Chapter 1
Recent developments in the legal and political framework

1. Developments in the European legal and political framework

1.1. Trafficking in human beings

1.1.1. Revision of the 2011 anti-trafficking directive

At European level, 2023 and the beginning of 2024 were marked by discussions on the proposal to revise the 2011 anti-trafficking directive[253]. The previous annual report[254] covered the Commission's submission of that proposal in December 2022. Adopted on 13 June, it came into force on 14 July 2024[255]. Belgium is required to transpose it by 15 July 2026, at the latest.

The adopted text amends a far greater number of articles of Directive 2011/36 than in the Commission's initial proposal[256]. It also contains new articles introduced into Directive 2011/36. Parliament has played an important role in this respect[257]. The EU wanted to take into account the changing trends in the fight against human trafficking, to remedy the shortcomings identified by the Commission and to further intensify the fight against this form of crime[258]. In Myria's view, the text of Directive 2011/36 was nevertheless an adequate legal text, bearing in mind that it was, above all, the sometimes very different implementation in the Member States that posed a problem.

The amendments introduced by the new directive concern three aspects: prevention and the criminal justice response; detection, assistance and protection of victims; and institutional aspects.

Here are the main amendments:

a. Prevention and the criminal justice response

- **extension of the definition of trafficking in human beings:** forced marriage, illegal adoption and surrogacy have been explicitly added to the types of exploitation included in the revised directive[259], even if, as the new directive makes clear, these forms of exploitation were already covered if all the criteria constituting trafficking were met.

253 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.
254 Myria, *Annual report 2023 – Trafficking and smuggling in human beings, A chain of responsibilities*, pp. 71-72.
255 Directive (EU)2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings, and protecting its victims, *O.J.* L, 24 June 2024.
256 The Commission's initial proposal made six amendments to Directive 2011/36: the addition of forced marriage and illegal adoption as new forms of exploitation; explicit reference to the online aspect in the definition of trafficking; the introduction of a mandatory system of sanctions against legal persons; mandatory criminalisation of the knowing use of the services of a victim of trafficking; formal creation of national referral mechanisms and national focal points responsible for referring victims; annual collection of statistical data according to certain indicators.
257 See, in particular, the report on 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, plenary session of the European Parliament on 10 October 2023, A9-0285/2023 and the Position of the European Parliament adopted at first reading on 23 April 2024. Almost 300 amendments (294 to be exact) had thus been initially tabled by the Parliament.
258 Recital 5 of Directive 2024/1712.
259 New §3 of Article 2 of Directive 2011/36, replaced by Directive 2024/1412.

As for surrogacy, the directive "targets those who coerce or deceive women into acting as surrogate mothers"[260]. The latter also specifies that these amendments are "without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or to those of offences related thereto other than trafficking, where provided for in national or international law" and "without prejudice to the national rules on surrogacy, including criminal law or family law"[261].

- **introduction of an additional aggravating circumstance relating to the use of information and communication technologies:** where the perpetrator has facilitated the dissemination or has themselves disseminated images, videos or similar material of a sexual nature involving the victim, the sentences handed down may be increased[262].

- **criminalisation of the use of services provided by a victim of trafficking, with full knowledge of the facts:** a new Article 18*bis* was added to the 2011 directive, in order to make such criminalisation compulsory, whereas previously, Member States were free to decide whether or not to include such a provision. Applicable to all forms of trafficking, the recitals of the new directive nevertheless provide a number of clarifications[263]. Hence, the offence should only target the use of services provided within the framework of trafficking. Consequently, it should not apply to customers who purchase products produced under conditions of labour exploitation, since they are not the users of such a service[264]. However, Member States are free to adopt or maintain more stringent criminal rules. Furthermore, they can criminalise the purchase of sexual services[265]. To establish knowledge, account must be taken of the specific circumstances of the case, such as the conditions under which the services were provided or facts indicating signs of control of the victims by the trafficker[266].

- **tougher sanctions for legal persons:** sanctions against legal persons responsible for breaches have been strengthened and can now include exclusion of access to public funding, tender procedures and subsidies, or the withdrawal of operating permits or authorisations[267].

b. Detection, assistance and protection of victims

- **principle of non-punishment:** the principle of non-prosecution and non-punishment of victims, which only concerned criminal activities, has now been extended to any unlawful acts committed under coercion[268]. This makes it possible to explicitly target a series of administrative offences relating, for instance, to prostitution or undeclared work, or other acts that are not criminal in nature but are subject to administrative or financial penalties[269].

- **training and capacity building:** Member States should extend training to a larger number of professionals likely to come into contact with potential victims of human trafficking[270], especially children[271], and encourage general and specialised training for judges and prosecutors involved in criminal proceedings[272]. The persons, units and services involved need to be provided with adequate expertise and technological capabilities. In addition, States are encouraged to create specialised units within law enforcement agencies and prosecution services[273].

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260 Recital 6 of Directive2024/1712.
261 *Ibid*.
262 Article 4, §3 of Directive 2011/36, replaced by Directive 2024/1412.
263 See recitals 26 to 28 of Directive 2024/1712.
264 Recital 26 of Directive 2024/1712.
265 *Ibid*.
266 Recital 27 of Directive 2024/1712. This recital gives concrete examples.
267 Article 6 of Directive 2011/36, replaced by Directive 2024/1712.
268 Article 8 of Directive 2011/36, replaced by Directive 2024/1712.
269 Recital 14 of Directive 2024/1712.
270 New Article 18ter, §1 of Directive 2011/36, introduced by Directive 2024/1712. This especially concerns frontline police officers, court staff, assistance and support services, labour inspectors, social services and healthcare workers.
271 On this subject, see recital 23 of Directive 2024/1712.
272 New Article 18ter, §2 of Directive 2011/36, introduced by Directive 2024/1712.
273 New §3 of Article 9 of Directive 2011/36, replaced by Directive 2024/1712.

- **specialised assistance for victims and sufficient accommodation:** assistance and specialised support for victims is a crucial point in the revised directive[274]. Sufficient shelters and suitable (temporary) accommodation should also be available. These should be easily accessible to victims, and equipped to meet the specific needs of children[275].

- **possibility of establishing a national fund for trafficking victims or similar instruments to compensate victims:** this possibility is expressly provided for alongside the obligation to provide victims with access to existing compensation schemes for victims of violent crimes of intent[276].

c. Institutional developments

- **implementation of a formal national referral mechanism, created and defined by laws, regulations or administrative provisions:** in order to enhance the national capability to detect and identify victims at an early stage, and to refer them to the appropriate support services, the revised directive reinforces the need to establish a (or several) formal referral mechanism(s)[277]. It defines the minimum tasks. This mechanism should include minimum standards for the early detection and identification of victims, their referral to the most appropriate support and assistance and the establishment of cooperation agreements or protocols with the competent asylum authorities, in order to ensure that assistance, support and protection are provided to victims of trafficking who are also in need of international protection. Ideally, this will involve identifying the competent authorities, civil society organisations and other stakeholders involved and defining their respective responsibilities, including procedures and lines of communication[278]. Another important aspect: Member States must appoint a focal point responsible for the cross-border referral of victims. This contact point should serve in the relations between the authorities or institutions responsible for the cross-border support of victims in the various Member States, but not for the victims themselves.

  These focal points can be based on existing mechanisms or governance structures and should not replace national complaint mechanisms or hotlines[279].

- **improving coordination between the official referral mechanisms and the asylum authorities:** complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities must be ensured[280]. At the same time, victims must be able to exercise their right to apply for international protection or equivalent national status, including when the victim is receiving assistance, support or protection as a presumed or identified victim of trafficking[281]. Member States must therefore ensure that the two relevant procedures are complementary and not mutually exclusive[282].

- **national anti-trafficking coordinators:** Article 19 of Directive 2011/36 on national rapporteurs was also revised. From now on, Member States must establish national coordinators or equivalent mechanisms and provide them with the adequate resources to improve internal cooperation. Their tasks shall include carrying out assessments of trends in human trafficking, measuring the results of anti-trafficking and reporting, i.e. the tasks previously assigned to the national rapporteur or equivalent mechanism in the previous version of Article 19. Their tasks may also include setting up contingency response plans, and promoting, coordinating and, where appropriate, financing anti-trafficking programmes. Furthermore, Member States may also establish independent bodies whose role may include monitoring the implementation and impact of anti-trafficking actions, submitting reports on matters requiring special attention and carrying out assessments of root causes and trends in trafficking. However, the new article states that where such an independent body is established, it may be assigned one or more of the coordinators' tasks.

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274 Art. 11, §1 of Directive 2011/36, replaced by Directive 2024/1712. Persons with disabilities and children, among others, have specific needs (see recital 17 of Directive 2024/1712).

275 New §5*bis* of Article 11 of Directive 2011/36, inserted by Directive 2024/1712.

276 Article 17 of Directive 2011/36, replaced by Directive 2024/1712.

277 §4 of Article 11of Directive 2011/36, replaced by Directive 2024/1712.

278 Recital 15 of Directive 2024/1712.

279 *Ibid*.

280 §1 of new Article 11bis of Directive 2011/36, inserted by Directive 2024/1712.

281 §2 of new Article 11bis of Directive 2011/36, inserted by Directive 2024/1712.

282 Recital 21 of Directive 2024/1712.

- **data collection and statistics[283]:** a system for the recording, production and provision of anonymised statistical data based on various indicators (victims,suspects, defendants, decisions, convictions) must be set up in every Member State to monitor the effectiveness of their systems. Moreover, an annual collection of data on human trafficking at EU level, carried out and published by Eurostat, has been formalised.

- **national action plans[284]:** Member States are required to adopt, implement and regularly update (at least every five years) a national action plan including objectives, priorities and general measures to address trafficking. There may also be various preventive measures, measures to strengthen the fight against trafficking and the early identification of victims, as well as monitoring procedures and the implementation of these action plans.

While Myria finds some points of the directive positive, some provisions raise questions. For instance, the strengthening of support and assistance for victims[285], in particular through the formalisation of national referral mechanisms, the obligation to provide specialised support and a sufficient amount of accommodation, and the extension of the non-punishment provision are all improvements on the 2011 directive. Another positive point is the obligation for Member States to offer more training to all types of professionals who may come into contact with potential trafficking victims, and to improve coordination between asylum and anti-trafficking authorities.

On the other hand, the extension of the definition, not only to the exploitation of forced marriage or illegal adoption[286] but also to surrogacy, raises questions, especially in terms of application in practice.

For instance, in concrete terms, how will the distinction be made between autonomous offences and those that fall under trafficking? It will be essential to provide practical guidelines for practitioners in the field, otherwise trafficking will become a catch-all concept. It will also be important to determine which victims should be referred and provided with support, particularly in cases of exploitation of illegal adoption.

At the same time, Myria wonders how Belgium will transpose and implement in practice the new Article 18bis on the mandatory criminalisation of knowingly using services provided by a victim of trafficking, given that it has reformed its sexual criminal law by decriminalising certain forms of pimping, and that it wishes to allow sex workers to benefit from a proper employment relationship under certain conditions[287]. Furthermore, the real impact of this type of measure on victims' rights has not been demonstrated[288] and may even prove counter-productive in the fight against human trafficking[289]. It is therefore essential to step up checks on all forms of prostitution in order to detect abuses, and to allocate resources for this purpose.

Finally, Myria regrets that the final version of Article 19 on coordinators and rapporteurs does not require the separate appointment of national coordinators and independent monitoring bodies, as proposed by the European Parliament[290]. While the role of coordinating internal policies is essential, an independent monitoring and evaluation function is just as important. The existence of independent rapporteurs makes it possible to examine policies objectively, critically and from different perspectives, taking into account the realities in the field and the players involved, to be more attentive to violations of victims' rights and to make recommendations to Member States with a view, in particular, to strengthening these rights.

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283 New Article 19*bis* of Directive 2011/36, inserted by Directive 2024/1712.

284 New Article 19*ter* of Directive 2011/36, inserted by Directive 2024/1712.

285 Even if the NGOs regret that the rights of the victims have not really been reinforced: on this subject, see La Strada, Joint NGO Statement on Recast EU Anti-Trafficking Directive, 25 April 2024.

286 The reform of the Belgian Criminal Code, which is due to come into force in 2026, has already included these two forms of exploitation in the definition of trafficking, See below point 2.2.2.

287 On this subject, see point 2.4 below.

288 In this sense: La Strada, Joint NGO Statement on Recast EU Anti-Trafficking Directive, 25 April 2024.

289 On this subject, see Myria, Annual report 2021 – *Trafficking and smuggling in human beings, Visibly invisible*, pp. 39-40. By criminalising clients, it would become more difficult for them to report potential abuse and cases of trafficking to the authorities.

290 Parliament proposed, on the one hand, the introduction of national coordinators responsible for assisting the government in the development of coherent and effective policies, including national action plans, and, on the other hand, the appointment of independent national rapporteurs or the establishment of equivalent mechanisms. The latter would be responsible for monitoring the impact of anti-trafficking measures, submitting annual reports and monographic reports on topics considered serious, urgent or requiring special attention to the competent national authority, and gathering complaints. They would also be responsible for carrying out assessments of the root causes and trends in human trafficking, and at least the collection of statistics. See the report on 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, European Parliament plenary session of 10 October 2023, A9-0285/2023, p. 27.

It is in this respect that Myria's reports serve as a basis for GRETA, the Council of Europe's group of experts responsible for evaluating Belgium's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, which emphasises the quality of the reports[291].

Moreover, there is no clear distinction between the coordinators' tasks and those of any independent bodies, so they may have very different responsibilities depending on the Member States. Belgium should maintain the current system since it already has a policy coordination mechanism, under the aegis of the Minister of Justice[292] and both governmental[293] and independent reporting[294].

1.1.2. Other measures

Other measures likely to have an impact on the fight against human trafficking have also been adopted or are in the final stages of adoption at European level.

New directive on asset recovery and confiscation

A new directive on asset recovery and confiscation came into force on 22 May 2024[295]. Member States must have transposed it by 23 November 2026, at the latest. The directive lays down minimum rules at EU level relating to the tracing, identification, freezing, confiscation and management of assets derived from criminal activities in connection with a wide range of offences, including human trafficking. The aim of the directive is to improve the means available to the Member States to fight organised crime and the associated illegal profits.It also obliges EU Member States to ensure that the authorities have the necessary resources to carry out their activities.

The new directive contains an important reference to compensation for the victims of crime, stating for instance that assets may also be frozen with a view to possible subsequent restitution or to guarantee compensation for damages caused by a criminal offence.

Corporate due diligence

In February 2022, the Commission proposed a corporate sustainability due diligence directive (CSDDD)[296]. The directive was hotly debated and finally adopted on 13 June 2024. It came into force on 25 July 2024 and must be transposed by the Member States by 26 July 2026[297].

The directive applies to companies in the EU and to certain companies in non-EU countries with a turnover in excess of EUR 450 million. It concerns their own activities, the activities of their subsidiaries and, where linked to their value chain(s), those of their business partners, ranging from the upstream production of goods or provision of services to the downstream distribution, transport or storage of products. It concerns their own activities, the activities of their subsidiaries and, where linked to their value chain(s), those of their business partners, ranging from the upstream production of goods or provision of services to the downstream distribution, transport or storage of products. The companies concerned will have to adopt and implement appropriate risk-based due diligence to monitor, prevent or remedy the harm to human rights (including human trafficking) or to the environment identified by the directive, in the context of their own operations and throughout their value chains.

The directive requires companies to ensure that human rights and environmental obligations are respected throughout their chain of activities. If a company is found to be in breach of these obligations, it must take appropriate measures to prevent, mitigate, eliminate or minimise negative impacts resulting from its own activities, those of its subsidiaries and those of its business partners in its chain of activities.

Companies may be held liable for any damages caused and will have to guarantee adequate compensation. The directive also requires Member States to designate a supervisory authority.

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291 See §17 of the report of the last evaluation cycle of Belgium: GRETA, Evaluation Report Belgium, *Access to justice and effective remedies for victims of trafficking in human beings*, third evaluation cycle, 20 October 2022.
292 Art. 4 to 11ter of the Royal Decree of 16 May 2004 on combating the smuggling and trafficking of human beings.
293 Art. 21, 1° of the Royal Decree of 16 May 2004 on combating smuggling and trafficking of human beings and Art. 12 of the Law of 13 April 1995 containing provisions for the suppression of trafficking and smuggling of human beings.
294 Art. 1, 2 and 21, 2° of the Royal Decree of 16 May 2004 on combating the smuggling and trafficking of human beings.
295 Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, *O.J.* L, 2 May 2024.
296 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, COM/2022/71 final/2. On this subject, see Annual report 2023 – Trafficking and smuggling of human beings, *A chain of responsibilities*, p. 36.
297 Directive (EU) 2024/1760 of the European Parliament and of the Council of 23 February 2022 on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 and regulation (EU) 2023/2859, *O.J.* L, 5 July 2024.

Proposal for a regulation prohibiting products made using forced labour on the Union market

On 23 April 2024, the European Parliament gave its final approval to a new regulation enabling the EU to ban the sale, import and export of goods produced using forced labour[298].

Member State authorities and the European Commission will be able to investigate suspicious goods, supply chains and manufacturers. If a product is deemed to have been made using forced labour, it will no longer be possible to sell it on the EU market (including online) and will be intercepted at the EU's borders. At the time of writing this report (July 2024), the text was still awaiting the Council's formal agreement.

1.2. *Human smuggling*

In 2023, the European Commission took a number of initiatives to step up the fight against human smuggling. In her State of the Union address on 13 September 2023, the President of the Commission, Ursula von der Leyen, announced the need for new European regulations and governance in this area, with a greater role for European agencies[299].

A few months later, the European Commission organised an international conference on the subject, at which it presented a proposal for a directive and a proposal for a regulation, as well as launching a call for a 'Global Alliance to Counter Migrant Smuggling'[300]. These three initiatives are discussed one after the other below.

Reforming the 'Facilitators' Package'

The first initiative[301] consists of a proposal for a directive to replace the 20-year-old 'Facilitators' Package', consisting of the 2002 directive[302] and framework decision[303] on combating smuggling of human beings. The 2023 proposal aims to reinforce the fight against human smuggling, in particular by making it a more serious offence, imposing stiffer penalties and extending jurisdiction.

The Commission thus proposes to criminalise contributing to the unauthorised entry, transit or residence of a third-country national, not only if the perpetrator seeks (or requests, receives or accepts) an (in)direct financial benefit[304], but also if there is a "high likelihood of causing serious harm to a person" (Article 3). The preamble states that these alternative conditions will 'generally' not be met in the case of humanitarian assistance[305]. Third-country nationals should also not be held criminally liable for having been the subject of such criminal offences[306]. In addition, the proposal provides for an "aggravated criminal offence" (Article 4) — which is very similar to the Belgian rules[307] — and explicitly criminalises incitement, complicity and attempted human smuggling (Article 5). Lastly, the proposal introduces a series of aggravating and mitigating circumstances.

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298 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) final and position of the European Parliament adopted at first reading on 23 April 2024.
299 European Commission, *State of the Union 2023 - President von der Leyen's speech*, 13 September 2023.
300 European Commission, *A Global Alliance to Counter Migrant Smuggling*, 28 November 2023.
301 Proposal for a directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA, 28 November 2023, COM/2023/755 final [Proposal for a directive on migrant smuggling].
302 Directive 2002/90/EC of the Council of 28 November 2002 defining facilitation of unauthorised entry, transit and stay, O.J. L 328, 5 December 2002.
303 Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, *O.J.* L 328, 5 December 2002.
304 In the 2002 directive, the financial benefit in question was required only in the case of a contribution to an unauthorised stay, and not in the case of a contribution to unauthorised entry or transit (Article 1(1) of Directive 2002/90/EC). Under current Belgian legislation, each of these situations already requires the aim of obtaining a financial benefit (Article 77bis of the Aliens Act, transposed to Article 259 of the Criminal Code, as of the entry into force of the new Criminal Code on 8 April 2026).
305 Recital 7 of the proposal for a directive on the smuggling of human beings. The Commission therefore proposes to replace the optional exception on humanitarian grounds (provided for in Article 1(2) of Directive 2002/90/EC) with a case-by-case assessment.
306 Recital 7 of the proposal for a directive on the smuggling of human beings.
307 The current Art. 77quater of the Aliens Act. This article will be transposed to Article 260 of the Criminal Code as of the entry into force of the new Criminal Code on 8 April 2026.

Aggravating circumstances include cases where the offence has resulted in the illegal employment[308], exploitation[309] or 'instrumentalisation'[310] of a person who has been the subject of smuggling (Article 9)[311]. On the other hand, it will be a question of mitigating circumstances where the perpetrator provides information that is unavailable, that helps the authorities to identify other perpetrators or to find evidence (Article 10).

The proposal provides for severe penalties, in particular for forms of 'aggravated smuggling of human beings', with maximum prison sentences of at least 10 or 15 years[312] (Article 6). It also considerably extends Member States' jurisdiction over criminal offences. Thus, a Member State would also have jurisdiction if the offence were committed for the benefit of a legal person established or exercising their activities on its territory. Furthermore, a Member State could also declare itself competent if the offence leads to the entry, transit or residence of the persons concerned in its territory (for instance, as a result of human smuggling in international waters) (Article 12). Finally, minimum limitation periods have also been introduced (Article 11).

Besides this harmonisation of the rules on prosecuting and punishing human smuggling, the proposal lays down obligations for the Member States in terms of prevention, making the necessary resources available, training and data collection. On this last point, Member States are required to collect data concerning, among other things, the number and profile of perpetrators and smuggled persons, as well as the length of proceedings (Article 17).

Amendment of the Europol Regulation

In parallel with the proposal for a directive, the European Commission has also launched a proposal to amend the Europol Regulation[313]. The main aim of this second text is to strengthen Europol's role in the fight against the smuggling and trafficking of human beings (Article 1). Among other things, the Commission is proposing to extend the powers of the European Migrant Smuggling Centre, which has been part of Europol since its creation in 2016. Despite its name referring to human smuggling, the Centre, renamed the European Centre Against Migrant Smuggling, would also be responsible for trafficking (Article 3). In addition, the Centre would not only be responsible for carrying out analyses and monitoring relevant trends — tasks which it already performs — but would also be entrusted with important operational tasks (Articles 5-6).

Global Alliance to Counter Migrant Smuggling

Finally, the European Commission launched a call for action to national governments, international organisations (including UNODC[314]) and —remarkably — online service providers, with the aim of creating a 'Global Alliance to Counter Migrant Smuggling'[315]. Within this framework, the Commission convened several expert groups during 2024. The first expert group, which met at Europol at the end of April 2024, focused on the fight against human smuggling using online platforms[316].

308 This is illegal employment within the meaning of the 'sanctions' directive (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. L 168, 30 June 2009.
309 Although the term 'exploitation' is not defined, according to the preamble it includes sexual exploitation (recital 14 of the proposed directive on migrant smuggling).
310 The term 'instrumentalisation' is not defined in the proposal, but it refers to a situation in which a third country encourages illegal migration flows to the EU in order to destabilise it. The term first appeared in two Commission proposals dating from the end of 2021: Proposal for a regulation of the European Parliament and of the Council on addressing situations of instrumentalisation in the field of migration and asylum, 14 December 2021, COM/2021/890 final and Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, 14 December 2021, COM/2021/891 final.
311 However, the rationale behind the introduction of these aggravating circumstances is not explained in the European Commission memorandum.
312 In Belgium, this maximum prison sentence already exists for all forms of human smuggling with the aggravating circumstances listed in Article 77quater of the Aliens Act.
313 Art. 2 of the Proposal for a regulation of the European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794, 28 November 2023, COM/2023/754 final.
314 United Nations Office on Drugs and Crime.
315 European Commission, *Call to action on a global alliance to counter migrant smuggling*, 28 November 2023.
316 Europol, *New network to target migrant smugglers in the digital domain*, 3 May 2024.

2. Developments in the Belgian legal and political framework

With the exception of a development directly related to human trafficking (a new Royal Decree on the recognition of reception centres, point 2.1.), several important measures were adopted in Belgium in 2023 and early 2024 that could have an impact on the fight against human trafficking. These include the adoption of the new Criminal Code (point 2.2.), the conditions for authorising advertising for the prostitution of an adult (point 2.3.) and the possibility of performing sex work under an employment contract (point 2.4.).

Other measures are also worth mentioning (point 2.5.), such as the new law on the administrative approach to criminal phenomena.

2.1. Renewal of the recognition of the three specialised reception centres

On 28 June 2023, the three reception centres specialising in the reception and support of victims of trafficking (Payoke in Antwerp, PAG-ASA in Brussels and Sürya in Liège) obtained new recognition for a period of five years[317]. This recognition, which also serves as an authorisation to take legal action, allows them to apply to the Immigration Office (IO) for residence permits for the victims they support.

Centres must meet certain conditions to be recognised as specialised centres[318]. These essentially consist of having non-profit status, having as their main social purpose the reception of human trafficking victims, ensuring the administrative follow-up of child and adult victims, and having reception places. They are also required to submit a strategic plan every five years and a report every year to the competent ministers[319].

2.2. New Criminal Code: an in-depth reform

One of the major developments of 2023 and early 2024 was the adoption and passing of the new Criminal Code[320]. This reform was the subject of two separate draft bills introducing Book 1[321], and Book 2[322] of the Criminal Code respectively. Even though it will not come into force until 8 April 2026, Myria wanted to highlight the main changes adopted. One of these is the extension of the definition of human trafficking and the inclusion of the offence of human smuggling in the Criminal Code in place of the Law of 15 December 1980 on the entry, residence, establishment and removal of foreign nationals (hereinafter referred to as the Aliens Act).

2.2.1. Key elements of the new code

Here is a summary of the key elements of this new code:

a. The new code contains Book 1 and Book 2.

Book 1 contains the general rules of criminal law: the general principles of criminal law and the rules that determine the general conditions of charges, criminal liability and penalties. Book 2 sets out the offences (constituent elements, aggravating factors and penalties) corresponding to the fundamental social values protected by criminal law.

317 Royal Decree of 28 June 2023 on the granting of recognition to centres specialising in the reception and support of victims of trafficking and certain aggravated forms of human smuggling and on authorisation to take legal action, *M.B.*, 1 September 2023.
318 See the Royal Decree of 18 April 2013 on the recognition of centres specialising in the reception and support of victims of trafficking and certain aggravated forms of human smuggling and on authorisation to take legal action, *M.B.*, 22 May 2013.
319 This concerns the Minister of Justice and the Minister or Secretary of State whose responsibilities include access to the territory, residence, settlement and deportation of foreign nationals.
320 Law of 29 February 2024 introducing Book I of the Criminal Code and Law of 29 February 2024 introducing Book II of the Criminal Code, *M.B.*, 8 April 2024.
321 Draft bill (I) of 23 May 2023 introducing Book I of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-3374/001. This first book was introduced concomitantly with another draft bill: Draft bill (II) with a view to inserting a security measure for the protection of society, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-3375/001.
322 Draft bill of 24 July 2023 introducing Book II of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-3518/001.

b. Three principles form the common thread of the reform: accuracy, simplicity and coherence.

The Criminal Code dates back to 1867, and since then, there has been no general revision. This resulted in a two-tier code, with numerous (virtually) unchanged provisions on the one hand, despite the fact that national and international developments had profoundly changed society. And on the other hand, an exponential increase in one-off legislative amendments and new legal and jurisprudential rules, which meant that substantive criminal law had become a complex tangle that was difficult to decipher.

c. In terms of content, penalties stand out the most.

The correctional system no longer exists, but the Code contains and defines the concepts of aggravating constituents, aggravating factors and mitigating circumstances[323]. Penalties are now divided into eight levels, and imprisonment has been abolished for the least serious offences (corresponding to penalty level 1).

In the current Code, aggravating circumstances, as described in the legal provision, are what the legislator considers to be aggravating factors, that are in addition to the constituent elements of the basic offence thus constituting an aggravation of this offence. Hence, these aggravating factors increase the theoretical penalty provided for by the law. There are two types of aggravating circumstances. On the one hand, **objective aggravating circumstances**, which are objective factors that increase the seriousness of the offence (for instance, a robbery committed with the use of violence carries a heavier penalty than a simple robbery). These are aggravating circumstances that are inherent in the behaviours that constitute the offence, such as the means used, the circumstances in which the offence was committed or its consequences. On the other hand, there are **subjective aggravating circumstances**, which are causes of aggravation that are personal to the individual being prosecuted. They form part of the process of individualising the penalty. Examples include premeditation, which turns murder into assassination.

The new Code now distinguishes between '**aggravating constituents**', which, in the eyes of the legislator, should result in one or more steps up the ladder of penalties; and, '**aggravating factors**' that the legislator wishes the judge to take into account when determining the penalty. Unlike aggravating constituents, aggravating factors do not automatically lead to a heavier sentence, but their impact on the choice of punishment and sentencing is at the judge's discretion. For the purposes of determining the penalties applicable to offences under Book 2 of the Criminal Code, a distinction is now made between aggravating circumstances that fall into the first category, henceforth referred to as 'aggravating constituents' (leading to an increase in the level of penalty), and those belonging to the second category, henceforth referred to as 'aggravating factors' (which are left to the discretion of the judge when determining the penalty). The concept of aggravating factor (formerly known as an aggravating circumstance) has no impact on the applicable level of penalty.

The current system for reducing sentences due to mitigating circumstances has been maintained. This is because the legislator considers that it allows for a high degree of flexibility in the criminal justice response. Mitigating circumstances may still be taken into account at the discretion of the judge.

d. Book 2 contains a new overall structure.

The offences are grouped under eight headings corresponding to eight themes[324]. New offences have been added, such as ecocide, incitement to suicide and the sale of children. Some criminal provisions stemming from special laws are also incorporated into the Criminal Code for certain offences (such as those relating to the punishment of discrimination, incitement to hatred and negationism). In addition, the Criminal Code decriminalises several offences when civil, administrative or disciplinary sanctions are sufficient to respond to the offending behaviour, or decriminalises certain behaviours because the offences are now obsolete.

323 On this subject, see Articles 20, 28 and 30 of the new Criminal Code.

324 The eight headings are as follows: serious violations of international humanitarian law (1); the crime of ecocide (2); offences against the person (3); offences against public safety (4); forgery (5); offences against property (6); economic offences (7); offences against the State and its functioning (8).

2.2.2. Human trafficking and smuggling and the principle of non-punishment in an autonomous provision

Human trafficking and smuggling included together in Criminal code

Trafficking in human beings (new Article 258 of the Criminal Code) will now form part of the new Chapter 7 of Title 3 (offences against the person), which deals with offences against human dignity and abuse of the victim's vulnerable situation. Trafficking is thus included alongside other offences such as the abuse of prostitution, the sale of children, trafficking in human organs, the exploitation of begging, slum landlords, forced marriage and forced legal cohabitation. Offences relating to discrimination, incitement to hatred and negationism are also included in this chapter.

As already mentioned, human smuggling has been incorporated into the Criminal Code and is found in the same section as human trafficking. This grouping is justified by the legislator in the interests of consistency and simplification, since these offences have similarities, particularly in terms of aggravating circumstances and applicable penalties[325]. Moreover, these issues sometimes overlap. However, the current Article 77 of the Aliens Act, relating to aiding illegal immigration, has not been incorporated into the Criminal Code.

The new article of the draft Criminal Code[326] initially included the offence of human trafficking as it appears in Article 433quinquies of the Criminal Code in its current version.

However, following an amendment[327] adopted at first reading by the Justice Committee[328], the definition of human trafficking was expanded to include illegal adoption and forced marriage. These were added to the exploitative purposes of human trafficking (new points 6° and 7° of §1 of Article 258).

The authors of the amendment thus intended to respond to one of the recommendations of the Special Commission on trafficking and smuggling in human beings[329], which called for such an extension, while also being attentive to the discussions on the new European directive on the subject. It should be noted that they thus anticipated the extension decided at European level (see point 1.1.1. above). However, another purpose of exploitation will still have to be introduced to comply with the directive: the exploitation of surrogacy.

Human trafficking is punishable by a level 3 penalty[330], in line with the existing penalty.

Like the current system, a fine as an accessory penalty may be applied as many times as there are victims[331].

As for the **new Article 259, it incorporates the offence of human smuggling in the Criminal Code**, which appears in Article 77bis of the Aliens Act of 15 December 1980.

The penalties are the same as those for human trafficking.

The new Criminal Code reorganises the aggravating circumstances of the offence. Hence, aggravating constituents (human trafficking and aggravated human smuggling in Article 260) and aggravating factors (Article 261) have now been set out in two separate articles.

The first paragraph of Article 260 includes the eight identical aggravating circumstances for human trafficking set out in Article 433septies of the Criminal Code and for human smuggling set out in Article 77quater of the Aliens Act. They are as follows: the fact the victim is a minor (1°), abuse of their situation of vulnerability (2°), use of fraudulent tactics, violence, coercion or threats (3°), offer or acceptance of payment or benefits to obtain the consent of a person with authority over the victim (4°), endangering the victim's life (5°), third-degree physical harm (6°), habitual activity (7°), and criminal association (9°).

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325 Explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-518/001, p. 223.

326 Article 259 of the draft bill.

327 Amendment no. 26 of Mr. Segers et al. to the draft bill introducing Book II of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3518/003, p. 25.

228 Article 259 of the draft bill introducing Book II of the Criminal Code, adopted at first reading by the Justice Committee, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55- 3518/007,p. 72.

229 Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-2530/002: see recommendation 83, p. 124. For an analysis of the Commission's recommendations, see Myria, *Annual report 2023 – Trafficking and smuggling of human beings, A chain of responsibilities*, pp. 75-82.

230 Level 3 offences are punishable by imprisonment for a term of more than three years but not more than five years, or by a custodial sentence of more than two years but not more than four years (Article 36 of the new Criminal Code).

231 Article 258, §3 of the new Criminal Code. If the main punishment is a level 3 penalty, the range of the fine as an additional penalty is EUR 200 to a maximum of EUR 10,000 according to Article 52, §1,6° of the new Criminal Code.

The legislator also added the motive of discrimination (8°). As these are aggravating constituents, the applicable penalty is level 4.

A second paragraph incorporates the two aggravating constituents set out respectively in Article 433octies of the current Criminal Code and Article 77quinquies of the Aliens Act, namely the unintentional death of the victim (1°) and participation in a criminal organisation (2°). The penalty in this case is level 5.

The aggravating factors in Article 261 correspond to the aggravating circumstances in Articles 433sexies of the current Criminal Code and 77ter of the Aliens Act: the fact that the offence was committed by a person with authority over the victim or who abused the authority or opportunities provided by their functions (1°); or by a person holding a public office in the exercise of that office (2°).

Article 262 deals with confiscation and incorporates the system currently applicable to human trafficking and human smuggling. Article 263 sets out specific prohibitions in the event of conviction for human trafficking.

Non-punishment provision

Lastly, the **non-punishment provision** for victims of trafficking, which is grounds for exemption from punishment, is now the subject of a **specific article** (new Article 264[332]) rather than a specific paragraph in the basic charge of trafficking (see §5 of current Article 433quinquies[333]). The explanatory memorandum[334] specifies in this respect that it will be applicable to offences under the Criminal Code (including the use of fake documents or theft), the Social Criminal Code (including undeclared work under article 183/1) and special laws (for instance, the sale of narcotics or offences under the Aliens Act). However, this provision has been amended so that it is not applicable to offences punishable by a level 7 or 8 penalty (i.e. the most serious offences such as murder, assassination or non-consensual sexual acts resulting in death without intent).

In such cases, only the coercion (irresistible force) referred to in Article 22 of Book 1[335] may be considered.

Myria would like to stress the importance of having opted for a separate article concerning the non-punishment provision, hoping that this will give it greater visibility. In addition, the details provided in the explanatory memorandum are very useful in reminding players in the field of the broad scope of this provision, especially as the revised European directive on trafficking has extended its scope.

Myria would also like to point out that this article should only be applied as a last resort, the aim being above all to avoid prosecution when it can be established that the victim must have committed offences in the context of their exploitation[336].

2.2.3. Other new relevant provisions

Sale of children

The criminalisation of the **sale of children** has been **explicitly included in the Criminal Code**[337]. In so doing, the legislator is seeking to comply with the international obligation arising from Belgium's ratification, on 17 March 2006, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, signed in New York on 25 May 2000, which requires States to prohibit the sale of children and specifically criminalise it[338].

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332 Article 264 of the new Criminal Code, entitled the "grounds of excuse in favour of the victim of human trafficking" states that "a victim of human trafficking who takes part in offences for which the law provides a level 1, 2, 3, 4, 5 or 6 penalty as a direct consequence of their exploitation shall not incur any penalty for these offences".

333 Article 433*quinquies*, §5 is worded as follows: "the victim of human trafficking who takes part in offences as a direct consequence of their exploitation shall not incur any penalty for these offences."

334 Explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-3518/001, pp. 226-227.

335 This article stipulates that "a person is not criminally responsible for an act committed while under the effect of physical or moral coercion that they were unable to resist".

336 On the principle of non-punishment of victims, see Myria, *Annual report 2012 – Trafficking and smuggling of human beings, Building trust*, part 1, pp. 8-41.

337 Article 273 of the new Criminal Code defines the sale of children as follows: "The sale of children consists of deliberately offering, promising, handing over or accepting a minor, whatever the means used, in exchange for a profit or comparable gain for oneself or for others."

338 See Articles 1 to 3 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, *Parl. Doc.*, Chamber, ordinary session 2022-2023, Doc. 55-3518/001, p. 228.

This is because of the seriousness of the offence and the need to protect minors from this form of crime, even if in some respects this offence may overlap with other offences such as human trafficking or offences relating to the sexual exploitation of children[339].

As the legislator also wished to draw a parallel with the punishment of human trafficking with regard to child victims, the aggravated sale of children[340] is punishable by a level 4 penalty "when its purpose is: 1) exploitation of prostitution or other forms of sexual exploitation; 2) exploitation of begging; 3) work or services in conditions contrary to human dignity; 4) exploitation through the removal of organs or bodily material; 5) to make that person commit a crime against their will".

Similarly, the aggravating circumstances currently provided for in Articles 433sexies and octies of the Criminal Code for trafficking are included both as aggravating factors[341], and as aggravating constituents in the sale of children[342].

The explanatory memorandum specifies that "where appropriate, the aggravated sale of children will also constitute human trafficking or organ trafficking (compound crime)"[343].

As the definition of the aggravated sale of a child is quite similar to that of human trafficking, Myria again questions its practical application. This is not without consequences for the victims of trafficking (in this case, children), who may or may not benefit from the special status depending on the definition used.

Unauthorised entry into a vehicle and grounds for exemption from punishment

Among the offences against public safety (new Title 4), in addition to trespassing in a port area, there is a **new offence** in the context of human smuggling and trafficking: **unauthorised entry into a vehicle**, punishable by a level 1 penalty[344].

However, a **new ground for exemption from punishment** has been introduced **for victims of human trafficking and smuggling** who enter port areas or vehicles **under coercion**[345]. While victims of trafficking already benefit from the general exemption in Article 264 (see point 2.2.2. above), victims of smuggling will not be punished if they can show that they were forced by smugglers to enter a vehicle or a port area[346].

Myria questions the value of such a provision concerning unauthorised entry into a vehicle. This approach may prove counter-productive in terms of gaining the trust of potential victims of smuggling who would be prepared to cooperate with the police and the justice system by making statements or providing relevant information. Furthermore, the case for exemption from punishment seems difficult to apply in practice, given that migrants are often moved and transported clandestinely in groups.

2.3. Advertising for the prostitution of an adult: what is and is not allowed

Despite the reform of sexual criminal law, which decriminalised certain forms of pimping, **advertising the prostitution of an adult remains prohibited**, except in certain specific cases (current article 433*quater*/2 of the Criminal Code[347]).

The law specifies what is meant by advertising. It refers to the creation, publication, distribution or dissemination of advertising for an offer of sexual services by an adult, as well as the fact of making it known that an adult is engaging in prostitution or facilitating prostitution, by any means of advertising, whether explicit or implicit.

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339 Explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, Parl. Doc., Chamber, ordinary session 2022-2023, Doc. 55-518/001, p. 228.

340 Article 274 of the new Criminal Code.

341 Article 275 of the new Criminal Code, which covers the fact of having authority over the victim or of exercising a public function.

342 §2 of Article 274 covers causing the death of the victim without the intention of doing so and participation in a criminal organisation.

343 Explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, Parl. Doc., Chamber, ordinary session 2022-2023, Doc. 55-3518/001, p. 232.

344 Article 421 of the new Criminal Code, which states: "In the context of the offences referred to in Articles 258 to 260, unauthorised entry into a vehicle consists of deliberately entering or intruding, without being entitled or authorised to do so, into a vehicle, ship, railway carriage, container, semi-trailer or aeroplane." Articles 258 to 260 concern the smuggling and trafficking of human beings.

345 See Article 422 of the new Criminal Code, which states: "Subject to the application of Article 264, which already contains a ground for exemption from punishment for victims of human trafficking, victims of human smuggling who take part in the offences provided for in this chapter as a direct consequence of the coercion exercised over them shall not incur any penalty for these offences."

346 Explanatory memorandum to the draft bill of 24 July 2023 introducing Book II of the Criminal Code, Parl. Doc., Chamber, ordinary session 2022-2023, Doc. 55-3518/001, pp. 363-364.

347 This article will become Article 266 in the new Criminal Code.

However, advertising for prostitution is **allowed in three cases:**

- when an adult advertises their own sexual services behind a window, in a place specifically intended for prostitution;
- when an adult advertises their own sexual services on an internet platform or other medium specifically intended for this purpose;
- for the provider of an internet platform or any other medium, specifically intended for this purpose, which disseminates advertising for services of a sexual nature or for a place dedicated to the provision of services of a sexual nature by adults, subject to certain conditions. They must take measures to protect the sex worker and to prevent abuse of prostitution and human trafficking, at least but not only[348] by immediately reporting any cases of abuse or exploitation to the police or judicial authorities, and by complying with the procedures laid down by the King.

The royal decree defining these procedures, as well as the personal data that may be processed, was issued on 18 May 2024[349].

Internet platform providers are required to comply with certain preventive measures, in particular to avoid the risk of sexual exploitation. The report to the King prior to this decree specifies that they must be able to play a role in identifying problematic situations and must not turn a blind eye to the risks of their platform being used for criminal purposes.

The decree specifies what is meant by 'supplier': it is a company[350] that disseminates, online or offline (e.g. via the print media), adverts of a sexual nature. A provider offering only storage space (cloud services) without disseminating the advert, and therefore not in direct contact with the advertiser, does not fall within the scope of the royal decree.

Furthermore, the supplier's registered office must be located in Belgium or, if this is not the case, the target audience must be specifically located in Belgium[351] regardless of the location of the sexual services or the place dedicated to offering such services[352].

As for the 'advertiser', they include both their own services or those of a third party (e.g. the manager of a brothel).

Providers are required to take certain steps with regard to each advertiser before any advert is published[353]: to check the identity (by means of an identity document and a recent photo of the face) and whether the advertiser or service provider is an adult. As the decree does not specify the type of identity document to be presented, the report to the King indicates that it may be an identity card, passport or any other document (birth certificate, family record book, student card). Suppliers are also expected to check the validity of the phone number and, where applicable, the e-mail address provided. If there is any doubt about the accuracy or veracity of the identity or age of the advertiser or the provider of sexual services, suppliers are obliged to request additional information. If this information is not provided or is inconclusive, they must refuse to place the advert.

Providers are also required to make available a range of useful information[354], in particular on referral options, such as voluntary services active in the field that provide advice to sex workers. They must also provide advertisers with the contact details of certain organisations, in particular centres recognised as specialised in the reception and support of victims of trafficking, and clearly mention the contact point for victims of trafficking and the phone number.

348 This distinction was introduced by Article 51 of the Act of 15 May 2024 containing provisions on the digitisation of justice and various provisions II, M.B., 28 May 2024. This same article also specified the essential elements of the processing of personal data for internet providers. This concerns the identification data of advertisers and, where applicable, providers of sexual services, as well as data relating to the placement of the advert. This addition was made in response to an observation by the Council of State on the draft royal decree.
349 Royal Decree of 18 May 2024 implementing Article 433*quater*/2 of the Criminal Code, *M.B.*, 13 June 2024.
350 Art. 1, 1° of the Royal Decree of 18 May 2024. The company may be a natural person working on a self-employed basis, a legal person or any other organisation without legal personality.
351 For instance, by using a Belgian domain name (.be).
352 Art. 2, para. 2 of the Royal Decree of 18 May 2024.
353 Art. 3 of the Royal Decree of 18 May 2024.
354 Art. 4 of the Royal Decree of 18 May 2024.

As regards cooperation with the authorities, providers are not expected to carry out an overall monitoring of adverts, but they must act promptly if they suspect a case of abuse of prostitution or human trafficking[355]. In the case of online providers, they must provide a contact point that can be reached by the authorities and communicate the details to the police[356]. Finally, they must respond quickly and free of charge to requests made by the police and judicial authorities.

Providers of an internet platform are also required to provide visitors with a visible means of reporting any suspicion of abuse of prostitution or trafficking linked to a profile posted on the platform, for instance by means of an alert button[357]. Specialised associations may also create an account on the platform in order to provide assistance, if necessary, to an advertiser or a provider of sexual services[358].

Myria has noted and welcomes the fact that a number of precautions have been taken to prevent the risks of abuse and trafficking in relation to advertising the prostitution of an adult. However, it wonders what type of checks providers will put in place to verify the identity and authenticity of the person behind the documents presented, in the case of documents other than an identity card or passport. Similarly, what type of monitoring of adverts will be implemented by providers and to what extent will their cooperation with the authorities in the event of suspected abuse or trafficking be effective? Adequate monitoring, both by the providers and by the authorities on the platforms, therefore seems necessary. Sufficient resources should therefore be made available, even though some police services are already carrying out checks and there is already good cooperation between the authorities and certain sites[359].

2.4. Sex work under an employment contract: a new development that raises questions

In line with the reform of sexual criminal law[360] and the unenforceability of the nullity of the employment contract of persons who prostitute themselves[361], an autonomous law has been passed to allow the organisation of the prostitution of others within the framework of an employment contract, thereby giving sex workers full employment rights[362]. In principle, it will come into force on 1 December 2024[363]. A series of royal decrees have yet to be issued, which was not yet the case at the time of writing this report (July 2024).

The reform of sexual criminal law defined pimping as, among other things, organising the prostitution of others in order to obtain a benefit, except in the cases provided for by law (Art. 433quater/1 of the Criminal Code). Consequently, while working as a self-employed sex worker poses no problem and therefore does not fall within the scope of this new law[364], it was still necessary to define the conditions under which a sex worker could be employed as a salaried employee under an employment contract.

The law defines the scope, the specific labour law rules and the conditions for approval for the employer.

The sex work covered by the law concerns the performance of sexual acts in fulfilment of a sex worker's employment contract involving physical contact. Consequently, other types of services, such as purely digital services via webcam, do not fall within the scope of this law[365].

355 Art. 7 of the Royal Decree of 18 May 2024.
356 Art. 10 of the Royal Decree of 18 May 2024.
357 Art. 9, §1 of the Royal Decree of 18 May 2024.
358 Art. 9, §2 of the Royal Decree of 18 May 2024.
359 On this subject, see the focus of this report: Part 1, Chapter 3, point 1.
360 Law of 21 March 2022 amending the Criminal Code with regard to sexual criminal law, *M.B.*, 30 March 2022. On this subject, see Myria, Annual report *2021 – Trafficking and smuggling of human beings, Visibly invisible*, p. 14 et seq. and 2022, *Bound by debt*, pp. 55-57.
361 Law of 21 February 2022 concerning the unenforceability of the nullity of the employment contract of persons who prostitute themselves, M.B., 21 March 2022. On this subject, see Myria, *Annual report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 58.
362 Law of 3 May 2024 containing provisions on sex work under an employment contract, M.B., 6 June 2024. See the explanatory memorandum of the draft bill containing provisions on sex work under an employment contract of 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 4.
363 Early entry into force for each provision may, however, be established by royal decree.
364 The Council for Equal Opportunities for Men and Women, whose opinion was sought on the draft bill (opinion no. 171 of 8 September 2023), reiterated that all prostitutes have the option of working as self-employed persons and therefore already benefit from full social security coverage, like all self-employed persons who contribute to NISSE: see the explanatory memorandum of the draft bill containing provisions on sex work under an employment contract of 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 101.
365 Explanatory memorandum to the draft bill containing provisions on sex work under an employment contract, 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 8.

While all provisions of **labour law and social security rights** will **apply** to such a contract, certain **specific features** are **provided for and regulated** by this new law. Thus, only adults may enter into a sex worker employment contract[366].Similarly, contracts, flexi-jobs and occasional work are prohibited for anyone whose principal status is a student[367].Homeworking is only possible under certain cumulative conditions, some of which have yet to be determined by royal decree[368]. The law also emphasises respect for the free consent of the worker, who cannot be forced to perform any act of prostitution. The rights and freedoms commonly recognised for sex workers must be respected by the employer, who may not attach any negative consequences to them: the right to refuse sexual relations with a client or the performance of certain sexual acts, the right to stop or interrupt sexual activity at any time and the right to impose their own conditions on the sexual activity or act[369]. The sex worker also has the right to terminate the sex worker employment contract without notice or compensation[370].

Specific measures for the well-being of workers are also provided for, such as the compulsory appointment of a person of trust[371].

An essential condition for the employment of sex workers under an employment contract is **that the employer must obtain prior authorisation**[372]. Without it, they could be prosecuted for pimping[373]. To obtain this approval, strict requirements have been introduced to prevent the abuses and risks of the exploitation of sex workers: the employer can only be a legal entity and must have the registered office or a place of business in Belgium; the directors must be clearly identified and may not have been previously convicted of a series of offences (including human trafficking); the articles of association of the company or association must clearly indicate respect for the rights and freedoms of the sex workers it employs, and in particular the four basic freedoms mentioned above.

Approval is granted jointly by the Minister of Justice and the Minister of Employment.

A series of concrete measures have yet to be adopted by royal decree, such as the procedures for submitting and processing applications for approval, and the procedures for suspending and withdrawing approval.

In addition to approval, the employer must comply with a series of conditions for employing sex workers[374], such as the prohibition of delegating the exercise of employer authority and the related obligations to subcontractors, the availability of a reference person for the duration of the services to intervene if the sex worker is in danger[375], equipping each room where sex work is performed with an emergency button, and guaranteeing that social, medical and professional organisations of sex workers have access to the premises.

Additional approval procedures have yet to be defined by royal decree concerning specific safety, health, welfare and quality of work measures for sex workers, such as specific hygiene conditions to be complied with, or obligations to display information on emergency numbers and contact details for trade union and support organisations, such as the three specialised reception centres for victims of trafficking[376].

366 Art. 4 of the Law of 3 May 2024.
367 Art. 5, para.1 of the Law of 3 May 2024.
368 In particular concerning the conditions to be met in terms of health and safety and the adoption of a collective agreement within a joint committee to be appointed (see Art. 5, para. 2 of the Law of 3 May 2024).
369 Art. 7 of the Law of 3 May 2024.
370 Art. 8 of the Law of 3 May 2024.
371 Art. 10 of the Law of 3 May 2024.
372 Art. 11 to 16 of the Law of 3 May 2024.
373 Explanatory memorandum to the draft bill containing provisions on sex work under an employment contract, 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 8.
374 Art. 17 of the Law of 3 May 2024.
375 Report on the first reading of the draft bill containing provisions on sex work under an employment contract, made on behalf of the Committee on Social Affairs, Employment and Pensions by Ms Anja Vanrobaeys, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/002, p. 4.
376 Art. 17, para. 2 of the Law of 3 May 2024 and explanatory memorandum to the draft bill containing provisions on sex work under an employment contract, 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 23.

Lastly, the law[377] specifies that social inspectors have the powers referred to in Articles 23 to 49 of the Social Criminal Code[378] when acting on their own initiative or upon request, as part of their mission to provide information, advice and monitoring relating to compliance with the law and its implementing decrees[379]. It is a royal decree that must determine the inspection service(s) competent to carry out this monitoring.

Amendments have also been made to the Social Criminal Code to penalise non-compliance with the provisions of this new law.

Lastly, an **evaluation of the law** and its implementing decrees is planned **two years after their entry into force.**

These new provisions have raised numerous questions about their implementation and impact, including during the debates in Parliament's Social Affairs Committee[380]; even though the Minister of the Economy and Employment, who introduced the draft bill, felt that by providing a legal framework to bring prostitution out of the shadows, the draft bill would help to combat the unacceptable forms of forced prostitution and human trafficking[381].

Like certain members of parliament when the draft bill was discussed at first reading, Myria questions the practical scope of these new provisions and their consequences for sex workers who are not covered by this status, in particular those working or residing illegally, who may include victims of human trafficking. Are they not at risk of going further underground?

Given the rigidity of the system and the extremely strict requirements laid down, it is likely that only a limited number of employers will adhere to this system[382]. Furthermore, a series of rules governing the feasibility of this system have yet to be determined by royal decree. So what will happen to other forms of organised work? At present, the social inspectorates are tolerant of sex workers who are registered as workers (e.g. in hospitality, beauty or massage parlours). Questions therefore arise as to whether or not such a policy of tolerance will be maintained and what approach the inspection services will adopt in this context[383]. There is also the question of the mechanisms for monitoring compliance with these new provisions and the resources that will be allocated to them[384], in particular to prevent and detect abuses[385].

2.5. Other measures

New law on the administrative approach to criminal phenomena

On 17 February 2024, a new law[386] relating to the municipal administrative approach[387] to 'destabilising' criminal phenomena came into force. The draft bill[388] was adopted after nearly 60 amendments and no less than four opinions from the Council of State. This shows how much discussion and criticism it provoked, particularly from a human rights perspective[389].

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377 Art. 19 of the Law of 3 May 2024.
378 Among other things, this means free access to all workplaces, day and night; access to private spaces under certain conditions; the power to identify and hear people.
379 Which was not yet the case at the time of writing this report (July 2024).
380 On this subject, see the report of the first reading of the draft bill containing provisions on sex work under an employment contract, drawn up on behalf of the Committee on Social Affairs, Employment and Pensions by Ms Anja Vanrobaeys, Parl. Doc., Chamber, ordinary session 2023-2024, Doc 55-3926/002.
381 *Ibid*., p. 20.
382 *Ibid*., p. 5.
383 *Ibid*., p. 6.
384 In this sense, see also the report of the first reading of the draft bill containing provisions on sex work under an employment contract, drawn up on behalf of the Committee on Social Affairs, Employment and Pensions by Ms Anja Vanrobaeys, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/002, pp. 12-13, 17 and the opinion of the Council for Equal Opportunities for Men and Women (opinion no. 171 of 8 September 2023, in the Explanatory Memorandum to the draft bill containing provisions on sex work under an employment contract of 22 March 2024, *Parl. Doc.*, Chamber, ordinary session 2023-2024, Doc 55-3926/001, p. 102).
385 See the opinion of the Council for Equal Opportunities for Men and Women (opinion no. 171 of 8 September 2023, *ibid*., p. 106), which called on the government to massively increase the resources available to combat trafficking, clandestine prostitution and pimping.
386 Law of 15 January 2024 on the municipal administrative approach, on the implementation of a municipal integrity investigation and establishing a Directorate for the Evaluation of Integrity for the Public Authorities, M.B., 7 February 2024. Two royal decrees published in the Moniteur belge of 15 May 2024 completed this law: one, dated 22 April 2024, relates to economic sectors and activities on the basis of which a police ordinance may be adopted in accordance with Article 119ter of the New Municipal Law, and the other, issued on 26 April 2024, relates to entry, access and consultation of data in the Central Register of Integrity Investigations.
387 The administrative approach is defined in Article 2, 3° of the Law of 15 January 2024 as "all preventive administrative decisions to guarantee public order and safety and prevent disturbances".
388 Draft bill of 8 February 2023 on the municipal administrative approach, the implementation of a municipal integrity investigation and the creation of a Directorate for the Evaluation of Integrity for the Public Authorities, *Parl. Doc.*, Chamber, ordinary session 2022-2023, DOC 55-3152/001.
389 See opinion no. 13/2022 of 28 October 2022 of the Federal Institute of Human Rights (FIRM/IFDH) on the first draft bill.

This law introduces a new Article 119*ter* in the new municipal law, which provides municipalities with a new tool to prevent crime hidden behind legal activities from taking root in their territory. This is what the law calls 'destabilising crime', which has its origins in a series of punishable offences, including trafficking and smuggling in human beings[390]. The new tool introduced is the integrity investigation. Municipalities will be able to conduct such an investigation into the setting up or operation of establishments accessible to the public in certain economic sectors and activities, after adopting a municipal police ordinance. When such an ordinance is adopted, all establishments accessible to the public belonging to the targeted sectors will be subject to this investigation, and not just new establishments[391].

Among the economic sectors and activities that may be subject to an integrity investigation are sectors that are sensitive to trafficking or smuggling in human beings, such as hospitality, the automotive sector (especially car washes), retail (including bakeries and butchers) or the beauty sector (massage parlours, nail salons)[392].

Based on the results of the integrity investigation, municipalities may refuse, suspend or revoke the establishment's licence or have the establishment closed down.

The law also provides for the creation of a Directorate for Integrity Assessment for Public Authorities (DEIPP), responsible for carrying out analyses and issuing opinions on destabilising crime[393]. Finally, local information and expertise centres (CIEAR) set up within the federal police have been further developed[394]. Their role is to provide support to the DEIPP and the municipalities in the administrative approach to destabilising crime.

It should also be noted that this new law also amends Article 134quinquies of the new municipal law, which allows the mayor to close an establishment where there are serious indications of human trafficking. This measure is now extended to a maximum of six months and is renewable twice[395].

New action plans in relation to human trafficking

A few measures relating to human trafficking can also be mentioned. For instance, a plan for fair competition in the construction sector[396] was signed on 21 February 2024 by the social partners in the construction sector, the social inspectorates, the Social Information and Research Service (SIRS) and the ministers responsible for the sector.

In addition, a second national 'Business and Human Rights' plan covering the period 2024-2029 was adopted by the Council of Ministers on 5 April 2024[397]. Its implementation applies both to Belgian companies operating in Belgium and/or abroad and to international companies operating in Belgium. The plan comprises no fewer than 67 actions, including the Belgian federal government's intention to play a pioneering role in drawing up a European legislative framework on the duty of care and a national support framework for the implementation of the duty of care in the value chains of Belgian companies, particularly those operating in high-risk sectors. Other actions concern the commitment of Belgian governments to legislate for a ban on products derived from forced labour on the European Union market, and the active fight against social fraud and social dumping, which have a major impact on human trafficking.

390 See Article 2, 6° of the Law of 15 January 2024 and Article 119ter, §10, 7° and 8° of the New Municipal Law, inserted by Article 35 of the Law of 15 January 2024.
391 Art. 119ter,para. 3of the New Municipal Law, inserted by Article 35 of the Law of 15 January 2024.
392 See Article 1 of the Royal Decree of 22 April 2024 on economic sectors and activities, on the basis of which a police ordinance may be adopted in accordance with Article 119ter of the New Municipal Law, M.B., 15 May 2024.
393 See Articles 4 to 9 of the Law of 15 January 2024.
394 See Articles 32 to 34 of the Law of 15 January 2024. See also the external contribution on the role of the administrative approach in the fight against the trafficking of human beings in the focus of Myria's *Annual report 2023, A chain of responsibilities*, pp. 62-67.
395 See Article 41 of the Law of 15 January 2024.
396 20240221_ PCL Secteurde la construction FR.pdf (belgique.be).
397 National Action Plan "Business and Human Rights" 2.0 (developpementdurable.be).