

OPINION ON LEGISLATION OF BULGARIA PERTAINING TO PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS

BULGARIA

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Based on an informal English translation of the legislation provided by the Caretaker Deputy Prime Minister, Caretaker Minister of Interior, and Chairperson of the National Commission for Combating Trafficking in Human Beings of Bulgaria



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, Bulgaria's legal framework on preventing and combating trafficking in human beings (THB) is well developed and contains many of the most important aspects of international law.

At the same time, the definitions of the relevant criminal and other provisions should be expanded in order to ensure that all forms of human trafficking are covered. Moreover, the underlying legislation could be further strengthened in terms of measures to protect and assist victims of trafficking, especially with regards to the reflection and recovery period, the principle of non-punishment, the provision of assistance and services, access to legal aid and compensation.

ODIHR thereby makes the following recommendations to further enhance the legal framework on preventing and combatting trafficking in human beings in Bulgaria:

- A. To revise the definition of trafficking in Article 159a (1) of the Criminal Code to:
 1. explicitly refer to all the "means" of trafficking, including the threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, except in cases where the victim is a child; [para. 25]
 2. expand the scope of exploitative forms to include exploitation of criminal activities and the production of pornographic materials and child sexual abuse materials (CSAM); [para. 28]
 3. ensure that contemporary methods of trafficking, such as those using information and communications technologies, including social media, are covered; [para. 27]
- B. To supplement the Combating Trafficking in Human Beings Act ("Combating Trafficking Act") with a provision establishing the presumption of child status in the event that conclusive age verification is impossible, ideally adopting a set of supporting regulatory acts stipulating the procedure for age estimation analysis, which would provide for a holistic and multidisciplinary approach, or make appropriate cross-reference to applicable legislation in this respect; [paras. 44-45]
- C. To consider instituting the office of the national rapporteur or other similar body as an independent monitoring mechanism for monitoring and evaluating public policies and actions at all level, while ensuring a clear delineation of the respective roles and responsibilities of such an independent body and of the National Commission for Combating Trafficking in Human Beings; [para. 50]
- D. To revise the provisions of Articles 25 and 26 of the Combating Trafficking Act in order to:
 1. provide for a longer reflection period, at minimum 60 days and ideally at least three months, to allow the victim to recover from the effects of trafficking; [paras. 56-57]
 2. ensure that the permission to legally stay in the country is not contingent on the decision to co-operate, at least during the reflection period; [paras. 57-58]

3. provide residence permits based on appropriate consideration of humanitarian and compassionate factors, including the necessity of stay within the national territory owing to the victim's personal situation; [para. 58]
 4. entitle the THB victims to residence permits post-reflection period, irrespective of the victim's willingness to act as a witness; and [para. 57]
 5. provide for solutions for extending temporary residence permits, in particular to especially vulnerable categories of THB victims, including children; [para. 57]
- E.
1. To create a system of dual identification with participation of law enforcement authorities and social services; [para. 59] and
 2. To include special procedure within the NRM for children integrating additional safeguards and child-friendly provisions; [paras. 62-63]
- F.
- To supplement the Combating Trafficking Act by provisions stipulating the minimum criteria that non-state shelter operators must meet, including an express requirement of vetting for all shelter personnel, including staff on permanent or temporary contracts, consultants, volunteers, and contractors, as well as minimum standard of such service provision, including minimum external and internal safety standards; [paras. 65-66]
- G.
1. To amend Article 10(1) of the Combating Trafficking Act to ensure that:
 - THB victims at shelters for temporary housing are ensured access to all medically necessary treatment and healthcare rather than to “emergency treatment” only; [para. 67]
 - psychological counselling is provided in a language accessible to the victim; [para. 68]
 2. To clarify the scope of the entitlement to free legal aid, specifying that free legal aid should extend to representing the victim's interests in any criminal proceedings (including the application of the non-punishment principle), to pursuing civil suits against the victim's traffickers, and, insofar as applicable, to assisting the victim with applications for regularization of his/her immigration status, while ensuring that free legal aid is accessible to trafficked persons without requiring the proof of lack of means and their residence in shelters; [para. 68]
 3. To include clear provision ensuring that victims of trafficking in persons are not arrested, detained (criminal or immigration-related), prosecuted or otherwise held responsible for offences, be it criminal or other, committed by them in the course, or as a consequence, of being trafficked, such as, in appropriate cases, violating regulations on prostitution, illegally crossing borders, the use of fraudulent documents and so on; concrete wording should be adopted so that criminalization of children victims of human trafficking is effectively prevented; [paras. 77 and 80]
- H.
- To clarify the language of Article 11 of the Combating Trafficking Act, in particular by ensuring that adequate information on victim support and protection be made in both Bulgarian and other languages where the victim does not have a sufficient command of the Bulgarian language, as well as by specifying the nature and extent of services aimed at facilitating victim

reintegration (including, but not limited to, education and training, employment assistance, etc.) family reunification and voluntary return; [para. 81]

- I. To amend the Crime Victim Assistance and Financial Compensation Act by:
 - clarifying in Article 15(1)(5) the “valid reasons” specifying that being a victim of THB constitutes one such valid reasons, in order for victims of THB to not be excluded from compensation; [para. 85]
- J. To revise Article 8(4) of the Crime Victim Assistance and Financial Compensation Act to make free psychological counselling available to all individuals with the procedural status of victim in cases of eligible crimes, including THB; and [para. 86]
- K. To include in the legislation relevant provisions on investigation adhering to the principles of:
 - Effective investigative tools similar to those used in serious crimes;
 - Victim-centred approaches in criminal justice procedures;
 - Prosecution for a sufficient period of time after the victim has reached the age of majority; and
 - Victim-centred, gender-sensitive and trauma-informed training for all those investigating, or prosecuting or adjudicating trafficking crimes. [para. 90]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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ANNEX: Combating Trafficking in Human Beings Act, adopted in 2003, last amended in 2019, Criminal Code of Bulgaria, Crime Victim Assistance and Financial Compensation Act.

I. INTRODUCTION

1. On 14 October 2021, the Caretaker Deputy Prime Minister, the Caretaker Minister of Interior, and the Chairperson of the National Commission for Combating Trafficking in Human Beings (THB) of Bulgaria sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for a legal review of certain pieces of Bulgarian anti-trafficking legislation.¹ The request also asked for a review of the National Referral Mechanism (NRM), and recommendations concerning the elaboration of the new National Strategy in Combatting Trafficking in Human Beings 2022-2026, which do not fall within the scope of this opinion and are dealt with in separate documents.
2. On 4 November 2021, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the submitted pieces of legislation with OSCE commitments and other international human rights standards. Resources from the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings were consulted during the process of preparing this legal analysis.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments in the field of combatting trafficking in human beings.² It should be read together with the findings and recommendations from the Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings following the country visit to Bulgaria on 22-24 June 2021,³ especially as they relate to policies, programmes and institutional framework.

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the pieces of legislation and provisions submitted for review. Thus limited, the Opinion does not constitute a comprehensive review of the entire legal and institutional framework pertaining to preventing and combating trafficking in human beings, including trafficking of children in Bulgaria. Further analysis on efforts to combat trafficking in human beings can be found, inter alia, in the analysis on the NRM.
5. The Opinion raises critical issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments, such as the OSCE Action Plan to Combat Trafficking

1 The request concerned in particular the relevant provisions of the Criminal Code: Articles 16a (non-culpability for victims of trafficking), 159a (definition of trafficking in human beings (THB)), 159b (recruitment and transportation of victims of THB), 159c (taking advantage of a victim of THB), and 159d (recidivism and circumstances of organized crime); the Crime Victim Assistance and Financial Compensation Act (as of August 2017); and Combating Trafficking in Human Beings Act (Combating Trafficking Act), adopted in 2003 (as of August 2019).

2 See the OSCE Action Plan to Combat Trafficking in Human Beings (2003); especially paras. 9.1 and 15.1 of the [Annex to OSCE Ministerial Council Decision 2/03 on Combatting Trafficking in Human Beings](#) (2003).

3 OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, [Report following the country visit to Bulgaria on 22-24 June 2021](#) (23 September 2022).

in Human Beings.⁴ In cases where the implementation of applicable international standards is illustrated by examples of good practices from certain national laws, such country examples should always be approached with caution since it cannot necessarily be replicated in another country and should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women⁵ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.⁶
7. This Opinion is based on the English translation of the legislation provided by the requester, as annexed to the Opinion. Errors from translation may occur. The Opinion is also available in Bulgarian but the English version shall prevail in case of inconsistencies between the two versions of the Opinion.
8. As a result of the situation in Ukraine following the Russian military invasion of the country, and the ensuing large number of asylum-seekers and refugees in Bulgaria, more people become vulnerable to THB. As noted by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (hereinafter “OSCE Special Representative”), “[a]s earlier migration crises have demonstrated, criminal groups or individuals will take advantage of large flows of people to exploit the most vulnerable in transit and destination countries”.⁷ Consequently, law-makers may need to further enhance protection of displaced persons against trafficking.
9. Given the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Bulgaria in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

10. The commitment to combat trafficking in human beings has been undertaken by states at a number of levels and is reflected in various human rights instruments and documents, notably at the international level. This includes the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000 to the UN Convention against Transnational Organized Crime⁸ (hereinafter “the Palermo Protocol”). Article 3 (a) of the Palermo Protocol defines “trafficking in persons” as:

4 *OSCE Action Plan to Combat Trafficking in Human Beings* (2003), [Annex to OSCE Ministerial Council Decision 2/03 on Combatting Trafficking in Human Beings](#) (2003), [MC_DEC/2/03](#), Maastricht, 2 December 2003

5 *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by General Assembly Resolution 34/180 on 18 December 1979. [Bulgaria deposited its instrument of ratification of this Convention on 8 February 1982.](#)

6 See *OSCE Action Plan for the Promotion of Gender Equality*, MC.DEC/14/04 (2004) 7 December 2004, para. 32.

7 See OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (SR/CTHB), [Recommendations on the need to enhance anti-trafficking prevention amid mass migration flows](#), 9 March 2022. See also e.g., United Nations Office on Drugs and Crime (UNODC), *Conflict in Ukraine: Key Evidence on Risks of Trafficking in Persons and Smuggling of Migrants*.

8 *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, adopted by GA resolution 55/25 of 15 November 2000, [ratified by Bulgaria on 5 December 2001.](#)

“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

11. The Conference of the Parties to the UNTOC established a review mechanism to the Convention during its meeting in Vienna from 15 to 19 October 2018.⁹
12. In addition, Article 6 of the Convention on the Elimination of Discrimination against Women (CEDAW)¹⁰ specifically calls on States Parties to *“take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”* The General recommendation No 38 (2020) on trafficking in women and girls in the context of migration¹¹ of the UN Committee on Elimination of Discrimination against Women (“CEDAW Committee”) provides a comprehensive sets of useful recommendations in this respect, particularly with regards to addressing the root causes of trafficking in women and girls, upholding victims’ rights, gender-sensitive court proceedings and data collection and legislative, policy and institutional frameworks, among others. In particular, it emphasizes the importance of *“[a]dopt[ing] and implement[ing] comprehensive, victim-centred, child-sensitive and gender-sensitive anti-trafficking legislation...”* and provides concrete recommendations in this respect.¹²
13. Similarly, the UN Convention on the Rights of the Child (UN CRC)¹³ requires States Parties to take all appropriate measures to *“combat the illicit transfer and non-return of children abroad”* and to recognize the right of the child to be protected from economic exploitation.
14. At the regional level, following the adoption of the Palermo Protocol, the Council of Europe adopted Convention on Action against Trafficking in Human Beings in 2005 (“the CoE Anti-Trafficking Convention”).¹⁴ The CoE Anti-Trafficking Convention adopts the same definition of trafficking as the Palermo Protocol. However, it is more ambitious in its provisions by seeking to provide more far-reaching protection and assistance mechanisms to victims of trafficking. Article 1(2) of the CoE Anti-Trafficking Convention establishes a monitoring mechanism to ensure the effective implementation of the Convention by all States Parties. Chapter VII of the CoE Anti-Trafficking Convention specifies the details of this two-pillar monitoring system, which includes a technical body (Group of Experts on Action against Trafficking in Human Beings or GRETA) and a political body (Committee of the Parties, Article 37). GRETA has conducted three evaluation rounds in Bulgaria, issuing its final reports in 2016 and

9 [Review Mechanism of the UN Convention against Transnational Organized Crime \(UNTOC\).](#)

10 [UN Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#), adopted by General Assembly Resolution 34/180 on 18 December 1979. [Bulgaria deposited its instrument of ratification of this Convention on 8 February 1982.](#)

11 [UN CEDAW Committee, General recommendation No. 38 \(2020\)](#) on trafficking in women and girls in the context of global migration.

12 *Ibid.*, para. 112.

13 [UN Convention of the Rights of the Child \(UN CRC\)](#), adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990. Bulgaria [ratified the Bulgaria on 3 June 1991.](#)

14 [Council of Europe \(CoE\), Convention on Action against Trafficking in Human Beings \(CETS No. 197\)](#), 16 May 2015, which entered into force in Bulgaria on 1 February 2008.

2021.¹⁵ The recommendations by the Committee of the Parties were addressed by the Government of Bulgaria in 2019.¹⁶

15. As an OSCE participating State, Bulgaria has also committed to follow the main principles of the OSCE Action Plan to Combat Trafficking in Human Beings (hereinafter “the OSCE Action Plan”).¹⁷ The OSCE Action Plan, while explicitly referring to the Palermo Protocol, also commits States to develop and implement “National Referral Mechanisms” (NRMs), defined as co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, especially children, co-ordinating their efforts in a strategic partnership with civil society organizations, survivor leaders and the private sector.¹⁸ The OSCE Action Plan also brought to the fore the necessity to prevent, protect and assist victims as well as effectively prosecute traffickers.¹⁹
16. In addition to the OSCE Action Plan, OSCE participating States have adopted several OSCE decisions that will be referred to throughout the Opinion.²⁰ Furthermore, in September 2022, the OSCE Special Representative issued a report following a country visit to Bulgaria.²¹
17. Bulgaria has been a member of the European Union (EU) since 2007.²² Therefore, the relevant EU legal framework is applicable, in particular the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (hereinafter, the “Anti-Trafficking Directive”),²³ which is binding legislation for European Union Member States, including Bulgaria. Furthermore, the *EU Strategy on Combatting Trafficking in Human Beings*

15 GRETA (2015)32: [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria](#), published on 28 January 2015; and GRETA(2021)04 Evaluation Report Bulgaria: [Access to Justice and Effective Remedies for victims of trafficking in human beings](#), published on 29 April 2021.

16 [Report submitted by the authorities of Bulgaria on measures taken to comply with Committee of the Parties Recommendation GRETA\(2018\)26 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), submitted on 21 June 2019.

17 OSCE, *Decision No. 2/03 Combating Trafficking In Human Beings*, MC.DEC/2/03, 2 December 2003.

18 *ODIHR: National Referral Mechanisms – A Practical Handbook (2nd ed., 2022)*, p. 14.

19 OSCE, *Decision No. 2/03 Combating Trafficking In Human Beings*, MC.DEC/2/03, 2 December 2003.

20 See [Decision No. 1 on Enhancing the OSCE’s Efforts to Combat Trafficking In Human Beings](#), MC(8).DEC/1, 28 November 2000; [Decision No. 6 of the Ministerial Council MC\(9\).DEC/6](#), 4 December 2001; [Decision of the Ministerial Council No. 426 on Trafficking in Human Beings](#), 12 July 2001; [Decision No. 13/04 on the Special Needs for Child Victims of Trafficking for Protection and Assistance MC.DEC/13/04](#), 7 December 2004; [Decision No. 557/Rev.1* OSCE Action Plan to Combat Trafficking in Human Beings](#), PC.DEC/557/Rev.1, 7 July 2005; [Decision No. 685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance](#), 7 July 2005; [Decision No. 13/05 Combating Trafficking in Human Beings](#), MC.DEC/13/05, 6 December 2005; [Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach](#), MC.DEC/14/06, 5 December 2006; [Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation](#), MC.DEC/8/07, 30 November 2007; [Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings Through a Comprehensive Approach](#), MC.DEC/5/08, 5 December 2008; [Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later](#), PC.DEC/1107/Corr.1, 6 December 2013; [Decision No.15/06 on the Combatting of Sexual Exploitation of Children](#), 5 December 2006; [Supplementary Human Dimension Meeting on Combatting Sexual Exploitation Of Children](#), 18-19 October 2007; [Final Report; -Child Trafficking: From Protection To Prevention](#), 28-29 May 2018, [Final Report](#); [Decision No.9/07 on Combatting Sexual Exploitation of Children on The Internet](#), 30 November 2007; [Decision No. 7/17 Strengthening Efforts to Combat All Forms of Child Trafficking, including for Sexual Exploitation, as well as other Forms of Sexual Exploitation of Children](#), MC.DEC/7/17, 8 December 2017; [Decision No. 6/17 Strengthening Efforts to Prevent Trafficking in Human Beings](#), MC.DEC/6/17, 8 December 2017; [Decision No. 6/18 Strengthening Efforts to Prevent and Combat Child Trafficking, including of Unaccompanied Minors](#), MC.DEC/6/17 7 December 2018.

21 *Op. cit.* footnote 3 (OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)).

22 [European Union <europa.eu>](#).

23 [EU Anti Trafficking Directive 2011/36/EU](#). Other relevant EU instruments include: [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#) (hereinafter “the Victims’ Directive”), and [Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography](#).

(2021-2025), which focuses on prevention, bringing traffickers to justice and protecting and empowering victims (“EU Anti-Trafficking Strategy”) is also relevant.²⁴

18. In addition, Bulgaria is also a member of the EU Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine.²⁵
19. It is worth emphasizing that International and European conventions aim to offer a “minimum standard” of protection of human rights,²⁶ that is, they provide the “floor” rather than the “ceiling” for states. States are free and indeed encouraged to go above the minimum benchmark to the degree possible.

2. DEFINITIONAL ISSUES

20. The internationally agreed definition of trafficking in human beings is broad and requires States Parties to criminalize the relevant conduct alongside taking measures to prevent trafficking and protect and assist victims. The definition of trafficking is broad also because it covers a range of exploitative purposes, including trafficking for the purpose of sexual exploitation, labour exploitation, and organ removal.²⁷
21. All the elements of the definition of trafficking under Article 3 of the Palermo Protocol and Article 4 of the CoE Anti-Trafficking Convention must be met in order for a perpetrator to be found guilty and convicted of the crime of trafficking of an adult victim. These three constitutive elements of the criminal offence are often termed “action” (recruitment, transport, transfer, harbouring or receipt), “means” (i.e., threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability) and “purpose” (the exploitation for the purpose of the prostitution of others or sexual or other forms of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, noting that it can mean either knowledge or intention and does not require actual exploitation).²⁸ Means need not be shown in cases where the victim is a child. Whether the elements are present is a question of fact to be assessed in all the circumstances.²⁹
22. Articles 3(b) of the Palermo Protocol and 4(b) of the CoE Anti-Trafficking Convention provide that the consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means in Article 3(a) or 4(a), respectively, have been used. On this point, the Explanatory Report accompanying the CoE Trafficking Convention emphasizes:

“The question of consent is not simple and it is not easy to determine where free will ends and constraint begins. In trafficking, some people do not know what is in store for them while others are perfectly aware that, for

24 See [EU Strategy on Combatting Trafficking in Human Beings 2021-2025](#).

25 See https://home-affairs.ec.europa.eu/news/anti-trafficking-plan-protect-people-fleeing-war-ukraine-2022-05-11_en.

26 E. Borge, “National supreme courts and the development of the ECHR rights”, ICON, vol. 9, 2011, n° 1, p. 22.

27 Article 3(a) of the Palermo Protocol defines exploitation as: “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” A similar definition is also included in the OSCE Action Plan.

28 UNODC, “[Legislative Guide for The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime](#)”, para. 118, which states: “The third aspect of the definition of trafficking in persons (the exploitative purpose) provides the basis for establishing the fault element in domestic criminal law. As a mens rea standard in criminal law, the phrase “for the purpose of” can mean either knowledge or intention. This means that evidence that the accused engaged in the prohibited conduct with either the intention that the victim be exploited or knowledge that they would be exploited will be sufficient to establish the offence. This means that the accused need not be the one who exploits the victim. It also means that actual exploitation is not required to establish the offence of trafficking in persons, but rather a purpose to exploit. Trafficking in persons is a crime of specific or special intent (dolus specialis)”.

29 See e.g., European Court of Human Rights, [V.C.L. and A.N. v. The United Kingdom](#), Application nos. 77587/12 and 74603/12, judgment of 16 February 2021, para. 149.

example, they will be engaging in prostitution. However, while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds. For that reason Article 4(b) provides that there is trafficking in human beings whether or not the victim consents to be exploited."³⁰

23. It is noteworthy also that already in 1997, in the Recommendation 1325 (1997) on "Traffic in women and forced prostitution in CoE member States", the Parliamentary Assembly defined use of force for this context as follows:

*"2. ... [A]ny legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other forms of forced sexual exploitation. The use of force may be physical, sexual and/or psychological, and includes intimidation, rape, abuse of authority or a situation of dependence."*³¹

24. Article 159a (1) of the Criminal Code of Bulgaria defines THB as "recruit[ing], transport[at]ion, harbor[ing] or receipt of individuals or groups of people in view to using them for sexual activities, forced labour or begging, dispossession of a body organ, tissue, cell or body fluid or holding them in forceful subjection, regardless of their consent." Paragraph 2 of Article 159a further states: "If the acts under paragraph 1 have been committed against a minor - through the use of coercion or deception, kidnapping or illegal deprivation of liberty, abuse of status of dependency or power and through promising, giving away or receiving benefits - the punishment is deprivation of liberty from three to ten years and a fine from BGN 10,000 to 20,000".

25. This definition is not fully consistent with that of Article 3 of the Palermo Protocol, nor with the expanded concept of THB as provided for by the Preamble of EU Directive 2011/36/EU (para. 11). In particular, the domestic legal definition omits a crucial element of the Palermo Protocol definition, i.e., the requirement that coercive or fraudulent consent be obtained "by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Article 3 (a)). Some of these elements are mentioned in Article 159a (2) of the Criminal Code,³² which deals with aggravating forms of trafficking but not in the definition of THB as such. While, as noted by the OSCE Special Representative, the absence of reference to the "means" element may render easier the proof of the offence, there is a risk that without proof of "means", trafficking cases may be viewed as less serious crimes, resulting in more lenient penalties.³³ **It is therefore recommended to supplement Article 159a (1) of the Criminal Code by including a reference to all the "means" of trafficking, thereby requiring as a constitutive element of the criminal offence, the threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, except in cases where the victim is a child.**

26. Article 159a (1) of the Criminal Code refers to a range of exploitative purposes. In this respect, Article 2 of EU Directive 2011/36/EU refers to the "exploitation of criminal

30 [Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings](#), para. 97 (16 May 2005).

31 Parliamentary Assembly of the Council of Europe (PACE), [Recommendation 1325 \(1997\) on "Traffic in women and forced prostitution in CoE member States"](#), para. 2 (23 April 1997).

32 *I.e.*, when the act is done: (1) in relation to a person under the age of eighteen; (2) by using coercion or by misleading the person; (3) by kidnapping or unlawful imprisonment; (4) by using a state of dependence; (5) through abuse of power; (6) by promising, giving or receiving benefits; (7) by an official during or on the occasion of the performance of his office.

33 *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 20.

activities” as an additional form of exploitation, which is not currently mentioned in the Criminal Code. In light of the Bulgarian context and as also recommended by the OSCE Special Representative, the legal drafters should consider **including the “exploitation of criminal activities” in the list of exploitative purposes mentioned under Article 159a (1) of the Criminal Code.**³⁴

27. In addition, under the Palermo Protocol, Child Sexual Abuse Material (CSAM) and pornography production could fall under “*other forms of sexual exploitation*” (Article 3) as also supported by Article 9. Human trafficking for the purpose of sexual exploitation includes a wide spectrum of what “sexual” means.³⁵ While the Palermo Protocol does not contain explicit references to cyber sexual exploitation of adults or children and/or pornographic content, it could be interpreted in ways which include “cyber” trafficking and bring the definition of exploitation closer to the needs of criminal prosecution in the digital era.³⁶
28. The United Nations Office on Drugs and Crime (UNODC) Model Law proposes a definition of sexual exploitation, which includes “*the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials*”³⁷, thereby including explicit reference to pornography and pornographic materials which was lacking in the original Palermo Protocol definition.
29. In light of the above, it is recommended **to expand the scope of exploitative forms to also include the production of pornographic materials and CSAM.** Though Article 159 of the Criminal Code criminalizes a broad list of acts related to the production, use and dissemination of pornographic materials, including of children online, such acts would not be prosecuted as THB even if the other constitutive elements of the THB criminal offence are present.
30. At the same time, it is noted that some of the provisions of the Criminal Code are rather progressive in that they are potentially applicable also to certain less-often expressly criminalized scenarios, such as “baby farm” trafficking (see Article 159a (3), trafficking in pregnant women for selling their children).

RECOMMENDATION A

To revise the definition of trafficking in Article 159a (1) of the Criminal Code to:

1. explicitly refer to all the “means” of trafficking, including the threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, except in cases where the victim is a child;
2. expand the scope of exploitative forms to include exploitation of criminal activities and the production of pornographic materials and child sexual abuse materials (CSAM);
3. ensure that contemporary methods of trafficking, such as those using information and communications technologies, including social media, are covered.

34 *Ibid.* (OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 20.

35 Further support for this argument can be found at Agency, Sex Trafficking, and Transnational Law: Applying Feminist Theory to the Palermo Protocol. Available at <https://dash.harvard.edu/bitstream/handle/1/21554920/Agency%20and%20Sex%20trafficking%20.pdf?sequence=1&isAllowed=y>.

36 See <https://voelkerrechtsblog.org/de/cyber-trafficking-an-interpretation-of-the-palermo-protocol-in-the-digital-era/>.

37 See https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf.

3. PREVENTION OF TRAFFICKING AND DISCOURAGING DEMAND

31. Article 9 of the Palermo Protocol, Article 5 of the CoE Anti-Trafficking Convention, Article 18 of the Anti-Trafficking Directive and OSCE commitments, especially OSCE Ministerial Council's [*Decision No. 6/17 on Strengthening Efforts to Prevent Trafficking in Human Beings*](#), set out measures States must endeavour to take in preventing trafficking in persons.
32. All of the obligations in Article 9 of the Palermo Protocol are mandatory, but the Protocol leaves States Parties with a great degree of flexibility as to how the obligations are to be implemented. The UNODC Legislative Guide to the Palermo Protocol (2020)³⁸ provides some guidance to implement Article 9, noting that reducing the vulnerability of potential victims, including by addressing "*poverty, underdevelopment, and lack of equal opportunity*"³⁹ may require legislative measures and that well-crafted legislation, particularly migration and labour legislation, can play an important role in preventing trafficking in persons.⁴⁰ At the same time, other efforts such as research into the nature and extent of the problem, the conducting of media or other public information campaigns, enhancing cross-border mobility, access to labour markets, and the alleviation of harsh social or economic conditions may not necessarily require legislation. CEDAW Committee's General recommendation No. 38 (2020) on trafficking in women and girls in the context of migration elaborates further on measures to address the root causes of trafficking in women and girls, including socioeconomic injustice, emphasizing the importance of strengthening the implementation of a labour rights framework, promoting a safe migration framework, addressing demand that fosters exploitation and leads to trafficking as well as the use of digital technology in trafficking, and raising awareness.⁴¹
33. Regarding measures for discouraging demand in particular, Article 9(5) of the Palermo Protocol provides that "*States shall **adopt or strengthen** legislative or other measures such as educational, social or cultural measures, including through bilateral and multilateral cooperation to **discourage demand** that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*" In addition, in its General recommendation No. 38, the CEDAW Committee specifically recommends, especially given the context of digital technology which exposes potential victims to an increased risk of being trafficked,⁴² that States "*discourage the demand that fosters exploitation of prostitution and leads to human trafficking*".⁴³ The CoE Trafficking Convention also includes under its Article 6 an obligation to adopt or strengthen legislative, administrative, educational, social, cultural or other measures to discourage demand, including: research on best practices, methods and strategies; raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings; target information campaigns; and preventive measures, including educational programmes for boys and girls during their schooling. Furthermore, Article 18(1) of the EU Directive 2011/36/EU provides that EU Member States shall "*take appropriate measures, such as education and training, to **discourage and reduce** the demand that fosters all forms of*

38 [UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children](#), Vienna 2020.

39 *Ibid.*, paras. 286, 302, 308, 309, 316 (2020 [UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children](#)).

40 *Ibid.* para. 287 (2020 [UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children](#)).

41 *Op. cit.* footnote 11 (UN CEDAW Committee, General recommendation No. 38 (2020)), paras. 47-75.

42 *Ibid.*, para. 30 (UN CEDAW Committee, General recommendation No. 38 (2020)).

43 *Ibid.*, para. 61.

exploitation”.⁴⁴ To similar effect, the OSCE Action Plan recommends “[a]dopting or strengthening legislative, educational, social, cultural or other measures, and, where applicable, penal legislation [...] to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking.”⁴⁵

34. Important guidance on addressing demand are also contained in the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking.⁴⁶ Principle 4 states that “*Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking*”, while Guideline 7 recommends that States, in partnership with intergovernmental and non-governmental organizations, should consider “*analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues*”. Furthermore, the UN Inter-Agency Coordination Group against trafficking in persons (ICAT)⁴⁷ has recently published a paper on the question of addressing demand in the context of trafficking, which is useful.⁴⁸ In order to implement Article 9(5) of the Palermo Protocol, the UNODC Model Legislative Provisions against trafficking in persons (2020)⁴⁹ proposes options that target those who are the beneficiaries of exploitative labour or services provided by a trafficking victim.
35. The obligation to discourage demand can be achieved through different means, including through the combination of legislative, including criminal justices measures, social, cultural or educational measures, addressing the cause of the problem and its manifestation.
36. Regarding criminal justice measures, Article 159c of the Criminal Code of Bulgaria criminalizes the use of the services from trafficked persons “*for lechery practices, for forced labour or begging, for removal of organs, tissue, cell or body fluids or for keeping her/him in servitude regardless of her/his consent*”. While this seems to suggest a strict liability approach, i.e., without the need to demonstrate the knowledge on the part of the user (*mens rea*), it is understood from the Report of the OSCE Special Representative that in practice, this provision is only applied “*to persons who use a victim of trafficking in human beings as a source of income or other tangible or intangible benefits*”.⁵⁰
37. With regards to criminal justice tools to discourage demand, Article 19 of the CoE Anti-Trafficking Convention provides that States Parties “*shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings*”. Article 18(4) of the EU Directive 2011/36/EU states that: “[i]n order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2,⁵¹ with the knowledge that the person is a victim of an offence referred to in Article 2.” In this respect, the most commonly adopted

44 *Op. cit.* footnote 23 (EU Directive 2011/36), Preamble (25).

45 *Decision No. 557, OSEC Action Plan to Combat Trafficking in Human Beings*, at IV, para. 3.3, PC.DEC/557 (July 24, 2003).

46 [UN Recommended Principles and Guidelines on Human Rights and Human Trafficking](#).

47 <<https://icat.un.org/>>.

48 Inter-Agency Coordination Group Against trafficking in persons: [Preventing trafficking in persons by addressing demand](#), September 2014, p. 2. On the debate on whether demand for all forms of prostitution contribute to trafficking, see for example, UN Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, report on the demand for sexual services deriving from exploitation, see [Report of the Special Rapporteur to the 62nd session of the UN Commission on Human Rights, UN document E/CN.4/2006/67](#), 12 January 2006, paras. 29 to 31).

49 See [UNODC Model Legislative provisions against trafficking in Persons \(2020\)](#).

50 *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 49.

51 [Offences concerning trafficking in human beings, EU Directive 2011/36/EU](#), OJ, L 101/6, Article 2.

response within the OSCE region is the criminalization of the knowing use of services from victims of trafficking in human beings.⁵² Another method has been to criminalize the purchase of services from victims of trafficking in human beings, without the need to demonstrate the knowledge on the part of the user (*mens rea*), the above-mentioned “strict liability” approach. Some countries have also decided to criminalize the use of sexual acts, irrespective of the status of the person in prostitution as a victim of trafficking in human beings or otherwise. When partnered with the decriminalization of the selling of sexual acts, this criminal justice framework is commonly referred to as the “Nordic” or Equality model. These forms of criminal justice responses are all currently present within the OSCE region, though they offer different benefits and limitations.⁵³

38. Criminal justice measures are however only one tool to discourage demand as outlined in the Palermo Protocol, with social, educational and cultural measures all within the scope of action for States, such as awareness-raising campaigns to discourage demand, targeted forms of education and deterrence initiatives, especially online, among other.⁵⁴
39. In light of the foregoing, it is recommended to the lawmakers **to assess whether existing legislation, including criminal, is in practice an effective tool to discourage demand that fosters exploitation that in turn leads to trafficking and if not, to consider whether legislative amendments or other legislative options together with other non-legislative tools should be adopted to discourage demand that fosters exploitation that leads to trafficking.** More generally, **law-makers should review the range of measures recommended at the international and regional levels to prevent trafficking in human beings, including by addressing the root causes, including demand, and consider supplementing the legal framework as appropriate and/or adopt other policy measures.**
40. With respect to children specifically, the States Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) – including Bulgaria – have taken upon themselves a legally

52 Office of the OSCE Special Representative, [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation \(2021\)](#), p. 34.

53 For instance, an analysis conducted by the OSCE Special Representative notes that “knowing use” statute is not useful or effective since “it criminalizes only the demand for trafficking — i.e., those who know that the person in prostitution is a trafficking victim and still proceed with the transaction. Therefore, it criminalizes only a subset of the broader concept of demand articulated in Article 9(5) [of the Palermo Protocol], which obliges States to discourage the demand that fosters exploitation that leads to trafficking” (*ibid.* Office of the OSCE Special Representative, [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#), p. 36); it has thus been argued that criminalizing the knowing use of services from victims of trafficking in human beings, without taking any additional steps to discourage the demand that fosters exploitation which leads to trafficking, may be insufficient to meet the standard set out by Article 9 of the Palermo Protocol. It is further argued that the “knowing use” statute is also particularly difficult to implement, as it may not reflect the realities of the purchase of sex, where both buyer and the persons engaged in prostitution are incentivized to not recognize, or indicate instances of trafficking. As such, proving that the sex buyer had prior knowledge that the person engaged in prostitution was a victim of human trafficking is a particularly difficult task. In removing the requirement to prove prior knowledge of the status of the person in prostitution as a victim of trafficking in human beings, the “strict liability” method expands the demand that is being discouraged from that which is for trafficking, to the demand that is directly connected to trafficking (*ibid.* Office of the OSCE Special Representative, [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#), p. 40). By focusing on the status of the victim, “strict liability” statutes target the harmful behaviour of the sex buyer in a manner which prioritizes addressing the harm inflicted on victims, forcing the buyer to exercise greater due diligence and serving as a form of risk management. Furthermore, criminalizing all purchases of sexual acts seeks to encompass the demand that fosters exploitation that leads to trafficking, by reducing the overall market for paid sexual acts. In doing so, it covers the broad scope of demand articulated within the Palermo Protocol. As stated by the UN Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, the obligation to discourage demand under Article 9(5) can be “effectively met” through the criminalization of all sex purchasers (see 2006 Report, Economic and Social Council [E/CN.4/2006/62](#), para. 88). Such a blanket approach could have a normative effect against the promulgation of exploitative behaviour, and lowers the barrier to implementation as neither the knowledge of the user or status of the person in prostitution need to be proven by law enforcement. As with any criminal justice measures, all of these options must be exercised ethically, responsibly and with due consideration for the vulnerabilities of those selling sex, whether trafficking victims or otherwise.

54 See e.g., Office of the OSCE Special Representative, [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation \(2021\)](#); and UNODC, [“Legislative Guide for The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime”](#), para. 316. See also e.g., [New policies needed to combat trafficking in the internet era, according to OSCE study](#), 15 February 2022. See also for instance [UN News](#) (accessed on 9 December 2014) and [Recommendations on enhancing efforts to identify and mitigate risks of trafficking in human beings online as a result of the humanitarian crisis in Ukraine](#), 22 April 2022.

binding commitment to criminalize, as per Article 19 of the Lanzarote Convention, the following offenses:

- a. recruiting a child into prostitution or causing a child to participate in prostitution;
 - b. coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
 - c. having recourse to child prostitution.
41. Article 155(1) of the Criminal Code criminalizes the fact for a person to persuade an individual to practice prostitution, to act as procurer or procuress for the performance of indecent touching or copulation, with the victim being a person under 18 years of age constituting an aggravating circumstance. Article 188(2) of the Criminal Code provides that “*anyone who coerces a person under 18 years of age to engage in prostitution under duress or through taking advantage of a state of dependence or supervision*” shall be punished by imprisonment of up to five years. This provision does not seem to fully reflect the acts contemplated in Article 19(b) of the Lanzarote Convention. Finally, Article 151(2) of the Criminal Code criminalizes the act of having sexual intercourse with a person who has not reached 14 years of age and who is engaged in prostitution. This is not in line with Article 19(c) of the Lanzarote Convention, which requires criminalizing having recourse to child prosecution, a child being understood as a person below the age of 18 (Article 3 of the Lanzarote Convention).
42. It is therefore recommended **to review the relevant provisions of the Criminal Code of Bulgaria to bring them in full compliance with Article 19 of the Lanzarote Convention, especially as it relates to having recourse to child prostitution.**

4. CHILD VICTIMS

43. It is welcome that Articles 21-24 of the Combating Trafficking Act include specific provisions concerning the treatment of child victims of THB. This is consistent with Article 6(4) of the Palermo Protocol, which requires that States Parties “*take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.*”
44. In doing so, the Combating Trafficking Act defines a child as “*any individual who is less than 18 years of age*” (Additional Provision § 1). This is in line with international and regional standards, such as the Palermo Protocol, the Lanzarote Convention and the UN CRC.⁵⁵ However, the said provisions of the Act concerning children are silent on the issue of age determination in the event that the individual presumed to be a child does not have identity documentation. Age determination may be regulated in other relevant legislation for instance on asylum and refugees, which fall outside the scope of this Opinion, in which case cross-references should be made to such applicable legislation. In any case, it is important to ensure that, where a young person is estimated to be below the age of 18 but his/her age cannot be conclusively verified, the said young person be presumed a child and afforded the full spectre of special protections and safeguards available to children. Importantly, Article 10(3) of the CoE Trafficking Convention states: “*When the age of the victim is uncertain and there are reasons to believe that the*

⁵⁵ Palermo Protocol Council of Europe, Article 3 (d); [Convention on Protection of Children against Sexual Exploitation and Sexual Abuse](#), (Lanzarote Convention), Article 3 (a); EU Directive 2011/93/EU, Article 2 (a); the CoE Trafficking Convention, Article 4 (d). See also the definition of a child in the UN CRC, Article 1.

victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.”

45. Such provisions should ideally be supported by regulatory acts stipulating the procedure for age estimation analysis. When designing age estimation/verification procedures, it is important that they not be based on anthropometric or physical measurements only, but be multidisciplinary in nature.⁵⁶ Where anthropometric assessments are used, they should come after a social assessment of the presumed child and form part of a holistic assessment that takes into account relevant social factors, such as possible history of malnutrition. In this respect, the European Asylum Support Office recommends that Member States *“analyse different aspects (assessing both psychological and physical development and not resorting only to medical methods) as part of the multidisciplinary process to improve the accuracy so that the decision is based on a wider range of evidence.”*⁵⁷

RECOMMENDATION B

To supplement the Combating Trafficking in Human Beings Act (“Combating-Trafficking Act”) with a provision establishing the presumption of child status in the event that conclusive age verification is impossible, ideally adopting a set of supporting regulatory acts stipulating the procedure for age estimation analysis, which would provide for a holistic and multidisciplinary approach, or make appropriate cross-reference to applicable legislation in this respect.

46. Furthermore, Article 24(1) of the Combating Trafficking Act laudably designates child protection authorities to *“take the necessary measures to protect the child who is a victim of trafficking in human beings in order to guarantee his or her rights.”* The exact nature and extent of these measures, however, is not specified. In particular, it remains unclear what authority, if any, is responsible for establishing the identity and nationality of the child, where such a need exists. The Act is also silent about who determines what is in the child’s best interests (e.g., if locating the child’s family is in his/her best interests) and how the determination should be made.⁵⁸ If this is provided by other legislation or policy documents, a cross-reference should be included in the Combating Trafficking Act. The determination of the best interests of the child, in particular, are expressly required by the Preamble of Directive 2011/36/EU, which states that *“[c]hildren are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings,”* and asserts that, *“[i]n the application of this Directive, the child’s best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child”* (para. 8).

56 For example, in the **United Kingdom**, Section 51 of the Modern Slavery Act (2015) places on a statutory footing the presumption that, where a presumed victim of modern slavery is reasonably believed to be under 18, then they are to be treated as being under 18 years of age for the purposes of assistance and support under the Modern Slavery Act (2015) until their age is conclusively verified. The Age Assessment Strategic Oversight Group was established by the Association of Directors of Children’s Services and includes representatives from the Home Office, Department for Education, Department of Health, Office of the Children’s Commissioner for England, Royal College of Paediatrics and Child Health, United Nations High Commissioner for Refugees, British Red Cross, National Policing, Refugee Children’s Consortium and Refugee Council. In addition, an Age Assessment Joint Working Guidance (JWG) has developed comprehensive age assessment guidelines to help the relevant agencies set up an age assessment process that is efficient, effective, and holistic and that enables them to comply with their statutory duties, see [Age Assessment Guidance - Guidance to assist social workers and their managers in undertaking age assessments in England](#), October 2015.

57 [European Asylum Support Office, Practical Guide on age assessment: Second edition, Chapter V Final Recommendations](#) (Key recommendation F.1, p. 62).

58 For further information on investigation in cases of abuse of children, see e.g., ODIHR, *“Opinion on Legislative Acts of Ukraine relevant for the establishment of a Child Justice Centre”*, 29 December 2021.

5. INSTITUTIONAL FRAMEWORK

5.1. Monitoring Functions

47. Article 7 of the Combating Trafficking Act details the functions of the national coordinating body, the National Commission for Combating Trafficking in Human Beings (“the National Commission”).
48. However, the Act does not address monitoring functions. It is understood from the 2022 Report of the OSCE Special Representative that such functions are currently carried out by the Secretariat of the National Commission, which “*monitors the trafficking situation in the country and issues an annual report on the implementation of the actions contained in the National Action Plan*”.⁵⁹
49. Monitoring is essential to ensure the effective delivery and development of anti-trafficking activities, including the provision of services to victims. It would also help Bulgaria to comply with its obligations as an EU Member State to report to the European Commission, which is mandated to conduct a regular assessment of Member States’ compliance with and implementation of the Anti-Trafficking Directive.
50. It is generally recommended that a system of reporting by the various authorities to one central point be established – an independent mechanism for monitoring the effectiveness of State measures against THB such as national rapporteurs or similar mechanisms. Indeed, Article 27 of the EU Directive prescribes: “*National monitoring systems such as national rapporteurs or equivalent mechanisms should be established by Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.*”⁶⁰ The Bulgarian authorities should consider **the possibility of establishing the role of an independent National Rapporteur or designating an already existing independent mechanism for monitoring and evaluating the anti-trafficking public policies and actions at all level, while ensuring a clear delineation of the respective roles and responsibilities of such an independent body and the National Commission.**⁶¹

RECOMMENDATION C

To consider instituting the office of the national rapporteur or other similar body as an independent mechanism for monitoring and evaluating public policies and actions at all level, while ensuring a clear delineation of the respective roles and responsibilities of such an independent body and the National Commission for Combating Trafficking in Human Beings.

5.2. Data Collection

51. Along with rigorous, continuous and consistent monitoring, data collection constitutes a key element in the prevention of human trafficking crimes as well as to inform protection measures and prosecution. Articles 7.4 and 8.4 of the Combating Trafficking Act deal to

⁵⁹ *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 26.

⁶⁰ *Op. cit.* footnote 23 (EU Directive 2011/36).

⁶¹ *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 26. See also [GRETA\(2021\)02](#) 16 March 2021, para. 19.

some extent with the issue of monitoring and data collection as part of the mandates of the National Commission and Local Commissions, which, amongst others are tasked with “research, analysis and statistical reporting of human trafficking data”. There is, however, no reference to concrete statistical information collected in respect of victims or recording of trends and/or development of specialized databases, as is provided in relevant international standards.⁶²

52. The OSCE Action Plan addresses this aspect in Chapters IV(1) and V(1.1). The OSCE Ministerial Council’s [Decision No. 6/17 on Strengthening Efforts to Prevent Trafficking in Human Beings](#) also encourages states to develop enhanced research and systematically gather reliable information in co-operation with other relevant stakeholders (para. 1) and stresses the role of media in prevention of human trafficking (para. 8).⁶³ The CEDAW Committee General recommendation No. 38 also emphasizes the importance of disaggregate data collected on both victims and perpetrators of trafficking, including by sex, age, disability, ethnicity, nationality, immigration status, location, socioeconomic status and form of exploitation, where permitted by national law and in compliance with international standards on privacy and confidentiality.⁶⁴
53. In order to improve the efficiency of the national provisions in this area, the following recommendations are put forward, aiming to improve the clarity and strengthen the national data collection mechanism in line with international and regional standards and recommendations:
- to explicitly include in the list of responsibilities of the National Commission (as already foreseen in the Combating-Trafficking Act), **the co-ordination of data collection, a timeline for publication of THB, and the formation of a nationwide database/data collections system** that is well resources with a view to obtain reliable data characterizing trends, achievements and new risks in the field of combating trafficking in persons in Bulgaria;
 - **to ensure that data collection is carried out in the following areas: the number of alleged victims, the number of people with the confirmed status of victims, the social and demographic characteristics of victims, perpetrators, types of exploitation, the recruitment method, countries of destination, transit and origin, the method of identifying victims, organizations providing assistance in each case, and assistance results.** Further areas of focus, which should be covered in domestic provisions, include labor exploitation and socio-cultural aspects of human trafficking. The database should also collect statistics on prosecutions and convictions. Data collected on both victims and perpetrators of trafficking should be **disaggregated, including on the basis of sex, age, disability, ethnicity, nationality, immigration status, location, socioeconomic status and form of exploitation**, where permitted by national law and in compliance with international standards on privacy and confidentiality.
 - **data and information collection/exchange should also focus on trafficking and exploitation of children**, with a view to develop and effectively implement procedures and referral mechanisms for children who became victims of trafficking.⁶⁵ Data collection and reporting in this field should then be followed by

62 [European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims \(2020/2029\(INI\)\)](#), preamble (28).

63 See OSCE Ministerial Council, [Decision No. 6/17 Strengthening Efforts to Prevent Trafficking in Human Beings, MC.DEC/6/17, 8 December 2017](#), paras. 1 and 8.

64 *Op. cit.* footnote 11 (UN CEDAW Committee, General recommendation No. 38 (2020)), i, paras. 110-111.

65 See OSCE Permanent Council, [Decision No. 685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, 7 July 2005, para. 4.](#)

scientifically based recommendations for the development and implementation of procedures for the referral of children victims of human trafficking.

5.3. Role of the Media

54. Furthermore, the role of the media in research and reporting, and more generally in combating human trafficking is not mentioned, apart from a vague formulation on public awareness in Article 14. 2 of the Combating Trafficking Act. The role of the media and new technologies in the prevention of trafficking in human beings, with particular regard to information collection and monitoring, is essential. As underlined in OSCE Ministerial Council Decision: 6/17, the role of mass media, social media and new technologies in providing platforms for information collection, statistics and monitoring is central, and this should be highlighted in the Combating Trafficking Act. The Act should include concrete wording in relation to state continuous and effective co-operation with such relevant stakeholders, while ensuring the protection of victims' personal information and sensitive data. Further recommendations on this issue can be found annexed.

6. PROTECTION AND ASSISTANCE

6.1. Reflection and Recovery Period

55. Article 25 of the Combating Trafficking Act provides that “[i]ndividuals who have become victims of trafficking and have declared their willingness to collaborate for disclosure of the trafficking offenders shall be granted special protection status for the time of the criminal proceedings,” which includes the issuance of a long-stay permit. Article 26 of the Combating Trafficking Act limits the reflection period to one month (two months in cases of child victims).
56. In this connection, it should be noted that the permission to legally stay in the country should not be contingent on the decision to co-operate, at least during the reflection period. The reflection period that the Act currently provides for, while nominally consistent with the minimum standard set by Article 13 of the CoE Anti-Trafficking Convention,⁶⁶ is still too short to provide for a meaningful recovery period and, consequently, to enable the victim to form a truly voluntary informed consent. Moreover, the purpose of such a recovery period should not be to allow victims to decide whether or not to co-operate with the authorities, but rather to recover from the effects of trafficking. The 2004 Report of the European Commission's Experts Group on Trafficking in Human Beings⁶⁷ states that:

“If there is the slightest indication to suspect that a person may be trafficked, a reflection period should be granted of no less than three months. Purpose should be to allow the trafficked person to (begin to) recover and to make an informed decision about her/his options, that is, whether to assist in criminal proceedings, to pursue legal proceedings for compensation, to enter a social assistance programme and/or to choose for immediate return home. Part of the reflection period should be the obligation to refer the trafficked person to support agencies, which can provide her/him with appropriate assistance. For the authorities the reflection period enables the identification of the

66 Article 13(1) of the CoE Anti-Trafficking Convention on recovery and reflection period, which states: “Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim.”

67 [European Commission Directorate-General Justice, Freedom and Security, Report of the Experts Group on Trafficking in Human Beings](#) (Brussels, 22 December 2004).

trafficked person including determining whether or not the person indeed is a victim of trafficking. In dealing with the reflection period account should be taken of the fact that, for a number of reasons, severing ties with the criminal circuit often takes the form of a gradual process rather than an immediate decision. In the case of children, there should be the possibility of extending the reflection period” (section 5.3).

57. Note that, with a view to the negotiations in the *ad hoc* Committee on action against trafficking in human beings on a European Convention on Action against Trafficking in Human Beings, the Experts Group on Trafficking in Human Beings prepared an Opinion on a reflection period and residence permits for victims of trafficking in human beings.⁶⁸ The Opinion unequivocally states that **a reflection period of not less than three months should be granted to all those for whom there is reason to suspect that they have been trafficked and should include an obligation to inform the affected person of the assistance services available to him or her.** It further provides that a residence permit should be granted to an identified trafficked person following the reflection period for a period of at least six months, with the possibility of renewal, irrespective of his or her willingness to act as a witness. When the temporary permit expires, if no other kind of residence permit can be issued on the basis of ordinary domestic law relating to aliens, the Experts Group recommends to issue a residence permit on humanitarian grounds (in particular to vulnerable persons such as minors and victims of sexual violence or human rights abuses, and in particular if there is a reasonable ground to believe that the victim’s life, health or personal liberty will be under threat upon return to his or her country of origin). The Experts Group specifically adds that child victims of trafficking should be equally entitled to temporary and/or permanent residence permits and corresponding rights, irrespective of the child’s willingness or capacity to co-operate with the authorities, consistent with the principle of the best interests of the child.
58. **Residence permits should be provided: (a) based on appropriate consideration of humanitarian and compassionate factors, including the necessity of stay within the national territory owing to the victim’s personal situation; or (b) if a victim’s stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.**⁶⁹

68 [Opinion of the Experts Group on Trafficking in Human Beings of the European Commission, In connection with the Conference ‘Tackling Human trafficking: Policy and Best Practices in Europe and its related Documents](#), Section II.

69 Article 7 of the Palermo Protocol states that: “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases [and] shall give appropriate consideration to humanitarian and compassionate factors”; Article 10(1) of the CoE Anti-Trafficking Convention states that: “Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention”. Article 14 of the Convention further sets out the provisions for the residence permit for victims of trafficking. At the EU level, the Council Directive 2004/81/EC provides for the issue of a residence permit to victims of trafficking in human beings who are third-country nationals and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 regulates the exercise of the right to move and reside freely in the territory of the Member States by citizens of the Union and their families, including protection from expulsion. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, 6 August 2004, OJ L 261. For examples of country practices, see e.g., in the **United Kingdom**, *PK (Ghana) v. Secretary of State for the Home Department* [2018] EWCA Civ 98, at para. 15, considering the executive policy, the National Referral Mechanism, that gives effect to the CoE Anti-Trafficking Convention, and which concerned the UK’s obligations to victims of trafficking who require a residence permit to remain in the UK owing to their personal situation, and which concluded that a renewal of a Residence Permit should be issued to a victim of trafficking where their stay is necessary in order for the UK to meet its obligation under the CoE Anti-Trafficking Convention to provide protection and assistance to that victim. See also in **Portugal**, the Portuguese Immigration Law entitles victims of THB to a reflection period of a minimum of 30 and a maximum of 60 days, during which the victim is accommodated in the state reception center and has to decide whether s/he wants to co-operate with the Portuguese authorities; in addition, residence permits are granted on a case-by-case basis for a period of one year, and are renewable under specific conditions. In **The Netherlands**, Dutch authorities provide a temporary residence mechanism to allow foreign THB victims to stay in the Netherlands for a reflection period of three months, during which they can

RECOMMENDATION D

To revise the provisions of Articles 25 and 26 of the Combating-Trafficking Act in order to:

1. provide for a longer reflection period, at minimum 60 days and ideally at least three months, to allow the victim to recover from the effects of trafficking;
2. ensure that the permission to legally stay in the country is not contingent on the decision to co-operate, at least during the reflection period;
3. provide residence permits based on appropriate consideration of humanitarian and compassionate factors, including the necessity of stay within the national territory owing to the victim's personal situation;
4. entitle the THB victims to residence permits post-reflection period, irrespective of the victim's willingness to act as a witness; and
5. provide for solutions for extending temporary residence permits, in particular to especially vulnerable categories of THB victims, including children.

6.2. Identification of Victims

59. In international law, the NRMs fall under States' obligation to identify victims. The NRMs are frameworks for identifying victims of human trafficking and ensuring they receive appropriate protection and support (dual system). The OSCE Ministerial Council Decision No. 5/08 reiterates that "*providing victims of human trafficking with adequate protection and assistance and enhancing victim identification are among the prerequisites for an effective criminal justice response [...] to human trafficking.*" Provisions on identification of victims of trafficking seem to be lacking in the relevant Bulgarian legislation. **To ensure the most efficient identification of human trafficking victims, the creation of a system of dual identification is recommended.**
60. Participants in such a system should include the law enforcement authorities and statutory social services, staffed by professionals who are trauma-informed and specialized in adult and child victim identification. The involvement of suitably trained members of the judiciary is also recommended, especially in cases of particular vulnerability of the victim, for instance when the victim is a child (i.e., appointment of designated legal guardian and advocate). The State should allow the human trafficking victim to access protection and rehabilitation services foreseen in the law, including access to a suitable shelter combined with programs to address substance abuse and mental and psychological issues resulting from trafficking, as appropriate. The NRM system should include provisions which foresee enhanced judicial and civil society co-operation, development of standard operating procedures which ensure the provision of support and assistance to the victim from the beginning to the end of the identification process (protection, support, assistance, regularization of immigration status and redress).
61. Non-conditional support should be equally accessible to victims of trafficking who do not wish to consent to referral for NRM identification procedures and/or those who do

decide whether or not to co-operate in criminal proceedings; if a victim chooses to do so, a temporary residence permit may initially be granted for a year, and is renewable for up to three years; during both these periods, the government provides victims with the necessary legal, financial, and psychological assistance, including shelter, medical care, social security benefits, and education financing.

not feel willing or able to co-operate with law enforcement investigations or criminal justice procedures. Identification represents a very early stage in the process for victims to be able to make fully informed decisions, therefore early legal advice and representation should be available for those who wish to consider their next steps prior to their preliminary identification.⁷⁰

62. A special procedure for the identification of children victims of human trafficking is established in OSCE Ministerial Council Decision No. 6/18 to provide, as relevant, government service providers and agencies that come into contact with children with adequate guidance and training on how to properly identify, report, assist, and protect child victims of trafficking in an age-appropriate manner that takes into account the respective gender-specific concerns of girls and boys. The provision of relevant training to private sector actors that come into contact with child victims of trafficking should also be considered. In addition, according to Article 6(4) of the Palermo Protocol, states must take into account age, gender and the special needs of victims of trafficking in persons, and in particular the needs of children. Protection measures should be afforded regardless of co-operation with investigators. **Article 25 of the Combating Trafficking Act requires co-operation and should be changed accordingly.**⁷¹
63. In light of the above, **it is recommended that a special procedure within the NRM be provided for children encompassing additional safeguards.** In particular, such mechanism should involve stakeholders such as national child protection systems and children's statutory services; law enforcement/police, including law enforcement bodies with police officers who are specialized in child protection, child abuse, domestic abuse/violence, sexual offences and trafficking; competent child specialist NGOs that are directly linked to the NRM for children or national child protection systems; and healthcare services for urgent or immediate healthcare needs, including mental health specialists. Moreover, such NRM for children should include the following stages of work with children: prevention of involvement in human trafficking, identification of a child who has become a victim of human trafficking, protection, support and assistance, redress and reintegration. The relevant national framework should also include specific safeguards for the child-victim such as the appointment of legal guardian for unaccompanied children, provision of child friendly information, safeguards as to age assessment (see Sub-Section 4 on Child Victims above). Bulgaria has the so-called "Blue Rooms", to investigate cases of abuse of children i.e., child-friendly spaces specially equipped with video and sound recording systems for evidential video interviewing of child victims and witnesses, though it is understood that they are not being fully utilized.⁷² This could be used more systematically and complemented by some elements of the Barnahus model for all child victims of crime,⁷³ i.e., a child-friendly, multi-disciplinary and inter-agency model responding to child victims and witnesses of violence, including victims of trafficking. Its purpose is to offer each child a co-ordinated and effective response and to prevent (re)traumatisation during investigation and court proceedings without experiencing undue delays in the criminal justice procedures.⁷⁴

70 See *ODIHR: National Referral Mechanisms – A Practical Handbook (2nd ed., 2022)*, p. 112.

71 See also ODIHR, *Opinion on Certain Legislation on Combatting Trafficking in Persons (Finland)*, paras. 87-89.

72 *Op. cit.* footnote 3 (OSCE Special Representative, 2022 *Report following the country visit to Bulgaria on 22-24 June 2021*), para. 52.

73 Radio Bulgaria: "Blue Room now instrument of Bulgarian justice as well" 19 January 2016 and <<https://www.barnahus.eu/en/about-barnahus/>>.

74 The Barnahus model for children comprises: 1. "Respect for the participatory rights of the child by ensuring that she/he is heard and receives adequate information and support to exercise these rights; 2. Multi-disciplinary and interagency collaboration during investigations, procedures, diagnostic and needs assessments, and service delivery, with the aim of avoiding re-traumatization and securing outcomes that are in the best interests of the child; 3. Comprehensive and accessible services that meet the individual and complex needs of the child and her/ his non-offending family or caregivers; and 4. Ensuring high professional standards, training and sufficient resources for staff working with child witnesses and victims of violence"; see *ODIHR: National Referral Mechanisms – A Practical Handbook (2nd ed., 2022)*, pp. 218-219.

RECOMMENDATION E

1. To create a system of dual identification with participation of law enforcement authorities and social services; and
2. To include special procedure within the NRM for children integrating additional safeguards and child-friendly provisions.

6.3. Provision of Basic Benefits and Services

64. Article 6(3) of the Palermo Protocol requires States Parties to consider implementing measures to provide for the physical, psychological and social recovery of THB victims. In practice, this means not only extending a full range of services essential for such recovery, but also ensuring that the provision of services occurs in a safe environment and THB victims may avail themselves of requisite services without regard for their gender, age and immigration status. These measures are prescribed within the National Referral Mechanism of Bulgaria, which is welcome.
65. The key Bulgarian law regulating the provision of services is the Combating Trafficking Act. It is welcome that its Article 9(2) expressly provides that shelters for temporary housing “*shall accommodate persons who claim to be victims of trafficking*”, therefore extending the entitlement to shelter services also to presumed victims, pending their definitive identification. It is also welcome that, in addition to state-operated services, the Act allows natural and legal persons registered in the National Commission Register, to operate shelters as well (see Articles 9 and 12). However, Article 12, which is supposed to regulate the operation of shelters, is silent about the minimum criteria that such natural and legal persons must meet to be registered as shelter operators. In particular, there is no express requirement of vetting in the Act, which creates a safety and security risk, and the Act also lacks reference to minimum standards of such service provision, including minimum external and internal safety standards.
66. For example, minimum external safety standards for adult and child sheltered accommodation should include: confidentiality of address (maintained by all residents and staff); discreet, external CCTV; other security measures, such as a panic button at key locations in the accommodation that can be used to call for help immediately and discreetly to alert trusted contacts or notify law enforcement; secure locks for doors and windows in each room; a trusted anti-trafficking focal point within the police should be informed of the property’s purpose, and the requirement of confidentiality of the location, so that they are able to provide assistance as and when it is needed; and an independent monitoring, inspection and regulation regime, conducted regularly.⁷⁵ In terms of internal safety standards, staff and volunteers in these services, at all levels, should be trained in all relevant aspects of trafficking protection and individualized support, including in trauma-informed methods of communication, and have a working knowledge of trafficking issues; there should also be direct access to healthcare services and appropriate therapeutic care for residents; disability access; access to vaccination and regular health checks for communicable diseases; an early mental health screening, therapeutic and medication needs.⁷⁶

⁷⁵ See *ODIHR: National Referral Mechanisms – A Practical Handbook (2nd ed., 2022)*, pp. 160-161.

⁷⁶ See *ODIHR: National Referral Mechanisms – A Practical Handbook (2nd ed., 2022)*, pp.162-163.

RECOMMENDATION F

To supplement the Combating Trafficking Act by provisions stipulating the minimum criteria that non-state shelter operators must meet, including an express requirement of vetting for all shelter personnel, including staff on permanent or temporary contracts, consultants, volunteers, and contractors, as well as minimum standards of such service provision, including minimum external and internal safety standards.

67. Article 10(1)(3)) of the Combating Trafficking Act obliges shelters for temporary housing to “*make available emergency medical and psychological services.*” It remains unclear why only access to *emergency* medical treatment is required rather than medically necessary treatment and care in general. In particular, the analysis of the concluding observations of the CEDAW Committee shows a clear tendency to recommend that States Parties to the CEDAW provide access to healthcare for “*serious health problems*”, which is a much wider concept than emergency medical treatment.⁷⁷ It is further noted that the European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU⁷⁸ goes even further by encouraging “*Member States to adopt measures to support victims, such as [...] access to comprehensive sexual and reproductive health services*” (para. 24).
68. Further, while Article 10(1)(5) of the Combating Trafficking Act provides for “appropriate language assistance” in conjunction with the requirement to ensure access to free legal aid, **no similar language-related provision is made to ensure the accessibility of psychological counselling to victims who do not have sufficient command of the Bulgarian language and the Act should be supplemented in this respect.** Finally, the provisions regarding the entitlement to free legal aid are insufficiently clear in that they do not specify the types of proceedings such free legal aid extends to, or at a minimum, should include a cross-reference to applicable legislation on legal aid. In this respect, it is essential that free legal aid extends to representing the victim’s interests in any criminal proceedings (including the application of the non-punishment principle), to pursuing civil suits against the victim’s traffickers, and, insofar as applicable, to assisting the victim with applications for regularization of his/her immigration status. Moreover, the criteria for being eligible to free legal aid should not unduly restrict access to such aid for victims of trafficking. On this issue, the OSCE Special Representative raised some concerns regarding such criteria, including proving the lack of means/income and victims’ access to free legal being limited to those placed in shelters, which is unduly restrictive.⁷⁹ It is recommended **to supplement the Combating Trafficking Act in this respect, while ensuring that free legal aid is accessible to trafficked persons without requiring the proof of lack of means and their residence in shelters.**⁸⁰

6.4. Protection of Victims and Witnesses

69. Chapter Five of the Combating Trafficking Act contains provisions on protection of victims of THB, reflecting important principles such as the protection of children (Article

⁷⁷ See, for example, the [Concluding Observation of the Committee on the Elimination of Discrimination against Women, Albania, CEDAW/C/ALB/CO/3](#), where the CEDAW Committee notes that “*Victims of trafficking suffering from serious health problems, including post-traumatic stress disorder, must have access to adequate health care*” (para. 29).

⁷⁸ [European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims \(2020/2029\(INI\)\)](#), para. 24.

⁷⁹ *Op. cit.* footnote 3 (OSCE Special Representative 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 43.

⁸⁰ *Ibid.* (OSCE Special Representative 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 43.

24), non-discrimination (Article 15) and international co-operation (Article 19). However, overall, the provisions on protection lack concrete measures.

70. As the protection of and assistance to victims of trafficking is one of the purposes of the Palermo Protocol (Article 2(b)), the Protocol has a special Chapter II on protection of such victims, which also includes assistance. OSCE Ministerial Council Decision No. 5/08 also encourages participating States to provide assistance and support to victims, also in the framework of criminal proceedings (para. 5). Likewise, the CoE Anti-Trafficking Convention also focuses on protection of the human rights of victims, which States shall ensure by designing a comprehensive framework for the protection of victims and witnesses, while guaranteeing gender equality (Article 1), as well as the protection of victims, witnesses, and collaborators with judicial authorities, especially during and after investigation and prosecution of perpetrators. Both international instruments stress the need for protection of privacy/private life and identity of victims, encourage States to provide for the physical, psychological and social recovery of victims, oblige them to permit foreign victims to remain on their territory and allow victims who are nationals of their states to return home. They also stress the need for protection and physical safety of victims. The importance of protection of victims of human trafficking by concrete legislative provisions has also been highlighted by the European Court of Human Rights in the cases of, *inter alia*, *Rantsev v. Cyprus and Russia*⁸¹ and *C.N. v. the United Kingdom*.⁸²
71. **Funding of protection mechanisms:** The issue of funding of protection mechanisms should also be addressed under this umbrella. In order to sustainably develop the system of assistance for victims, it is recommended to provide annual funding from state and regional budgets available to governmental and non-governmental organizations (including those under the state social contract) involved in the provision of services for the rehabilitation and reintegration of victims.

6.5. Principle of Non-punishment and Non-prosecution

72. The non-punishment and non-prosecution principles are key legal requirements that ensure that victims of human trafficking are not penalized for actions that they have committed in the course, or as a consequence, of being trafficked.
73. The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking state: “*Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons*” (Principle 7).⁸³ Furthermore, States should consider “*ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons*”.⁸⁴
74. The non-punishment of victims of trafficking is also addressed under CEDAW’s General recommendation No. 38,⁸⁵ which specifically recommends to “*ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries*

81 European Court of Human Rights, *Rantsev v. Cyprus and Russia* (Application no. 25965/04), 7 January 2010, para. 285.

82 European Court of Human Rights, *C.N. v. the United Kingdom* (Application no. 4239/08), 13 November 2012, para.76.

83 [UN Office of the United Nations High Commissioner for Human Rights \(OHCHR\), *Recommended Principles and Guidelines on Human Rights and Human Trafficking \(2002\)*, E/2002/68/Add.1, Principle 7.](#)

84 *Ibid.*, Guidelines 8(3).

85 *Op. cit.* footnote 11 (UN CEDAW Committee, General recommendation No. 38 (2020))

of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking.”⁸⁶ It adds that “the non-punishment principle must be: (a) enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief; (b) not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services; and (c) provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.”⁸⁷ In addition, the OSCE Action Plan to Combat Trafficking in Human Beings recommends “ensuring that victims of trafficking are not subjected to criminal proceedings solely as a direct result of them having been trafficked”. In paragraph 13 of its resolution 55/67, the UN General Assembly invited Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation.

75. Article 16a of the Criminal Code provides that “An act shall not be considered culpably committed if performed by a person who is a victim of human trafficking and who was forced to perform the act in direct relation to being such a victim”. At the same time, as noted by the OSCE Special Representative, this provision requires some forms of force, thereby not reflecting other situation of “abuse of position of vulnerability”, which should also be mentioned under Article 16a of the Criminal Code.⁸⁸ Moreover, another provision of the Criminal Code (Article 329) criminalizes those making money from “immoral doings”, such as persons in prostitution and begging.⁸⁹ **The Criminal Code should be amended in this respect.**
76. It is also recommended that the principle of non-punishment for victims of trafficking who commit a crime be referred to in the Combating Trafficking Act. Article 25 of the Combating Trafficking Act mentions that victims of human trafficking shall receive a special protection status for the time of criminal proceedings, but this does not amount to a clear non-punishment/non-prosecution clause and this special status only applies as long as they collaborate in “disclosure of trafficking offenders”.
77. Thus, **it is recommended to include clear provisions ensuring that victims of trafficking in persons are not prosecuted or otherwise held responsible for offences, be it criminal or otherwise, committed by them in the course, or as a consequence, of being trafficked, such as, in appropriate cases, violating regulations on prostitution, illegally crossing borders, the use of fraudulent documents and so on.** Two different criteria are generally used: causation (the offence is directly connected/related to the trafficking) and duress (the person was compelled to commit the offences). In addition, **victims of trafficking in persons shall not be arrested or detained, in a prison, jail or detention centre (criminal or immigration) at any time prior to, during or after all civil, criminal or other legal or administrative proceedings.**⁹⁰
78. It appears that, although fragments of the non-punishment principle exist, for instance in Article 16a (1) of the Criminal Code and Articles 2 and 6 of the Combating Trafficking Act, **the principle should be worded in a strong and clear way to ensure maximum**

86 *Ibid.*, para. 98.

87 *Ibid.*, para. 98.

88 *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 59.

89 *Ibid.* (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 59.

90 See e.g., [UNODC Model Legislative provisions against trafficking in Persons \(2020\)](#), p. 61.

efficiency and protection, in line with the above-mentioned relevant international standards and recommendations.

79. Additionally, and with particular reference to child victims of human trafficking, the OSCE policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to child victims of trafficking, published in April 2013, contains additional useful guidance:

“[41]. In the case of children, therefore, no means at all, including coercion, deception or threat, are required to establish the victim status of the child. Children cannot in law consent to being trafficked nor can trafficked persons validly consent to their exploitation. ‘Even if a child is not threatened, no force is used against him or her, or he or she is not coerced, abducted or deceived, the child cannot give consent to the act of trafficking for the purpose of exploitation.’

[42] The Special Representative takes the view that in cases involving children, the need for a broad application of compulsion needs to be understood in light of the child’s vulnerability on account of their age alone, and of the irrelevance of consent in the legal definition of child trafficking. More specifically, where there is evidence of abuse and/or exploitation and/or trafficking of a child, from a legal perspective it should be understood that in such circumstances a child has no autonomy, is not free to make clear or informed choices such as regarding opportunities for escape and may have access to very limited, if any, alternative options. Thus, where a child is exploited and/or trafficked, and is used by a trafficker for an illegal purpose, or the child commits a criminal act related to their trafficked status, the application of the non-punishment provision is crucial, not only from a child safeguarding perspective but also to prevent the risk of secondary traumatization to the child at the hands of the State“.

80. Accordingly, as regards child victims of human trafficking, the non-punishment principle is especially important given that consent to exploitation is irrelevant. For child safeguarding purposes and to avoid re-traumatization, this principle should also be reflected in clear wording in the Combating Trafficking Act and Criminal Code. It is thus recommended that **concrete wording be adopted so that criminalization of child victims of human trafficking is effectively prevented.**

RECOMMENDATION G

1. To amend Article 10(1) of the Combating Trafficking Act to ensure that:
 - THB victims at shelters for temporary housing are ensured access to all medically necessary treatment and healthcare rather than to “emergency treatment” only; and
 - psychological counselling is provided in a language accessible to the victim;
2. To clarify the scope of the entitlement to free legal aid, specifying that free legal aid should extend to representing the victim’s interests in any criminal proceedings (including the application of the non-punishment principle), to pursuing civil suits against the victim’s traffickers, and, insofar as applicable, to assisting the victim with applications for regularization of his/her immigration status, while ensuring that free legal aid is accessible to

trafficked persons without requiring the proof of lack of means and their residence in shelters.

3. To include clear provision ensuring that victims of trafficking in persons are not arrested, detained (criminal or immigration-related), prosecuted or otherwise held responsible for offences, be it criminal or other, committed by them in the course, or as a consequence, of being trafficked, such as, in appropriate cases, violating regulations on prostitution, illegally crossing borders, the use of fraudulent documents and so on. Concrete wording should be adopted so that criminalization of children victims of human trafficking is effectively prevented.

81. Furthermore, Article 11 of the Combating Trafficking Act outlines the scope of services provided by Centres for Protection and Support of Victims of Trafficking. This includes the provision of “*simple-language information regarding the administrative and judicial procedures that administer victim support and protection.*” It is unclear whether this information is only provided in Bulgarian or translations into the victim’s native language may also be provided. It is also not clear what services are covered by the “*facilitation of victims’ reintegration in the family and the social environment.*” **It is recommended to supplement the Combating Trafficking Act in this respect.**

RECOMMENDATION H

To clarify the language of Article 11 of the Combating Trafficking Act, in particular by ensuring that requisite information on victim support and protection be made in both Bulgarian and other languages where the victim does not have a sufficient command of the Bulgarian language, as well as by specifying the nature and extent of services aimed at facilitating victim reintegration (including, but not limited to, education and training, employment assistance, etc.) family reunification and voluntary return.

6.6. Access to Compensation and Restitution

82. Article 6(6) of the Palermo Protocol requires the States Parties to “*ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*” This translates to a requirement to expressly introduce the right to compensation and a supporting mechanism to obtain compensation under the national law, unless such a right and mechanism are already in place. Further, Article 25(2) of the UNTOC similarly requires that States Parties establish at least some “*appropriate procedures*” to facilitate victim access to compensation or restitution.
83. Moreover, Bulgaria is bound by the requirements of Article 15 of the CoE Trafficking Convention to ensure that trafficking victims have an enforceable right to obtain compensation, both from the perpetrators and from the State. Further, Article 17 of the EU Trafficking Directive 2011/36/EU requires that victims of trafficking have access to existing compensation schemes on par with victims of other violent crimes.

84. Article 3 (1) of the Crime Victim Assistance and Financial Compensation Act makes crime victims in general, regardless of the crime committed against them, eligible for victim assistance, while creating an additional entitlement to financial compensation for victims of certain exhaustively enumerated criminal offenses, including trafficking in human beings (Article 3 (3) para. 1). The access to compensation for trafficking victims in general terms is on par to that of victims of other serious and violent crimes. However, there are still gaps or challenges to be addressed, which either concern access to compensation for crime victims in general or for trafficking victims specifically. In particular, the requirements to prove material (pecuniary) damages and losses may prove challenging for victims of trafficking who would typically not have or keep receipts and financial documents from the time of their exploitation so as to prove material damage.⁹¹ In addition, GRETA specifically recommended to make state compensation accessible to all victims of THB, irrespective of their nationality and residence status and to introduce several measures to facilitate access to compensation by victims of trafficking and remove burdensome requirements. The legal provisions have not changed in this respect.⁹² This also concerns access to certain free services, covered in the Crime Victim Assistance and Financial Compensation Act by a vague umbrella term of “assistance” (Article 3(1)).
85. Further, Article 15(1)(5) of the Crime Victim Assistance and Financial Compensation Act bars crime victims from obtaining compensation in the event that “*the victim has not reported the crime to the competent authorities, except if the victim has valid reasons for failing to do so.*” It is not clear what exactly constitutes “valid reasons,” which makes this provision potentially vulnerable to arbitrary application. Given that trafficking victims are often reluctant to report, this creates a situation where some trafficking victims may be denied compensation on the grounds of not reporting the crime.

RECOMMENDATION I

To amend Article 15(1)(5) of the Crime Victim Assistance and Financial Compensation Act to clarify the “valid reasons” specifying that being a victim of THB constitutes one such valid reasons, in order for victims of THB to not be excluded from compensation.

86. With respect to the access to “assistance” (i.e., victim support services), Article 8(4) of the Crime Victim Assistance and Financial Compensation Act makes free psychological counselling available only to those victims who have been granted a positive decision under Article 24 of the same Act i.e., awarded compensation. In practical terms, this makes trafficking victims (and serious crime victims in general) ineligible for free psychological counselling as long as their criminal proceedings are ongoing and until a convicting judgment has been passed. This effectively denies serious crime victims access to free psychological counselling at a stage when they are the most vulnerable, i.e. in the immediate aftermath of the criminal victimization. Moreover, inability to access psychological counselling may impact on the victim’s ability to testify, which in turn risks undermining the success of prosecution.

⁹¹ *Op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 44.

⁹² GRETA(2021)04 Evaluation Report Bulgaria: [Access to Justice and Effective Remedies for victims of trafficking in human beings](#), published on 29 April 2021, paras. 102-103.

RECOMMENDATION J

To revise Article 8(4) of the Crime Victim Assistance and Financial Compensation Act to make free psychological counselling available to all individuals with the procedural status of victim in cases of eligible crimes, including THB.

7. INVESTIGATION AND PROSECUTION

87. The Combating Trafficking Act and the Criminal Procedure Code are almost silent on prosecution of trafficking, except for the special protection mentioned in Article 1 (1) 5 of the Combating Trafficking Act and Chapter Two, Article 4 (3) on the role of the National Investigation Service. However, specific provisions on investigation of THB are missing.
88. The relevant international standards provide detailed guidance as to the importance (and suggested wording) of legislation related to prosecution. In the Palermo Protocol, Article 5 obliges States Parties to adopt legislative and other measures as may be necessary to establish as criminal offences intentional acts of trafficking as defined under Article 3 of the Protocol. According to Article 5(2), attempting to commit such acts shall also be a criminal offence, as shall aiding and abetting, or “organizing or directing” other persons to commit such acts. Furthermore, Article 4 states clearly that the Palermo Protocol shall apply to the investigation and prosecution of trafficking offences where they are transnational in nature and involve an organized criminal group. OSCE Ministerial Council Decision 5/08 urges OSCE participating States to “ensure that investigations into or prosecution of human trafficking shall not be dependent upon a report or accusation by a victim” (para. 8).
89. Under the CoE Anti-Trafficking Convention, effective investigation and prosecution are included in Article 1 para. 1 (c) on the purposes of the Convention. Chapter IV of the CoE Anti-Trafficking Convention deals specifically with substantive criminal law. While Article 18 reiterates the criminalization of intentional acts of trafficking in human beings stated above in Article 5 of the Palermo Protocol, Articles 19 and 20 go even further in outlining specific cases, namely the use of services of victims and acts relating to travel and identity documents. Articles 21 and 22 cover aiding/abetting and corporate liability, while Articles 23-25 deal with sanctions, aggravation of sanctions and previous convictions. Article 26 reiterates that victims of trafficking shall not be punished for engaging in unlawful activities if they have been compelled to do so.⁹³ The importance of effective investigation and prosecution has also been highlighted by the European Court of Human Rights in the recent cases of *S.M. v. Croatia* as well as in the cases of *inter alia Rantsev v. Cyprus and Russia*, *Chowdury v. Greece* and *L.E. v. Greece*.⁹⁴
90. **In this respect, when carrying out their mandate, the competent prosecution authorities should adhere to the following principles:**
- **Independence of investigation:** investigation or prosecution of offences of trafficking crimes should not be dependent on report or accusation by a victim, and consequently, in the interest of justice, criminal proceedings should continue even

93 See also in the EU Anti Trafficking Directive, effective investigation and prosecution of trafficking crimes is regulated in Article 9. The non-punishment and non-prosecution principle for victims of human trafficking is covered in Article 8.

94 European Court of Human Rights, *Rantsev v. Cyprus and Russia* (Application no. 25965/04), 7 January 2010, paras 198-202; [Chowdury and Others v. Greece](#) (Application no. 21884/15), 30 March 2017, paras. 86-91 *supra*; [Grand Chamber Judgement, S.M. v. Croatia](#), Application no. 60561/14, judgment 25 June 2020, paras. 55-60; and *L.E. v Greece* (Application no. 71545/12), 21 January 2016, paras 83-85.

if the victims have withdrawn their statement, which appears to be the case under Bulgarian law as prosecution is mandatory for THB;

- **Victim-centred approaches in criminal justice procedures;**⁹⁵
- **Effective investigative tools:** necessary measures should be taken to ensure that effective investigative tools, such as those used in organized crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting human trafficking crimes ;
- **Prosecution:** all necessary measures should be taken to enable, where the nature of the act calls for it, the prosecution of a trafficking crime for a sufficient period of time after the victim has reached the age of majority;
- **Victim-centred, gender-sensitive and trauma-informed training:** appropriate, victim-centered training should be available to all units responsible for investigating, prosecuting, or adjudicating⁹⁶ trafficking crimes.

RECOMMENDATION K

To include in the legislation relevant provisions on investigation adhering to the principles of :

- Effective investigative tools similar to those used in serious crimes;
- Victim-centred approaches in criminal justice procedures;
- Prosecution for a sufficient period of time after the victim has reached the age of majority;
- Victim-centred, gender-sensitive and trauma-informed training for all those investigating, prosecuting or adjudicating trafficking crimes.

8. RECOMMENDATIONS RELATED TO THE PROCESS OF AMENDING THE LEGISLATION OF BULGARIA ON TRAFFICKING IN HUMAN BEINGS

91. OSCE participating States have committed to ensuring that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).⁹⁷ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).⁹⁸
92. In its General recommendation No. 18, CEDAW Committee specifically recommends to ensure “*the full, effective and meaningful participation of women and girls, especially victims of trafficking, those at risk of being trafficked and communities affected by trafficking and/or anti-trafficking measures, in all levels of decision-making and at all stages of efforts to prevent and combat trafficking, in the design of human rights-based, gender-sensitive response measures, including in the development, implementation, monitoring and evaluation of anti-trafficking legislation, policy and programmes*”.⁹⁹

95 See *op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 22.

96 See *op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), paras. 53-56.

97 Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

98 Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

99 *Op. cit.* footnote 11 (UN CEDAW Committee, General recommendation No. 38 (2020)), para. 48.

93. Any future amendment process should start by a proper evaluation of the implementation of the existing legal framework, including of its effectiveness and impact on different persons or groups, including women, girls and boys, migrants, minorities,¹⁰⁰ persons with disabilities, also evaluating the potential intersectional discriminatory impact of existing measures. Even at the stage of evaluation, full, effective and meaningful participation of women and girls, especially victims of trafficking, those at risk of being trafficked and communities affected by trafficking and/or anti-trafficking measures should be ensured. On this basis, the legal drafters may initiate the preparation of an in-depth regulatory impact assessment, also integrating gender and diversity considerations, to inform the drafting of the proposed amendments.
94. Moreover, for consultations on draft legislation to be effective, they need not only be inclusive as mentioned above but also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.¹⁰¹ To guarantee effective participation, inclusive consultation mechanisms must allow for input at an early stage *and throughout the process*,¹⁰² meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations should be provided in adequate time with adequate response possibilities as well as exchange of views.
95. It is also important for the authorities to engage actively with civil society in monitoring the situation, developing policy and continuing to build partnerships to reduce vulnerability.

[END OF TEXT]

100 See *op. cit.* footnote 3 (OSCE Special Representative, 2022 [Report following the country visit to Bulgaria on 22-24 June 2021](#)), para. 62.

101 See e.g., [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

102 See e.g., Section II, Sub-Section G on the Right to participate in public affairs (2014 ODIHR Guidelines on the Protection of Human Rights Defenders).