

The Belgian defendant owned the champagne bar in Lede. He advertised rooms for rent on 'Redlights' and was responsible for renting them out, both in Lede and in Ostend. The other defendant, a Belgian born in Haiti, was a self-employed sex worker. She admitted that she had also rented out the rooms in Ostend and Lede. A search was carried out at the couple's home, where the sum of EUR 4,140 was found in her wallet.

Concerning **the charge of smuggling**, the judge took the following factors into account: the couple were aware that they were renting out the rooms to people staying illegally, as they had been warned of this by their accountant on several occasions; they were mainly renting out to people of foreign origin; they did not ask the people to sign a rental contract or require them to register with the Belgian national register; they asked for the rent to be paid in cash; and the rent charged was not in line with market prices. The judge reclassified the charges brought by the public prosecutor's office of harbouring with a view to prostitution and running a brothel as pimping[495] following the reform of the sexual criminal law[496]. They took the following factors into account: the fact that the advertisements for rooms to let had been published on 'Redlights' for sex workers; and the abnormal financial benefit derived from the exorbitant rents received. The defendants were sentenced to one year in prison and fined EUR 48,000. A sum of EUR 4,140 was confiscated from the female defendant.

Exploitation of young South American women in private rooms

The Mons Court of Appeal re-examined a case of smuggling and exploitation of young Latin American women in flats. This case, which was heard at first instance by **the Charleroi Criminal Court on 27 October 2021**, was discussed in a previous report[497].

Fourteen defendants of various nationalities (Brazilian, Belgian, Peruvian, French and Moroccan) were prosecuted, most of them for exploitation of prostitution with aggravating circumstances, human smuggling with aggravating circumstances and criminal organisation. A number of defendants were prosecuted for pimping in hotels and one for possession and sale of narcotics. Two defendants were also prosecuted for human trafficking with aggravating circumstances. Three victims and Myria filed a civil suit. The case is composed of two parallel investigations that were joined together, bringing to light two prostitution networks. Regarding the first nine defendants concerned with the first network, **the Charleroi Criminal Court** convicted them on the majority of the charges against them. The court considered that the charge of smuggling had been established because the exploitation of the victims' prostitution had provided them with a means of subsistence and accommodation in Belgium. This exploitation had thus contributed to their stay in Belgium.

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495 On the basis of new Article 433 quater/1 of the Criminal Code.

496 Since the Law of 21 March 2022, amending the Criminal Code, came into force.

497 Hainaut Crim. Court, Charleroi division, 27 October 2021, 6th ch. (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 70-71 and Myria's website (Case law).

Three defendants acted as receptionists. They answered clients' phone calls, made appointments, directed them to the places of prostitution, informed the prostitutes and checked the duration and terms of the service, then reported back to the main defendant, a Brazilian woman, who was in charge of the first prostitution network and defined the roles of the various members, giving instructions on how to deal with the prostitutes.

The public prosecutor and two of the three defendants who acted as receptionists, one of whom was the daughter of the other one, lodged an appeal.

The charges related to smuggling and exploitation of the prostitution of others, with aggravating circumstances, and participation in a criminal organisation. The defendants were sentenced to two years in prison (with a five-year suspension) and a EUR 3,000 fine (with a three-year suspension). They did not contest the facts of the case but sought their acquittal, invoking the general legal principle of invincible error as a ground to justify the exclusion of criminal liability. They alleged that, being of Peruvian origin and unfamiliar with Belgian law, they were unaware that, by making a profit from the prostitution of others, they were participating in an unlawful activity.

In a ruling of 5 October 2022, the Mons Court of Appeal[498] took into account the fact that the defendants had been told that the WhatsApp application offered greater security with regard to the police, and the fact that they had continued their illegal activities after the arrest of a fellow receptionist by the police. The court found it implausible that they could have thought this was purely related to the failure to declare business activities and not to human smuggling, exploitation of the prostitution of others and participation in a criminal organisation. Following the reform of the sexual criminal law, the court reclassified the charge of exploitation of the prostitution of others as procuring and abuse of prostitution with aggravating circumstances, and upheld the sentences and confiscations handed down at first instance. The defendants were ordered to pay Myria EUR 1 in non-pecuniary damages.

2.1.3. | Loverboy method, including the application of the non-punishment clause

Once again this year, Myria was informed of several decisions relating to cases involving the loverboy method. The cases involved both Dutch-speaking and French-speaking victims from Antwerp, Bruges and Liège. In most cases, the victims were Belgian minors, often very young, barely 13 or 14, and often from vulnerable family backgrounds. The perpetrators were often very young themselves. The sexual services were generally offered via online advertisements and took place in hotels or Airbnb accommodation.

The Ghent Court of Appeal ruled on a case discussed in the previous annual report involving the loverboy method with underage girls and forced criminality. The girls had to carry out 'ripdeals', i.e. making an appointment with a client and running off with the money. The first judgment was upheld on appeal[499].

498 Mons, 5 October 2022, 4th ch.

499 Ghent, 18 February 2022, ch. 10. and West Flanders Crim. Court, Bruges division, 22 September 2021, B17. See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 73-74 and Myria's website (Case law).

The loverboy method involving very young Belgian girls

The Bruges Criminal Court[500] and **the Antwerp Criminal Court**[501] both ruled on cases in which the loverboy technique had been used on very young underage victims, aged 13 and 14. In one case, the defendant was a young Bulgarian man and in the other, a young Dutchman. In both cases, the victims were young girls from difficult family backgrounds (runaways from institutions or from home). In both cases, the police tracked down the girls thanks to advertisements on sexual dating websites. In one case, the defendant was prosecuted for human trafficking, but also for rape, exploitation of debauchery and prostitution, as well as for drug-related offences. He was convicted on the basis of the evidence in the case and the victim's reliable statements. In the other case, the defendant was also prosecuted and, on the basis of all the evidence in the case, convicted of rape with violence against a minor, indecent assault on a minor and distribution of child pornography.

In both cases, the defendants were sentenced to five years in prison, suspended on probation. For one of the defendants, the conditions imposed included a ban on contact with the victim and medical and psychological follow-up for his drug problem.

Another decision handed down by **the Bruges Criminal Court**[502] concerned two young Belgian girls, aged 15 and 16, who had run away from an institution. In the days following their escape, they went from one hotel to another in different towns in Flanders. Each time, they had sexual relations with different men. The clients were recruited via a sex dating website. The girls had to hand over the money they earned to their pimps. The defendant, one of the two pimps, repeatedly denied the facts. This was despite all the evidence, including a DNA sample. He was prosecuted and convicted for human trafficking and exploitation of prostitution. He was handed a two-year suspended prison on condition that he undergo psychological counselling by a specialist service and that he be forbidden to have any contact with the two victims.

Loverboy technique and application of the non-punishment clause

An interesting case involving young teenage girls exploited using the loverboy technique was tried in **Liège.** Four defendants (including one woman) were charged with various offences: human trafficking, incitement and exploitation of prostitution, advertising for the prostitution of minors, all with aggravating circumstances, as well as criminal conspiracy. The victims were four young teenage girls, minors at the time of the events, three of whom were under the age of 16. They were exploited in Liège, Arlon and Brussels between November 2019 and December 2020. The female defendant benefited from the non-punishment clause.

The case began when, in 2020, a client reported to Child Focus that he had made an appointment through an advertisement on the 'Redlights' website with a prostitute who appeared to be underage, in a flat in Liège. The girl was heard on video. Two searches were carried out. Two other teenage girls then lodged a complaint, stating that they had been prostituted through 'Redlights'. They said they had been introduced to the first teenager, who had convinced them to engage in prostitution and put them in contact with the defendants. In their hearings, the teenagers explained that they had met a fourth victim, which was corroborated by an analysis of one of the defendants' phones and the contact details and photographs linked to the advertisements published on the 'Redlights' website[503], although she denied having been a prostitute.

In **a judgment of 15 July 2021**, **the Liège Criminal Court**[504] upheld all the charges against the male defendants.

500 West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17, No. 1268 (final).
501 Antwerp Crim. Court, Antwerp division, 21 March 2022, ch. AC8 (final).
502 West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17, No. 1267 (final).
503 The court found that the fourth victim's denials lacked credibility in light of the evidence in the case file.
504 The Liège Crim. Court, Liège division, 15 July 2021, 19th ch. (appeal).

The first defendant, an Italian, exploited the prostitution of the first two teenage girls. The first victim had been put in touch with him via Snapchat by someone she had met in a square in Liège. He adopted the loverboy attitude, taking advantage of her romantic feelings towards him, and convinced her to prostitute herself by showing her the money she would make. He gave her instructions about prostitution and took her to places of prostitution (clients' homes, flats or hotels). He refused to let her stop prostituting herself when she expressed an intention to do so, demanding large sums of money from her (EUR 7,000 and then EUR 20,000). The rates were EUR 100 per half-hour, EUR 150 per hour, and she received between 10 and 15 customers per day. The defendant used the money to pay for car hire, food, Airbnb, cannabis and cocaine. Owing to the pressure and the grip he exerted on her, the victim lied about the role he had played before retracting her statement.

The court acquitted the second defendant, a Belgian woman, of all the charges, even though she admitted them. A former prostitute herself, she was in a relationship with the first defendant and was allegedly locked up and abused on several occasions when they were living together. The first teenager had been introduced to her by the first defendant. She was in charge of the photographs, advertisements and appointments on 'Redlights'. The teenager would give her half of her earnings and she gave half to the first defendant. On the basis of the non-punishment clause[505] and complaints in which the female defendant and her entourage had reported both mental and physical violence inflicted by the defendant, the court found that she had acted without any real autonomy as a lovergirl under the influence of the defendant, who had adopted the attitude of a loverboy. The court pointed out that lovergirls are themselves victims of loverboys. They commit punishable acts in order to remain in the good books of their loverboy. The first victim had played the role of lovergirl herself in order to help recruit the third teenager and then, together, convince the second teenager to prostitute herself.

The third defendant, a Belgian, was in a relationship with three of the four teenage girls after accosting them in the street. He had convinced them to prostitute themselves and exploited their prostitution. He managed the advertisements, surveillance, transport and accommodation. The third victim had run away with him for several weeks. When the victims changed their minds, the defendant used violence.

The fourth defendant, a Belgian, was a repeat offender who failed to appear at the trial. He exploited the prostitution of two of the girls, taking 20 % of their earnings. He was responsible for transport, advertising, clients and accommodation.

The court pointed out that the fact that the girls had not claimed the status of victim did not exclude the offence of human trafficking. As the girls had rebelled against parental authority, the court held that abuse of their situation of vulnerability was an aggravating circumstance. Using a specific modus operandi[506], the defendants collaborated in the recruitment, reception, surveillance, transport and accommodation of the teenage girls (through reservations in hotels and Airbnbs and in a brothel) with an organisation for the recovery of the profits and control of the services. Analyses of one hotel's phones and cameras revealed the relationship between the defendants.

With regard to human trafficking, the court found the aggravating circumstances of underage victims, habitual activity, abuse of a position of vulnerability, association and violence, threats and coercion to be present on the basis of the following elements: the girls being made to stay with people who monitored them, particularly when they received clients; the regular relocation of their place of work/ accommodation; the lack of freedom to come and go, and of autonomy in organising their work.

The sentences handed down ranged from three to seven years in prison and fines of between EUR 24,000 and EUR 32,000. Two victims were represented at the trial by their parents, the legal representatives of the civil parties (one of whom was absent), in their capacity as such and on their own behalf. The court ordered the three defendants jointly and severally to pay them EUR 1,000 each in their capacity as legal representatives, and EUR 500 in their own names.

The third defendant appealed. In a ruling delivered **on 15 March 2022, the Liège Court of Appeal**[507] found that all the charges against the defendant remained established and upheld both the fine and the civil judgment. However, the court increased the sentence to 10 years in prison (instead of seven), in particular because of the extreme seriousness of the offences and the number of victims.

505 On the basis of Article 433 quinquies, § 5 of the Criminal Code: victims of human trafficking who take part in offences as a direct consequence of their exploitation do not incur any penalty for these offences. When the defendant invokes the non-punishment principle, which is an absolute ground for acquittal, the defendant does not have to provide proof.

506 The court took into account the fact that the three defendants used the same vehicles, bought phone cards, booked in the same hotels and the same places of prostitution, regularly contacted each other by phone and travelled together in Liège, Arlon and Brussels.

507 Liège, 15 March 2022, 18th ch.

Hungarian loverboy and Hungarian victims

In **a decision of 28 April 2022**[508], **the Antwerp Court of Appeal** reviewed a case of human trafficking for the purpose of sexual exploitation, which the Antwerp Criminal Court had already ruled on in **a judgment of 14 December 2021**[509].

The defendant, a man of Hungarian nationality, had exploited several young Hungarian women in hotels in Antwerp and Brussels. Their sexual services were offered on a sex dating website.

He was known for human trafficking offences in the United Kingdom, where he was sentenced to five years in prison. Europol revealed that he had been convicted of similar offences in the Netherlands. Following an investigation involving phone calls, phone tapping, consultation of hotels and the sex dating website, the intervention services searched a hotel room.

The victim, also Hungarian, was his partner. She had already been working as a prostitute for two years. She and the defendant had initially lived on the streets, but her income had enabled them to sleep in hotels. Both used drugs on a daily basis. She gave all her income to the defendant so that he could buy the drugs. The investigation revealed that the defendant had used the loverboy technique. He had constant control over her and was aggressive.

The defendant was charged with human trafficking for the purpose of sexual exploitation, using fraudulent means, violence, threats and any form of coercion. The court reclassified the offence by adding the aggravating circumstance of having taken advantage of the victim's vulnerability.

According to the court, the victim was a particularly vulnerable young woman, given her precarious financial and administrative situation and the large age difference between her and the defendant.

She had no personal possessions, was socially isolated in Belgium, could not speak the language, was addicted to drugs and was effectively living on the streets. The defendant had used the loverboy technique, alternating coercion and kind remarks to get the victim to prostitute herself. He took all her income and demanded a high work rate. The fact that the defendant and the victim had a certain relationship did not detract from the fact that the defendant exercised control. The record also shows that the defendant had no source of income and was himself addicted to drugs. He deprived her of food, as is clear from the phone taps and the comparison of photographs over a period of six months, which show her significant weight loss.

The court sentenced the defendant to five years in prison and a fine of EUR 8,000. He was also stripped of his rights for ten years.

The court of appeal found that the facts were true and upheld the first judge's decision. The fact that the victim continued to engage in prostitution and visited the defendant in prison did not change anything. The victim's consent was irrelevant and, given her critical situation, it was clear that her free will had been impaired. The court upheld the sentence handed down by the court.

Loverboy technique used on adult women by a businessman and a former Belgian politician

The Antwerp Court of Appeal again reviewed a case of human trafficking in which the loverboy technique was used. This case had already been processed by the Antwerp Criminal Court in a **judgment dated 29 June 2020,** discussed in a previous annual report[510]. Three defendants of Belgian nationality were charged with various offences, including human trafficking, assault and battery, harassment and rape. Only the first defendant and the second defendant were prosecuted for human trafficking. The third defendant was prosecuted solely for assault and battery. The main defendant was a former politician and businessman. The third defendant was a well-known actor. Two victims filed a civil suit.

According to the court, the main defendant was guilty of exploiting the victims by making them work for him as prostitutes (control) in his home (harbouring), and by actively seeking new victims (recruitment). The other defendant, who was his partner and also a prostitute, helped to organise and run the prostitution business: she placed advertisements, answered the phone 'for work', accompanied clients and kept her partner informed. She was also responsible for collecting and distributing the proceeds.

508 Antwerp, 28 April 2022, ch. C6.
509 Antwerp Crim. Court, Antwerp division, 14 December 2021, ch. AC10 (appeal).
510 Antwerp Crim. Court, Antwerp division, 29 June 2020, ch. AC10. For more details, see Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, p. 66 and Myria's website (Case law).

The court ruled that the victims' consent was irrelevant, as they feared he would throw them out on the street. In addition, one of the victims had had a child with the defendant and he had threatened to take the child away from her.

The court also found them guilty of the other charges. The third defendant, who was charged solely with assault and battery, was acquitted.

The main defendant was sentenced to seven years' imprisonment and a fine of EUR 40,000. The other defendant was sentenced to three years in prison and a fine of EUR 24,000, part of which was suspended. The court took into account the fact that she was both a victim and a co-perpetrator. She worked as a prostitute and was beaten by her boyfriend, the first defendant, when she did not have enough clients. The plaintiffs received one provisional euro and EUR 3,500 in non-pecuniary damages respectively. The EUR 15,000 claimed for pecuniary damages was refused. According to the court, this sexual activity could not justify a claim for damages.

The main defendant lodged an appeal. In an interlocutory ruling, the Antwerp Court of Appeal summoned several witnesses and the two civil parties. They were heard at the hearing.

In **a decision of 16 June 2022**, **the Antwerp Court of Appeal**[511] reviewed a case in light of the new sexual criminal law. As former Article 380 of the Criminal Code had been repealed, the acts were reclassified as procuring on the basis of Article 433 quater/1:

- organising the prostitution of others in order to obtain a benefit, except in the cases provided for by law;
- promoting, inciting, encouraging or facilitating prostitution in order to obtain, directly or indirectly, an abnormal financial or other benefit;
- taking measures to prevent or make it more difficult to leave prostitution.

Consequently, the fact that the defendant had taken one of the girls to an appointment for prostitution was no longer punishable. He was therefore acquitted of all charges in respect of these acts.

The court also confirmed that the reasonable time limit had been exceeded despite the complexity of the case and the fact that there had been no periods of inactivity, and took this into account when sentencing.

The court did not question the credible and consistent statements of all the witnesses involved. The defendant deliberately sought out women who were in difficulty due to drug addiction, lack of money or homelessness. The defendant rushed to their aid by providing them with money, goods and/or shelter, and then exploited their weakness to have hard sex with them, whether or not in exchange for payment or compensation in kind.

Some of these women were then exploited in prostitution, having no other choice, given their precarious situation. When he became involved with the second defendant, he left her in charge of the practical aspects of exploiting the victims.

The court explained, for each woman, why it was a question of human trafficking. For instance, the defendant had recruited (from a centre for homeless people), received and harboured one of the victims in a hotel with the aim of exploiting her prostitution. He did this at a time when she was homeless and having financial problems, which enabled him to control her and abuse her precarious situation. The fact that the victim voluntarily contacted the defendant and asked him for help does not change anything. Nor does the fact that the victim had already engaged in sexual activities in the past. The court found that the acts of human trafficking were established.

The court amended the sentence to five years in prison, three of which were suspended, and a fine of EUR 18,000. The defendant was ordered to pay the two victims compensation of EUR 15,000 and EUR 3,500 respectively in pecuniary and non-pecuniary damages.

511 Antwerp, 16 June 2022, ch. C6.

Sexual exploitation of a Senegalese woman

The Liège Court of Appeal reviewed a trafficking case in which three defendants were prosecuted in various capacities in relation to different charges: trafficking for the purpose of sexual exploitation, human smuggling, criminal organisation, rape and assault and battery.

A fourth defendant was prosecuted solely for human smuggling. The victim, a Senegalese woman, filed a civil suit. She reported the acts of trafficking to the police in Liège in 2016, with the support of a reception centre for victims. Myria also filed a civil suit.

The first and main defendant, a Belgian, was a repeat offender[512]. He was the former manager of a prostitution network in Liège who had already been convicted of human trafficking in a previous emblematic case[513], mentioned in the 2007 annual report[514].

The prosecution stated that after several long-distance contacts, promising her a good life, the defendant convinced her to leave Senegal and come to Luxembourg and then Belgium. They first met in Morocco and got married there in a religious ceremony. During this period, the defendant and his partner in Belgium regularly sent her money. According to the victim, it was at his instigation that intermediaries and smugglers of African origin enabled her to leave Africa for Belgium using false identity documents. The defendant exerted control over her by adopting a loverboy attitude. She had to do the housework in the defendant's home and stated that he had encouraged her to prostitute herself via the 'Badoo' application. She was unable to leave because she was pregnant, staying illegally and had no money. She was also reportedly forced to have sex with several people. Lastly, she stated that she had been bullied, insulted and hit by the defendant and his partner if she refused.

The second defendant, a Belgian woman born in Nigeria, was the first defendant's partner and was in charge of the housekeeping and management of their home, where a third partner and the defendant's parents also lived. The third defendant, an Italian born in Seraing, was also a repeat offender. He dealt with false documents and was involved in the assets of the first defendant, as the latter's lawyer and right-hand man.

He had also been convicted in the emblematic Liège case of criminal organisation, trafficking and aiding illegal residence with aggravating circumstances. The fourth defendant, a Senegalese woman who failed to appear at the trial, was arrested by the Moroccan authorities when she attempted to get the victim across the border at Tangiers and was identified by the latter. An analysis of the defendants' multimedia devices showed she had received a plane ticket, consisting of a financial benefit.

In **a judgment of 20 October 2021**, **the Liège Criminal Court**[515] acquitted the main defendant of the trafficking offence, on the grounds that not all the essential elements of the offence were present in this case, in particular the purpose of sexual exploitation. It also acquitted the main defendant's partner and his right-hand man of this offence.

In the case of the first three defendants, the court reclassified the smuggling offence as facilitating residence[516]. It convicted the main defendant and his partner on this charge, but acquitted the third defendant, acceding to the latter's request to invoke an exception on humanitarian grounds.

The court also acquitted the defendants on the charges of rape, criminal organisation, which was reclassified as criminal association, and assault and battery. The latter charge was, however, declared to have been established in the case of the first defendant's partner, to the detriment of the plaintiff, although the court recognised the excuse of provocation.

In the civil suit, the main defendant and his partner were ordered to pay EUR 2,000 in damages to the plaintiff (the second defendant was also ordered to pay EUR 500 to the plaintiff, on the grounds of assault and battery)[517].

The fourth defendant was convicted in absentia of attempted smuggling with participation in a criminal association. She was required to pay a final EUR 500 to the prosecution and a final one euro to Myria.

512 Following the ruling of the Liège Court of Appeal of 2 December 2010.

513 He was also charged with smuggling human beings. The network was comprised of Albanian and Turkish pimps, Nigerian madams, Turkish and Belgian bodyguards and Italian owners of houses and windows. The case concerned his organisation's role in receiving stolen shares that the Sicilian mafia wanted to use as an investment in a bar in Liège. The defendant had also been involved in another case, during the period 2000-2002, concerning a Nigerian trafficking network based on a small family business, consisting of an offshoot of the case concerning salons in Liège (Myria, *Annual Report 2010, Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 45-46 and Myria's website).

514 Liège, 18 January 2008, 4th chamber. See Myria, *Annual Report 2007, Trafficking and smuggling of human beings*, pp. 77-83, pp. 106-107 and Myria's website.

515 The Liège Crim. Court, Liège division, 20 October 2021, 19th ch. (appeal) (unpublished).

516 Due to the fact that the prosecution could not prove that they derived a personal financial benefit from having the woman come over.

517 Given the acquittal of the defendants for human trafficking and their conviction only for facilitating residence (and not for human smuggling), the court declared that it did not have jurisdiction to rule on Myria's application.

The public prosecutor and the first two defendants appealed. As the victim had died in the meantime, her son took over the proceedings, represented by his guardian. Myria was not involved in the appeal.

In **a ruling rendered on 14 September 2022**, **the Liège Court of Appeal**[518] overturned the majority of the court of first instance's judgment. Contrary to the criminal court, it found that trafficking for the purpose of sexual exploitation had been established in the case of the first defendant, his partner and the lawyer, who had knowingly played an active role. The main defendant used the loverboy method, which the court described in detail (recruitment, enticement, attachment), making the victim totally dependent on him. This was done in order to exploit her sexually, if only for his own benefit. The court noted that the law also criminalises anyone who exploits the victim in order to satisfy their own sexual desires. The defendant had control over the victim by using this method. The court based its decision on the victim's statements, which described a significant and well-practised modus operandi, the statements of the defendant's partner and witnesses, as well as the findings of the investigating officers (in particular the analysis of the defendant's computer). Confrontations were also organised. Finally, the court upheld the aggravating circumstances of abuse of vulnerability, coercion, violence or threats and criminal association.

The court also upheld the conviction of the main defendant and his companion on the smuggling charge, which was reclassified as facilitating residence. Unlike the criminal court, it also convicted the main defendant's right-hand man on this charge. The court considered that, although he had not participated in the victim's entry into Belgium, he had contributed to her illegal stay. It rightly rejected the benefit of the humanitarian exception, since the defendant's action was part of a primarily criminal approach, namely to satisfy the sexual desires of the main defendant, of which he was well aware.

Finally, the court confirmed the conviction of the fourth defendant for attempted human smuggling. She attempted to allow the victim to enter Belgium illegally in order to obtain a financial benefit.

It also found that all the defendants had committed the offences as part of a criminal association.

The sentences varied from one to three years in prison and the fines ranging from EUR 8,000 to EUR 80,000. A forfeiture of rights was also pronounced.

As the victim's son did not make his claim sufficiently clear in the civil proceedings, the court decided to reopen the case.

Sexual exploitation of a young Albanian woman

The Liège Court of Appeal was asked to re-examine a trafficking case involving an Italian defendant who had exploited the prostitution of a young Albanian woman in Italy and in several places in Belgium afterwards.

In **a judgment of 30 November 2021** rendered in absentia and analysed in the previous report[519], **the Liège Criminal Court** had convicted him of human trafficking and exploitation of prostitution, both with aggravating circumstances. The case was initiated when the victim filed a complaint with the federal judicial police. She explained that, as a young student in Albania, she had met the defendant while on holiday in Italy in 2012 and that he had seduced her. She then decided to stop her studies. The defendant then provided her with accommodation and locked her up, confiscating her passport and identity card, and forcing her into prostitution by telling her that he had money problems. She had to prostitute herself on the street, working at a high rate, and was beaten if she did not comply. The rates were set by the defendant and she was under his almost constant surveillance. She arrived in Belgium in 2015 with false documents and had to undergo an abortion. After her abortion, she was forced to work as a prostitute in bars in Sint-Truiden and Seraing, earning at least EUR 500 a day.

The defendant was sentenced to four years in prison, fined EUR 24,000 and ordered to pay the victim EUR 307,200 in damages.

The public prosecutor lodged an appeal and requested that the charges of exploitation of prostitution be reclassified following the sexual criminal law reform, as follows: procuring, abuse of prostitution with aggravating circumstances and violation of the bans on prostitution. In **a decision of 15 November 2022**, **the Liège Court of Appeal**[520], ruling in absentia, upheld the judgment on the charge of trafficking with aggravating circumstances, except that of endangering the victim's life.

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518 Liège, 14 September 2022, 4th ch.

519 The Liège Crim. Court, Liège division, 30 November 2021, 19th ch. (in absentia and on appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt,* p. 78 and Myria's website (Case law). 520 Liège, 15 November 2022, 18th ch.

It considered that this had not been established, based on the fact that the abortion had probably been performed in accordance with medical rules and without any adverse consequences for the victim. With regard to the charge of exploitation of prostitution, the court followed the public prosecutor in reclassifying it on the basis of the articles set out in the appeal. However, the court considered that the judgment did not meet the requirements of fair punishment, given the physical and moral violence exercised by the defendant against his partner, showing particular contempt for her, and the duration of the offence. The prison sentence was increased from four to six years.

2.1.4. | Exploitation of numerous victims by a Romanian criminal association

In **a judgment rendered on 15 July 2022**, **the Brussels French-speaking Criminal Court**[521] tried six defendants (a Belgian of Romanian origin and five Romanians). They were prosecuted for criminal association, human trafficking for the purpose of sexual exploitation with aggravating circumstances, recruitment and exploitation of prostitution with aggravating circumstances in relation to a large number of victims, some of whom remained unidentified. The acts were committed in several Brussels municipalities between May 2020 and June 2021. Following changes to sexual criminal law, the court reclassified the charges of recruitment with a view to the prostitution of others and exploitation of the prostitution of others as the charge of procuring[522].

The case was initiated on the basis of information obtained from police sources. In January 2021, the police learned that an organisation might be active in the exploitation of prostitution. A cross-check of information gathered through open consultation of Facebook profiles and police data led to the identification of various defendants and victims. The services that monitor prostitution activities via the 'Redlights' website, had contacted a phone number mentioned on one of the advertisements. The appointments that were arranged enabled the police to identify an apartment in a block of flats where three prostitutes and four men were living, and to take down identity and phone details.

The police were then able to link the phone numbers, accounts and reference email addresses to the advertisements published. An analysis of the phones ('retro-zoller'), a check on a vehicle used to transport the girls and verification photos also enabled other defendants and victims to be identified and links between them to be established. The use of phone taps confirmed the contacts between the various defendants and their varying degrees of involvement in the acts.

The court upheld the charge of trafficking for 11 identified victims. Ten of them were also affected by the reclassified offence of procuring, with seven other victims identified. The two charges also concerned an unknown number of victims.

The first defendant benefited from the trafficking of eight identified people. He was the partner of two of them, one of whom he had brought from the Netherlands. According to one of them, she gave the third defendant EUR 250 of the EUR 1,000 she earned and the rest to the first defendant, who drove her to the destination. An analysis of her phone and phone taps showed that he had used violence and made threats against her, particularly when they broke up. He played a central role in providing accommodation. The flat he rented was used as a place to receive clients. The victims were either accommodated in one of the flats rented by the defendant or prostituted themselves in a hotel, in connection with the advertisements on 'Redlights'.

The second defendant was the main driver of the vehicle carrying the girls. He benefited from the trafficking of two identified individuals. He was less involved in the association. One of the victims was present at his home, where she was staying, during a search carried out in July 2020. She gave him some of the money from the tricks to pay the rent. He was also living with a second victim who was prostituting herself in the flat.

The third defendant, a former partner of the second defendant, managed the advertisements on 'Redlights', made the appointments, negotiated the prices and paid for the services. She benefited from the trafficking of five identified individuals. She was in contact with the first defendant, who sent her the addresses where the prostitutes could work and be housed. A victim stated that she gave a fifth of her earnings to the defendant. The defendant was sentenced to 250 hours of community service.

521 Brussels French-speaking Crim. Court, 15 July 2022, 47th ch. (final).

522 New Article 433 quater/1 of the Criminal Code.

The fourth defendant, a repeat offender[523], appeared in custody pending extradition to Austria. The first defendant had hired him as a driver. The analysis of WhatsApp messages on his phone showed that he was involved in prostituting women on his behalf and trafficking an identified victim.

The fifth defendant, who failed to appear at the trial, had benefited from the trafficking of three identified individuals. He was the partner of one of the victims, with whom he lived, and was involved in the occupancy of the flats.

The sixth defendant benefited from the trafficking of two identified victims. He exercised control over one of the victims, with whom he lived.

The sentences handed down ranged from two to six years in prison and from EUR 8,000 to EUR 72,000 in fines, suspended for some of the defendants. The court ordered the return of the vehicle used to transport the victims (or its equivalent value) to its owner, the Romanian voluntary intervenor who appeared at the trial.

2.1.5. | Early marriage within the Roma community

In **a judgment of 5 March 2021**[524], **the Antwerp Criminal Court** examined a case of human trafficking involving a traditional early marriage in the Roma culture.

The case came to light after the youth court's social services department reported it to the public prosecutor's office.

The victim was a 14-year-old girl. Her uncle and grandfather married her off to a 16-year-old boy from a related family, 'in accordance with Roma tradition'. Her mentally fragile parents – the father was apparently deaf and dumb – were unable to resist pressure from the families and were forced to marry off their daughter. The uncle and grandfather were violent towards members of the family. The eldest sister had also been married off earlier. The victim's family was particularly afraid of revenge and reprisals.

The young girl had to live with her in-laws after the wedding, in accordance with Roma tradition. Initially, she was isolated from her family environment and had to engage in sexual acts with the underage boy. The expert report revealed that she had to become pregnant as quickly as possible. After her marriage, she was forced to change schools and regularly missed classes.

The criminal investigation was based on searches, multiple interviews with family members, access to the young woman's medical records and statements from social workers. The court relied on the young woman's initial statements, which she subsequently amended, but which could be corroborated by several objective elements.

The parents-in-law, uncle and grandfather, all Belgian nationals but originally from former Yugoslavia, were prosecuted and convicted of co-perpetrating rape, indecent assault, incitement to debauchery, degrading treatment, human trafficking for the purpose of exploitation of prostitution and culpable negligence. The evidence is that they forced the child to marry, consummate the marriage and have sexual relations. The girl's parents were also prosecuted, but acquitted because, according to the court, they were particularly vulnerable themselves and under psychological pressure from the family. In addition, the mother had sought help for her daughter.

523 He was already convicted in 2015 by Brasov court of first instance in Romania for fraud and scams.

524 Antwerp Crim. Court, Antwerp division, 5 March 2021, ch. AC8 (appeal).

The defendants received prison sentences ranging from three years to 40 months. The victim, who had initially filed a civil suit, withdrew her claim during the proceedings.

The uncle appealed against the judgment. **The Antwerp Court of Appeal** ruled on this appeal in a **judgment of 23 December 2021**[525].

The girl's uncle was also convicted on appeal of human trafficking for the purpose of sexual exploitation. The judgment stated that the acts of trafficking were proven, since the defendant had transported the child to the residence where her 'husband's' family lived and where she was forced to have sexual relations. However, the court ruled that the reasonable time limit had been exceeded and took this into account in setting the sentence.

The uncle was given a 30-month suspended prison sentence.

2.2. | Labour exploitation

2.2.1. | Construction

Myria was informed of two cases of human trafficking for the purpose of labour exploitation in the construction sector. The judgments in these cases were mentioned in previous annual reports. One concerned the renovation of a private house[526] and the other, several building sites in municipalities of Brussels[527]. In both cases, the court of appeal largely upheld the initial judgment.

2.2.2. | Road transport

Myria was informed of two decisions concerning the road transport sector. One case resulted in an acquittal, while the other led to a conviction for human trafficking.

Road transport with lorry drivers originating from Lithuania

In **a judgment of 10 March 2023**[528], **the Bruges Criminal Court** ruled on a case of human trafficking for the purpose of labour exploitation concerning 39 workers in the road transport sector.

A Lithuanian company and its director, a Lithuanian national, were prosecuted for human trafficking with aggravating circumstances, as well as for non-payment of wages and incorrect Dimona declarations. Eight workers filed civil suits.

On several occasions, West Flanders federal judicial police (FJP) saw lorries belonging to a Lithuanian company in a car park in the port of Zeebrugge, along with their drivers, whose living conditions did not meet minimum standards due to the lack of amenities. The FJP sought additional information from open sources and government databases, after which it carried out an inspection of the car park in collaboration with the social legislation inspectorate[529]. Thirteen lorries were seized on the orders of the labour prosecutor.

525 Antwerp, 23 December 2021, ch. C6.

526 Antwerp, 24 November 2022, ch. C6 and East Flanders Crim. Court, Dendermonde division, 18 September 2020, ch. D13V, see Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 70-71. The judgment at first instance is available on Myria's website (Case law. The defendant who lodged the appeal was the owner of the house to be renovated. He claimed not to know the victims, but the court disagreed and confirmed the first judge's analysis.

527 Brussels Dutch-speaking, 28 October 2022, 15th ch. and Brussels Dutch-speaking Crim. Court, 7 March 2019, 25th ch., see Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 82. The appeal concerned only one defendant, the founder of the company. The court largely upheld the judgment, but did not order a prison sentence, only a fine of EUR 60,000. The court considered that the reasonable time limit had been exceeded. The judgment at first instance is available on Myria's website (Case law.

528 West Flanders Crim. Court, Bruges division, 10 March 2023, ch. B17 (appeal).

529 The social legislation inspectorate of FPS Employment, Labour and Social Dialogue. These inspectors, like the NSSO's ECOSOC teams, are authorised to record human trafficking offences

The case revealed that the Lithuanian company organised domestic transport within Belgium and external transport from Belgium to France and the Netherlands. The workers were both Lithuanians and third-country nationals, posted from Lithuania to Belgium. The defendants took the view that Lithuanian labour legislation applied as the workers were posted. The court concluded that Belgium was the country of habitual employment of the lorry drivers, which meant that Belgian labour law was applicable to the employment contract in its entirety, including the rules on the minimum wage.

The findings revealed that the workers only visited the company's head office in Lithuania sporadically. Many workers did not even have Lithuanian nationality and were not actually resident in the country. In the case of posted third-country nationals, the company applied to the Lithuanian government for a work permit, even though they were not resident in the country. The address given was that of a hotel in Lithuania.

According to the court, the intention was clearly to make the lorry drivers work out of Western Europe and not Lithuania. At the end of their period of work, they returned to their place of residence in their country of origin outside the EU, and not in Lithuania. They had to load goods in Belgium and then transport them within Belgium or to the Netherlands, France, Germany or Italy. The lorry drivers had to stay and work in Belgium or neighbouring countries for periods of several weeks and regularly spent the night in a car park in the port. They were paid the Lithuanian minimum wage.

Regarding the charge of **human trafficking**, the court stressed that the offence of human trafficking requires a specific intent to exploit labour in inhumane conditions. This intent may be inferred from the material facts.

The mere fact that a job does not comply with (applicable) social legislation does not necessarily mean that it is contrary to human dignity. Other elements must be concomitant. The court found that the police and the inspection services had not carried out sufficiently concrete investigations into the (living) conditions in the car park. The fact that lorry drivers very often spend the night in their lorries without being able to return home amounts to arduous working conditions. However, according to the court, such working conditions are neither unusual nor prohibited in the international road transport sector. Moreover, it was compensated for by periods of leave lasting several weeks.

The defendants chose a business model that took advantage of the application of Lithuanian social legislation. This enabled them to offer more competitive prices. This competitive advantage was illegal, however, because the lorry drivers were actually entitled to Belgian wage conditions. However, this in itself does not indicate human trafficking.

The court ruled that the defendants had taken advantage of a loophole in Lithuanian regulations to obtain valid work permits for third-country nationals who were not actually living in the country. The case did not show that they had taken advantage of the precarious residence situation of these lorry drivers.

In view of the circumstances, the court concluded that if there had indeed been social dumping, it had not been sufficiently proven that the defendants had intended to employ their workers in conditions contrary to human dignity. They were acquitted of human trafficking, but found guilty of the other charges[530].

Road transport operations via Bulgarian 'letterbox' companies with Serbian drivers

In a **judgment rendered on opposition dated 13 January 2023** before **the Bruges Criminal Court**[531], a defendant of Belgian nationality residing in Serbia was prosecuted for human trafficking.

The defendant owned two companies, one in Bulgaria and the other in Poland.

He was prosecuted for human trafficking for the purpose of labour exploitation with regard to six people and for other offences under social criminal law (failure to make a Dimona declaration, non-payment of wages and illegal employment). He was also prosecuted for fraud under social criminal law, claiming that the companies organised their activities from Bulgaria, whereas in reality these companies were 'letterbox' companies, with the defendant organising everything from Belgium.

The defendant had set up several foreign 'letterbox' companies in Bulgaria to carry out road transport activities in Belgium and neighbouring countries. For this purpose, he used Serbian drivers. He had already done the same in the past with Polish 'letterbox' companies.

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530 See the chapter of this report on good practices and experiences: Part 1, Chapter 4, point 14: Raising awareness.

531 West Flanders Crim. Court, Bruges division, 11 March 2022, ch. B17 (opposition) and West Flanders Crim. court, Bruges division, 13 January 2023, ch. B17 (conviction confirmed on appeal: Ghent, 5 October 2023, 3rd ch.).

The case file revealed that PAG-ASA had been contacted by a Serbian NGO helping victims of human trafficking, which had informed it of the existence of anonymous complaints against the defendant. He lured Serbian workers to Belgium with the promise of legal work and a salary. In Belgium, however, they were employed illegally, had to work longer hours than permitted by law and had to drive lorries with falsified registration and safety certificates. In addition, their wages were only paid in part and late.

On the basis of the evidence in the case file, the court found the defendant guilty of all charges, except with regard to one person.

A Europol investigation revealed that the defendant had never lived at his Bulgarian address. He was only registered in Bulgaria because he needed a Bulgarian address to set up a company there. The staff had neither an employment contract nor the driver's certificate required by European legislation.

The police found several lorry drivers and the lorries in an open storage building, which had no sanitary facilities. The drivers had to relieve themselves in a plastic bag. In the past, they had been able to go to a garage belonging to the defendant to shower and prepare food, but in default of payment, they could not go there anymore.

The court found that all the lorry drivers involved were carrying goods on behalf of the defendant. The court also found that they had performed these tasks in vehicles they did not own, since these vehicles were supplied to them by the defendant, in his capacity as 'lessor', as he claimed.
Several drivers stated that the defendant was their boss and that he had brought them from Serbia to Belgium. They never had to load or unload in Bulgaria or Poland, but only in Belgium and neighbouring countries. They always slept in their lorries, even at weekends. There were no sanitary facilities. Some had never signed an employment contract. They were paid per kilometre travelled, with no payslip. Several victims still had not received a salary, even after several months.

The defendant had previously been convicted of similar offences. He was sentenced to one year in prison. A special forfeiture order of €81,963.97 was issued.

2.2.3. | Hospitality

Myria was once again informed of a number of decisions relating to human trafficking in the hospitality sector, concerning cafés, (exotic) restaurants, a snack bar and a pizzeria[532].

Exploitation of a Belgian victim suffering from a mental disability in a café

In **a judgment of 12 December 2022**[533], **the Antwerp Criminal Court** ruled on a case of human trafficking concerning a Belgian victim in a café.

Three defendants of Belgian and Dutch nationality and a company were prosecuted for human trafficking for the purpose of labour exploitation.

The company, the third defendant, ran a café in Stabroek. The second defendant was the manager. It was in this capacity that he managed the café. Due to a serious physical handicap, he had to call on the services of staff and was assisted by the first defendant, among others.

The defendants hired the victim for various tasks between October 2019 and January 2020. At the time, the victim was a 53-year-old man with a mental disability under guardianship.
The victim had to help clean the café, restock it and sort out the empty bottles. Sometimes he was asked to run simple errands. He was also expected to take part in a renovation project in which one of the defendants was involved. There was no clear structure to the job, nor was the pay determined. The job was also not declared, so that no normal social control was possible.

The acts came to light when the social inspection service and local police carried out an unannounced check at the café at 22:30 in January 2020. On the indications of a drug detection dog, a trap door was opened, giving the inspectors access to a hidden part of the basement. This is where the victim was found.

The victim was sleeping in an enclosed crawl space, where the police officers could not even stand up. The conditions in which the man was living were appalling and unsanitary. He had a dirty mattress and his belongings were in plastic bags. The basement was full of rubbish, had no heating and no sanitary facilities. The conditions in which he was found were dreadful.

532 Luxembourg Crim. Court, Marche-en-Famenne division, 17 March 2023, 14th ch. (unpublished). This judgment was, however, limited to civil interests. The court awarded the worker, the civil party, EUR 20,000 in pecuniary damages. In a previous judgment, relating to the same case, it had convicted the two defendants, who were running a pizzeria, of human trafficking with regard to this worker and ordered them to pay him, together with their company liable under civil law, EUR 1,500 for non-pecuniary damages and a provisional EUR 1 for pecuniary damages. See Luxembourg Crim. Court, Marche-en-Famenne division, 19 November 2021, 14th ch., No. 2021/277: Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 83-84 and Myria's website (Case law).
533 Antwerp Crim. Court, Antwerp division, 12 December 2022, ch. AC1 (appeal).

The investigating officers highlighted not only the lack of space and the clutter, but also the filth and stench. The victim and his belongings were also very dirty and gave off a foul odour.

The victim was very confused and communication was difficult. He explained that he was afraid in his own home and was allowed to sleep in the basement of the caf if he helped out. He said he was afraid of the defendants. He was reportedly paid in part, but also had to give back some of what he had earned. According to him, he had very little time to go to the shops and was not allowed to get his unemployment card stamped.

The court found that the facts were established, but reduced the period of criminal liability. It relied on the physical findings of the police, the statements of the victim's provisional administrator and witnesses.

The court also stated that human trafficking does not require physical confinement or absolute deprivation of liberty, but that in this case the victim's liberty was effectively restricted by the instructions he received, his social dependence and his limited mental capacity.

The court also pointed out that human trafficking for the purpose of labour exploitation does not necessarily mean that the work imposed on the victim has to be full-time or regular work; even adapted work (for instance, in a garment factory can be considered to be human trafficking. The compulsory nature of the victim's work and the total absence of social control illustrate the fact that he worked in conditions contrary to human dignity. Even if the victim had consented to the work imposed on him, the acts would still fall within the definition of human trafficking. Finally, the court emphasised that labour exploitation does not presuppose that the victim's employment is genuinely financially profitable.

The defendants received prison sentences of two years and 20 months respectively, the latter partly suspended, and fines of EUR 8,000. The court found that the company had limited liability and imposed a suspended fine of EUR 24,000.

'Exotic' restaurants with victims holding a single permit

In **a judgment handed down in absentia on 22 June 2022** by **the Brussels Dutch-speaking Criminal Court**[534], three defendants (two Dutch nationals and one company were charged with multiple breaches of social criminal law and human trafficking with regard to five people: four Indian nationals and one Afghan national.

The company recruited people, mainly of Indian origin, to work in Belgium as cooks, promising them a decent salary and a residence permit. The Afghan worker had a single permit[535] in Belgium. Two other workers were initially brought to Belgium with a single permit. After this was withdrawn, they continued to work there.

They lived in appalling conditions above the restaurants, in premises with virtually no sanitary facilities. They had to work and sleep alternately in different restaurants in Flanders (Liedekerke, Ostend, Antwerp. In the Antwerp establishment, one of the former workers had to sleep on a mattress on the floor and there was no shower. The accommodation at Liedekerke was also in a shabby state.

The workers thought they were working officially in Belgium with a valid residence permit and work permit.

They worked seven days a week without holidays and were not paid at all, or only partly (via a third party for their work, despite being promised a salary of between EUR 1,000 and EUR 1,200. The wage promises were not kept and prevented them from rebelling against the employer, for fear of losing both their stay and their wages.

During the investigation, it was found that the company employed a large number of workers who came with a single permit, while the company did not have enough capital to pay their wages. On the basis of this evidence, the court found the first and third defendants guilty of human trafficking in relation to four victims and of offences under social criminal law.

They were sentenced to two years in prison and fined EUR 12,000. Meanwhile, the second defendant, the company, had gone into liquidation. A forfeiture of EUR 41,326.61 was ordered.

534 Brussels Dutch-speaking Crim. Court, 22 June 2022, 25th ch. (opposition).
535 The single permit is a work permit combined with a residence permit for non-EU citizens who come to Belgium to work for a period of more than 90 days.

Several victims in a Chinese restaurant

The Bruges Criminal Court ruled in a judgment of 8 April 2022[536] on a case of human trafficking concerning three victims employed in a restaurant.

The defendants, two Belgian nationals from China and a company, were also prosecuted for other offences, including non-payment of wages and fraud.

The police had been informed by the bank of a suspicious situation involving three people who had to withdraw their wages and hand them over to their employer. The bank tellers had witnessed discussions between the employer and the workers on several occasions. According to information received, several people were staying at the employer's restaurant. The workers regularly moved between restaurants in Belgium and the Netherlands.

The investigation was conducted using CCTV footage, interviews with tellers, bank data searches, analysis of mobile phones and interviews with the defendants and victims. The bank statements revealed that the workers had to withdraw and hand over all the wages they had been paid. The victims had no knowledge of Dutch; they had been brought to Belgium through an intermediary. They had to sign documents whose content they did not understand, they did not know the Belgian system, they had to work an average of ten hours a day, six days a week, initially for a salary of EUR 900 a month (then for a salary of EUR 1,300 a month and they had to hand over their identity cards or residence documents.

They were told that the money did not belong to them. The victims had no choice but to hand over the money or risk losing their jobs.

On the basis of this evidence, the court ruled that this was indeed a case of human trafficking and that the other charges were also proven. The defendants were sentenced to one year in prison and fined EUR 24,000. The illegal financial benefit was estimated at EUR 40,614.11 and was confiscated. The company was held civilly liable.

Snack bar

In **a decision rendered on 26 April 2022**[537], **the Brussels Court of Appeal** ruled on offences under social criminal law and trafficking for the purpose of labour exploitation with aggravating circumstances, of a Moroccan worker in a snack bar in Brussels. The snack bar had been checked several times by the police and by inspection services (social and social legislation inspectorate. During the last inspection in 2017 by the social legislation inspection service accompanied by the police, a man had tried to escape. This man was the worker, who subsequently filed a civil suit. The worker stated that he had been living in Belgium since 2006, and that he had been present during an inspection in 2013, during which he had fled, being undocumented and staying illegally in Belgium. He stated that he had been working in the establishment for four years, between eight and nine hours a day (from 17:00-18:00 to 02:00, seven days a week with no days off, for a daily wage of EUR 30 paid in cash. He cooked and served the meals. The defendant, who was Moroccan, had never taken any steps on his behalf to obtain a work permit.

In **a judgment of 11 December 2018**, discussed in a previous report, **the Brussels French-speaking Criminal Court**[538] found that these were working conditions contrary to human dignity, with the defendant also taking advantage of the worker's precarious situation. The latter did not dare contact the police for fear of being repatriated. The court sentenced the defendant for trafficking with aggravating circumstances[539] and offences under social criminal law[540], 15 months in prison (suspended in full) and a EUR 12,000 fine. It awarded the plaintiff substantial compensation, namely EUR 10,000 in pecuniary damages and EUR 5,000 in non-pecuniary damages.

536 West Flanders Crim. Court, Bruges, 8 April 2022, 17th ch. (appeal).

537 Brussels, 26 April 2022, 11th ch.

538 Brussels French-speaking Crim. Court, 11 December 2018, 89th ch. (appeal). See Myria,, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims,* pp. 124-125 and Myria's website (Cas

539 The court upheld the aggravating circumstances of having authority over the victim, committing an offence against a minor, abuse of a position of vulnerability and the use of fraudulent tactics, violence, threats or any form of coercion.

540 The following are offences under social criminal law: failure to declare employment immediately (Dimona) and employment of a foreign worker without a residence permit for more than three months.

The defendant and the public prosecutor lodged an appeal. As regards guilt, the jurisdiction of **the Brussels Court of Appeal** was limited to the charge of human trafficking. The court also found that trafficking had been established. It took into account the fact that the victim was serving customers or trying to flee every time a check was carried out in the snack bar. According to the court, the defendant's explanations that he had come to the victim's aid in exchange for a hand in his snack bar from time to time lacked credibility. The court also took into account the low hourly rate of pay, the lack of days off over a long period and the working conditions that were contrary to the Code of Well-being in the Workplace, which the victim could not refuse given his precarious social and administrative situation. The prison sentences and fines were confirmed, but half of the fine was suspended for three years in view of the length of time the offences had been committed, the defendant's family responsibilities and the absence of any new offences. The court referred to the first judge's estimate of pecuniary and non-pecuniary damages[541].

2.2.4. | Bakery

In **a judgment handed down on 16 November 2022**[542], **the Bruges Criminal Court** ruled on a case of human trafficking involving two victims employed in a bakery. The defendants – a man of Turkish nationality and a company – were also prosecuted for other offences under employment law.

The bakery attracted attention during a police inspection to check compliance with coronavirus control measures in March 2020. It was found that people were working late into the night. In addition, an anonymous report had already been made about undeclared work in the bakery.

The bakery was observed on several occasions by the social inspection service and, on each occasion, it was established that people were present on the premises after closing time. During a social inspection check, two people escaped Both were illegal immigrants and one of the victims was the defendant's son-in-law, who claimed not to be working for money. Neither spoke Dutch.

They both had to work nights at the bakery. They were housed above the bakery workshop, in a small, damp and dirty space. An electric radiator, that was shoddily and unsafely connected, stood between the cupboard and the mattress. The accommodation was clearly unfit for human habitation. The property had already been declared uninhabitable, but this decision was lifted after permission was obtained to use it as a professional space.
On the basis of all these elements, the court decided that this was a case of human trafficking and that the conditions of employment were contrary to human dignity. The other charges were also upheld.

The defendant had previously been convicted of social criminal law offences in 2018. He received a two-year suspended prison sentence and a fine of EUR 16,000. The court declared the company civilly liable as the employer for payment of the fines.

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541 The court rejected the plaintiff's request concerning the evaluation of pecuniary damages at EUR 64,000 and non-pecuniary damages at EUR 10,000: since the plaintiff's conclusions had been excluded from the proceedings, the plaintiff was unable to justify why the court should depart from the evaluation made by the first judge.
542 West Flanders Crim. Court, Bruges division, 16 November 2022, ch. B17 (final).

2.2.5. | Car wash

The Liège Court of Appeal reviewed a case of trafficking in a car wash.

In this case, four defendants of Indian and Belgian nationality, the first two of whom were husband and wife and the fourth a limited partnership, were charged with trafficking a Romanian worker and with various social criminal law offences. The first two defendants were repeat offenders. The worker who was the victim filed a civil suit. The offences were concurrent with, or followed on from, those covered by a previous judgment handed down by the same court in 2017. The company managed a car wash in Andenne under the authority of the second defendant in their capacity as a limited partner. In reality, it was the first defendant who was the de facto manager, despite their status as a limited partner, which does not, in principle, authorise them to carry out acts of management.

The plaintiff was working on behalf of the company in the car wash in Andenne, which was checked by the social inspection service. The plaintiff was working there on the day of the check and spontaneously declared living in accommodation above the office. Two other workers, who were never identified, ran off.

In **a judgment of 22 January 2020**, the Namur Criminal Court[543] had found the first three defendants guilty of human trafficking and social criminal law offences. The plaintiff was working under a self-employed contract, which the court considered to be contrary to the evidence in the file. It found that there was indeed a verbal employment contract. The worker worked more than 10 hours a day. The court calculated his gross hourly wage as being EUR 1.86, i.e. 13 % of what he should have been paid (EUR 14.147 an hour. It also considered that the offence of human trafficking was established on the basis of the following factors: the inadequate wages, the fact that the worker was housed in premises that were clearly unfit for habitation, and his total dependence on the defendants. As regards the plaintiff and another worker, the court also upheld the social criminal law charges. The court acquitted the failing company of the charges against it, finding that the first two defendants had committed the most serious offence. The first two defendants were sentenced to 12 and four months in prison respectively, while the third defendant was given a six-month suspended prison sentence and fined EUR 8,000. The three defendants were ordered to pay the plaintiff EUR 48,504.65 ex aequo et bono for pecuniary and non-pecuniary damages.

The three defendants (natural persons) and the public prosecutor lodged an appeal. In a decision of 9 June 2022, the Liège Court of Appeal[544] upheld the judgment handed down by the court of first instance for the most part.

In the Court's view, the mere fact of having signed a self-employed contract, which corresponded neither to the relationship actually envisaged between the parties nor to that which actually existed, was insufficient to demonstrate that the defendants had not acted knowingly and in full knowledge of the facts in demanding work under the aforementioned conditions and for such low wages. In addition, the court stated that the defendants could not absolve themselves of liability by placing the burden on the plaintiff, who should not, in their view, have accepted the work without requiring a worker's contract.

Contrary to the 2020 judgment, the decision established that the sentences imposed by the judgment of Namur Criminal Court in 2017 were sufficient to punish all the offences committed by the first two defendants before 10 February 2017, which comprised a collective offence. The court limited the offence to the period from 10 February 2017 to 14 June 2017. As regards the third defendant, they were sentenced to six months in prison and a fine of EUR 8,000, with the sentence suspended for three years. The civil penalty was increased to EUR 49,621.52, plus EUR 1,500 for non-pecuniary damages. An amount of EUR 20,018 was confiscated.

541 The court rejected the plaintiff's request concerning the evaluation of pecuniary damages at EUR 64,000 and non-pecuniary damages at EUR 10,000: since the plaintiff's conclusions had been excluded from the proceedings, the plaintiff was unable to justify why the court should depart from the evaluation made by the first judge.
542 West Flanders Crim. Court, Bruges division, 16 November 2022, ch. B17 (final).

Exploitation of a victim of trafficking already recognised as such

In **a judgment of 22 April 2022, the Mechelen Criminal Court**[545] ruled on a case of human trafficking for the purpose of labour exploitation in several hand car washes.

Five defendants were prosecuted, including two companies who were the third and fourth defendants. Two of the defendants were born in India but had Belgian nationality. Another defendant was born in Surinam, but had Dutch nationality. Four defendants failed to appear in court.

The file consisted of four connected cases. Only one of the cases was classified as human trafficking. All the defendants were prosecuted for offences under social criminal law. Four of them, including the two companies, were also prosecuted for human trafficking against a victim.

Several checks were carried out in the car washes. One victim was found by NSSO social inspectors on two occasions in the car wash. As a victim of human trafficking (labour exploitation, the man had been entitled to permanent residence since 2009, but as he had been struck off automatically, his residence permit had also been withdrawn. He declared that he worked as a self-employed person in the car wash, but it turned out that he was not covered by social security as such.

The first defendant was the boss of the company on paper only, because the real boss was the second defendant.

The court found that the second defendant and the third defendant, i.e. the company, which was the actual exploiter, were guilty of trafficking. The other two defendants were acquitted for lack of evidence. The court upheld the charge of human trafficking on the basis of the following elements: the victim had to work every day from 08:00 to 19:00 without being paid. The man worked seven days a week. He slept at the car wash, in a dirty bed and in an unsecured room. He had no shower and had to wash with soap used for the cars, which caused rashes all over his body. He was not provided with any protective clothing to carry out his professional activities. In addition, the car wash was infested with rats. His Indian passport had been taken away by the defendant and his Belgian residence documents had been withdrawn. The victim, who could no longer work in the construction industry after an accident at work, found himself in a precarious financial situation.

According to the court, employing a foreign worker without a work or residence permit for variable and minimal wages, without social protection and without complying with regulations on working hours and Sunday rest, implies forced submission to arbitrary work in conditions contrary to human dignity. According to the court, this was part of a deliberate strategy on the part of the defendant. The court found that the company was both materially and morally responsible for the acts.

In addition, all the defendants were convicted of various breaches of social criminal law.

The second defendant was sentenced to 12 months in prison and fined EUR 8,000. The company was fined EUR 48,000, half of which was suspended.

543 Namur Crim. Court, Namur division, 22 January 2020, 12th ch. (appeal). See Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 86 and Myria's website (Case law).
544 Liège, 9 June 2022, 6th ch.
545 Antwerp Crim. Court, Mechelen division, 22 April 2022, ch. MC7 (in absentia for four of the five defendants).

Exploitation at a car wash and human smuggling

In another case involving labour exploitation at a car wash, the defendants were prosecuted for **human smuggling**, and not for human trafficking.

In this case, judged by **the Bruges' Criminal Court on 13 January 2023**[546], two brothers with British nationality but of Pakistani origin, were prosecuted for social criminal law offences regarding

several people and for human smuggling in relation to one person. One victim and Payoke filed a civil suit.

A check by the police and the NSSO's social inspectorate found several people at a car wash in Jabbeke. One of these people was staying illegally. This person explained that everyone had to work at the car wash from 08:30 to 18:30, for EUR 40 a day. The man worked seven days a week. The boss (the first defendant instructed them to say, during an inspection, that they only worked four hours a day. Wages were always paid in cash and no payslips were issued. The man was housed free of charge, with another worker, in a flat belonging to the boss. He did not have the key to the flat, so the boss would take them there and take the key back.

During the investigation, the boss put pressure on the victim to make statements. The defendants did not contest the breaches of employment law, but did contest the charge of human smuggling. However, the court found that the defendants had allowed the victim to stay in very basic conditions in a room (covered in mould in the flat they rented. This way, they secured cheap labour supplied by the victim at the car wash. They thus knowingly, directly and in violation of Article 77 bis of the Law of 15 December 1980, helped the victim to reside illegally in Belgium. They did so in order to gain a financial benefit from his cheap labour.

The defendants were sentenced to one year in prison and fined EUR 4,000. The victim received compensation of EUR 4,959.77 in pecuniary damages (salary arrears and EUR 250 in non-pecuniary damages. Payoke was awarded pecuniary and non-pecuniary damages of EUR 2,750.

Set-up of companies to operate a car wash and night shops, with acquittal

The Ghent Criminal Court ruled in a judgment of 5 January 2022[547] on a case of human trafficking which involved company set-ups. Several case files were attached to this case. Three defendants were prosecuted. The first and second defendants, of Indian and Belgian nationality, were the company directors. The third defendant was a company. The company had already been dissolved at the time of the proceedings.

They were prosecuted for human trafficking with aggravating circumstances in relation to four people, and for other social criminal law offences with regard to several people. A victim of Indian nationality filed a civil suit.

During checks at a car wash and in several night shops in the Ghent region, illegally staying persons were found working there on several occasions.

In the beginning, it was difficult to know who was running these businesses. A tangle of different company set-ups had been created, with a constant alternation of active partners and managers. Often, these people did not understand what being a manager entailed and did not realise that they could be held liable in the event of bankruptcy.

Following these findings, the car wash was seized and placed under seal. It was at this point that the defendants came forward to request that the seizure be lifted. Both defendants were already known to the police, notably for human smuggling and trafficking for the purpose of labour exploitation.

During the ensuing investigation, emphasis was placed on the links between the various companies, in particular between the company referred to here as the 'third defendant' and the various companies linked to the first defendant.

The investigators believed that they had detected a pattern in the profiles of the managers and partners active in the company (the third defendant and the companies in which the first defendant was involved.

546 West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal).

547 East Flanders Crim. Court, Ghent division, 5 January 2022, ch. G29 (final).

These companies operated night shops, among other businesses.

The investigation revealed a certain modus operandi:

- employment on unbalanced terms under a false status of active partner, resulting in exploitation;
- housing people always at the same addresses, in premises owned by the first defendant, from which he sought to derive abnormal profit from the rent and operating leases he entered into.

The various people involved in the case — defendants, victims and other people concerned — seemed to know each other through the 'temple'. In addition, the first defendant also seemed to take care of residence permits for his compatriots, which gave him a great deal of power. Sham marriages were also organised between Indians, Pakistanis and European women in return for payment, with the aim of obtaining a right of residence in Belgium. Almost all of these suspect marriages were contracted abroad (Denmark, Sweden, India and the United Kingdom).

In the first case, in which the victim was illegally employed at a car wash, the court found that the social criminal law offences were proven, unlike the offence of human trafficking. Although it was clear that the salary agreed and paid was insufficient, the specific intention (special intent to employ, recruit, transport or house the victim in inhumane conditions had not been demonstrated, according to the court. The victim was not obliged to work at the car wash; he had asked to do so himself. Nor was the man obliged to spend the night on the premises behind the car wash, which he only did voluntarily on a few occasions because he was homeless at the time. In addition, the court found that there was no other objective evidence in the criminal case file concerning the inhumane conditions in which the victim was allegedly employed. Photographs of the premises behind the car wash did not provide convincing evidence in this respect.

The other case concerned the fact that the first defendant rented out the car wash, through his company, on unreasonable terms to the company of two other victims.

The public prosecutor put forward the hypothesis that the first defendant had set up a scheme, whereby he pressured the two victims so that their company would sign two contracts, namely a lease and an operating lease for the car wash. According to this hypothesis, the resulting double financial obligation would, by definition, have prevented the car wash from being profitable. As a result, the two victims had to work in inhumane conditions because they had almost nothing left and this only benefited the first defendant.

On this point, the court ruled that it was necessary to prove the fictitious nature of the victims' company and therefore establish its legal personality, or at least prove that the first defendant was involved behind the scenes in the management and administration of this company. The criminal case file did not make it possible to establish the feigned and fictitious nature of the victims' company, or the feigned nature of the operating lease. It therefore could not be proved that the victims were working on behalf of or under the authority of the first defendant. Once again, the court ruled that the offence of human trafficking had not been established.

As regards the facts relating to another victim, the public prosecutor worked on the assumption that there was a fictitious situation, in which the partnership and co-management of this victim and the company, i.e. the third defendant, amounted to work in a subordinate relationship to the first defendant. The inhumane nature of the situation lay in the fact that the victim did not earn enough, that the second defendant was the one who decided everything, that the victim had not deliberately chosen to live in this way and that he had not been told what it meant to be a manager. The court ruled that there was no evidence that the job entailed a relationship of subordination, and that this was not a question of fictitious self-employment.

2.2.6. | Day and night shops

The Ghent Criminal Court ruled in a judgment of **7 December 2022**[548] on a large-scale case of human trafficking in day and night shops. Five defendants were prosecuted, including two companies. Only the first and third defendants and their company, the second defendant, were prosecuted for human trafficking.

The defendants were also prosecuted for other offences, including social criminal law offences (missing or incorrect Dimona declaration, illegal employment of foreign workers, fraud under social criminal law (sham self-employed status to avoid payment of social security contributions and subsidy fraud (under the Covid measures. Two victims and the Flemish Region filed a civil suit.

Both companies operated several (night shops. One company, the second defendant, had several subsidiaries in Ghent and Waregem. The first and third defendants belonged to the same family and alternated between being managers or shareholders of the company. The fourth defendant was the company's accountant.

Several checks were carried out in day and night shops. One of the checks took place following the opening of an investigation into theft. In all cases, the workers did not appear to have been registered with Dimona and were working as independent partners, holding 5 or 10% of the shares in the business. Several people were heard and made similar statements: they had been put to work as self-employed workers in the shops and were required by the first defendant to sign documents to this effect. They were often unaware of Belgian legislation and did not know the difference between an employee and a self-employed person. They had been promised a good monthly income, but ended up having to work long hours, sometimes seven days a week, with no holidays. They were only paid EUR 50 a day. Sometimes they had to give some of it back, supposedly for tax or social security contributions.

For those who were self-employed during the coronavirus crisis, the defendants had claimed a 'Covid' bonus, but they never saw any of it. The investigation revealed that several shops had remained open during the pandemic and that the bonuses had therefore been wrongly claimed.

A search was carried out at the home of the first defendant. He was living in a luxurious villa on the outskirts of Ghent. Large sums of cash were found there, as well as luxury cars.

During the hearings, the investigators noted that several people seemed to be afraid of the defendants, because they came from an important Pakistani family. During the investigation, one of the victims was threatened by the third defendant.

Fixed working hours were imposed, the workers could not choose their holidays, they performed purely executive tasks and had no freedom of organisation. The defendants kept a close eye on them, in particular by means of cameras. The court concluded that the employees were indeed working under the authority of the company. The employment relationships were thus reclassified as employment under authority. The purpose of the set-up was to avoid paying higher social security contributions for these people.

Concerning the charge of human trafficking, the court stated that the willingness of the victims to work in such circumstances was irrelevant. In addition, the treatment or income of the victims in their country of origin could not be considered a criterion either.

The court found that people of Pakistani or Afghan nationality with a precarious residence status had been used. They did not know the language or the regulations, but wanted to build a life here. As a result of their insecure residency status, they had limited access to housing and employment, making them vulnerable to exploitation as victims of human trafficking. The company's business concept took advantage of this situation by creating a certain dependency among these workers, which often led to a vicious circle. They wanted to work, but given their status and the language barrier, they had few opportunities to do so. As a result, they went to work, or even to live, with compatriots whom they could, at first sight, trust because of their similar culture and a familiar language in which they could communicate.

The criminal case also revealed that the company had initially paid the social security contributions. However, when the workers expressed their wish to end the collaboration, this proved impossible as they would then have had to pay back these social security contributions, which they could obviously only do by continuing to work.

The defendants deliberately took advantage of the vulnerable situation of their workers to obtain a financial benefit.

548 East Flanders Crim. Court, Ghent division, 7 December 2022, ch. G29 (appeal).

The court assessed the facts for each worker and calculated that they earned only between EUR 3.5 and EUR 6 per hour. The court therefore found that the business model on which the company operated involved labour exploitation. This was evidenced not only by the use of a bogus self-employed status to avoid having to pay social security contributions, but also by the observation that so-called 'active partners' had to work long hours in exchange for a meagre remuneration.

For one of the victims, the aggravating circumstance of abuse of his vulnerable situation was also deemed to have been established. The man needed accommodation and could only obtain it if he worked in the shop. Therefore, he had no real choice but to accept this abuse.

As regards one of the victims, the defendants were acquitted owing to a lack of evidence.

The defendants received prison sentences of one year and 18 months respectively, partly suspended, and fines of EUR 12,000 and EUR 40,000. Substantial sums of money were confiscated. The company was ordered to pay a fine of EUR 384,000. The victims were awarded EUR 21,289.60 in damages (including EUR 2,500 for non-pecuniary damages) and EUR 30,085.60 (including EUR 3,000 for non-pecuniary damages).

2.2.7. | Second-hand clothing sorting

The Brussels Court of Appeal reviewed a case of trafficking in the second-hand clothing sorting sector, with the aim of exporting to Africa.

In this case, a Belgian defendant, originally from Syria but domiciled in the United Arab Emirates, and his company (bankrupt and in default were prosecuted for the human trafficking of two Algerian workers who had filed a civil suit. They were accused of having recruited them to work in conditions contrary to human dignity (very low and irregularly paid wages, long working hours, lack of safety protection during dangerous work, threatening attitude of the employer, very difficult working conditions (fast pace, excessive dust causing respiratory problems, little or no heating, substandard accommodation They were also prosecuted for various social criminal law offences: non-payment of these two workers' wages; illegal employment of foreign workers without a right of residence; failure to file a Dimona declaration and failure to declare the two Algerian workers and several other African workers to the NSSO.

The acts came to light when one of the two Algerian workers was heard by the social inspectorate after having been in contact with a specialised reception centre. He explained his journey from Algeria and the working conditions (seven days a week, an average of one day off a month, trial period, irregular payment, death threats. The social inspectorate then visited the company's warehouse. It found that the warehouse was locked, that several workers did not have residence permits or work permits, that there was no ventilation, that it smelt of mould and damp, and that there was a huge amount of dust caused by the handling of clothes.

In **a judgment of 9 March 2020**, **the Brussels French-speaking Criminal Court**[549] declared that the criminal action against the defendant's company had lapsed after the bankruptcy had been concluded. As for the defendant, he put forward a number of procedural arguments (including infringement of due process), all of which were rejected by the court. Regarding this point, the court noted that there was nothing suspicious about the fact that the workers had been assisted in their efforts by a specialised reception centre, given that this non-profit association has a statutory mission to receive and support victims of trafficking, as set out by royal decree.

549 Brussels French-speaking Crim. Court, 9 March 2020, 69th ch. (in absentia and appeal). See Myria, Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors, p. 88 and Myria's website (Case law).

The court acquitted the defendant of the charge of human trafficking, finding that the investigation carried out had not sufficiently substantiated the plaintiffs' statements. It did, however, uphold the social criminal law charges for the workers found at work during the social inspectorate check. The defendant was handed a partially suspended fine of EUR 67,200 and banned from engaging in similar professional activities for three years.

All the parties lodged an appeal.

In **a decision of 3 October 2022, the Brussels Court of Appeal**[550] also rejected the procedural arguments put forward by the defendant, relating in particular to the infringement of due process in the context of the steps taken by the reception centre.

It confirmed the acquittal of the defendant on the charge of human trafficking, also noting that there was insufficient evidence to substantiate the statements made by the plaintiffs during the investigation[551]. It also upheld the decision of the original judges regarding the social criminal law charges. Considering that the reasonable time limit had expired, the court only handed down a simple guilty verdict. Considering the acquittal for the charge of trafficking, the court also declared that it had no jurisdiction to hear the claims of the civil parties.

2.2.8. | Agriculture and horticulture

Two cases of trafficking in the agriculture and horticulture sector were tried: one concerned a farm in the province of Liège and the other a tomato plantation, tried by Dendermonde Criminal Court.

In **a ruling of 19 January 2023, the Liège Court of Appeal**[552] overturned a decision rendered by the Liège Criminal Court. In this case, two Belgian defendants, a mother and her son, were prosecuted for exploiting a Belgian worker on their farm. In addition to the charge of trafficking in human beings for the purpose of labour exploitation brought against the two defendants, the son was prosecuted for various social criminal law offences.

The victim, who filed a civil suit, went to the police himself in 2017 to report the acts. The police went to the address and a search was subsequently carried out.

Homeless and suffering from financial problems, the worker had been recruited, received and housed in a former dairy, annexed to the farm. In addition to working full-time for a company, the victim carried out various types of unpaid work as part of the farm's agricultural activity: masonry and carpentry work; maintenance of the fields, yards and stables; looking after the animals, etc. The worker slept on an inflatable mattress with very thin covers and had to wash himself with cold water in a basin. The annex was a small room, not intended as a living space. It was poorly insulated, had no interior lock, was heated by an electric radiator and had no running water. The son had provided the worker with a prepaid phone card but did not top it up, so the worker was cut off from his family for several months. The worker stated that his post was also taken care of by the son, who had shouted at him on several occasions, grabbed him and threatened him.

The worker's bank card was found in a wallet in the parents' bedroom. An analysis of the bank transactions on the worker's account showed that payments had been made by another person, indicated by a certain change in purchasing behaviour. Hearings were held and investigations carried out in the shops concerned to check whether the staff recognised the protagonists.

550 Brussels, 3 October 2022, 11th ch.

551 In particular, social inspectors did not check working and housing conditions in person; there was no relevant phone investigation; there were no extensive hearings involving the witnesses.

552 Liège, 19 January 2023, 6th ch.

In **a judgment rendered on 15 February 2021, the Liège Criminal Court**[553] found that the card, voluntarily handed over to the son so that he could take care of the worker's financial problems, had been used by the two defendants to make payments and purchases that benefited them, and convicted them of breach of trust. The court also found that the social criminal law offences (failure to file a Dimona declaration; NSSO violations; non-payment of wages) were established against the son. However, it acquitted the defendants of the trafficking charge, finding that the misappropriation of a significant portion of the worker's salary and the absence of remuneration for his services were not sufficient to establish his employment in conditions contrary to human dignity.

The defendants were sentenced to one and two years in prison respectively, suspended for three years (for half or all of the sentence depending on the defendant) and fined EUR 800 and EUR 1,600.

The court was unable to determine the amount of unpaid wages, due to a lack of precise objective information about the hours and nature of the services provided. The plaintiff's claim for damages arising from the non-payment of wages was therefore evaluated at EUR 1 to be paid by the son. The court declared that it had no jurisdiction over the plaintiff's claim relating to the charge of trafficking, owing to the acquittal. By way of compensation for damages arising solely from the breach of trust, the court ordered the two defendants jointly and severally to pay EUR 32,768.55 to the plaintiff, with the sum of EUR 16,384.275 confiscated from each defendant. Regarding the non-payment of wages, the son was ordered to pay the unpaid amount, valued at one provisional euro. The court reserved judgment on the remainder, and in particular on compensation for non-pecuniary damages.

The defendants, the plaintiff and the public prosecutor lodged an appeal.

The Liège Court of Appeal upheld the conviction of the son for the social criminal law charges, and of the two defendants for the breach of trust charge. It found that the worker's statements appeared measured and credible, as they were supported on many points by the investigators' findings, by the results of the visit and search, by his daughter's statements and by certain statements made by the defendants. Contrary to the criminal court, the court of appeal considered that the charge of trafficking had been established. The court referred to the reasoning of the Court of Cassation, which considers that the term 'recruit' must be understood in its common sense, and does not imply that the person hired must be solicited for this purpose.

It also pointed out that there was no argument to be drawn from the fact that the defendants themselves lived in spartan conditions, as the farm was being renovated. Their own living conditions had no bearing on the exploitation of the plaintiff's labour in conditions contrary to human dignity. In this respect, the usual living conditions of other citizens at the time of the events must be taken into account.

According to the court, the plaintiff was totally dependent on the defendants for accommodation, food and any debts and expenses he might have incurred. He was not paid for his work on the farm and no longer had access to his own income because of his debts and the fact that the defendants had seized his bank cards. In addition, he was cut off from his family. Even though he was free to come and go and had social contact with third parties because he worked for his employer, he was dependent on the defendants and subject to their goodwill.

The court also found the two defendants guilty of the aggravating circumstances of authority, coercion, habitual activity and abuse of vulnerability. It fined them both EUR 4,000, and sentenced the mother to 15 months in prison, suspended for five years, and the son to 180 hours' community service. They were jointly and severally ordered to pay the plaintiff EUR 2,500 for non-pecuniary damages and EUR 5,000 for damages resulting from the lack of wages, the latter amount to be confiscated from the son and awarded to the plaintiff.

553 The Liège Crim. Court, Liège division, 15 February 2021, 18th ch. (appeal).

Identity fraud in the horticulture sector

In **a judgment of 20 May 2022, the Dendermonde Criminal Court** ruled on a case in the horticulture sector[554]. The defendant, a man of Nigerian nationality, had twice made other people work on his behalf. The first victim was never found. The man worked for a large Flemish logistics company. The second victim, who also had Nigerian nationality, was found working on a tomato farm. The man had been illegally resident in Belgium for 10 years. He filed a civil suit.

The defendant employed other people in his name. In return, they had to deposit their wages in his account and give him their payslips. The victim would keep between a third and a half of the total salary.
On the basis of this evidence, the court found that the second victim was the subject of human trafficking. The defendant had taken advantage of his precarious residence status and financial position. As the information concerning the first victim was insufficient, the court acquitted the defendant of the charges against him.

The defendant was sentenced to six months in prison and fined EUR 8,000.

A special confiscation order was issued for EUR 6,236.21, which was reserved for the victims. The plaintiff was awarded compensation of EUR 14,556.21 (including EUR 4,500 for non-pecuniary damages).

2.2.9. | Domestic work

The Brussels Court of Appeal reviewed a case of trafficking in the domestic work sector, judged at first instance on **2 October 2018** by **the Walloon Brabant Criminal Court**[555]. A British defendant was prosecuted for social criminal law offences and for human trafficking with aggravating circumstances against a Congolese woman, who filed a civil suit. She had recruited the worker in Kinshasa to take care of her seven-year-old son who had a mental disability.. The worker accompanied the defendant on these visits to Belgium on tourist visas, applied for on the basis of the care provided to the young boy. She continued to look after the young boy once the defendant had settled permanently in Belgium. The worker also had to look after the household (cleaning, cooking, washing up and laundry).

The court upheld the social criminal law offences as well as the charge of human trafficking. The victim had to work seven days a week, from 06:00 to 23:00 for a monthly salary of USD 200 (i.e. a daily wage of USD 6.6. According to the social inspectorate's calculations, her pay was only 11 % of what she would have been entitled to on the basis of full-time work, i.e. EUR 1,604.45 gross. She had no social security cover. In addition, she lived in the laundry room, located in the cellar, on a sofa and without access to a bathroom. To wash, she had to fetch water from upstairs using a bucket. Her passport was also confiscated when she visited Belgium.

The court had given a great deal of credence to the victim's statements. It ordered that the defendant's sentence be suspended for five years and ordered her to pay the plaintiff EUR 1,500 in non-pecuniary damages and EUR 62,625 in pecuniary damages.

The defendant and the public prosecutor lodged an appeal. In a decision of **24 October 2022, the Brussels Court of Appeal**[556] upheld the conviction for human trafficking, including the aggravating circumstance of the defendant's vulnerability resulting from her precarious administrative and social situation leaving her no choice but to work for the defendant and live with her. The court took into account the fact that the defendant could neither read nor write, did not know how to take any administrative steps herself and gave her passport to the defendant each time she visited Belgium. It upheld the judgement concerning the offences under social criminal law, but limited them in time, and acquitted the defendant of the offence of failing to make a Dimona declaration.

554 East Flanders Crim. Court, Dendermonde division, 20 May 2022, ch. D13V (in absentia).
555 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal). See Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 134 and Myria's website (Case law).
556 Brussels, 24 October 2022, 11th ch. (cassation).

The defendant was sentenced to ten months in prison, with a three-year suspension, and a fine of EUR 2,400.

The order to pay EUR 64,125 in pecuniary and non-pecuniary damages to the plaintiff was confirmed.

2.2.10. | Football

Brussels Court of Appeal partly reversed a judgment handed down on **4 November 2019 by Brussels French-speaking Criminal Court**[557] in the football sector. A couple, including the former chairman of a Brussels football club, was prosecuted for the trafficking of a Nigerian football player.

They were accused of having recruited, harboured and received this footballer in order to make him work in conditions contrary to human dignity (inadequate pay, broken promises and withholding his passport). They were also prosecuted for forgery (having falsified a payslip to make it appear that the footballer was being paid in accordance with the agreements entered into with the football club) and, together with the non-profit association managing the football club, for various offences under social criminal law (failure to make an immediate declaration of employment, failure to take out employers' liability insurance, failure to make quarterly declarations to the NSSO, non-payment of wages).

In 2014, the football club, whose players until then had been exclusively amateur, considered taking on one or more professional players. It recruited a young Nigerian who had previously played for other clubs. The player was staying illegally. He lived at the defendants' family home and received a small amount of pocket money. He was never provided with staff accommodation and only received a small part of his salary. He twice received EUR 700. In addition, he had not been registered with the NSSO, worked without social security cover and was completely dependent on the defendants, who had confiscated his passport. In January 2015, he was thrown out of the defendants' home.

The court convicted the defendants on all counts. It found that the offence of human trafficking had been established. While the conditions of the accommodation were comfortable, the court nevertheless considered that other criteria undermined human dignity: no social security, the failure to pay the agreed salary (in this case a few payments far below the salary to which he was entitled and which made him dependent on the defendants, the withholding of his passport.

It handed the two defendants a 15-month suspended prison sentence and a fine of EUR 4,800. It also fined the non-profit association EUR 18,000 for the social criminal law offences. The court ordered the two defendants to pay the footballer EUR 2,500 for non-pecuniary damages associated with the charge of human trafficking; the two defendants and the non-profit association to pay one provisional euro for loss of earnings and EUR 1,500 for non-pecuniary damages associated with the failure to comply with social legislation.

One of the defendants lodged an appeal, followed by the public prosecutor. The co-defendant did not appeal. In **a ruling of 27 June 2022**, **the Brussels Court of Appeal**[558] upheld the convictions for the social criminal law offences. Only the period of the offence was revised, as the court considered that it began when the victim's contract as a paid sportsperson took effect. However, the court acquitted the defendant on the trafficking charge. According to the court, there was no criticism of the living conditions or of the work itself (sporting activities), or of the duration and conditions of the work, which had not been the subject of any comments or complaints. In addition, the court considered that the withholding of the passport was a neutral element with regard to trafficking insofar as it was an aggravating circumstance and not an essential element. The court granted the defendant a simple stay of the sentence.

The court upheld the civil judgment, with the exception of the payment of EUR 2,500 to the plaintiff for non-pecuniary damages relating to the charge of human trafficking, in view of the defendant's acquittal.

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557 Brussels French-speaking Crim. Court, 4 November 2019, 69th ch. (in absentia and appeal). See Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors,* pp. 90-91 and Myria's website (Case law).~

558 Brussels, 27 June 2022, 11th ch.

2.2.11. | Other sectors

Animal shelter

The judgment rendered by the Walloon Brabant Criminal Court, on 4 October 2022[559], concerns a Belgian defendant accused of employing and housing an illegally-staying Moroccan on her farm in inhumane conditions. She had already been prosecuted in the past for an offence under the Animal Welfare Act, but acquitted by the Brussels Court of Appeal in 2018.

After meeting him in a shop, the defendant recruited the Moroccan worker to help her on a permanent basis in an animal shelter. She partly compensated him by giving him board and lodging in an unsanitary flat in precarious conditions.

In addition to the charge of human trafficking, the defendant was also prosecuted for a number of social criminal law offences: failure to submit a Dimona declaration; failure to send the NSSO the relevant documentation regarding the amount of social security contributions for the victim; employment of an illegally-staying foreign worker and the absence of an employers' liability insurance policy. The defendant's phone and photos taken by the plaintiff were analysed. The worker was taken in by a specialised reception centre for victims.

The court found that the charge of human trafficking, and the other charges under social criminal law, were established for a limited period of time. In particular, it relied on the defendant's statements acknowledging that she had recruited the worker for work purposes. The court referred to a Court of Cassation ruling to clarify that the term 'to recruit' must also be understood in its common meaning of 'to hire', since recruitment does not exclude the person hired from having requested the work. It sentenced the defendant to one year in prison, suspended for three years, and to a fine of EUR 4,800, as well as paying the plaintiff EUR 1,000, in the absence of calculations to establish the salary that should have been paid.

2.3. | Exploitation of begging

In **a judgment of 16 September 2022**[560] , **the Ghent Court of Appeal** examined a human trafficking case involving exploitation of begging in respect of one victim, exploitation of begging and swindling in respect of several other victims. The accused was a man of Polish nationality.

In **a judgment of 6 November 2019**, **the Bruges Criminal Court**[561] had sentenced him at first instance to two years in prison and a fine of EUR 8,000.

Between 2016 and 2017, West Flanders police intercepted several people selling wooden figurines or drawings door-to-door or in the street. During an intervention, the police noted that these people were always being picked up by a van registered in Poland.

Several people were found each time during various checks on the van, the defendant being the driver. According to the latter, the other occupants were deaf and dumb and therefore unable to make any statements. Personal belongings and cash were also found in the van.

One person did make statements. The woman said that the defendant had contacted her in Poland to come and work for him. She trusted him and needed money to pay for her studies.

Once in Belgium, she had to sell wooden figurines for the defendant. He drove her to different towns and picked her up at the agreed time. She had to show a placard on which it was written in Dutch that she was in need. She stayed with other men and women in a small house rented by the defendant. They also had to sell wooden handicrafts on behalf of the defendant. They had to sell these figurines for EUR 15 each, of which they had to pay EUR 9 to the defendant. In addition, they had to pay the rent and petrol, which left them with very little money.

The court found that human trafficking had been committed, with the aggravating circumstance that the defendant had taken advantage of the victim's vulnerable situation, and also upheld the judgment regarding sentencing. It also imposed a ban on professional activity.

559 Walloon Brabant Crim. Court, 4 October 2022, 6th ch. (appeal).

560 Ghent, 16 September 2022, 10th ch.

561 West Flanders Crim. Court, Bruges division, 6 November 2019, ch. B17 (appeal).

3. Human smuggling

The following sections successively present the case law concerning Vietnamese, Iraqi and Indian smuggling networks. These decisions show that these smuggling organisations use both lorries and boats for illegal transportation.

As regards human smuggling using lorries, vans or (semi-trailers, some decisions reveal the use of refrigerated containers, mainly involving Iraqi defendants[562] and Vietnamese defendants. In other cases, people were hidden in tarpaulin-covered semi-trailers or behind false walls[563].

Then there are the decisions relating to small boats in the North Sea. On the one hand, there are cases relating to logistical support, i.e. those who bought or transported small boats and other equipment. The nautical equipment was transported from abroad (Germany and the Netherlands via Belgium to the French coast, where the Channel crossing is the shortest way to reach the United Kingdom by boat. On the other hand, there are cases where small boats were found at sea[564]. Myria has chosen to present six of these decisions[565].

Like last year, but to a lesser extent, Myria was informed of decisions relating to the smuggling of Albanian nationals[566] by car via a ferry departing from Zeebrugge[567] or by sailing boat from marinas on the Belgian coast[568].

Finally, Myria adresses an appeal decision on the misuse of humanitarian visas and a striking decision concerning a travel agency that smuggled Surinamese nationals into Belgium

3.1. | Vietnamese smuggling networks

Two Vietnamese smuggling cases were reviewed on appeal.

Essex case concerning 39 victims who died in a refrigerated lorry

The first case concerns the Essex tragedy, a vast case of human smuggling by a Vietnamese network of smugglers, in which 25 defendants were prosecuted. At first instance, **the Bruges Criminal Court** handed down **a judgment on 19 January 2022**, which was discussed in the previous annual report[569]. The defendants were of Vietnamese, Belgian, Moroccan and Armenian nationality.

On 23 October 2019, 39 bodies were found in in the trailer of a lorry in the United Kingdom. The victims were all Vietnamese nationals who had been smuggled in a lorry container from Zeebrugge to the United Kingdom by sea.

At the time of the events, several criminal investigations were already underway in West Flanders for previous acts of smuggling of Vietnamese nationals. These investigations were combined with the one into the events of 23 October 2019. The investigation therefore covered both previous and subsequent events. On this basis, a whole series of activities and modi operandi of the Belgian branch of the smuggling network were identified.

The main defendants, several facilitators and taxi drivers from the Belgian cell, were convicted at first instance.

Two other defendants of Vietnamese nationality were prosecuted in a separate case. The judgement was handed down on **13 June 2022**[570] by **the Bruges Criminal Court.** As the two defendants could not be found initially, this case was separated from the other criminal case. They were eventually found and arrested in the United Kingdom, then extradited to Belgium. One of the defendants lodged an appeal.

562 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (see below); West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17 (unpublished).

563 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (see below); West Flanders Crim. Court, Bruges division, 1st September 2022, ch. B15 (unpublished); West Flanders Crim. Court, Bruges division, 8 March 2023, ch. B17 (unpublished); West Flanders Crim. Court, Bruges division, 25 July 2022, ch. B17 (unpublished).

564 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17 (appeal) (see below); Ghent, 15 February 2023, 8th ch. (see below); West Flanders Crim. Court, Bruges division, 9 February 2022, ch. B17 (appeal), see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 95-96; Ghent, 18 January 2023, 8th ch. (see below) and Myria's website (Case law).

565 In total, Myria received 11 decisions relating to nautical equipment and four decisions relating to small boats found at sea.

566 West Flanders Crim. Court, Bruges division, 25 July 2022, ch. B17 (final) (unpublished); West Flanders Crim. Court, Bruges division, 1 September 2022, ch. B15 (appeal) (unpublished).

567 In a judgment handed down on 1 March 2023, Bruges Criminal Court upheld the conviction of a defendant who had filed an opposition to the first instance judgment: West Flanders Crim. Court, Bruges division, 1 March 2023, ch. B17. (appeal) (unpublished); West Flanders Crim. Court, Bruges division, 8 December 2021, ch. B17. (opposition). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 101 and Myria's website (Case law).

568 West Flanders Crim. Court, Bruges division, 12 October 2022, ch. B17, No. 1962. (final) (unpublished); Ghent, 2 November 2022, 8th ch. (unpublished). West Flanders Crim.

569 Court, Bruges division, 19 January 2022, ch. B17 (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 92 ff. and Myria's website (Case law).

570 West Flanders Crim. Court, Bruges division, 13 June 2022, ch. B17 (appeal).

Several (10) defendants and the public prosecutor appealed against the judgement of 19 January 2022. The appeal proceedings concerned a total of 16 defendants, namely the main defendants, the facilitators such as the owners of the safehouses and the taxi drivers who had transported the victims to the coastal region in Belgium and France. Myria, PAG-ASA and several relatives of the deceased victims again filed a civil suit in the case.

The Ghent Court of Appeal reviewed the case in two decisions of **23 February 2023**[571].

Several of the defendants requested a confrontation. The court agreed. The confrontation was organised between several taxi drivers and a number of Vietnamese smugglers.

As the defendants were prosecuted as co-perpetrators under Article 66 of the Criminal Code, the court analysed, on the one hand, co-perpetration and complicity (Articles 66 to 69 of the Criminal Code) and, on the other hand, intent for the offences of directing a criminal organisation, participating in the decision-making of a criminal organisation and participating in the preparation or execution of lawful activities within the framework of a criminal organisation. It also analysed participation in the offence of human smuggling.

The court held that co-perpetration and complicity (Articles 66 and 67 of the Criminal Code) were not applicable to the charge of **criminal organisation** because it requires necessary participation. The court stated that, in accordance with Article 324ter §2 and §3 of the Criminal Code, it was necessary to examine whether the defendant knew that they were contributing to the activities of the criminal organisation. This contribution to a criminal organisation may take the form of the (co-)commission of an offence or the provision of support and assistance. In addition, the court considered that, even if Article 324ter, §2 and §3 of the Criminal Code does not literally refer to a component of '**willingness**', doctrine considers that a person must indeed act with full knowledge of the facts. Nor should wilful ignorance be rewarded. The defendant's behaviour is compared to that of a normal person confronted with the same acts in the same circumstances.

The court ruled that aiding and abetting the offence of **human smuggling** was tantamount to being a co-perpetrator or accomplice to the offence. The same act of aiding and abetting can be considered as being committed as a perpetrator in one case and as an accomplice in another. The criterion that determines whether there is co-perpetration or complicity lies in the answer to the question of whether the assistance provided was **necessary or merely useful** for the execution of the offence of human smuggling. In this case, the prosecution relied primarily on Article 66 of the Criminal Code to prosecute the lessors of the safehouses and the taxi drivers as co-perpetrators. Criminal participation requires both **knowledge and intent (with full knowledge of the facts)** and a positive act of participation. The assistance provided must also have been necessary, regardless of whether it was on a large or small scale.

The court assessed the role and contribution of each defendant separately.

As regards the main defendant, the court found that it had been established that he headed the Belgian cell in contact with the Vietnamese branch and the coordinators in Berlin and France. He provided the necessary assistance during the final stages of the smuggling route. For instance, he ensured that migrants were hidden in safehouses and set the date for their departure for the United Kingdom. When they arrived in the United Kingdom, he decided when and how they should pay. The court examined which facts could actually be attributed to him and which could be proved. He was still found guilty, but the prison sentence was reduced from 15 to 10 years.

The court limited the period of crime regarding another defendant, whom the judge had considered to be in middle management. His sentence was reduced from 10 to four years in prison.

The defendant in the second case was also re-sentenced, but the period of crime and the number of victims were limited. Only the fine was reduced. The court found it established that he had continued to be part of the criminal organisation after moving to the United Kingdom and that he had been responsible for running the safehouses from abroad. Moreover, he organised for other members to escape to Berlin after the events of 23 October.

571 Ghent, 23 February 2023, 3rd ch, No. C/308/2023 and No. C/309/2023.

As regards the lessors of the safehouses, the court found that it was not established with certainty and beyond reasonable doubt that they knew that they were participating, as lessors, in the preparation and execution of the activities of the criminal organisation involved in the smuggling of Vietnamese people by making their property available. They were acquitted.

As regards the taxi drivers, the court found that the mere task of transporting people was not in itself immediately and automatically criminal in nature. However, taxicab drivers could be punished as co-perpetrators (Article 66 of the Criminal Code). According to the court, four taxi drivers (out of eight) were actually guilty of human smuggling, with or without aggravating circumstances.

The court specified the circumstances that proved they acted knowingly and intentionally. The fact that the destinations were near Calais, in the fields, on the west coast, that they were different people each time (supposedly acquaintances and relatives) and that it was always the same principals who paid and gave the instructions should at least have aroused the suspicions of the drivers. The court took into account the following circumstances: the principals were always Asians who paid and specified the destination, without there being any contact with the passengers being transported, who were unable to make themselves understood in a European language — furthermore, these 'principals' called from many different numbers; the destinations were neither tourist nor business destinations, but rather places known to be departure points for the organised smuggling of people to the United Kingdom; in any case, it was clear from the outset that the Asians' journeys to Calais were well paid – in fact, one of the taxi drivers had negotiated the price in advance.

The fact that these were worthwhile runs that could bring in a lot of money in a short space of time (the financial benefit in question) was decisive. According to the Court, the fact that these taxi rides from Brussels to other countries were actually carried out in these circumstances clearly showed that they had **acted knowingly and intentionally**, and not through negligence.

There is also the fact that, at one point, they tried to keep the runs within the restricted circle of three drivers, thus creating a close collaboration between the Asian principals and these three taxi drivers. The three defendants carried out a particularly large number of runs over a fairly long period of time. The defendants' wilful ignorance at the time of the events is therefore neither credible nor plausible. In view of all these findings, the court was convinced that a quasi-structured and organised form of provision of services to four members of a criminal organisation had been established between the three defendants over a long period of time.

The court examined whether the charge of human smuggling was proven for each run. In the case of the four taxi drivers, the court found that it had been proven that they were aware of the smuggling activities and were therefore guilty as co-perpetrators. The four taxi drivers received significantly lighter sentences than at first instance, namely fully suspended prison sentences of one or two years (instead of determinate prison sentences of three, four and seven years and almost fully suspended fines.

In the case of the three other taxi drivers acquitted at first instance, the court confirmed their acquittal. One taxi driver convicted at first instance was acquitted. According to the court, this taxi driver suspected, after three runs, that something was wrong and therefore immediately stopped collaborating.

The family members who filed a civil suit received between EUR 6,500 and EUR 13,250 in damages from the convicted offenders. Myria and PAG-ASA once again each received compensation of EUR 5,000.

British lorry driver involved in smuggling Vietnamese victims

In the second case, also discussed in the previous annual report, **the Ghent Court of Appeal** examined a case of human smuggling in a decision of **1 June 2022**[572] involving Vietnamese victims, in which a British lorry driver was prosecuted.

In a **judgment of 13 October 2021**[573], **the Bruges Criminal Court** ruled on the case at first instance. West Flanders FJP had police information showing that an organisation was active in bringing trailers to Belgium to transport transit migrants to the United Kingdom via the Zeebrugge-Purfleet route. Ten people were found in a trailer, including eight minors, all of Vietnamese origin. The defendant was the driver and denied any knowledge that stowaways were in the trailer.

The court found that the acts were established, with aggravating circumstances. The defendant already had a criminal record. He was sentenced to 37 months in prison and fined EUR 80,000. He appealed against this decision.

The court upheld his conviction. It found that the criminal investigation had established beyond reasonable doubt that the defendant, in return for a payment of GBP 600, had knowingly and intentionally assisted in the smuggling of 10 Vietnamese migrants in transit (including eight children) whom he had deliberately allowed to board the trailer with the intention of bringing them to the United Kingdom, hidden in a load of car tyres. The court upheld the sentence handed down by the first judge.

3.2. | Iraqi organisation involved in human smuggling by lorry

In a judgment handed down by the Bruges Criminal Court on 5 October 2022[574], 17 defendants were convicted of various acts of human smuggling with aggravating circumstances[575] committed in Zeebrugge, France, the Netherlands and the United Kingdom between 2017 and 2021. The organisation had a hierarchy, a structure and was continuously active. The defendants were of various nationalities: six Iraqis, three Belgians, one Briton, one Dutchman, all of Iraqi origin, two Iranians, two Syrians, and two of unknown nationality (one of whom was born in Iraq).

Four defendants[576] were repeat offenders, mainly for acts of human smuggling with aggravating circumstances. Some of the defendants had family links.

Four other defendants failed to appear and were judged in absentia[577].

This case concerns 36 smuggling operations carried out on different dates, around 10 of which involved the smuggling of minors. For the most part, migrants were transported in covered semi-trailers, hidden spaces or refrigerated containers from France to Zeebrugge, with the final destination being the United Kingdom. The acts concerned at least 45 unidentified victims, including a pregnant woman. More than 130 victims (including some from Iraq and Kuwait) were nevertheless identified.

The investigation began when, in October 2019, 20 illegally-staying persons, including women and children, were found in a tarpaulin-covered semi-trailer on the grounds of the port company ECS in Zeebrugge after having been there for three days. The first defendant was known to be involved in smuggling people and children and had been linked to the case thanks to information provided by the United Kingdom. This information made it possible to make the link with another transportation of Iraqi migrants, a few months earlier, found in the Port of Tilbury (part of the wider Port of London) coming from Zeebrugge. The defendant employed lorry drivers who mainly used the Port of Hull as part of their route. He charged between GBP 9,000 and GBP 11,000 per person and allegedly pocketed GBP 100,000 per week for the smuggling.

572 Ghent, 1 June 2022, 8th ch.

573 West Flanders Crim. Court, Bruges division, 13 October 2021, ch. B17 (appeal). See also Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 96 and Myria's website (Case law).

574 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (appeal).

575 The aggravating circumstances of smuggling minors, abuse of a vulnerable position, endangering the lives of victims, habitual activity and criminal organisation were upheld.

576 These were the fourth, fifth, sixth and fourteenth defendants.

577 These were the first, second, third and seventeenth defendants.

An extensive case file was compiled to link multiple smuggling incidents, based on the modus operandi and the location of the incidents: in each case, illegal immigrants were found in transport lorries, trailers or vans on the grounds of a port company in Zeebrugge. A link was also established with human smuggling by boat from the French coast to the United Kingdom, in which some of the defendants were also involved. Thanks to a phone investigation, other defendants were identified.

The investigation was carried out by means of phone records, a 'retro-zoller' examination of the defendants' phones and phones found on the victims, revealing communications (WhatsApp between the various defendants. Interviews and confrontations between the defendants and searches of their homes were also organised, as well as an analysis of notebooks, computers and SD cards found.

Belgian investigators actively collaborated with their British counterparts through the exchange of police information, a letter rogatory and the execution of a request for mutual legal assistance.

The first two defendants were respectively found guilty of 18 and nine counts of human smuggling as leaders of the criminal organisation. They used aliases in the United Kingdom. As the second defendant had already been convicted in the United Kingdom of human smuggling, the judge considered that the offences he was charged with in the present trial demonstrated the same criminal intent. They were sentenced to 10 and two years in prison respectively and to fines of EUR 272,000 and EUR 968,000.

The judge accepted the application of the principle of *non bis in idem* for the prosecution of the third defendant, who had already been convicted by a judgment of 25 March 2019 for the present offences of human smuggling, with the exception of an act of smuggling committed after the judgment, which the judge considered to constitute the same criminal intent. The third, fourth and fifteenth defendants were convicted of participation in decision-making within the criminal organisation. Their sentences ranged from one year to 50 months in prison (some suspended) and from EUR 8,000 to EUR 240,000 in fines (some suspended).

The 12 other defendants were convicted of participating in the preparation and execution of activities authorised within the framework of the criminal organisation. The sentences handed down to the 12 defendants, who had no decision-making powers, ranged from six to 18 months in prison(mostly suspended) and from EUR 8,000 to 304,000 in fines (mostly suspended).

The judge found that the ninth defendant's desire to ingratiate himself with the third defendant, who had decision-making power and would guarantee the smuggling of his family under favourable conditions, constituted an indirect advantage and a financial gain for him.

The sentences handed down to the eighth, eleventh, thirteenth and fourteenth defendants also included their conviction for money laundering. Of the smuggling offences in the case file, five were organised through the hawala system[578]. The judgment ordered several defendants to forfeit large sums of money representing financial benefits derived from smuggling.

The seventeenth defendant, an Iraqi who had failed to appear at first instance, lodged an objection to the judgement. He had been involved in two smuggling operations using inflatable boats, in collaboration with the seventeenth defendant. He was responsible for ensuring that the victims arrived at the agreed location. A boat had been delivered to him by the fifth defendant.

The judge referred to the phone investigation showing communications between the latter and the other defendants on the subject of smuggling. The defendant had used the hawala system: victims had deposited a sum of money in a foreign exchange office in Iraq in his name. Police information from the United Kingdom showed that the defendant had entered the country in a rigid-hulled inflatable boat (RHIB)[579] in 2020. On **14 December 2022, Bruges Criminal Court**[580] confirmed his sentence of two years in prison and a fine of EUR 32,000.

578 A hawala type of system can be considered as a parallel banking system to transfer money from one country to another without leaving any trace of the transaction. The system is completely anonymous.

579 Rigid hull inflatable boat.

580 West Flanders Crim. Court, Bruges division, 14 December 2022, ch. B17, No. 2509 (final).

3.3. | Indian human smuggling organisation

On **12 October 2022, the Bruges Criminal Court**[581] handed down a judgement convicting two Indian defendants, the main smugglers in a criminal organisation, of smuggling with aggravating circumstances, with regard to an unknown number

of people (at least 97), including several minors, in Zeebrugge.

The investigation began in April 2018 following a statement by an Indian man claiming to have been a victim of human smuggling. After travelling to Paris, he went to Brussels-Midi railway station, Blankenberge and then Zeebrugge via an Indian smuggler whom he identified. The smuggler's name was found in police databases. This smuggler, who was not mentioned at the trial in this case, had already been found and recognised in the Zeebrugge area during previous observations. In May 2018, after being found by the maritime police, another person stated that they had been approached in Brussels by the same smuggler before formally identifying him in a photo. They had travelled with him eight to ten times from Brussels to Zeebrugge, via Blankenberge, in the presence of other migrants, each time in a semi-trailer.

The investigation was carried out using phone tapping, a phone investigation, an examination of WhatsApp conversations, a forensic investigation of the phones and an examination of surveillance cameras in the railway stations. Investigators also carried out an analysis of people held at the Bruges detention centre who had had contact with the smuggler (who was not named at the trial). The investigation revealed that he was linked to a criminal organisation, along with other people. The two main smugglers were in India at the time of the events. However, the charges in the judgment in this case relate only to these two. During the investigation, other suspects were also interviewed. They stated that they had been provided with accommodation by other members of the organisation in return for payment, and that they had provided services without being aware of any link with human smuggling. Searches were also carried out at the homes of some of them.

The smuggling network organised the accommodation and the transportation by lorry of the victims to the United Kingdom. They were often abandoned for several days on the coast or in a park. They had to provide their own food and drink, potentially for several nights. The criminal organisation used threats. The victims were mainly Indian women, who were taken from India to the UK. One of the suspects[582] received money via Western Union from the United Kingdom, France and Germany. The activities were well organised: the people travelled in small groups; some members kept watch

in case the police showed up; clear instructions were given; the victims were looked after and accommodated in different safehouses. The members knew who had been picked up by the police, who had escaped and who had arrived in the United Kingdom.

The two defendants, who were the main smugglers for the criminal organisation, kept in direct contact with the members of the organisation and gave them instructions. They used numerous aliases in their communications with the victims and the other members of the criminal organisation.

The first defendant did not dispute the acts of human smuggling in this case. He performed a managerial and supervisory role within the criminal organisation. The judge pointed out that it was not necessary for the organisation to have been set up by the defendant for him to be the head of the structure. He was a repeat offender, following several convictions for similar offences[583]. He was arrested in Armenia before being transferred and arrested in Belgium in April 2021. As the defendant had already been convicted by Brussels Court of Appeal in June 2022 for human smuggling, the judge considered that the acts of which he was accused in this trial manifested the same intent, thus requiring additional sentencing.

The second defendant was also considered to be the main smuggler alongside the first defendant. He was repatriated from Belgium to India in 2014 and has not left India since. In this case, a default arrest warrant was issued in September 2018 and a request for mutual legal assistance was sent to India in October 2019, which was executed and returned in August 2021. In this case, a default arrest warrant was issued in September 2018 and a request for mutual legal assistance was sent to India in October 2019, which was executed and returned in August 2021.

581 West Flanders Crim. Court, Bruges division, 12 October 2022, ch. B17, No. 1961 (appeal).

582 This suspect was not a defendant at the trial.

583 He was convicted on 17 February 2010 by Brussels Court of First Instance and on 27 July 2011 by Dendermonde Criminal Court.

The execution of the mutual legal assistance request also mentions smuggling activities in the Ukraine-Poland region. He was also a repeat offender as he had already been convicted of similar offences by the Brussels Dutch-speaking Criminal Court on 29 June 2017. He failed to appear at the present trial and was sentenced in absentia.

Both defendants were sentenced to four and 10 years in prison respectively, and fined EUR 560,000. They were also stripped of their rights.

3.4. | Small boats on the North Sea

3.4.1. | *Small boats*

Two cases involving small boats concern well-structured Iraqi and Iranian organisations.

Iraqi/Iranian smuggling network with a small boat in distress at sea

In **a judgment of 22 June 2022, the Bruges Criminal Court**[584] examined a case of human smuggling by small boat across the North Sea, involving a network of Iraqi-Kurdish smugglers. A defendant of Iranian nationality was prosecuted as a perpetrator or co-perpetrator of aggravated human smuggling in October 2021. Three victims and Payoke filed civil suits. Three victims, all Iranian nationals, were granted the status of victims of human smuggling with aggravating circumstances.

In autumn 2021, following a distress call, a boat was located on the North Sea. A rescue operation followed, during which some of the passengers were taken by helicopter to hospital for emergency treatment. In all, 24 people were on board the boat, which appeared to have been at sea for more than a day off the coast of northern France.

Interviews with various people on board revealed that they felt they were victims of human smuggling, but one of them, the defendant, spontaneously declared that he had been involved in human smuggling practices. According to his account, the smugglers had told him who had paid in the camps and he had escorted the migrants to the beaches. According to him, around six smugglers were active on the beaches between Dunkirk and Calais. The number one in the organisation was based in London, while the number two was based in Turkey. As there were problems in the Calais 'jungle' camps, he wanted to leave for the United Kingdom himself. There were around 20 people on board and after 30 minutes the engine broke down. They then spent two days drifting at sea without food or drink. When they reached the wind farm, they were able to access the network again and make an emergency call.

When the man learned that he was considered a suspect for cooperating in the human smuggling operations, he retracted his statement. He was arrested and prosecuted for human smuggling. During the investigation, several mobile phones were found at his home, as well as cash.

The three victims were also questioned, a 'retro-zoller' phone analysis was carried out on one phone number, information was requested from abroad and the 16 mobile phones found were examined. It emerged from the victims' statements that around six smugglers were active on the beaches, using violence and pepper spray against those being smuggled. The defendant was identified by at least one victim as the man at the helm of the boat. He was known abroad for a number of criminal offences and had even been sentenced to 13 years in prison for armed robbery. The phone investigation revealed that the defendants often communicated about who had paid and was allowed on the small boats, about payment to the 'offices' in London and Turkey, about the asylum procedure in the United Kingdom, about hotel bookings in the Calais area, etc.

According to the court, the defendant should be considered a smuggler. The pursuit of a financial benefit is one of the constituent elements of the offence of human smuggling, not its actual execution. For there to be a conviction for co-perpetration, the defendant must have known that they were contributing to the smuggling by their act, without it being necessary to prove intent or the obtaining of a direct or indirect financial benefit. A benefit may also be defined as, for instance, the defendant's own passage free of charge or at a reduced rate.

The defendant endangered the lives of the people being smuggled. They spent two whole nights on rough seas in a boat that was totally unsuitable and taking on water, with a broken outboard motor. There was no navigation and no signalling. The life jackets were totally inadequate. It was perfectly plausible that the crossing would end fatally, as the North Sea is one of the busiest shipping lanes in the world. The victims had no other choice, given their precarious situation.

584 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1532 (appeal).

The only elements that were still somewhat in the defendant's favour were the fact that he was prepared to give the names of the (other) smugglers and that he had also put himself in mortal danger by embarking on the crossing.

He was sentenced to six years in prison and fined EUR 184,000. Two victims received compensation of EUR 500 for pecuniary damages and EUR 2,500 for non-pecuniary damages. One victim received pecuniary and non-pecuniary compensation of EUR 2,001 and Payoke received EUR 2,500 in damages.

The defendant lodged an appeal and **the Ghent Court of Appeal** reviewed the case in **a ruling of 15 February 2023**[585]. The court broadly upheld the judgment. The court considered that the fact that the defendant was being prosecuted as a co-perpetrator of the offence of human smuggling did not mean that all the acts of participation committed by him had to contain all the constituent elements of the principal offence. It is necessary, but sufficient, for the perpetrator of the act of participation to contribute to the offence in one of the ways set out in Articles 66 and 67 of the Criminal Code and for there to be an intention to participate, i.e. that they knowingly and intentionally collaborated in the organisation of human smuggling. It is sufficient for the offender to have knowledge of the offence without being aware of all the details of its execution. The investigation established that he had provided crucial assistance in organising the smuggling and that he had at least contributed to obtaining the financial benefit. It was clear that the defendant had an executive role in the smugglers' criminal organisation, as a lower middle manager.

The court sentenced him to five years in prison and upheld the rest of the sentence.

Small boats transporting Vietnamese victims and Iraqi human smuggling organisation

In **a decision of 18 January 2023**[586], **the Ghent Court of Appeal** ruled on a case of human smuggling by small boat across the North Sea. Bruges Criminal Court had already ruled on this case in a judgment of 9 February 2022[587], analysed in the previous annual report.

A defendant of Iraqi nationality was prosecuted. In May 2021, 43 people (mainly Vietnamese and five Kurds) were

intercepted on board an RHIB on the North Sea. According to statements made by some of the migrants, it was the person navigating the boat who had used his mobile phone to alert the emergency services.

A few days later, a patrol discovered a French-registered van parked in Koksijde with its doors open. The patrol observed several people fleeing into the sand dunes, and illegal smuggling using a small boat was suspected.

One of the people, the defendant, had the key to the car found with the French number plate. The investigation revealed that it had been intercepted several times by the ANPR588 system in Belgium. Heroin was also found in the vehicle. The defendant and several members of his entourage were arrested and their mobile phones analysed. Several transit migrants were heard and identified the defendant as one of the smugglers. Vehicles and the sand dunes were searched, and traces were found on the RHIBs and accessories, as well as on the vehicles. The mobile phones of the transit migrants were analysed.

The defendant was sentenced at first instance to seven years in prison and fined EUR 640,000. Payoke filed a civil suit and was awarded EUR 5,500 in damages.

The court of appeal ruled that the acts remained established. The criminal case file (and in particular information from various chat groups and audio clips) showed that the defendant was not at the top of the smuggling organisation, but that he was undoubtedly an enforcer and belonged at least to the middle management. He had international contacts through which he gave direct instructions to migrants and other smugglers, organised payments through the hawala system, agreed prices and indicated where migrants could be dropped off. Migrants were generally referred to as 'cows' or 'cargo'.

585 Ghent, 15 February 2023, 8th ch.

586 Ghent, 18 January 2023, 8th ch.

587 West Flanders Crim. Court, Bruges division, 9 February 2022, ch. B17 (appeal), see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 95-96 and Myria's website (Case law).

588 Automatic Number Plate Recognition.588

According to the victims' statements, the defendant was responsible for plotting the routes and preparing the boats. Six of the migrants found were children. They were mainly Vietnamese migrants. Transit migrants paid between EUR 1,700 and EUR 2,000.

The court also found the fact that the victims' lives were endangered to be an aggravating circumstance. The court confirmed the sentence associated with the judgment. The compensation payable to Payoke was also upheld.

3.4.2. | Logistical support for North Sea smuggling

Smuggling organisations with links to Germany

Several decisions concern smuggling networks operating in a number of countries, including Germany.

In **the first case, the Bruges Criminal Court** ruled in opposition to a judgment handed down on **23 June 2021**, analysed in the previous annual report[589].

Five defendants, of Iranian or unknown nationality, were prosecuted. Several of them lived in Germany. Two of them failed to appear at their trial.

In May 2020, the federal judicial police's 'human trafficking and smuggling' section found two defendants in their car with equipment intended for human smuggling. Information from the German police revealed that other defendants had also been found with equipment in their cars. One of the boats purchased by one defendant had previously been intercepted by the British coastguard. The German police reported that several outboard motors had been purchased from a specific sports shop. In another shop, several boats had been sold to the same person. Police found photos of boats and life jackets on the defendants' mobile phones. One of the defendants had been buying boats and motors for a long time and organising smuggling operations, even with Vietnamese nationals.

The investigation revealed that between August and September 2020, he had bought boats worth EUR 10,000 from a shop.

The defendants were working with a person in Calais who was recruiting victims to be smuggled into the United Kingdom in inflatable boats in return for payment. The boats were in no condition to make the entire crossing. The court assessed the facts in the light of the ANPR camera search, the results of the 'retro-zoller' phone analysis, the results of the examination of the seized mobile phones, the WhatsApp conversations found, the mobile phone photos of inflatable boats and outboard motors, the Google Maps photos, the fact that some of the defendants had been caught in a car with smuggling equipment, and the implausible and contradictory statements made by the defendants.

The court ruled that the facts had been established and that the defendants were clearly part of a criminal organisation. They received prison sentences ranging from six to 12 years and fines ranging from EUR 96,000 to EUR 240,000.

As the third defendant had returned to Iran, he was sentenced in absentia to 12 years in prison and a fine of EUR 240,000. He filed an opposition to the judgment. During a hearing, he stated that he was a refugee, a victim and that he had worked for a principal in order to be able to cross to England free of charge. In **the judgment handed down in opposition** on **14 December 2022, the Bruges Criminal Court**[590] found that the defendant was the head of the supranational criminal organisation, given that he was responsible for contacts with the boatmen, sending out the locations, accompanying the victims to the beaches, controlling payments and recruiting people to work for him. Analysis of WhatsApp conversations showed that the former defendants were under his control and that he had real decision-making power.

The judge also took into account the fact that some of the smuggling victims were also minors. The period of incrimination was revised to take into account his return to Iran from June 2020. In the end, the court sentenced him to nine years in prison and a fine of EUR 80,000 for smuggling with aggravating circumstances, in particular involving minors. He was also stripped of his rights.

An appeal was eventually lodged against the first **judgment of 23 June 2021**. The appeal procedure involved only three of the five defendants, two of Iranian nationality and one of German nationality.

589 West Flanders Crim. Court, Bruges division, 23 June 2021, ch. B17 (opposition and appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt,* pp. 103-104 and Myria's website (Case law).
590 West Flanders Crim. Court, Bruges division, 14 December 2022, ch. B17, No. 2508 (appeal).

The Ghent Court of Appeal ruled in **a decision of 9 March 2022**[591] that the criminal case file showed that the three defendants operated within a criminal organisation with international ramifications, in which each had a clearly defined task in the organisation of human smuggling. The members of the organisation were in constant contact with each other, alternating locations where police checks could be avoided, purchasing equipment (motors, life jackets and fuel) and transporting it to the north of France, from where the crossing to the United Kingdom was organised. The three defendants each had a specific task to perform. In addition, the organisation was supranational in nature (purchase of boats in Germany in particular, meetings in Belgium and transport of equipment to northern France) and the members had the money needed to purchase the boats (an inflatable boat with a floor cost between EUR 2,000 and EUR 5,000 and an outboard motor easily between EUR 2,000 and EUR 4,000).

The court assessed the role of each defendant and sentenced them to between four and nine years in prison and fines of between EUR 40,000 and EUR 80,000.

Two other cases, also involving the transport of logistical equipment, were tried by **the Bruges Criminal Court on 22 June 2022**. In these two cases, the acts were committed in De Panne, France and Germany.

In the first case, the Bruges Criminal Court[592] convicted three Iraqi defendants residing in Germany of acts of smuggling with aggravating circumstances committed in 2021.

The investigation began in April 2021 when the police found a car with a German number plate containing nautical equipment in De Panne: a small boat made up of several pieces of rubber joined together with adhesive tape and glue. The model of motor was over 30 years old.

The investigation involved hearing the defendants, confrontations between them, an in-depth examination of their phones (including WhatsApp conversations and Facebook accounts) and an ANPR analysis of their number plates. The last two defendants were arrested in Germany before being extradited.

The judge took into account the danger of a North Sea crossing to the United Kingdom with small boats and totally unsuitable equipment.

The first defendant acted as an enforcer and was low in the criminal organisation's hierarchy. The investigation showed that he had informed the second defendant that he did not want to take part in the smuggling, after being contacted by the latter. At the latter's request, he provided an inflatable boat.

The second defendant, of Iraqi and German nationality, organised the transfer of nautical equipment from Germany to France and recruited the operatives from a Yazidi community. His telephone was linked to a false identity.

The third defendant was also a member of the criminal organisation's management. His fingerprint was found on a door of the first defendant's car, although he denied having been in the car, which the judge found not credible. Despite the absence of any substantial regular income, the investigation showed that he maintained a luxurious lifestyle (luxury cars, photos of holidays and bundles of cash, amounts of money on the phone, etc.).

The prison sentences handed down ranged from 37 months to five years, suspended (partially or fully, depending on the defendant), and fines of between EUR 12,000 and EUR 36,000 (some suspended). The defendants were also stripped of their rights.

The second case[593], involving three defendants, began when, in October 2021, the police checked two vehicles at night on a slip road off the E40 at De Panne. The first one was supposed to follow the second one, which was transporting nautical equipment. The three defendants and a fourth person were in the vehicles, which were registered in France and Germany[594]. One of the cars had previously been observed loading and unloading migrants and equipment on the French coast.

591 Ghent, 9 March 2022, 8th ch.

592 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1530 (final).

593 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1531 (appeal).

594 This person died shortly after their interception during the night, in a police cell.

A search of the two confiscated vehicles, fingerprinting and an ANPR analysis were carried out, as well as an examination of the phones found in the vehicles belonging to the defendants.

The first defendant, an Iranian, failed to appear at his trial. He had claimed to be a minor, but this was contradicted by a bone scan showing that he was 26-27 years old, with a margin of error of two to three years. According to the defendant, the people in the other vehicle were going to help him cross to the United Kingdom, at a cost of EUR 5,000. Unable to pay this sum, the defendant stated that he had agreed to cross free of charge, on condition that he drove the car, brought the motors to France and transported the nautical equipment. They had given him a phone and he was being watched by the other car.

The second defendant, an Iraqi, was in the first vehicle that was stopped. He had a more important role within the organisation.

The third defendant, an Iraqi, had been fingerprinted in several countries under different names. He worked day and night as a sub-manager in the criminal organisation, smuggling migrants into the United Kingdom using Turkish inflatable boats that were overloaded and known for their poor quality. As well as playing a logistical role, he checked the payments made by the victims via the hawala system and gave orders to his accomplices. He would go to Germany to collect motors and boats and prepare them on the beach. He was in contact with other traffickers and in particular with the head of the organisation, who was based in the United Kingdom.

The sentences handed down ranged from 30 months (suspended in some cases) to six years in prison and a fine of between EUR 20,000 and EUR 32,000 (partly suspended in the case of the first defendant). All the defendants were also stripped of their rights.

3.5. | Humanitarian visa fraud

In a **decision of 30 June 2022**[595], **the Antwerp Court of Appeal** ruled on a case of humanitarian visa fraud. At first instance, t**he Antwerp**

Criminal Court had ruled on this case in a **judgment of 12 January 2021**, mentioned in a previous annual report[596].

The acts date back to the period from 2017 to 2019. In this case, 10 defendants (including the main defendant, his son and his wife) were prosecuted for actively participating in human smuggling with aggravating circumstances in various ways. The main defendant was also prosecuted for having been the head of a criminal organisation and the other defendants for having been members of this organisation. Several of them, including the main defendant, were also charged with passive corruption, while two defendants were also prosecuted for attempted extortion.

In return for payment of sums ranging from EUR 2,500 to EUR 7,500, the defendants helped third-country nationals to obtain a one-year short-stay humanitarian visa with the sole aim of applying for asylum in Belgium. They did this despite the fact that these people had settled abroad - which is contrary to the conditions for obtaining the visa, of which the defendants were aware - and/or they had not applied for asylum, the period of validity of the visa having since expired.

The main defendant abused the authority or facilities granted to him by the State Secretary for Asylum and Migration at the time. In his capacity as representative of the Assyrian Church in Mechelen, he was responsible for drawing up lists of Syrians applying for this visa as part of a rescue operation and forwarding them to the office of the Secretary of State.

Humanitarian visas were issued by the Belgian Embassy in Beirut to Syrian refugees on lists drawn up by the main defendant, following investigation by the Immigration Office, OCAD and State Security, and the approval of the Secretary of State. Once in Belgium, beneficiaries of the humanitarian visa were required to follow the 'normal' procedure, by submitting an asylum application to the Commissioner General for Refugees and Stateless Persons (CGRS).

595 Antwerp, 30 June 2022, ch. C6 (appeal in cassation dismissed).

596 Antwerp Crim. Court, Antwerp division, 12 January 2021, ch. AC10 (appeal). See Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 88 ff., and on Myria's website (Case law).

The defendants contested the charge of human smuggling on the grounds that "there is no legal obligation to apply for asylum" and that "the fact that some people have not applied for asylum as part of the asylum procedure in Belgium is therefore not contrary to Belgian law".

The court rejected this reasoning. The humanitarian visa issued was only for the purpose of applying for asylum in Belgium (and therefore not in another EU Member State). Several documents in the case file (statements, phone investigation) revealed that the main defendant was aware of this condition. The public prosecutor therefore accused the defendant of having been aware that some applicants had no intention of staying or applying for asylum in Belgium, but rather of travelling immediately to another EU Member State. This is exactly why the defendant demanded (even) higher sums (around EUR 7,500) than those demanded from people he knew would stay in Belgium.

After being confronted with several wiretapped conversations and other audio recordings, the defendant stated several times that he wanted to introduce, or had introduced, a 'sanctions regime' to ensure that applicants would actually remain in Belgium.

The court acknowledged that it was not the defendant's responsibility to check whether every beneficiary of a humanitarian visa had applied for asylum after arriving in Belgium, or whether they were resident in the country. Nevertheless, the court considered that there had been human smuggling: the defendant had - in breach of the law - allowed people to enter the European Union with a humanitarian visa issued solely for Belgium, without ever intending to reside there and/or apply for asylum, in order to be able to travel immediately to another EU Member State to reside or apply for asylum there.

According to the court, this was indeed a criminal organisation. The work was divided between the first two defendants (father and son) and others, through intermediaries who designated the candidates and sometimes shared the profits. Victims who failed to keep their promise of payment were threatened.

The court also found the main defendants guilty of almost all the other charges. The second defendant, the son of the main defendant, helped to draw up the lists and contacted a series of victims or their relatives. The main defendant's wife (who rented a safe in which part of the criminal proceeds were hidden) and intermediaries were among the other defendants.

The main defendant was sentenced to eight years in prison, fined EUR 696,000 and stripped of his civil and political rights. An amount of EUR 450,000 was confiscated. The other defendants received prison sentences ranging from one to four years (and fines ranging from EUR 8,000 to EUR 296,000, suspended for some of them).

The civil parties (including the Belgian State and Myria) were awarded compensation.

Five of the ten defendants lodged an appeal against this decision.

The court of appeal considered that, given that the humanitarian visas were issued on condition that the persons applied for asylum in Belgium, it was essential, in order to assess guilt for human smuggling, to know whether the defendants had **prior knowledge of the intentions of the refugees applying** for these visas. The main defendant was suspected of having demanded large sums from applicants for humanitarian visas and even larger sums if they intended to go abroad immediately and not report to the Belgian authorities. In the case of several people, the court found that this prior knowledge could not be sufficiently demonstrated. The defendant was therefore acquitted of the charge of human smuggling with regard to these people. If prior knowledge was proven, then the charge would remain.

Some of the defendants, including the main defendant, were also found guilty of passive bribery in relation to several people. On the one hand, he was found guilty of passive corruption with regard to the persons for whom human smuggling had been proven, given that the corruption, in his role as a public official, was carried out with a view to committing an offence (Article 247, § 3, of the Criminal Code). On the other hand, regarding those people for whom human smuggling was not proven, he was found guilty of bribery for the purpose of performing a lawful act (Article 247, § 1 of the Criminal Code). His son was found guilty of passive corruption as a co-perpetrator, and his wife of human smuggling and passive corruption.

According to the court, it was established that the main defendant, as leader, had set up an organisation in which his link with a government project, i.e. the rescue of Syrian Christians through manitarian visas, was used by him for human smuggling and/or passive corruption with the aim of achieving the greatest possible financial benefit. For this purpose, he structurally used intermediaries, his son and his wife, who were found guilty of participating in the decision-making of the criminal organisation. The other defendants were convicted of belonging to a criminal organisation.

In addition, the court also found that the main defendant and his son were guilty of attempted extortion. They threatened to withdraw the residence documents of certain people, who were in a precarious residence situation, if they did not pay them large sums of money.

The main defendant was sentenced to five years in prison and a fine of EUR 48,000. The other defendants received two-year prison sentences and fines ranging from EUR 32,000 to EUR 296,000, some of which were suspended. The court sentenced the tenth defendant to a full suspended prison sentence, because of her role as a whistleblower in this case.

Large sums of money were confiscated. The civil parties were awarded compensation.

An appeal in cassation was filed by the main defendant, his son and his wife, but was dismissed in a ruling of 6 December 2022[597].

3.6. | Smuggling of Surinamese migrants by a travel agency offering various residence options

The Antwerp Criminal Court ruled in **a judgment of 28 June 2022**[598] on a case involving the smuggling of Surinamese nationals. Nine defendants were prosecuted in this case, all of Surinamese nationality. One of the defendants, a company, was a travel agency. The three main defendants were brothers. They were prosecuted for human smuggling with aggravating circumstances and human trafficking for the purpose of labour exploitation with regard to one person. Among other things, they were also prosecuted for belonging to or leading a criminal organisation, rape, fraud and threats.

The case concerned a travel agency with branches in Belgium, the Netherlands and Surinam, which acted as a hub for smuggling human beings, both minors and adults, mainly of Surinamese origin.

The case was opened by Antwerp FJP following a number of reports from the Immigration Office and observations by the local police.

Every time, the organisation tried to get the people smuggled registered in Belgium. Depending on the situation and/or the preferences of the victim, various options were available, in return for payment. The people smuggled allegedly paid between EUR 10,000 and EUR 20,000 for this.

i) An option linked to an asylum application - often used as a means of taking other steps during the 'provisional legal situation' period.
ii) A family reunification option with a real family member - the family member living in the Netherlands was registered in Belgium and, in order to establish their solvency, had received a false employment contract from the criminal organisation. The criminal organisation provided registration and residence addresses and false documents to prove a relationship, for instance. The addresses of the places of residence were used until there were problems with the landlord or the neighbourhood police officer.
iii) A family reunification option with a partner or through legal or de facto cohabitation in which a fictitious partner was sought by the organisation: in this case, a person unknown to the victim would turn up and the organisation would provide false documents to prove the relationship.

597 Cass., 6 December 2022, No. P22.1026.N.
598 Antwerp Crim. Court, Antwerp division, 28 June 2022, Chamber AC10 (appeal).

iv) An employment-related option: the organisation
v) drew up false employment contracts with the travel agency.

The organisation also offered an 'all-in' option whereby victims were helped to obtain a tourist visa, a plane ticket, furnished accommodation, a registration address, practical and administrative support throughout the process and legal advice from lawyers.

The members of the criminal organisation all had different tasks and roles, ranging from direct contact and discussions with the victims to collecting the money and depositing it in the travel agency's account; searching for, visiting and renting suitable premises; compiling files, including communications and photographs; preparing for interviews at the Immigration Office and transport to Brussels; drafting and signing false employment contracts to establish solvency; and also providing vehicles.

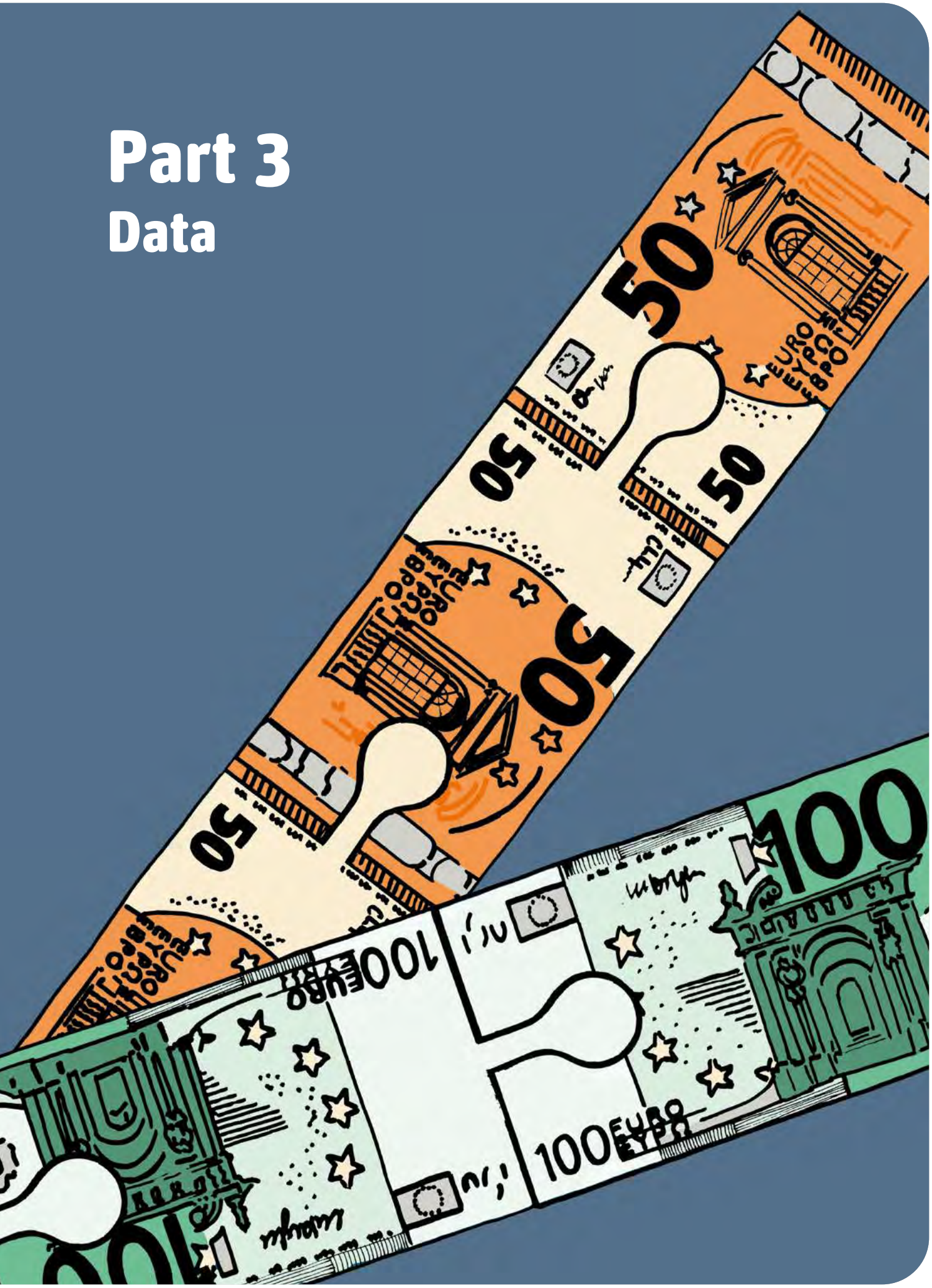
The court found that it had been demonstrated that all the defendants had knowingly participated in and/or contributed to the smuggling activities and that it wasn't a question of sporadic contacts or fortuitous collaboration. The actions they had taken to support the victims weren't motivated by humanitarian considerations, since large sums of money had to be paid. Finally, the court emphasised that, even if some of the defendants hadn't received any financial benefits, the network's leaders had in any case made money thanks to the participation of the co-defendants in the smuggling activities.

The defendants were found guilty of human smuggling. The main defendant was also found guilty of human trafficking for the purpose of labour exploitation of a victim. The court found that the conditions of employment were indicative of labour exploitation, in particular the fact that she worked illegally, that she was in the country illegally, that she had no social protection and that she didn't receive a regular salary commensurate with the services provided, but only minimal and variable compensation. The consent of the person involved in the exploitation was irrelevant in this respect. The court also found that the victim had been raped.

Another defendant was also convicted of raping another victim, who was also a victim of human smuggling.

The three main defendants received prison sentences ranging from four to eight years and fines of EUR 448,000, some of which were suspended. The other defendants received prison sentences of between two and four years and fines of between EUR 440,000 and EUR 448,000, some of which were suspended. The company was fined EUR1,920,000. The court also ordered that the company be dissolved, as it had been deliberately set up to carry out criminal activities. The company had gone bankrupt in the meantime. A confiscation of the financial benefit amounting to EUR 115,000 was ordered.

Part 3
Data



Introduction

This part of the report contains the key figures given to Myria by the stakeholders likely to play a role in a human trafficking or human smuggling case in Belgium. It presents the most recent data on human trafficking and smuggling, as well as a retrospective of the last few years, insofar as this is possible, in an effort to put this data into perspective.

The stakeholders who gave their figures to Myria are:

- the police, with information from the National General Database (NGD);
- the NSSO inspection department (Thematic Directorate for Trafficking in Human Beings, ECOSOC teams);
- the College of Prosecutors General, with information on the prosecutions made by the public prosecutors' offices and the labour prosecutors' offices;
- the Immigration Office (IO);
- PAG-ASA, Payoke and Sürya: centres specialised in the reception and support of victims;
- the Criminal Policy Service (CPS) of FPS Justice, with information on the final convictions.

In keeping with tradition, this chapter ends with an external contribution from the NSSO's inspection services.

Please note:



- The figures in this report in no way reflect the true extent of the phenomenon of human trafficking and smuggling in Belgium. They only concern the acts, victims and perpetrators identified as such by the authorities. Nothing can be said about unidentified events.
- These figures and their evolution provide information about the action taken by the authorities to combat human trafficking and smuggling rather than about these phenomena as such.
- There is a lack of harmonisation between the figures from the various stakeholders and, therefore, there is no coherent and uniform image of these criminal phenomena. This limits the possibilities for policy evaluation, strategic analysis and reporting to the European institutions. It goes without saying that Myria collaborates with the above-mentioned stakeholders to collect figures of the best quality possible.

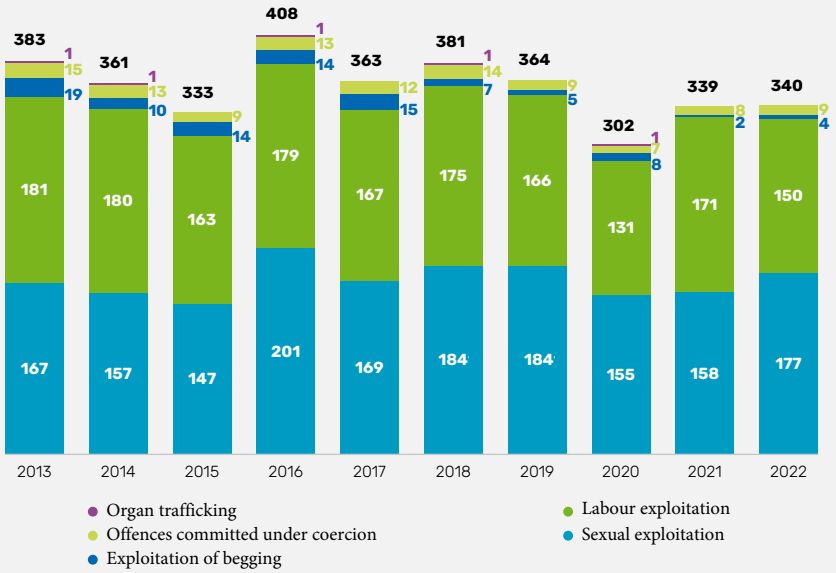
1. Human trafficking

Human trafficking offences (police data)

In 2022:

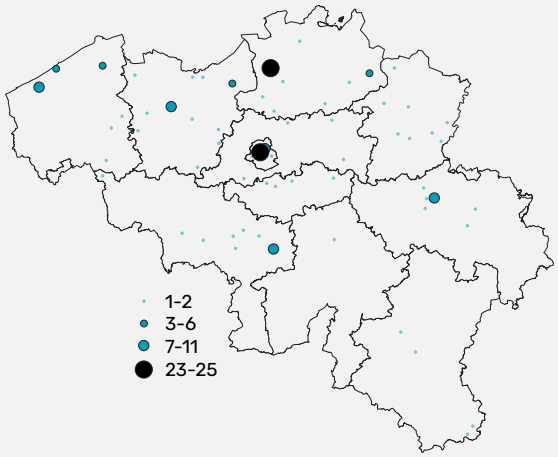
- 340 offences linked to human trafficking were detected by the police, a figure comparable to last year's.
- Sexual exploitation (52%) and labour exploitation (44%) remain the most detected human trafficking offences.
- However, there were also nine cases of offences committed under coercion and four cases of exploitation of begging.

Human trafficking offences recorded 2013-2022



Sexual exploitation offences recorded

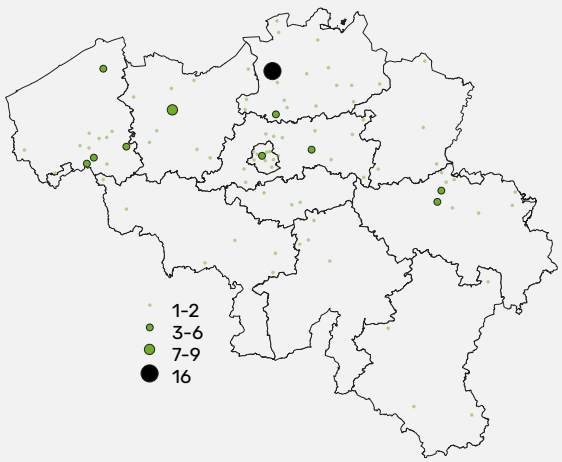
In 2022, **sexual exploitation** was most often detected in large conurbations such as Brussels-Capital (46 offences in the 19 municipalities), Antwerp (23), Ghent (9) and Liège (9).



Province	Number of offences
Brussels-Capital	46
Antwerp	34
East Flanders	22
West Flanders	20
Hainaut	15
Liège	14
Limburg	8
Luxembourg	6
Flemish Brabant	5
Walloon Brabant	5
Namur	2
Total	**177**

Labour exploitation offences recorded

The majority of trafficking offences for the purpose of **labour exploitation** were recorded in the cities of Antwerp (16 offences), Brussels-Capital (16 offences in the 19 municipalities) and Ghent (9). Contrary to sexual exploitation, geographic expansion was greater and the offences recorded seem to be far less connected to city centre environments.



Province	Number of offences
Antwerp	36
West Flanders	25
East Flanders	18
Flemish Brabant	16
Brussels-Capital	16
Liège	15
Hainaut	7
Luxembourg	5
Limburg	5
Namur	4
Walloon Brabant	3
Total	**150**

Source: National General Database, Police

NSSO inspection department (ECOSOC teams) – Human trafficking for the purpose of labour exploitation

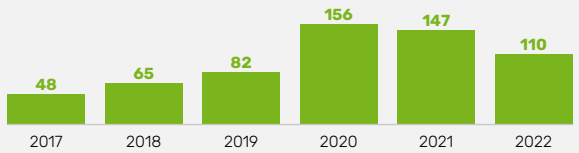
To present the work of the ECOSOC teams and their role in the fight against human trafficking, two indicators have been used:

- The annual number of presumed victims of human trafficking, from closed investigations, given to the judicial authorities on the basis of criminal reports or police reports.
- The number of checklists prepared every year. In this case, a checklist is drawn up for every presumed victim as soon as there is sufficient evidence of a possible trafficking situation, regardless of the investigation's status (at the start, during, or at the end).

Not all of the investigations closed were opened in the same calendar year; some investigations take several months or years to complete. This is also why the number of presumed victims from closed investigations is not the same as the number of presumed victims from checklists.

See the external contribution at the end of this chapter for more information on the results of the NSSO's inspection services.

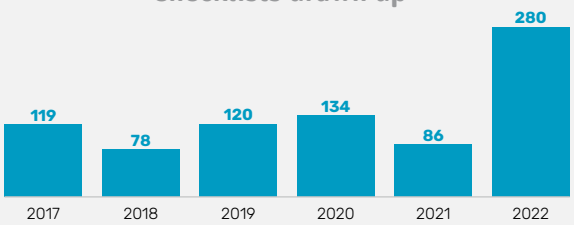
Presumed victims in closed investigations



In 2022, 110 potential victims of trafficking were referred to the judicial authorities after the investigation was closed. This is 25% less than in 2021. The vast majority of these victims were men (100). As in 2021, a surprisingly high number of Romanian victims were employed in the agriculture and horticulture sector.

Nationality	Agriculture & horticulture	Construction	Road transport	Retail	Garages	Hospitality	Domestic work	Others	Total
Romania	29	7							36
Lithuania			7						7
Slovakia		7							7
Bulgaria		6							6
Afghanistan				1	4				5
Belgium								5	5
Morocco			1	2				2	5
Brazil			1			1	1	1	4
Nigeria								4	4
Belarus			3						3
Ivory Coast								3	3
Ukraine				3					3
Burkina Faso						2			2
Congo								2	2
Eritrea				2					2
Guinea-Bissau								2	2
India		2							2
Others		1	1	1	1	2	2	4	12
Total	**29**	**23**	**13**	**9**	**5**	**5**	**3**	**23**	**110**

Checklists drawn up



There were 280 checklists in 2022, which means that three times more victims were detected than in 2021. This figure is strongly influenced by large-scale cases of exploitation identified on several building sites during the summer of 2022.

Nationality	Construction	Agriculture & horticulture	Food industry	Retail	Hospitality	Other personal services	Road transport	Domestic work	Cleaning	Others	Total
Turkey	87										87
Philippines	43										43
Bangladesh	30										30
Romania		26									26
Ukraine	18		3								21
Brazil	8		3		1		1	1	1		15
Morocco	5		2				2			2	11
Slovakia	7										7
China					1	3					4
Iran					2				2		4
Ivory Coast										3	3
Spain						2		1			3
Poland	3										3
Afghanistan				1						1	2
Congo										2	2
Eritrea				2							2
Guinea										2	2
India	2										2
Pakistan				2							2
Others	2	1	1	2	3			1		1	11
Total	**205**	**27**	**9**	**7**	**7**	**5**	**3**	**3**	**3**	**11**	**280**

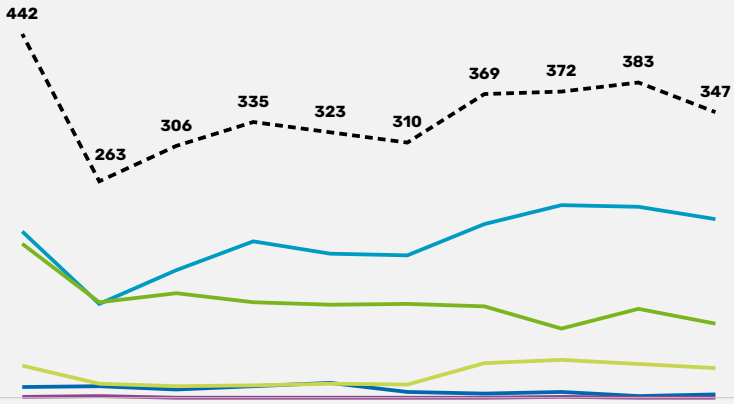
Source: NSSO inspection department (ECOSOC teams)

Human trafficking cases submitted to the public prosecutor

In 2022:

- The criminal prosecutors' offices received 347 criminal cases related to human trafficking, i.e. only slightly less than in 2021.
- This slight decrease was observed for each purpose of exploitation, with the exception of exploitation of begging.

A **new criminal case** is opened on the basis of an initial police report (subsequent reports will not lead to the opening of a new criminal case). A new criminal case can also be opened on the basis of a complaint or a civil action.



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Sexual exploitation	202	114	155	190	175	173	211	234	232	217
Labour exploitation	187	116	127	116	113	114	111	84	108	90
Exploitation of begging	13	14	10	14	18	7	5	7	2	4
Offences committed under coercion	39	17	14	15	17	16	42	46	41	36
Organ trafficking	1	2	0	0	0	0	0	1	0	0
Total	442	263	306	335	323	310	369	372	383	347

As at 7 May 2023, a third of the criminal cases submitted in 2022 were dropped

Of the 347 criminal cases submitted to the public prosecutors' offices in 2022, 117 cases were dropped as at 7 May 2023.

In 90 cases, this decision was taken because the case could not lead to prosecution (mainly owing to a lack of evidence or the fact perpetrators could not be identified). In 27 cases, prosecution was not considered worthwhile.

Methodological remarks

- This is data from the College of Prosecutors General as at 7 May 2022.
- It relates to the number of criminal cases received by the criminal prosecutors' offices (including the federal prosecutor's office) and is limited to offences committed by adults.
- The cases submitted to the public prosecutor's office of Eupen have only been recorded since 19 February 2019. The previous years were not taken into account owing to a problem in IT system harmonisation.
- A risk of double-counting exists for cases sent to another district for a decision, or when they have been sent to another division in the same judicial district.
- There can be one or more defendants in the same case.

Bron: Gegevensbank van het College van procureurs-generaal, analisten

Jurisdiction: extent of a jurisdiction's territorial competence. Belgium is composed of five major jurisdictions, each with a court of appeal. Each court of appeal has jurisdiction over several judicial districts.

- Antwerp → Antwerp and Limburg
- Brussels → Brussels (Brussels and Halle-Vilvoorde), Louvain and Walloon Brabant
- Ghent → West Flanders and East Flanders
- Liège → Liège, Eupen, Namur and Luxembourg
- Mons → Hainaut

Jurisdiction of Antwerp

- The total number of new criminal cases concerning human trafficking has fallen for the third year running.
- This trend can be explained by the decrease in the number of new criminal cases involving sexual exploitation.

Jurisdiction of Brussels

- In 2022, 100 new criminal cases linked to human trafficking were recorded, i.e. the highest number of all the jurisdictions.
- The trend has been slightly upward since 2018.
- Almost 8 new criminal cases out of 10 were linked to sexual exploitation (77).

Jurisdiction of Ghent

- The total number of new criminal cases concerning human trafficking has remained relatively stable over the past few years.

Jurisdiction of Liège

- The total number of new criminal cases concerning human trafficking has fallen for the second year running.
- This trend can be explained by the decrease in the number of new criminal cases involving labour exploitation.

Jurisdiction of Mons

- A large number of new criminal cases concerning human trafficking related to acts of forced criminality, a striking trend that has been going on since 2019.

This unusual trend has been reported to the relevant departments and was being examined in greater detail at the time of writing.

Federal public prosecutor's office

- An increasing number of new criminal cases are being recorded by the federal public prosecutor's office, even though the absolute numbers remain relatively low.
- In 2022, all the new criminal cases related to sexual exploitation.

Classification of charges

Sexual exploitation	37L	Art. 433 quinquies § 1, 1° of the Criminal Code
Labour exploitation	55D	Art. 433 quinquies § 1, 3° of the Criminal Code
Exploitation of begging	29E	Art. 433 quinquies § 1, 2° of the Criminal Code
Forced criminality	55F	Art. 433 quinquies § 1, 5° of the Criminal Code
Organ trafficking	55E	Art. 433 quinquies § 1, 4° of the Criminal Code

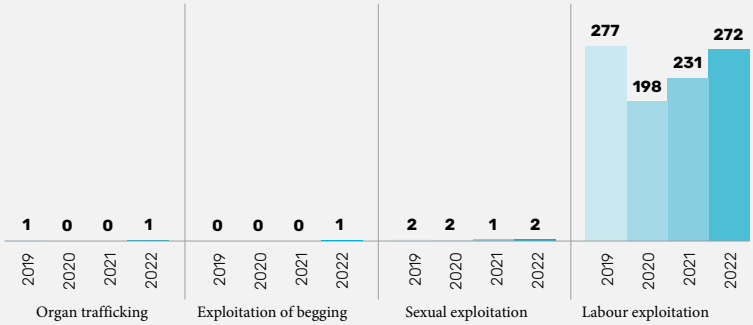

Antwerp
Brussels
Ghent
Liège
Mons
Federal prosecutor
Sexual exploitation
Labour exploitation
Exploitation of begging
Forced criminality
Organ trafficking
Total per jurisdiction

Human trafficking cases submitted to the labour prosecutors' offices

In 2022:

- Labour prosecutors' offices received 276 criminal cases concerning human trafficking, i.e. almost 20% more than in 2021.
- Given the specific remit of the labour prosecutor's office, these cases mainly concerned labour exploitation (272).
- However, two new criminal cases were also opened for sexual exploitation, one for organ trafficking and another for exploitation of begging.

Human trafficking cases submitted to the labour prosecutors' offices



Labour prosecutor	New cases of labour exploitation in 2022
Antwerp	68
Ghent	67
Brussels	51
Liège	35
Halle-Vilvoorde	18
Louvain	16
Walloon Brabant	9
Hainaut	8
Total	**272**

As regards labour exploitation cases specifically:

- The cases were mainly recorded by the labour prosecutors' offices in Antwerp, Ghent (25% each), Brussels (19%) and Liège (13%).
- The labour prosecutors' offices of Hainaut and Walloon Brabant recorded the lowest number of criminal cases, with 8 and 9 cases respectively.

10% of criminal cases received in 2022 were dropped as at 7 May 2023

Of the 276 criminal cases received by labour prosecutors' offices during 2022, 28 cases were dropped as at 7 May 2023.

In 23 cases, this decision was taken because the case could not lead to prosecution owing to lack of evidence.

Methodological remarks

- This is data from the College of Prosecutors General as at 7 May 2023.
- It relates to the number of criminal cases received by the labour prosecutors' offices and is limited to offences committed by adults.
- This data is available as of 2019.
- A risk of double-counting exists for cases sent to another district for a decision, or when they are sent to another division in the same judicial district.
- There can be one or more defendants in the same case.

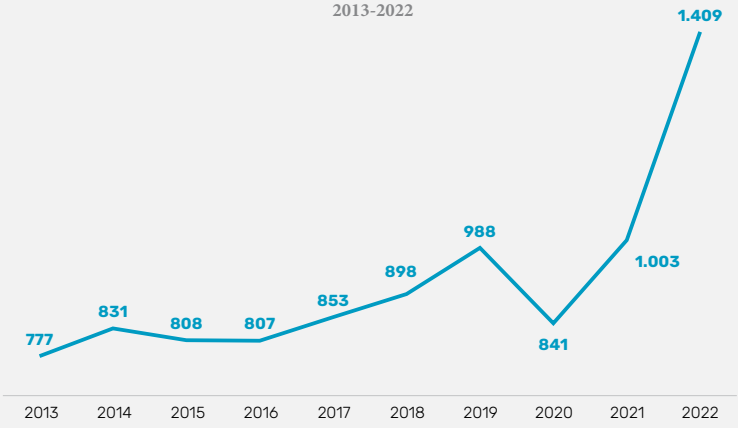
Source: College of Prosecutors General database, analysts

Reports submitted to specialised centres

The annual **number of reports** submitted to specialised centres has increased significantly in recent years. More than 1,400 presumed victims were reported in 2022, i.e. 40% more than the previous year.

This high increase can partly be explained by the widespread cases of exploitation found at several building sites during the summer of 2022.

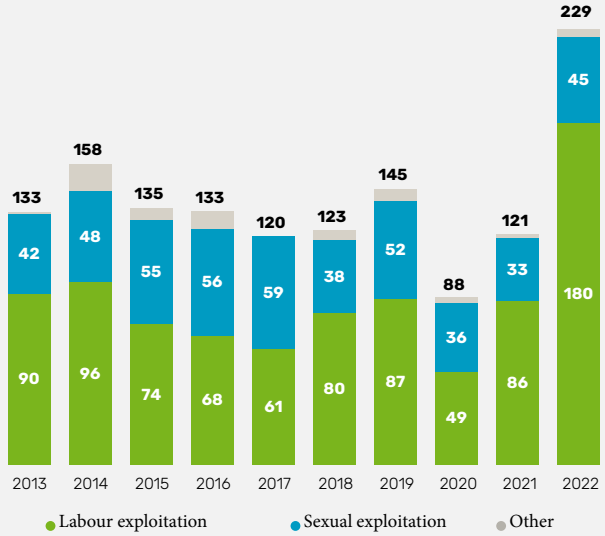
Number of reports of potential victims of human trafficking and/or smuggling 2013-2022



Source: Payoke, PAG-ASA, Surya

New support for human trafficking victims initiated by the specialised centres

Number of cases of support initiated for THB victims according to type of exploitation 2013-2022



Never before have so many victims of human trafficking joined a support programme as in 2022.

In 2022:

- Support was initiated for 228 victims of human trafficking, almost twice as many as in 2021. Two types of exploitation were identified for one and the same victim, so they were counted twice in the graph (229 instead of 228).
- Among these new cases of support, there was a record number of **180 victims of labour exploitation**, mainly of Filipino (67), Bangladeshi (31) and Moroccan (27) nationality.
- In addition, **45 victims of sexual exploitation** were able to join a support programme, mainly of Brazilian (12), Nigerian (5) and Afghani (5) nationality. Of note: four Afghani victims were underage boys.
- The four other cases of support were initiated for victims of forced criminality.

Support is initiated as soon as the first phase (period of reflection) has begun, i.e. as soon as Annex 15 has been issued.
›› *For more information, see 'Documents issued by the Immigration Office'.*

The data related to new cases of support does not reflect the extent of work carried out by the specialised centres.

Support may last several years, but its duration is not discussed here as an indicator. However, the Immigration Office's figures on the renewal of documents in the context of human trafficking proceedings can be used as an indicator in this respect.

Source: Payoke, PAG-ASA, Surya

New support for THB victims initiated in 2022 per type and per nationality

Nationality	Labour exploitation				Sexual exploitation						Forced criminality				Total
	Women		Men		Women		Men		x		Women		Men		
	<18	≥18	<18	≥18	<18	≥18	<18	≥18	<18	≥18	<18	≥18	<18	≥18	
Philippines				67											67
Bangladesh				31											31
Morocco		3		24	1	1		1							30
Afghanistan				9			4	1							14
Brazil				1		12									13
Romania		1		3	1	3									8
Nigeria		1		2		5									8
Ivory Coast				6											6
Iran		2		2											4
Ukraine		2		1											3
Serbia		1									2				3
Peru						2				1					3
Ghana				2		1									3
Spain		1		1		1									3
China				2		1									3
Netherlands		2				1									3
Algeria				2											2
Angola				1		1									2
Tunisia				1	1										2
Sudan				1											1
Hungary						1									1
Palestine				1											1
Belgium					1										1
Senegal				1											1
Madagascar						1									1
Surinam				1											1
Benin					1										1
Ethiopia				1											1
Venezuela						1									1
Rwanda								1							1
Congo Brazzaville				1											1
Iraq				1											1
Bosnia-Herzegovina											1				1
Colombia				1											1
Syria				1											1
Albania														1	1
Guinea				1											1
Ecuador		1													1
Pakistan				1											1
Niger					1										1
Total	**0**	**14**	**0**	**166**	**6**	**31**	**4**	**3**	**0**	**1**	**3**	**0**	**0**	**1**	**229**

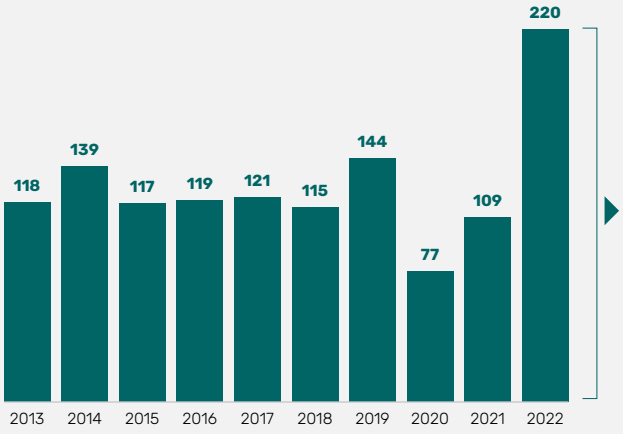
Source: Payoke, PAG-ASA, Sürya

Victims of human trafficking who entered the procedure (IO)

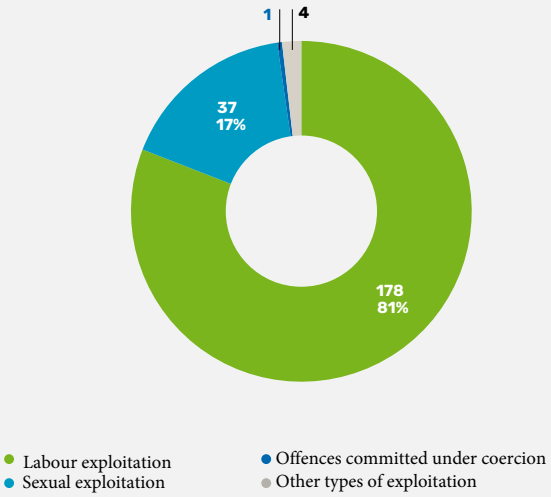
In Belgium, human trafficking victims who agree to cooperate with the judicial authorities can benefit from a specific residence status (Articles 61/2 to 61/5 Aliens Act).
This is subject to three basic conditions, namely that the victim:

- cooperates with the criminal investigation into human trafficking;
- cuts off all contact with the exploiter;
- agrees to be supported by one of the specialised centres.

Number of human trafficking victims who entered the procedure



THB victims who entered the procedure in 2022, per type of exploitation



The number of human trafficking victims who entered the procedure has doubled, with a particular emphasis on labour exploitation.

The category '**other types of exploitation**' corresponds to cases for which the type of exploitation was not clearly identified at the time of the first application.

In 2022:

- 220 trafficking victims entered the procedure, i.e. twice as many as the previous year.
- This twofold increase can be found mainly among labour exploitation victims (178 people) and therefore falls within the scope of large-scale exploitation observed at several building sites during the summer of 2022.
- In addition, 37 victims of sexual exploitation also entered the procedure, a figure that has remained relatively stable over the past few years. One victim was coerced into committing offences.
- According to IO data, no victim of organ trafficking or exploitation of begging entered the procedure in 2022. On the other hand, there is reference to four victims of 'another type of exploitation'.

N.B.: there is some information that the Immigration Office prefers not to divulge to prevent the identification of anyone involved.

Source: IO

Among the 178 victims of THB for the purpose of labour exploitation in 2022:

- The large majority of victims were men (168), while there were 10 women.
- As regards the nationality of these victims, there was a large group of Filipinos (67), Bangladeshis (32) and Moroccans (26). The relatively high number of victims of Filipino or Bangladeshi nationality is in stark contrast with the previous decade. Between 2013 and 2021, two Filipinos and seven Bangladeshis in total entered the procedure.

Among the 37 victims of THB for the purpose of sexual exploitation in 2022:

- The victims are mainly women (31), although there were six male victims.
- In terms of nationality, there was a large group of Brazilians (11), then Nigerians (6) and Romanians (4).

Victims of THB who entered the procedure, by age, gender and type of exploitation

		0-17	18-25	26-30	31 and +	Total	Men	Women
Sexual exploitation	2019	3	28	12	9	52	3	49
	2020	0	7	12	7	26	3	23
	2021	1	6	7	12	26	2	24
	2022	3	13	11	10	37	6	31
Labour exploitation	2019	7	13	11	57	88	65	23
	2020	2	8	6	32	48	37	11
	2021	5	9	14	52	80	62	18
	2022	4	9	20	145	178	168	10
Exploitation of begging	2019	1	1	0	1	3	1	2
	2020	0	1	0	0	1	0	1
	2021	0	1	0	0	1	0	1
	2022	0	0	0	0	0	0	0
Offences committed under coercion	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	1	1	1	0
Other types of exploitation	2019	0	0	1	0	1	0	1
	2020	2	0	0	0	2	0	2
	2021	1	0	0	1	2	2	0
	2022	3	1	0	0	4	3	1
Total	2019	11	42	24	67	144	69	75
	2020	4	16	18	39	77	40	37
	2021	7	16	21	65	109	66	43
	2022	10	23	31	156	220	178	42

Source: IO

Documents issued by the Immigration Office to victims of human trafficking and smuggling

		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
OLT 45 days		28	32	17	10	3	0	0	0	0	0
Annex 15		0	0	0	0	20	44	43	16	42	49
Certificate of immatriculation (CI)		117	133	114	116	112	113	136	80	98	204
CI extension		15	11	22	26	31	19	16	7	6	4
Human trafficking/ Human smuggling	A card	98	84	90	84	97	91	108	78	62	140
	Extension A card	458	443	425	413	383	348	370	384	398	395
	B card	44	33	36	49	50	61	42	29	25	35
Humanitarian	A card	2	2	6	2	0	3	3	5	0	1
	Extension A card	31	30	29	20	29	20	26	34	40	49
	B card	24	21	36	22	23	18	26	13	22	14
Total		817	789	775	742	748	717	770	646	693	891

In 2022:

- The Immigration Office took 891 positive decisions to issue or renew a residence permit. These decisions concern new victims as of 2022, but also victims from previous years who are in the process of being granted victim status and for whom one or more decisions were previously taken.
- A very high number of certificates of immatriculation and A cards were granted, i.e. twice as many as in 2021. This twofold increase can largely be explained by the fact that several nationalities (e.g. Filipinos and Bangladeshis) appeared as victims in the case of wide-scale exploitation identified at several building sites during the summer of 2022.

Annex 15
When a victim goes to one of the specialised centres, this residence document is requested by the centre. Annex 15 is valid for 45 days and covers the so-called reflection period. During this period, the victim has time to decide whether to cooperate with the criminal investigation or to abandon the procedure. If the victim files a complaint directly or makes statements against the perpetrators, this document is not requested; instead, a certificate of immatriculation (CI) is requested immediately. Since 21 May 2017, Annex 15 has replaced the order to leave the territory (OLT) - 45 days. The type of document has changed while the legal basis and conditions for obtaining it remain unchanged.

Certificate of immatriculation
If the victim decides to cooperate with the criminal investigation (make statements and/or lodge a complaint), the centre requests a certificate of immatriculation. This is valid for a period of three months and can be extended once for another three months, provided that the case is still ongoing at the public prosecutor's office.

A card
This residence permit is valid for six months and is issued under various conditions, namely that the magistrate accepts the classification of victimisation. It can be extended for the same period of time as long as the legal proceedings are ongoing.

B card
A residence permit for an indefinite period of time is granted if the victim's statements or complaint have led to a conviction or if the charges of trafficking or smuggling with aggravating circumstances have been accepted in the indictment of the public prosecutor's office or the labour prosecutor's office.

Humanitarian regularisation
The minister or their representative may decide to regularise the stay of a victim by virtue of their discretionary power.

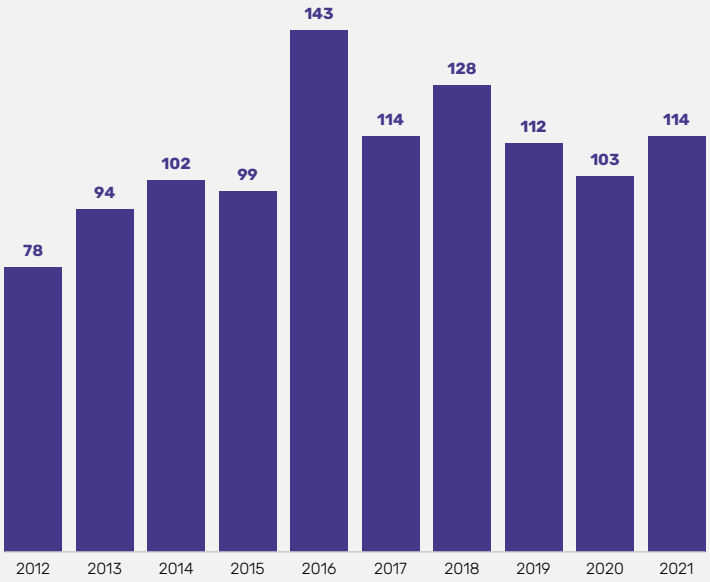
Source: IO

Final convictions for human trafficking

In 2021, 114 final convictions were pronounced for human trafficking, i.e. 11 more than in 2020, a year marked by the coronavirus, and a level comparable with that of the period between 2017 and 2019.

Given that a conviction can be accompanied by several sentences, the total number of sentences is higher than the number of convictions. Hence, 377 sentences were handed down in 2021.
90% of all convictions result in a prison sentence combined with a fine (suspended or not).
In 94 cases, the convicted person was deprived of their civil rights and in 57 cases, there was confiscation. Other forms of punishment are only occasionally handed down.

Number of final convictions for human trafficking



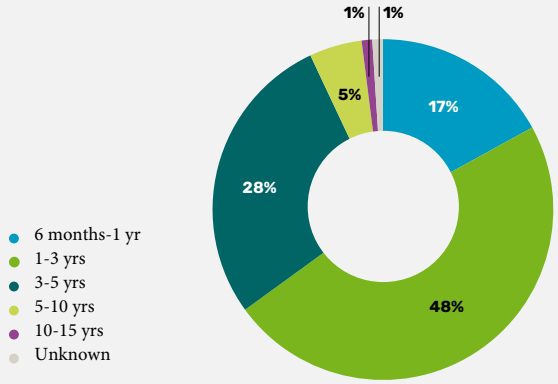
Main sentences	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Prison sentences	**72**	**82**	**93**	**94**	**128**	**93**	**120**	**100**	**97**	**104**
Not suspended	36	45	37	41	40	44	63	43	42	46
Suspended (partly or fully)	36	37	56	53	88	49	57	57	55	58
Fine	**71**	**85**	**99**	**82**	**132**	**109**	**126**	**103**	**97**	**105**
Not suspended	43	54	62	49	73	58	83	51	54	48
Suspended (partly or fully)	28	31	37	33	59	51	43	52	43	57
Confiscation	**31**	**40**	**58**	**53**	**64**	**39**	**67**	**58**	**38**	**57**
Deprivation of rights (Art. 31 Crim. Code)	**58**	**57**	**73**	**53**	**115**	**71**	**102**	**85**	**77**	**94**
Community service	**0**	**3**	**3**	**1**	**6**	**2**	**1**	**4**	**0**	**5**
Others	**5**	**11**	**3**	**3**	**4**	**7**	**19**	**14**	**12**	**12**
Total	**237**	**278**	**329**	**286**	**449**	**321**	**435**	**364**	**321**	**377**

Methodological remarks

- These figures concern the number of final convictions, which can therefore no longer be the subject of an appeal.
- Since the type of exploitation is not known for each conviction, this data is presented in an aggregated form.
- Several cases were entered into the database a few months late, which explains why the data for 2022 is not available yet.
- This data corresponds to the status on 16 May 2023.

Source: Criminal Policy Department, FPS Justice

Duration of the prison sentences pronounced in 2021 (suspended or not)



As regards the duration of the prison sentences handed down:

- More than 3 prison sentences out of 4 were 1 to 5 years.
- Prison sentences of 5 to 10 years were handed down in 5 cases.
- One prison sentence of 10 to15 years was handed down in one case.

Main nationalities of persons convicted of human trafficking in 2021

Nationality	2021
Belgium	42
Unknown	11
Romania	10
Bulgaria	8
Italy	4
Nigeria	4
Turkey	4
Albania	3
Spain	3
France	3
Morocco	3
Czech Rep.	3
Netherlands	2
Others	14
Total	**103**

In 2021, as in previous years, the nationality of a large number of convicted persons was unknown. Therefore, the nationality of 11 % of the convicted persons remains unknown. Among the others convicted, no less than 26 different nationalities were listed.

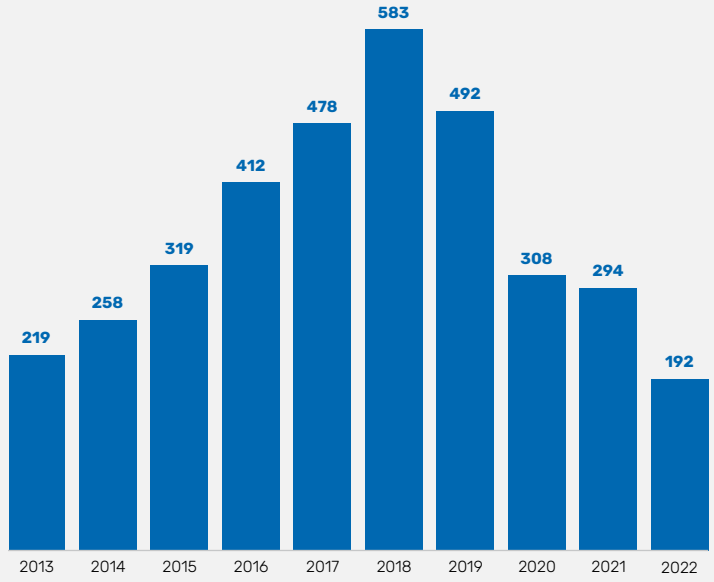
As in previous years, there was a high number of Belgian nationals (41% of cases). The other main nationalities were Romanian and Bulgarian.

Source: Criminal Policy Department, FPS Justice

2. Human smuggling

Human smuggling offences (police data)

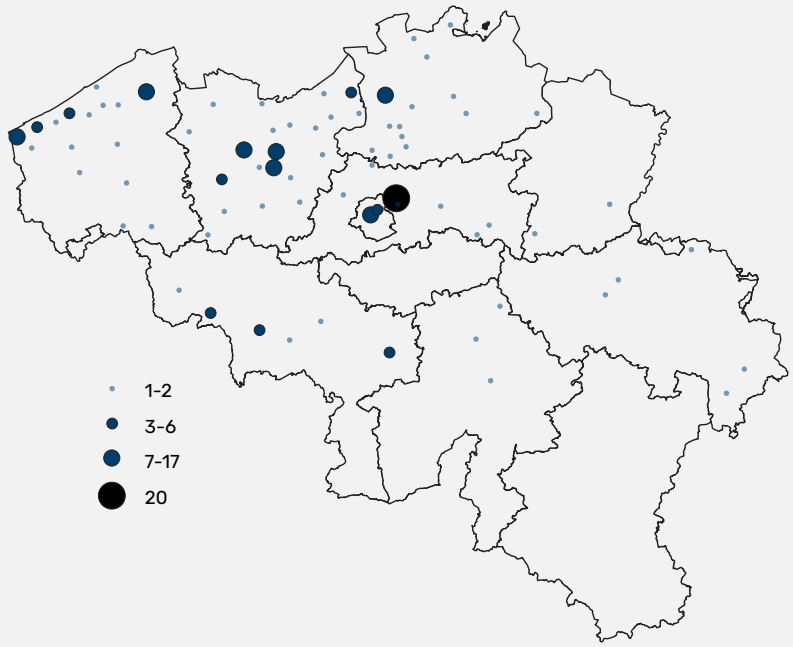
Human smuggling offences recorded 2013-2022



In 2022:

- 192 offences associated with human smuggling were detected by the police. This marks a fall of 35% compared with the previous year and the lowest level of the past 10 years.
- 4 out of 5 findings occurred in the Flemish Region. In the Walloon Region and the Brussels-Capital Region, 21 and 18 acts respectively were recorded. One act could not be associated with a place.
- The offences were mainly observed in the provinces of East Flanders, West Flanders, Flemish Brabant and Antwerp. They mainly originated in provincial capitals such as Ghent (17), Brussels-Capital (18 offences in the 19 municipalities), Antwerp (7), Bruges (7) and at Zaventem airport (20). Nine offences were recorded in the coastal municipality of De Panne.

Human smuggling offences recorded in 2022

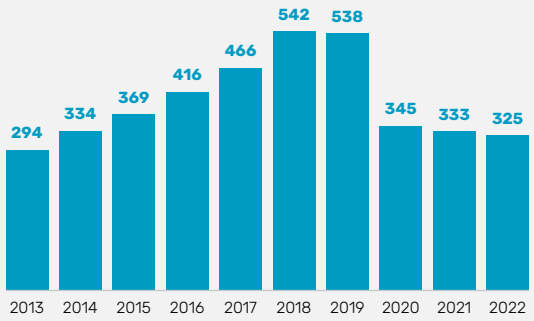


Province	No. of offences
East Flanders	61
West Flanders	39
Flemish Brabant	26
Antwerp	23
Brussels-Capital	18
Hainaut	12
Liège	5
Namur	4
Limburg	3
Unknown	1
Luxembourg	0
Walloon Brabant	0
Total	**192**

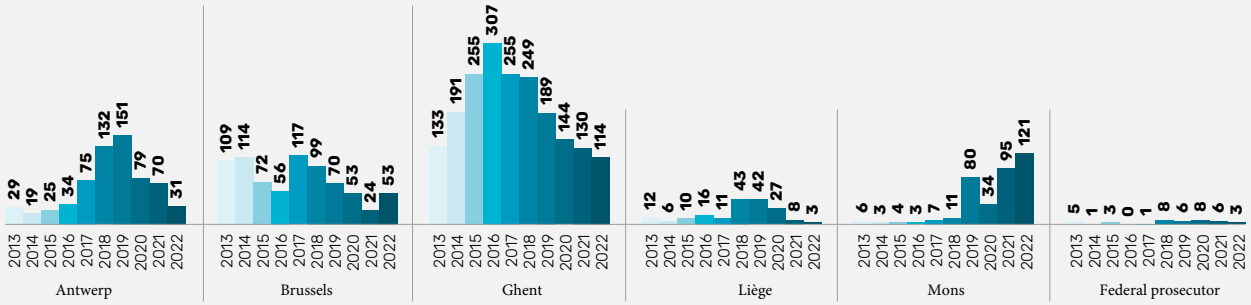
Source: National General Database, Police

Human smuggling cases submitted to the public prosecutor's office

Human smuggling:
- Art. 77bis, 77ter, 77quater and 77quinquies of the Residence Act;
- Code 55G.



In 2022:
- 325 criminal cases involving human smuggling were referred to the criminal prosecution service, a very slight decrease compared with 2021 and a continuation of the downward trend since 2018.
- This evolution can most clearly be seen in the jurisdictions of Antwerp, Ghent and Liège: continuous growth as of 2013, peaking in the 2017-2019 period, before falling.
- In recent years, there have been a striking number of criminal cases associated with human smuggling in the jurisdiction of Mons. Last year, the number of criminal cases opened was even higher than in the jurisdiction of Ghent (which covers the provinces of East Flanders and West Flanders). The low number of offences recorded by the police in the province of Hainaut makes this situation all the more striking. This unusual trend was reported to the services concerned and was the subject of a closer examination at the time this report was being written.
- For the sake of completeness, it should be noted that Antwerp labour prosecutor's office also opened three criminal cases involving human smuggling in 2022.



Jurisdiction: extent of a jurisdiction's territorial competence. Belgium is composed of five major jurisdictions, each with a court of appeal. Each court of appeal has jurisdiction over several judicial districts.

- Antwerp → Antwerp and Limburg
- Brussels → Brussels (Brussels and Halle-Vilvoorde), Louvain and Walloon Brabant
- Ghent → West Flanders and East Flanders
- Liège → Liège, Eupen, Namur and
- Luxembourg
- Mons → Hainaut

Insufficient capacity to investigate and identify offenders is the main obstacle to a successful prosecution.

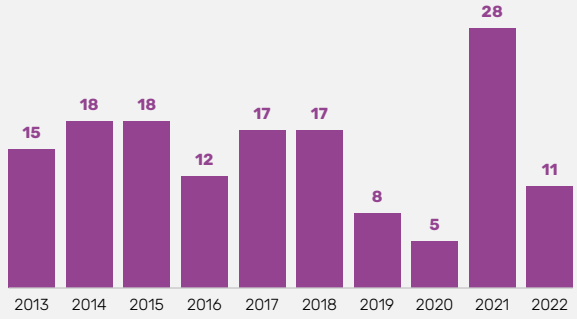
Of the 325 criminal cases involving human smuggling referred to public prosecutors in 2022, 222 had already been dropped as at 7 May 2023, i.e. approximately 68%.

- In 117 of these cases, the reason was expediency and technical reasons in 105 cases (of which 35 were due to insufficient burden of proof).
- Almost a third (70) of these decisions resulted from the impossibility of identifying the perpetrator(s). In other words, more than one in five criminal cases referred in 2022 were dropped as at 7 May 2023 because the perpetrator(s) was unknown.
- In 77 cases, no criminal proceedings were initiated owing to insufficient investigation capacity.

Source: College of Prosecutors General, analysts

New support for human smuggling victims initiated by the specialised centres

New cases of support initiated for victims of human smuggling in 2013-2022



In 2022, **11 victims** of an aggravated form of human smuggling joined a support programme at one of the three specialised centres.

Profile of human smuggling victims receiving support for the first time in 2022

Nationality	Women		Men		Total
	<18	≥18	<18	≥18	
Syria			2	3	5
Guatemala	1	1		2	4
Vietnam				1	1
Turkey				1	1
Total	**1**	**1**	**2**	**7**	**11**

- In 7 of the 11 cases, these were **adult men**, although support was also initiated for 3 minors.
- 5 Syrians and 4 Guatemalans were among the victims.

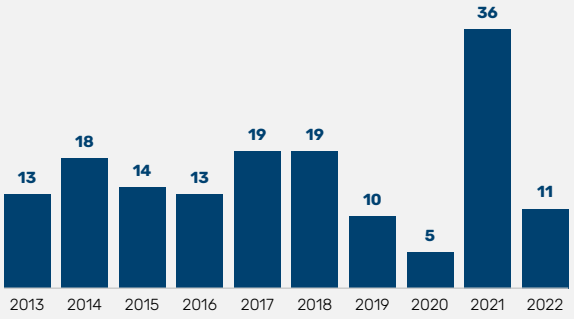
Source: Payoke, PAG-ASA, Surya

Victims of an aggravated form of human smuggling who entered the procedure (IO)

Like victims of human trafficking, victims of an aggravated form of human smuggling can also claim victim status. Aggravated forms of human smuggling are defined in Article 77 quater 1° to 5° of the Residence Act of15 December 1980 and apply if:

- the offence was committed against a minor;
- there was abuse of the particularly vulnerable situation in which the person found themselves, leaving the victim with no real and acceptable choice but to be abused; violence, coercion, threats or deception were used; the victim's life was endangered, either deliberately or through gross negligence;
- the crime caused permanent physical or psychological harm.

Number of victims of human smuggling with aggravating circumstances who entered the procedure



In 2022, the IO received a first application for residence for **11 victims of human smuggling** with aggravating circumstances. A significant drop compared with 2021, but comparable to previous years.

Among these victims, there were:

- 9 men and 2 women
- 6 Syrians, 4 Guatemalans and 1 victim of another nationality
- 5 minors were also among the victims

Victims of human smuggling with aggravating circumstances who entered the procedure, by age and by gender

	0-17	18-25	26-30	31 jaar en +	Totaal	Mannen	Vrouwen
2013	1	3	5	4	13	11	2
2014	5	3	3	7	18	9	9
2015	5	2	4	3	14	7	7
2016	2	6	1	4	13	8	5
2017	4	6	5	4	19	13	6
2018	8	5	4	2	19	12	7
2019	3	2	3	2	10	6	4
2020	0	3	1	1	5	2	3
2021	0	20	7	9	36	31	5
2022	5	3	1	2	11	9	2

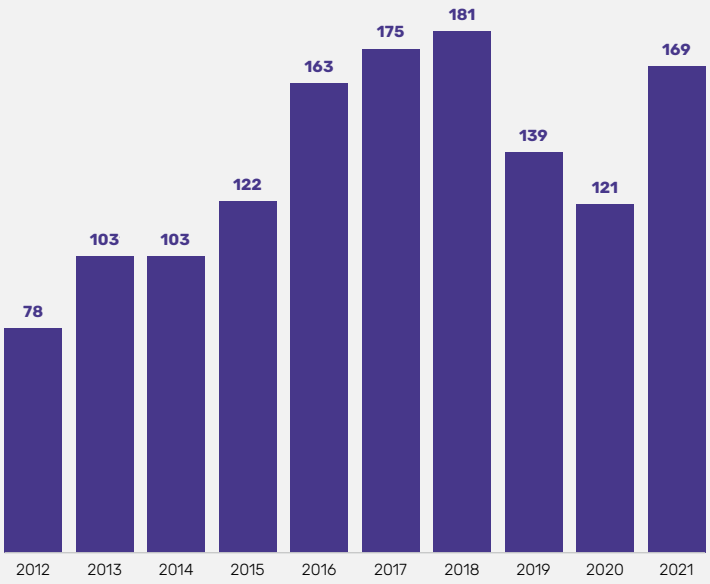
N.B.: there is some information that the Immigration Office prefers not to divulge to prevent the identification of anyone involved.

Source: IO

Final convictions for human smuggling

There were 169 final convictions for human smuggling in 2021, i.e. an increase of 40% compared with 2020, marked by the coronavirus, and a level comparable to that of the period 2016 - 2018. Given that a conviction can be accompanied by several sentences, the total number of sentences is higher than the number of convictions. Hence, 582 sentences were handed down in 2021. Almost all the convictions resulted in a prison sentence combined with a fine (suspended or not). In 111 cases, the convicted person was deprived of their civil rights and in 137 cases, a confiscation took place. Other forms of punishment are only occasionally pronounced.

Number of final convictions for human smuggling



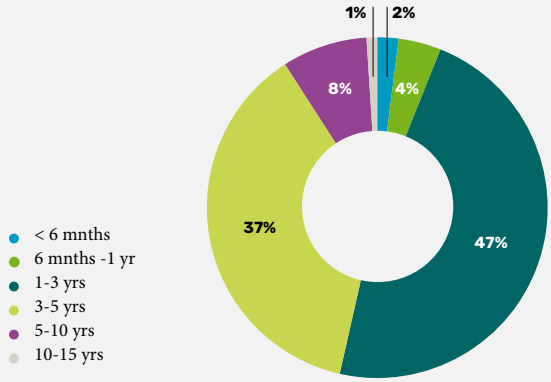
Main sentences	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Prison sentence	**74**	**96**	**100**	**120**	**154**	**174**	**176**	**128**	**118**	**161**
Not suspended	43	45	59	60	56	123	113	85	71	87
Suspended (partly or fully)	31	51	41	60	98	51	63	43	47	74
Fine	**76**	**94**	**100**	**117**	**158**	**172**	**177**	**132**	**120**	**164**
Not suspended	40	64	69	57	71	102	110	87	56	88
Suspended (partly or fully)	36	30	31	60	87	70	67	45	64	76
Confiscation	**48**	**64**	**55**	**76**	**76**	**101**	**110**	**88**	**77**	**111**
Deprivation of rights (Art. 31 Crim. Code)	**60**	**79**	**75**	**89**	**120**	**130**	**135**	**90**	**97**	**137**
Community service	**1**	**4**	**1**	**1**	**4**	**1**	**5**	**8**	**2**	**4**
Others	**3**	**0**	**0**	**0**	**1**	**0**	**4**	**8**	**2**	**5**
Total	**264**	**338**	**332**	**403**	**513**	**578**	**607**	**454**	**416**	**582**

Methodological remarks

- These figures concern the number of final convictions, which can therefore no longer be the subject of an appeal.
- Several cases were entered into the database a few months late, which explains why the data for 2022 is not available yet.
- This data corresponds to the status on 16 May 2023.

Source: Criminal Policy Department, FPS Justice

Duration of prison sentences pronounced in 2021 (suspended or not)



As regards the duration of the prison sentences pronounced:

- More than 4 out of 5 prison sentences were 1 to 5 years.
- Prison sentences of 5 to 10 years were pronounced in 13 cases.
- A prison sentence of 10 to 15 years was pronounced in 2 cases. It was the first time that such long prison sentences were pronounced.

Main nationalities of the persons convicted of human smuggling in 2021

Nationality	2021
Unknown	43
Belgium	29
Albania	23
Iraq	12
Iran	8
Sudan	7
Egypt	6
Syria	6
Italy	5
Afghanistan	3
DR Congo	3
France	3
Nigeria	3
Others	18
Total	**169**

As in previous years, there was a large number of convicted persons in 2021 whose nationality was unknown. Therefore, the nationality of 25% of the convicted persons remains unknown. Among the others convicted, no less than 27 different nationalities were listed.

In 2021, a large number of convicted persons were of Belgian or Albanian nationality. The other main nationalities were Iraqi, Iranian, Sudanese, Egyptian and Syrian.

Source: Criminal Policy Department, FPS Justice

External contribution

Explanation of the statistical data relating to the investigations into human trafficking conducted by the NSSO inspection department's ECOSOC teams in 2022

Stéphanie Schulze

Peter Van Hauwermeiren

NSSO inspection department – Thematic Directorate for Trafficking in Human Beings

Introduction

This contribution concerns the NSSO inspection department (Thematic Directorate for Trafficking in Human Beings and ECOSOC teams). Besides the purely statistical data, this contribution aims to provide qualitative information on the investigations conducted by the NSSO inspection department's ECOSOC teams in 2022. The data included in this contribution stems from two sources:

1. ARTEMIS, the internal investigation management system from which the data relating to the investigations closed in 2022 was extracted. In 2022, 210 'human trafficking' investigations were finalised with a total of 110 presumed victims. Some investigations did not correspond to our definition of a THB investigation or were duplicates. Therefore, after verification, the number of 181 (THB) closed investigations was taken into account.
2. The analysis of the checklists drawn up by the social inspectors in 2022 in accordance with Chapter VIII of the Joint Circular of the Minister of Justice, the Minister for Employment, the Minister for Security and the Interior, the Secretary of State for the fight against social fraud and the College of Prosecutors General on the policy of investigation and prosecution regarding trafficking in human beings (COL 01/2015). NSSO inspectors draw up a checklist as soon as possible following observations and as long as there are sufficiently precise indications of a potential situation of human trafficking. In 2022, 280 checklists were drawn up, which means that the situation of 280 presumed victims was examined as part of our checks.

   The reason for the difference between the 280 checklists and the 10 potential victims stemming from the ARTEMIS investigation management system results from the fact that the checklists are drawn up as soon as there are sufficient indicators of labour exploitation, regardless of the investigation's state of progress (at the start, during or when it is closed) whereas the figures from our ARTEMIS program concern investigations that were closed in 2022 but started in 2022 or before. Subsequently, the data relating to the checklists is the most representative of 2022.

   A specific analytical report based on these checklists is submitted annually by our Thematic Directorate to the Criminal Policy Department, FPS Justice.

Another source of qualitative information is the information sharing relating to investigations into the trafficking of human beings set up with the ECOSOC team leaders.

1. 1. Statistics relating to the police report and the criminal reports (ARTEMIS)[599]

Since March 2020, the NSSO inspection department's ECOSOC investigations have been processed in a new investigation management tool: ARTEMIS. Statistics relating to the **investigations closed in 2022** therefore stem exclusively from this program. This management tool is constantly evolving. It has already been adapted several times since its launch, to best meet our needs in terms of statistics.

599 These statistics are based on closed investigations.

Over the course of 2022, the NSSO compiled 39 Pro Justitia (PJ) and/or initial criminal reports (CR), 38 supplementary criminal reports and 35 information reports concerning labour exploitation (Art. 433 quinquies of the Criminal Code). These reports concern 110 presumed victims. In addition, following investigations carried out by other inspection services or the police, the Pro Justitia or criminal report on THB is sometimes drawn up by another service (generally the police); 16 reports or PJ were written by other services within the framework of a collaboration with the NSSO.

A supplementary criminal report is drawn up when the magistrate requests additional actions for a situation of exploitation that has already been reported through a Pro Justitia or an initial criminal report, as long as it concerns the same victim or victims. This distinction between an initial criminal report and a supplementary criminal report prevents the same situation of exploitation or the same presumed victim from being counted several times in the results.

As for the result of the 'information report', it is used to support the reports intended for the judicial authorities either to expose limited evidence of labour exploitation (e.g. without a presumed victim) or to convey the results of research, information gathering, and data analysis when an investigation into THB has not yet been initiated.

Also note that in 2022:

- 110 presumed victims of THB were referred to the judicial authorities by the NSSO inspection department through criminal reports or Pro Justitia.
- The prevalent nationalities were: Romania (36), Lithuania (7), Slovakia (7), Bulgaria (6).
- Also note that among these 110 presumed victims, 64 concerned EU nationals, five of whom were Belgian. In terms of distribution according to gender, 10 presumed victims were women and 100 were men.
- The most prevalent sectors of activity were forestry, construction, road transport, retail and hospitality.
- The two provincial departments with the most presumed victims according to the figures from investigations closed in 2022 were Hainaut and Flemish Brabant:
  - In Hainaut, the 35 victims in the table below were Romanian nationals. Among them, 26 were employed in the forestry sector, six in construction and three in agriculture. In two of these three cases, our department intervened after the police to examine the evidence in the investigation, upon the request of the judicial authorities. Our inspectors did not meet the potential victims themselves but numerous indicators of labour exploitation subsequently came to light during the investigation.
  - In Flemish Brabant, of the 18 people identified, seven were Slovakian nationals working on a construction site under the cover of a fraudulent posting.

Provincial departments	PJ/CR compiled by NSSO	Supplementary criminal reports	Information reports	PJ/CR compiled by another service[600]	Presumed victims
West Flanders	3	1	0	7	15
East Flanders	1	0	1	1	2
Antwerp	9	0	15	3	12
Limburg	3	1	0	0	7
Hainaut	3	2	2	0	35
Namur-Luxembourg	3	9	7	0	3
Liège	5	13	9	2	8
Flemish Brabant	6	1	0	0	18
Brussels	4	10	1	2	5
Walloon Brabant	2	1	0	1	5
Total	**39**	**38**	**35**	**16**	**110**

600 Within the framework of an investigation conducted in collaboration with the NSSO. It should be noted that when the PJ or CR is written by another service, we do not include the victims in our management program.

1.1. Analysis of the checklists

Introduction

In accordance with the stipulations of COL 01/15, a checklist was completed **in 2022** as soon as there were **sufficiently precise indications** of a potential situation of human trafficking, whether during the investigation or when it was closed.

In total, **280 checklists** were drawn up (one checklist per presumed victim; therefore, several checklists may concern the same employer/exploiter); the breakdown is as follows:

Provincial departments	Number of checklists drawn up
West Flanders	9
East Flanders	164
Antwerp	8
Limburg	3
Hainaut	31
Namur-Luxembourg	15
Liège	5
Flemish Brabant	17
Brussels	3
Walloon Brabant	25
Total	**280**

1.1.1. Geographic breakdown per sector of activity (2022)

	Namur-Luxembourg	Brussels	Liège	Hainaut	Limburg	Walloon Brabant	Flemish Brabant	Antwerp	East Flanders	West Flanders	Total
Butcher's/abattoir	2							3		3	8
Bakery							1				1
Car wash & lorry wash											0
Hairdressing/beauty salon/ personal services	3								2		5
Clothing										1	1
Retail trade			1					4	1	1	7
Construction	9		1	4	3	20	7		161		205
Materials factory											0
Garage			1								1
Hospitality			1			3	1			2	7
Agriculture/horticulture/ Forestry	1			26				1			28
Logistics			1				6				7
Riding hall											0
Cleaning						1				2	3
Prostitution											0
Various services				1							1
Road transport						1					1
Domestic work		1					2				3
Sorting/Recycling		2									2
Total	**15**	**3**	**5**	**31**	**3**	**25**	**17**	**8**	**164**	**9**	**280**

1.1.2. Breakdown according to age, gender and nationality of the presumed victims 2022

Nationality	Men	Women
Afghanistan	2	
Albania	1	
Bangladesh	30	
Benin	1	
Brazil	11	4
Burkina Faso	1	
China	1	3
Congo	2	
Eritrea	2	
Philippines	43	
Georgia	1	
Guinea	2	
Guinea-Bissau	1	
Honduras		1
India	2	
Irak	1	
Iran	2	2
Ivory Coast	3	
Morocco	11	
Ukraine	18	3
Pakistan	2	
Poland	3	
Portugal	1	
Romania	26	
Senegal	1	
Slovakia	7	
Sudan	1	
Spain		3
Tunisia	1	
Turkey	87	
Total	**264**	**16**

Age	Men	Women
Minors (-18 yrs)	0	0
18 to 30 yrs	48	3
30 to 40 yrs	108	3
40 to 50 yrs	83	6
Over 50 yrs	25	4
Total	**264**	**16**

A quick analysis of the table above leads to the conclusion that 94% of presumed victims of labour exploitation were men (264/280). As regards age, 18% of the presumed victims were between 18 and 30 years old, 40% were between 30 and 40 years old, 32% were between 40 and 50 years old and 10% were over 50. Among the male presumed victims, the oldest one was 61. The oldest female presumed victim was 62 years old at the time of the acts. It should be noted that the women were mainly active in the following sectors: personal services (massage parlour), food (butcher's/bakery), hospitality and cleaning (private or professional).

No child victims were the subject of a checklist in 2022.

As regards the nationality of the victims, 240 were from third countries (outside the EU). Among the 40 EU nationals, there were 26 Romanians, seven Slovaks, three Poles, three Spaniards and one Portuguese. There were no Belgian victims in 2022.

1.2. Identified indicators of human trafficking and aggravating circumstances

Several indicators of human trafficking are included in the checklists. The analysis of those received in 2022 led to the following findings:

a. Identity documents

Two-thirds of the third country nationals in Belgium were staying illegally. Either they had no identity or travel documents or they had their national passport or a temporary residence permit for another EU country. Among the non-European Belgians, only a few were settled in Belgium and had a Belgian residence permit. The others were generally in possession of their national identity document.

Several presumed victims did not have their own identity documents, and sometimes they had copies of them.

b. Financial aspect – social security – social documents

In terms of income: in almost all the situations encountered, wages were either insufficient, low, very low, or even non-existent. Sometimes wages were promised but only paid in part or not at all, or they decreased significantly over the months. Among the 280 presumed victims, a dozen or so had not been paid at all. Some victims had to hand over part of their wages or made do without in exchange for room and board. Others had to pay their own social security contributions and travel costs to reach their workplace.

Two presumed victims even had to pay bills or fines addressed to their employer.

In addition, some victims stated they were only paid if there were clients.

A large number of presumed victims who received wages (often below the Belgian statutory rate) were not paid the full amount for their services, as the employer did not pay the last, or last few months, of work.

Many presumed victims explained that they had had to pay large sums of money to come and work in Belgium. Depending on the case, these sums varied from EUR 400 to EUR 8,000.

Here are a few concrete examples encountered during 2022, insofar as wages were paid: EUR 75/12 hours; EUR 800/34 months of work at a rate of 10 to 14 hours of work per day; EUR 5.5/hour; EUR 6.5/hour; EUR 15/hour if client; EUR 300/month; EUR 855/month, etc.

In terms of social security and social documents: as regards potential victims employed directly by a Belgian employer or one established in Belgium, approximately 35% were informed about Dimona while just under 40% were employed illegally without any steps being taken with regard to social security or employment documents.

Only a few workers were declared to social security and authorised to work in Belgium (± 3%). Moreover, these workers were working at least twice the number of hours stated on their employment contract or declared to social security. Of the presumed victims identified as posted workers, around 25% were employed in Belgium as part of a proven or presumed fraudulent posting.

c. Circumstances of the exploitation

Among the indicators of exploitation, some are recurring, such as squalid housing conditions or excessive work hours. Details and examples are provided below for some of these indicators.

- **The victim has no appropriate equipment/ work clothes, works in dangerous/squalid conditions**
  Indicators relating to work protection (health and safety of workers: hygiene measures, clothes and workplaces, etc.) concern approximately 60% of presumed victims encountered. Several victims were detected following a serious work-related accident.

- **The victim has no freedom of contact with the outside world or is restricted in their freedom of movement** Just over 10% of presumed victims encountered had little or no contact at all with the outside world and their freedom of movement was restricted.

- **The victim lives in squalid conditions**
  In a large number of potential situations of human trafficking, the victims are housed in substandard or insanitary accommodation. This accommodation is often provided by the perpetrator/employer. This indicator was present for just over half of the presumed victims.

- **The victim is deprived of medical care**
  Several presumed victims were deprived of medical care when they needed it.

- **The victim works for long periods**
  Almost 90% of the presumed victims encountered worked for abnormally long periods. While in most cases, the weekly hours oscillated between 45 and 60 with one or two days of rest in the week, which is already excessive, for some 70 potential victims, the working hours were extreme. Among the latter, there were many who had to work six or seven days a week, and nine to 18 hours a day.

d. Aggravating circumstances

Several aggravating circumstances were found in the cases encountered in 2022:

- **Relating to the perpetrator**
  In the majority of cases, the perpetrator abuses the victim's vulnerable situation, has authority over them or abuses their position. None of the checklists mention a perpetrator being a police officer exercising their duties.

- **Relating to the victim's situation**
  None of the checklists drawn up in 2022 involve children.

  As mentioned above, many presumed victims from third countries are particularly vulnerable owing to their illegal or precarious administrative situation.

  Among the 280 victims concerned by the checklists in 2022, 80 explained they had been subjected to threats, violence or coercion by the perpetrator. Some victims even received threats through their families back in their country of origin.

  The lives of some presumed victims were put in danger: two victims were injured during their exploitation and suffered lasting effects resulting in a permanent incapacity to work.

  The vast majority of cases involved habitual activity.

1.3. Referral of victims to a specialised reception centre in 2022

Among the 280 checklists recorded, **188** concerned presumed victims who were taken care of by a specialised reception centre (Sürya, Payoke or PAG-ASA). Some of them were already there or had already had contact with these centres before the intervention of the NSSO's social inspectors. In such cases, the NSSO intervenes, in particular to hear the presumed victim and/or to conduct an investigation into labour exploitation in collaboration with the reception centre, the magistrate and, if necessary, the police or other services.

It should be noted that there were no minors among these 280 presumed victims.

It should also be noted that some of the presumed victims of THB did not wish to contact a reception centre, which is often the case for workers employed in the context of a bogus posting, who prefer to return to their country of origin.

The breakdown per provincial department is as follows:

Provincial departments	No. of presumed victims referred	Nationality/gender Man (M) Woman (W)
Namur-Luxembourg	3	2 Morocco (M) 1 Tunisia (M)
Brussels	2	2 Ivory Coast (M)
Liège	5	2 Afghanistan (M) 2 Morocco (M) 1 China (M)
Hainaut	5	5 Morocco (M)
Walloon Brabant	5	2 Brazil (1M – 1W) 1 Sudan (M) 1 Burkina Faso (M) 1 Senegal (M)
Antwerp	0	
Flemish Brabant	3	2 Brazil (W) 1 Portugal (M)
East Flanders	161	87 Turkey (M) 30 Bangladesh (M) 42 Philippines (M) 2 India (M)
West Flanders	3	2 Iran (1 M – 1W) 1 Brazil (M)
Limburg	1	1 Philippines (M)
Total	**188**	

1.4. *Empact Action Days*

On several occasions in 2022, the NSSO inspection services participated for the seven[th] consecutive year in the Empact Action Days, a European initiative supported by Europol, also called Joint Action Days (JAD). This EU initiative is part of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) project, in which the fight against human trafficking is one of the priority criminal phenomena. The EMPACT project is part of the EU Action Plan against Trafficking in Human Beings.

Running **from 6 to 13 June 2022**, the Brussels ECOSOC team took part in the EAD child trafficking actions under the direction of the federal police. These actions focused on the detection of all forms of child trafficking, especially child victims of THB working in high-risk sectors.

As for the EAD labour exploitation actions organised **from 15 to 21 June 2022**, they were aimed at detecting labour exploitation among posted workers in Asian restaurants. Special attention was also paid to Ukrainian workers (refugees as a result of the war).

During some of these checks, we observed the effectiveness of close collaboration (exchange of information) with the competent Portuguese services.

The ECOSOC teams took part in the EAD labour exploitation actions in the **agriculture sector from 14 to 22 September 202**2. The exchange of inspectors facilitated by the European Labour Authority (ELA) enabled some ECOSOC inspectors to take part in checks in the north of France as observers, and foreign inspectors to take part in checks in Belgium as observers.

2. Highlights in 2022

After two years marked by the health crisis, punctuated by lockdowns and specific missions related to the pandemic entrusted to our social inspectors, 2022 suggested a return to 'normal', even if some agreed that the world, including the world of work, would never be the same again.

This return to 'normality', so to speak, was short-lived. On 24 February, Ukraine was invaded by Russia, marking the start of an **armed conflict** that is dragging on. This conflict has had major repercussions for the global economy and has triggered a major migratory crisis. In this context, several tens of thousands of Ukrainians arrived in Belgium and were able to benefit from temporary protection status.

Although this status offers immediate collective protection to displaced persons (right of residence, access to the labour market, access to housing, social and medical assistance), the influx of people in precarious situations has led to fears of abuse among the various players involved in combating human trafficking.

For example, our inspection department, and more specifically our Thematic Directorate for Trafficking in Human Beings, has been involved in setting up various projects aimed at informing Ukrainian refugees about the risks and dangers associated with human trafficking, and more specifically labour exploitation, sexual exploitation and criminal exploitation. The Social Intelligence and Research Service's Point of Contact for Fair Competition has also developed, with various partners, including our department, an online form so that individuals (presumed victims or witnesses), companies or organisations can report situations of labour exploitation via its website.

Our Thematic Directorate has done its utmost to keep abreast of the issue and monitor any related phenomena. It has also been involved in setting up checks to detect cases of exploitation of Ukrainian workers, which are regularly carried out throughout Belgium by our ECOSOC teams.

During 2022, several of our teams worked in both Flanders and Wallonia on **high-profile cases**, which can not be named here in order to protect confidentiality of information and/or the investigations where applicable.

In one of these cases, a very large number of potential victims were detected on the construction site of a factory located in the port area of Antwerp. It should be noted that this part of the Port of Antwerp is located in the geographical area of East Flanders. This investigation generated an enormous workload for our specialist inspectors from several provincial directorates. With the help of interpreters, they had to conduct detailed hearings involving dozens of third-country nationals, who were presumed victims of labour exploitation, in often difficult conditions.

During the same year, we also took part in the work of the **Special Commission** set up by the Belgian Chamber of Representatives to evaluate legislation and policy on **human trafficking and smuggling**.

In terms of **quantified results**, the ECOSOC teams closed 210 investigations labelled 'human trafficking' in ARTEMIS, our investigation management program, in 2022. However, some of these investigations did not meet our definition of a THB investigation or were duplicates. As a result, after verification, the Thematic Directorate decided on the number of 181 investigations (THB) that had been closed.

As at 31 December 2022, 106 investigations had been opened, i.e. they were being processed.

In just under 50% of the THB investigations conducted and closed by the specialised ECOSOC teams, it was not possible to conclude that exploitation had taken place. This is mainly because the elements of the investigation were not relevant or because the indications of labour exploitation were not sufficiently clear, indicating illegal labour rather than labour exploitation.

It is also important to emphasise that around 20% of the investigations that were closed were follow-up investigations concerning acts detected and reported previously to the judicial authorities. Indications of THB leading to the conclusion of a potential THB situation were found in 30% of the investigations carried out.

In terms of headcount, our **ECOSOC teams** have undergone several changes, with an overall decrease of 15% between the beginning and end of 2021. The new members of staff planned to replace those leaving in 2021 arrived in 2022 to strengthen our specialist teams, increasing the number of full-time equivalents (FTEs) from 33.05 to 35.55 (+2.5 FTEs).

End 2022, our government also decided to **reinforce the inspection** services by allocating a supplementary budget to hire social inspectors. We were pleased to learn that part of this budget was specifically earmarked for the **recruitment of 10 social inspectors for the NSSO's ECOSOC teams**. At the time of writing, the recruitment process was underway and we hope that they will be fully active in our ECOSOC teams by mid-2024, after completing the robust training provided for new staff.

As it does every year, the Thematic Directorate, assisted by the NSSO's Data Mining Directorate and, where appropriate, by other departments, chose a **specific annual project (focus)**.

In 2022, we chose the same focus as in 2021, namely the monitoring of selected companies using a tool developed by the Data Mining Directorate. This department examined data from completed THB investigations to establish a model for identifying employers at increased risk of labour exploitation, based on some 50 parameters.

Taking into account its capacity, its stock of investigations in progress and its knowledge of the field, every ECOSOC team selected investigations from lists provided by the Data Mining Directorate and generated by the model developed. A total of 168 investigations were selected for 2021 and 2022. Of these 168 investigations, 113 were finalised and 55 were still in progress at 31 December 2022. These investigations led to the detection of offences falling within the remit of the NSSO (offences relating to DIMONA, foreign labour, part-time work, compliance with COVID measures, social security, etc.). Only one of these investigations led to the detection of a presumed victim of labour exploitation of Bangladeshi nationality.

It should be noted that the investigations initiated as part of this focus were not automatically opened as THB investigations. The 'trafficking in human beings' label was only added if sufficient signs of exploitation were detected during the investigation. Of the 'focus' investigations opened during these two years, only the one that had led to the identification of a potential victim was included in the THB investigations closed in 2021 and 2022 (and more specifically in 2021).

As in previous years, the social inspectors of the ECOSOC teams used **specific investigation tools and techniques** such as:

- phone investigations;
- the use of video surveillance footage;
- examination of mobile phones;
- open-source intelligence searches (internet, social media, etc.).

These investigation techniques are carried out with the specialised services of the federal police, most often at the request of the labour prosecutor. Such techniques can lead to identifying and hearing presumed victims, identifying potential witnesses, corroborating victims' statements without having to involve them further or make them bear the burden of proof. They also help to ascertain the employment of other workers/victims, to identify the perpetrators and to reveal links between people or companies.

Recourse to social media and the internet is increasingly essential to conduct searches and thoroughly investigate human trafficking for the purpose of labour exploitation. However, in order for our social inspectors to make optimum use of these sources, it is necessary to examine the technical and legal possibilities.

Finally, as regards **emerging or growing phenomena,** 2022 was marked by a number of high-profile investigations that drew the attention of the general public to the labour exploitation of third-country nationals. These investigations revealed practices consistent with well-established criminal organisations. They involved large numbers of workers from the same communities, employed by the final link in a chain of subcontractors.

Cases of identity theft by illegal workers wishing to work were again encountered in 2022. This practice is increasing in several provinces, especially in certain courier services. In general, the imposters, who are often in a precarious administrative and social situation, use the identity documents of compatriots to find official employment. For courier services, they simply use their compatriot's account. In return, the identity holder demands a percentage of the wages earned through their identity. Sometimes they use threats and intimidation to obtain payment. Among the cases encountered by our social inspectors, they were only rarely able to conclude that the situation was potentially one of labour exploitation. As long as both parties get something out of it, no-one complains… Therefore, these situations are detected either during a check on the spot, or when the actual worker goes to an inspection department because they are no longer receiving a salary from the person lending them their identity.

Some sectors of activity already known, in the recent or more distant past, to be the setting for situations of labour exploitation have resurfaced. In particular, these include the clothing sorting and newspaper distribution sectors. We have also noted a certain relocation of these activities to other provinces, largely as a result of regional legislation that makes it easier to set up or create businesses.

Some provincial teams have also noted an increase in investigations relating to domestic staff (domestic workers, carers) or construction workers, often third-country nationals, who are victims of serious or even fatal accidents at work. These investigations do not always reveal indicators of labour exploitation, but they serve as a red flag when it comes to monitoring the phenomenon and should encourage frontline services to be vigilant.

The points of attention raised in previous years are still relevant: nail bars, domestic staff, construction, hospitality, etc., are all easily accessible sectors of activity in which it is easy to resort to under-qualified labour in a precarious situation and with little room for manoeuvre.

Conclusion

2022 marked the end of the pandemic (or nearly). Nevertheless, the war in Ukraine, which has led to a migration crisis, and the detection of several situations of labour exploitation involving a large number of presumed victims, have brought their share of challenges to our specialist social inspectors and to our Thematic Directorate for Trafficking in Human Beings.

This contribution includes figures from two different channels:

- the file management system regarding **investigations closed** in 2022, involving 110 presumed victims;
- the analysis of checklists drawn up in 2022, as soon as ongoing or closed investigations were shown to contain **sufficiently precise indications** of a potential situation of human trafficking. This involved 280 presumed victims. Subsequently, this is the most representative data for 2022.

If we compare the figures for 2022 with those for previous years, we can see a significant increase in the number of presumed victims identified on the basis of checklists (280 in 2022 - 86 in 2021 - 134 in 2020), which we believe to be the most relevant data, as explained above.

It should be noted that the number of THB investigations processed fell by about 20% in 2022, mainly due to a few large-scale investigations, the reduced capacity of the ECOSOC teams and the training of new staff within these teams (236 in 2020 – 235 in 2021 – 181 in 2022)[601].

	2018	2019	2020	2021	2022
No. of potential victims in the closed investigations	65	82	156	147	110
No. of potential victims according to the checklists	78	120	134	86	280
No. of victims for whom reception centres intervened (based on checklist)	39	73	38	42	188

The analysis of the checklists shows that potential situations of labour exploitation occur in both urban and rural areas and mainly involve men. It should be noted that in 2022, a large number of the potential victims detected were employed on an industrial site.

Generally, in the vast majority of cases, one, two or even three people were involved in these situations of exploitation. Nevertheless, during the course of 2022, several investigations revealed a large number of presumed victims who were being exploited by one or more employers on the same site. This was especially the case:

- in East Flanders where 159 potential victims were employed in the construction of a factory, by the last link in a chain of subcontractors;
- in Walloon Brabant, where 20 presumed victims were employed in dismantling a factory;
- in Hainaut, where 26 workers were employed in a forestry operation. It should be noted that this investigation, which began in 2018, was not entrusted to the NSSO until 2019. In addition, evidence of THB was later found as part of the investigation carried out at several key moments in the case.

The sectors of activity most frequently encountered when analysing the 2022 checklists were construction and forestry.

The most common practices were undeclared work (no DIMONA declaration), irregular employment of foreign workers staying illegally and fraudulent posting (to a lesser extent).

Among the indicators of human trafficking, the most frequently encountered were:

- Little or no pay
- Abnormally long working hours
- Accommodation in squalid conditions
- Abuse of vulnerable situation
- Use of threats/violence
- Restriction of freedom of movement and contact with the outside world

It should be noted that some presumed victims found working in conditions contrary to human dignity did not contact a specialised reception centre, in particular because they refused any form of support. This is often the case for workers employed in Belgium by foreign companies whose wish, above all, is to be paid so that they can return to their country of origin.

It should also be pointed out that in some cases, our teams met with presumed victims after they had applied to such a reception centre, either at the request of the centre itself, or at the request of the labour prosecutor.

As mentioned above, the most revealing figures on labour exploitation are those relating to the checklists, which are drawn up as soon as a presumed victim is found.

Other data, such as Pro Justitia, criminal reports or other information reports, record the number of victims included in investigations closed in 2022 (even if the investigation began earlier).

To conclude, and as the players in the field keep repeating, labour exploitation is a hidden phenomenon. It is difficult to identify and estimate the extent of it. The proactive checks carried out, especially in high-risk sectors, by social inspectors who specialise in THB or who have been made aware of the issue, enable situations of exploitation to be brought to light. The greater the human resources and the greater the awareness and training of frontline inspection services, the stronger and more effective the fight against this phenomenon will be.

601 Figures retained by the Thematic Directorate after verification of the THB investigations included in our investigation management programme, as explained above.

Part 4
Recommendations



Increase capacity and tools for detection and investigation

RECOMMENDATION 1

Organise more proactive checks in high-risk sectors by increasing the capacity of frontline services.

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Situations of exploitation can only be detected if sufficient proactive checks are carried out in high-risk sectors. To achieve this, it is necessary to **boost the capacity of the ECOSOC teams of the National Social Security Office (NSSO) and the police services** concerned. The Special Parliamentary Commission on Trafficking and Human Smuggling 2022-2023 drew attention to this point in several recommendations.

ECOSOC teams play a crucial role in detecting acts and victims of human trafficking. According to the director of the Thematic Directorate for Trafficking in Human Beings within the NSSO (ECOSOC director), only 25% of investigations closed in 2021 were the result of an ECOSOC initiative, i.e. a check in high-risk sectors. For this ratio to increase, we need to be able to carry out more systematic and extensive inspections in these high-risk sectors. In fact, Liège only had two ECOSOC inspectors and a part-time team leader in 2022. This was also the case in the Hainaut province.

During multidisciplinary inspections, the police provide significant added value for the social inspection services through their support role. The police guarantee the inspectors' safety, but everyone has their own role and skills, which are mutually supportive. For instance, the police can take the employer to the police station to prevent them from exerting any further influence on the victims and to better gain the trust of the latter.

RECOMMENDATION 2

Raise awareness of human trafficking among regional labour inspection services and examine whether these services can become competent in the field of human trafficking

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Federal Migration Center

Raising awareness about trafficking indicators among regional inspection services, e.g. the labour inspectorate and the housing inspectorate, that are not competent in the field of human trafficking, can bring great added value to the fight against this phenomenon.

In the course of their checks, they may be confronted with possible acts and victims of human trafficking. The NSSO inspection department has already organised several training courses for the regional inspection services, which is good practice and should be encouraged. A check by the Flemish labour inspectorate and their vigilance led to the detection of a large-scale case of human trafficking and social dumping.

The Parliamentary Commission goes further and recommends that regional labour inspectors should also be competent in the field of human trafficking (recommendations 36 and 42/1). With regard to this last point, Myria considers that, at first sight, this is an avenue to be explored, which would be best discussed at the level of the Interdepartmental Coordination Unit, not only because of the tools to be developed, but also because of the objectives to be achieved.

RECOMMENDATION 3

Allow the FJP sections in charge of human trafficking in the major districts to also specialise in labour exploitation.

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In order to conduct in-depth investigations into large-scale cases of human trafficking linked to social dumping, labour prosecutors need the cooperation of the federal judicial police (FJP) sections in charge of human trafficking, as well as the social inspection services. To achieve this, these **FJP sections responsible for combating human trafficking should also specialise in labour exploitation**, as is already the case in certain areas of Flanders.

Investigations of this scale require the FJP to use more specialised investigative techniques, such as phone tapping and social media investigations. This means they are working not only for the public prosecutor's office, but also for the labour prosecutor's office. The result is closer cooperation with the labour inspectorates and the labour prosecutor's office, which enables a high level of expertise in the fight against labour exploitation and to better detect larger-scale cases.

To achieve this, it is also necessary to guarantee **sufficient capacity in the FJP section in charge of combating human trafficking**. In several districts, such as those in Liège and Brussels, the FJP does not have sufficient capacity to play a role in combating human trafficking for the purpose of labour exploitation. In Charleroi, there is not even an anti-human trafficking unit anymore within the FJP. Hence, the policy choices of the public prosecutors' offices and the labour prosecutors' offices can sometimes also be relevant in this respect. All this leads to a different approach and, consequently, to **another image of cases of human trafficking for the purpose of labour exploitation within these districts.**

Chain approach and due diligence

RECOMMENDATION 4

Conduct a financial investigation as part of a chain approach.

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A financial investigation can be useful in a chain approach. In its recommendations, the Parliamentary Commission calls for large-scale financial investigations to be included in a chain approach to dismantling large international networks (**'follow the money'**) (recommendation 13). Myria's 2019 annual report also covered this issue extensively.

According to one magistrate, the principals can also be large companies with an international reputation that do not go bankrupt and that have helped to facilitate situations of human trafficking. If the investigation goes far enough up the chain, assets can generally be traced back to these companies and seized. This also sends a **signal** to other Belgian companies. This encourages them to **check the subcontractors with whom they wor**k.

A number of good practices – also mentioned within the framework of the Parliamentary Commission – already exist, such as the police 'kaalplukcel' (literally: unit in charge of 'fleecing') which is systematically deployed from the outset in larger cases in order to make seizures as quickly as possible. This type of cooperation should be encouraged.

In addition, the calculation of the financial benefit by the labour inspectorate on the basis of the estimate of unpaid wages, among other things, is a relevant aspect of the financial investigation.

This could also represent significant added value later on for any compensation paid to victims.

RECOMMENDATION 5

Pay attention to the chain approach to reach the upper echelons of the principals.

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According to several labour prosecutors, social dumping and human trafficking can go hand in hand. It is essential that **all the labour prosecutors' offices and competent frontline services are made aware of the fact that social dumping can also lead to the opening of a case for human trafficking on some occasions**.

The chain approach can be an important tool for dealing with such a system of principals and subcontractors. The further up the chain you go, the heavier the burden of proof and the more often the principal is better covered by the law. This is why several magistrates are calling for a **strengthening of the legal framework for joint and several liability of principals**.

According to several labour prosecutors, the **concept of co-perpetration in the context of human trafficking** can be a good tool for going further up the chain. The principal must act '**knowingly and intentionally**'. Magistrates do not always succeed in proving the unscrupulous role of the principal, but they must try to prove that the principal was well aware of the poor working conditions. There is already case law in this field thanks to a human trafficking case in which the principal had been informed of the exploitative situation following checks carried out by the social inspectorate.

A system of compulsory self-regulation with reporting obligations along the lines of the regulations on due diligence (see below) could help to prove this 'knowingly and intentionally' aspect in a context of co-perpetration in any subsequent findings of human trafficking. It might therefore be possible to develop certain control systems, possibly through self-regulation, which would make it possible to prevent the principal from later denying any knowledge of the wrongdoing.

RECOMMENDATION 6

Introduce due diligence for companies.

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Federal Migration Center

Belgium needs a due diligence obligation for companies operating on Belgian soil, whether as part of the transposition of the future European directive or not. In this respect, the Belgian authorities must examine **which system is best suited to our country** by analysing the possibilities offered by neighbouring countries that have already introduced this obligation. When it is introduced, care must be taken to ensure that the **due diligence obligation is effective** and that **sufficient control mechanisms** are implemented so that it is applied in practice in an ongoing and permanent basis by companies and not just once a year. Due diligence could also be a major factor when awarding public contracts.

When introducing a due diligence obligation, companies should be provided with **sufficient tools** to help them fulfil this obligation.

RECOMMENDATION 7

Introduce an obligation to report on the risks of human trafficking as part of due diligence.

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In current legislation on the disclosure of non-financial information and as part of the transposition of Directive 2022/2464 on corporate sustainability reporting, Belgium should include the need for companies to specifically indicate whether their activities present a risk of human trafficking and labour exploitation and how their policy aims to prevent human trafficking. In doing so, companies would report on the risks associated with their own activities and value chain. **Companies need to know exactly what they need to disclose and how they need to disclose it, and that they can adopt certain disclosure standards.** Reports should be **published online** on company websites and in a national register to ensure **sufficient transparency** for consumers, investors and other stakeholders. The information disclosed by companies as part of this process could be used as part of an investigation into human trafficking and labour exploitation.

Victims

RECOMMENDATION 8

Better detection of groups of victims without agency.

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Greater specialisation is needed within the frontline services that deal with human trafficking, such as the ECOSOC teams and the FJP, to gain the trust of certain groups of victims found in high-risk sectors. These are often vulnerable groups of victims with no agency in exploitative situations, such as illegally employed Vietnamese. Frontline services need to be constantly aware of how to detect situations such as human trafficking. The role of these services is essential here, as they are often the only ones able to detect and get these particularly vulnerable groups of victims out of their distressing situation. The authorities must also be aware of the crucial role played by frontline services.

RECOMMENDATION 9

Have the authorities cancel the social security debts of bogus self-employed workers who are victims of human trafficking.

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RECOMMENDATION 10

Adopt a number of legislative changes to improve victim support.

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Among the victims of labour exploitation, there are many bogus self-employed people, who are unaware that they are working under this status. These victims unwittingly risk incurring a heavy burden of debt, as they were not in a position to pay their social security contributions during their period of exploitation.

Myria's 2012 annual report[602] had already identified this problem and made recommendations in this respect. Subsequently, this point was included and further developed in the National Action Plan to Combat Trafficking in Human Beings 2015-2019[603], but it was never implemented. Nevertheless, this problem still exists[604] and was taken up again in the National Action Plan to Combat Trafficking in Human Beings 2021-2025[605].

In such cases, labour prosecutors should inform the National Institute for the Social Security of the Self-Employed (NISSE) that the person has been identified as a victim of human trafficking – and is therefore a bogus self-employed worker – and ask the NSSO to carry out an investigation at the employer's premises. In addition, the NISSE should **designate a contact person** who can cancel the debts once the public prosecutor's office or the labour prosecutor's office has recognised the person as a victim of trafficking.

Myria is in favour of several of the Parliamentary Committee's legislative recommendations relating to victims, such as the **introduction of a simplified procedure to grant victim status** when victims have complied with the conditions of the procedure, but the status is terminated for reasons beyond their control (discontinuation of proceedings, dismissal, out-of-court settlement) (recommendation 57), or an **effective compensation mechanism** for victims, by amending the Law of 1 August 1985 (recommendation 52). It hopes that the necessary steps to make these changes will be taken soon.

602 Myria, Annual Report 2012, Trafficking and smuggling of human beings, Building trust, pp. 23, 29 and 104.
603 Criminal Policy Department, Action plan to 'Combat human trafficking 2015-2019', p. 24.
604 VRT NWS, Gent draaischijf voor sociale uitbuiting van Bulgaren: "Echte maffiapraktijken, ik kreeg 50 euro per week".
605 Criminal Policy Department, Action plan to 'Combat human trafficking 2021-2025', p. 24.

RECOMMENDATION 11

Ensure a lawyer is quickly appointed for victims.

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Myria supports the recommendation of the Parliamentary Commission on human trafficking to maintain **a list of lawyers specialising in human trafficking and smuggling through legal aid offices,** and to ensure the immediate appointment of a lawyer (recommendation 24). Myria has already highlighted the importance of this in its 2019 annual report on victims' right to legal aid and protection. GRETA has also made it one of its points of attention in its third round of evaluation of Belgium. Myria therefore hopes that these measures will be implemented rapidly.

RECOMMENDATION 12

Improve the detection and protection of child victims by favouring their reception in small facilities, for instance.

MYRIA
Federal Migration Center

Several of the Parliamentary Committee's recommendations aim to improve the detection and protection of child victims, which Myria welcomes. Myria therefore encourages the rapid implementation of recommendations such as favouring the reception of unaccompanied foreign minors (UAMs) in **small facilities by guaranteeing specific security measures** (recommendation 53), providing **a single point of contact at all** Fedasil **reception centres** and partner facilities, and training them adequately (recommendation 55), or strengthening interaction between youth prosecutors' offices and the reference magistrates for trafficking in human beings (recommendation 91).

Annex: Recommendations

Increase capacity and tools for detection and investigation

2023/1	Organise more proactive checks in high-risk sectors by increasing the capacity of frontline services	**Recipients** Minister of the Interior, Minister of Justice, Minister of Employment, NSSO's ECOSOC teams, SIRS
2023/2	Raise awareness of human trafficking among regional labour inspection services and examine whether these services can become competent in the field of human trafficking	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings, and Parliament(s)
2023/3	Allow the FJP sections in charge of human trafficking in the major districts to also specialise in labour exploitation	**Recipients** Minister of the Interior, Minister of Justice, magistrates and the police

Chain approach and due diligence

2023/4	Conduct a financial investigation as part of a chain approach	**Recipients** Reference magistrates for human trafficking and smuggling
2023/5	Pay attention to the chain approach to reach the upper echelons of the principals	**Recipients** Reference magistrates for human trafficking and smuggling, Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings, and Parliament
2023/6	Introduce due diligence for companies	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings, and Parliament
2023/7	Introduce an obligation to report on the risks of human trafficking as part of the due diligence	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings, and Parliament

Victims

2023/8	Better detection of groups of victims with on agency	**Recipients** The police, NSSO's ECOSOC teams
2023/9	Have the authorities cancel the social security debts of bogus self-employed workers who are victims of human trafficking	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings
2023/10	Adopt a number of legislative changes to improve victim support	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings, and Parliament
2023/11	Ensure a lawyer is quickly appointed for victims	**Recipients** Specialised reception centres for victims of human trafficking
2023/12	Improve the detection and protection of child victims by favouring their reception in small facilities, for instance	**Recipients** Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings

Colophon

Brussels, December 2023
Evaluation Report 2023, Independent National Rapporteur on Trafficking and Smuggling in Human Beings
A chain of responsibilities

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Myria, the Federal Migration Centre, is an independent public institution. It analyses migration, defends the rights of foreign nationals and combats human trafficking and smuggling. Myria advocates a policy based on factual knowledge and respect for human rights.

The purpose of the report on Trafficking and smuggling of human beings is to provide an independent evaluation and the results of the fight against the trafficking and smuggling of human beings.

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