



IHREC
National Rapporteur
National Rapporteur on the
Trafficking of Human Beings

Trafficking in Human Beings in Ireland

Third Evaluation of the Implementation of the EU Anti-Trafficking
Directive



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Foreword

The Commission, in its role as Ireland's Independent National Rapporteur on the Trafficking of Human Beings¹ is delighted to present 'Trafficking of Human Beings in Ireland: Third Evaluation of the Implementation of the EU Anti-Trafficking Directive in Ireland', which reports on the progress made and actions undertaken by the State to address and combat trafficking, in all its forms.

The Commission's task as Rapporteur is to provide effective, independent and meaningful oversight of the State's actions to combat human trafficking and protect victims. We continue to do this by highlighting the strengths and gaps, as well as identifying trends in the overall anti-trafficking response. The Commission's values are underpinned by a holistic, equality, human rights, victim-oriented, gender-specific and child-centred approach to human trafficking.

This Report builds on the detailed analysis of the First and Second National Evaluation Reports, assessing the actions and outcomes which occurred during 2023,² with reference to Articles 1-18 of the EU Anti-Trafficking Directive.³ This year's Report also undertakes an evaluation of the new minimum standards introduced by the recently adopted recast (amended) EU Anti-Trafficking Directive.⁴

The Commission was designated National Rapporteur on the Trafficking of Human Beings in 2020 and has been fulfilling this mandate since. We have strived to positively inform and contribute to the work towards full compliance with modern human rights standards, ensuring a proactive response to emerging challenges in the area of anti-human trafficking. Given the constant evolution of trends in the field and the aim of producing relevant and applicable knowledge, we have complemented our analysis of the implementation of the EU Anti-Trafficking Directive with additional thematic research.

¹ In October 2020 the Commission was designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. This accords with the obligation set forth in Article 19 of the EU's Anti Trafficking Directive 2011 which introduced a legally binding requirement for all EU Member States to establish National Rapporteurs or equivalent mechanisms.

² While this Report is focused on 2023, key developments up to and including May 2024 have been included. Further important pieces of legislation have been enacted in Summer 2024, we have ensured that the findings of our analysis and recommendations remain valid.

³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

⁴ Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

In particular, this year's Report examines emerging trends in trafficking, including the challenges presented by human trafficking for criminal activities in Ireland, the exploitation of surrogacy as one of the most concerning novel and emerging forms of trafficking, and the role of business and migrant employment regulation in the prevention of human trafficking. With our thematic research and analysis of emerging issues related to human trafficking from a national perspective, the Commission aims to increase the knowledge base and to provide an informed response to the ever-evolving crime of human trafficking, with a special focus on its victims/survivors. The proactive prevention of the crime of human trafficking remains a priority for the Commission as National Rapporteur.

This year's Report also coincided with a number of significant national and international developments during the reporting period (2023). These include the recast of the EU Anti-Trafficking Directive⁵ noted previously, the Third National Action Plan to prevent and combat Human Trafficking 2023-2027 ('NAP'),⁶ and the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2023.⁷

The Commission welcomes these national and international developments, and believes that they will greatly improve the State's overall anti-trafficking response and, most importantly, the protection and assistance to victims/survivors of human trafficking.

The recast EU Anti-Trafficking Directive sets out new strengthened minimum standards of response, including by explicitly recognising novel forms of exploitation and the online dimension of trafficking, adding mandatory sanctions against legal persons, the criminalisation of the knowing use of exploited services, and establishing the obligation of yearly collection of statistics.

The publication of the NAP in November 2023 was welcomed by the Commission. In particular, we welcomed the concrete timings, responsibilities, and evaluation processes committed to in the Plan. However, we also highlighted the need to address some gaps that remain, calling for the NAP to be properly budgeted for, and for a clear allocation of resources for the commitments contained within it and flagging the absence of reference to age assessments.

Both the recast EU Anti-Trafficking Directive and the NAP will shape the anti-trafficking measures, policies, legislation, and actions in the upcoming years.

The Criminal Justice (Sexual Offences and Trafficking) Act 2024 now places on a statutory footing the new National Referral Mechanism ('NRM') for the Identification and Assistance of

⁵ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)

⁶ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#) (October 2023)

⁷ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#);

Victims of Trafficking, which is a first-of-a-kind in Europe and aims to improve the identification of victims in Ireland. The Act marks an important and significant step in ensuring a victim-centred NRM in law; a mechanism that includes a multidisciplinary approach and cooperation between State bodies and independent expert organisations. The Commission reiterates the need for the equal treatment of victims, regardless of their nationality, immigration circumstances or international protection claims. While the removal of references to IPAS in the Bill is welcomed, the new NRM must incorporate explicit provisions to ensure that International Protection can be sought at any moment in time – prior to, during, or after identification as a victim of trafficking. While we welcome the increased provisions for child victims and the inclusion of a presumption of minority, we remain concerned about the absence of a child specific identification process and the absence of any age-estimation assessment in the legislation. Mindful that the mechanism is intended to provide for both for identification and assistance of victims, the Commission has repeatedly called for more specifics on assistance and supports to be provided in the legislation. We remain concerned that too many important matters surrounding assistance are omitted from the statute.

The Commission looks forward to evaluating the implementation and results of these national and international developments as they reshape the State’s response to human trafficking.

This Third National Evaluation Report would not have been possible without the unreserved support, commitment and open collaboration of survivors, Civil Society Organisations, policy makers, researchers, and essential cooperation from State Agencies. We, as a Commission, extend our sincere gratitude to all those who worked with us to bring this Report to fruition. We would like to thank particularly: the Health Service Executive, the Workplace Relations Commission, the International Protection Accommodation Services - Department of Children, Equality, Disability, Integration and Youth (DCEDIY), the International Protection Office, the Child and Family Agency Tusla, and the Legal Aid Board. Our gratitude also goes to the excellent Civil Society Organisations working in the field who support victims and raise awareness to prevent human trafficking in Ireland: AkiDWA, Doras, the Immigrant Council of Ireland, the International Transport Workers Federation (ITF), MECPATHS, the Migrant Rights Centre of Ireland (MRCI), Ruhama, the Sexual Violence Centre in Cork, and the International Organization for Migration (IOM). Special thanks go to Ruhama, MRCI, and the ITF for their invaluable assistance to the Commission in consulting survivors.

Our particular and special appreciation goes to the survivors who shared their time, insights and experiences of protection and assistance with the Commission. A recurring theme over the last three years of the Commission’s direct consultation with survivors has been the vital role that CSO’s play in the recovery of survivors. Survivors whom we have had the privilege to consult with generously shared their opinions and lived experiences so as to help improve the State’s response to human trafficking and to protect others from experiencing what they have. We reiterate and underscore the need to employ a trauma-informed and victim-centred approach, and to involve survivors’ voices in consultations on the development of policy and

legislation. Survivor engagement remains a central tenet of the Commission's work as National Rapporteur.

We hope this Report will invigorate everyone involved in anti-trafficking efforts to continue our united fight against this heinous crime. The Commission has provided analysis that not only critically assesses the gaps in the anti-trafficking response, but also recognises the important achievements which have occurred in the reporting period. We must continue our work together against the harms of human trafficking. We hope that this Report will build on the previous two reports, acting as an evidence base and catalyst for change, contributing to informing the progression of work in Ireland to prevent human trafficking, and to provide protection and support to those who need it most. We must continue to work together to combat the pervasive harm and violence of human trafficking.



Dr. Lucy Michael

Member of the Commission

August 2024

Executive Summary

This Report, covering the period from January to December 2023, is the Commission's Third National Evaluation Report since its designation as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. The Commission has adopted the tasks as set out under Article 19 of the EU Anti-Trafficking Directive,⁸ including the assessment of trends, the measuring of results of anti-trafficking actions, the gathering of statistics, and reporting.

By producing and publishing National Evaluation Reports, we aim to provide a comprehensive review and evaluation of the binding provisions of the EU Anti-Trafficking Directive, which serves as the framework for addressing trafficking in human beings in Ireland.

Following the format of the First and Second National Evaluation Reports, we review each Article of the EU Anti-Trafficking Directive, we provide any relevant updates, we identify positive developments, and we highlight any gaps. All of this informs our most up-to-date recommendations to the State.

This year's Article analysis has been enriched by two seminal documents – the recently agreed recast EU Anti-Trafficking Directive⁹ and the Third National Action Plan to Prevent and Combat Human Trafficking 2023-2027 ('NAP').¹⁰ The Directive is setting new minimum standards of response, which Ireland is obliged to transpose by June 2026. Both documents will be shaping anti- trafficking measures, legislation, and actions in the upcoming years.

We are delighted to be able to supplement our standard Report in Chapter 1 with three thematic chapters, which explore the issues of: trafficking for the purpose of criminal activities, exploitative surrogacy, and business and employment regulations as a method of prevention, respectively. In identifying areas of additional research, we are often guided by considerations, such as the novelty of the phenomenon, changes in trends, existing gaps in knowledge and a dearth of research, or expected significant changes in such areas.

This Report would not have been possible without the invaluable cooperation of State agencies and specialist Civil Society Organisations ('CSO'), which we are honoured to have received each year since our designation as Ireland's National Rapporteur on the Trafficking of Human Beings. We are also honoured to again have had the privilege to consult with survivors of human trafficking, who have been recovering in the State from their ordeal. We

⁸ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#)

⁹ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)

¹⁰ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#)

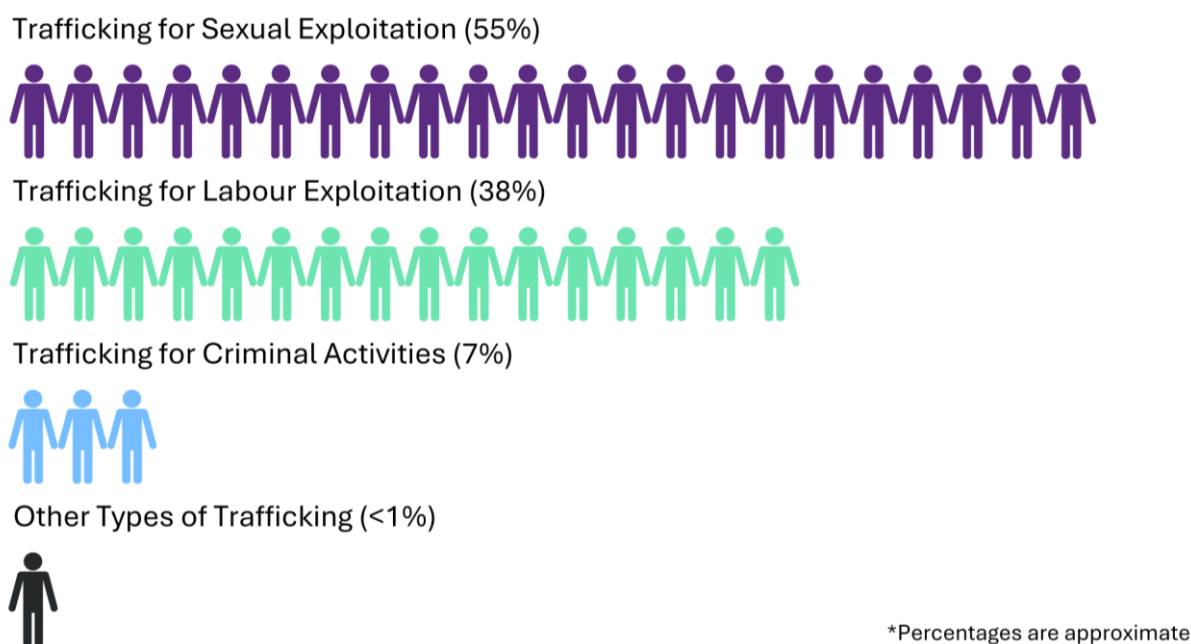
have been humbled and privileged to listen to their experiences and to incorporate their opinions on anti-trafficking into our analysis.

With our Reports we endeavour to provide a snapshot of the current anti-trafficking efforts and to offer analysis that adds value to the national response, by assisting policy makers and practitioners working in the field in making informed decisions. We try to highlight good practice and interesting approaches that could be of assistance to professionals working on combatting human trafficking and protecting victims. Finally, we are hoping that the Report will contribute to the general public awareness of the despicable crime of human trafficking and the serious multifaceted efforts required to tackle it

While this Report is focused on 2023, key developments up to and including May 2024 have been included. Further important pieces of legislation have been enacted in Summer 2024, we have ensured that the findings of our analysis and recommendations remain valid.

Multiannual Trends

Figure 1: Victims of Human Trafficking 2013-2023



The data trends have remained largely consistent over the last eleven years (2013-2023). Ireland remains primarily a destination for trafficking in persons. In total, 566 people have been identified as victims of trafficking since 2013. The most frequently detected forms of trafficking in Ireland continue to be trafficking for the purpose of sexual exploitation ('TSE'), trafficking for the purpose of labour exploitation ('TLE'), and trafficking for the purpose of criminal activities ('TCA'). Human trafficking continues to be a highly gendered and racial act; more women than men are trafficked in Ireland, and almost all identified victims are of a migrant background. Africa and the European Economic Area ('EEA') and, to a lesser, extent

Asia, Europe (non-EEA), and Latin America, are the most common regions of origin for victims of trafficking in Ireland. Most victims of TSE are from the African continent, while the EEA and Asia are represented in TLE. TCA mainly affects people from Asia and the EEA.

Multiannual data from the National Referral Mechanism ('NRM') for the identification and assistance of victims of trafficking shows that TSE accounts for 55% of all identified cases, followed by TLE (38% of all identified cases), and TCA (7% of all identified cases). It is important to remind that about 40% or more of the cases are never identified.

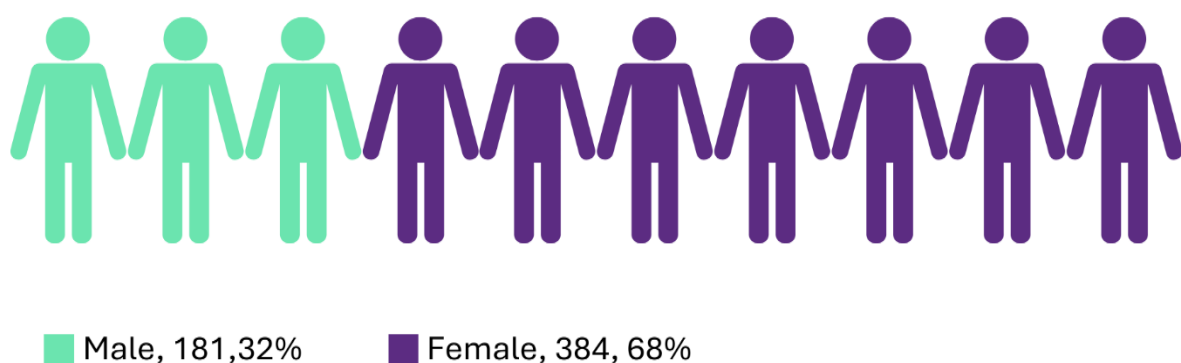
Over the last three years, from 2021 to 2023, there were 139 victims of trafficking identified in Ireland, which is up by 12% compared to the previous three-year period (2019-2021),¹¹ which shows significant increase.

The total number of victims of trafficking in 2023¹² represents a 20% increase from 2021, which is a significant increase that has occurred within a relatively short period of time. This also demonstrates that the capacity to identify victims of trafficking in Ireland has increased.

Over the last three years, TSE and TLE show a slight increasing and decreasing trend, respectively. The more notable change has occurred in respect of TCA identified victims of trafficking, which has risen from 0 (in 2021) to 9 (in 2023). TCA represents 17% of all victims of trafficking identified in 2023, which is significant. We have included a special overview of TCA in [Chapter 2](#) of this Report.

The national multiannual official data demonstrates the highly gendered aspect of human trafficking, which proves to be a consistent trend in Ireland (as well as overall in the EU). Overall, more women (68%) are victims of human trafficking than men (32%). Over the years, there has been only one case of a transgender victim of human trafficking officially recorded.

Figure 2: Victims of Trafficking by gender 2013-2023



¹¹ Three annual periods are a timeframe for assessment of human trafficking trends in the European Union.

¹² 53 officially identified/accepted into the current national referral mechanism

The gender dimension of human trafficking is particularly evident in TSE, where over 96% of victims are women. TLE is also gendered, but to a lesser extent, and it affects more men (69%).

Figure 3: Trafficking for Labour Exploitation 2013-2023, by Gender

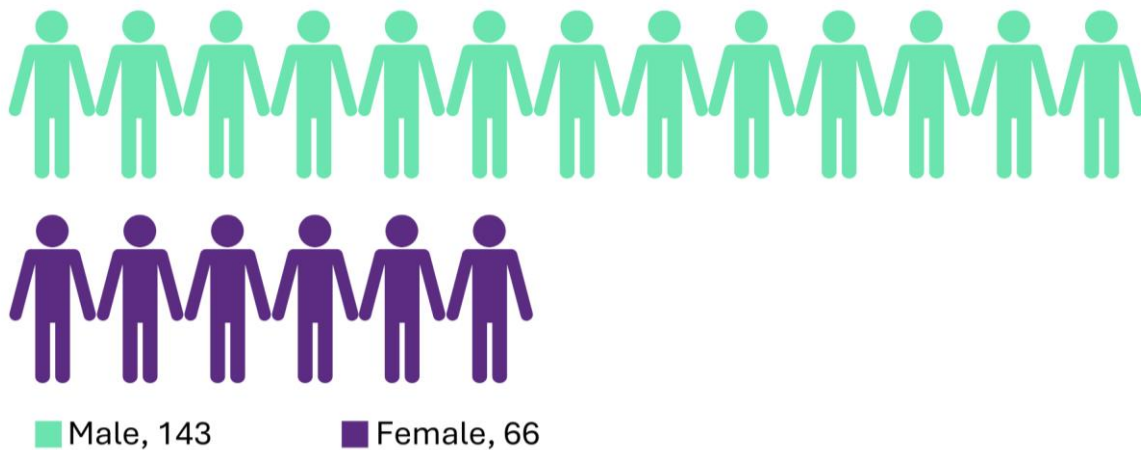
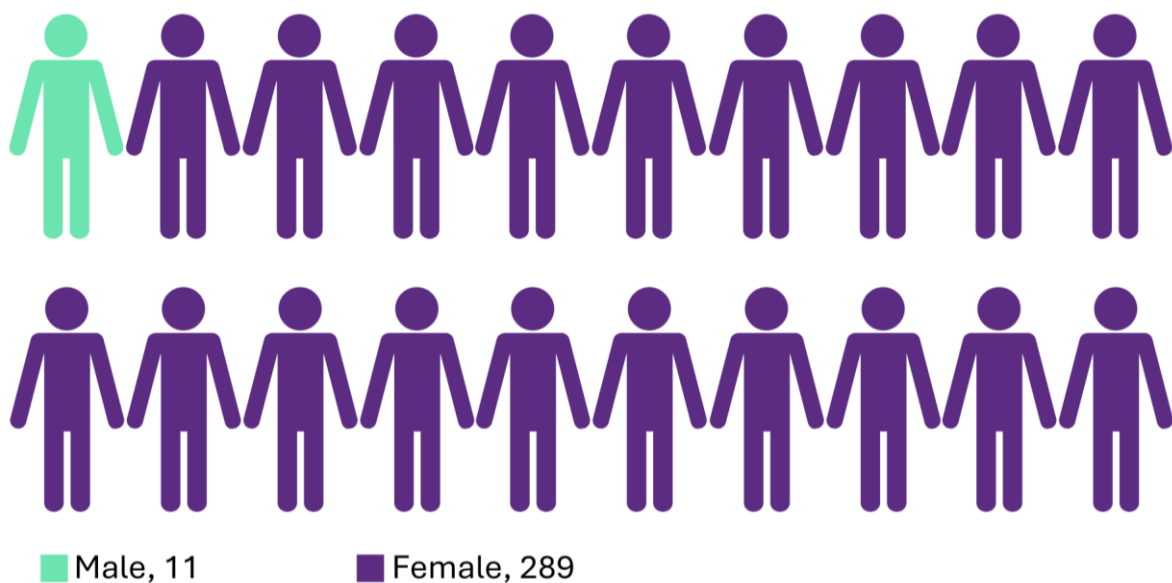


Figure 4: Trafficking for Sexual Exploitation 2013-2023, by Gender

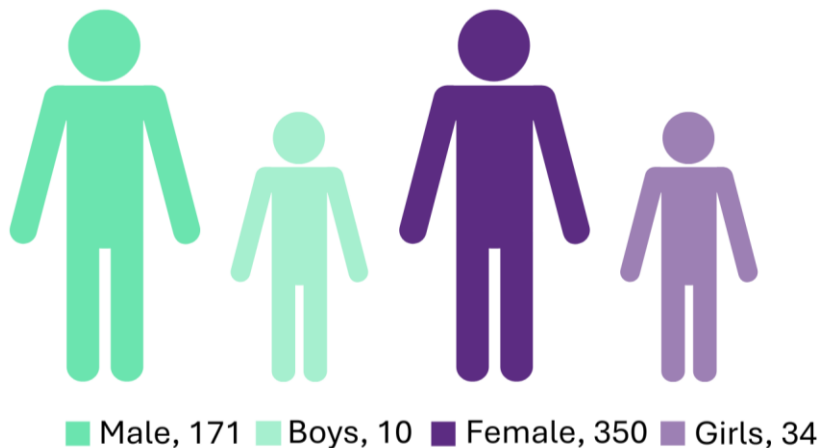


Children represent 8% of all victims of trafficking in Ireland. 44 children have been officially recognised as victims of trafficking in Ireland since 2013 (among a total of 566 victims identified). This is significantly less than the most recent EU average (15%).¹³ Similarly to the gender demographics in adults, the data shows that more girls than boys are trafficked at 9% and 5% of all victims identified, respectively. 77% of child victims of trafficking identified are

¹³ Directorate-General for Migration and Home Affairs (2024) '[Newly released data show an increase of trafficking in human beings](#)' European Commission (28 February)

girls. No child victims of trafficking were identified in 2020 and 2021. In 2022 and 2023, 5 child victims of trafficking were identified each year as suspected victims of trafficking – 8 girls and 2 boys. The majority of these were victims of TSE (6), followed by TCA (3), and TLE (1).

Figure 5: Victims of Trafficking by gender and age 2013-2023



Data shows that prostitution is a high-risk environment for sexual exploitation in Ireland. The EU identifies prostitution, escort agencies, the pornography industry, massage parlours, and bars and nightclubs as high-risk environments for sexual exploitation. Agriculture, construction, seasonal work, food processing, hospitality, carwashes, and cleaning and domestic work are some of the high-risk sectors identified for TLE. Further information on trends and statistics is provided in [Appendix 2](#).

National Anti-Trafficking Response: Progress and Gaps

During the reporting period from January to December 2023, there have been some significant developments at national level. In [Chapter 1](#), the Commission is happy to direct attention to a range of matters in which national progress has been made. These include but are not limited to:

1. the publication by the Government of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, which has adopted important improvements from the pre-legislative stage;
2. the release of the Third National Action Plan to prevent and combat Human Trafficking; and
3. the opening of the first gender-specific pilot shelter for victims of trafficking.

We greatly welcome these developments as they have the potential to significantly improve the overall anti-trafficking response, and crucially, they will improve the necessary protections and supports victims/survivors need to restore their human rights.

Perhaps the most significant development, not just in the reporting period, but also in the last 15 years, has been the publication of the **Criminal Law (Sexual Offences and Human Trafficking) Bill 2023**.¹⁴ The Commission welcomes the significant advances contained within the Bill as well as the improvements since the pre-legislative stage, in particular:

- › The multidisciplinary decision making body, also including independent organisations;
- › The two stage procedure which triggers assistance to victims early;
- › The inclusion of an independent appeal mechanism, which the Commission considers a best practice approach;
- › The provisions for people with reduced capacity to consent and children within the identification process;
- › The removal of the additional test of ‘credibility’ in the assessment of the identification of victims of trafficking; and
- › The inclusion of a presumption of minority.¹⁵

Despite these developments, there are areas of great concern that persist, such as the need for: the provision of detailed assistance in law; immigration permits provided as a key part of assistance to third-country nationals who need it; equity of treatment of victims; special identification procedures for child victims of trafficking; and statutory measures for protection against prosecution. The Commission will follow closely how these matters are addressed in the design of the Operational Guidelines under the new National Referral Mechanism.

Chapter 1 also extensively references the new **Third National Action Plan to prevent and combat Human Trafficking 2023-2027**,¹⁶ which has been welcomed for its clear timelines, objectives, responsibilities, and evaluation processes. Especially welcome in the Plan are: the commitment to engagement with survivors, the commitment to developing a comprehensive training framework for professionals likely to encounter victims, the commitment to engage with the findings of the review of the Law Reform Commission on Compensation to ensure that victims of all forms of trafficking have realistic chances of compensation, the commitment to study the approach to trafficking for forced labour, and the commitment to provide expungement of past criminal convictions in regard to prostitution, to name a few. There are still outstanding matters that must be considered within the lifetime of this Plan, such as age estimation procedures, the designation of appropriate budget for

¹⁴ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

¹⁵ This is in line with the EU Directive: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA “Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection.”

¹⁶ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#)

implementation, and the need to review and amend the Plan in accordance with the new standards introduced by the transposition of the recast EU Anti-Trafficking Directive.

An extremely positive development within the reporting period is the opening of the **first gender-specific shelter**. This shelter has already attracted positive feedback, and one of the key recommendations of the Commission is that this shelter be replicated in sufficient numbers (current capacity is just 8 beds) so as to eradicate the need for the accommodation of victims of trafficking within the International Protection (Direct Provision) system.

While there have been significant and positive national developments that could lead to tangible advances in victims' assistance, the prosecution efforts in the reporting period have not resulted in any successful convictions. However, of note is the increased number of investigations and prosecutions for trafficking-related offences and the first prosecution of traffickers for forced labour, which is commendable.

The prevention work undertaken has been extensive, even though no one uniform national public awareness campaign can be singled out by the Commission in the reporting period. In this area, the NAP has the potential to provide a much needed synchronicity in terms of efforts and allocation of resources.

Chapter 1 identifies many other positive initiatives and commitments undertaken in Ireland with reference to the implementation of various provisions of the Directive. Any outstanding matters or areas of opportunity have been addressed by the Commission, followed by the usual dedicated recommendations.

Trafficking for Criminal Exploitation: What do we know?

In this [Chapter](#), we provide a better understanding of Trafficking for Forced Criminality (or trafficking for criminal activities (TCA)), which is a somewhat overlooked subsection of human trafficking, by exploring several pertinent aspects. We analyse the existing legal and academic definitions, demonstrating their broadness and conceptually incomplete development. The phenomenon of criminal exploitation existing without the trafficking concept was highlighted by the Greentown intervention project.¹⁷ We then review the limited academic, grey and media literature on the prevalence and structure of criminal exploitation within Irish drug markets, focussing on its prevalence and mechanisms. We highlight how 'there is a dearth of official information' in Ireland, and that specialist CSO and media reports focus predominantly on cannabis cultivation,¹⁸ and how little has changed, although there has been greater focus on exploitation within local drug markets. Key findings include the continued need for non-

¹⁷ Redmond, S. (2020) '[How Irish crime gangs are a hidden threat to child well-being](#)' RTÉ (21 January)

¹⁸ RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#)

prosecution principles to be put into statute, which is of particular importance for victims of TCA; and the need for further efforts to ensure early identification of suspected TCA to avoid victims being incarcerated and prosecuted. We call for: a national taskforce to help define the issue and for its findings to feed up to European level; an awareness campaign; the development of systematic data collection across all State agencies who may encounter victims; a training programme to assist practitioners with identification of victims, including advanced interview techniques for vulnerable people/suspects; independent Department of Justice funded research; and the convening of local and national operational taskforces to share formal data, informal knowledge, and intelligence.

Surrogacy, an Emerging Form of Trafficking Exploitation

Recently, the recast EU Anti-Trafficking Directive included exploitative surrogacy as a form of human trafficking exploitation, in light “of the gravity of those practices, and in order to tackle the steady increase in the number and relevance of offences.”¹⁹ The global surrogacy industry is expected to grow ten-fold within the coming decade to approximately \$130 billion.²⁰ Relevant legislative framework in this area is currently under development in Ireland, in the form of the Health (Assisted Human Reproduction) Bill 2023 (‘AHR Bill’). The Bill as initiated, was for domestic altruistic surrogacy²¹ but was later supplemented with very significant proposed amendments regulating international surrogacy. These are aimed at providing a route to formal recognition by the State of prospective surrogacy arrangements undertaken by Irish residents in other jurisdictions.²² Part 8 of the AHR Bill also contains measures aimed at upholding and safeguarding the rights of the parties in international surrogacy agreements.

This [Chapter](#) considers whether the proposed amendments are compatible with the obligations of the recast Anti-Trafficking Directive’s provisions to combat and prevent trafficking for exploitation of surrogacy and to protect its victims:

“More specifically, as regards trafficking for the exploitation of surrogacy, this Directive targets those who coerce or deceive women into acting as surrogate mothers.”²³

The Chapter presents the Commission’s concerns that there had not been sufficient time and regard given to the State’s obligation to prevent and combat exploitative surrogacy as a form of human trafficking.

¹⁹ Recital 6 of the recast [Directive \(EU\) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)

²⁰ The Economist, “What’s driving the baby-business boom?” (21 September 2023).

²¹ [Health \(Assisted Human Reproduction\) Bill 2022 as initiated](#), Section 54 and Section 55

²² https://www.oireachtas.ie/en/debates/debate/select_committee_on_health/2024-03-06/2/

²³ [Recast EU Anti-Trafficking Directive](#), Recital 6 and Article 2(5)

It points at the benefit of ensuring a minimum standard of ethics and protection between domestic surrogacy and international surrogacy arrangements, questioning the role of intermediaries within the market reality. It recommends that the State examine whether the situation requires further synchronisation between the AHR Bill and the national human trafficking legislation. Taking into account the complexity and novelty of the issues involved – and their importance to the parties to surrogacy as well as to the State’s obligations to fight human exploitation - the Commission recommends that the Government allows sufficient time for the input of all relevant stakeholders to be sought and for the provisions of the Bill as they relate to human trafficking to be properly debated.

Business, Employment Rules and Trafficking

This [Chapter](#) aims to support understanding of the role that business and migrant employment regulation can play in combatting trafficking for the purpose of labour exploitation. Business decisions, such as outsourcing and subcontracting for the purposes of product cost reduction, and the restrictive regulations of the employment of third-country nationals, potentially contribute to labour exploitation.

The Chapter offers a review of legal instruments with a distinct focus on protection measures. First, it examines a selection of relevant national and EU-level legislation - the *Employers Sanctions Directive*²⁴, the *Seasonal Workers Directive*²⁵, and the *Employment Permits Bill 2022*²⁶, with a view to exploring the role it can play in protecting workers and potential victims of trafficking and closing exploitation niches. We also present the Private Members’ Labour Exploitation and Trafficking (Audit of Supply Chains) Bill²⁷, as a national legislative development of relevance. The second section briefly examines the recently agreed *Corporate Sustainability Due Diligence Directive*²⁸ and the *Regulation enabling the EU to prohibit the sale, import, and export of goods made using forced labour*²⁹, and the role that these can play in preventing exploitation.

Key findings include the continued need for a standalone offence of labour exploitation and how this is a gap in the approach towards tackling forced labour in Ireland.³⁰ We highlight the

²⁴ [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards and measures against employees of illegally staying third-country nationals](#)

²⁵ [Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#)

²⁶ [Employment Permits Bill 2022](#)

²⁷ [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021](#)

²⁸ [Texts adopted - Corporate Sustainability Due Diligence - Wednesday, 24 April 2024 \(europa.eu\)](#)

²⁹ [Texts adopted - Prohibiting products made with forced labour on the Union market - Tuesday, 23 April 2024 \(europa.eu\)](#)

³⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

potential benefits of the State opting into relevant EU legislation with a view to tracking the minimum standards in the protection of migrant workers. EU-wide efforts towards large businesses' responsibilities to human rights in terms of their business activities and supply chains, and the agreements achieved in this regard are presented, while the opportunity for greater synchronicity with the human trafficking framework has been found to be missing.

Recommendations



Recommendations Chapter 1- Implementation of the Anti-Trafficking Directive

Subject Matter – Focus on Gender and Disability (Article 1)

The Commission reiterates its recommendation that the State provides sufficient funding to Gender-Based Violence organisations to enable them to participate in the delivery of trafficking-specific services to victims who have experienced domestic, sexual or gender-based violence, and particularly for victims of sexual exploitation.

The Commission recommends that the State engages with the early transposition of the recast EU Anti-Trafficking Directive, which benefits potential victims of trafficking with disabilities.

The Commission recommends that the State:

- › develops a human trafficking data system that includes the possibility to account for disabled victims/survivors; and,
- › mandates all State agencies and bodies involved in the response to human trafficking (especially the State Departments and Agencies designated as Competent Authorities under the revised National Referral Mechanism) to take steps to ensure that their respective data systems capture disaggregated data on human trafficking, including data on disabilities.

The Commission recommends that the State fully implements the rights of persons with disabilities contained in the United Nations Convention on the Rights of Persons with Disabilities.

The Commission recommends that the State consider the particular needs of victims of human trafficking with disabilities in their anti-human trafficking response, including but not limited to, ensuring services (such as shelters) for victims are fully accessible to disabled people and designed considering diverse needs, in line with Article 9 of the UN Convention on the Rights of Persons with Disabilities.

Criminalisation of Human Trafficking (Article 2-10)

The Commission recommends that to achieve definitional clarity, the Criminal Law (Human Trafficking) Act 2008 (as amended) be amended to include the offence of trafficking of children for sexual exploitation, with all necessary consequential amendments to the 1998 Act.

The Commission reiterates its recommendation that the interplay between the offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) 2024 Act and the trafficking offences outlined in the 2008 Trafficking Act (as amended) are recognised as forming part of a continuum of the exploitation of children for criminal gain and not as wholly distinct and separate offences. Irrespective of the offences charged, the children involved must receive protection, assistance and non-punishment for the offences they were forced to commit, either as identified victims of trafficking and/or as victims of crime.

The Commission recommends that the State ensures that children of migrant background (irrespective of their status and guardianship situation), also benefit from the preventive programmes and resources invested by the State.

The Commission recommends that detailed analysis of the relevant national legislation is undertaken by the State to ensure that transposition of the recast Directive fully meets the objective and purpose of this new Directive including its expanded definitions. Furthermore, that the Third National Action Plan is amended to reflect the actions needed, and that all legislation enacted during the transposition period fully respect the doctrine of consistent interpretation of EU law.

Penalties (Article 4)

The Commission recommends that work is undertaken to examine the most effective way of ensuring that where a perpetrator of trafficking has facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of a sexual nature involving the victim, that such circumstances be regarded as aggravating factors in sentencing.

The Commission recommends that the State use every available avenue to address technology-facilitated trafficking through penalties that exceed the minimum requirements of the recast Directive, for example, by making the use of internet-based tools in the commission of the crime of human trafficking an aggravated offence.

The Commission reiterates its recommendation that the proposal of the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons and on reducing the demand that fosters trafficking for sexual exploitation is considered by the State. Specifically, the OSCE has identified the following measures:

1. Criminalising the creation and dissemination of explicit material from trafficking victims.
2. Establishing civil and criminal liability for online platforms, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about the exploitation.
3. Mandating online platforms to:
 - a. Implement age and consent verification mechanisms for individuals depicted in sexually explicit content;
 - b. Create content-removal-request mechanisms for non-consensual, sexually-explicit materials;
 - c. Conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks;
 - d. Report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission reiterates its recommendations on addressing the online dimension of trafficking contained in the Second Evaluation Report that:³¹

- › the State develops extensive public awareness and educational programmes for young people, especially girls, to highlight the risks on social platforms of being groomed and recruited into the sex trade;

³¹ Irish Human Rights and Equality Commission (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 240-241

- › national State-led campaigns are developed, targeted at demand, in particular, addressing young men as potential buyers;
- › An Garda Síochána are resourced to allow for the monitoring of prostitution advertising websites to identify vulnerability, control, organising and trafficking;
- › An Garda Síochána develops specific law enforcement measures to disrupt the business model and profits of prostitution advertising websites;
- › the Department of Justice develops a long-term legal and enforcement framework for prosecuting sites such as Escort Ireland for advertising the sale of controlled and trafficked women and minors and for profiting from the prostitution of others;
- › in the light of the war on Ukraine, trends in the marketplace are monitored, paying particular attention to increases in advertisements for Ukrainian, East European/Slavic or ‘new’ persons selling sex; increases of content related to Ukrainian/Eastern European/Slavic women on pornographic websites; and increases in online searches for Ukrainian pornography or ‘escorts’, and Ukrainian women or girls for sex/marriage/dates;
- › sex buyers’ review forums are monitored by law enforcement, NGOs, and academics in order to identify trends related to sexual exploitation;
- › specialist services are resourced to meet the needs of women and provide pathways and support for exiting the sex trade;
- › the Garda National Protective Services Bureau are resourced to ensure that it can continue to tackle organised crime in the sex trade, to prosecute buyers and to protect women and girls who are being sexually exploited;
- › the Department of Justice, as National Coordinator, develops, in collaboration with other experts, detailed guidance on how the current legislation is applicable to the online dimension of human trafficking for sexual exploitation;
- › the Government procures wide and comprehensive research on the online dimension of human trafficking for sexual exploitation in Ireland, including an extensive analysis of data contained in online environments available for traffickers, from prostitution advertising websites such as Escort Ireland to social media platforms;

- › the capacity and knowledge of those responsible for investigating cases of prostitution and trafficking for sexual exploitation be increased, through the inclusion of the latest technologies;³²
- › the National Coordinator develops and chairs a Forum to examine ways to disrupt demand and combat technology facilitated trafficking. This Forum must be multi-disciplinary, bringing together technology experts, law enforcement, legal experts, data analysts, social scientists, health professionals and NGOs;
- › Ireland examines ways to use its unique position as EU headquarters for the biggest social media companies to enforce minimum standards to protect users against exploitation and human trafficking; and
- › legislative reforms that have been effective in disrupting the operations of prostitution advertising websites in other jurisdictions – e.g. France, US, Sweden are examined to see how they are disrupting the market.

Sanctions on Legal Persons (Article 6)

The Commission reiterates its recommendation that the State steps up its efforts to punish all legal entities implicated in human trafficking by criminal and non-criminal sanctions. This includes civil and criminal liability of online platforms, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims – when such platforms knew or had reason to know of the exploitation.

The Commission reiterates its recommendation that the Department of Justice develops a long-term legal and enforcement framework for prosecuting platforms and websites that advertise the sale of controlled and trafficked women and minors and for profiting from the prostitution of others. An Garda Síochána must be fully resourced to allow them to monitor these advertising websites to identify vulnerability, control, organising and trafficking.

³² The GNSB team has secured a place for an ICT/digital content officer to be recruited in 2024, which is very practical and necessary in light of the increased use of internet technologies within the sex trade and in general in human trafficking. The

The Commission recommends that at a minimum, statute should be introduced to include the full range of the recast Directive optional criminal or non-criminal sanctions or measures:

- (a) exclusion from entitlement to public benefits or aid;
- (b) exclusions from access to public funding, including tender procedures, grants, concessions and licences;
- (c) temporary or permanent disqualification from the practice of business activities;
- (d) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- (e) placing under judicial supervision;
- (f) judicial winding-up;
- (g) closure of establishments used for committing the offence; and
- (h) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Seizure and Confiscation (Article 7)

The Commission recommends that the State re-examines the decision to opt-out of the Directive on Asset Recovery and Confiscation as this may be an opportunity to further strengthen efforts to harmonise the approach across Europe to better target and combat the pan-European and organised crime nature of human trafficking.

Non-Prosecution of Victims (Article 8)

The Commission again reiterates its recommendation that to adhere fully to the non-punishment principle, the Criminal Justice (Sexual Offences and Trafficking) Bill 2023 should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes “as a direct consequence of them being trafficked.

The Commission reiterates its recommendation for the wider application of the retrospective expungement of criminal records of victims of trafficking where they have been forced to commit such crimes as a direct result of them having been trafficked.

Investigation and Prosecution (Article 9)

The Commission recommends that the Third National Action Plan 2023-2027 is amended to include detailed actions to expand, support, and enhance the development and knowledge of An Garda Síochána and the Office of the Director of Public Prosecutions to fully integrate technological solutions to better investigate and prosecute trafficking offences.

The Commission reiterates its recommendation that victims' rights and their experiences be at the centre of all efforts – both legal and policy – to combat trafficking, and that every potential victim be appointed a Garda Liaison Officer from the beginning of the investigation.

The Commission reiterates its recommendations for:

- › increased specialist knowledge and increased resourcing of the Garda National Protective Services Bureau to ensure that they can continue to tackle human trafficking and organised crime;
- › greater monitoring of websites and platforms to identify indicators of vulnerability, control, organising and trafficking;
- › targeted law enforcement measures to disrupt the business model and profits of exploiters;
- › comprehensive research on the online dimension of human trafficking;
- › guidance on how the current legislation is applicable to the online dimension of human trafficking;
- › the establishment of a Forum to examine ways to disrupt demand and combat technology-facilitated trafficking;
- › accession to the Budapest Convention on Cybercrime; and
- › an examination of ways to use its unique position as EU host of headquarters of the biggest social media companies to enforce minimum standards to protect its users against exploitation.

Assistance and Support of Victims of Trafficking (Article 11)

Conditions of Assistance

The Commission recommends that the State ensures that all victims receive specialised assistance for victims of human trafficking, reiterating that this assistance must be provided regardless of their origin, nationality, statelessness, immigration status or a pending International Protection claim, as the recast Directive obliges.

The Commission recommends that State Agencies and specialist organisations nominated as ‘Competent Authorities’ or likely ‘Trusted Partners’ are entitled to trigger or extend the provision of assistance, including by making recommendations for immigration status that allows access to assistance, where the victim’s circumstances so require.

The Commission reiterates its recommendation that the proposed new National Referral Mechanism incorporates explicit provisions to ensure that International Protection can be pursued at any moment in time – prior to, during, or after identification as a victim of trafficking. The Commission additionally recommends that this is without impact on the victim’s access to specialised assistance designed for victims of trafficking.

The Commission recommends that access to International Protection is provided without any impact on the victim’s access to specialised assistance designed for victims of trafficking.

The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team is entrusted with a clear role in the new National Referral Mechanism and resourced for wide geographical reach, due to its victim-centred, disability-sensitive and gender-specific approach.

Mechanism for Early Identification

The Commission recommends that the State develops National Referral Mechanism Guidelines for centralised uniform data-collection, and launch a data system to which all Competent Authorities and Trusted Partners must contribute information, and which will facilitate the State in its new annual reporting obligations under Article 19b of the recast Directive.

The Commission recommends that all government Agencies and Departments who are part of the new National Referral Mechanism develop data systems that are:

- › designed to meet the requirements of the new National Referral Mechanism, including the Operational Guidelines;
- › fully compatible with other Competent Authority and Trusted Partner systems;
- › capturing and disaggregating data with ease; and
- › user-friendly.

The Commission reiterates its recommendation that the National Referral Mechanism legislation clearly sets out the specialised assistance and support for suspected victims of trafficking, providing equity of care for all victims.

The Commission recommends that the National Referral Mechanism legislation clearly sets out the necessary immigration provisions for third-country national victims and stateless persons allowing access to the specialised measures for all victims.

The Commission reiterates its recommendation that the National Referral Mechanism legislation explicitly states that assistance and supports are not conditional on cooperation with criminal investigations and proceedings.

The Commission reiterates its recommendation that the Department of Social Protection explicitly exempts all victims of human trafficking from the Habitual Residence Condition to access statutory assistance.

The Commission recommends that the State invests in the adoption of the OSCE Simulation Training (the creation of which was supported and co-funded by the Irish State) designed for testing and improved implementation of National Referral Mechanisms, which particularly benefits countries that are implementing new mechanisms, as is the case in Ireland.

The Commission reiterates its recommendation that the identification procedure is made applicable to all suspected victims of trafficking and that it involves transparent decision making with timely confirmation of victim status to the individual and their legal representative. Such a procedure must include an appeals process.

Efforts for Proactive Detection

The Commission recommends that the Labour Inspectorate capacity is increased as planned, and maintained at levels allowing the Workplace Relations Commission to fulfil its functions as Competent Authority in the new National Referral Mechanism in the anti-trafficking area, and a key body in preventing labour exploitation in Ireland.

The Commission recommends that the newly recruited labour inspectors receive mandatory training on human trafficking as early as possible to allow them to contribute to the efforts around early detection of possible victims and that the Workplace Relations Commission ensures all inspectors are sufficiently trained in accordance with the agency's role in the new National Referral Mechanism.

The Commission recommends that the Workplace Relations Commission considers and plans for strengthened and clearly communicated fire-walls between immigration enforcement and labour inspections, deriving from the role of the Workplace Relations Commission as a Competent Authority in the National Referral Mechanism, which in addition to facilitating reports of possible exploitation, has to protect the principle of non-punishment of detected victims of trafficking.

The Commission recommends that the targeted inspections of high-risk sectors for human trafficking become a permanent practice of the Workplace Relations Commission, as a tool towards screening and early detection of possible cases of human trafficking.

The Commission recommends that the State uses its bilateral and international connections to seek and establish clarity regarding the responsibility in reported cases of exploitation and potential human trafficking on foreign-flagged vessels operating in Irish waters.

The Commission reiterates its recommendation that, at a minimum, the Workplace Relations Commission keeps disaggregated data on the potential victims of trafficking they uncover and report to An Garda Síochána; and keeps data regarding any efforts to provide redress and compensation to such victims of trafficking.

The Commission recommends that the State takes urgent measures to move from pilot arrangements to Vulnerability Assessment Screening of international protection applicants as the Recast Reception Condition Directive international commitment requires.

The Commission recommends that Vulnerability Assessments are resumed as quickly as possible and deployed widely as a viable tool for early detection of trafficking cases among the applicants for International Protection.

Accommodation and Other Assistance

The Commission reiterates its recommendation that assistance and support for victims is enshrined in primary legislation.

The Commission recommends that the Operational Guidelines supplementing the revised National Referral Mechanism make it explicitly clear that all victims of trafficking are entitled to assistance, which is based on their individual needs but does not prejudice their choices, including their right to seek and enjoy International Protection.

The Commission recommends that the envisaged Housing (Miscellaneous Provisions) Bill 2024 is drafted in a way that ensures the five years reckonable residency requirement does not apply to victims of trafficking in a manner that is contrary to the EU Anti-Trafficking Directive.

The Commission recommends that the pilot shelter is swiftly evaluated and replicated in sufficient numbers to accommodate, in a gender-specific manner, victims of trafficking recovering from gender-based violence trauma.

The Commission recommends that the State plans for, and invests in, a sufficient number of gender-specific shelters and appropriate interim accommodation to satisfy the need for accommodation of victims of trafficking, in line with the required standards in the recast EU Anti-Trafficking Directive.

The Commission recommends that gender-specific shelters are afforded the facilities to cater for victims who are mothers with children, given the significant proportion of female victims accompanied by children.

The Commission recommends that specialised shelters also be opened for male victims of trafficking, as well as for entire families, whenever such needs arise.

The Commission recommends that the actions of the Third National Action Plan 2023-2027 are implemented independently and irrespective of the transformations envisaged for the International Protection Accommodation Service as a whole.

The Commission recommends that the State makes provisions to ensure medical and psychological assistance to victims in all areas of Ireland, due to the present geographical dispersal of victims.

The Commission recommends that the funding of the HSE Anti-Human Trafficking Team service is enhanced to ensure branching out and geographical coverage throughout the country.

The Commission reiterates its recommendation that the HSE Anti Human Trafficking Team retains its gender-specific expertise in the provision of care for victims of trafficking with special needs, especially those arising because of trafficking exploitation involving gender-based violence.

The Commission reiterates its recommendation that the Department of Justice (as the lead Department on Domestic, Sexual and Gender-Based Violence) is tasked with integrating victims of trafficking who have suffered gender-based violence into their overall Domestic, Sexual and Gender-Based Violence response.

The Commission reiterates its recommendation that the State develops trafficking and gender-specific pathways of care that are victim centred, ensuring that specialist Civil Society Organisations with expertise of trafficking are fully supported and their role formalised within the reformed National Referral Mechanism.

The Commission recommends that the State provides sustainable funding to specialist Civil Society Organisations providing services for victims of trafficking.

The Commission recommends that the State explores avenues for providing family reunification to victims of trafficking.

Protection of Victims in the Criminal Justice System (Article 12)

The Commission reiterates its recommendation that the Legal Aid Board is sufficiently resourced to meet the EU Anti-Trafficking Directive obligations. Along with an increase in permanent staff, this must also include clerical and administrative assistance to support the coordination with outside stakeholders, maintenance of the case management system, and data collection.

The Commission recommends that the Legal Aid Board invests in an improved data system that meets the needs of the legal case work and data analysis, in order to better track and assess the investment in the provision of legal services to victims of trafficking by the State.

The Commission reiterates its recommendation that survivors' legal needs must be a priority issue in the Review of Civil Legal Aid. The Review must consider the legislative reforms needed to expand the remit of the Legal Aid Board to offer legal advice, assistance and, where necessary, representation to victims of human trafficking in all relevant matters, both criminal and civil, including compensation, and before the Workplace Relations Commission.

The Commission reiterates its recommendation that the State must provide increased, multiannual funding to established independent law centres.

The Commission recommends that the State considers supporting independent law centres that wish to provide legal service to victims of trafficking outside of Dublin to ensure geographical spread of this vital type of assistance.

The Commission reiterates its recommendation that on the need for all State Agencies working on trafficking to maintain up-to-date websites that are trauma-informed³³ and that provide accurate information with working links to assist and enable victims of trafficking to navigate these complex processes.³⁴

The Commission recommends that victims/survivors, and/or their legal representative are given regular updates on their cases, without delay.

The Commission recommends that State Agencies continue to develop and implement Standard Operating Procedures for cross-department coordination. It is essential that there are processes in place while the new National Referral Mechanism Operational Guidelines are being drafted and implemented.

The Commission recommends that the Minister for Justice considers the introduction of both Trafficking and Exploitation Risk Orders and Trafficking and Exploitation Protections Orders as

³³ Including quick 'exit buttons', careful consideration of images (do not use stock images that portray violence and can be triggering), ensuring that safety alerts and support services are unmissable, designed with mobile and touchscreen capabilities such as 'call' buttons.

³⁴ The Commission welcomes the inclusion in the NAP of a specific Action (1.3.5) to 'Ensure that all resources on human trafficking issues are available to relevant Government websites so they can be kept up-to-date'.

part of the review of the criminal justice approach to trafficking contained in the Third National Action Plan to Prevent and Combat Human Trafficking 2023-2027.

The Commission recommends that all Intermediary Panel members undertake trafficking, and child-trafficking-specific, training and that their role be clearly outlined and integrated within the Operational Guidelines that will accompany the new National Referral Mechanism.

The Commission reiterates its recommendation that an effective response to combatting trafficking for sexual exploitation and other sexual exploitation offences requires that these offences are categorised as sexual offences. Victim/witnesses of these crimes must be entitled to protections that include, at a minimum: access to legal advice (without a prosecution being initiated), exclusion of the public from trials, and anonymity.³⁵

The Commission reiterates its recommendation that the right to separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences), should be extended to victims of offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.

³⁵ Exclusion of the public from trial and anonymity are available for offences of trafficking for sexual exploitation, but are not available for other sexual exploitation offences, which may involve potential victims of trafficking

Child Victims of Trafficking (Articles 13-16)

Prevalence of Child Trafficking

The Commission reiterates its recommendation that the State works with An Garda Síochána and Tusla to develop a methodology for collecting uniform and reliable data on the scale and different forms of exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.

The Commission recommends that the State develops a separate mechanism for identification, referral and assistance of child victims of trafficking that implements the distinct legal obligations of Article 2(5), Article 2(6), and Articles 13-16 of the EU Anti-Trafficking Directive, corresponding to the modified definition of the offence and the enhanced set of measures for child victims.

Unconditional Assistance, Best Interest of The Child

The Commission welcomes the inclusion of the best interest of the child principle within the Third National Action Plan to Prevent and Combat Human Trafficking 2023-2027 and calls for this principle to be embedded in every policy, action and strategy involving child victims of trafficking, and children at risk of trafficking within the national child protection system, in regard to prevention, assistance and protection in the criminal justice process. In particular, the Commission recommends that the best interest of the child principle is explicitly included in the child-specific National Referral Mechanism Operational Guidelines, as well as in the policy being developed by Tusla's Working Group on Child Trafficking.

The Commission recommends that the Best Interest of the Child assessment framework³⁶ is used to assess children at risk, potential child victims of trafficking, and identified victims of trafficking, including age-disputed minors, irrespective of their immigration status.

³⁶ OSCE/ODIHR (2022) [*National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*](#). Warsaw: OSCE Office for the Democratic Institutions and Human Rights, pp. 340–371

The Commission recommends that, in addition to the child trafficking specific response, the State undertakes steps to strengthen the general child protection system response to children at risk of human trafficking.

Age Assessment

The Commission agrees with the recommendations issued by the Joint Committee on Children, Equality, Disability, Integration and Youth in their Report on Refugees and Integration³⁷ and calls for:

- › the allocation of additional resources to Tusla to assist in their response to the unprecedented increase of young people in need of care, assistance and protection in Ireland, including for separated and unaccompanied age-disputed minors;
- › the establishment of a shelter for age-disputed people where they are treated as minors and not adults, and to end the placement of age-disputed minors in adult accommodation;
- › healthcare professionals to be provided with guidance around their role and pathways of advocacy, support and treatment of age-disputed minors;
- › age-disputed minors to be allocated an advocate or Tusla social worker with capacity to ensure their access to child-specific and appropriate services, including but not limited to education and mental health support.

The Commission reiterates its recommendation that specific guidelines on the criterion officers use to determine when a person may be a child, and when an adult is entitled to ‘take responsibility’ for a child, be drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training.

³⁷ Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Refugees and Integration](#), pp. 80–81

Assistance and Support to Child Victims

The Commission reiterates its recommendation that Tusla develops a child trafficking-specific procedure which contains short-term and long-term assistance measures to ensure the physical and psychosocial recovery of all child victims of trafficking, in sufficient detail.

The Commission recommends that the State provides the necessary support for Tusla to reduce their reliance on Special Emergency Arrangement accommodation and ensures access to safe and appropriate accommodation that is child-centred for presumed and identified child victims of trafficking.

The Commission recommends that the Health Information Quality Authority performs an urgent audit of all the State care residential centres to assess the risk of exploitation and human trafficking, as recommended by the Sexual Exploitation Research Programme ‘Scoping Study on the Exploitation of Children and Young People in Ireland’.³⁸

The Commission recommends that the State develops specific strategic plans aimed at preventing the trafficking of all children in Ireland, especially trafficking of children in State care accommodation, without regard to their country of origin or immigration status.

The Commission reiterates its recommendation that every child victim is appointed a ‘Children’s Legal Advisor’ at the earliest stage of their referral to the National Referral Mechanism to ensure that the identification, assistance and protection during the process respects the views and best interest of the child.

The Commission recommends that Tusla supports child victims of trafficking in their emancipation and adulthood with aftercare plans that specifically protect them from being re-trafficked, as mandated by the recast EU Anti-Trafficking Directive.

The Commission recommends that the child victims of trafficking are afforded access to the full range of aftercare services, irrespective of the duration or the legal basis upon which they

³⁸ Canning, M., Keenan, M. and Breslin, R. (2023) [*Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland*](#). Dublin: SERP

have entered the care of the Tusla – the status as a child victim of trafficking should satisfy all eligibility requirements.

The Commission reiterates its recommendation that all child victims of trafficking are afforded the same access and supports to primary and post-primary education, training and employment as Irish nationals.

The Commission recommends that the State guarantees access to Student Universal Support Ireland for identified victims of human trafficking who wish to pursue tertiary education, regardless of the immigration permission they hold.

The Commission recommends that the social workers allocated to child victims of trafficking should be trained and fully aware of the full suite of support services and statutory entitlements that child victims should have access to, including health support and immigration permissions.

The Commission reiterates its recommendation that any appointed guardians or social workers allocated to children who are potential and identified victims of trafficking are regularly trained, as well as availing of professional supervision.

The Commission reiterates its recommendation that specific rights are extended to the family of child victims, as an integral part of child victim assistance, and that the access to this assistance is clearly outlined in the National Referral Mechanism Operational Guidelines.

Protection of Child Victims in Criminal Proceedings

The Commission recommends that every child who is identified or presumed to be a victim of trafficking and is in the care of Tusla is appointed a social worker who has received specialist and accredited training in child trafficking.

The Commission recommends that the Operational Guidelines that accompany the new National Referral Mechanism include a specific obligation and procedures that require the child victim's appointed social worker to arrange that the child receive legal advice from the Legal Aid Board, without delay.

The Commission recommends that funding is made available to the Legal Aid Board to enable them to establish a system of Children's Legal Advisors. This is essential to ensure that child victims of trafficking receive age-appropriate and trafficking-specific legal advice and support, on all criminal matters and for the purposes of claiming compensation.

The Commission recommends that reform of Civil Legal Aid extend the provisions in section 26(3A) of the Civil Legal Aid Act 1995 to the (safe) parent/guardians of child victims of trafficking.

The Commission reiterates its recommendation that all child trafficking victims, irrespective of the form of exploitation they were subjected to, are included in the ‘Barnahus model’ already operating in the State, as well as the roll out of the model nationwide.

The Commission reiterates its recommendation that an ‘appropriate adult scheme’ is introduced, modelled on the UK National Appropriate Adult Network to ensure that all children, including child victims of trafficking, are protected and accompanied at every stage of the criminal investigation and prosecution. This is in addition to the appointment of a Children’s Legal Advisor.

The Commission recommends that specialist support organisations with expertise in supporting child victims of trafficking must be provided with sufficient, multiannual funding to ensure children receive the support they need to recover from what they have endured.

Measures for Unaccompanied Minors

The Commission recommends that Tusla ensures that all internal policies on human trafficking are legally accurate, and that the new child trafficking policy is rolled out equally across the whole organisation, including, but not limited to unaccompanied and separated children.

The Commission recommends that the State ensures that intake assessments for all unaccompanied children are conducted in a child-friendly manner, by trained professionals, and that applications for legal residency, when applicable, are promptly processed.

The Commission reiterates its recommendation that the State develops national guidelines on ensuring the rights of unaccompanied children.

The Commission reiterates its recommendation that the State reviews its system of family reunification involving unaccompanied children, with a view to broadening the definition of “family member”, simplifying application procedures to ensure that the best interests of the child are a primary consideration in all related decisions.

The Commission reiterates its recommendation that the new National Referral Mechanism removes the need for unaccompanied child victims of trafficking of 15 years of age or younger

to wait three years prior to their application for a more durable residence status, in the spirit of EU Anti-Trafficking the Directive.

The Commission reiterates its recommendation that Tusla ensures that any decision regarding application for International Protection on behalf of an unaccompanied child victim of trafficking is taken only after a consultation with a qualified lawyer/Children's Legal Advisor.

The Commission recommends that the State sufficiently resource and staff Tusla's Separated Children Seeking International Protection Team, in order to ensure they are capable of addressing children's specific needs.

Access to Compensation (Article 17)

The Commission reiterates its recommendation that the Law Reform Commission consider the specific needs of trafficked victims in its review of compensation, for all types of exploitation, and especially in regard to: the inclusion of 'pain and suffering' as a ground for compensation from the Criminal Injuries Compensation Scheme, ensuring provision is made for acquiring expert witness reports to substantiate claims related to these claims.

The Commission reiterates its recommendation that the use of Section 6 Orders³⁹ as a means of compensating victims within the criminal process⁴⁰ needs reform, and an examination of the potential benefits of providing separate legal representation to the victim/witness for this purpose.

The Commission recommends that proceeds from seizure and confiscation orders relating to trafficking activities – both pre and post-conviction orders - are ring-fenced and used to establish a 'Victims of Trafficking Fund', either as a standalone scheme or as part of the reformed Criminal Injuries Compensation Scheme to support victims directly, and for other trafficking-related social supports.

The Commission recommends that civil legal aid is extended to include hearings before the Workplace Relations Commission.

³⁹ Criminal Justice Act 1993

⁴⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

Prevention of Human Trafficking (Article 18)

Prevention Measures

The Commission recommends that the Department of Justice, following the mandate of the recast EU Anti-Trafficking Directive and where appropriate, seeks the collaboration of the private sector, especially in relation to trafficking for labour exploitation, to develop awareness raising campaigns.

The Commission reiterates its recommendation that the Government explores the feasibility of establishing a dedicated 24/7 hotline to report all forms of human trafficking crimes, including providing information and support. One such way may be through expanding and resourcing existing 24/7 services to meet this need.

The Commission recommends that the Department of Justice develops and coordinates annual nationwide campaigns focused on the online dimension of trafficking that are directed at hard-to-reach sectors and vulnerable groups such as children, young people, disabled people and migrants.

The Commission reiterates its recommendation that dedicated multiannual funding is made available to Civil Society Organisations to develop awareness raising campaigns in their areas of expertise that highlight the specificities of each form of exploitation and/or encourage the utilisation of their expertise in the development of such campaigns.

The Commission reiterates its recommendation that accredited trafficking training is embedded into professional education programmes of relevant courses such as medicine, social work, and law.

The Commission recommends that the Government facilitates and encourages research into under-explored forms of exploitation and how they present in Ireland including trafficking for labour exploitation and forced begging, trafficking for criminal activities and trafficking for novel forms of exploitation (illegal adoptions, forced marriages, and exploitative surrogacy) in order to enhance understanding across relevant stakeholders and contribute to its prevention.

The Commission reiterates its recommendation that awareness raising campaigns aimed at younger audiences within educational institutions are developed and rolled out nationwide.⁴¹

Training of Government Officials

The Commission recommends that National Council for Curriculum and Assessment introduce awareness raising training on trafficking in human beings for children aged from 6-18 years old in Primary, and Secondary cycles.

The Commission recommends that professional regulatory bodies for relevant professions including court staff, health and social care professionals, and law enforcement promote and offer regular and specialised training on identifying and preventing trafficking in human beings as part of the professional development curriculum, especially to those likely to encounter victims and potential victims of trafficking.

In addition to the training provided to law enforcement and prosecutors, as committed to in the National Action Plan 2023-2027 to Prevent and Combat Human Trafficking, the Commission reiterates its recommendation that judges are trained on a victim-centred, trauma-informed approach in relation to law enforcement efforts and trials, including their sensitisation to the severity of human trafficking crimes.

The Commission reiterates its recommendation that all members of the new National Referral Mechanism Operational Committee receive regular mandatory Anti-Trafficking training.

The Commission reiterates its recommendation that all statutory bodies with responsibilities towards victims and survivors of human trafficking adopt a formal, coordinated, systematic, and mandatory approach to training their staff, based on evaluated needs and on measurable implementation plans.

Criminalising Users of Services of Trafficked Victims

The Commission reiterates its recommendation that the State must proactively implement the relevant provisions of the Criminal Law (Sexual Offences) Act 2017 to reduce the demand that fosters trafficking for sexual exploitation, alongside increased support to exit pathways for people affected, including potential victims of trafficking.

⁴¹ The Commission welcomes the inclusion of specific Actions on awareness raising campaigns in the National Action Plan

This must include at a minimum:

- › legal, psychological and medical support;
- › access to exit programmes;
- › emergency and social housing;
- › financial assistance;
- › regularised immigration status with the right to work; and
- › access to training and employment.

The Commission recommends that when the State is transposing Article 18a(1) of the recast EU Anti-Trafficking Directive, that the concept of ‘recklessness’ is considered to make the evidential burden more practicable, thus making the offence of the knowing use of services provided by victims of trafficking easier to prove.

The Commission recommends that the State ensures the new offence established by Article 18a(1) of the recast EU Anti-Trafficking Directive is transposed and applicable to all forms of trafficking; it is crucial that the penalties provided for in Article 18a(2) should be sufficiently dissuasive to act as a deterrent to those who may wish to commit the crime established in Article 18a(1) and that this new offence is not transposed in such a way so as to render its impact meaningless.

The Commission recommends that the State introduces the criminal sanctions or measures as provided for in Article 5 and Article 6 of the recast EU Anti-Trafficking Directive with regard to the responsibilities owed by companies and businesses implicated in the use of services of trafficked people, in the context of their activities and supply chains.

Recommendations Chapter 2 - Human Trafficking for Forced Criminality in Ireland: A Rapid Literature Review

The Commission recommends that the Department of Justice establishes and coordinates a national taskforce, composed of academic experts, stakeholders from the state and civil society, and victims/survivors of trafficking.

This taskforce should:

- › Generate discourse around Trafficking for Criminal Activities and clearly define the problem and concept. Competing definitions, and their operational meaning, in national and local contexts and for different offences must be included in the programme of work of the taskforce.
- › Include competing definitions, and their operational meaning, in national and local contexts and for different offences, in the programme of work for the taskforce.
- › Ensure that the findings of the taskforce feed up to the European level. This is essential as Trafficking for Criminal Activities is a national, regional and international issue, requiring international collaboration.
- › Once the issue has been conceptualised, an awareness raising campaign must follow to communicate to practitioners and the public what Trafficking for Criminal Activities is and how to identify it.
- › Develop a systematic data collection strategy be rolled out across all State agencies who may come into contact with victims of Trafficking for Criminal Activities. Not only will this allow estimations of prevalence and scope of the issue, but will support resource allocation and distribution. A multi-agency shared database should be developed.

The Commission recommends that a training programme is developed to assist practitioners in identifying signs of Trafficking for Criminal Activities, and how to respond, and emphasises the need for more specialist training in advanced interview techniques with vulnerable people-suspects. Many victims of Trafficking for Criminal Activities will be afraid to disclose information, may not identify as a victim, may be unaware they were exploited and/or may have experienced significant trauma.

The Commission recommends that the Department of Justice funds independent research to explore: the operation of various iterations of Trafficking Criminal Activities in an Irish context, how victims have experienced Trafficking for Criminal Activities, and evaluate existing programmes. Interviews with both perpetrators and victims should be a focus of such research.

The Commission recommends that both national and local operational taskforces should be convened to share formal data and informal knowledge and intelligence, and undertake joint exercises where needed.

The Commission reiterates its recommendation that the non-prosecution principle be put into statute. This is especially important for victims of Trafficking for Criminal Activities.

The Commission reiterates its recommendation that efforts are made to ensure early identification in cases of suspected Trafficking for Criminal Activities to avoid victims being incarcerated on remand.

Recommendations Chapter 3 - Emerging Forms of Trafficking: Exploitative Surrogacy

The Commission recommends that international surrogacy arrangements are subjected to at least the same minimum standards of ethics and protection as domestic surrogacy. In this regard, the Commission notes in particular the Bill's provisions for international intermediaries and for the payment of reasonable expenses.

Acknowledging the efforts of the legislature to provide significant protections for the parties involved in the Health (Assisted Human Reproduction) Bill 2022, the Commission recommends that the State carefully examines whether those protections are capable of being implemented and/or whether they are sufficient for the reality of the market this Bill seeks to regulate.

The Commission recommends that the State examines the deterrents mandated under the recast EU Anti-Trafficking Directive - including the criminalisation of the knowing use of services of trafficking victims - and how the Health (Assisted Human Reproduction) Bill 2022 and the Criminal Law (Human Trafficking) Act will need to be harmonised.

Taking into account the complexity and novelty of the issues involved – and their importance to the parties to surrogacy and to the State's obligations to combat human exploitation - the Commission recommends that the Government allows sufficient time for the input of all relevant stakeholders to be sought and for the provisions of the Health (Assisted Human Reproduction) Bill 2022 as they relate to international surrogacy to be properly debated. The Commission would welcome an opportunity to consult with our partners in the European Union, and in Private International Law (The Hague Conference) to work towards a harmonised approach to international surrogacy in which all persons involved are protected, especially the most vulnerable in these arrangements – the surrogate mothers and the children born through surrogacy.

If the Bill is passed, the Commission makes the following observations and recommendations:

- › Given the small number of countries that will faithfully be able to meet the requirements of the Health (Assisted Human Reproduction) Bill 2022, the Commission recommends that the Government explore bi-lateral arrangements with countries that meet these

requirements. This may ensure greater protection to guard against exploitation, and will better safeguard the rights of surrogates, children born and intended parents in international surrogacy.

- › The review of how the legislation is operating will be critically important. As such, the Commission recommends that a Review Process be established before the commencement of the provision relating to international surrogacy. This review process must be fully independent, sufficiently funded, and given access to all relevant information and data. Annual interim reports, and the final report must be made public.

Recommendations Chapter 4 - The Role of Business and Migrant Employment Regulation in Preventing Trafficking: A Review of Legal Instruments

The Commission reiterates its recommendation that Seasonal Employment Permits are not introduced, or at the least that such Permits are introduced on a limited basis, while the standards are on a par with those agreed by the EU Member States. The Commission recommends that the State observes the minimum standards agreed by the EU Member States.

The Commission recommends that the State considers all the available learning and good practices from the implementation of Seasonal Workers Permits and the Seasonal Workers Directive in the other EU Member States since 2014.

The Commission recommends that the State maintains a closer synchronisation with other matters of regulation of third-country nationals' employment by participating in and opting in to legal agreements of the EU, given that they represent minimum standards that the countries are free to exceed.

The Commission reiterates its recommendation that a standalone offence is introduced in Irish law for holding a person in slavery, servitude or forced or compulsory labour.

The Commission recommends that the State moves quickly to operationalise the permits allowing for a simple change of employer.

The Commission recommends that the Employment Permit system is reformed towards greater mobility of migrant workers, for example sectoral work permits, as a means of prevention against abuse and exploitation.

The Commission reiterates its recommendation that the State considers the introduction of a specific “migrant exploitation protection permit” to enable migrant victims of exploitative employment situations to leave those situations quickly.

The Commission reiterates the recommendations proposed by the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons through reducing the demand fostering trafficking for labour exploitation be considered by the State. Measures such as, establishing civil and criminal liability for online platforms⁴² and mandating online platforms to conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks; report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission reiterates its recommendation that the State develops a research strategy to help fill knowledge gaps related to human trafficking, specifically the experiences of victims of human trafficking for the purpose of labour exploitation, in the Irish context.

The Commission reiterates its recommendation that a National Strategy/Forum on Technology and Human Trafficking is developed.

The Commission reiterates its recommendation that this Strategy/Forum should contain a roadmap to tackle the abuse of technology by traffickers for the purposes of labour exploitation, including the staffing, training and resources that will be required, the areas of online activity that will be initially targeted for attention, the research agenda that will be conducted and the legislative gaps that will be addressed.

⁴² As defined by Art 2(h) of the Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about of the exploitation. OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking (2020) [*Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools*](#). Vienna

Introduction and Policy Context



The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014. In accordance with our founding legislation, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report our views on any implications for human rights or equality.

In October 2020, we were designated Ireland's Independent National Rapporteur on the Trafficking of Human Beings. This accords with the obligation set forth in Article 19 of the European Union's Anti-Trafficking Directive,⁴³ which introduced a legally binding requirement for all European Union Member States to establish National Rapporteurs or equivalent mechanisms.

This is our third national overview report since we were appointed as National Rapporteur on the Trafficking of Human Beings and mainly focuses on the period of January–December 2023.

In line with our role as the independent National Rapporteur, this report centres on the implementation of the European Union (EU) Anti-Trafficking Directive. As with previous years, our work was made possible only through engagement and contributions by CSOs, government departments, state agencies and bodies, and crucially the survivors who participated in our consultations.

This Third Report is divided into four chapters. Chapter 1 follows the methodological approach of the First and Second reports, building on the baseline analysis established in previous years. This part provides an overview of the policy developments that have occurred during the reporting period and undertakes a detailed review of the implementation of Articles 1 to 18 of the EU Anti-Trafficking Directive. Where relevant, the commentary also includes analysis of the potential impact that the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 may have on the anti-trafficking response, once enacted. In addition, Chapter 1 also includes analysis of the proposed reforms of the recast EU Anti-Trafficking Directive and references the recently published National Action Plan ('NAP').⁴⁴

Chapters 2, 3, and 4 focus on different thematic areas, selected by the Commission for a more in-depth review - necessitated either by emerging trends and novelties in the area or by identified gaps in existing research at national level. The chapters are dedicated to: trafficking for the purpose of criminal activities; emerging forms of trafficking – focusing on exploitative surrogacy; and the role of business regulations in combatting and addressing human trafficking for labour exploitation.

⁴³ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#)

⁴⁴ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#)

Chapter 2, trafficking for the purpose of criminal activities ('TCA'), examines the phenomena as it manifests in Ireland according to the available literature. This chapter provides the reader with a better understanding of the nature and extent of TCA and the legislative and policy framework required to both combat the crime and to protect the victims. Of particular importance is the analysis of the recruitment and exploitation of children by organised criminal networks, with references to the Green Town⁴⁵ initiative. This chapter also covers the principle of non-prosecution and non-punishment of victims in Ireland for crimes committed as a direct consequence of a person having been trafficked.

Chapter 3 considers the emerging forms of trafficking with a particular focus on trafficking for the purpose of reproductive exploitation through surrogacy. The Commission has welcomed the proposal to amend the EU Anti-Trafficking Directive to expand the definition of human trafficking with 'forced marriage', 'illegal adoption' and 'exploitative surrogacy'. The chapter examines the relevant sections of the Health (Assisted Human Reproduction) Bill 2023 ('AHR Bill') pertaining to international surrogacy. The chapter discusses, *inter alia*, whether the proposed amendments are compatible with the duty to prevent and combat trafficking. Additionally, this section considers whether the procedures outlined in the Bill are meeting the desired aims aligned to combating human trafficking – to guard against exploitation of women who act as surrogates while safeguarding the rights of the child. The section concludes with a list of recommendations on measures strengthening the safeguards to prevent and combat trafficking for the purpose of exploitative surrogacy.

The final chapter, Chapter 4, looks at the role of business regulations in combatting and addressing human trafficking for labour exploitation. The overall aim of this section is to explore the regulation of third-country national employment, in particular, the protections against exploitation at EU level as they compare to the national legal framework, in light of the optional application of various EU Directives. In that regard, the chapter considers the potential utility offered by the Employment Permits Bill 2022⁴⁶, the Seasonal Workers Directive⁴⁷ and the Employers Sanction Directive⁴⁸ to further efforts to address this form of trafficking. This chapter also examines the EU's Corporate Services Due Diligence Directive ('CSDDD')⁴⁹ and the EU ban on products made with forced labour, as a framework to investigate the use of forced labour in companies' supply chains.

The report is supplemented with two appendices. [Appendix 1](#) presents in full the Commission's detailed overview (as of October 2023) of the Criminal Law (Sexual Exploitation and Human Trafficking) Bill 2023, which introduces into law a National Referral Mechanism

⁴⁵ Department of Justice (2021) [Green Town Research Project](#) [publication]

⁴⁶ [Employment Permits Act 2024](#)

⁴⁷ [Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#)

⁴⁸ [Ibid](#)

⁴⁹ [Texts adopted - Corporate Sustainability Due Diligence - Wednesday, 24 April 2024 \(europa.eu\)](#)

for the Identification and Assistance of Victims of Trafficking (NRM). This seminal piece of legislation is designed to close the legislative gap in assistance and support for victims of this crime, and to structure the collaboration of the multiple partners involved in this matter. The review containing the Commission's detailed recommendations was presented to legislators in late 2023 with a view to informing the debates in the Houses of the Oireachtas.

As usual, the Report presents an analysis of the trends in human trafficking in Ireland for the reporting period – 2023 – and the aggregate data from 2013 to 2023. The information is presented in the form of factsheets with diagrams and infographics, in [Appendix 2](#).

While each part of the Report includes a number of new recommendations, we reiterate our calls for the State to reform and strengthen the anti-trafficking response by fully implementing the Commission's repeated and fresh recommendations in full.

The Report uses interchangeably the term 'victim', 'witness' and 'survivor' according to the context.

Developments in the International and Regional Anti-Trafficking Responses

Recast EU Anti-Trafficking Directive

In December 2022, the European Commission adopted a proposal for a Directive amending the 2011 EU Anti-Trafficking Directive. The proposed new rules provide for, *inter alia*:

- › extending the definition of trafficking to explicitly include forced marriage, illegal adoption and exploitative surrogacy;
- › replacing the provision for 'safe and appropriate accommodation' of victims with 'shelters' in sufficient numbers (capacity);
- › making it a criminal offence to knowingly use the services of trafficking victims;
- › replacing the discretionary sanctions against legal persons held liable for trafficking offences with mandatory sanctions, such as exclusion from entitlement to public benefits, aid or subsidies, and temporary or permanent closure of establishments which have been used for committing the offence.

The Commission actively participated in the EU-wide review of the Directive, alongside many stakeholders in the Union, and endorses the reforms achieved. In the European Parliament, the proposal was assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The Committee on Women's Rights and Gender Equality (FEMM) and the Committee for Legal Affairs (JURI) were designated as committees for opinion. The resulting opinion of the

EU Parliament demonstrated the forward thinking that guided the negotiations prior to the agreement on the final text of the Directive, and as such deserves attention.⁵⁰

On 23rd April and 27th May 2024, the EU Parliament and the Council, respectively, adopted the final text of the recast of the EU Anti-Trafficking Directive, and Member States have two years to transpose the amended Directive.

US Trafficking in Persons Report 2023

On 24th June 2024, the US Department of State released the Annual Trafficking in Persons (TIP) Report.⁵¹ Ireland remained in Tier 2 of the US Department of State Trafficking in Persons Report 2024, which assessed the previous year, 2023. This was the third year that Ireland was placed at this level. Being designated as Tier 2 means that while progress was made and efforts are visible, Ireland did ‘not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so’.

The report welcomed the adoption of the NAP to guide national coordination against human trafficking, the opening of the first specialised shelter for women victims of trafficking, the increasing of funding for victim assistance and awareness-raising activities, increased investigations, prosecutors’ initiation of the first prosecutions for labour trafficking, and the courts convicting more traffickers under non-trafficking statutes, as well as reports of training for officials and NGOs. The report also noted areas in which efforts did not meet minimum standards. These included the lack of convictions for human trafficking offences in 2023 and instead relying on non-trafficking statutes for the prosecution of the crime. The report also noted persistent and systemic deficiencies in victim identification, referral and assistance and that the government has not yet amended the NRM, and consequently has not identified any Irish Nationals as victims; and that the government did not overhaul the current framework to provide accommodation to victims of trafficking, which leaves the majority of them with inadequate and unsuitable accommodation. The report also noted lack of training for judges and that the government has ‘never awarded restitution or compensation to any victims’.⁵²

⁵⁰ European Parliament (2023) [Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)

⁵¹ US Department of State (2024) [Trafficking in Persons Report: Ireland](#)

⁵² [Ibid](#)

EU 5th Progress Report on Trafficking

In February 2024, the Commission published a Contribution to the European Commission's 5th Progress Report on the Fight against Trafficking in Human Beings in the European Union.⁵³ The report contained a three-year analysis of the trends in human trafficking and the measures taken by Ireland to fight the crime and to protect the victims. The Commission's contribution will form part of the collective analysis of progress in the fight against trafficking in human beings. It is expected that the resulting EU-wide report will be published in autumn 2024.

European Court of Human Rights

The judgment in the case of [Krachunova v Bulgaria \(application no. 18269/18\)](#) was delivered on 28th November 2023 by the European Court of Human Rights (ECtHR).⁵⁴ The ECtHR found that Article 4 of the European Convention on Human Rights (ECHR) includes a positive obligation on the State to enable victims of human trafficking to claim compensation from their traffickers in respect of lost earnings.⁵⁵

The case essentially concerned two questions: (a) whether Article 4 of the Convention lays down a positive obligation to enable the victims of trafficking in human beings to seek compensation in respect of lost earnings from their traffickers, and (b) whether, and in what circumstances, such a positive obligation can be avoided in relation to earnings obtained by the victim through prostitution and taken away by the trafficker. This was the first time the ECtHR considered the question of compensation for victims of human trafficking as a positive obligation owed by States under Article 4 of the Convention,⁵⁶ finding that a trafficking victim had a right to seek compensation in respect of pecuniary damage from her trafficker.

The judgment in the case of [Jasutis and Simaitis v Lithuania \(applications nos. 28186/19 and 29092/19\)](#) was delivered on 12th December 2023.⁵⁷ The case concerns the applicants' complaint that their conviction on charges of trafficking in human beings had not been foreseeable and had therefore been in breach of Article 7 of the ECHR. The applicants

⁵³ IHREC (2024) [Contribution to the European Commission's 5th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#)

⁵⁴ [Krachunova v Bulgaria App no 18269/18 \(ECtHR, 28 November 2023\)](#); European Court of Human Rights (2023) '[Judgement concerning Bulgaria](#)' (28 November); European Court of Human Rights (2023) '[Trafficking victim has right to seek compensation from trafficker](#)' (28 November)

⁵⁵ The Sofia Globe (2023) '[ECHR on Bulgaria case: Trafficking victim has right to seek compensation from trafficker](#)' The Sofia Globe (28 November)

⁵⁶ [Krachunova v Bulgaria App no 18269/18 \(ECtHR, 28 November 2023\)](#). Para 161: 'In the instant case, the Court is for the first time confronted with the question of whether there is a positive obligation under Article 4 of the Convention to enable trafficking victims to claim compensation from their traffickers in respect of lost earnings'

⁵⁷ [Jasutis and Simaitis v Lithuania App nos 28186/19 and 29092/19 \(ECtHR, 12 December 2023\)](#)

were charged with trafficking offences under the Lithuanian Criminal Code. They had been convicted of recruiting and coercing women to undertake ‘web modelling’. One woman made a complaint to the police that the applicants had used threats and psychological violence to force her to show ‘clients’ her naked body, to dance striptease, to use sex toys and to do everything the ‘clients’ requested. Following an investigation, the men were convicted of trafficking offences.

The ECtHR found that the wording of Lithuanian Criminal Code, under which the applicants were charged, did not give rise to uncertainty or ambiguity, and that the interpretation of the Šiauliai Regional Court and the Supreme Court was not, at the time in question, inconsistent and did not lack the required precision. There had accordingly been no violation of Article 7 of the Convention.

Committee on the Elimination of Discrimination against Women (CEDAW)

In September 2023, we welcomed the opportunity to provide a parallel report⁵⁸ to inform the List of Issues Prior to Reporting being adopted by the Committee on the Elimination of Discrimination against Women at its 88th Pre-Sessional Working Group meeting, in advance of its forthcoming examination of Ireland’s compliance with the CEDAW.

In that report we drew particular attention to a number of thematic areas requiring priority focus during Ireland’s examination. This was informed by our Strategy Statement and ongoing engagement with civil society. While there have been positive developments since 2017, the Concluding Observations by the Committee have not seen sufficient progress. Our consistent observation, including throughout UN review processes, is that while the State publishes well-intended strategies and action plans, these do not tangibly improve rights and protections for communities in practice, due to insufficient monitoring and implementation.

In writing this report, we have reflected the Committee’s position that ‘intersectionality is a basic concept for understanding the scope of the general obligations of State parties’. On this point, the Commission notes that the recast EU Anti-Trafficking Directive introduces the concept of intersectionality in the design of victim assistance.

⁵⁸ IHREC (2023) [*Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the Committee on the Elimination of Discrimination against Women for the List of Issues Prior to Reporting on Ireland’s 8th periodic cycle*](#)

Our report considers the multiple and intersecting inequalities experienced by structurally vulnerable women throughout, and focuses on specific groups of women in the final section, in line with the Committee's thematic approach.

UN Special Rapporteur on Violence Against Women and Girls

In January 2024, IHREC made a submission to the UN Special Rapporteur's report to the Human Rights Council on 'Prostitution and violence against women and girls'.⁵⁹ The contribution was prepared from the perspective of a National Human Trafficking Rapporteur and focused on human trafficking as a form of violence against women recognised in the EU Victims of Crime Directive and the Third National Strategy on Domestic, Sexual and Gender-Based Violence (DSGBV). In 2022 and 2023, among the victims of trafficking in Ireland were a number of girls identified as suspected victims of human trafficking for sexual exploitation. The resulting report of the UN Special Rapporteur called on States to prevent the cof anti-trafficking policies to avoid addressing the issue of prostitution as a form of violence against women.⁶⁰

Directive on Combating Violence Against Women

While not trafficking-specific, it is also important to note that the European Parliament adopted the first ever EU rules on combatting violence against women and domestic violence on 24th April 2024. This followed significant negotiations during the reporting period of this report. The Directive requires Member States to prohibit, *inter alia*, female genital mutilation and forced marriage, and cybercrimes such as cyber flashing, cyber stalking and incitement to violence online.⁶¹ Due to the gender-based nature of trafficking, in particular trafficking for sexual exploitation, coupled with the significantly increased role played by technology in trafficking and exploitation, this Directive may further bolster efforts to tackle trafficking both in Ireland and across the EU.

⁵⁹ IHREC (2024) [Contribution to the Report of the UN Special Rapporteur on Violence Against Women and Girls](#)

⁶⁰ UN (2024) [Prostitution and Violence against Women and Girls: Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem](#)

⁶¹ European Parliament (2023) [amendments by the European Parliament* to the Commission proposal DIRECTIVE \(EU\) 2024/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ... on combating violence against women and domestic violence; Directive \(EU\) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence](#)

Corporate Sustainability Due Diligence Directive⁶²

In 2024, the Council formally adopted a Directive that indirectly forms part of the overall picture of combatting human trafficking. It introduces obligations on large companies regarding the adverse impacts of their activities on human rights and environmental protection. It also lays down the liabilities linked to these obligations. The rules concern not only the companies' operations, but also the activities of their subsidiaries, and those of their business partners along the companies' chain of activities (for further details see [Chapter 4](#)).

EU Ban on Products Made with Forced Labour

In March 2024, the Parliament and Council reached a provisional agreement on new rules that ban products made with forced labour from the EU market. The new regulation would create a framework for enforcing this ban, including through investigations, new IT solutions and cooperation with other authorities and countries.⁶³ While it does not directly refer to human trafficking, the Commission considers this ban of relevance to the overall fight against this crime (for further details see [Chapter 4](#)).

Implementation of the Anti-Trafficking Directive

In our First and Second Evaluation Reports we undertook a comprehensive examination of the State's actions in respect of obligations set forth in the EU Anti-Trafficking Directive – considered article by article. Chapter 1 follows that methodological approach and offers a number of new recommendations on how the State can improve the response to trafficking, and better support victims/survivors. To give the reader a rounded view of the status of implementation of the Directive, analysis of each article will include:

- › an overview of changes that have occurred during 2023, if any;
- › expected impact of the proposed amended text of the EU Anti-Trafficking Directive;
- › cross-reference with relevant actions contained in the third NAP;
- › updated recommendations.

Prior to analysis of the individual articles, the chapter presents the relevant national developments that have shaped the anti-trafficking response in the reporting period.

⁶² [Texts adopted - Corporate Sustainability Due Diligence - Wednesday, 24 April 2024 \(europa.eu\)](#)

⁶³ European Parliament (2024) [Prohibiting products made with forced labour on the Union market European Parliament legislative resolution of 23 April 2024 on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market \(COM\(2022\)0453 – C9-0307/2022 – 2022/0269\(COD\)\)](#)

Chapter 1

Implementation of the EU Anti-Trafficking Directive



Introduction

Chapter 1 contains a comprehensive analysis of the current status of the implementation of the EU Anti-Trafficking Directive in Ireland. It opens with a review of the major national developments shaping the implementation, which is followed by an in-depth Article by Article analysis flagging positive achievements and approaches, and making recommendations for improvement. The Chapter also contains direct quotations from survivors (victims of trafficking who have been receiving assistance or who have participated in the criminal justice process) as well as anonymised case studies prepared with the kind cooperation of CSOs and State Agencies. The analysis builds on the Commission's Second National Evaluation Report and it takes into consideration relevant provisions of the recast EU Anti-Trafficking Directive (pending transposition) and commitments expressed in the third NAP.

National Developments

There have been a number of advancements during the reporting year that improve the anti-trafficking response. Particularly positive developments that the Commission identifies are:

1. the publication by Government of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023;
2. the release of the Third National Action Plan to prevent and combat Trafficking;
3. increased training and education by State agencies, and;
4. the opening of Rosa's Place – the first gender-specific accommodation for victims of trafficking (pilot).

We greatly welcome these developments as they have the potential to significantly improve the overall anti-trafficking response, and crucially will improve the necessary protections and supports victims/survivors need in order to recover from what they have endured.

Criminal Law (Sexual Offences and Human Trafficking) Bill 2023

Perhaps the most significant development during the reporting period was the publication of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023.⁶⁴ Building on our analysis of the General Scheme of the Bill⁶⁵ in 2022, we undertook a thorough review of the fully developed Bill, and published it in October 2023.⁶⁶ The Commission presented its

⁶⁴ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023 \(as initiated\)](#)

⁶⁵ IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

⁶⁶ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

findings to the Minister for Justice and members of the Oireachtas at an A.V. Room briefing session on 18 October 2023 (EU Anti-Trafficking Day). The proposed Bill marks an important and significant step in ensuring a victim-centred NRM in law; a mechanism that includes multidisciplinary approach and cooperation between State bodies and independent expert organisations. The Commission welcomes the significant advances in the Bill since the publication of the General Scheme of the Bill, achieved through consultations and debates, in particular:

- › The inclusion of an independent appeal mechanism;
- › The provisions for adults with reduced capacity to consent, and for children;
- › The inclusion of presumption of minority;
- › The removal of the test of ‘credibility’ in the assessment of the identification of victims of trafficking;
- › The removal of references to direct provision as a centre for services.

Although discussed in detail under Article 11(4), it is worth highlighting, at this juncture, the crucial areas of the Bill we raised as requiring amendment. First is the missed opportunity to include assistance measures in primary legislation. Second is the failure to provide clear immigration rules for victims of trafficking who are third-country nationals. The Commission has always maintained that this is an essential and key form of assistance to victims who need it. Third, the Bill lacks child victim-specific provisions for identification and assistance. It would also appear that the opportunity to bring clarity into the area of age assessment for victims of trafficking, including those who do not seek international protection, has been missed in the Bill. In the fourth and final place, the opportunity to provide statutory protection of victims from prosecution has not been taken. The Commission has strongly recommended the Bill be amended to include a statutory defence for victims of trafficking where they have committed crimes as a direct consequence of being trafficked.

Third National Action Plan to Prevent and Combat Human Trafficking 2023–2027

In November 2023, we welcomed the publication by the Department of Justice of the NAP. In particular, we welcomed the concrete timings, responsibilities, and evaluation processes committed to in the Plan. It was also encouraging to see greater alignment between the NAP and the Third National Strategy on Domestic, Sexual and Gender-Based Violence in the area of demand reduction and safe accommodation for victims. We also welcomed the alignment of the NAP with other national documents on anti-racism, national minorities, migration and the strategy on women and girls. As National Rapporteur, we especially welcomed the NAP commitment to:

- › engage with survivors of human trafficking;

- › develop a training framework for those in contact with trafficking victims;
- › engage with the findings of the Compensation Review of the Law Reform Commission; and
- › the explicit mention of the commitment to provide for the expungement of convictions for prostitution.

However, we highlighted the need to address some gaps that remain in order to better protect and support victims. We called for the NAP to be properly budgeted for, and for a clear allocation of resources for the commitments contained within it. We flagged the absence of reference to age assessments for unaccompanied and separated minors. We also raised concern that the NAP does not include reference to the current amendment process of the EU Anti-Trafficking Directive – the upcoming provisions of which will require implementation in Ireland during implementation of the NAP. The Directive includes the amended definition to include forced marriage, illegal adoption and exploitative surrogacy on the list of forms of exploitation, and provisions to:

- (a) consider criminal offences that are committed or facilitated by means of information and communication technologies as involving aggravating factors;
- (b) strengthen sanctions of legal persons by introducing two mandatory regimes (standard and aggravated offences); and
- (c) introduce mandatory penalties for knowing use of services of victims of trafficking for all forms of exploitation by “natural” persons and “legal” persons.

Beyond these important trafficking-specific developments there have also been advances in other areas that directly or indirectly shape the overall effort to combat and address human trafficking. These include, although are not limited to:

- › The enactment of the Domestic, Sexual and Gender-Based Violence Agency Act 2023,⁶⁷ which, *inter alia*, established An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe, or Cuan. This is a statutory agency under the remit of the Department of Justice dedicated to tackling and reducing domestic, sexual and gender-based violence.
- › The enactment of the Criminal Justice (Engagement of Children in Criminal Activity) Act 2024⁶⁸ (for further information see analysis of [Article 4](#) and [Chapter 2](#)).
- › The ongoing Law Reform Commission (‘LRC’) public consultation on their project on compensating the victims of crime.⁶⁹ The European Commission evaluation of a

⁶⁷ [The Domestic, Sexual and Gender-Based Violence Agency Act 2023](#)

⁶⁸ [The Criminal Justice \(Engagement of Children in Criminal Activity\) Act 2024](#)

⁶⁹ [Law Reform Commission \(2019\) Fifth Programme of Law Reform](#)

proposal to amend the EU Anti-Trafficking Directive⁷⁰ identifies Ireland as one of the two EU Member States that does not offer compensation for pain and suffering that negatively impacts the chances of victims of trafficking (for further information see analysis of [Article 17](#)).

- › The Independent Review of the Civil Legal Aid Scheme calling for an expansion of the scheme to provide for greater legal representation for victims of trafficking (for further information see our analysis of [Article 12](#)).
- › Progression of the Employment Permits Bill 2023⁷¹ through the Oireachtas – expressing the need for employment mobility to reduce the risk of exploitation (for further information see [Chapter 4](#)).
- › The introduction of the Private Members’ Labour Exploitation and Trafficking (Auditing of Supply Chains) Bill⁷² to the Oireachtas (for further information see [Chapter 4](#)).
- › The Health (Assisted Human Reproduction) Bill 2022⁷³ (for further information see [Chapter 3](#)).

Multiannual Trends on Human Trafficking

The data trends have remained mostly consistent over the last eleven years (2013-2023). Ireland remains primarily a destination for trafficking in persons. In total, 566 people have been identified as victims of trafficking since 2013. The most frequently detected forms of trafficking in Ireland continue to be trafficking for the purpose of sexual exploitation (‘TSE’), trafficking for the purpose of labour exploitation (‘TLE’), and trafficking for the purpose of criminal activities (‘TCA’). Human trafficking continues to be a highly gendered and racial act; more women than men are trafficked in Ireland, and almost all identified victims are of a migrant background. Africa and the European Economic Area (‘EEA’) and, to a lesser, extent Asia, Europe (except the EEA), and Latin America, are the most common regions of origin for victims of trafficking in Ireland. Most victims of TSE are from the African continent, while the EEA region is significant in terms of TLE. TCA mainly affects people from Asia and the EEA.

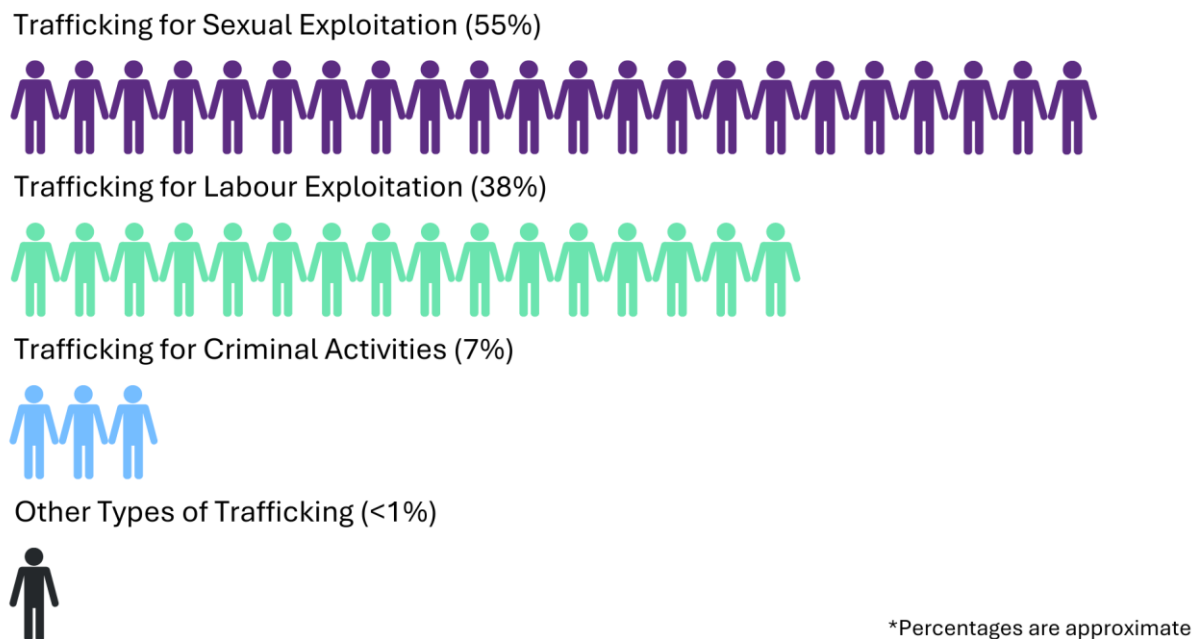
⁷⁰ European Commission (2022) Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim, p. 40

⁷¹ [Employment Permits Act 2024](#)

⁷² [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021](#)

⁷³ [Health \(Assisted Human Reproduction\) Bill 2022, as initiated](#)

Figure 1: Victims of Human Trafficking 2013-2023



Multiannual data from the National Referral Mechanism for the identification and assistance of victims of trafficking shows that TSE accounts for 55% of all identified cases, followed by TLE (38% of all cases), and TCA (7% of all cases).

Over the last three years from 2021 to 2023, there were 139 victims of trafficking identified in Ireland, which is up by 12% compared to the previous three-year period (2019-2021).⁷⁴

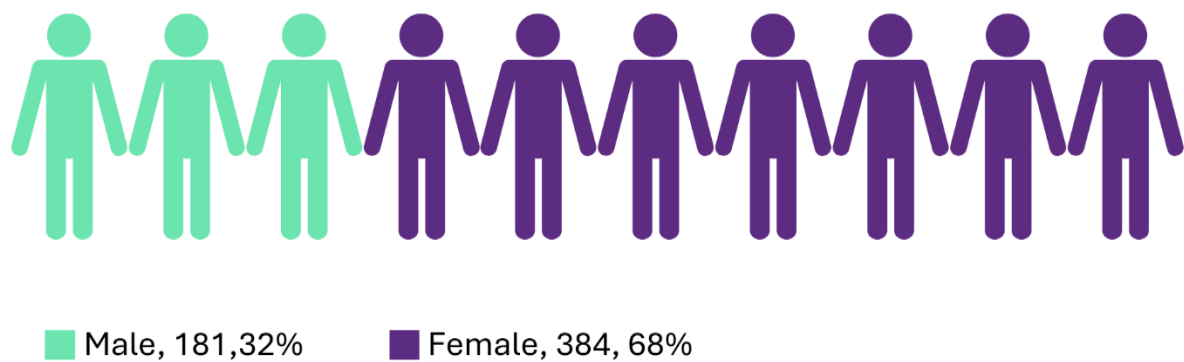
The total number of victims of trafficking in 2023 represents a 20% increase from 2021, which is a significant increase that has occurred within a relatively short period of time. This also demonstrates that the capacity to identify victims of trafficking in Ireland has increased.

Over the last three years, TSE and TLE show a slight increasing and decreasing trend, respectively. The more notable change has occurred in respect of TCA, which has risen from 0 (in 2021) to 9 (in 2023) victims of trafficking. TCA represents 17% of all victims of trafficking identified in 2023, which is significant. We have included a special overview of TCA in [Chapter 2](#) of this Report.

The national multiannual official data demonstrates the highly gendered aspect of human trafficking, which proves to be a consistent trend in Ireland (as well as overall in the EU). Overall, more women (68%) fall victim of human trafficking than men (32%). Over the years, there has been only one case of a transgender victim of human trafficking officially recorded.

⁷⁴ Three annual periods are a timeframe for assessment of human trafficking trends in the European Union.

Figure 2: Victims of Trafficking by gender 2013-2023



The gender dimension of human trafficking is particularly evident in TSE, where over 96% of victims are women. TLE is also gendered, but to a lesser extent, and it affects more men (69%).

Figure 3: Trafficking for Labour Exploitation 2013-2023, by Gender

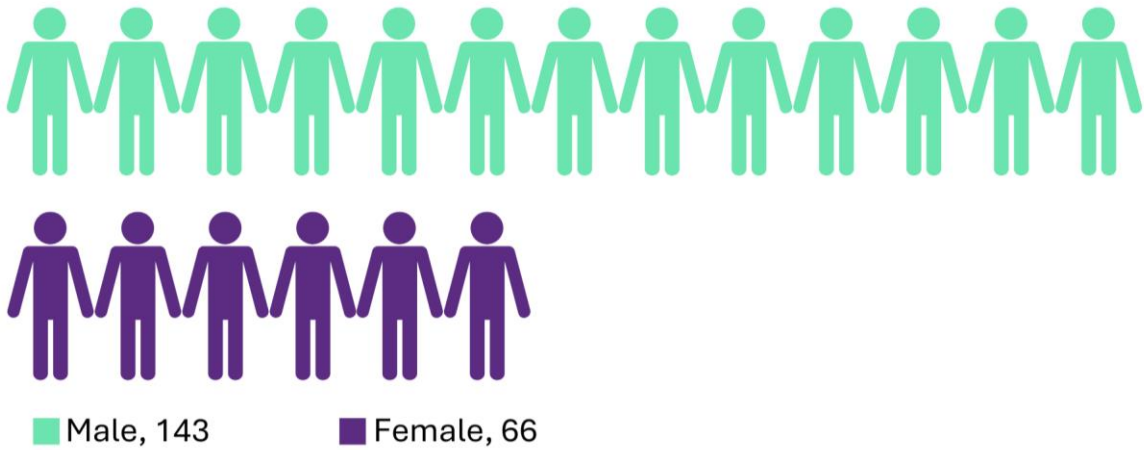
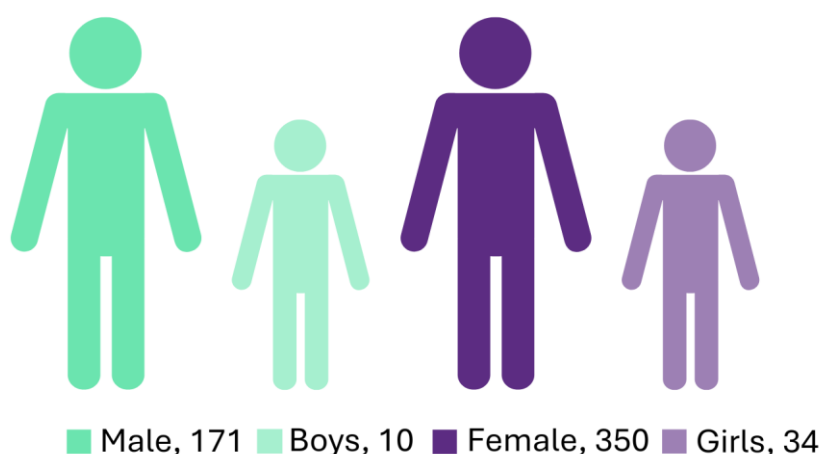


Figure 4: Trafficking for Sexual Exploitation 2013-2023, by Gender



Children represent 8% of all victims of trafficking in Ireland. 44 children have been officially recognised as victims of trafficking in Ireland since 2013 (among a total of 566 victims identified). This is significantly less than the most recent EU average (15%).⁷⁵ Similarly to the gender demographics in adults, the data shows that more girls than boys are trafficked at 9% and 5% of all victims identified, respectively. 77% of child victims of trafficking identified are girls. No child victims of trafficking were identified in 2020 and 2021. In 2022 and 2023, 5 child victims of trafficking were identified each year as suspected victims of trafficking – 8 girls and 2 boys. The majority of these were victims of TSE (6), followed by TCA (3), and TLE (1).

Figure 5: Victims of Trafficking by gender and age, 2013-2023



⁷⁵ Directorate-General for Migration and Home Affairs (2024) '[Newly released data show an increase of trafficking in human beings](#)' European Commission (28 February)

Data shows that prostitution is a high-risk environment for sexual exploitation in Ireland. The EU identifies prostitution, escort agencies, the pornography industry, massage parlours, and bars and nightclubs as high-risk environments for sexual exploitation. Agriculture, construction, seasonal work, food processing, hospitality, carwashes, and cleaning and domestic work are some of the high-risk sectors identified for TLE. Further information on trends and statistics is provided in [Appendix 2](#).

Subject Matter – Focus on Gender and Disability (Article 1)

Original Directive Article 1 Subject matter	Recast Directive Article 1 Subject matter
This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.	Unchanged

Original Directive Recital	Recast Directive Recital
(3) This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The ‘push’ and ‘pull’ factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.	(3) Directive 2011/36/EU of the European Parliament and the Council ⁽³⁾ is the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework for addressing trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen the prevention of trafficking, the assistance provided to victims, as well as their protection, taking into account gender, disability and children’s perspectives, and using a victim-centred approach.
	(17) Persons with disabilities, in particular women and children, are at an increased risk of becoming victims of trafficking. Member States should consider the specific needs of victims of trafficking with disabilities when providing them with support measures.

This Article establishes that the Directive is the main EU legal instrument on preventing and combatting trafficking in human beings and protecting its victims. It sets out a comprehensive framework to address human trafficking by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions on practical assistance, protection in the criminal justice system, and prevention, adopting a victim-centred approach.

With reference to this Article, the Commission draws attention to the extended list of matters that have to be taken into consideration when organising the anti-trafficking response. Essentially, these represent a set of victim-profile features that have to shape the recovery and integration of victims and their protection as witnesses. These features include: the gender of victims; possible disability; a child-sensitive perspective and a victim-centred approach.

In considering the obligations of the State under this Article, we will look in more detail at the first two features – gender and disability – while noting that the review of Articles 12 to 16 later in this Report will incorporate considerations regarding victim- and child-centred approaches.

Gender Specificity

The gender dimension of human trafficking has been well documented to date in specialised literature. At EU level, this was reflected in reports and position papers published by the European Commission, the European Parliament, the European Institute for Gender Equality (EIGE) and the European Economic and Social Committee, to mention a few.⁷⁶

In its recent report on Gender Equality, the European Commission described the EU approach to the gendered phenomenon of human trafficking in the following way:

‘Trafficking for sexual exploitation is a form of gender-based violence rooted in gender inequalities. While it can also affect men, women and children are particularly vulnerable to this type of trafficking. According to the most recent data, 68.4% of

⁷⁶ Walby, S., et al (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#); European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Empty on the EU Strategy on Combating Trafficking in Human Beings 2021-2025](#), COM (2021) 171 final; Charlton D. and Yonkova N. (2016) [Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU. European Implementation Assessment](#). European Parliament; Yonkova N. et al (2017) [Protecting Victims: An Analysis of the Anti-Trafficking Directive from the Perspective of a Victim of Gender-Based Violence](#); European Economic and Social Committee and European Committee of the Regions (2023) [Proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims – Opinion of the European Economic and Social Committee and the Committee of the Regions](#)

registered victims of trafficking in the EU were women or girls. Trafficking for sexual exploitation is a form of violence against women, and therefore a reason why the victims of trafficking are covered by the provisions of the proposal for a Directive on combating violence against women and domestic violence which apply in addition to the EU Anti-Trafficking Directive.’⁷⁷

The Directive itself ‘recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes’, requiring that ‘assistance and support measures should also be gender-specific where appropriate’ (in Recital 3).

In our First and Second Evaluation Reports we described in detail the multiple gendered manifestations of the crime of human trafficking. They include but are not limited to:

- › firstly, the statistical prevalence of women among all victims and particularly among victims of sexual exploitation;
- › secondly, the nature of harms, which are often gendered and linked to the use of the body within gender-based violence, as well as the increased resources required for female victims’ recovery due to the greater need for healthcare; and
- › thirdly, the novel forms of trafficking targeting and affecting female victims in the context of forced marriages and as surrogate mothers.⁷⁸

Over the years, the Commission has called for the explicit inclusion of novel gender-specific forms of trafficking in the definition of the crime and welcomes the reform of the Directive in this respect. In particular, we note that forced marriages, illegal adoption and exploitation of surrogacy have now been included in the expanded EU definition of human trafficking, in the recast Anti-Trafficking Directive (see Table 1).⁷⁹

⁷⁷ European Commission (2023) [2023 Report on Gender Equality in the EU](#), p. 9

⁷⁸ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁷⁹ European Parliament (2024) [European Parliament legislative resolution of 23 April 2024 on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims \(COM\(2022\)0732 – C9-0431/2022 – 2022/0426\(COD\)\)](#)

Table 1: Definition of Human Trafficking in European Union Law (Expanded)

Original Directive	Recast Directive
<p>[ACTION]</p> <p>The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons,</p>	<p>[ACTION]</p> <p>The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons,</p>
<p>[MEANS]</p> <p>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,</p>	<p>[MEANS]</p> <p>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,</p>
<p>[EXPLOITATION]</p> <p>for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs</p>	<p>[EXPLOITATION]</p> <p>for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the exploitation of surrogacy, of forced marriage, or of illegal adoption.</p>

The latest EU statistical data from February 2023 shows that 63% of registered victims of trafficking in human beings were women or girls. According to official data in Ireland, the proportion of female victims is, on average, 73%,⁸⁰ which is corroborated by independent studies on the ‘hidden’ data.⁸¹ National data for 2023 shows that the proportion of identified female victims has nearly doubled since 2021. In 2023 alone, female victims represented

⁸⁰ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁸¹ Breen J. M., et al. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland. Limerick: Mary Immaculate College](#), p. 83

almost 80% of identified victims. This was understandably accompanied by a slight decrease in the proportion of male victims identified. Based on the profile of identified victims, trafficking for sexual exploitation remains the most gendered type of human trafficking exploitation, affecting over 97% of female victims. By comparison, trafficking for labour exploitation is more evenly distributed in terms of gender, with 53% male victims and 47% female, over the last three years.⁸²

Bearing in mind the overwhelming evidence of the gendered character of human trafficking, the Commission reiterates its positive stance on the adoption, in 2022, of a National Strategy on Domestic, Sexual and Gender-Based Violence (‘DSGBV’) that includes and draws pragmatic parallels with human trafficking as a particular form of violence against women.⁸³ In an encouraging move, the State launched a new NAP, which includes specific commitments for synchronicity with the aforementioned National Strategy on DSGBV.

The Commission welcomes the enhanced provisions regarding victim accommodation in the recast Directive. Moving away from the open-to-interpretation language of ‘safe and appropriate accommodation’, Article 11 now explicitly requires ‘shelters’ for victims. Last year, gender-specific assistance in Ireland received an important boost in the form of a small, specialised shelter for female victims, which is aligned with the long-standing recommendations of the Commission on this matter. While a shelter for eight victims is insufficient and must be multiplied in order to meet the needs in Ireland, this is a relevant starting point which we acknowledge and commend. With regard to increasing the response infrastructure for victims of domestic and sexual violence in line with the requirements of the Istanbul Convention, the Commission would point out that gender-based violence services have to be complementary and inclusive for victims of such violence, which includes trafficking in human beings.

Due to the disproportionate representation of women and girls among victims, the Commission supports a gender-specific approach to anti-trafficking plans and actions in prevention, but also, essentially, in assistance and support for victims.

⁸² IHREC (2024) [Contribution to the European Commission’s 5th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#)

⁸³ Government of Ireland (2022) [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#), p. 4, 14, 30, 38, 46, 47

‘The guard officer in charge of the case was also supportive. She really helped me through the process. I was able to connect with her on a personal level and I felt more comfortable around her. The first time the officers came they wanted to get my things from the hotel room it was a male officer, the person in charge was a man and I wasn’t able to talk to him that much. But when she came it was different. I was able to open up to her and tell her everything. I think it helped that it was a female.’

Survivor

The Commission welcomes the recognition of human trafficking as a form of gender-based violence in the National Strategy on DSGBV. The Commission welcomes the clear links between the national policy documents on human trafficking and on DSGBV as a means of mutual reinforcement, better coordination and increased efficiency in resourcing these related areas.

The Commission reiterates its recommendation that the State provides sufficient funding to Gender-Based Violence organisations to enable them to participate in the delivery of trafficking-specific services to victims who have experienced domestic, sexual or gender-based violence, and particularly for victims of sexual exploitation.

Disabled Victims of Trafficking

There appears to be a consensus in the specialist literature that the international agreements on human trafficking have paid insufficient attention to disabled victims, their special circumstances and their heightened risk of human trafficking.⁸⁴ An exception is CEDAW General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, which makes specific references to trafficking of women and girls with disabilities.⁸⁵ In the original EU Anti-Trafficking Directive of 2011, disability is also included as

⁸⁴ The European Disability Forum is an umbrella organisation of persons with disabilities that promotes the rights of over 100 million persons with disabilities in the European Union: www.edf-feph.org

⁸⁵ CEDAW (2020) [General recommendation No. 38 \(2020\) on trafficking in women and girls in the context of global migration](#)

a potential exacerbating factor guiding the prosecution of trafficking crimes committed against particularly vulnerable victims.⁸⁶ It is similarly flagged as a consideration guiding the assessment of individual needs of victims of trafficking in the criminal justice process,⁸⁷ and as a factor giving rise to ‘special needs’ under Article 11(7), which is dedicated to assistance.

The Commission welcomes the greater regard for disabled victims in the recast Directive of 2024 compared to the original. This is expressed primarily in the inclusion of additional reference to disability in Recitals 3 and 17 (Purpose of the Directive), Article 11 (Assistance and Support) and Article 18b (Training). These provisions require attention to be paid to disabled victims in delivering assistance and support, in their protection in the criminal justice process, and in the design of prevention and training actions.

There are a number of strengthened provisions in the recast Directive that will benefit the response to disabled victims/survivors. Article 11(1) mandates Member States to provide specialised assistance through a disability-sensitive approach, before, during, and for an appropriate period of time after, the criminal proceedings. Article 18b (Training) obliges the State to promote and offer training to professionals likely to come into contact with victims of trafficking – including police officers, court staff, assistance services, labour inspectors and social and health workers. Such training, the Article stipulates, has to be disability-sensitive (in addition to gender-specific, victim-centred, child-sensitive and human rights-based) with a view to enabling those professionals to prevent and combat trafficking in human beings and avoid re-victimisation, and to detect, identify, assist, support and protect the victims.

It must be noted that the EU Statistical Reports on human trafficking to date do not present any data on disability. There is a general admission in EU reports that there are currently important gaps in the data collection on the number of disabled victims of human trafficking. Still, in its evaluation of the Directive the European Commission concludes:

‘Available data shows that the number of trafficked victims with disabilities is rising. Trends include trafficking of persons with physical or visual impairments for the purpose of forced begging, as visible disabilities have a stronger impact on public sympathy.’⁸⁸

The existing gaps in the area of data collection are set to be filled by the recast Directive mandating annual disaggregated reporting by EU Member States (Article 19b). Generally, all victims of human trafficking are extremely vulnerable individuals. Yet, there are those among

⁸⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Recital 12

⁸⁷ [Ibid.](#), Recital 20

⁸⁸ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 36

them that have profound vulnerabilities due to their personal circumstances that give rise to special assistance needs. Article 11(7) of the Directive requires Member States to ‘attend to victims with special needs, where those needs derive, in particular from their health, a disability, a mental or psychological disorder they have, or a serious form of psychological or sexual violence they have suffered’. The Directive, however, does not explicitly require Member States to ensure that prevention materials are accessible (e.g. through braille, sign languages or easy-to-read) or that shelters are physically accessible. According to the EU, among the areas hindering the full effectiveness of the Directive in responding to victims with special needs is the limited attention to, or understanding of, the needs of disabled victims of human trafficking.⁸⁹

The national human trafficking data is not better equipped to capture the nexus of trafficking and disability than that of the EU. Over the years, there have been isolated anecdotal reports of disabled victims. They have not been captured in a data disaggregated manner in the national reports, which will have to change after implementation of the recast Anti-Trafficking Directive.

The unofficial reports that the Commission collated from support organisations in 2023 suggested that their teams have encountered cases of disabilities among victims of human trafficking over the years. There are reports of a case involving a visually impaired female victim who required the assistance of a guide dog, which was provided. Another CSO recounts several cases of mobility issues, conditions of a ‘bad hip’ and temporary immobility which were linked to infections in the pelvic area. Cognitive issues, and disabilities that affect learning, are quite common, according to service providers. Support organisations reported that the individual care planning that they conduct includes questions about disabilities. Issues raised are approached on a case-by-case basis, and reportedly, treated with sympathy and cooperation by State services. A more recent report by Depaul Ireland on the nexus of homelessness and victims of trafficking included reports of interlocutors who have worked with victims of trafficking with a learning disability and with an acquired brain injury.⁹⁰

Concerns were raised regarding the issue of victims of human trafficking with undiagnosed psychosocial and intellectual disabilities, where the problem only becomes evident amid human trafficking detection/investigation. In these cases, the ability of the victim to give informed consent to obtain assistance and to participate in investigations is linked to their more general capacity to consent, including within the definition of human trafficking. The State-certified process for assessment of both adults and children involves very long waiting times. The current issues within the health system which Irish resident people experience

⁸⁹ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 37

⁹⁰ The Passage and Depaul (2024) [An Overview of Homelessness and Human Trafficking in Dublin](#)

also affect migrant people, including victims of human trafficking, possibly in an exacerbated way.

Despite the lack of data, or the indication of the very few cases currently officially identified, the intersection between human trafficking and disability is valid and pertinent. It would appear that the legal framework in Ireland contains provisions exceeding the minimum requirement of the EU Anti-Trafficking Directive by rendering the issue of consent irrelevant regarding the commission of offences against people with mental disability. The prosecution does not need to prove deception or other means of coercion in such cases because Section 4(3) of the Criminal Law (Human Trafficking) Act 2008 provides:

‘A person who trafficks a person who is mentally impaired for the purposes of the exploitation of the person shall be guilty of an offence.’

In this section ‘mentally impaired’ means ‘suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation’, as provided by Section 5(4) of the Criminal Law (Sexual Offences) Act 1993.

To date, the Commission has no information on whether or not this provision has been tested in court, as to date there have been only two successful prosecutions against adult traffickers for sexual exploitation.⁹¹

Several other matters of importance to the legal and policy framework are worth mentioning in this section dedicated to disabled victims.

According to the proposed new National Referral Mechanism, the process of identification will require ‘an application’ by the victim to any of the Competent Authorities (or Trusted Partners) to be identified as a victim of human trafficking. The conferring of agency on victims in the process of identification has been welcomed. However, the Commission pointed out that the Bill must recognise and provide for individuals who do not have the capacity to be their own agent, for example, children or adults with diminished capacity to consent. In its pre-legislative observations on the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022, the Commission recommended that the Bill include express provisions for the identification of victims who lack capacity such as children or adults with diminished capacity.’⁹²

⁹¹ McCárthaigh S. (2021) [‘Two women given jail sentences in excess of five years for human trafficking offences’](#), *The Journal* (28 September)

⁹² IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

The Commission is delighted that this recommendation has been taken on board and that the ensuing draft Bill, published in 2023, contained provisions for victims with diminished ability to consent in the process of identification.

The current NAP, published in 2023, contains only a general reference to disability, in the form of commitment to non-discrimination in the provision of support to victims on the grounds of: ‘gender, age, race, disability, religion, sex, sexuality, occupation, immigration status, family status, membership of the Roma or Travelling community or status as a victim of trafficking or the type of exploitation’.⁹³

In conclusion, it must be noted that the response to disabled victims of trafficking is not solely regulated by anti-trafficking law but falls within the wider framework of human rights and the rights of people with disabilities. The Commission acknowledges the efforts at ratification of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which the State ratified in 2018. The Optional Protocol creates additional mechanisms for monitoring and evaluation under the UNCRPD, which the Programme for Government has committed to. In March 2024, the Minister for Children, Equality, Disability, Integration and Youth, announced his intention to establish an Inter-Departmental Group on ratification of the Protocol, with a view to energising the work that is necessary for ratification of this important treaty.⁹⁴

The Commission recommends that the State engages with the early transposition of the recast EU Anti-Trafficking Directive, which benefits potential victims of trafficking with disabilities.

The Commission recommends in particular, that the State:

- › develops a human trafficking data system that includes the possibility to account for disabled victims/survivors; and,
- › mandates all State agencies and bodies involved in the response to human trafficking (especially the State Departments and Agencies designated as Competent Authorities under the revised National Referral Mechanism) to take steps to ensure that their respective data systems capture disaggregated data on human trafficking, including data on disabilities.

⁹³ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 19

⁹⁴ Department of Children, Equality, Disability, Integration and Youth (2024) [‘Inter-Departmental Group to accelerate work to ratify the Optional Protocol to the UNCRPD’](#) (5 March)

The Commission recommends that the State fully implements the rights of persons with disabilities contained in the United Nations Convention on the Rights of Persons with Disabilities.

The Commission recommends that the State consider the particular needs of victims of human trafficking with disabilities in their anti-human trafficking response, including but not limited to, ensuring services (such as shelters) for victims are fully accessible to disabled people and designed considering diverse needs, in line with Article 9 of the UN Convention on the Rights of Persons with Disabilities.

Offences Concerning Trafficking in Human Beings (Article 2)

Original Directive Article 2 Offences concerning trafficking in human beings	Recast Directive Article 2 Offences concerning trafficking in human beings
1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.	Unchanged
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.	Unchanged
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.	3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the exploitation of surrogacy, of forced marriage, or of illegal adoption.
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.	Unchanged

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.	5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used. This paragraph shall not apply to the exploitation of surrogacy as referred to in paragraph 3, unless the surrogate mother is a child.
6. For the purpose of this Directive, ‘child’ shall mean any person below 18 years of age.	Unchanged

During the reporting period of this report, Ireland has remained bound by the original EU Anti-Trafficking Directive. There has been no material change to the substantive laws criminalising trafficking in persons in Ireland during the reporting period.⁹⁵ While these laws are what can be termed ‘trafficking-specific’, there are a number of other offences that can, given their nature, be referred to as trafficking-related offences.⁹⁶

There continues to be a blurring of the definition of what constitutes child trafficking for sexual exploitation, and child sexual exploitation *simpliciter* following the Court of Appeal decision in *People (DPP) v LS & PS*,⁹⁷ which effectively held that Section 3(2) of the Child Trafficking and Pornography Act 1998 includes a standalone offence of sexual exploitation of a child without a requirement that the circumstances surrounding the commission of the offence involved

⁹⁵ What constitutes human trafficking is provided for in the Criminal Law (Human Trafficking) Act 2008, supplemented by the Child Trafficking and Pornography Act 1998 and refers to trafficking for the purposes of sexual exploitation, forced labour and organ removal. This Human Trafficking Act has been amended through the Criminal Law (Human Trafficking) (Amendment) Act 2013 which, *inter alia*, broadened the scope of the definition of ‘exploitation’ to include forcing a person to engage in criminal activity for financial gain, and expands the definition of ‘labour exploitation’ to include forcing a person to beg. See [Criminal Law \(Human Trafficking\) \(Amendment\) Act 2013](#), s.1(a): ‘Beg’ has the same meaning as in Section 1(2) of the Criminal Justice (Public Order) Act 2011’. Furthermore, the Act defines ‘forced labour’ as ‘work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily’, this accords with the definition set out in the International Labour Organization (ILO) [Convention No. 29 of 1930 on Forced or Compulsory Labour](#).

⁹⁶ Other examples of trafficking-related offences might include: Criminal Justice (Smuggling of Persons) Act 2021, soliciting s. 7 Criminal Law (Sexual Offences) Act 1993; organisation of prostitution s. 9 Criminal Law (Sexual Offences) Act 1993; Living on earnings of prostitution s. 10 Criminal Law (Sexual Offences) Act 1993; Brothel keeping s. 11 Criminal Law (Sexual Offences) Act 1993; Begging s. 2 Criminal Justice (Public Order) Act 2011; Directing or organising begging s. 5 Criminal Justice (Public Order) Act 2011; Living off the proceeds of begging s. 6 Criminal Justice (Public Order) Act 2011. Also, there are a number of administrative laws that may be directly (or indirectly) related to trafficking, but which are not criminal offences such as Employment Rights legislation.

⁹⁷ [2021] IECA 308

trafficking. However, the inverse is not the case; there is no standalone offence of trafficking in Section 3(2) without an element of sexual exploitation.

We continue to recognise that although some offences committed under Section 3(2) of the 1998 Act do not involve an element of trafficking, this does not exclude the possibility that some offences may include an element of trafficking. As such, there is a real risk that the reclassification of data collection since the 2017 Department of Justice Annual Report may obscure the true extent of child trafficking in the State.

The Commission recommends that to achieve definitional clarity, the Criminal Law (Human Trafficking) Act 2008 (as amended) be amended to include the offence of trafficking of children for sexual exploitation, with all necessary consequential amendments to the 1998 Act.

Trafficking-Related Offences

While trafficking-specific offences have remained unchanged, there was a significant trafficking-related law that made its way through the Oireachtas in 2023: the Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023 was initiated by the Government in January 2023 and the Bill was signed into law on 11th March 2024.⁹⁸

In October 2021, we provided detailed observations and recommendations on the General Scheme of the Criminal Justice (Exploitation of Children in the Commission of Offences) Bill 2020.⁹⁹ The legislative addition of the new offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 provides for two new offences targeting adults who procure children to commit criminal offences.

- › Section 2(1): An adult who, knowing that a person is a child or being reckless as to whether a person who is a child (a) compels, coerces or directs the child, or (b) deceives the child, for the purpose of causing that child to engage in criminal activity, shall be guilty of an offence.
- › Section 2(2): An adult who, knowing that a person is a child or being reckless as to whether a person who is a child is a child (a) induces or invites, or (b) aids, abets, counsels or procures, the child for the purpose of causing that child to engage in criminal activity, shall be guilty of an offence.

The definition of an adult in the Act is anyone over 18 years of age and penalties include a five-year sentence on indictment. Of course, human trafficking can be punished with a maximum

⁹⁸ [Criminal Justice \(Engagement of Children in Criminal Activity\) Act 2024](#)

⁹⁹ IHREC (2021) [Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill 2020](#)

of life imprisonment in Ireland, which means that the Act provides a lower level of punishment for forced criminality of a child than either an adult or a child under the 2008 (amended) Trafficking Act. The Act also fails to provide support for victims of this form of exploitation. It is limited to powers to prosecute (for more information please refer to [Chapter 2](#)).

This type of offence is an inchoate offence that includes the common law offences of inciting another to commit a crime by persuasion or intimidation or conspiracy, a crime where two or more people with a conscious understanding of a common design plan a crime. While conspiracy should be easier to prove than an attempt at committing an offence, practical reality indicates it is not. The Criminal Law Act 1997 repealed the Accessories and Abettors Act 1861 and established a new offence in Section 7 for someone who aids, abets, counsels or procures the commission of an indictable offence and provides for that person to be treated as a principal offender. Despite this, there has been little apparent use made of this provision and it appears little has changed since Peter Charleton discussed the practical difficulties of prosecuting inchoate offences over a generation ago.¹⁰⁰

This legislation will face possible challenges. For instance, in many cases, the offence will be directed at family members of the child. In other words, the principal witness and offender live together or at least have immediate and frequent access to each other. It may be expecting more than normal human behaviour that whatever statement was initially gathered would remain unaltered until the trial. The legislation does, however, provide for the power of arrest and detention for the purpose of questioning under Section 6 of the Criminal Justice Act 1984. Moreover, it provides for offences of procuring the child to engage in any ‘criminal activity’, so even minor offences are included. Additionally, the child does not have to actually have committed any offence or even intended to do so. Therefore, this represents a useful tool in the investigation of criminal grooming of children, which does not exist at present. There may be additional benefits from the perspective of visible action being taken in a political context, but essentially this legislation is specifically directed at the criminal networks disruption and provides little to nothing in the way of care or victim support, as this is a ‘victimless crime’, not in nature but by design. Even though the State has designated resources to support the communities affected by this problem, it remains to be seen if this approach would benefit migrant children, in addition to resident children, considering the European manifestation of the crime.

Other criminal offences that are particularly relevant – although not trafficking-specific – are contained in the Criminal Law (Sexual Offences) Act 2017. The 2017 Act includes a number of offences that aim to, *inter alia*, combat the sexual exploitation and sexual abuse of children, including new offences relating to child sexual grooming and to strengthening the response to

¹⁰⁰ Charleton, McDermott, and Bolger (1999) *Criminal Law*; McAuley and McCutcheon (2000) *Criminal Liability*

tackling child sexual abuse material (termed ‘child pornography’ in the Act).¹⁰¹ The 2017 Act also includes a new definition of ‘sexual exploitation’ in relation to a child.¹⁰² Importantly, the Act also criminalises the purchase of sexual services,¹⁰³ including a specific offence of paying for sexual activity with a trafficked person.¹⁰⁴ The Act also introduces new provisions regarding the giving of evidence by victims in sexual offence trials.¹⁰⁵

The intersection between the various legislation on child-specific trafficking-related offences – such as those contained in the Criminal Law (Engagement of Children in Criminal Activity) Act 2024, the Criminal Law (Sexual Offences) Act 2017, and the Child Trafficking and Pornography Act 1998 (as amended by the 2017 Act) – creates a complex array of offences that, arguably, may assist in furthering a trafficking investigation. However, there is also a possibility that having so many offences creates confusion, and child victims of trafficking may not be identified as such. For this reason, it is important the criminal law paradigm is not the sole lens through which victims of trafficking, in particular child victims, are identified as being potential/suspected victims of trafficking under the National Referral Mechanism.

The Commission emphasises the important need to develop a trafficking-specific identification system not solely framed through the criminal law paradigm. This is necessary given the wide range of trafficking-related offences and the increased burdens imposed by the

¹⁰¹ Criminal Law (Sexual Offences) Act 2017 Section 3 – Obtaining, providing etc. a child for purpose of sexual exploitation; Section 4 – Invitation etc. to sexual touching. Section 5 – Sexual activity in presence of child; Section 6 – Causing child to watch sexual activity; Section 7 – Meeting child for purpose of sexual exploitation; Section 8 – Use of information and communication technology to facilitate sexual exploitation of child; Section 11 amends the Child Trafficking and Pornography Act 1998 to include – Organising etc. child prostitution or production of child pornography; Section 12 amends the Child Trafficking and Pornography Act 1998 to include – Producing, distributing, etc. child pornography; Section 13 amends the Child Trafficking and Pornography Act 1998 to include – Participation of child in pornographic performance; Section 14 amends the Child Trafficking and Pornography Act 1998 to include – Possession of child pornography.

¹⁰² Criminal Law (Sexual Offences) Act 2017 Section 10 amends Section 3 of Child Trafficking and Pornography Act 1998 inserting the definition – ‘sexual exploitation’ means, in relation to a child— (a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography, (b) the prostitution of the child or the use of the child for the production of child pornography, (c) the commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child, causing another person to commit such an offence against the child, or inviting, inducing or coercing the child to commit such an offence against another person, (d) inducing or coercing the child to engage or participate in any sexual, indecent or obscene act, (e) inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child, or (f) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child.

¹⁰³ Criminal Law (Sexual Offences) Act 2017 Section 25 amends the Criminal Law (Sexual Offences) Act 1993 – payment etc. for sexual activity with prostitute.

¹⁰⁴ Criminal Law (Sexual Offences) Act 2017 Section 26 amends Section 5 of Criminal Law (Human Trafficking) Act 2008 by inserting (2A) A person who pays, gives, offers or promises to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person shall be guilty of an offence.

¹⁰⁵ Criminal Law (Sexual Offences) Act 2017 Part 6.

criminal law, which are considerably lower in victim identification. This is important for all victims, but in particular for child victims of trafficking.

The Commission reiterates its recommendation that the interplay between the offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) 2024 Act and the trafficking offences outlined in the 2008 Trafficking Act (as amended) are recognised as forming part of a continuum of the exploitation of children for criminal gain and not as wholly distinct and separate offences. Irrespective of the offences charged, the children involved must receive protection, assistance and non-punishment for the offences they were forced to commit, either as identified victims of trafficking and/or as victims of crime.

The Commission recommends that the State ensures that children of migrant background (irrespective of their status and guardianship situation), also benefit from the preventive programmes and resources invested by the State.

Expanded Definition of Human Trafficking (Recast Anti-Trafficking Directive)

The non-exhaustive definition contained in the Anti-Trafficking Directive 2011/36/EU (Article 2(3)) read in conjunction with Recital 11 states: ‘The definition also covers trafficking in human beings for the purpose ... [of] other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.’ It is clear this broad definition of human trafficking has not been meaningfully implemented by Member States, which have instead adopted the narrower definition that includes only the specified forms of exploitation – sexual exploitation, labour exploitation and criminal exploitation. This reluctance to adopt the broad definition was the impetus for expanding the definition in the recast Directive to also specifically include the exploitation of surrogacy, of forced marriage or of illegal adoption, to the extent that all the criteria constituting those offences are fulfilled.¹⁰⁶ This was deemed necessary owing to the gravity of these practices, and in order to tackle the steady increase in the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation.¹⁰⁷

¹⁰⁶ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 1(3)

¹⁰⁷ Council of the EU (2024) [‘Fight against human trafficking: Council and European Parliament strike deal to strengthen rules’](#) (23 January)

The recast Directive makes clear that as regards trafficking for the exploitation of surrogacy, the Directive targets those who coerce or deceive women into acting as surrogate mothers. Furthermore, the amendments are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or to those of offences related thereto other than trafficking, where provided for in national or international law. Those rules are also without prejudice to the national rules on surrogacy, including criminal law or family law.¹⁰⁸

To avoid infringement proceedings¹⁰⁹ against Ireland, the State must transpose the Directive by 2026. As the transposition of the recast Directive will require legislative amendment to include these additional forms of exploitation, it is important that laws made do not contravene the intent and purpose of the Directive.¹¹⁰ Of particular interest in this regard is the obligation on Member States to punish the ‘exploitation of surrogacy’, as per the recast Directive.

The explicit inclusion of ‘exploitation of surrogacy’ in the recast Directive is particularly significant as legislation to permit domestic and international surrogacy is being debated in the Health (Assisted Human Reproduction) Bill 2022. The Bill (as initiated) will, for the first time, regulate domestic surrogacy arrangements. Moreover, the insertion at the Third Stage of the legislative process of a provision for Assisted Human Reproduction Regulatory Authority (AHRRA) pre-authorisation, is perhaps more significant when read alongside the expanded definition of trafficking within the recast Directive.

Specifically, the recast Directive not only requires Member States to take measures to punish the ‘exploitation of surrogacy’ in Article 2, but Article 3 requires that the inchoate offences of incitement, aiding and abetting, and attempt to commit offences named in Article 2 must also be punishable.¹¹¹ Additionally, Article 18(a) requires Member States to ensure that intentional acts on the part of individuals or legal persons to use the services of a trafficked person are punishable by effective, proportionate and dissuasive penalties. Article 5 requires Member States to take the ‘necessary measures to ensure that legal persons can be held liable for the offences referred to in Article 2, Article 3 and Article 18a(1) committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person’.

¹⁰⁸ European Parliament (2024) [European Parliament legislative resolution of 23 April 2024 on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims \(COM\(2022\)0732 – C9-0431/2022 – 2022/0426\(COD\)\)](#)

¹⁰⁹ Summaries of EU Legislation: [Infringement of EU law](#)

¹¹⁰ Van Duyn v Home Office (1974) C-41/74

¹¹¹ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 3

As per the doctrine of indirect effect, or consistent interpretation of EU law, national authorities are obliged to interpret domestic legislation in conformity with the recast Directive.¹¹² This obligation is not confined solely to the transposition measures of the Directive, but to all domestic law.¹¹³ In light of this important matter, the Commission wrote to the Minister for Health to express concern that the proposed amendments, namely the insertion of Part 8 to regulate international surrogacy ‘would extend the legislation to a practice not permitted by any other EU State, in an area marred with increasing human trafficking’. Furthermore, we expressed our apprehension that such an approach may ‘thwart other countries’ efforts to protect their own citizens from trafficking and reproductive exploitation’.¹¹⁴

As of May 2024, the Minister had not responded to this initial correspondence. Following the adoption of the recast Directive by the European Parliament and the European Council in April 2024, we wrote again to draw the Minister’s attention to the recast Directive and the expanded definition, which includes ‘exploitation of surrogacy’, noting, in particular, that:

‘the substantial amendments proposed at Committee Stage essentially have the scale and complexity of a stand-alone Bill. In light of this, the Commission is concerned that there is limited time for analysis and comprehensive legislative scrutiny of the Bill.’

Lastly, we asked that the Department outline the ‘actions ... taken to ensure that this Bill is adequately aligned with the new obligations on the State relating to victims of trafficking for the purposes of surrogacy contained in the revised Anti-Trafficking Directive’.¹¹⁵

Given the importance of amending Irish law to include ‘exploitation of surrogacy’ and its compatibility with the Health (Assisted Human Reproduction) Bill, this matter is addressed in detail in [Chapter 3](#) of the Report. While the above analysis relates to surrogacy, it is equally important to examine in detail how the other forms of exploitation contained in the recast Directive, namely illegal adoption and forced marriage, are fully transposed into Irish law. In this regard, we have noted that the NAP makes no reference to the recast Directive – a serious omission which must be addressed.¹¹⁶

¹¹² Von Colson and Elisabeth Kamman v Land Nordrhein-Westfalen, (1984) ECR 1891.

¹¹³ Bernhard Pfeiffer and others v Deutsches Rotes Kreuz, Kreisverband Waldshut eV, [2004] ECR I-8835.

¹¹⁴ [Irish Human Rights and Equality Commission Letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee, dated 31 January 2024, RE: Questions regarding the proposals to regulate international surrogacy amid EU-wide concerns for reproductive exploitation and trafficking](#)

¹¹⁵ [Irish Human Rights and Equality Commission Letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee, dated 11 April 2024, RE: Revised EU Anti-Trafficking Directive Obligations to Prevent and Combat Exploitation of Surrogacy and Part 8 of the \(Amended\) Assisted Human Reproduction Bill – International Surrogacy.](#)

¹¹⁶ IHREC (2023) ‘[National Rapporteur calls for funding to match ambition of new National Action Plan on Human Trafficking](#)’ (6 November)

The Commission recommends that detailed analysis of the relevant national legislation is undertaken by the State to ensure that transposition of the recast Directive fully meets the objective and purpose of this new Directive including its expanded definitions. Furthermore, that the Third National Action Plan is amended to reflect the actions needed, and that all legislation enacted during the transposition period fully respect the doctrine of consistent interpretation of EU law.

Incitement, Aiding and Abetting, and Attempt (Article 3)

Original Directive Article 3 Incitement, aiding and abetting and attempt	Recast Directive Article 3 Incitement, aiding and abetting and attempt
Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.	Unchanged

Just as there have been no material changes to the offences outlined in Article 2, similarly there have been no changes to the associated inchoate offences outlined in Article 3. The 2008 Act criminalises the specific offence of attempting to traffick a person. This applies to both adult and child victims in respect of the offences set out in Sections 2, 3 and 4 of the 2008 Act.¹¹⁷ In addition, aiding, abetting, counselling and procuring such acts are also criminalised by Section 7(1) of the Criminal Law Act 1997. The inchoate liability offences of incitement and conspiracy to traffick are covered by the general common law.¹¹⁸ Furthermore, the 2008 Act specifically allows for extra-jurisdictional application of these offences in addition to offences of attempt to commit trafficking.¹¹⁹

In relation to child victims, the Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 (discussed above) provides for two new offences, which, in many ways could be viewed as coming within Article 3, in addition to Article 2. The Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 aims to target adults who procure children to commit criminal offences. As such, where a person (a) compels, coerces or directs the child, or (b) deceives the child,¹²⁰ or where a person (a) induces or invites, or (b) aids, abets, counsels or

¹¹⁷ S.2(4); S.3(4); S.4(6) Criminal Law (Human Trafficking) Act 2008 (amended)

¹¹⁸ Such offences are known as secondary liability offences, which are distinguished from Inchoate Liability offences, see Law Reform Commission (2010) [Report Inchoate Offence](#)

¹¹⁹ Similarly, such acts committed outside the State against Irish citizens or a person ordinarily resident in the State are also criminalised. Further, where an Irish citizen or a person ordinarily resident in Ireland conspires with or incites, outside the State, another person to commit such acts outside the State they are guilty of an offence. Where a person conspires with or incites another person, whether or not they are inside or outside Ireland, to commit such acts against an Irish citizen outside the State, they are guilty of an offence. Additionally, where a person conspires with or incites, outside the State, an Irish national or person who is ordinarily resident in Ireland, to commit such acts outside the State, they are guilty of an offence. The Section also criminalises attempts to commit any of these offences.

¹²⁰ Section 2(1)

procures¹²¹ a child for the purpose of causing that child to engage in criminal activity, they shall be guilty of an offence.

To the best of our knowledge, there has been one charge of conspiracy to commit human trafficking contrary to Section 7(6) Criminal Law (Human Trafficking) Act 2008, with two ongoing charges for the same offence.¹²²

While Article 3 of the recast Directive has remained unchanged, the expanded definition in Article 2 will require that there are corresponding offences of inciting, aiding and abetting, and attempting to commit the newer forms of exploitation, e.g. illegal adoption, forced marriage and exploitation of surrogacy.

¹²¹ Section 2(2)

¹²² Source: Department of Justice 2024

Penalties (Article 4)

Original Directive Article 4 Penalties	Recast Directive Article 4 Penalties
1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.	Unchanged.
<p>2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <p>a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</p> <p>b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24/08/2008 on the fight against organised crime (1);</p> <p>c) deliberately or by gross negligence endangered the life of the victim; or</p> <p>d) was committed by use of serious violence or has caused particularly serious harm to the victim.</p>	<p>2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <p>a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</p> <p>b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24/08/2008 on the fight against organised crime (1);</p> <p>c) deliberately or by gross negligence endangered the life of the victim; or</p> <p>d) was committed by use of serious violence or has caused particularly serious harm to the victim, including physical or psychological harm.';</p>
3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.	3. Member States shall take the necessary measures to ensure that, where they relate to an offence referred to in Article 2, the following, in accordance with relevant provisions of the national law, are regarded as aggravating circumstances:

	<p>a) the fact that the offence was committed by public officials in the performance of their duties;</p> <p>b) the fact that the perpetrator facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of a sexual nature involving the victim.</p>
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.	Unchanged

In accordance with Article 4 of the Directive, the Criminal Law (Human Trafficking) Act 2008 (as amended) provides for dissuasive penalties of up to life imprisonment and, at the discretion of the court, an unlimited fine for all forms of exploitation covered by the Act.¹²³ The Criminal Law (Trafficking) (Amendment) Act 2013 increased the penalties where trafficking offences are committed by public officials, making this an aggravating factor at sentencing, which accords with Article 4(4) of the Directive.

It is important to note that as there have been no successful trafficking prosecutions in 2023, it is impossible to comment on any potential patterns arising in sentencing. While there has been no substantive change in the penalties associated with trafficking offences during the reporting period, the Court of Appeal decision in the cases of *DPP v Edosa & Enoghaghase*¹²⁴ provided helpful guidance as to the headline sentences to be applied in trafficking cases. In those decisions, the Court held that in the most serious and egregious trafficking cases, the maximum headline sentence should be set in the range 18–20 years, and that headline sentences cannot be less than 10 years.

¹²³ Trafficking of a child (excluding sexual exploitation) – up to life imprisonment – S. 2(5)(a); Trafficking of a child for sexual exploitation – up to life imprisonment – S.3(a)(1)(a); Trafficking a person for exploitation – up to life imprisonment – S. 4(7); In line with Article 4(3) of the Anti-Trafficking Directive trafficking offence committed by a public official is an aggravating factor – S. 4A

¹²⁴ [2023] IECA 38

These sentences are in line with both the current and the recast Directive, which require a penalty of at least 5 years of imprisonment,¹²⁵ and of at least 10 years where the victim is particularly vulnerable, which must include at least child victims; where the offence was committed as part of organised crime; where the offence was committed deliberately or by gross negligence and endangered the life of the victim.¹²⁶ Importantly, the recast Directive strengthens the sentence applied where the offence ‘(d) was committed by use of serious violence or has caused particularly serious harm to the victim, including physical or psychological harm’.

As noted above, Irish law recognises offences that have been committed by a public official in the performance of their duties as an aggravating factor.¹²⁷ In the recast Directive, this is required by Article 4(3)(a), along with the requirement that where the ‘perpetrator facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of a sexual nature involving the victim’, this too must be regarded as aggravating circumstances.¹²⁸

The trafficking-specific legislation does not itself capture the new requirements of Article 4(3)(b) of the recast Directive. However, the offences referred to, namely ‘the dissemination of images or videos or similar material of a sexual nature involving the victim’, could fall under the Harassment, Harmful Communications and Related Offences Act 2020. Yet, treating the fact that such an offence was committed against a person who had been trafficked as an aggravating factor would require legislative amendment. Helpfully, the 2020 Act provides a useful example of how this may be achieved. Section 11(a) of the 2020 Act inserted Sections 40(5)(a) and (aa) amending the Domestic Violence Act 2018 where the relationship between the defendant and victim is an aggravating factor in sentencing for certain offences, including offences contained in the 2020 Act.

¹²⁵ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#) and [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 4 (1)

¹²⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#) and [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 4(2)(a), (b), (c)

¹²⁷ Sections 2 and 3, Criminal Law (Human Trafficking) (Amendment) Act 2013

¹²⁸ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 4(3)(b)

The Commission recommends that work is undertaken by the State to examine the most effective way of ensuring that where a perpetrator of trafficking has facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of a sexual nature involving the victim, that such circumstances be regarded as aggravating factors in sentencing.

It is important to remember that overall the approach taken by the recast Directive defines minimum standards, which may turn out to be insufficient to discourage the ICT-assisted exploitation of people and human trafficking. The constant utilisation of the internet at all stages of the crime of human trafficking merits consideration of a range of standalone offences targeting the behaviour of multiple players in the ICT activity – both private persons and companies. This is necessary in a context where it is clear the EU Digital Services Act would not directly address human trafficking. The oversight, scrutiny and sanctions are limited to legal persons (companies) and therefore may not be directly applicable to human trafficking investigations and prosecutions. Further consideration of this aspect is included in the review of Article 6 pertaining to responsibility of legal persons below.

The Commission recommends that the State use every available avenue to address technology-facilitated trafficking through penalties that exceed the minimum requirements of the recast Directive, for example, by making the use of internet-based tools in the commission of the crime of human trafficking an aggravated offence.

The Commission reiterates its recommendation that the proposal of the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons and on reducing the demand that fosters trafficking for sexual exploitation is considered by the State. Specifically, the OSCE has identified the following measures:

1. Criminalising the creation and dissemination of explicit material from trafficking victims.
2. Establishing civil and criminal liability for online platforms, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about the exploitation.
3. Mandating online platforms to:
 - a. Implement age and consent verification mechanisms for individuals depicted in sexually explicit content;
 - b. Create content-removal-request mechanisms for non-consensual, sexually-explicit materials;

- c. Conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks;
- d. Report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission reiterates its recommendations on addressing the online dimension of trafficking contained in the Second Evaluation Report that:¹²⁹

- › the State develops extensive public awareness and educational programmes for young people, especially girls, to highlight the risks on social platforms of being groomed and recruited into the sex trade;
- › national State-led campaigns are developed, targeted at demand, in particular, addressing young men as potential buyers;
- › An Garda Síochána are resourced to allow for the monitoring of prostitution advertising websites to identify vulnerability, control, organising and trafficking;
- › An Garda Síochána develops specific law enforcement measures to disrupt the business model and profits of prostitution advertising websites;
- › the Department of Justice develops a long-term legal and enforcement framework for prosecuting sites such as Escort Ireland for advertising the sale of controlled and trafficked women and minors and for profiting from the prostitution of others;
- › in the light of the war on Ukraine, trends in the marketplace are monitored, paying particular attention to increases in advertisements for Ukrainian, East European/Slavic or ‘new’ persons selling sex; increases of content related to Ukrainian/Eastern European/Slavic women on pornographic websites; and increases in online searches for Ukrainian pornography or ‘escorts’, and Ukrainian women or girls for sex/marriage/dates;
- › sex buyers’ review forums are monitored by law enforcement, NGOs, and academics in order to identify trends related to sexual exploitation;
- › specialist services are resourced to meet the needs of women and provide pathways and support for exiting the sex trade;

¹²⁹ Irish Human Rights and Equality Commission (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 240-241

- › the Garda National Protective Services Bureau are resourced to ensure that it can continue to tackle organised crime in the sex trade, to prosecute buyers and to protect women and girls who are being sexually exploited;
- › the Department of Justice, as National Coordinator, develops, in collaboration with other experts, detailed guidance on how the current legislation is applicable to the online dimension of human trafficking for sexual exploitation;
- › the Government procures wide and comprehensive research on the online dimension of human trafficking for sexual exploitation in Ireland, including an extensive analysis of data contained in online environments available for traffickers, from prostitution advertising websites such as Escort Ireland to social media platforms;
- › the capacity and knowledge of those responsible for investigating cases of prostitution and trafficking for sexual exploitation be increased, through the inclusion of the latest technologies;¹³⁰
- › the National Coordinator develops and chairs a Forum to examine ways to disrupt demand and combat technology facilitated trafficking. This Forum must be multi-disciplinary, bringing together technology experts, law enforcement, legal experts, data analysts, social scientists, health professionals and NGOs;
- › Ireland examines ways to use its unique position as EU headquarters for the biggest social media companies to enforce minimum standards to protect users against exploitation and human trafficking; and
- › legislative reforms that have been effective in disrupting the operations of prostitution advertising websites in other jurisdictions – e.g. France, US, Sweden are examined to see how they are disrupting the market.

It is welcome to see steps being taken towards becoming a party to the Budapest Convention on Cybercrime, which can facilitate collaboration with relevant countries on trafficking technology facilitated for sexual exploitation.

¹³⁰ The GNSB team has secured a place for an ICT/digital content officer to be recruited in 2024, which is very practical and necessary in light of the increased use of internet technologies within the sex trade and in general in human trafficking. The

Liability of Legal Persons (Article 5)

Original Directive Article 5 Liability of legal persons	Recast Directive Article 5 Liability of legal persons
<p>1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <p>(a) a power of representation of the legal person;</p> <p>(b) an authority to take decisions on behalf of the legal person; or</p> <p>(c) an authority to exercise control within the legal person.</p>	<p>1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Article 2, Article 3 and Article 18a(1) committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <p>(a) a power of representation of the legal person;</p> <p>(b) an authority to take decisions on behalf of the legal person; or</p> <p>(c) an authority to exercise control within the legal person.</p>
<p>2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.</p>	<p>2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Article 2, Article 3 and Article 18a(1) for the benefit of that legal person by a person under its authority.</p>
<p>3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.</p>	<p>3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of, inciters to, or accessories to the offences referred to in Article 2, Article 3 and Article 18a(1).</p>
<p>4. For the purpose of this Directive, 'legal person' shall mean any entity having</p>	<p>Unchanged</p>

legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

The situation regarding holding legal persons liable for their part in human trafficking continues to remain unchanged and arguably insufficient in Ireland.¹³¹ Article 5 of the Directive provides for human trafficking offences perpetrated by, for the benefit of, or under the supervision (or negligence) of legal persons or entities (for example companies), as distinct and in addition to possible criminal proceedings against individual traffickers.¹³² In Ireland, offences by legal persons are provided for in Section 6 of the Criminal Justice (Human Trafficking) Act 2008.¹³³ If it is proven that an offence has been committed by the consent or connivance of, or is attributable to any neglect on the part of, any person, such as a director, manager, secretary, officer or ‘person holding themselves out as a person acting in any of those capacities’, that person will also be guilty of an offence. The maximum penalty is life imprisonment and/or a fine. A custodial sentence has no effect on a body corporate and so a monetary fine is the criminal sanction available under Irish law.¹³⁴ The body corporate is capable of being convicted of any of the offences as set out in the Criminal Justice (Human Trafficking) Act 2008.¹³⁵ As such, the Irish legislation creates the possibility of secondary liability for an officer of the body corporate where there has been ‘neglect on behalf of any person’, and if the body corporate is convicted of an offence.¹³⁶ The recast Directive will require legislative review and possible/potential amendments in order to incorporate the offences of the knowing use of services of trafficking victims by legal persons.

¹³¹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 72

¹³² IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 56

¹³³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 72

¹³⁴ [Ibid](#)

¹³⁵ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 56

¹³⁶ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 72

Sanctions on Legal Persons (Article 6)

Original Directive Article 6 Sanctions on legal persons	Recast Directive Article 6 Sanctions on legal persons
<p>Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:</p> <ul style="list-style-type: none"> (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) judicial winding-up; (e) temporary or permanent closure of establishments which have been used for committing the offence. 	<p>1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is punishable by effective, proportionate and dissuasive criminal or non-criminal sanctions or measures.</p>
	<p>2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held liable pursuant to Article 5(1) or (2) for the offences referred to in Article 2, Article 3 and Article 18a(1) shall include criminal or non-criminal fines, and may include other criminal or non-criminal sanctions or measures, such as:</p> <ul style="list-style-type: none"> a) exclusion from entitlement to public benefits or aid; b) exclusion from access to public funding, including tender procedures, grants, concessions and licences;

- c) temporary or permanent disqualification from the practice of business activities;
- d) withdrawal of permits and authorisations to pursue activities that resulted in the relevant offence;
- e) placing under judicial supervision;
- f) judicial winding-up;
- g) closure of establishments used for committing the offence;
- (h) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Article 6 of the Directive sets out the available penalties that may apply against legal persons.¹³⁷ These penalties *shall* include criminal or non-criminal fines and *may* include five other optional sanctions. In Ireland, offences by legal persons or bodies corporate are provided for in Section 6 of the Criminal Justice (Human Trafficking) Act 2008.¹³⁸ Article 6 of the Directive requires criminal and non-criminal sanctions for legal persons, as against Section 6 of the 2008 Act, which sets out only a criminal offence.¹³⁹ There is no express provision in the 2008 Act for the winding-up of the establishments/companies that have been used for committing the offence.¹⁴⁰ However, such acts may fall to be considered within the ‘circumstances in which a company may be wound up by the court’ set out in Section 569 of the Companies Act 2014.¹⁴¹

It remains the case that there is no provision in Irish law for ‘judicial supervision’ or temporary or permanent disqualification from the practice of commercial activities – save in the context

¹³⁷ [Ibid](#)

¹³⁸ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 56

¹³⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 73

¹⁴⁰ [Ibid](#)

¹⁴¹ Companies Act 2014, S. 569(1), (e) and (g)

of a winding-up of a company, where the director can be disqualified in certain circumstances.¹⁴² In relation to the ‘exclusion from entitlement to public benefits or aid’, in December 2018, the National Office of Government Procurement published an information note entitled ‘Incorporating Social Considerations into Public Procurement for All Public Sector Bodies’, in which mandatory exclusion from public contracts of those convicted of human trafficking was highlighted.¹⁴³ This also highlighted the need to consider supply chain risks.¹⁴⁴

Importantly, ‘the Irish authorities have [previously] indicated that as part of recent investigations into human trafficking for the purpose of labour exploitation, An Garda Síochána has interviewed corporate office holders connected to recruitment processes to establish the level of awareness, if any, of exploitative practices taking place within supply chains’.¹⁴⁵ In response, the Council of Europe’s monitoring body Group of Experts on Action against Trafficking in Human Beings (‘GRETA’) urged Ireland to:

‘... [keep] under review the application of the legal provisions concerning corporate liability for THB [trafficking in human beings] with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive’.¹⁴⁶

The Directive on Corporate Sustainability Due Diligence¹⁴⁷ and the Regulation prohibiting products of forced labour in the EU¹⁴⁸ have the potential to significantly bolster anti-trafficking prevention. On 24th May 2024, following weeks of delays and negotiations, a new compromised text of the Corporate Sustainability Due Diligence Directive was formally adopted by the Council of Ministers. On 23rd April 2024, the EU Parliament adopted the Regulation to ban products made by forced labour from the EU market. The Corporate Sustainability Due Diligence Directive and the Regulation prohibiting products of forced labour in the EU will be further explored in [Chapter 4](#) of this Report.

¹⁴² IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 73

¹⁴³ Source: The Department of Justice 2023

¹⁴⁴ Ibid

¹⁴⁵ GRETA (2017) [Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), para. 198

¹⁴⁶ Ibid

¹⁴⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859Text with EEA relevance EU

¹⁴⁸ European Parliament (2024) [Prohibiting products made with forced labour on the Union market European Parliament legislative resolution of 23 April 2024 on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market \(COM\(2022\)0453 – C9-0307/2022 – 2022/0269\(COD\)\)](#)

It remains the case that legislation has not been enacted by the Government to criminalise the use of services which are the object of labour exploitation or to disrupt the supply chains.¹⁴⁹ There is no update in relation to the Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021, which is currently at Committee Stage.

The Bill seeks:

‘to provide for transparent reporting by undertakings in relation to the risk of labour exploitation and human trafficking occurring in their supply chains or in any part of their business and of the steps taken by them to ensure such activities do not take place; and to provide for connected matters.’¹⁵⁰

Under this Bill, Irish businesses would be required to report annually on the measures taken to guarantee products are free of human trafficking (including exploitation of children).¹⁵¹ There is no overarching legal or regulatory regime to make due diligence and reporting on human rights and labour rights for businesses mandatory in Ireland.¹⁵² Under the proposed Section 3 (transparency in supply chains), the Minister can make regulations requiring businesses with a prescribed turnover to publish a labour exploitation and trafficking statement.¹⁵³ This statement may include information about:

- › the undertaking's structure;
- › its business and supply chains;
- › its policies on labour exploitation and trafficking;
- › its due diligence processes on labour exploitation and trafficking in its business and supply chains;
- › the parts of its business and supply chains where there is a risk of labour exploitation and trafficking taking place and the steps it has taken to assess and manage this risk;
- › its effectiveness in ensuring labour exploitation and trafficking is not taking place in its businesses or supply chains;

¹⁴⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 76

¹⁵⁰ Houses of the Oireachtas Dáil Éireann Debates (2021) [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021: First Stage](#) (1 April 2021)

¹⁵¹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 74

¹⁵² Houses of the Oireachtas Dáil Éireann Debates (2023) [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021: Second Stage](#) (28 September 2023)

¹⁵³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 74

- › measures against such performance indicators as it considers appropriate; and the training about labour exploitation and trafficking available to staff.¹⁵⁴

The Bill enables the Minister to issue guidelines on the duties imposed on undertakings by this measure and requires the Minister to publish any such guidelines on the Minister's website. The guidelines may include further provision about the kind of information which may be included in a labour exploitation and trafficking statement. An undertaking that contravenes regulations under the legislation will be guilty of a summary offence and liable to a fine. This is a measure that is not available in some of the legislative provisions elsewhere.¹⁵⁵

We continue to consider this development an area of particular interest. We note that the new EU Strategy for Combatting Trafficking in Human Beings 2021–2025 has identified measures to disrupt the business model of human trafficking as a priority.¹⁵⁶ One of the actions of the NAP is to continue to promote the UN Guiding Principles on Business and Human Rights as outlined in the National Plan on Business and Human Rights (2017–2020)¹⁵⁷ (which by now is out of date).¹⁵⁸

We previously recommended¹⁵⁹ that the State conduct a comprehensive rights-led revision of the State's procurement practices in the wider context of the UN Guiding Principles on Business and Human Rights and the State's National Action Plan on Business and Human Rights¹⁶⁰ (which is by now out of date), as well as in the context of its obligations under Section 42 of the Irish Human Rights and Equality Commission Act 2014.¹⁶¹

In strengthening prevention of human trafficking, Articles 5 and 6 of the Directive must apply to the Information and Communication Technology businesses (ICT), where companies are sometimes complicit in the exploitation and trafficking of persons. The Commission dedicated a chapter on the use of information and communication technologies in trafficking for sexual exploitation in Ireland in the Second National Evaluation Report. In this regard, we

¹⁵⁴ Houses of the Oireachtas Dáil Éireann Debates (2023) [Labour Exploitation and Trafficking \(Audit of Supply Chains Bill 2021: Second Stage\)](#) (28 September 2023)

¹⁵⁵ [Ibid](#)

¹⁵⁶ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025](#), p. 7.

¹⁵⁷ Department of Foreign Affairs (2017) [National Plan on Business and Human Rights 2017–2020](#)

¹⁵⁸ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 1.7

¹⁵⁹ IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#), p. 16

¹⁶⁰ Department of Foreign Affairs (2017) [National Plan on Business and Human Rights 2017–2020](#)

¹⁶¹ Irish Human Rights and Equality Commission Act 2014, s.42 (1) establishes that public bodies, in the performance of their functions, are required under this section to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights. For further information, see [IHREC Public Sector Equality and Human Rights Duty](#)

welcomed the enactment of the Media Regulation Act 2022,¹⁶² and we continue to emphasise the importance of Safety Codes.¹⁶³

Among other important insights that may be drawn from the *Da Silva* and *Fidelis* case (discussed in detail in respect of Article 9 Investigation and Prosecution) is how technology is facilitating the sex trade and sexual exploitation.

In the words of prosecuting Counsel Garnet Orange, SC:

‘Escort Ireland seems to have been central to the organisation because it provided the means by which clients or customers made arrangements to meet prostitutes’.¹⁶⁴

This is an important point: not only did the technology provide the means of facilitating the alleged exploitation, but it must also be remembered the website itself is an active player (enabler and profiteer) in this case, whereas the site owners/operators made a profit from facilitating these activities.

In order to enhance the criminal response to offences concerning trafficking in human beings committed for the benefit of legal persons and to deter the commission of those offences, the sanctions regime against legal persons should be clarified and brought in line with other European Union criminal law instruments.¹⁶⁵ According to Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU), a conviction by a final judgment for child labour and other forms of trafficking in human beings is a ground for an exclusion from participation in a procurement procedure or a concession award procedure.¹⁶⁶ Nevertheless, Member States

¹⁶² The Online Safety and Media Regulation Act 2022 (the ‘OSMRA’ and the ‘Act’) was signed into law by President Higgins on 10 December 2022. The Act is yet another example of an opportunity to better detect, investigate, prosecute and counteract trafficking in persons both within Ireland and, potentially across the EU. The Act establishes a new regulator, Coimisiún na Meán (the Media Commission) and an Online Safety Commissioner has been appointed. The Media Commission is responsible for overseeing updated regulations for broadcasting and video on-demand services and the new regulatory framework for online safety created by the Act. The Media Commissioner governs this new framework through binding online safety codes and robust compliance, enforcement and sanction powers. Online safety codes will deal with several issues, including measures to be taken by online services to tackle the availability of illegal and harmful online content on their services. See IHREC (2021) [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht on the General Scheme of the Online Safety Regulation Bill](#)

¹⁶³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 75

¹⁶⁴ Hayes I. (2023) [‘Woman living in Longford accused of trafficking Brazilians to work as prostitutes’](#) Longford Live (24th January)

¹⁶⁵ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Recital 6

¹⁶⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Recital 6

may also decide to provide for exclusion from tender procedures or concessions among the criminal or non-criminal sanctions or measures which can be imposed on legal persons, in order to also cover procurements and concessions below the thresholds of the relevant Directives.¹⁶⁷

The Recast EU Anti-Trafficking Directive

As stated earlier, the EU strategy towards a more efficient response to human trafficking favours a firmer stance on the role of companies and businesses. This approach found wide public and institutional support in the consultation on the reform of the main EU Anti-Trafficking law, Directive 2011/36/EU. As a result, Articles 5 and 6 were strengthened in the recast Directive, which the State must implement over the next two years.

In the first instance, Article 5 of the recast Directive, which provides for the criminalising of legal persons, received an expanded scope. Legal persons are not only punishable for the offence of human trafficking (Article 2), and aiding and abetting (Article 3), but also now in relation to the crime of the *knowing use of services of trafficked victims* (Article 18a(1)).¹⁶⁸

Therefore, Article 5 of the recast Directive now provides for liability of legal persons in respect of the new Article 18a(1), along with the offences provided for in the amended Articles 2 and 3. It is important to note that legal persons include both individuals and companies.¹⁶⁹

Article 18a(1) has been added to the list of offences included in Article 5(1) of the recast Directive. Article 5 of the recast Directive remains unchanged in relation to the ways in which legal persons can be held liable for human trafficking offences. With regard to the possibility of vicarious liability of the employer, Article 5(2) of the recast Directive now includes Article 18a(1) in the list of offences. Similar to the above, Article 6 of the recast Directive, which outlines the sanctions on legal persons, was also strengthened in line with the new EU strategy's goal to better involve businesses in the fight against human trafficking. The list of sanctions was expanded and the conditionality of the language in the Article was reduced, making its applicability stronger and the sanctions clearer. The amended Article 6(1) now provides that a legal person held liable for trafficking is punishable by effective, proportionate and dissuasive criminal or non-criminal sanctions or measures. The wording of Article 6(1) has changed from 'subject to' to 'punishable by'. 'Fines' is changed to 'non-criminal sanctions or measures'.

The amended Article 6(2) goes on to provide that Member States shall take the necessary measures to ensure that sanctions or measures for legal persons for the offences referred to

¹⁶⁷ [Ibid](#)

¹⁶⁸ [Ibid](#), Article 5

¹⁶⁹ [Ibid](#), Article 5(4)

in Articles 2, 3 and 18a shall include criminal and non-criminal fines. These criminal and non-criminal fines are mandatory, while the list of optional measures was extended by ‘exclusions from access to public funding, including tender procedures, grants, concessions and licences’ and ‘withdrawal of permits and authorisations to pursue activities which have been resulted in committing the offence’. The amended Article now mandates the permanent, not only temporary, closure of establishments used for committing the offence. Very significantly, the list of measures was expanded to include the public ‘naming and shaming’ of businesses involved in human trafficking, apparently aimed at reputational punishment, which is a potentially strong deterrent. Where there is a public interest, all or part of the judicial decision that related to the criminal offence committed and the sanctions or measures imposed will be published.¹⁷⁰

By including some of the existing sanctions presently in Article 6 as reworded measures in the amended Article 6, it is arguable that their remit has been extended; however, some caveats and questions arise at first glance. For instance, ‘commercial activities’ has been changed to ‘business activities’ and ‘temporary or permanent closure of establishments which have been used for committing the offence’ has been changed to ‘closure of establishments used for committing the offence’. A possible reason for changing ‘commercial activities’ to ‘business activities’ is that business activities could be interpreted in a broader sense than commercial. Article 6(2)(g) is silent on the duration of the closure of the establishment used for the committing of the offence, while the term ‘temporary’ has been removed, possibly indicating a permanent closure. On the other hand, it could be argued that the less prescriptive language here could lead to a broad interpretation.

Overall, the addition of these measures complements and expands the current discretionary list and they are intended to prevent legal persons convicted of trafficking from accessing public funding, in the terms set out above. In relation to the public interest dictating the publishing of all or part of the judgment relating to the criminal offence and the sanctions or measures imposed, presumably the intention is that it acts as a dissuasive measure. The question is whether in practice this would act as enough of a deterrent to those engaged in trafficking in human beings. The definition of public interest is very broad and it is open to interpretation what would fall under it. Neither is it clear who decides whether or not the public interest justifies publication. Presumably, this would fall to the court or judge hearing the case. Different Member States may define public interest differently. The public interest also has to be balanced against national rules on privacy and the protection of personal data, and this could differ vastly depending on the national law.

¹⁷⁰ Without prejudice to rules on privacy and the protection of personal data.

The European Commission had previously proposed that all of the listed sanctions or measures be made mandatory.¹⁷¹ According to the European Commission, the adoption of a mandatory regime strengthens the criminal justice aspect of the response.¹⁷² However, this was not what was agreed in the final text by the EU Member States. The agreed measures, albeit expanded, are optional, and it remains to be seen whether the implementation of the Articles pertaining to the responsibility of legal persons will be used and implemented effectively.

Conclusions

At present, the situation regarding the holding of legal persons liable for their part in human trafficking remains unchanged and arguably inefficient in Ireland. Article 6 of the recast Directive requires strengthened criminal and non-criminal sanctions for legal persons in comparison to Section 6 of the Criminal Justice (Human Trafficking) Act 2008, which only provides for a criminal offence. The Commission will be following the State's efforts to transpose fully the amended provisions of the Directive that hold legal persons – companies, businesses and their owners and managers – accountable, and not just for involvement in human trafficking offences (under Articles 2 and 3), but also for the use of services extracted from victims of trafficking under the freshly added Article 18a. There is a great potential in involving legal persons in the fight against human trafficking, potential which remains to be fully utilised, if we stand a chance to effectively combat human trafficking as a criminal profit-yielding business model.

The Commission reiterates its recommendation that the State steps up its efforts to punish all legal entities implicated in human trafficking by criminal and non-criminal sanctions. This includes civil and criminal liability of online platforms, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims – when such platforms knew or had reason to know of the exploitation.¹⁷³

The Commission reiterates its recommendation that the Department of Justice develops a long-term legal and enforcement framework for prosecuting platforms and websites that advertise the sale of controlled and trafficked women and minors and for profiting from the

¹⁷¹ European Commission, [Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims](#), Explanatory Memorandum

¹⁷² [Ibid](#)

¹⁷³ This recommendation is based on the OSCE/Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2022) [Policy Responses to Technology-Facilitated Trafficking in Human Beings: Analysis of current Approaches and Considerations for Moving Forward](#)

prostitution of others. An Garda Síochána must be fully resourced to allow them to monitor these advertising websites to identify vulnerability, control, organising and trafficking.

The Commission recommends that at a minimum, statute should be introduced to include the full range of the recast Directive optional criminal or non-criminal sanctions or measures:

- (a) exclusion from entitlement to public benefits or aid;
- (b) exclusions from access to public funding, including tender procedures, grants, concessions and licences;
- (c) temporary or permanent disqualification from the practice of business activities;
- (d) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- (e) placing under judicial supervision;
- (f) judicial winding-up;
- (g) closure of establishments used for committing the offence; and
- (h) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Seizure and Confiscation (Article 7)

Original Directive Article 7 Seizure and confiscation	Recast Directive Article 7 has been deleted
Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.	

To the best of our knowledge, there has been no change to the operating laws governing the confiscation and seizure of instruments and proceeds acquired from trafficking offences.¹⁷⁴ In April 2023, the then Minister for Justice Simon Harris and Minister of State James Browne published the *Justice Plan 2023*.¹⁷⁵ This was the third and final in a series of annual plans outlining the actions required to deliver against the high-level goals and objectives set out in *A safe, fair and inclusive Ireland: Statement of Strategy 2021–2023*.¹⁷⁶

The Justice Plan included a commitment to strengthen the powers of the Criminal Assets Bureau through the Proceeds of Crime Amendment Bill 2023.¹⁷⁷ This was on foot of the publication of the *Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Report of the Review Group*.¹⁷⁸ In January 2024, the Minister for Justice secured approval to draft legislation to enhance the Criminal Assets Bureau's powers.¹⁷⁹

According to the Government, the proposals being progressed in this Bill include:

¹⁷⁴ In accordance with the provisions of the Proceeds of Crime Acts 1996–2016, the Criminal Justice Act 1994, as amended, and related statutes, all confiscations relating to the proceeds of crime are transferred to the Minister for Finance to be paid into, or disposed of, for the benefit of the Exchequer. The Criminal Assets Bureau (CAB) is a multidisciplinary body, made up of members of An Garda Síochána, officials from the Office of the Revenue Commissioners (Taxes and Customs), officials of the Department of Social Protection, together with staff from the Department of Justice, including the Bureau Legal Officer, Forensic Accountants, Financial Crime Analysts, IT experts and Administrative Staff. The Court of Justice of the EU held in 'Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v, BP and others' [2019] Case no. C-234/18 that civil proceedings for confiscation (that are unrelated to a finding of a criminal offence) are compatible with EU law

¹⁷⁵ Department of Justice (2023) '[Ministers Harris and Browne publish Justice Plan 2023](#)' (6 April)

¹⁷⁶ Department of Justice (2021) '[A Safe, Fair and Inclusive Ireland. Statement of Strategy 2021-2023](#)

¹⁷⁷ Department of Justice (2023) '[Justice Plan 2023](#)', Objective 32.2

¹⁷⁸ Department of Justice (2020) '[Review Group Report on Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption](#)

¹⁷⁹ Department of Justice (2024) '[Minister for Justice secures approval to draft legislation to enhance Criminal Assets Bureau's powers](#)'. (18 January)

- › The reduction from seven years to two years in the time between an order being made that assets are the proceeds of crime and a final disposal order being available in respect of those assets;
- › Provision for immediate and automatic appointment of a receiver to deprive respondents of the benefit of the assets;
- › The limitation of respondents' ability to reopen the question of whether assets are proceeds of crime at the point of a disposal order being sought;
- › Enhanced restraint and asset detention powers prior to the High Court process; and
- › Improved domestic and international information exchange powers.

We welcome these proposed reforms and will be following the Bill as it makes its way through the legislative process.

Importantly, under the recast Directive, Article 7 has been repealed. The *raison d'être* for this deletion was attributed to the new rules on compensation in Article 17, which require Member States to create a fund for the compensation of victims (further discussed below). In addition, in its 2021 work programme,¹⁸⁰ the European Commission announced its intention to revise Directive 2014/42/EU on asset recovery and confiscation, as well as Council Decision 2007/845/JHA on asset recovery offices. After three rounds of inter-institutional negotiations, on 12th December 2023, the Parliament and Council reached a provisional agreement on the draft Directive. Following on from this, on 18th January 2024, all three institutions reached an agreement on a final text. On 13th March 2024, the European Parliament adopted it by 598 votes to 19, with 7 abstentions.¹⁸¹ The Directive was published in the *Official Journal* of the EU on 3rd April 2024¹⁸² and entered into force on 23rd April. Member States have 30 months to incorporate the provisions of the Directive into their national legislation.

Ireland voiced concerns over the possibility of conflicts between the asset recovery and confiscation Directive and domestic mechanisms for asset recovery and confiscation.¹⁸³ Ireland has decided to opt out of this Directive.¹⁸⁴

¹⁸⁰ European Commission (2020) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, European Commission Work Programme 2021](#)

¹⁸¹ European Parliament (2024) [Directive \(EU\) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation](#)

¹⁸² [Directive \(EU\) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation](#)

¹⁸³ Department of Justice (2023) [Report on relevant EU developments in the period 1 January 2023 – 30 June 2023 Submitted under Section 2\(5\) of the European Union \(Scrutiny\) Act 2002](#)

¹⁸⁴ In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not

According to the Council of the EU, ‘the Directive will better equip Member States in their fight against organised crime and the associated illegal profits. It will also oblige EU countries to ensure that authorities have the resources they need for their activities.’¹⁸⁵ Europol estimates that only 1.1% of criminal proceeds are confiscated and criminal organisations are amassing revenue estimated to amount to at least €139 billion every year.¹⁸⁶

In regard to the NAP, we are pleased to see that action 3.4.1 commits An Garda Síochána to ‘Identify possible assets and seize where relevant as the proceeds of human trafficking and as provided under legislation’ and to ‘Liaise with International counterparts when appropriate’.¹⁸⁷ While these actions are welcome, they remain somewhat vague, without clear measures or indicators of whether the aims have been achieved.

Despite Article 7 being repealed in the recast Directive, the seizure and confiscation of assets is an essential part of combatting human trafficking, perhaps more so given the decision of Ireland to opt out of the Directive on Asset Recovery and Confiscation. In light of this, the importance of Section 9 Confiscation Orders¹⁸⁸ must be emphasised and they must be utilised in every way possible to ensure that assets that were acquired as a result of the exploitation of others are seized and confiscated.

The Commission recommends that the State re-examines the decision to opt-out of the Directive on Asset Recovery and Confiscation as this may be an opportunity to further strengthen efforts to harmonise the approach across Europe to better target and combat the pan-European and organised crime nature of human trafficking.

bound by it or subject to its application. [Directive \(EU\) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation](#)

¹⁸⁵ Council of the European Union (2024) ‘[Organised crime: Council gives green light for EU law on asset recovery and confiscation](#)’ (12 April)

¹⁸⁶ Europol (2016) [Does Crime Still Pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2012–2014](#)

¹⁸⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 3.4.1

¹⁸⁸ Which apply to offences other than drug trafficking offences, and allows a court to order a convicted person to pay such sum as the court thinks fit to the Exchequer to be used at the discretion of the Minister for Finance. Criminal Justice Act 1994

Non-Prosecution of Victims (Article 8)

Original Directive Article 8 Non-prosecution or non-application of penalties to the victim	Recast Directive Article 8 Non-prosecution or non-application of penalties to the victim
Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.	Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal or other unlawful activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

There has been no material change in the non-prosecution of the victim, otherwise known as the non-application of penalties to the victim or the non-punishment principle during the reporting period. This is so notwithstanding consistent international criticism,¹⁸⁹ a High Court judgment,¹⁹⁰ recommendations by a Joint Oireachtas Committee,¹⁹¹ and our repeated concern both in submissions, reports¹⁹² and in a direct letter from the Chief Commissioner to

¹⁸⁹ GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Trafficking in Human Beings by Ireland. Second Evaluation Round](#), para. 207; GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#); US State Department (2022) [Trafficking in Persons Report](#), pp. 298–302; US State Department (2023) [Trafficking in Persons Report](#)

¹⁹⁰ P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222

¹⁹¹ Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#) ‘10. The Committee recommends that consideration be given to enshrining a non-prosecution principle as a statutory defence within the legislation, to guarantee that victims of trafficking would not face prosecution for any offence that they were pressured into committing as a result of being trafficked.’

¹⁹² IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); IHREC (2021) [Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill 2020](#); IHREC (2022) [Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the](#)

the Minister¹⁹³ that the current approach is insufficient and ineffective in protecting victims from prosecution or punishment for offences they were forced to commit as a direct consequence of them having been trafficked.

It remains the case that the only application of the principle of non-prosecution is contained in one section of the Office of the Director of Public Prosecutions ('DPP') Prosecutors Guidelines of 2019, which reads:

'In assessing whether the public interest lies in commencing or continuing with a prosecution, a prosecutor should exercise particular care where there is information to suggest that the suspect is a victim of a crime. An example would be where it is suggested that the suspect is a victim of human trafficking. Such a person may be suspected of a range of offences from breaches of immigration law to offences related to prostitution. In a case in which there is credible information that a suspect is also a crime victim, the prosecutor **should** consider whether the public interest is served by a prosecution of the suspect.'¹⁹⁴ [Emphasis added]

Other factors that 'should' be considered by prosecutors in their assessment of whether to commence or continue with a prosecution include the nature of the offence; whether there was coercion or duress, violence or threats of violence or the use of force, deceit or fraud, or an abuse of authority or exploitation of a position of vulnerability and whether the suspect has cooperated with the authorities in relation to any offences believed to have been committed against the suspect.¹⁹⁵

The Minister for Justice has remained firm in her view that such a defence is unnecessary, holding instead she is 'confident that the DPP would take into consideration whether a person has been trafficked, what that has potentially meant and what has led to the particular crime that was committed'.¹⁹⁶

While it is noted that Section 35 of the Criminal Law (Sexual Offences and Trafficking) Bill 2023 includes a prohibition on deportation of certain persons, meaning presumed and identified victims, this is not synonymous, nor should it be construed as being equivalent to a non-prosecution/punishment provision. Of course, we welcome this protection from deportation, but remain steadfast regarding the need for greater protections for victims of trafficking from criminal prosecution for unlawful acts they have been forced to commit.

[European Union; IHREC \(2022\) Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

¹⁹³ Letter from the Chief Commissioner to Minister McEntee re: The Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, 2 October 2023

¹⁹⁴ Director of Public Prosecutions [\(2019\) Guidelines for Prosecutors: 5th Edition](#), s. 4.7, pp. 12–13

¹⁹⁵ [Ibid](#), s. 4.8, p. 13

¹⁹⁶ Select Committee on Justice Debate (2023) '[Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023: Committee Stage](#)' (14 November)

For the second year running, data received by us for the reporting period reveals that there is an identified victim of trafficking in custody for an offence that relates to their trafficking. We remain deeply concerned and again call on the State to create a statutory defence for victims of trafficking where they have committed offences ‘*as a direct consequence of them being trafficked*’ – an essential protection obligation set out in Article 8.

The recast Directive has left Article 8 largely unchanged, but for the inclusion of ‘criminal or other unlawful activities’. In many ways, this reflects the reality that victims of trafficking are vulnerable to being punished by the State, beyond just the criminal sphere, for actions they have been forced to commit but over which they had no real control. Such examples may include fraudulent welfare claims or work permit violations. In addition to protection from criminal prosecution, particular attention should be paid to examining and understanding the different ways in which victims of trafficking can be punished for actions/offences they have been forced to commit.

Related to this is the matter of expungement of criminal records. In 2021, the Minister for Justice announced plans for legislation to retrospectively expunge over 600 convictions obtained for ‘sale of sex’ under the preceding Criminal Law (Sexual Offences) Act 1993 legislation. In her statement, the Minister linked the measures explicitly with the plans to end the unnecessary criminalisation of potential victims of trafficking.¹⁹⁷ The NAP commits the Department of Justice to ‘Progress legislative amendment for the expungement of convictions relating to the sale of sexual services, when the review of Part 4 of the Sexual Offences Act 2017 Act is completed’.¹⁹⁸ We have continuously supported this important measure, but have highlighted the absence of such an initiative with regard to victims of other forms of human trafficking present in Ireland who have been convicted of crimes they may have been forced to commit. Simply constraining this measure to ‘sale of sex’ offences is too narrow, and does not fully capture the harm criminalisation does to victims of trafficking.

The Commission again reiterates its recommendation that to adhere fully to the non-punishment principle, the Criminal Justice (Sexual Offences and Trafficking) Bill 2023 should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes “as a direct consequence of them being trafficked.”

¹⁹⁷ Department of Justice (2021) [‘Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’’](#) (25 April)

¹⁹⁸ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 3.5.2

The Commission reiterates its recommendation for the wider application of the retrospective expungement of criminal records of victims of trafficking where they have been forced to commit such crimes as a direct result of them having been trafficked.

Investigation and Prosecution (Article 9)

Original Directive Article 9 Investigation and prosecution	Recast Directive Article 9 Investigation and prosecution
1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.	1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2, 3 and 18a(1) is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.	Unchanged
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.	3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly. Member States shall ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 2 and 3, where those offences are committed or facilitated by means of information or communication technologies, have adequate expertise and technological capabilities. Member States are encouraged to create specialised units within law-enforcement and prosecution services, where appropriate and in accordance with their national legal systems.
4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious	Unchanged

crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

To the best of our knowledge, there has been no material change to the application of Article 9 during the reporting period. It remains the case that there were no successful convictions for human trafficking in 2023, although there does appear to be an uptick in investigations and prosecutions for trafficking offences. This is particularly welcome, most especially in the case of trafficking for labour exploitation, where the first prosecutions for this offence occurred in 2023. It was also the first time that charges were brought in respect of trafficking a child for labour exploitation, another significant development.

In both our First and Second National Evaluation Reports, we have welcomed the Garda Síochána Inspectorate's self-initiated review *Transnational Organised Crime – A Review of the Structures, Strategies and Processes in the Garda Síochána*. Considerable efforts have been made to directly consult with victims of trafficking and frontline service providers as part of this review. We welcome these efforts and await the findings of this Report.

Despite these positive developments, securing victims' testimony in criminal trials continues to be imbued with challenges and difficulties. Successful trafficking prosecutions continue to rely heavily on a victim's testimony and their cooperation with An Garda Síochána and prosecutors. The reliance on victims' testimony in both investigations and in securing trafficking prosecutions is an enduring and complex area that needs to be continuously improved. Article 11(3) of the EU Directive, as well as our First and Second Evaluation Reports, make clear that practical assistance, in particular that provided for in Articles 11 and 13, is the absolute foundational support measure and without it, it is extremely unlikely that victims/survivors will have the ability to aid in an investigation. We have been clear that support and assistance must **not** be made conditional on a victim/survivor's willingness to cooperate in the criminal investigation, prosecution or trial.¹⁹⁹ Put simply, making these supports conditional on cooperation may harm not only the individual but also the investigation and prosecution, by creating an argument of incentivising the victim.

In our Second Evaluation Report, we drew attention to the undeniable nexus between inadequate victim services and victims' ability to cooperate in criminal investigations and successful prosecutions.²⁰⁰ The support that victims receive must meet their specific needs,

¹⁹⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 79; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#) pp. 16–18

²⁰⁰ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 16

in some cases, over an extended period of time. As such, every obligation to support and assist victims must be fulfilled, in the round, if there are to be successful prosecutions.

The Case Study of Gael

Gael was referred into the NRM in 2023 following a MRCI assessment of indicators of trafficking that showed he was likely a victim of trafficking. He was still in the situation when he came to MRCI's attention. His trafficking case was referred to local investigating Garda (not the specialised unit HTICU), but no contact was made for almost two weeks. Before the Garda made initial contact, Gael had to leave his trafficker and, fearing homelessness, agreed to a job with accommodation. After meeting with the investigating Garda, Gael was told that accommodation through the NRM was scarce. He made the decision to remain with his employer who offered accommodation. MRCI believes this communication by Gardaí, left Gael open to exploitation and re-trafficking. Victims of trafficking need to be brought to safety and cannot be left to fend for themselves. Since that time, Gael has moved employer several times when the situation turned bad, assisted by MRCI. Additionally, Gael experienced delays in getting his temporary residence permit, which also left him even more vulnerable to exploitation.

(Courtesy of MRCI)

There are unique factors that affect the ability of victims' of trafficking to engage in the criminal justice system. While victims of crime share many of these factors, the needs of victims/survivors of trafficking will vary depending on their particular vulnerabilities and the form of exploitation they were subjected to, as well as other factors such as their age, gender, ethnicity and ability. Fear of retaliation by the traffickers, wariness of possible implications of complicity in the traffickers' crimes, intimidation against family members, inability or unwillingness to identify themselves as victims, and lack of trust in authorities are just some of the reasons why victims/survivors may not be willing or able to cooperate with the criminal

process.²⁰¹ Relatedly, and in relation to Article 12 (detailed below), we have highlighted the need to expand the tools available to better protect and support victims during the investigation and prosecution of trafficking offences. It is our view that introducing trafficking-specific Protection Orders could better safeguard the rights of victims and potential victims and will support proactive, evidence-led investigations, without having to depend almost exclusively on the engagement of the victim in the investigation and their willingness or ability to cooperate.

A common feature of this year's consultations with survivors was that they spoke encouragingly of their interactions with An Garda Síochána, and how they had to overcome their profound fear of law enforcement:

'The Garda called me and told me they are in my hostel, can I see you in the reception. When I got there he showed me his ID card and that he is Garda, Irish Police. Police in my country are not friendly so I was seeing that Garda as if I'm in [country of origin]. I was upset. I went back to my trauma situation. I never knew that Ireland Garda can help people. He said – don't worry sit down. He said is this your name and your story? He asked me questions. He eventually asked me to bring down my documents to be recorded. When he was going to leave he said – how do you feel here now? I said I am better. I shake his hand and he told me – you are safe here. Sorry for coming late, I would have come earlier but I have a workload. I'm going to write a referral back to the HSE of what I've discovered'.

Survivor

In previous years, we have highlighted the importance of specialisation in the investigation and prosecution of trafficking offences. While it is not possible to draw overall conclusions on the effect, it would appear that the increase in specialist units in An Garda Síochána such as the Divisional Protective Services Units and the Garda National Protective Services Bureau and in the Office of the DPP, has improved the experiences of victims. This is to be welcomed, but it is essential that resources, specialist training and supervision continue to be invested in

²⁰¹ Farrell A., McDevitt J., Pfeffer R., et al. (2012) [Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases](#). National Institute of Justice

to maintain and expand this approach. One of the survivors we consulted expressed the following regarding her trial experience:

‘I was able to have my HSE worker in court for support. Garda was generally very supportive, checking if I am okay; if I needed anything, even to talk. Garda sorted childcare for my child, she arranged for [an organisation] to look after [my child] in [residence location] while I was attending my trial

Survivor

We welcome the commitment in the third NAP to ‘conduct a review of law enforcement response and resourcing following the implementation of the revised NRM framework’.²⁰² There are a number of actions in the Action Plan to better ensure that victims are protected within the criminal justice system, and to increase prosecutions. These are largely contained in Pillar 3 on ‘Prosecution’.²⁰³ These actions are greatly welcomed. This is discussed in greater detail in [Article 12](#)

It is worth noting that the recast Directive (Article 9(3)) goes further in requiring that necessary measures be taken to ensure that ‘persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 committed or facilitated by means of information or communication technologies have adequate expertise and technological capabilities’. Member States are encouraged to create ‘specialised units within law enforcement and prosecution services, where appropriate and according to their national legal system’.

There is one specific action in the NAP that relates to technology. Action 1.4 commits to ‘Monitor technological developments in the area of human trafficking’. To achieve this, Action 1.4.1 reads ‘Evaluate new technologies to combat human trafficking, taking guidance from developments at EU and International level’.²⁰⁴ By any measure, this is insufficient to address the demands of investigating and prosecuting trafficking offences and will not be able to meet

²⁰² Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), action 3.2.3

²⁰³ [Ibid](#), p. 32–34

²⁰⁴ [Ibid](#)

the standards of combatting technology-facilitated trafficking recommended in the recast Directive.

Technological tools are being developed on a global scale to support law enforcement in the identification of adult and child victims of trafficking. A consensus is developing on what may indicate vulnerability, risk, coercion, control, organisation and trafficking and how those indicators can facilitate police to identify and investigate potential cases of trafficking.²⁰⁵ Recognising the importance of the role that technology plays in facilitating trafficking, we dedicated an entire chapter in our Second National Evaluation Report to examining how technology is used to both facilitate and tackle trafficking for sexual exploitation.²⁰⁶

The Commission recommends that the Third National Action Plan 2023-2027 is amended to include detailed actions to expand, support, and enhance the development and knowledge of An Garda Síochána and the Office of the Director of Public Prosecutions to fully integrate technological solutions to better investigate and prosecute trafficking offences.

The Commission reiterates its recommendation that victims' rights and their experiences be at the centre of all efforts – both legal and policy – to combat trafficking, and that every potential victim be appointed a Garda Liaison Officer from the beginning of the investigation.

The Commission reiterates its recommendations for:

- › increased specialist knowledge and increased resourcing of the Garda National Protective Services Bureau to ensure that they can continue to tackle human trafficking and organised crime;
- › greater monitoring of websites and platforms to identify indicators of vulnerability, control, organising and trafficking;
- › targeted law enforcement measures to disrupt the business model and profits of exploiters;
- › comprehensive research on the online dimension of human trafficking;

²⁰⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#); OSCE (2022) [Recommendations on enhancing efforts to identify and mitigate risks of trafficking in human beings online as a result of the humanitarian crisis in Ukraine](#)

²⁰⁶ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

- › guidance on how the current legislation is applicable to the online dimension of human trafficking;
- › the establishment of a Forum to examine ways to disrupt demand and combat technology-facilitated trafficking;
- › accession to the Budapest Convention on Cybercrime; and
- › an examination of ways to use its unique position as EU host of headquarters of the biggest social medial companies to enforce minimum standards to protect its users against exploitation.

Case A: Trafficking for Labour Exploitation

The Commission greatly welcomes the first charges of Human Trafficking for the purposes of labour exploitation.²⁰⁷ The case concerns two Latvian men, Georgijs Poniza (35) and Armen Pogosyan (28), both of Assaroe Falls, Ballyshannon, Co. Donegal, who, it is alleged, trafficked four Latvian men to exploit them in the forestry and bakery industries. In addition to the trafficking charges, both men faced charges of money laundering. According to Gardaí:

‘This international Law Enforcement Operation involves a Joint Investigation team which has been established with Law Enforcement in Latvia. Law enforcement activity is also being co-ordinated today 24th October 2023 in Latvia. The international operation is supported by Europol and Europol Officers are present in Donegal during this operation.’²⁰⁸

Following their initial arrest, Georgijs Poniza and Armen Pogosyan were charged with an additional 16 charges, which included participation in organised crime. The men were remanded in custody to appear before Sligo District Court in May.²⁰⁹

²⁰⁷ Section 4(1) Criminal Law (Human Trafficking) Act 2008

²⁰⁸ Kelly O. (2023) [‘Two men arrested in Donegal in relation to human trafficking Gardaí arrest men aged 28 and 35 years as part of international organised crime investigation’](#) *Irish Times* (24 October)

²⁰⁹ Court Reporter (2024) [‘Man charged with human trafficking says being in jail is affecting his health’](#) *Donegal Live* (22 April)

Case B: Trafficking for Labour Exploitation and Child Trafficking

There was another case reported concerning two individuals in which four charges were brought of Human Trafficking for the purposes of labour exploitation contrary to Section 4(1) Criminal Law (Human Trafficking) Act 2008 and two charges of trafficking a child for the purposes of labour exploitation contrary to Section 2(1) Criminal Law (Human Trafficking) Act 2008. The individuals in this case have been sought for extradition from the US and the process is ongoing.²¹⁰ This investigation is particularly significant in that it appears to be the first prosecution of trafficking a child for the purpose of labour exploitation.

Case C: Trafficking for Sexual Exploitation

In regard to trafficking for the purposes of sexual exploitation, it has been reported that an individual has been charged with one charge of conspiracy to commit human trafficking contrary to Section 7(6) Criminal Law (Human Trafficking) Act 2008. It is noted that this individual has previously been charged with two counts of the same offence. This case relates to the first and only trafficking conviction in 2021.²¹¹ This new charge concerns allegations of trafficking of a Nigerian woman to Ireland, via France, for the purposes of sexual exploitation.

Case D: Trafficking for Sexual Exploitation

On 8th February 2023, the trial of two Brazilian women charged with trafficking and other offences collapsed due to ‘unforeseen circumstances’. The retrial was expected to begin before a new jury later that month,²¹² but to the best of our knowledge, this has not happened.

The trial collapsed after 10 days of hearing in the case of Natalia Nogueira Da Silva and Ivanilce (Lisa) Vailones Fidelis, before Dublin Circuit Criminal Court. The State alleged that the two accused trafficked two vulnerable Brazilian women for the purposes of exploiting them and taking advantage of their vulnerability ‘to such an extent as to cause the trafficked person to have no real or acceptable alternative but to submit to being trafficked’.²¹³

During the trial, the Court heard the first complainant is alleged to have been moved across six locations. The Court heard she is alleged to have stayed in Portarlinton, Co. Laois, before

²¹⁰ Source: Department of Justice 2024

²¹¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p.54; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 66, pp. 178–179

²¹² McLean S. (2023) [‘Human trafficking and prostitution trial collapses due to “unforeseen circumstances”’](#) *Irish Times* (8 February)

²¹³ Hayes I. (2023) [‘Woman living in Longford accused of trafficking Brazilians to work as prostitutes’](#) *Longford Live* (24 January)

going to Enniscorthy, Co. Wexford; Thurles, Co. Tipperary; Roscommon town, Co. Roscommon; Tralee, Co. Kerry; Cashel, Co. Tipperary and back to Portarlinton. The Court also heard the second complainant is alleged to have had 14 visits across eight locations. The woman first went to Ballymahon in Co. Longford, before going to Roscommon town, Co. Roscommon; Kildare town, Co. Kildare; Athlone, Co. Westmeath; Ballyconnell, Co. Cavan; back to Kildare town; Tullow in Co. Carlow; Portarlinton, Co. Laois; back to Ballymahon in Co. Longford; Cashel, Co. Tipperary; then back to Kildare town, Roscommon town, Ballymahon, Co. Longford and finally Kildare town again.²¹⁴

The first complainant, who cannot be named for legal reasons, gave her evidence via video-link and through an interpreter during the trial.

When describing the role of Vailones Fidelis (Lisa) she said:

‘When I arrived, she told me I needed to do this site [Escort Ireland] and she organised a hotel room, clothes, and a photographer for pictures ... She paid for the pictures and told me I had to pay her back – she organised the style of it, schoolgirl clothes, really small skirts, stockings and heels.’²¹⁵

When asked by the prosecuting Counsel what she was expected to do with buyers, she replied:

‘Weird things. All of weird things relating to sex, humiliating things. Sometimes they agreed on the phone to do anal sex and things with food and fetishes.’

When asked whether she had agreed to do these things she replied:

‘No. The safe option for me was to just do that.’

When detailing how much she had to pay Vailones Fidelis (Lisa), she said that each week she had to pay €100 for the website that was used for clients – Escort Ireland. She would also have to pay her rent, which she said could range from €500 to €900. She also had to pay the driver who moved her to a different location every week.

Ms Da Silva admitted 35 charges, which included organising prostitution, facilitating the entry into the state of an illegal person, and 33 counts of money laundering. She denied the single charge of human trafficking. At trial, the single charge of human trafficking was withdrawn by the prosecution in respect of Ms Da Silva. The co-accused, Ms Fidelis (Lisa), denied all 18 charges brought against her, including two counts of human trafficking, one count of organising prostitution and 14 counts of money laundering the proceeds of crime on dates

²¹⁴ Hayes I. (2023) [‘Brazilian women who were allegedly trafficked to work as prostitutes spent time in county Longford’](#) *Longford Live* (31 January)

²¹⁵ McClean S. (2023) [‘My plan was to end the day alive, alleged trafficking victim tells court’](#) *Irish Examiner* (1 February)

between January 2015 and December 2020 and one count of removing proceeds of crime from the State during the same time period. Ms Fidelis (Lisa) maintains her not guilty plea and is currently awaiting a retrial.

The Da Silva and Fidelis case demonstrates the complexities and challenges in prosecuting trafficking cases. While it is encouraging to see the case progress to trial, it is disappointing that the human trafficking charges were withdrawn and that a retrial date has not yet been set for Ms Fidelis.

Conclusions regarding Investigations and Prosecutions

In our First National Evaluation Report, we identified some of the potential barriers to successful prosecution of trafficking offences.²¹⁶ Two of these appear to be most relevant to the above case and are worth reflecting on. The first is that trafficking offences are complex: the interaction of the various elements is difficult to establish, and we recommended that specialist training be provided so that this complexity can be better understood. The second is securing the cooperation of victims and witnesses. Despite the undoubted progress made in establishing Divisional Protective Services Units ('DPSUs') in all Garda Divisions and the special protection measures available such as giving evidence via video-link and anonymity of the witness, the cooperation of victims in the criminal process appears to be a persistent problem and a notable feature of this case.

The cases outlined above illustrate just how largescale and complex the investigation and prosecution of human trafficking cases for both labour and sexual exploitation are. They also clearly demonstrate how trafficking is often cross-jurisdictional, and prosecution requires substantial technological knowledge and cooperation with a number of specialist law enforcement agencies, both domestically and in other countries. The cases also highlight the profound toll investigations and prosecutions have on victim/witnesses and this is returned to when discussing Article 12 below.

²¹⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 67

‘The labour court [referring to the WRC] heard my case. How many people go through human trafficking? Only 1 Percent stand out. [Specialist CSO] and the lawyer helped me through the case. The Court [WRC] did order the employer to pay. The employer didn't obey. It really costs little to offend the law, it doesn't show anything. [The employer] was asked to pay and could just ignore that. My justice is that they should pay the consequences. If you have done something wrong you should pay for it. They broke the law, it should not be easy, they should be made pay. They don't care, they might do that to somebody else. How many people can stand out like me? I won the case, however nothing was paid. They don't go to custody. It's so easy to break the law again. My justice is they should pay for what they actually did to me’.

Survivor

Jurisdiction (Article 10)

Original Directive Article 10 Jurisdiction	Recast Directive Article 10 Jurisdiction
<p>1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:</p> <p>(a) the offence is committed in whole or in part within their territory; or</p> <p>(b) the offender is one of their nationals.</p>	<p>1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Article 2, Article 3 and Article 18a(1) where:</p> <p>(a) the offence is committed in whole or in part within their territory; or</p> <p>(b) the offender is one of their nationals.</p>
<p>2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:</p> <p>(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;</p> <p>(b) the offence is committed for the benefit of a legal person established in its territory; or</p> <p>(c) the offender is an habitual resident in its territory.</p>	<p>2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Article 2, Article 3 and Article 18a(1) committed outside its territory, inter alia, where:</p> <p>(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;</p> <p>(b) the offence is committed for the benefit of a legal person established in its territory; or</p> <p>(c) the offender is an habitual resident in its territory.</p>
<p>3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:</p> <p>(a) the acts are a criminal offence at the place where they were performed; or</p>	<p>Unchanged</p>

(b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

To the best of our knowledge, there has been no material change to the extra-jurisdictional provisions during the reporting period. However, once passed, the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 will remove the last remaining obstacles to Ireland's ratification of the second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002.²¹⁷ Specifically, once enacted, the Act will make the offence of obtaining or providing a child for the purposes of sexual exploitation amenable to prosecution where the offence is committed outside the State.²¹⁸ The enacted Bill will also ensure that mutual assistance can be provided to Convention States in accordance with the Protocol.²¹⁹ This is an important measure protecting children from exploitation where the offence has occurred outside the State, and ensures greater cross-border collaboration, which is so necessary in combatting these crimes.

Article 10 of the Directive requires Member States to enact laws that criminalise trafficking offences that are committed in their territory in whole or in part (Article 10(1)) or where the offence is committed by one of their nationals. Given the cross-border nature of trafficking, Member States can impose extraterritorial jurisdiction by informing the European Commission when the trafficking offence has been committed against one of its nationals or against a person who is habitually resident in their territory; when the offence is committed for the interests of a legal person established in their territory; or when the perpetrator has his or her habitual residence in their territory (Article 10 (2)).

Irish law can be said to comply with the obligations of Article 10 of the current Directive. Trafficking offences apply to an Irish citizen (or person ordinarily resident) when such acts are committed outside the State²²⁰ and also where such acts are committed *upon* an Irish citizen (or person ordinarily resident) outside of the State.²²¹ Sections 7(3), (4), (5) and (6) of the 2008 Act criminalise the inchoate offences of a person conspiring with, or inciting, another person

²¹⁷ [UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#)

²¹⁸ Section 15 Criminal Law (Sexual Offences and Human Trafficking) Bill 2023

²¹⁹ Part 5 Criminal Law (Sexual Offences and Human Trafficking) Bill 2023

²²⁰ Criminal Law (Human Trafficking) Act 2008, s.7(1)

²²¹ Criminal Law (Human Trafficking) Act 2008, s.7(2)

to traffick a child for exploitation, to traffick a person other than a child, or to traffick a child for sexual exploitation.²²² Additionally, Section 7(7) of the 2008 Act makes ‘attempts’ at committing the aforementioned an offence.

The recast Directive extends these extra-jurisdictional obligations to the offences contained in Article 18a – offences concerning the knowing use of services provided by a victim of trafficking in human beings. This will necessarily require legislative change to provide for: a) the offences of trafficking persons for the purposes of the added forms of exploitation, namely forced marriage, illegal adoption and exploitation of surrogacy, b) mandatory penalties for persons (including legal persons) who knowingly use services of victims of trafficking, and c) the extraterritorial application of these offences.

Although considered in detail below in Chapter 3 (Novel Forms), it is worth considering here that Articles 2, 10 and 18a of the recast Directive when read together will require mandatory penalties for the knowing use of services rendered from persons who have been trafficked for the purposes of the exploitation of surrogacy, both domestically and extra-territorially. Given this, we have written to the Minister for Health to express our concerns regarding the potential conflict of this obligation with the proposed provisions set out in Part 8 of the AHR Bill 2022.²²³ The AHR Bill, as currently drafted, provides for the pre-authorisation of international surrogacy arrangements by the Assisted Human Reproduction Regulatory Authority. In our correspondence with the Minister (January 2024) we sought information on whether there were sufficient protections to guard against the trafficking and reproductive exploitation of women in commercial, transnational surrogacy within this Bill.²²⁴ Following the signing of the recast Directive, we followed up with a second letter in April to again seek clarification on the protections to guard against exploitation. We did not receive a response to either of these correspondences.

²²² Section 7 of the Criminal Law (Human Trafficking) Act 2008 criminalises such acts where: 9(3) a person in the State conspires with, or incites another to commit such acts outside the State (4) an Irish citizen (or ordinary resident) conspires with, or incites another to commit such acts in another State (5) a person in the State conspires with, or incites another to commit such act upon an Irish Citizen in another State (6) a person conspires with, or incites an Irish citizen (or ordinary resident), in another State to commit such acts in another State.

²²³ [Commission letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee 31 January 2024, RE: Questions regarding the proposals to regulate international surrogacy amid EU-wide concerns for reproductive exploitation and trafficking](#); [Commission letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee 11 April 2024, RE: Revised EU Anti-Trafficking Directive Obligations to Prevent and Combat Exploitation of Surrogacy and Part 8 of the \(Amended\) Assisted Human Reproduction Bill – International Surrogacy](#).

²²⁴ Commission letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee 31 January 2024, RE: Questions regarding the proposals to regulate international surrogacy amid EU-wide concerns for reproductive exploitation and trafficking

While the above uses the example of trafficking for the exploitation of surrogacy, the analysis is equally relevant to trafficking for forced marriage and illegal adoption, as per Article 2 of the recast Directive.

It is very encouraging that the NAP commits to enhancing the response to combatting forced marriage and recognises the inextricable link between the practice and trafficking.²²⁵ The Plan details three specific actions to achieve this objective. These are: to increase awareness of Section 38 of the Domestic Violence Act 2018,²²⁶ which made forced marriage a criminal offence; to examine the potential introduction of forced marriage Protection Orders;²²⁷ and to refer suspected victims of trafficking to appropriate statutory and non-statutory services.²²⁸

Given application of the recast Directive and the changes that will be required, it is also welcome that the NAP will be ‘flexible so as to respond to new forms of human trafficking that emerge, such as possible trafficking in relation to forced marriages or adoption’.²²⁹ This flexibility will be essential to meet the requirements of the recast Directive, and to ensure full transposition.

Case Study of Kai

At a young age, Kai became homeless and was working on the streets in Asia. At aged 13, he was recruited by an agency, and then trafficked to Russia using false documents. Here he was exploited for labour purposes in the farming industry. He was unable to seek help or assistance. At age 14 Kai was re trafficked to the UK through the Baltic States. Upon arrival in the UK he was informed by alleged traffickers that he would need to work to pay them back what he owed for his transportation costs from Russia to UK. Kai was informed that this fee was in the region of equivalent of Between 20.000 and 30.000 euro. He was forced to work in a cannabis-cultivating factory. At age 15 Kai came to the attention of the UK authorities when the police targeted the premises. Kai was then arrested with possession and cultivating of Cannabis and was placed in foster care. Kai was found by/returned to his alleged traffickers and was

²²⁵ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 3.6

²²⁶ [Ibid](#), Action 3.6.1

²²⁷ [Ibid](#), Action 3.6.2

²²⁸ [Ibid](#), Action 3.6.3

²²⁹ [Ibid](#), p. 5

moved to a different cultivating factory in the UK. After a short period, the UK police identified this location and Kai was arrested but fled. Kai then spent 6-8 months in another cannabis factory before being arrested again. He was then placed in another foster care placement where he was engaged in English classes. In 2019, Kai was then placed in private rented accommodation with weekly payments from the UK government and also had an allocated social worker during this time. The alleged traffickers found him and transported Kai to Belfast using the ferry crossing. Upon arrival in Belfast Kai managed to escape, another Asian national helped him get a train to Dublin and get to a Garda station where he disclosed his story. Kai was identified as a potential victim of human trafficking and referred to HSE AHTT. Kai spoke no English and an interpreter was required. He was fearful for his safety and was concerned his traffickers would find him. Following support provided by the HSE AHTT Kai was able to start English classes and began to feel secure and look to a future in Ireland. He cooperated fully with the police investigation, which has involved liaison with the UK. Kai found employment very quickly once his Stamp 4 was issued. He secured private rented accommodation sharing with other Asian nationals. Kai was also referred to MRCI where he received information and support about employment rights in Ireland. Kai is currently in full time employment and living in private rented accommodation. Kai reports that with the support of the HSE and An Garda Síochána he feels safe in Ireland.

(Courtesy of HSE AHTT)

Assistance and Support for Victims of Human Trafficking (Article 11)

The Commission attributes special attention to the implementation of Article 11 dedicated to assistance and support for victims of trafficking. For clarity purposes it would be useful to elaborate that this is practical assistance that victims are entitled to, as distinct from the protections available to victims in the criminal justice process. Our review of Article 11 represents a central interest in the reports of the Commission written from the perspective of a National Rapporteur on Human Trafficking.

The section presents updates and notable developments since January 2023, building on the analysis and findings of the Commission’s first Report²³⁰ from 2022 and second Report²³¹ from 2023. The Article covers a wide range of matters pertaining to assistance and support, such as conditions of assistance (Articles 11(1), 11(2) and 11(3)), identification of victims (Article 11(4)) and elements of assistance, accommodation and other support (Article 11(5)), which will be covered in this section.

In our view, three particular developments marked the implementation of assistance provisions over the Reporting period – the publication of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, the adoption of the recast EU Anti-Trafficking Directive, and the publication of the NAP. These developments will be shaping and redefining the assistance measures in the years to come, and deserve special attention in this analysis.

During the consultation for the EU Anti-Trafficking Directive of 2011, two relevant aspects were identified as shortcomings by Member States. These are the failure to ensure ‘early detection’ of potential victims and to provide ‘specialised assistance’. These major problems fall within the scope of the provisions of Article 11.²³²

The Commission observes that assistance and support for victims has received a significant boost in the recast Directive. Of particular note is the unconditional commitment to support victims of trafficking ‘regardless of their country of origin’ expressed in Recital 1, and ‘irrespective of their nationality or of being stateless, of their citizenship, their place of residence or residence status, as well as of the form of their exploitation’ in Recital 18. The nexus with international protection (‘IP’) is addressed in a clear manner, leaving no doubt about the State’s obligation to assist victims of trafficking seeking asylum, and reversely to

²³⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 74–103

²³¹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 89–200

²³² [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Recital 5

allow victims to seek asylum at any time and without fear of losing their entitlements to assistance as victims of crime.

The Commission further commends the recast Directive for providing much-needed nuancing to anti-trafficking assistance under this Article. It is now clear that both ‘*presumed*’ and ‘*identified*’ victims have to benefit from Article 11. Furthermore, efforts to ‘*detect*’ possible victims have to precede work on the ‘*identification*’ of victims of trafficking – detection of victims now represents a specific stage, as reality dictates. The Commission has always been interested in the proactive detection stage, as can be seen in the review of Article 11(4) in the First and Second National Evaluation Reports, where the efforts of An Garda Síochána within the prostitution industry, Workplace Relations Commission inspectors in certain industry sectors, and International Protection Accommodation Service (‘IPAS’) among applicants for IP, to detect victims early have been flagged and carefully examined.

Another important nuance brought to ‘assistance’ by the recast Directive is the explicit attention to children in the system of assistance, both children who accompany adult victims and children who themselves are victims of trafficking. Such explicit clarity must be welcomed for its direct practical benefits for victims who are mothers with children. The Commission welcomes the explicit obligations for the provisions of ‘shelters’ for victims as central points of assistance, which relates to a pertinent need in Ireland:

‘The shelters and other appropriate interim accommodations referred to in paragraph 5 shall be provided in sufficient numbers and shall be easily accessible to presumed and identified victims of trafficking. The shelters and other appropriate interim accommodations shall assist them [the victims] in their recovery’.²³³

Finally, before we consider the implementation of the Article in detail, the Commission flags the appropriate efforts of the State to legislate for a NRM. These efforts predate the recast Directive and have been singled out as a point of interest and good practice in the 4th EU Progress Report on Trafficking (2022). The Commission also commends the Government’s legislative work but flags that the mechanism must be for both *identification* and *assistance* of victims, noting that the latter is currently missing from the draft Bill:

‘Member States shall take the necessary measures to establish by laws ... mechanisms aimed at the early detection and identification of, assistance to, and support for identified and presumed victims’.²³⁴

²³³ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 11(5)(a)

²³⁴ [Ibid.](#), Article 11(4)

Conditions of Assistance (Articles 11(1), 11(2) and 11(3))

Original Directive Article 11 Assistance and support for victims of trafficking in human beings (Conditions of Assistance)	Recast Directive Article 11 Assistance and support for victims of trafficking in human beings (Conditions of Assistance)
<p>1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.</p>	<p>1. Member States shall take the necessary measures to ensure that specialised assistance and support are provided to victims in a victim-centred, gender-, disability- and child-sensitive approach before, during, and for an appropriate period of time after the conclusion of, criminal proceedings, in order to enable them to exercise the rights set out in Directive 2012/29/EU of the European Parliament and of the Council* and in this Directive.</p>
<p>2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.</p>	<p>Unchanged</p>
<p>3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.</p>	<p>Unchanged</p>

The first three parts of Article 11 impose rules restricting conditionality in the delivery of assistance to victims of trafficking. The combined effect intends to ensure that assistance to victims commences early; remains available before, during and after the criminal proceedings; and is not conditional on the victim's willingness to cooperate in the criminal investigation and prosecution.

Our findings remain unchanged and all observations of the Commission made in the Second National Evaluation Report remain valid. The successful implementation of these three provisions has been obstructed by a combination of obscure policy approaches rendering the implementation of the assistance provisions lacking, i.e., the current application of the Administrative Immigration Arrangements for Victims of Trafficking of 2011 as the only State policy directed at victims of trafficking, the lack of clarity regarding victims of trafficking who seek IP and regarding Irish and EEA nationals, and the lack of a specific policy regarding child victims of trafficking.

As the Administrative Immigration Arrangements for the Protection of Victims of Trafficking remains the central policy regulating identification of victims in Ireland, the Commission's concerns about linking of assistance with existing criminal investigations and proceedings are reiterated. Similarly, observations on the State's preoccupation with immigration and victim origin remain unchanged. The arrangements mentioned apply only to victims of trafficking who are undocumented third-country nationals without pending IP applications. The Commission is expecting the new NRM will provide a comprehensive overhaul of this area by essentially rendering the mechanism applicable to all victims of trafficking regardless of their immigration status and nationality or willingness to cooperate in the criminal process.

Our recommendations will remain valid until the NRM legislation is fully adopted and supplied with implementation guidelines that provide clarity in terms of content, timing and duration of assistance and that ensure that **all victims** are beneficiaries of specialised help put in place for them.

With respect to the examined Article, the Commission particularly flags the recast Directive's amendments to Article 11(1), which are welcome.

In the first place, the State is obliged to provide 'specialised assistance', which must be interpreted as assistance specifically designed with victims of trafficking in mind, as distinct from the random utilisation of existing supports deployed within different contexts.

In the second place, the recast Article 11(1) mandates that the assistance be 'victim-centred', sensitive to the victim's gender and to possible disability, and child-sensitive where relevant (children accompanying victims of trafficking are also included). This represents an expanded obligation that the Irish State has to consider and comply with. The Commission acknowledges that certain steps are already undertaken in this regard in Ireland, through the strategic approach to gender-based violence and the pilot gender-specific shelter. Similarly, the individual victim planning provided by the State (HSE) is already attuned to such provisions and requires little effort to achieve full compliance. The Commission acknowledges the NAP's explicit commitment to not discriminate on the basis of disability in

the provision of accommodation, which supports the implementation of the said provisions.²³⁵

The Commission recommends that the State ensures that all victims receive specialised assistance for victims of human trafficking, reiterating that this assistance must be provided regardless of their origin, nationality, statelessness, immigration status or a pending International Protection claim, as the recast Directive obliges.

The Commission recommends that State Agencies and specialist organisations nominated as ‘Competent Authorities’ or likely ‘Trusted Partners’ are entitled to trigger or extend the provision of assistance, including by making recommendations for immigration status that allows access to assistance, where the victim’s circumstances so require.

The Commission reiterates its recommendation that the proposed new National Referral Mechanism incorporates explicit provisions to ensure that International Protection can be pursued at any moment in time – prior to, during, or after identification as a victim of trafficking. The Commission additionally recommends that this is without impact on the victim’s access to specialised assistance designed for victims of trafficking.

The Commission recommends that access to International Protection is provided without any impact on the victim’s access to specialised assistance designed for victims of trafficking.

The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team is entrusted with a clear role in the new National Referral Mechanism and resourced for wide geographical reach, due to its victim-centred, disability-sensitive and gender-specific approach.

²³⁵ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 19

National Referral Mechanism (Article 11(4))

Original Directive Article 11 Assistance and support for victims of trafficking in human beings (National Referral Mechanism)	Recast Directive Article 11 Assistance and support for victims of trafficking in human beings (National Referral Mechanism)
<p>4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.</p>	<p>4. Member States shall take the necessary measures to establish by laws, regulations or administrative provisions one or several mechanisms aimed at the early detection and identification of, assistance to, and support for identified and presumed victims, in cooperation with relevant support organisations, and to appoint a focal point for the cross-border referral of victims.</p> <p>The tasks of the referral mechanisms operating in accordance with this paragraph shall include at least the following:</p> <ul style="list-style-type: none"> (a) establishing minimum standards for the detection and early identification of victims, and adapting the procedures for such detection and identification to the various forms of exploitation covered by this Directive; (b) referring the victim to the most appropriate support and assistance; (c) establishing cooperation arrangements or protocols with the asylum authorities to ensure that assistance, support and protection is provided to victims of trafficking who are also in need of international protection or who wish to apply for such protection, taking into account the victim's individual circumstances.

As mentioned earlier in the Report, the detection and identification of victims has been identified as a shortcoming in the implementation of the EU Anti-Trafficking Directive and this needs to be addressed. With respect to the provision, the State appears to be ahead of the curve by introducing and advancing the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, as a matter of priority.

The Irish efforts precede the EU agreement for amendment of the EU Anti-Trafficking Directive to make it mandatory for Member States to establish in law (or regulation) a mechanism for early detection and identification of victims. In this, Ireland represents a leading example that was explicitly acknowledged in the 4th EU Progress Report on Human Trafficking, particularly the plan to formally involve CSOs in the mechanism. The Government rationale for the Bill has been succinctly summarised in the following way:

‘The proposals in this Bill will put a new National Referral Mechanism, NRM, for the identification of victims of trafficking on a statutory footing. The NRM is the framework through which the State fulfils its obligations to protect and promote the human rights of trafficking victims, working in partnership with civil society. Currently, An Garda Síochána is the sole competent authority for the formal recognition of victims of human trafficking. This is not adequate. Some victims of trafficking, because of interactions they may have had with law enforcement officials in other jurisdictions, may have a perception that police cannot be trusted. Our new model acknowledges that other State bodies and NGOs have an important role in identifying victims of human trafficking, and referring them to the NRM. In addition, NGOs that have been designated as trusted partners will be able to refer victims for formal identification. It will make it easier for victims of human trafficking to come forward so they can access all of the supports and resources available to them.’²³⁶

This section will review the implementation of Article 11(4) in the relevant reporting period, with reference to the aforementioned NRM Bill and the recast EU Anti-Trafficking Directive shaping anti-trafficking measures in the years ahead.

There is little change from 2022 to 2023, as the identification of victims is delegated solely to An Garda Síochána, an approach marked with problems that impact on data-collection efforts as a whole and on potential victims of trafficking in particular.

The Commission supports calls for ‘prioritising identification over cooperation [with investigation] even before the new NRM comes into effect’. Under the existing NRM, the problems are succinctly explained by one of the leading independent services to victims:

‘Victims are admitted to NRM on the condition that they cooperate with authorities, which is preventing some victims from coming forward for identification’.

Specialist CSO

‘Currently, victims identified by us are reluctant to choose the NRM process based on the requirement to engage with Garda investigations ... Concern also remains in the

²³⁶ Minister of State James Browne, Select Committee on Justice Debate (2023) ‘[Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023: Committee Stage](#)’ (14 November)

identification process involving male-only Gardaí which can further deter women from entering the NRM and, in our experience is further isolating victims, and not in line with trauma-informed practice and internationally recommended standards ...'

Specialist CSO

The only possible solution to the problems is the prioritisation of the enactment of the new NRM law. Presently, the Bill is moving at speed through the Houses of the Oireachtas for debates and amendments (at Seanad Stage at the time of drafting). The stakeholders working on human trafficking widely welcome the Bill, as they are anxious to see the new NRM operationalised as early as possible:

'A reformed NRM will offer more support to victims of human trafficking, particularly encouraging more victims to come forward to be formally identified by trusted statutory and/or NGO partners.'

Specialist CSO

The Commission has engaged extensively with the pre-legislative and legislative stages of the process of establishing a national NRM in law, alongside other stakeholders. Significant advances were made by the legislators as a result of debates and consultations with the Commission and other Stakeholders, chief among these being the introduction of an independent appeal mechanism.²³⁷ We also commend the removal of references to IPAS in the NRM Bill because the difficulties in the State's response to date have been, in part, predicated on the problematic conflation of two distinct frameworks – international protection and human trafficking. The Commission welcomes the following changes in the system of identification about to be brought by the Bill in particular:

- › The multidisciplinary decision making body, also including independent organisations;
- › Two stage procedures that triggers assistance to victims early;
- › The inclusion of an independent appeal mechanism, which the Commission considers a best practice approach;
- › The provisions for people with reduced capacity to consent and children within the identification process;
- › The removal of the test of 'credibility' in the assessment of the identification of victims of trafficking; and
- › The inclusion of a presumption of minority.

Of particular importance will be the guidelines that will be developed to operationalise the NRM. Diagram 1 offers an illustration of the main synergies and stages discernible in the

²³⁷ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

proposed national mechanism for identification and assistance of victims, proposed by the Bill.

There remain, however, important omissions that the Commission has called on the State to address before the Bill is enacted, in relation to details on assistance and immigration provisions to enable access to assistance by third-country national victims, the introduction of child-specific identification, and the opportunity to strengthen the non-prosecution principle.

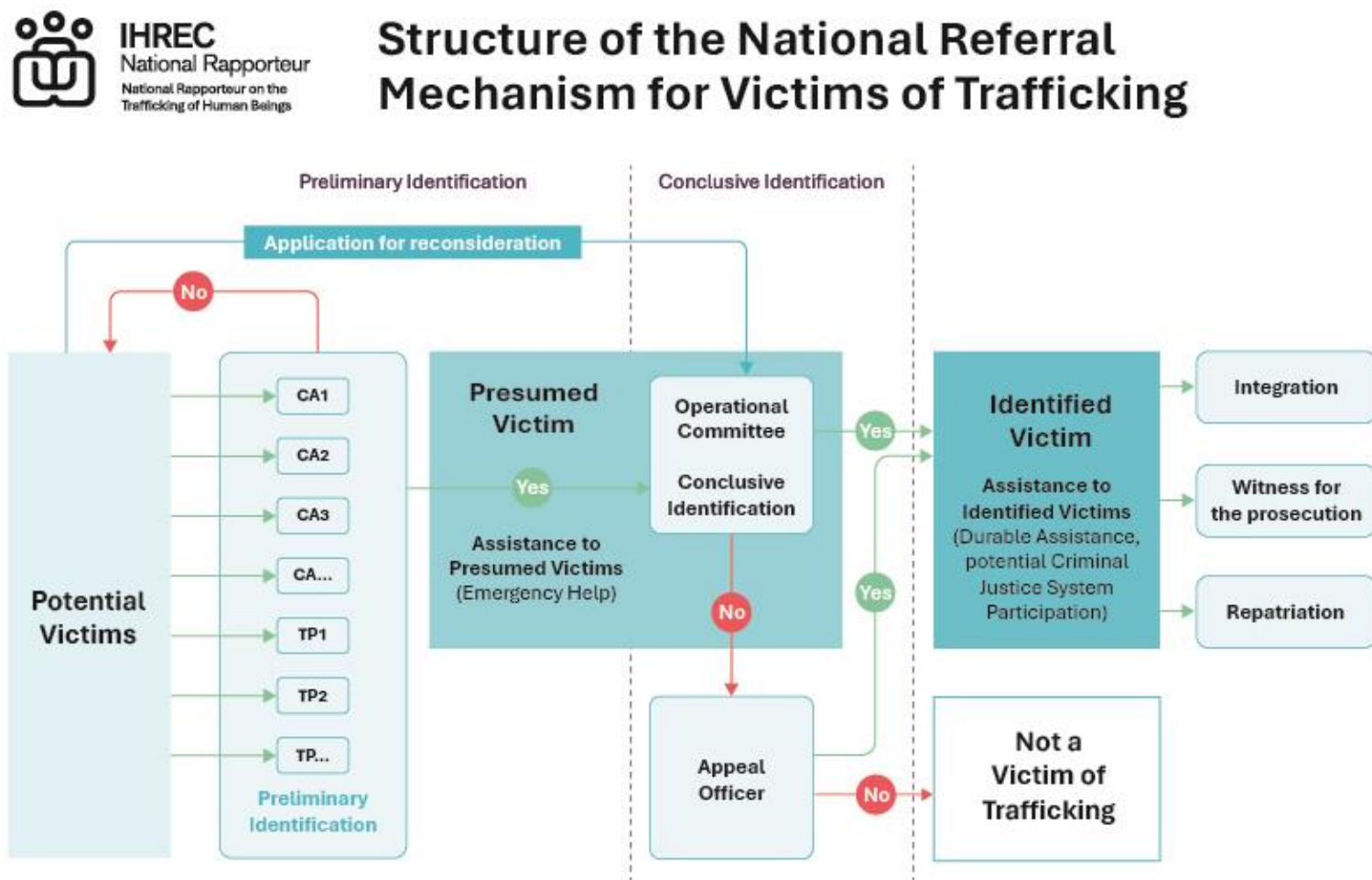
Assistance and Immigration Permissions provided in Law

The Commission has previously called for more details on assistance to be provided in the Bill. We are concerned that too many important matters surrounding assistance are left to be provided through soft policy. A fundamental principle of an NRM is that it must apply equally to all victims, regardless of their nationality, immigration status or pending international protection application. However, the decision not to enshrine immigration-related measures in statute undermines the equal treatment of victims of trafficking based on their backgrounds, origins and circumstances. This policy will disproportionately affect third-country nationals, whose unconditional assistance necessarily requires immigration permission. The Commission has continuously highlighted this need. We recommended that the Bill be amended to provide immigration permissions for presumed and identified victims of trafficking.

Age Estimation and Special Process for Child Victims

While we welcomed the increased provisions for child victims and the inclusion of a presumption of minority, we remain concerned about the absence of any age-estimation assessment in the Bill.

Diagram 1: National Referral Mechanism proposal: Stages and synergies.



NOTE: This Diagram is based on the Criminal Law (Sexual Offences & Human Trafficking) Bill 2023, Second Stage Debate, October 2023, In this Diagram 'CA' denotes Competent Authority and 'TP' denotes Trusted Partner.

The dangers inherent in treating a child as an adult are far greater than the danger of providing a young victim with corresponding protection and support. We also raised the need to amend the Children First Act 2015 to include all forms of child trafficking. At present, the Act applies only to trafficking for the purposes of sexual exploitation. **We recommended that this Bill be amended to ensure the Children First Act fully protects children from all forms of trafficking.**

Statutory Protection from Prosecution for Victims

The Commission strongly recommended the Bill be amended to include a statutory defence for victims of trafficking where they have committed crimes as a direct consequence of being trafficked. We are concerned that Bill does not provide for protection for victims, noting that this was a significant recommendation of the Joint Committee in the Pre-Legislative Scrutiny Report. In addition to the above, we made recommendations on Part 2 of the Bill, ‘Sexual Offences’, which we included with a view to enhancing the protections for potential victims who are hidden within mixed populations of independent, exploited and coerced people in prostitution and in mixed migration flows. We raised concerns that potential victims of trafficking who are not positively identified – as provided for in Part 3 of this Bill – will be deprived of these protections. We also raised concerns that the crime of sexual exploitation is viewed completely separately from other crimes of a sexual nature, which effectively denies victims of trafficking for sexual exploitation the protections available to victims of sexual offences. **To that end, we recommended that the Bill include sexual exploitation offences in the list of ‘applicable offences’ to which protections apply.**

Strengthening the National Referral Mechanism Concept in the Recast Directive

The Commission draws attention to the fact that the recast Directive of 2024 deepens the understanding of the concept of an NRM, enhances the standards and brings a range of new features to the mechanism. They merit consideration by policy makers in Ireland, prior to finalisation and enactment of the Bill establishing a national mechanism. Some features, such as the *dual stage of detection–identification* and *exploitation-specific detection* are already part of procedure in Ireland, while others such as the *provision of assistance as part of the NRM* and *referral to the most appropriate service* remain to be addressed for the purposes of transposition.

Mechanism for Referral and Assistance of Victims

The Commission draws attention to the fact that the required mechanism under Article 11(4) has a dual purpose, namely, to identify victims on the one hand and to assist them on the other. Such a mechanism is ‘aimed at the early detection and identification of, assistance to,

and support for identified and presumed victims’ (Article 11(4)(1), recast Directive). Identification is not carried out for the sake of statistical numbers and data collection. The primary role of identification is to ensure an early point of protection and provision of assistance to victims. This is a weak point in the Bill establishing an NRM in Ireland. The Bill barely makes clear what assistance victims are entitled to, and certainly does not elaborate on when this assistance commences and how victims who are third-country nationals will access it, if they hold no appropriate legal status in the State.

Detection and Identification of Victims

The recast Directive makes clear the existence of separate stages of detection and identification of victims. Both detection and identification trigger assistance to victims. The NRM Bill, as proposed, reflects well the reality of a two-stage process, with early detection of victims (or preliminary identification) carried out by a multitude of partners from government departments, state agencies and civil society Trusted Partners, and formal identification by the proposed Operational Committee. The NRM Bill also proposes an independent appeal mechanism, which is an example of good practice that merits EU-wide attention.

Mechanism Applicable to All Victims

Another notable step in the recast Directive is to explicitly mandate for the application of the mechanisms for early detection and assistance *to all victims* of all forms of trafficking:

‘A referral mechanism should apply to all victims and to all forms of trafficking offences taking into account the individual vulnerability of the victims.’ (Recital 15)

A Set of Adapted Identification Procedures

The Commission highlights the three ‘tasks’ of any mechanism specified in Article 4. The first pertains to the obligation to establish minimum standards for detection and early identification with adapted procedures for the different forms of exploitation. This essentially obliges the State to develop exploitation-specific guidelines for the various manifestations of the crime – in the sex industry; in labour exploitation; in forced begging, domestic work, criminality and other areas. Ireland has established some good practice in relation to early detection of victims within various contexts. Of note are the proactive work of An Garda Síochána within the sex industry, the WRC Labour Inspectorate within high-risk economy sectors and the IPAS vulnerability assessment (which regrettably has been suspended in 2024). The learning from these efforts could be utilised in the development of operation guidelines and procedures, once the law is adopted in Ireland.

Referral to the Most Appropriate Services

Of interest are the second and third tasks identified in Article 11(4)(1)(b) and 11(4)(1)(c), which go beyond detection and identification. The second obliges the State to ensure that the referral of the victim is made to the ‘*most appropriate services*’. This essentially means that the mechanism has to ensure referrals to the most appropriate service that could respond to the specific profile and needs of the victims, depending on the form of exploitation and the age and gender of the victim, including services that can meet any special needs arising from pregnancy, disability or experience of sexual violence (as detailed in Article 11.7). The system operated by IPAS would not meet this requirement, and we are delighted that the explicit reference to this possibility in the NRM Bill has been removed.

The third task mandates the establishment of ‘cooperation arrangements or protocols with the asylum authorities to ensure that assistance ... is provided to victims of trafficking who are also in need of international protection’. This feature of the recast Directive requires that the State ensure victims of trafficking seeking IP are protected in a similar manner as other identified victims of trafficking. Presently in Ireland, a person who seeks international protection cannot be formally identified as a victim of trafficking, cannot reside anywhere but in direct provision and has restricted rights to training and education compared to properly identified victims. The NRM must put an end to this differential treatment. The issue with the asylum-seeking victims of trafficking has been flagged in multiple assessment reports – national and international. One of the key independent services remarked on the inappropriate choice that exists between seeking recognition as a victim or applying for IP:

‘[The inadequate identification mechanism] can also push women into opting for the international protection system as this provides more security in terms of longer-term immigration permission, and in turn better chances to obtain employment in the Irish labour market.’

Specialist CSO

NAP’s Key Task on Early Identification and Assistance

The launch of the NAP in Ireland coincides with the addition of a fresh new Article to the agreed recast Directive that is solely dedicated to the Member States’ mandatory obligation to adopt NAPs on human trafficking. Specifically, Article 19b requires the State to develop a National strategy, where a key task would be to propose ‘measures to strengthen the early identification and assistance to, support for, and protection of the victims of trafficking in human beings’ (Article 19b(2)). It would appear that in the adoption of a new NAP, the State is once again ahead of the curve in the EU.

On that note, the Commission acknowledges that the NAP proposes a number of actions that have the potential to positively influence the new system of identification and assistance of victims. Under the Pillar of ‘Prevention,’ of note are the plans for updated guidelines and leaflets for indicators of trafficking in multiple languages, which will be used to target those working with vulnerable communities, and those in health and social care settings.²³⁸ Another action builds on the experience of proactive operations carried out periodically within the high-risk environments of the sex trade and selected economic sectors to screen for potential victims of trafficking, with subsequent evaluation.²³⁹ Importantly, the NAP designates specific actions on child trafficking, separate to the identification of child victims, which has been previously identified by the Commission as a problematic gap. For this reason, the efforts to ensure that by the second half of 2024, all professionals in contact with children, and working on child-related matters, are qualified in dealing with and recognising victims of trafficking and act in the child’s ‘best interest’ are acknowledged.²⁴⁰ The urgency of this action cannot be overestimated. Many expectations and hopes are concentrated on the outcomes of the NAP and the new NRM, which is captured well in the following statement by an independent CSO:

‘[T]he emphatic call for the inclusion of a child-specific identification process in the new Bill, which was not delivered, [despite this] was hugely disappointing. Even though there are child-specific guidelines promised in the third National Action Plan, we would have hoped for these to be transposed into law, reflecting international best practice. The continued lack of coordination of training efforts in Ireland remains challenging also with a duplication of services.’

Specialist CSO

Under the Protection Pillar, two actions are included to boost the NRM operations. On the one hand, applications for IP by potential victims of trafficking will be prioritised in accordance with the International Protection Office/UNHCR prioritisation statement²⁴¹ and on the other hand, the identification of victims of trafficking for labour exploitation will be considered by a purposefully established group aimed at improvement.²⁴²

Data Collection as Part of the National Referral Mechanism

The Commission draws attention to the recast Directive’s strengthened obligations regarding data collection, including data on detected and identified victims. These obligations are

²³⁸ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.2

²³⁹ [Ibid](#), Action 1.3.4

²⁴⁰ [Ibid](#), Action 1.10

²⁴¹ [Ibid](#), Action 2.6

²⁴² [Ibid](#), Action 2.7.1

included under a special additional article in the recast Directive that will also oblige the State to submit annual data disaggregated in multiple categories. In that regard, the Commission sees an opportunity with the introduction of the new NRM in Ireland to develop a special data-collection task entrusted to the Operational Committee – a collective body representing a new authorised authority for formal and conclusive identification of victims.

The Commission recommends that the State develops National Referral Mechanism Guidelines for centralised uniform data-collection, and launch a data system to which all Competent Authorities and Trusted Partners must contribute information, and which will facilitate the State in its new annual reporting obligations under Article 19b of the recast Directive.

Another issue that continues to arise is the outdated information and communication technology systems used by state agencies. These systems make case management challenging and are severely limited in their ability to disaggregate data. This issue appears to be a barrier for most state agencies and departments. We welcome the commitment in the NAP to ‘agree common data-collection protocols, disaggregation and reporting timeframes to ensure a consistent approach across departments and agencies’.²⁴³ Enhanced data collection is of course vital, but case management systems must also be improved to support cross-departmental/agency collaboration, and be user-friendly, to minimise, as much as possible, the administrative burden on frontline workers.

The Commission recommends that all government Agencies and Departments who are part of the new National Referral Mechanism develop data systems that are:

- › designed to meet the requirements of the new National Referral Mechanism, including the Operational Guidelines;
- › fully compatible with other Competent Authority and Trusted Partner systems;
- › capturing and disaggregating data with ease; and
- › user-friendly.

Conclusions on the National Referral Mechanism

This section provided an overview of the efforts to advance the establishment of an adequate system for identification and assistance in Ireland. It was emphasised that assistance has to

²⁴³ [Ibid](#), Action 4.7.2

be an integral part of the NRM, as international obligations dictate. Presently, this aspect of the referral mechanism is lacking in the design of the Bill. Nonetheless, essential steps have been taken through priority treatment of the Bill by the legislature and the publishing of an NAP on human trafficking, which brings the State closer to full compliance. It is also noted that the recast Directive, which is binding on the State, represents a new improved standard of human trafficking response in general, and identification and assistance of victims in particular. The Commission will closely observe the State's adherence to these standards, as the transposition of the EU law unfolds in the immediate future.

The Commission reiterates its recommendation that the National Referral Mechanism legislation clearly sets out the specialised assistance and support for suspected victims of trafficking, providing equity of care for all victims.

The Commission recommends that the National Referral Mechanism legislation clearly sets out the necessary immigration provisions for third-country national victims and stateless persons allowing access to the specialised measures for all victims.

The Commission reiterates its recommendation that the National Referral Mechanism legislation explicitly states that assistance and supports are not conditional on cooperation with criminal investigations and proceedings.

The Commission reiterates its recommendation that the Department of Social Protection explicitly exempts all victims of human trafficking from the Habitual Residence Condition to access statutory assistance.

The Commission recommends that the State invests in the adoption of the OSCE Simulation Training (the creation of which was supported and co-funded by the Irish State) designed for testing and improved implementation of National Referral Mechanisms, which particularly benefits countries that are implementing new mechanisms, as is the case in Ireland.

The Commission reiterates its recommendation that the identification procedure is made applicable to all suspected victims of trafficking and that it involves transparent decision making with timely confirmation of victim status to the individual and their legal representative. Such a procedure must include an appeals process.

The full list of the Commission's recommendations on the Bill establishing a NRM for Identification and Assistance of Victims of Trafficking are presented in [Appendix 1](#) of this Report.²⁴⁴

Efforts for Proactive Detection

The detection of victims of trafficking is a preliminary and provisional, but important step preceding the formal identification of victims. The recast Directive is very explicit on this dual stage of action, where detection is the first very important step. The Commission praises the fresh EU take on 'detection', as this has been in the focus of our national evaluation Reports to date. Purposeful screening for the purposes of detection of victims is not novel in Ireland, and it has continued in the reporting period.

Despite the current limitation of the NRM, the State actors have already significant experience in targeted actions for screening high-risk sectors for potential victims of trafficking. As in previous reports, the Commission will present and comment on the efforts in this Report.

This work unfolds in three main directions: Screening by An Garda Síochána within the high-risk sector of prostitution, inspections by the WRC Labour Inspectorate in selected high-risk economy sectors and vulnerability assessment pilot efforts carried out by IPAS among a portion of IP applicants identifying potential human trafficking cases among other vulnerabilities.

Workplace Relations Commission - Inspections as a Tool for Proactive Screening

The identification of victims of trafficking for labour exploitation has been problematic, which merited targeted actions under the new NAP, in particular the establishment of a special group to address potential barriers. On this background, the central role WRC Labour Inspectorate plays in the early identification of victims of trafficking for labour exploitation cannot be overstated, as the Commission has already noted. This role will increase with the new NRM, where the WRC will assume the role of a Competent Authority with the power to carry out preliminary identification (detection) of suspected victims.

The WRC has many different functions linked to the third-country national employment and immigration system as well as to labour regulations in Ireland. The WRC Labour Inspectorate, which has a particular relevance to human trafficking, has not increased in absolute capacity terms over 2023.

²⁴⁴ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

There are still 63 inspectors (inclusive of eight Inspector Team Managers) deployed in five regional offices. It is expected that the sanctioned capacity will increase to 80. It is essential that this work force is increased to sufficient levels in order to be allowed to deliver on the enhanced functions in 2024, linked to the performance of the NRM.

The Commission recommends that the Labour Inspectorate capacity is increased as planned, and maintained at levels allowing the Workplace Relations Commission to fulfil its functions as Competent Authority in the new National Referral Mechanism in the anti-trafficking area, and a key body in preventing labour exploitation in Ireland.

The WRC reported that no new policies, procedures or amendments to existing positions related to human trafficking have been introduced during 2023. All inspectors who have commenced employment prior to 2023 have received a training on identification of human trafficking signs by An Garda Síochána. Not all ‘new’ inspectors who were recruited over 2023 have received similar training, but some have. The WRC also regularly updates inspectors on trends and new developments relating to labour exploitation.

The Commission recommends that the newly recruited labour inspectors receive mandatory training on human trafficking as early as possible to allow them to contribute to the efforts around early detection of possible victims and that the Workplace Relations Commission ensures all inspectors are sufficiently trained in accordance with the agency’s role in the new National Referral Mechanism.

Over 2023, the WRC carried out 4,727 in-person inspections, with more than half of these unannounced (2,627). This represents an increase of almost 20% in comparison to 2022 (on average each inspector carried out and processed 65 inspections in 2023). The increased number of inspections is welcome. It essentially ends the declining trends in the annual inspections conducted in the preceding three years.

In performing its various tasks, the labour inspectors carry out joint inspections with other agencies and bodies. Of all inspections in 2023, 11% were jointly performed with another agency – 95 with An Garda Síochána, 157 with Revenue, and 262 with the Department of Social protection. One inspection was conducted jointly with the Marine Survey Office.

The Commission remains vigilant about the joint labour inspections that are carried out with immigration authorities, which may potentially result in unnecessary prosecution of not-yet-identified victims of trafficking. The Commission acknowledges the commitment of the WRC not to initiate proceedings against migrant workers for Employment Permits but rather to investigate employers for failed work permit compliance. According to the WRC, the firewalls allowing third – country national workers to communicate any concerns or complaints with the inspectors including in cases of joint An Garda Síochána inspections remain sufficient:

‘The WRC is satisfied that there are sufficient firewalls in place... The WRC implements a policy of not initiating prosecutions against an employee when detected working without a valid employment permit. In such circumstances, any prosecution proceedings are initiated against the employer only.’²⁴⁵

The Commission does not have sufficient data to assess the situation but remains of the opinion that clear firewalls are paramount to early detection of cases of exploitation, forced labour and human trafficking.

The Commission recommends that the Workplace Relations Commission considers and plans for strengthened and clearly communicated fire-walls between immigration enforcement and labour inspections, deriving from the role of the Workplace Relations Commission as a Competent Authority in the National Referral Mechanism, which in addition to facilitating reports of possible exploitation, has to protect the principle of non-punishment of detected victims of trafficking.

Of particular interest to the Commission remains the efforts of the WRC to inspect high-risk sectors for human trafficking. In its Second National Evaluation Report, the Commission observed a positive trend in such targeted inspections. This positive trend is also observed in the work of the WRC over 2023 (see Table 2). Based on the available data, an average increase of 50% was achieved in the high-risk economy sectors. Some areas received special attention with a dramatically higher number of inspections, such as the construction industry and the fishing industry, while the meat-related industry and domestic work saw fewer inspections in 2023. In the focus of the Commission came the health sector, which will be monitored in the future due to anecdotal information of coercive and exploitative incidents that may be conducive to human trafficking.

²⁴⁵ Source: Workplace Relations Commission 2024

Table 2: Inspections in the High-Risk Sectors for Human Trafficking

Sector	No. of inspections in 2023	Annual increase in 2023 (in %)	Annual increase in 2022 (in %)
Hair, nail, massage and beauty salons	376	34%	15%
Construction industry	223	168%	9%
Agricultural sector	14	-71%	-14%
Hospitality industry – hotels	123	38%	134%
Food production / service	1558	12%	82%
Beverage services	222	42%	170%
Fishing	88	151%	25%
Meat industry	17	-26%	53%(estimated) ²⁴⁶
Domestic work (all announced inspections)	2	Multi-fold decrease	Multi-fold increase ²⁴⁷
Human health	111	(no information)	(no information)
Car Wash, Valeting	95 (estimated) ²⁴⁸	(no information)	(no information)

²⁴⁶ Source: Workplace Relations Commission 2024. In late 2021, the WRC undertook a consultative process with operators in the meat processing sector with a view to conducting a series of compliance checks during 2022 to raise awareness and to check and ensure compliance with relevant employment legislation in this sector. The WRC received responses from 85 operators in the meat sector arising from the consultative process, and 25 (29%) of these respondents indicated they have availed of the services of Employment or Work Placement Agencies or similar intermediaries to engage workers or source of employees in this sector.

²⁴⁷ In 2021 just two inspections were performed, whereas in 2022 a total of 33. Over 2023, again, just two inspections were carried out.

²⁴⁸ As part of Europol EMPACT days of action on 10–17 June 2023, 285 businesses were inspected in the nail/massage, car washes and restaurant industries.

The WRC considers their work in high-risk sectors especially productive and necessary:

‘The process of focusing on higher ‘risk’ employments with 50% of inspections focused on high-risk employers and areas of interest – this resulted in an increase in recorded breach rates and necessitated more in-depth inspections during 2023.’²⁴⁹

The Commission recommends that the targeted inspections of high-risk sectors for human trafficking become a permanent practice of the Workplace Relations Commission, as a tool towards screening and early detection of possible cases of human trafficking.

The situation with migrant workers in the fishing industry has received much attention and a special focus in the human trafficking discourse in recent years. The WRC reported that there are 11 inspectors led by a Regional Manager that are trained and available for deployment. However, according to the WRC *‘given the number of employers and employees in this sector, this is a significant, and indeed, disproportionate allocation of resources’*. Most such inspections are unannounced and undertaken in port. For example, as part of *Operation Glaucus*, which took place from 11–13 October 2023, the latest for the year, 13 unannounced inspections took place at several fishing ports.

The International Transport Workers’ Federation (‘ITF’) reports improvements with the situation of migrant fishers, attributed to the abolition of the Atypical Work Permit Scheme, a number of important WRC adjudications (notable among these *Ahmed Elganagy v Galopin Trawlers*,²⁵⁰ related to workers right to resting time and the responsibility of the WRC in ensuring these rights are upheld). However, the ITF maintains that the WRC does not have enough prevention powers in regard to legal entities, for example to have a dissuasive effect on the vessel owner community.

²⁴⁹ Source: Workplace Relations Commission 2024

²⁵⁰ [2023] IEHC 544; Lawless L. (2022) [‘Underpaid and overworked: the serious allegations by migrant fishers to the WRC’](#) *The Journal* (4 December)

‘[We spent] all the time on the ship. From the start when we arrived here, he [employer] told us not to go anywhere, and if we needed anything we had to tell him and he would get it for us. So we didn't get to go anywhere. When we are on to work, he would normally provide food for us, the moment we are on the ground we cater for our own food. He would either bring his own car or let someone come in with a car and pick us up and take us there [to the shop to get food].

Survivor

On the contract I saw before travelling it was actually 1,300 pounds that I was supposed to be receiving, I was really happy and excited about it. But when we came in he said it's not what it's supposed to be. He [the employer] would normally just give us what he wants to give us, and when you ask him about it, we don't really know much about the shares and everything. When we would ask him about the payment, he would normally tell us from what he has given us he has deducted the amount used for food, clothing and shelter’.

Survivors

The ITF has identified as a specific novel issue, the exploitation of migrant fishers on foreign-flagged vessels in Irish waters. The occurrence of similar cases is substantiated by Irish media reporting. The Commission is interested in this issue, as it essentially places vulnerable workers and potential victims in a situation of limbo without a clear course of assistance, and maintains that such a problem must be considered in its multinational and EU-wide dimension.

The Commission recommends that the State uses its bilateral and international connections to seek and establish clarity regarding the responsibility in reported cases of exploitation and potential human trafficking on foreign-flagged vessels operating in Irish waters.

Despite the official position that the WRC currently plays no formal role in the State's anti-trafficking efforts, as in the previous year, WRC inspections led to the detection of human trafficking victims. In 2023, the Labour Inspectorate identified nine suspected cases of human trafficking for labour exploitation, in the following sectors:

- Massage parlours (3 cases);
- Food services (2 cases);
- Car Washing and Valeting (2 cases);
- Retail business (2 cases).

Among the nationalities affected were EEA nationals (Romanian, three cases), Third-Country Nationals (three cases from Latin America, one from Asia), and two of unknown nationalities. The WRC informed that all cases were referred to the Garda National Protective Services Bureau and that due to the lack of an official role in the State's human trafficking response, the WRC retains no detailed data of such cases.

The Commission reiterates its recommendation that, at a minimum, the Workplace Relations Commission keeps disaggregated data on the potential victims of trafficking they uncover and report to An Garda Síochána; and keeps data regarding any efforts to provide redress and compensation to such victims of trafficking.

Days of Action (EMPACT)

The Workplace Relations Commission participates in EMPACT joint days of action, which focusses on labour exploitation and human trafficking, which involves labour inspectorates and police forces across Europe.²⁵¹ EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime.²⁵²

From **8-12 May 2023, the EMPACT Global Chain week of Action on Labour Exploitation** was conducted, which focussed on, amongst other things, identification of possible victims of trafficking, disruption of possible supply chains in trafficking for the purposes of sexual exploitation, forced begging, and labour exploitation.²⁵³ Joint inspections were conducted during the campaign with Workplace Relations Commission inspectors and officers from the Garda National Protection Services Unit, the Garda National Immigration Bureau, and the

²⁵¹ Source: Workplace Relations Commission 2024

²⁵² Workplace Relations Commission (2023) [Annual Report 2023](#), p. 23

²⁵³ [Ibid](#)

Revenue Commissioners.²⁵⁴ 22 unannounced inspections were undertaken and 17 of the employers inspected were found to be in breach, or possible breach, of employment rights legislation and six employers were found to be in breach of the Employment Permits Act 2003.²⁵⁵

On **10-17 June 2023 EMPACT Labour Exploitation** multi-agency campaign was conducted, consisting of 7 Joint Days of Action, involving Workplace Relations Commission inspectors, the Department of Social Protection, the Revenue Commissioners, and members of An Garda Síochána from the Garda National Protective Services Unit and Garda National Immigration Bureau.²⁵⁶ This campaign identified potentially high-risk sectors for inspection including nail bars, the massage business sector, car washes, and restaurants.²⁵⁷ 285 inspections were carried out during the campaign, with 184 of the employers inspected having employment law breaches (with a total of 399 contraventions of employment legislation detected).²⁵⁸ Other issues detected outside of the remit of the Workplace Relations Commission were referred to the relevant State agencies.²⁵⁹ It is not clear if the possible human trafficking led to any identified victims of trafficking.

From **13-20 September 2023, the EMPACT Joint Days against Labour Exploitation in the Agriculture Sector** campaign was conducted with the Workplace Relations Commission inspectors carrying out inspections throughout Ireland on employers operating within the agricultural sector including forestry, fruit and vegetable farms, and livestock farms (animals and poultry). 14 unannounced inspections were undertaken and 9b of the employers inspected had employment law breaches (with a total of 13 contraventions of employment legislation detected).²⁶⁰

The NAP, provides that under the revised National Referral Mechanism framework as approved by the Government, the Workplace Relations Commission, in addition to An Garda Síochána, will become competent authorities for the identification of victims of human trafficking.²⁶¹ The Plan provides that the Workplace Relations Commission shall be responsible for reviewing the training on human trafficking currently provided to Workplace

²⁵⁴ [Ibid](#)

²⁵⁵ [Ibid](#)

²⁵⁶ [Ibid](#)

²⁵⁷ Source: Workplace Relations Commission 2024

²⁵⁸ Workplace Relations Commission (2023) [Annual Report 2023](#), p. 23

²⁵⁹ [Ibid](#), p. 19

²⁶⁰ [Ibid](#), p. 23

²⁶¹ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 15

Relations Commission inspectors, the timeline for this being the first quarter of 2024.²⁶² The Plan provides that the Workplace Relations Commission shall be responsible for ensuring that training on trafficking continues to be part of the baseline training of newly recruited labour inspectors and that refresher training is provided at appropriate intervals, the timeline of which is ongoing.²⁶³ A subgroup shall be convened to examine what more can be done to identify victims of trafficking for labour exploitation, with the timeline being quarter 4 of 2024.²⁶⁴ The implementing and supporting bodies for this include the Department of Justice, the Department of Enterprise, Trade and Employment, the Workplace Relations Commission, An Garda Síochána, and support from CSOs.²⁶⁵

Vulnerability Assessment as a Tool for Detecting Trafficking

IPAS reported that in 2023, 1,949 vulnerability assessments were undertaken. This represents 14% of all applicants in 2023 (13,277). This represents an increase from 2022 when only 8% were screened but overall remains far below the levels achieved in 2021, when one-quarter of all applicants were screened. Of course, the Commission is concerned that the vulnerability assessments ground to a halt in early 2024, due to the sheer volume of applications compounded by the accommodation shortage.

Over 2023, in almost 60% of the cases screened, vulnerability was established that in many cases was of multiple nature. The levels of vulnerability within the small sample that was assessed continue to be high, even though not as high as in 2022 (79%). Among the 1,949 cases where vulnerability assessment was conducted, 4 cases of potential human trafficking were detected. By extrapolation, if all new applicants were screened, there could have been more cases of human trafficking detected, which could have been of significance.

The Commission recommends that the State takes urgent measures to move from pilot arrangements to Vulnerability Assessment Screening of international protection applicants as the Recast Reception Condition Directive international commitment requires.

²⁶² Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1.1, p. 24

²⁶³ [Ibid](#)

²⁶⁴ [Ibid](#), Action 2.7.1, p. 29

²⁶⁵ [Ibid](#)

Table 3: Table 3. IPAS Vulnerability Assessments

Year	Total IP	VA Screening	Positive Assessment	Human Trafficking
2023	13,227	1949 (14%)	1150 (60%)	4
2022	13,651	1097 (8%)	829 (78%)	6
2021	2,649	686 (25%)	438 (63%)	13

The vulnerability assessment programme was formally suspended in March 2024 and the decision was communicated along with a suite of information to all of those queued for assessment. The programme was suspended as resources were required to deliver the vulnerability triage programme. IPAS and the HSE will continue to operate the vulnerability triage at the International Protection Office ('IPO') for all persons who cannot be accommodated. The triage aims to identify persons with very high-level needs and to prioritise them for accommodation.

The Commission recommends that Vulnerability Assessments are resumed as quickly as possible and deployed widely as a viable tool for early detection of trafficking cases among the applicants for International Protection.

Accommodation and Other Assistance (Article 11(5), 11(6), 11(7))

Original Directive Article 11 Assistance and support for victims of trafficking in human beings (Elements of Assistance)	Recast Directive Article 11 Assistance and support for victims of trafficking in human beings (Elements of Assistance)
<p>5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.</p>	<p>5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation, including shelters and other appropriate interim accommodation, and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.</p> <p>5a. The shelters and other appropriate interim accommodations referred to in paragraph 5 shall be provided in sufficient numbers and shall be easily accessible to presumed and identified victims of trafficking. The shelters and other appropriate interim accommodations shall assist them in their recovery, by providing adequate and appropriate living conditions with a view to a return to independent living. They shall also be equipped to accommodate the specific needs of children, including of child victims.</p>

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (16) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (17) or pursuant to other international instruments or other similar national rules.	6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Regulation (EU) 2024/... ⁺ and Regulation (EU) 2024/... of the European Parliament and of the Council, ^{***} or pursuant to other international instruments or other similar national rules.
7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.	Unchanged

Original Directive	Recast Directive
	Article 11a Victims of Trafficking who may be in need of International Protection
	1. Member States shall ensure complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities.
	2. Member States shall ensure that victims of trafficking are able to exercise their right to apply for

international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human beings.

Article 11(5) details the elements of assistance victims of trafficking are entitled to. It provides that the assistance provision must be based on informed consent, which has been already a well-established practice in Ireland. It provides for interpretation and translation services, regarding which no issues have been reported by the interlocutors in the reporting period. It then outlines the obligations to provide accommodation, which will be considered in detail in this section, as this remains an issue of high concern but also an area of some positive developments. The section finishes with some elaboration on medical and psychological assistance, presented on the background of the central service coordination delivered by the HSE AHTT (Anti Human Trafficking Team). From the outset, it must be noted that the State provides individual assessment and care planning for each victim, upon referral by An Garda Síochána. The care planning is a task performed for a number of years by the HSE AHTT, who by now have emerged as an important State assistance coordinator. Their work as well as the work of a number of independent specialist CSOs in Ireland will also be presented in this section.

The adoption of the recast EU Anti-Trafficking Directive, prior to the enactment of the National Referral Mechanism law in Ireland provides an opportunity for final legal amendments that would bring the legislation closer to the status of full compliance with the provisions of Article 11 ‘Assistance and Support’. These adjustments are particularly necessary in the legal provisions for practical assistance and support for victims. The draft legislation as written provides little clarity on the rights of victims to assistance and support.

Article 11(5) outlines in a clear manner the elements of assistance and support that victims of trafficking are entitled to. The Commission considered these elements in great detail in the First and Second National Reports of the Rapporteur. This section will build on the existing analysis, flagging the enhanced standards of the recast Directive and the positive commitments in the context of the recently adopted NAP.

It would be timely to note, at this juncture, that assistance and support for victims of trafficking is not provided for in national law. This gap could be filled by the Bill establishing a new NRM in law, which the Commission has been repeatedly recommending and flagging as an important opportunity not to be overlooked. The Commission warns that if assistance is left out of the legislation and provided in Operational Guidelines, this will represent a lower level of commitment with lesser scrutiny. The current Administrative Immigration Arrangements are a clear illustration of how unworkable such an approach could be.

It is concerning that during the parliamentary scrutiny on the NRM Bill, the features of assistance to victims – parameters, elements and access – have remained largely unknown. The Commission is disappointed to witness the missed opportunity to provide clear rights to assistance of victims in law.

The Commission recommends and stresses that assistance and support must be provided in a way that is clear, consistent and irreversible, which is best ensured through primary legislation.

The Commission reiterates its recommendation that assistance and support for victims is enshrined in primary legislation.

Immigration Permits – An Essential Part of Assistance and Support

The quality of assistance and support remains irrelevant for victims who are not entitled to access it. **The Commission is of the opinion that immigration permits are at the core of ensuring equality in assisting victims and must be an integral part of the assistance and support measures.**²⁶⁶ The NRM Bill would be an appropriate legal instrument to incorporate some regulation of immigration status for victims who need it. Failure in that regard carries wider implications for the successful operation of the NRM, as reported by the specialist CSOs consulted:

‘However, key issues such as immigration permissions in the primary legislation were not taken on board. The provision of immigration permissions is widely held to encourage victims to come forward for identification.’

Specialist CSO

The present lack of clarity regarding immigration rights raises questions. The State has expressed intentions to include immigration provisions in the NRM Operational Guidelines, even though the NAP itself states that the Operational Guidelines are solely for coordination purposes. Greater clarity and commitment in this regard remain outstanding matters.

Accommodation

As a central element of practical assistance to victims, accommodation in Ireland remained precarious and substandard in the reporting period. It has been repeatedly identified as a challenge by all specialist independent CSOs, has been the subject of criticism by

²⁶⁶ IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

international monitors, and has been reflected on extensively by the Commission as a National Rapporteur. Over the reporting period, the State has demonstrated awareness of the serious problems stating that the housing situation for victims of trafficking ‘is quite challenging at present’.²⁶⁷

The increase in the numbers of IP applicants over the reporting period and the acute shortages compound the validity of the Commission’s recommendation that victims of trafficking be accommodated separately, in specialised shelters.

The Commission was not alone in its comments. The call for specialised shelters has been echoed by specialist CSOs in our recent consultations. In 2023, a group of UN experts, including the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, Professor Mullally, issued a joint press statement calling on the Irish Government to strengthen the access to gender-specific housing and assistance of victims:

‘We call for urgent action to provide dedicated, safe accommodation for victims of trafficking, and to implement a statutory framework for assistance measures, including medical assistance, psychosocial support, and legal aid, in partnership with Civil Society Organisations ...The experts said particular focus was necessary on the gender dimension of trafficking, the risks of trafficking for migrant women, and the need for specialised assistance and protection measures.’²⁶⁸

The Commission has written extensively on the accommodation needs of victims of trafficking over the years. Our observations remain vastly unchanged, key among these being that the State is problematically conflating distinct legal frameworks by attempting to utilise direct provision (DP)²⁶⁹ operated by IPAS for the purposes of accommodation of victims of human trafficking. These attempts have stretched over many years. There are several major issues with the use of DP which obstructs the improvement of accommodation for victims: design, volatility, lack of gender and trauma approaches, institutionalisation and risk.

Firstly, DP is not designed for victims of trafficking crimes. Through the work of IPAS the State is meeting some distinct and separate international commitments, but is failing in its human trafficking commitments. Victims of trafficking occupy less than 1% of the overall capacity of DP, thus their needs could easily receive an alternative response. Secondly, the IPAS services have been under severe pressure due to the rising numbers of applications for international

²⁶⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 19

²⁶⁸ UN (2023) [UN experts urge Ireland to strengthen access to housing and assistance for trafficking victims](#) (11 September 2023), Ms. Siobhan Mullally, Special Rapporteur on trafficking in persons, especially women and children and Ms. Ashwini K.P., Special Rapporteur on contemporary forms of racism

²⁶⁹ Direct provision is the name used to describe the accommodation, food, money and medical services you get while your international protection application is being assessed or while you are an asylum seeker, which means the same thing. Source: [Citizen Information Centre](#).

protection. This reality unnecessarily and dangerously exposes victims of trafficking to a crisis of a largely unrelated nature.

‘The dire housing situation nationally caused one victim to believe that accommodation through the NRM was likely not available to him, and he sought accommodation elsewhere which left him vulnerable to exploitation and trafficking.’

Specialist CSO

Thirdly, DP is gender-neutral and staff have not been trained in trauma-informed approach. The vast majority of trafficked victims in DP (over 80%) are sexually violated women. There is clear evidence that female victims are propositioned and further sexualised and as a result re-traumatised in mixed-gender hostels. The UN Special Rapporteur on Trafficking has taken an unprecedented step in urging the State to provide gender-specific shelters, as mentioned earlier. Staff in direct provision do not even have the right to know to whom they are providing the service, and this is contrary to the required specialised assistance in the EU Anti-Trafficking Directive.

Fourthly, the circumstances of DP (full board and toiletries for example) are not conducive to the restoration of independent living skills for victims who have been deprived of choice over many aspects of their daily life, including choice in mundane matters such as food, clothes and toiletries.

Finally, DP hostels are not sufficiently secure and guarded to prevent the further exploitation of victims of trafficking, including by traffickers, who in some cases instruct victims to avail of DP, where their contact remains undisturbed. In the Commission’s consultation with survivors, they spoke of the fear and violence they experienced within DP accommodation. Worryingly, from talking to frontline service providers and victims/survivors there does appear to be an increase in the violence experienced by women within IPAS accommodation.

The first night I got to Ireland I was admitted to the emergency ward. When I was there the social worker that referred me to Ruhama also got the guards and I reported my case to them. There was a hotel manager that tried to sexually assault me. The only thing that gave me courage was that I knew I had Ruhama by my side.’

Survivor

IPAS Data for 2023

The analysis of data for 2023 shows that IPAS has provided accommodation for 40 victims of human trafficking, 4 males and 36 females. All were adults. The vast majority of the victims were from the African continent (27 victims), with Nigeria being the leading country (19 female victims), followed by the EEA (5 victims), Asia (4 victims) and other European countries (2). Two-thirds of the victims had made applications for international protection. The data for 2023 represents a small increase on 2022, when IPAS accommodated 35 victims in total, 32 women and 3 men.

As usual, the Commission analysed the situation for the month of December 2023 as a snapshot of the utilisation of direct provision for victims of trafficking, with the kind cooperation of IPAS. Data showed that there were 110 victims of trafficking residing in DP in December 2023, 9 males and 101 females. Of the 110 victims accommodated in December 2023, 95 (86%) were seeking international protection, while 15 were not. Data on the form of exploitation was not known to IPAS.

The victims were from 25 countries, with the highest numbers being from Nigeria (56 victims), South Africa (nine victims), Zimbabwe (seven victims) and Kenya (six victims). The other countries were represented with less than five victims each. Overall, the African continent was strongly represented, followed by Asia and the EEA.

The vast majority of the victims were in ‘mixed-gender’ hostels (87), with nine in single male and six in single female hostels respectively. 27 of the 101 female victims of trafficking were mothers accompanied by children. Of these, two had four children each, five had three children each, eight had two children, and 12 mothers were accompanied by just one child. None of the male victims were accompanied by children. The recast Directive mandates that shelters for victims have to take into account the needs of accompanying children, which is a whole new dimension of assistance that the State has to acknowledge.

The snapshot for the month of December 2023 shows an almost identical picture to December 2022, where:

- › Victims of trafficking comprise less than 1% of IPAS residents (103 among 13,651 in 2022 and 110 among 13,277 in 2023);
- › The overwhelming majority are women (88% in 2022 and 91% in 2023);
- › Above one-quarter of the female victims were accommodated with their children in 2023;
- › The vast majority are placed in mixed-gender accommodation (80%), and single-gender shelters are rarely used for female victims (just three in 2022 and six in 2023);
- › Eight men were accommodated in single-gender male centres;
- › Long-term institutionalisation poses problems.

The data collected by the Commission since 2021 indicates that on annual basis about 100 places are required for victims of human trafficking (though it is expected that this number will increase with the revised NRM). The service has been delivered by IPAS against a background of unprecedented crisis due to the dramatic increase in demand for spaces for international protection applicants. IPAS opened a first of a kind specialised shelter for 8 females on a pilot basis in the reporting period. A special section is dedicated to this very positive development in this chapter.

Policy Matters Concerning the Accommodation of Victims

IPAS shared that its current obligations regarding accommodation includes a 60-day recovery and reflection period for all victims, followed by more long-term accommodation for victims who seek international protection. The problem is that the State does not explicitly grant ‘recovery and reflection’ periods to victims, nor does it make victims (or their legal representatives where applicable) aware that such a recovery period is granted. The Commission is of the view that the ‘recovery and reflection period’ is fundamentally different from ‘emergency’ accommodation, which direct provision essentially represents for victims of trafficking.

According to IPAS’s policy approach, victims of trafficking who do not seek international protection should not remain at IPAS beyond the period of 60 days, despite the fact that the State has not made alternative arrangements. Additionally, the Commission reiterates that the accommodation of victims must not differ on the basis of their background or pending applications. The EU Anti-Trafficking Directive does not distinguish in its provision for assistance to victims of trafficking who claim or do not claim international protection. Rather, the principle is that assistance to trafficked victims must not prejudice their right to seek asylum.

The Commission recommends that the Operational Guidelines supplementing the revised National Referral Mechanism make it explicitly clear that all victims of trafficking are entitled to assistance, which is based on their individual needs but does not prejudice their choices, including their right to seek and enjoy International Protection.

Circular 41/2012

IPAS is the main provider of accommodation for victims of trafficking but not the only one. The Regional Housing Authorities are also in a position to house victims of trafficking by processing their application for Housing Assistance Payment according to Circular 41/2012 *Access to social housing supports for non-Irish nationals*.²⁷⁰ In its second national report, the

²⁷⁰ Circular Housing 41/2012 – Access to Social Housing Supports for non-Irish nationals, available [here](#).

Commission provided detailed comments on the erroneous application of the Circular as a test for accommodation of victims of trafficking.

The Circular impermissibly creates an exclusion from eligibility for social housing support which is not founded in law, and denies victims lawfully resident in the State accommodation to which, under the State's international obligations, they are entitled.

'Our experience is that where a survivor of trafficking has access to HAP they are more quickly able to access employment and generally integrate and recover from their experience. The inverse is true, where survivors have spent significant time in direct provision their integration and recovery is delayed and the negative experience compounded.'

Specialist CSO

The Commission expresses its concern that the General Scheme of the Housing (Miscellaneous Provisions) Bill 2024 purports to put the policy position of Circular 41/2012 on a statutory footing, as well as adding habitual residence as a requirement.²⁷¹ In practice, most identified victims of trafficking are accommodated in DP centres as stated above, which is not 'appropriate and safe', beyond emergency accommodation. Over time, it could be argued that the basic conditions, the over-crowding, the transfers, the lack of privacy and the absence of any scope for meaningful personal autonomy may easily become inappropriate. However, the conditions of the Circular make victims of trafficking ineligible to move out and rent privately. The application of the Circular is incompatible with Article 11(5) of the Anti-Trafficking Directive in that it prevents the State from complying with its obligation to provide 'appropriate and safe' accommodation.

The Commission recommends that the envisaged Housing (Miscellaneous Provisions) Bill 2024 is drafted in a way that ensures the five years reckonable residency requirement does not apply to victims of trafficking in a manner that is contrary to the EU Anti-Trafficking Directive.

First Specialised Shelter

On the background of the findings presented above, positive developments that have occurred in the reporting period must be highlighted. Chief among these is the opening of the first specialised shelter for victims of trafficking in Ireland. This is a small facility for 8 female victims, operated by the Depaul charity and funded by the DCEDIY (IPAS). The shelter opened

²⁷¹ IHREC (2024) [Submission to the Minister for Housing, Local Government and Heritage on the General Scheme of the Housing \(Miscellaneous Provisions\) Bill 2024](#)

on a pilot basis with an Oversight Committee of state agencies and Ruhama. It operates as a gender-specific facility providing specialised services. The opening of the shelter has been met with enthusiasm and has been warmly welcomed by virtually all specialist CSOs in Ireland.

During the consultations, positive opinions were expressed by survivors of trafficking who were already recovering in this shelter.

“When I came to Depaul I was completely lost. Rosa’s Place has given me the strength to come to the realisation of what had happened to me and has helped me process it. It’s been a journey over the last few months. I am so grateful to have been placed here, [staff 1] and [staff 2] have been fantastic, you have checked on me, looked out for me and hugely supported me. You guys take action and make sure that everything I have needed has been prioritised, I can’t express how important that has been in my healing. I came to you one day about how I was feeling, I was totally overwhelmed, scared and I could hardly leave the room. You listened to me and you knew straight away that I was anxious, you were able to teach me about anxiety and told me how the GP could help me. Because of that, and because of how calm and normal you were about it I could go to the doctor and that has changed everything for me. I feel like a new person. What can I say, it’s just a lovely, lovely service and everyone is treated fairly and with kindness. You don’t pick sides and you let everyone have their say, it looks like a hard job but you don’t make it seem like a job, you guys do it because you really want to help us. Someone I know who hasn’t seen me in a long time saw me this week and they couldn’t believe I was the same person. I didn’t speak back then, I was so depressed and scared and now this woman is seeing me laughing and speaking out. That’s how much Rosa’s Place has done for me, I feel like the person I have always meant to be.”

Survivor

The shelter has a number of limitations. The capacity is very small, considering the findings of the Rapporteur that in the last couple of years on average 90 women victims of trafficking are residing in DP hostels at any given time.

‘[The new hostel] cannot accommodate the true volume of female victims in the country who continue to be housed in inappropriate, mixed-gendered and restrictive living spaces within direct provision. Victims account being put at risk of threats and violence from men and there are no alternatives available to them.’ CSO Specialist

A number of CSOs called for an expansion of the capacity of specialised shelters as a matter of urgency. The Commission shares the commendations to the State regarding the piloted gender-specific shelter and the concerns regarding its capacity.

The Commission recommends that the pilot shelter is swiftly evaluated and replicated in sufficient numbers to accommodate, in a gender-specific manner, victims of trafficking recovering from gender-based violence trauma.

Another positive development that must be highlighted is the strengthened and clarified accommodation provisions in the recast Directive. Article 5(a) provides:

‘5a. The shelters and other appropriate interim accommodations referred to in paragraph 5 shall be provided in sufficient numbers and shall be easily accessible to presumed and identified victims of trafficking. The shelters and other appropriate interim accommodations shall assist them in their recovery, by providing adequate and appropriate living conditions with a view to a return to independent living. They shall also be equipped to accommodate the specific needs of children, including of child victims.’²⁷²

It is clear that EU law has moved beyond any ambiguity in the provision of assistance by calling for ‘shelters’ in addition to other appropriate interim accommodation. Importantly, it is calling for such facilities to be established in sufficient numbers. In the short term since its establishment as a National Rapporteur, the Commission has already been able to establish patterns and trends in the accommodation needs of victims of trafficking. The hope is that the State would be able to correctly assess and allocate resources to meet the requirements of Article 5(a) in the immediate future and prior to June 2026, the deadline for the transposition of the recast Directive.

The Commission recommends that the State plans for, and invests in, a sufficient number of gender-specific shelters and appropriate interim accommodation to satisfy the need for

²⁷² [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Article 5 (a)

accommodation of victims of trafficking, in line with the required standards in the recast EU Anti-Trafficking Directive.

The Commission highlights that the NAP already contains strong and adequate statements in relation to accommodation and includes actions that ‘link to the commitment under the third National Strategy on Domestic, Sexual and Gender-Based Violence to provide gender-specific accommodation to trafficked women’.²⁷³ The concrete actions are presented in Table 4.

Table 4: Extract on Accommodation from National Action Plan to Prevent and Combat Human Trafficking 2023–2027

Action	Overall objectives	In relation to actions we will:	Timeline	Implementing bodies Supporting bodies
2.5	Accommodation provision for victims of trafficking	2.5.1 Identify short-term accommodation arrangements including safe houses and emergency accommodation	Ongoing	NRM Operational Committee NGOs
		2.5.2 Establish dedicated accommodation for victims of trafficking – ensuring that victims of trafficking for sexual exploitation are provided with gender-specific accommodation	2023 and ongoing thereafter	Department of Children, Equality, Disability, Integration and Youth IPAS
		2.5.3 Ensure victims of trafficking are provided with accommodation which is suitable to their vulnerabilities	2023 and ongoing thereafter	Department of Children, Equality, Disability, Integration and Youth IPAS

© National Action Plan to Prevent and Combat Human Trafficking 2023–2027, p. 28

²⁷³ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 19

The Commission is encouraged at the commitments made by the State and wishes to reiterate that both short-term and some longer-term accommodation facilities would be required in reality. Also important would be to provide for male victims of trafficking, who, albeit present in lower numbers, are persistently identified as victims who are in need of accommodation. The reality that a sizeable proportion of female victims receiving assistance are mothers accompanied by children has to be taken into account. The recast EU Directive, quoted above, already creates obligations with regard to such cases. Finally, in some cases entire families are identified and arrangements have to be put in place to cater for such cases.

A resident of the pilot shelter explains:

'I'm only going to stay here 4 months, and my health is going to be a long term problem. If I don't get my health back where should I go from there? I understand it's a short period of shelter provided for us, I wasn't thinking to stay for long, I thought I was only going to stay here for a couple of weeks, but because of my health issue I couldn't move anywhere. My leg was only not in pain for the last month, otherwise it was really painful during the nights, the first month especially. I also thought I would be able to work, I didn't think I would stay there for that long'.

Survivor

The Commission recommends that gender-specific shelters are afforded the facilities to cater for victims who are mothers with children, given the significant proportion of female victims accompanied by children.

The Commission recommends that specialised shelters also be opened for male victims of trafficking, as well as for entire families, whenever such needs arise.

Conclusions on Accommodation

Accommodation remains a challenge for both professionals assisting victims and IPAS as central service provider. Direct provision continues to be widely used for victims, who represent a tiny proportion of the residents in IPAS. The policies allowing alternative accommodation are becoming more restrictive under a proposed new piece of legislation. Instances of homelessness of trafficking victims are reported in Ireland.

In this context, IPAS opened the first specialised shelter for victims, run by Depaul. It is of small capacity but already has attracted extremely positive feedback and appreciation by professionals in the field. The recast EU Anti-Trafficking Directive strengthens the obligations on accommodation of victims and now mandates specialised shelters as well. Thus the establishment of the shelter is a step in the right direction but it needs to be replicated at least tenfold to meet the basic need for spaces in Ireland, and this must be done with greater urgency.

The NAP contains strong obligations regarding further developments of accommodation capacity for victims, on a gender-specific basis. Finally, it will be essential that the NAP actions be implemented independently and irrespective of the transformations envisaged for IPAS as a whole.²⁷⁴ Of concern is that practice to date shows our international obligations towards victims of trafficking have remained unmet for years, due to the incorporation and de-prioritisation of trafficking victims within the larger picture of the International Protections system.

The Commission recommends that the actions of the Third National Action Plan 2023-2027 are implemented independently and irrespective of the transformations envisaged for the International Protection Accommodation Service as a whole.

Other Assistance

The elements of assistance naturally include provisions for medical and psychological assistance of victims. In previous reports we have explained the relatively generous approach to healthcare for victims, which includes access to a free medical card and GP assignment for identified victims. The coordination of this task has been entrusted to the HSE Anti-Human Trafficking Team ('HSE AHTT') who are also central point of individual care planning for victims.

In the reporting period, the HSE AHTT informed us that their capacity to provide assistance has improved. This now permanently includes a full-time psychologist, a GP specialising in sexual health and a general GP on a part-time basis. Importantly, there are free GP services for potential victims who do not have a medical card or who have not been able to secure a personal GP.

²⁷⁴ Under the Revised Accommodation Model of the DCEDIY,²⁷⁴ in section Accommodation for Vulnerable Cohorts, we read that 'families and the most vulnerable will be prioritised for accommodation in the community, in specialised accommodation that may be supported by specific NGOs – e.g. accommodation for victims of trafficking.'

The Commission welcomes the full-time provision of psychological services, which gives effect to our recommendations in that regard. Also welcome is the flexibility in the provision of GP clinics, to ensure all victims have access to basic medical care.

On the matter of healthcare, the new NAP reconfirms favourable treatment of victims involving access to medical card, a designated GP and referral to community healthcare services.²⁷⁵

The Commission recommends that the State makes provisions to ensure medical and psychological assistance to victims in all areas of Ireland, due to the present geographical dispersal of victims.

Coordination of Services to Victims

As mentioned earlier, the HSE AHTT is responsible for care planning and for supporting all potential victims of human trafficking. The AHTT is co-located with the HSE Women's Health Service ('WHS').²⁷⁶

In addition to a GP and Principal Psychologist, the unit includes a full-time nurse and five social care leaders (one to be recruited), all led by a Service Manager. The team is backed up by administrative support.

The team is responsible for carrying out a full assessment of need for each potential victim of trafficking referred to the service. An individual care plan is then developed in conjunction with the victims based on informed consent, and then implemented in cooperation with state partners and specialist CSOs. Each victim is contacted within three days of receipt of referral and allocated a social care leader. Areas covered in the assessment include health, psychological and social. Assistance is provided for practical matters such as housing, immigration status and family reunification. All care plans are reviewed quarterly. The team has established structured referral agreements with CSOs and agencies, such as the Legal Aid Board ('LAB') and Depaul (shelter). On the prevention side the HSE AHTT and the co-located HSE WHS participate in joint 'welfare visits' with An Garda Síochána (Garda National Protective Services Bureau ('GNPSB'), Organised Prostitution Investigation Unit ('OPIU')) with the aim of improving access to healthcare and support services for individuals in the sex trade and increasing identification of persons trafficked for sexual exploitation in partnership with law enforcement. The team has also secured a place for an ICT/digital content officer to be recruited in 2024, which is very practical and necessary in light of the increased use of

²⁷⁵ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 2.4

²⁷⁶ This is a health service and outreach support for women (inclusive of trans and cis women) across all areas of prostitution and victims of sexual exploitation.

internet technologies within the sex trade and in general in human trafficking. The HSE National Social Inclusion office has developed a programme of DSGBV training modules, inclusive of human trafficking awareness, which is already available on the HSE e-learning website.

‘I really miss my family over in [country of origin]. I wish after a year with a visa, I really want a reunion with my family. I've not seen them for 2 years. I really, really miss them. If they renew my GNIB card longer, that would be great. I have a lot of hope for the visa I can renew for longer than half year, a chance to reunite with my family or invite them over’

Survivor

Over 2023, the HSE has worked with 46 new cases and 78 ongoing cases. On average, three-quarters of the victims are female and one-quarter male. The ongoing cases from previous years involve transgender clients. Roughly two-thirds of the service users are under the age of 35. Seemingly, the age in the ongoing versus current cases is increasing, which may indicate a need for longer-term assistance for victims of more advanced age, but this requires further research. Among the medical problems reported are back pains, FGM related complications in the sex industry, alcohol and drug use. The new clients (potential victims) in 2023 were of 19 different nationalities. More than half of them were from Africa (most often Nigeria), followed by Asia, and a small number of victims from the European continent and Latin America. The month of December saw three-quarters of the victims accommodated in DP (IPAS), and a small number in the Rosa shelter. The Commission is concerned about the information that seven victims were homeless (two new clients in addition to five cases from before 2023), eight victims were of no fixed abode and one potential victim was in prison. Eight victims in total (four of the new clients and four of the ongoing cases from before 2023) received a place in the new specialised shelter. Overall, the accommodation of the team’s service users illustrates the extreme scarcity of safe places for victims of trafficking in Ireland.

Overall, the work of the HSE AHTT adheres to best practice standards in many respects, while it is gender sensitive and valued by service users. The Commission has previously commended the State (HSE) for organising this type of central service coordination and envisages utilisation of its significant expertise in the operations of the future NRM.

The Commission recommends that the funding of the HSE Anti-Human Trafficking Team service is enhanced to ensure branching out and geographical coverage throughout the country.

The Commission reiterates its recommendation that the HSE Anti Human Trafficking Team retains its gender-specific expertise in the provision of care for victims of trafficking with special needs, especially those arising because of trafficking exploitation involving gender-based violence.

The Commission reiterates its recommendation that the Department of Justice (as the lead Department on Domestic, Sexual and Gender-Based Violence) is tasked with integrating victims of trafficking who have suffered gender-based violence into their overall Domestic, Sexual and Gender-Based Violence response.

Specialist CSO Involvement in Assistance

The state agencies' efforts in delivering victim assistance are complemented by the work of a number of expert CSOs specialising in different forms of exploitation or aspects of the human trafficking response. It is important to highlight that the services of CSOs are not limited to referral by An Garda Síochána. Such organisations are free to identify and assist suspected victims irrespective of the State's endorsement. This provides a much-needed flexibility in the field of victim assistance in Ireland. In that sense, the CSOs have an essential role to play in the national human trafficking response. Most of the specialist CSOs are funded by the State, on an annual basis, for their contribution to the fight against human trafficking, and most importantly to allow them to deliver independent services. This funding has increased in recent years, which is discussed further in the context of Article 18, dedicated to prevention of the crime.

These CSOs remain largely the same with the exception of Depaul, which recently joined this cohort. This section will briefly outline the profile and role of the CSOs in the area of human trafficking. It is reiterated that the consolidated statistical data from the specialist CSOs on victim assistance is presented in [Appendix 2](#) Data fact sheets. The CSOs, alongside the state agencies, have been invaluable contributors to the Commission's work as a National Rapporteur on Trafficking.

Ruhama is a charity organisation with long expertise in support of persons involved in prostitution and victims of trafficking for sexual exploitation and other trafficking forms involving gender-based violence. Due to the gendered profile of service users (mostly women) Ruhama has adopted a professional gender lens in its work, which is well-utilised in its anti-trafficking work. Ruhama's full range of services are available to suspected victims of

trafficking for sexual exploitation on referral to Ruhama. These include Outreach, Casework, Education and Development programmes, Trauma Therapy/Counselling, Bridge to Work programme, Seeking Safety and Peer Mentoring programme. In specific cases assistance measures may extend to: support in reporting crime(s), support in accessing appropriate crisis accommodation, psychotherapy and counselling to support individuals with trauma, accompaniment to appointments with other agencies, court accompaniment, assistance in regularising immigration status, support to return to country of origin. In addition to assistance, Ruhama is active in prevention through policy work, research, training, campaigns, and welfare visits with An Garda Síochána for those within the sex industry. Ruhama operates a special referral protocol with the HSE. Its contribution to services in this most widely-encountered form of trafficking continues to be significant.

The Immigrant Council of Ireland (‘ICI’) is an independent law centre and provides information and free legal assistance to migrants and their families, including victims of human trafficking, as well as engaging in advocacy relating to policy and law reform. Any information provided is anonymised. The ICI only acts with the consent of the individual concerned. The organisation provides holistic legal representation to victims of trafficking, which is not available through State services. This work is resource intensive; therefore only a limited number of victims of trafficking could benefit from this service. The cases are selected based on considerations linked to vulnerability and potential for strategic litigation. Victims of trafficking who are clients of the law centre receive professional legal advice and assistance on a wide range of matters to do with identification as victims and access to State services, immigration rights, citizenship and personal documentation, family matters, education access, compensation and other issues. The ICI is an important independent legal and policy analyst. It is well connected within Europe and is a preferred partner in pan-European projects, when resources permit. The ICI has specific expertise in gender-based violence and is currently participating in multinational research on forced marriages.

The Migrant Rights Centre of Ireland (‘MRCI’) is a national organisation working with migrants and their families in Ireland to promote justice, empowerment and equality. MRCI is a national Assessment Centre For Trafficking for Labour Exploitation and part of the informal NRM at present. It offers a national assessment and advocacy service for people who experience trafficking for labour exploitation, providing high-quality individual casework supports. MRCI also works on prevention by raising awareness of trafficking for labour exploitation and developing a multi-agency identification system for victims of trafficking nationally. The MRCI is an important policy analyst in the realm of migrant employment, forced labour and human trafficking. In 2023, MRCI strongly contributed to the WRC decision on protecting the identity of victims of trafficking who take cases to recover wages and compensation for employment breaches to the WRC. These protections are important as they could make it easier for a victim to take a case against their trafficker, and also because there is no other form of compensation available to victims of trafficking for labour exploitation in practice in the absence of conviction.

MECPATHS is a non-governmental organisation that specialises in awareness raising and training on the issue of human trafficking of children. It is a unique organisation with a targeted focus on child trafficking in Ireland. Its work focuses on delivering training to frontline and emerging professionals. Its extensive training programme includes work with hospitality staff/management, aviation and security personnel, social workers, social care workers, private recruitment, criminology graduates, social policy professionals and others. MECPATHS maintains a close working relationship with Tusla and sits on their Child Trafficking Working Group. As its work is not on assistance but on prevention of human trafficking, it is presented in detail on [Article 18](#) dedicated to prevention.

The International Transport Workers' Federation (ITF) assesses migrant fishers working on Irish vessels or foreign-flagged vessels operating in Irish waters who meet the Delphi criteria for human trafficking and make representations on their behalf to the Gardaí or Police Service of Northern Ireland ('PSNI') for their admission to the NRM and investigation of their complaints. ITF has a unique focus on labour breaches and human trafficking for labour exploitation in the fishing industry. Unlike the other organisations, it is trade union-based and operates on the island of Ireland. ITF has made an important contribution to the national understanding of the situation of migrant fishermen, which is a contemporary high-risk sector for human trafficking in the world. It provides advocacy and support on individual cases, as well as policy analysis and advocacy in its subject area. Its work notably complements the fight against trafficking for labour exploitation.

There are other organisations, such as AkiDwA, Doras Luimní, the Dublin Rape Crisis Centre and the more recently joined Depaul, that are also important contributors in the field of human trafficking. They have provided invaluable input to the consultations of the Commission as a National Rapporteur.

It was evident from our survivor consultations that many expressed profound isolation and loneliness, especially as a result of separation from their children and family, with no timeframe for when they may be able to see them again:

‘The problem is that I am not with my children, and I need to have them with me. I don’t know how to bring them here to Ireland. Before we have been promised that it was five years for work permit and then I can seek to become a resident here. But now I have an issue, or maybe a lot of us have the same issue, that we can’t be reunited with our children. The primary reason for me to take the risk come to Ireland and pay the high price for everything that I did was really just for my children, to have them here and study here and live with me. That was the reason I agreed to come here first’

Survivor

Among the international non-governmental organisations, it is worth presenting the International Organisation for Migration, which provides safe repatriation assistance to victims of trafficking and is active in the area of awareness raising and training.

The Case Study of Lily

Lily comes from a big family who was not well off. However, she was able to go to college and obtain a degree but wasn’t able to find work. Things got worse for the family when her father died prematurely, leaving the family to struggle making ends meet. Lily set up a stall selling food products at the market. Lily met a woman in the local market in her hometown. This woman “Madame Joy” appeared to be wealthy and took an interest in Lily and her family’s situation. She befriended her and gained her trust, even met her family. She offered to bring Lily abroad for a better life where she could further her education and get a job and pay her back gradually. “Madame Joy” made all the travel arrangements and treated Lily with respect. On arrival to Ireland “Madame Joy” changed and became very harsh towards her. “Madame Joy” forced Lily into prostitution in order to pay back money for the travel expenses and arrangements. She threatened Lily with the police in Ireland, as she did not have a legal status and that she would harm her family if she tried to escape or did not pay back her debts. Lily

managed to escape from the house she was kept in for about 4 months, fleeing to Dublin. She was put in touch with Ruhama who referred her to the Gardaí. Upon initial assessment Lily reported very poor sleep, flashbacks, frequent crying, feeling low and anxious and suffering from daily headaches. Lily was very concerned about her family in Africa as the trafficker knows where they live. The trafficker had sent her associates to threaten the family, demanding money Lily allegedly owes her. Lily blamed herself for putting her family in danger. Lily received continued assistance and support from Ruhama, HSE AHTT and other State Agencies. Lily obtained her refugee status in September 2023. She was relieved about this but continues to be very concerned for her family's safety in Africa. She tries to send them money whenever she can save some. Lily continues to live in IPAS accommodation but has submitted her application to the local housing authority. She has obtained a care assistant's qualification and is working part time as a care assistant. Her IPAS accommodation is in a very remote location with poor public transport links so finding suitable work has been difficult. Lily finds it difficult to trust people and make friends.

(Courtesy of HSE AHTT)

The Commission reiterates its recommendation that the State develops trafficking and gender-specific pathways of care that are victim centred, ensuring that specialist Civil Society Organisations with expertise of trafficking are fully supported and their role formalised within the reformed National Referral Mechanism.

The Commission recommends that the State provides sustainable funding to specialist Civil Society Organisations providing services for victims of trafficking.

The Commission recommends that the State explores avenues for providing family reunification to victims of trafficking.

Victims in the Criminal Justice System (Article 12)

Original Directive Article 12 Victims in the Criminal Justice System	Recast Directive Article 12 Victims in the Criminal Justice System
1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.	1. The protection measures referred to in this Article shall apply in addition to the rights set out in Directive 2012/29/EU.
2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.	Unchanged
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.	Unchanged
4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following: (a) unnecessary repetition of interviews during investigation, prosecution or trial; (b) visual contact between victims and defendants including during the giving of evidence such as	Unchanged

interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;

(c) the giving of evidence in open court; and

(d) unnecessary questioning concerning the victim's private life.

Protection of Victims in the Criminal Justice System (Article 12(1))

Article 12 details the protections for victims of trafficking within the criminal justice system. These protections are in addition to the rights set out in the EU Victims of Crime Directive – which has been transposed through the Criminal Law (Victims of Crime) Act 2017.²⁷⁷

To our knowledge, there has been no substantive change in the protections available for victims of trafficking within the criminal justice during the reporting period. As outlined in the First and Second National Reports, the rights and protections available to victims of trafficking largely derive from the Criminal Justice (Victims of Crime) Act 2017.²⁷⁸ As such, they are not in the strictest sense trafficking-specific.²⁷⁹ Of course, there is considerable overlap between what is required by the EU Anti-Trafficking Directive and the Victims of Crime Directives, but Article 12(1) specifically requires that the protection measures referred to apply *in addition* to the rights set out in Directive 2012/29/EU.

We have previously welcomed the Independent Review of the Civil Legal Aid Scheme, and were pleased to provide the Review Group with a number of recommendations specific to victims of trafficking that, we hope, will inform their work.²⁸⁰ We reiterate the importance of these recommendations and believe these are necessary to fully satisfy the obligations of Article 12.²⁸¹ As part of this process, the (former) Chief Commissioner, Sinéad Gibney, presented the Commission's submission to the Chief Justice's Working Group on Access to Justice: *Civil Legal Review: An opportunity to develop a model system in Ireland* in February 2023.²⁸² We await the findings of this important review.

²⁷⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 105

²⁷⁸ [Ibid](#)

²⁷⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 82

²⁸⁰ IHREC (2023) [Submission to the Independent Review of Civil Legal Aid Scheme](#)

²⁸¹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), Appendix 3 'Civil Legal Aid for Victims of Human Trafficking'

²⁸² Chief Justice's Working Group on Access to Justice (2023) [Civil Legal Aid: An Opportunity to Develop a Model System in Ireland](#)

Limited or insufficient practical assistance to victims before, during and after the criminal process will have a tremendous impact on victims' ability to participate fully in the criminal justice process. As such, the effectiveness of Article 12 provisions will greatly depend on the degree to which Article 11 (Assistance and Support) has been effectively implemented to ensure that victims of trafficking are empowered, protected and supported in their recovery, including in their participation as witnesses in the criminal process.

Legal Assistance without Delay Article 12(2))

As noted above, there has been no substantive change to the laws governing the provision of legal assistance during the reporting period. However, there have been some welcome operational changes. Whereas there used to be one part-time solicitor in the Legal Aid Board providing advice on trafficking as part of their overall work on international protection,²⁸³ there is now one senior solicitor – supported by two interns – in Smithfield Law Centre. The Principal Managing Solicitor provides the advice service for all trafficking cases coming to that centre, with some services provided in offices in Cork and Galway.²⁸⁴ The Legal Aid Board also avails of some pro bono initiatives offered by private law firms.

The management of trafficking cases within the Legal Aid Board being undertaken by a Principal Managing Solicitor is commendable. Trafficking cases are notoriously complex requiring knowledge of a number of areas of law such as immigration, criminal, civil, administrative and family law, to name but a few. Given the profound trauma victims have experienced, solicitors who work with victims of trafficking must also have the skills required to understand the myriad of issues predating the cultural, interpersonal, psychosocial, health, practical and spiritual needs of survivors. Given the importance of this service, in our Second National Evaluation Report we recommended 'dedicated expert services'²⁸⁵ and we are pleased to see positive developments in this direction.

Despite this welcome increase in expertise, the resources available to the Legal Aid Board continue to fall considerably short of what is required. In 2021, there were 19 new referrals within a total of 85 open files. In 2022, there were 27 new referrals and an additional 31 ongoing cases. The sharp drop in 'ongoing cases' during this period is likely the result of the

²⁸³ Department of Justice allocated €44,575 to the anti- trafficking work of the LAB for 2021. IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 107

²⁸⁴ Source: Legal Aid Board 2024

²⁸⁵ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 139

comprehensive case management review that was undertaken in early 2022.²⁸⁶ In 2023, there were 38 new cases referred to the Board, with an additional 37 ongoing cases.²⁸⁷ The increase in new cases is evident and invites questions about the capacity of the Legal Aid Board to absorb this trend in the future. There was one child victim of trafficking referred to the Legal Aid Board in the reporting period. It was also reported that some clients had disabilities and serious health concerns.²⁸⁸ There was also a wide range of cultural backgrounds.²⁸⁹ Nevertheless, the case management software was not capable of extracting disaggregated data on disabilities and cultural backgrounds. Instead, this had to be inputted and extrapolated manually – a time-consuming process. Given the likely increase in referrals that will result from the establishment of the new National Referral Mechanism, and the expert knowledge this will require, we recommend that legal services be expanded (see below, [Article 17](#)).

The Commission reiterates its recommendation that the Legal Aid Board is sufficiently resourced to meet the EU Anti-Trafficking Directive obligations. Along with an increase in permanent staff, this must also include clerical and administrative assistance to support the coordination with outside stakeholders, maintenance of the case management system, and data collection.

The Commission recommends that the Legal Aid Board invests in an improved data system that meets the needs of the legal case work and data analysis, in order to better track and assess the investment in the provision of legal services to victims of trafficking by the State.

Significant gaps remain in the provision of legal advice and representation for victims of trafficking. As per the Civil Legal Aid Act 1995, the Legal Aid Board is limited in the services it can provide. The Legal Aid Board is statutorily required to provide only legal *information* to victims of trafficking, and not legal advice and representation.²⁹⁰

²⁸⁶ [Ibid.](#), p. 108

²⁸⁷ Source: Legal Aid Board 2024

²⁸⁸ These are noted at the intake stage and discussed with the HSE caseworker.

²⁸⁹ There were 19 different nationalities recorded. Source: Legal Aid Board 2024

²⁹⁰ Section 26 of Civil Legal Aid Act 1995 (as amended by Section 3 Civil Law (Miscellaneous Provisions) Act 2011) extended the remit of the Legal Aid Board to grant legal advice to a person who is an alleged victim of a human trafficking offence in relation to— (a) any matter connected with the commission of the human trafficking offence (whether or not a prosecution for that offence has been instituted), (b) any matter connected with the commission of any other offence of which the person is alleged to be a victim, being an offence (whether or not a human trafficking offence) that is alleged to have been committed in the course of, or otherwise in connection with, the commission of the human trafficking offence, or (c) without prejudice to the generality of paragraph (a) or (b), the prosecution of the human trafficking offence or of the other offence referred to in paragraph (b).

As an alternative to the Legal Aid Board, some victims of trafficking avail of the holistic legal service provided by the licensed pro bono law centres established at two specialist CSOs – the Immigrant Council of Ireland and the Irish Refugee Council. The legal assistance offered includes legal advice, assistance with informed decisions and legal representation, in addition to the provision of legal information. According to the US State Department Trafficking in Persons Report in 2023, these CSOs largely only provided legal services regarding labour exploitation.²⁹¹ Therefore, victims of sexual, criminal and other forms of exploitation rely almost exclusively on the limited services of the Legal Aid Board. Moreover, the CSO law centres only provide advice to persons over 18 years.

The Commission reiterates its recommendation that survivors' legal needs must be a priority issue in the Review of Civil Legal Aid. The Review must consider the legislative reforms needed to expand the remit of the Legal Aid Board to offer legal advice, assistance and, where necessary, representation to victims of human trafficking in all relevant matters, both criminal and civil, including compensation, and before the Workplace Relations Commission.

The Commission reiterates its recommendation that the State must provide increased, multiannual funding to established independent law centres.

The Commission recommends that the State considers supporting independent law centres that wish to provide legal service to victims of trafficking outside of Dublin to ensure geographical spread of this vital type of assistance.

We have also raised the issue of the Legal Aid Board website in both our First and Second National Evaluation Reports. The website continues to offer a link to an application form that does not work. It is also unclear whether the Legal Aid Board accepts self-referrals by people who suspect that they may be a victim of trafficking. Although no such requests have been reported in the previous two years of reporting, it is not possible to say whether this is because there is no clear way this can be done, or simply whether there has been no such need.

²⁹¹ US State Department (2023) [2023 Trafficking in Persons Report: Ireland](#)

‘Loads of people are like me, this happens, they take you [and threaten to] deport you or you be homeless, can’t get a job, no one will hire you. Maybe more people like me [should] know how you escape this in the future. There be far more people like me, don’t know what to do, where to go, who to talk to. Language barrier as well. Threatening you, losing job, you will have no visa, deported next, you be homeless, no job no ID, everything they will take off you. I wish a lot of people know who to talk to, for help. They just say nothing, do nothing’.

Survivor

The Commission reiterates its recommendation that on the need for all State Agencies working on trafficking to maintain up-to-date websites that are trauma-informed²⁹² and that provide accurate information with working links to assist and enable victims of trafficking to navigate these complex processes.²⁹³

In addition to the technological constraints, there continue to be challenges with cross-departmental agency communication and collaboration. There appears to be a particular issue when it comes to victims/survivors or their legal representative receiving information regarding the criminal investigation. While it would appear that improvements have been made, for example, the Standard Operating Procedure between the Legal Aid Board and the HSE’s Anti-Human Trafficking Team,²⁹⁴ many procedures are yet to be fully operationalised, while many agencies and bodies are waiting for the National Referral Mechanism Operational Guidelines to be published. That being said, there is a pressing need to ensure that there are processes in place for cross-departmental agency communication and collaboration in lieu of these guidelines to guarantee victims/survivors are receiving the information and advice to which they are entitled.

²⁹² Including quick ‘exit buttons’, careful consideration of images (do not use stock images that portray violence and can be triggering), ensuring that safety alerts and support services are unmissable, designed with mobile and touchscreen capabilities such as ‘call’ buttons.

²⁹³ The Commission welcomes the inclusion in the NAP of a specific Action (1.3.5) to ‘Ensure that all resources on human trafficking issues are available to relevant Government websites so they can be kept up-to-date’.

²⁹⁴ Sources: Legal Aid Board 2024, HSE AHTT 2024

The Case Study of Ada

Ada is an African national, aged 39 and was already living in rented accommodation and working. Following an accident and the loss of her fiancé in Africa, an acquaintance offered her a new life working in Ireland and organised her transport to Ireland in 2017. She was confined against her will and subjected to sexual exploitation for approximately one year. She experienced horrific abuse and rape by men, including men who were hooded. She managed to escape from traffickers in 2018 and slept rough for five days. She was offered money by a stranger to get a bus to Dublin. She managed to get work as an au pair for a family for one year but was let go and became homeless again. She was supported with temporary accommodation by a local church in 2020. Ada secured employment in 2021 and rented private accommodation, but did not have a PPS number, immigration permission, or access to benefits and supports. On seeking medical treatment in a hospital in 2023, Ada was referred to Ruhama. She had been unaware of the concept of human trafficking and her rights around this. She was assisted with supports in Ruhama, advocacy with external support services, and following assessment and advice, Ada decided to make a report to the police. She was very vulnerable and required emotional support for her trauma. Ada requested for her initial assessment with the police to take place in Ruhama with her caseworker. The Ruhama caseworker followed up on the referral and received apologies that the case had not yet been assigned and that the victim would be contacted the next week. The initial assessment took place in Ruhama's Dublin office as requested and the follow up formal statement appointment was scheduled for the following year, but was cancelled due to a Garda emergency. New appointment date is currently pending. Ada endured over five years with no supports, security, or safety in Ireland since escaping traffickers.

(Courtesy of Ruhama)

The Commission recommends that victims/survivors, and/or their legal representative are given regular updates on their cases, without delay.

The Commission recommends that State Agencies continue to develop and implement Standard Operating Procedures for cross-department coordination. It is essential that there are processes in place while the new National Referral Mechanism Operational Guidelines are being drafted and implemented.

Individual Risk Assessment (Article 12(3))

Article 12(3) requires that protections be provided to victims of human trafficking on the basis of an individual risk assessment. Article 12(3) has been transposed by virtue of the Criminal Justice (Victims of Crime) Act 2017, which provides for distinct approaches to special measures for child and adult victims. Child victims are presumed to have protection needs²⁹⁵ whereas adult victims will be assessed by a member of An Garda Síochána²⁹⁶ to determine their protection needs.²⁹⁷

There appears to be an understanding of the protection measures that victims/survivors may need within the criminal justice system. Yet many of these measures remain unfeasible for a number of reasons, be it legislative (including jurisdictional), administrative, due to resource constraints, or operational. These constraints make providing protections limited or unattainable. Victims/survivors continue to express their fear of reprisals against them and/or their families in their home country.

²⁹⁵ Criminal Justice (Victims of Crime) Act 2017, S. 15(7)(a)

²⁹⁶ Or an officer of the Ombudsman Commission

²⁹⁷ Criminal Justice (Victims of Crime) Act 2017, S. 15 (1)(2)(4)

‘At that time I was really stressed because of all what had happened. The truth is, I was also scared because the people that are involved in case ... I come from a country where you don’t mess with people, you have to be careful, especially with the more powerful. I know I still have some people at home I don’t want problems with ... I know I’m safe here. I don’t want to generate more troubles for myself. I feel I am lucky to be here because I know of other girls that the same had happened to them, were taken to [Middle Eastern country]. I was taken to [same Middle Eastern country] at first but I ended up in the UK. The girls in [Middle Eastern country] they were not so lucky because it is more difficult there. I fear for them, I fear for their families. They were being so brave.’

Survivor

Measures must also be taken to tackle the threats victims/survivors or their families face in their home countries. This issue arises often in our consultations with survivors and is one that must be addressed.

The Directive does not define what constitutes ‘appropriate protection’ but does go on to name ‘witness protection programmes or other similar measures’ as examples of such. We have seen the practical application of protection measures, such as the use of safe houses, moving a victim/survivor to another locality, direct telephone numbers of Gardaí for regular communication and support, and consistent support worker engagement. While all these measures are very welcome, there are other mechanisms available that can provide additional victim/survivor safety. One such could be the expansion of civil Protection Orders. There is encouraging evidence from the UK showing Slavery and Trafficking Risk Orders/Prevention Orders²⁹⁸ have been used successfully to disrupt and dismantle organised crime groups, prevent further offending, and safeguard potential victims.²⁹⁹ These orders restrict the activities of an unconvicted person where there is a risk that they will commit a trafficking offence.

²⁹⁸ Also known as Trafficking and Exploitation Risk Orders/Prevention Orders in Scotland. Currently, Northern Ireland only legislates for Slavery and Trafficking Protection Orders.

²⁹⁹ UK Independent Anti-Slavery Commissioner (2022) [The Use of Modern Slavery Risk and Prevention Orders](#)

Case Study of Kira

Kira lived in an abusive relationship where the ex-partner introduced her to drugs and she developed dependency. She lived in Europe and has two children and other family members that depend on her. Kira was offered an opportunity to work in Ireland by a person known. Twenty-five people were recruited at the same time for a job opportunity to work in a food processing plant in Ireland, by an EU national in the country of origin. Kira's transport was paid for and her alleged trafficker also provided accommodation, which was extremely poor and overcrowded. Kira worked very long hours and the EU national/alleged trafficker paid her wages directly after receiving the salary from the factory owner/employer of the food processing plant in Ireland. There was an agreement to repay the travel expenses to Ireland. Kira's wages worked out approximately €1 per hour as the rest was held by the alleged trafficker. Kira was told she would not be allowed to leave until she repaid her debt. She was threatened that her family would be targeted if she left. Initial assessment showed Kira's well-founded fear of the alleged traffickers who are from the country of origin and who know the whereabouts of her children and family members. Kira was very worried about the traffickers as they were aware that she reported human trafficking crimes against them, stating that those people were getting a lot of money from victims and were very rich and capable to harm those who stood against them. The HSE AHTT has been providing support to Kira. Kira was accommodated in IPAS centre and requested a different region to the alleged traffickers, reporting being happy and finding supportive the management of the centre. Kira has also been receiving psychological help and rehabilitation from addiction. Kira remains in contact with AHTT.

(Courtesy of HSE AHTT)

The effectiveness of Trafficking and Exploitation Risk and Trafficking and Exploitation Prevention Orders³⁰⁰ depends on several factors including, although not limited to, awareness of these Orders, detailed guidance and training among frontline staff and the judiciary, and robust procedures to actively monitor individuals subject to Orders.³⁰¹

In our Second National Evaluation Report, we detailed some of the reasons why victims/survivors are reluctant to engage with investigations.³⁰² This is a recognised barrier to securing prosecutions and convictions in trafficking cases. As outlined above, Article 9(1) of the EU Anti-Trafficking Directive specifically requires that ‘investigations into or prosecution ... is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement’. Trafficking and exploitation-specific protections – such as the Trafficking and Exploitation Risk/Prevention Orders – have the potential to better safeguard victims/survivors while the investigation is ongoing, after a conviction, and, depending on how the legislation is drafted, potentially after an acquittal.³⁰³

The introduction of Trafficking and Exploitation Risk/Prevention Orders would support proactive, evidence-led investigations, especially where a victim/survivor is unwilling or unable to engage. Importantly, these orders may also prevent the victimisation of others through, for example, prohibiting the defendant from: advertising for/recruiting/employing staff; being a gangmaster; working with children; working with vulnerable people; residing with (specified) children/vulnerable people; organising transport/accommodation for other people; travelling to specified countries; contacting/recruiting specific individuals, directly or

³⁰⁰ Trafficking and Exploitation Risk and Prevention Orders are tools in the UK that can be adopted by the Courts in order to authorise restrictions upon the activities of individuals believed to be at risk of offending to control the perpetrators behaviour. The orders can be made on application by police, immigration officers, the National Crime Agency or the Gangmasters and Labour Abuse Authority. The minimum duration for a Risk Order is two years and five years for a Prevention Order.

³⁰¹ UK Independent Anti-Slavery Commissioner (2022) [The Use of Modern Slavery Risk and Prevention Orders](#)

³⁰² There are a number of factors that influence and impact on a trafficking victims’ ability or willingness to cooperate in an investigation and prosecution. While some of these are shared by victims of crime generally, it must be recognised that there are unique factors that affect victims of trafficking. These factors will be different depending on the particular vulnerabilities of the person and the form of exploitation they were subjected to. Fear of retaliation by the traffickers, wariness of possible implications of complicity in the traffickers’ crimes, inability or unwillingness to identify themselves as victims, and lack of trust in authorities are just some of the reasons why victims/survivors may not be willing or able to cooperate with the criminal process. Farrell A., et al. (2012) [Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases](#); IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 16

³⁰³ In February 2021 Chief Constable Shaun Sawyer wrote to the Home Office seeking changes to legislation. Following ministerial approval, a stakeholder engagement exercise has been undertaken in respect of the proposed amendments which include: i) To amend Section 23 of the Act, making provision for STROs to be available to the Crown Court on acquittal of a slavery or trafficking offence ...’ UK Independent Anti-Slavery Commissioner (2021), ‘The Use of Modern Slavery Risk and Prevention Orders’. UK Independent Anti-Slavery Commissioner (2022) [The Use of Modern Slavery Risk and Prevention Orders](#), p. 14

indirectly, either personally or by any electronic means; holding a licence to act as a sponsor for visa applications; or going to a specific place (e.g. where a victim resides).³⁰⁴

If Trafficking and Exploitation Risk/Prevention Orders are to be introduced, it is essential that these be accompanied by detailed statutory guidance that includes direction on monitoring of subjects and recording of actions, as well as guidance on potential prohibitions.

Currently there are no Protection Orders available to protect victims/survivors of trafficking in Irish law. The vast majority of victims/survivors of trafficking will not be able to satisfy the requirements to obtain an existing Safety, Protection or Barring Order in Ireland, as they are not the spouse or ex-spouse of the respondent.³⁰⁵

The lack of trafficking-specific Risk and Protection Orders in Ireland is a significant gap in the overall strategy to combat, address and disrupt the activities of traffickers. There is also a clear gap in the tools available to better safeguard and protect victims, and potential victims, from abuse.

The Commission recommends that the Minister for Justice considers the introduction of both Trafficking and Exploitation Risk Orders and Trafficking and Exploitation Protections Orders as part of the review of the criminal justice approach to trafficking contained in the Third National Action Plan to Prevent and Combat Human Trafficking 2023-2027.

³⁰⁴ UK Home Office (2017) [Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015](#)

³⁰⁵ Such orders can also be applied for by: civil partners, parents with a child in common, partners in an intimate relationship including cohabitants (a couple living together) and dating partners (a couple not living together), parents of an abusive child if that child is over 18, people residing with the respondent in a non-contractual relationship, such as two relatives living together. Former partners are also able to apply, for example, a former spouse or cohabitant.

Protection from Secondary Victimisation (Article 12(4))

The requirements of Article 12(4) largely mirror the obligations of the EU Directive on victims' rights, requiring the State to ensure that measures exist within the criminal justice system to protect victims of trafficking from secondary and repeat victimisation and to safeguard 'the dignity of victims during questioning and when testifying'.³⁰⁶

As previously reported, we welcome the special measures that a victim of trafficking *may* be able to avail of in Ireland. These include, although are not limited to, the use of screens during a trial,³⁰⁷ certain restrictions to protect the private and personal life of the victim,³⁰⁸ giving evidence through live television link,³⁰⁹ and video-recorded statements where the victim is under 18.³¹⁰ Victims/survivors who have gone through the trial process made specific reference to how these measures helped them.

³⁰⁶ 'Protection measure' means a measure which is intended to safeguard the safety and welfare of a victim by limiting or preventing contact with, or repeat victimisation, retaliation or intimidation of, the victim by an alleged offender or any other person on his or her behalf and includes (a) advice regarding the personal safety of the victim; (b) advice regarding the protection of the property of the victim; (c) advice regarding safety orders, barring orders, interim barring orders and Protection Orders within the meaning of the Domestic Violence Act 1996; (d) advice regarding orders made under Section 10 of the Non-Fatal Offences Against the Person Act 1997; Section 10 1 of the Criminal Justice Act 2006 and Section 26 or 26A of the Criminal Justice Act 2007; (e) an application to remand the alleged offender in custody; and (f) an application that any admission of an alleged offender to bail be subject to conditions'. See Criminal Justice (Victims of Crime) Act 2017, s. 2 (1) (b). See also, [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](#), Art. 18

³⁰⁷ Victims of crime who are deemed to have a 'specific protection need', have a right to apply for the use of a screen (and other special measures) in a criminal trial under the terms of s. 19(2)(b) of the Criminal Justice (Victims of Crime) Act 2017, which permits, at the court's discretion, the use of screens, regardless of the nature of the alleged offence.

³⁰⁸ The application of specific safeguards to protect the private and personal life of the victim where to do so could cause secondary and repeat victimisation, intimidation or retaliation. This includes s. 21 of the 2017 Act in which the court may give such directions it considers just and proper regarding any evidence adduced or sought to be adduced and any question asked in cross-examination at the trial, which relates to the private life of a victim where this is unrelated to the offence.

³⁰⁹ Section 16 of the Criminal Evidence Act 1992 (amended) provides that a video-recording of any evidence in relation to a sexual offence (or certain other offences including trafficking) through a live television link in proceedings under Part 1A of the Criminal Procedure Act 1967,

³¹⁰ Section 16 of the Criminal Evidence Act 1992 (amended) provides a video-recording of any statement made during an interview with a member of An Garda Síochána by a person under 18 years of age in relation to an offence of which he or she is the victim shall be admissible at trial as evidence of any fact stated therein of which direct oral evidence would be admissible.

‘I found the State’s defence team great [Senior Counsel], the woman who did the talking. The judge was really good and cracked some jokes during the trial, I liked that he remembered small details. The accused was at a good distance from me, which made me feel somewhat safe. I couldn’t see him while I was in the witness box ... I could take my time to give my evidence. I was never rushed ... There was a victim’s room for me and my support person ... I had a support person from V-SAC [Victim Support at Court] ... I was able to take break during trial. If I started to cry, I could take a break for five minutes.’

Survivor

The use of intermediaries, although not expressly provided for in the EU Anti-Trafficking Directive, can also play an ‘important advisory role, by assessing the witnesses’ needs in advance of the hearing, and advising the Court and Counsel in advance of the trial as to what kind of special arrangements should be made’.³¹¹ The Victoria Law Commission describes the role of intermediaries, as ‘to facilitate communication between the vulnerable victim and the prosecutor or the accused’s lawyer, so that questions are asked in a way that the victim can understand’. Intermediaries are not victim advocates or support people; their primary purpose is to ensure that the Court receives the best evidence from these victims.³¹² Article 13 of the Convention on the Rights of Persons with Disabilities³¹³ requires that persons with disabilities have effective access to justice on an equal basis with others and that appropriate accommodations be made available to facilitate their participation in all legal proceedings, including at the investigatory and other preliminary stages.

Given the important role of intermediaries for both child and other vulnerable victims,³¹⁴ we are very pleased that the use of intermediaries has been formalised in Ireland. While we welcome the establishment of the register of qualified intermediaries, without published guidance it is unclear how this system will work in practice.

³¹¹ Law society Gazette (2021) [‘Witness intermediary could get advisory pre-trial role’](#) (21 September)

³¹² Victoria Law Reform Commission (2015) [The Role of Victims of Crime in the Criminal Trial Process: Consultation Paper](#), para. 8–74

³¹³ Ireland ratified this Convention in March 2018; [2014] EWCA Crim 2064

³¹⁴ The term ‘vulnerable witnesses’, is not defined in legislation, but generally includes children, people with an intellectual disability and cases involving sexual offences

The Commission recommends that all Intermediary Panel members undertake trafficking, and child-trafficking-specific, training and that their role be clearly outlined and integrated within the Operational Guidelines that will accompany the new National Referral Mechanism.

In addition to the special measures provided at trial, it is also important to recognise the wider needs of victims before they step into the physical court building, and when they leave. Accommodation, childcare, transport, the availability of water and food, as well as clothing, are all factors that must also be considered and are important and necessary in supporting people to give their best evidence. One survivor we consulted with spoke eloquently and warmly about how the Gardaí arranged all of these essential practical supports for her and her daughter. This is very welcome to see and shows understanding and considerable pragmatism by An Garda Síochána. The Garda involved arranged the practical and logistical supports without which it is unlikely a victim/survivor would have been able to engage with the trial process.

‘Why there is no childcare support for single moms? I personally have no friends and had to travel to another county to attend the trial. I have no family here either ... Garda [name] sorted childcare for my daughter, she arranged for [name of childcare workers] to look after [daughter’s name] in their playrooms while I was attending my trial ... accommodation was provided for me and my child, our dinners were paid for us and also I had travel vouchers all provided by the Garda.’

Survivor

Victims of Trafficking for Sexual Exploitation Deprived of Protections

Victims/survivors continue to experience profound and compounded trauma during the criminal trial. Nonetheless, victims/survivors of trafficking for sexual exploitation continue to be excluded from the protections available to victims of other sexual offences such as rape, serious sexual assault and sexual assault. As we see the ever-greater broadening of protections for victims of sexual offences through the implementation of the O’Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual

Offences recommendations,³¹⁵ it is deeply regrettable that victims of sexual exploitation continue to be left behind and excluded.

As part of our legislative analysis of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023,³¹⁶ in our First and Second National Evaluation Reports³¹⁷ and in our submission on the Review of the Civil Legal Aid Scheme,³¹⁸ the Commission presented clear recommendations for legislative amendments. These recommendations aim to ensure that victims of trafficking for sexual exploitation, and victims of other sexual exploitation offences,³¹⁹ have access to the same protection available to victims of other sexual crimes.

In the Department of Justice's Plan to help victims and vulnerable witnesses in sexual violence cases, 'Supporting a Victim's Journey',³²⁰ recommendations 6.3 and 6.4 commit to removing the restriction in the Civil Legal Aid Act 1995 that require a prosecution to have been instituted before legal advice is available to victims of a wider range of sexual crimes such as sexual assault and other sexual crimes.³²¹ We have called for these protections to be extended to witnesses/victims in all sexual exploitation offences, such as soliciting or importuning for purposes of prostitution; making payment for sexual activity with a prostitute;

³¹⁵ O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#)

³¹⁶ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#); IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

³¹⁷ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

³¹⁸ IHREC (2023) [Submission to the Independent Review of Civil Legal Aid Scheme](#)

³¹⁹ In our [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#) we define sexual exploitation offences as 'offences relating to sexual exploitation wherein a victims/witness may be called upon to act as a witness in a criminal trial. These offences relate to those who organise and benefit from the prostitution of others, a recognised form of human trafficking exploitation. A number of offences under the Criminal Law (Sexual Offences) Act 1993 must be recognised as coming within the ambit of sexual exploitation offences, specifically Section 7 – Soliciting or importuning for purposes of prostitution; Section 7A – making payment for sexual activity with a prostitute; Section 8 – loitering for the purposes of prostitution; Section 9 – organising prostitution; Section 10 – living off the earnings of the prostitution of another; and Section 11 – brothel keeping.' Prostitution is a high-risk environment for sexual exploitation, the EU-wide report identifies prostitution, escort agencies, the pornography industry, massage parlours, bars and nightclubs as high-risk environments for sexual exploitation; see European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#), p. 6

³²⁰ Such as, offences created by Sections 3 to 8 of the Criminal Law (Sexual Offence) Act 2017 (which outlaw various forms of child sexual exploitation), Section 18 (which relates to a sexual act by a person in authority with a young person aged between 17 and 18 years) and Sections 21 and 22 (which relate to the sexual abuse of persons with mental illness or a mental or intellectual disability); see Department of Justice and Equality (2021) [Supporting a Victim's Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases](#)

³²¹ Both would require an amendment to Section 26(3A) of the Civil Legal Aid Act 1995

loitering for the purposes of prostitution; organising prostitution; living off the earnings of the prostitution of another; and brothel keeping.³²²

When brothels are investigated or buyers arrested, the victims/witnesses may, for a number of reasons, be reluctant to cooperate with An Garda Síochána. Failing to recognise the full ambit of offences that are by their nature sexual exploitation offences, fails to protect and support the victims/witnesses of these offences, further compounding their vulnerability and the harm done to them.

‘Evidence was withheld and amended to prevent the accused person [being] prejudice[d] yet the defence team was trying to make me appear as a bad person by using details of my past. Brought up that I’ve worked as a sugar baby, stripper and an escort, trying to create an image of a promiscuous person. If I was an escort voluntarily, does it mean it makes it easy to force me into it? The accused was painted white while I was painted black. Double standards, gas lighting and manipulation in trial!’

Survivor

On the matter of separate legal representation for victims of trafficking for sexual exploitation, in our submission to the Joint Oireachtas Committee in December 2022, we called for separate legal representation under Section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences), to be extended to victims of offences committed under Section 4 of the Criminal Law (Human Trafficking) Act 2008. Given the nature and effect of the crime of sexual exploitation, victims of trafficking for sexual exploitation must be afforded the same protections as victims of rape and other sexual assault offences in criminal trials. It may even be argued that given the harmful stereotypes of women, and women of colour in particular, the effect of unconscious bias and myths around the sex trade and sexual exploitation, there is an even greater need to ensure such protections are available in these cases. For this reason, we strongly emphasise the findings and recommendations of the Commission’s analysis of Part 2 of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023.

³²² Section 7 and 7A, Section 8 to Section 11 of the Criminal Law (Sexual Offences) Act 1993

The Commission reiterates its recommendation that an effective response to combatting trafficking for sexual exploitation and other sexual exploitation offences requires that these offences are categorised as sexual offences. Victim/witnesses of these crimes must be entitled to protections that include, at a minimum: access to legal advice (without a prosecution being initiated), exclusion of the public from trials, and anonymity.³²³

The Commission reiterates its recommendation that the right to separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences), should be extended to victims of offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.

³²³ Exclusion of the public from trial and anonymity are available for offences of trafficking for sexual exploitation, but are not available for other sexual exploitation offences, which may involve potential victims of trafficking

General Principles in responding to Child Victims (Article 13)

Original Directive Article 13 General provisions on assistance, support and protection measures for child victims of trafficking in human beings	Recast Directive Article 13 General provisions on assistance, support and protection measures for child victims of trafficking in human beings
<p>1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.</p>	<p>1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.</p>
<p>2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.</p>	<p>2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.</p>
	<p>3. Member States shall ensure that the procedures for reporting an offence under this Directive are safe, are carried out in a confidential manner in accordance with national law, are designed and accessible in a child-friendly manner and use language in accordance with the age and maturity of child victims.</p>

Article 13 to Article 16 are dedicated to the assistance, support and protection of victims of trafficking who are minors/children. The Directive obliges the State to provide unconditional assistance and support to child victims as well as protection in the criminal justice process. These child-specific measures are in addition to the general provisions outlined in Articles 11 and 12, which also apply to adult victims. The national response provides for unconditional assistance to child victims; however, this assistance is not specialised or designed for child victims of human trafficking. It is rather seen as a part of the services under the general system of child protection delivered by the Child and Family Agency (Tusla). The assistance to unaccompanied child victims is provided through the framework of international protection (through the Tusla Separated Children Seeking International Protection ('SCSIP') Unit), which

is not appropriate in all cases. The age assessment of victims with disputed age is problematic and in some cases may amount to conditionality in assistance to child victims of trafficking.

On a positive note, Tusla has commenced and worked throughout 2023 on the design of specialised services for child victims of human trafficking. The work, which is ongoing, intends to prepare the agency for assuming its responsibility as a Competent Authority in the future National Referral Mechanism for the Identification and Assistance of Victims of Human Trafficking.

The last few years have seen a significant and unprecedented increase in young people in need of support from the State. In 2023, at least 316 unaccompanied minors were in the care of the State of whom 200 were in special emergency placements, 61 in residential settings, 29 in foster care and 26 in supported lodgings.³²⁴ Some of these separated and unaccompanied young persons, for example arriving to Ireland to seek international protection, or having been smuggled to Ireland, have no manner to prove their age. Therefore, the burden on the State to assess the age of such young people and to provide accommodation and care has increased significantly. The Directive has very clear provisions regarding age-disputed cases of child victims of trafficking; however those who are not identified as victims of trafficking cannot avail of those strong and specific protection measures.

In the absence of efficient identification for child victims, and in the context of the increased cohort of vulnerable young people arriving in Ireland, the Commission will explore the rules and practices of age assessment in greater detail in this section, with a view to highlighting this problematic and pressing matter.

Data on Child Trafficking

In 2023, An Garda Síochána formally identified four girls and one boy as child victims of human trafficking in Ireland. Three of the girls were suspected victims of trafficking for criminal activities, one girl was for trafficking for sexual exploitation and one boy was trafficking for labour exploitation. This mirrors the trend relating to gender and form of exploitation observed in adult victims. However, the increase in child trafficking for criminal activities appears to be a new trend in the last three years, since the Commission began analysing official data (analysis focused on trafficking for criminal activities can be found in

³²⁴ Dáil Éireann Debate (2023) [Unaccompanied Minors and Separated Children](#) (14 December). Special emergency placements or arrangements (SEAs) are unregulated placements, in rented accommodation such as houses or apartments that are managed by staff from third parties (Houses of the Oireachtas (2024) [Committee of Public Accounts Debate Financial Statements 22 – Tusla-Child and Family Agency](#) (29 February)

[Chapter 2](#) of the Report). On this note, we welcome the move of the State to share data on child victims disaggregated by gender and type of exploitation with the National Rapporteur.

Following the formal identification by An Garda Síochána, and according to the current procedure, child victims are referred to Tusla for allocation of a social worker, appropriate accommodation, access to education and legal assistance.³²⁵ Children represent 9% (5 out of 53) of all victims identified in Ireland in 2023. This contrasts with the latest available numbers for the European Union, where, on average, children represent 15% of all identified victims with the majority being girls.³²⁶ In her 2023 address to the Joint Committee on Children, Equality, Disability, Integration and Youth, the Special Rapporteur on Child Protection highlighted child trafficking as a child protection concern, stating:

‘First, there is significant under-identification of child victims of trafficking in Ireland; and second, there is likely to be disproportionate under-identification of child victims in comparison to adult victims’.³²⁷

In relation to the current understanding of child trafficking and its prevalence in the country, the Special Rapporteur importantly stressed that:

‘One of the key points being made by stakeholders, including healthcare professionals, relates to whether healthcare professionals or school professionals, for example, are making referrals. If we do not know the information and are blind to it, we cannot see where the gaps are, so the information gaps lead to us being essentially child blind. We will not understand what is happening in the system and then we will not be able to take steps to address it’.³²⁸

The Commission reiterates its recommendation that the State works with An Garda Síochána and Tusla to develop a methodology for collecting uniform and reliable data on the scale and different forms of exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.

³²⁵ Source: Department of Justice 2024

³²⁶ Directorate-General for Migration and Home Affairs (2024) [‘Newly released data show an increase of trafficking in human beings’](#) European Commission (28 February)

³²⁷ [Opening Statement to the Joint Committee on Children, Equality, Disability, Integration and Youth Caoilfhionn Gallagher KC, Special Rapporteur on Child Protection 20th September 2023](#), p. 6

³²⁸ [Opening Statement to the Joint Committee on Children, Equality, Disability, Integration and Youth Caoilfhionn Gallagher KC, Special Rapporteur on Child Protection 20th September 2023](#), p. 6

Unconditional Assistance to Child Victims (Article 13(1))

Unlike adults, child victims of trafficking enjoy unconditional access to assistance, support and protection, after their identification as victims of human trafficking. This assistance has to be delivered observing the principle of the best interests of the child (BIC). In age-disputed cases, the presumption of minority³²⁹ must be adopted with a view to avoiding harm by depriving child victims of crime of appropriate assistance. Of course, timely detection and identification is a necessary precondition. This section will review the provisions of Article 13.

Identification of Child Victims of Trafficking

Children are any person below 18 years of age.³³⁰ Children should have immediate access to a suite of child-specific supports upon their identification as victims of trafficking. The assistance should focus on their protection as well as their physical and psychosocial recovery, favouring long-lasting solutions as the Directive requires. Early identification is a prerequisite to accessing these services. The Commission has repeatedly called for a child-specific identification, assistance and protection procedure within the new National Referral Mechanism.³³¹ Similarly, GRETA has previously called for the revised National Referral Mechanism to include specific procedures for children and to ensure that the best interests of the child are the primary consideration in all proceedings related to not only child victims of trafficking, but also children who may be at risk.³³² The Commission notes that the recast EU Anti-Trafficking Directive provides for the possibility of multiple referral mechanisms (Article 11(4) recast Directive). **We remain firmly of the view that the identification and assistance of child victims merits a separate mechanism (separate protocols, processes and procedures), in light of the distinct definition of human trafficking of children enshrined in Article 2(5) and 2(6), as well as the distinct and strengthened set of obligations to assist and protect child victims according to Articles 13 to 16.** It follows that the

³²⁹ The UN Committee on the Rights of the Child on its Join General Comment 3/22, Para 32(h) provides that ‘anyone claiming to be a child should be treated as such’. The Council of Europe explains that the presumption of minority has to underpin age assessments procedures if children are not to be denied their rights, calling States to treat the person as a child to ensure they have access to appropriate child protection services, education, housing and support; Council of Europe (2019) [Age Assessment for Children in Migration a Human Rights-Based Approach: a Guide for Policy Makers](#).

³³⁰ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 2.6; Criminal Law (Human Trafficking) Act 2008, s.1

³³¹ For more information see IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 150–153

³³² GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), p. 57

identification process will be marked by a different, lower threshold that does not require the State to prove intent through means such as deception, force and coercion, which is required in identifying adult victims. Such a separate mechanism is necessary for the simple reason that only specifically authorised personnel in the State have the ‘clearance’ to allow contact with and to care for children.

The current national policy on the identification and assistance of victims of human trafficking does not contain any child-specific measures nor does it consider sufficiently the higher susceptibility of children to coercion and exploitation. The Commission has repeatedly highlighted the inadequate identification of child victims.³³³ In our observations on Part 3 of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022, which places on a statutory footing the new NRM, we underlined the almost complete absence of child-specific measures within the proposed revised National Referral Mechanism.³³⁴ The Commission called for the inclusion of: a child-specific identification process; mandatory child trafficking training for all ‘Competent Authorities’ and ‘Trusted Partners’; the definition of the terms ‘child’ and ‘age assessments’ with accompanying guidelines adopting the presumption of minority.³³⁵ The Commission also recommended the introduction of a ‘Children’s Legal Advisor’ in the Bill to ensure that child victims of trafficking are assisted and involved in reaching an informed decision about their future predicated on durable solutions, as required by the Directive.³³⁶

Following the publication of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, the Commission submitted a detailed review, which is included in [Appendix 1](#) of this Report. We called for the removal of the offence of trafficking of a child for sexual exploitation from the Child Trafficking and Pornography Act 1998 and for its incorporation into the Criminal Law (Human Trafficking) Act 2008 with a view to ensuring that all human trafficking offences are contained in the same piece of legislation.³³⁷ We recommended that the ‘means’ element of the human trafficking definition include a clear exemption with regard to minors and persons with ‘mental impairments’.³³⁸ Furthermore, we recommended the amendment of the Children First Act to include all forms of trafficking against children (not just sexual exploitation) and the incorporation of a statutory duty to refer a child to the Operational Committee for their identification as a child victim when a report has been made.³³⁹ The

³³³ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 125; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 150–151

³³⁴ IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 11

³³⁵ [Ibid.](#), pp. 16–17

³³⁶ [Ibid.](#), p. 14

³³⁷ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#), p. 23–24

³³⁸ [Ibid.](#), p. 25

³³⁹ [Ibid.](#), pp. 35–37

Commission welcomes Tusla's continued work over 2023 and 2024 to develop an anti-child trafficking response and guidelines, to fill the gap in the State's response.

The Commission welcomes the inclusion of the presumption of minority within the final text of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, as passed by Dáil Éireann. Section 26 recognises the presumption of minority for child applicants, establishing that the relevant authority, partner, committee or officer shall presume the minority of the applicant or appellant unless and until the contrary is proved. The introduction of an appeal process is also most commendable. However, overall, the Commission regrets the missed opportunity for statutory provisions on identification and assistance of child victims of trafficking.

Section 23 of the final text of the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 assigns responsibility for the development of specific procedures for the identification and support of child victims and presumed child victims of trafficking to the Operational Committee. The Commission believes this may contribute to an increased detection of child victims.

The NAP recognises the identification of child victims of trafficking as a priority in the State's anti-trafficking efforts.³⁴⁰ In particular, the plan establishes that all relevant State Departments and Agencies are responsible for ensuring that all professionals (including but not limited to social workers, family support workers and social care workers) in contact with children, and working on child-related matters, are qualified in dealing with and recognising victims of trafficking and act in the child's best interests.³⁴¹ The proposed actions correspond to our recommendations, while success will depend on implementation and commitment by the authorities involved.

The Commission recommends that the State develops a separate mechanism for identification, referral and assistance of child victims of trafficking that implements the distinct legal obligations of Article 2(5), Article 2(6), and Articles 13-16 of the EU Anti-Trafficking Directive, corresponding to the modified definition of the offence and the enhanced set of measures for child victims.

³⁴⁰ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), p. 21

³⁴¹ [Ibid.](#), p. Action 1.10

The Best Interests of the Child

International law and policy require that the BIC be the primary consideration in the design and implementation of measures to assist, support and protect child victims of trafficking.³⁴² The UN Committee on the Rights of the Child explains the ‘best interests of the child’ as a threefold concept: a substantive right; a fundamental, interpretative legal principle; and a rule of procedure. The Committee holds that any ‘decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child, or children concerned’,³⁴³ including: what is considered to be in the best interests of the child, the criteria on which this is based, and how the child’s interests have been weighed against other broader (policies) or specific issues (individual cases),³⁴⁴ essentially recommending practical steps in ensuring the application of the principle.

Child trafficking and exploitation has remained high on the EU agenda. The recast Anti-Trafficking Directive has strengthened the unconditional assistance to child victims of trafficking, requiring Member States to ensure that reporting procedures are safe, confidential, child-friendly and use language that accords to the child’s age and maturity.³⁴⁵ A recently adopted Recommendation by the European Commission requires Member States to develop and strengthen integrated child protection systems against any form of violence, including exploitation.³⁴⁶ It states that ‘Member States should always hold the child’s best interests as a primary consideration, ensuring that children are recognised, respected and protected as rights-holders, with non-negotiable rights to protection’.³⁴⁷

Nationally, the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 paves the way for the ratification by Ireland of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography. The Protocol calls for, *inter alia*, State Parties to provide appropriate support services to child victims going through a legal process and to ensure that ‘in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interests of the

³⁴² UN (1989) Convention on the Rights of the Child, Article 3(1), Council of Europe (2005) Convention on Action Against Trafficking in Human Beings, Article 10, 14, 16 and 28.

³⁴³ UN Committee on the Rights of the Children (2013) [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)*](#), p. 4

³⁴⁴ UN Committee on the Rights of the Children (2013) [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)*](#), p. 4

³⁴⁵ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 13.2a

³⁴⁶ [European Commission Recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child](#), para 1

³⁴⁷ [Ibid.](#), para 3

child shall be a primary consideration’.³⁴⁸ It will be essential that the Operational Guidelines accompanying the National Referral Mechanism include explicit and practical steps to give effect to the principle of BIC in the identification and assistance, once the Bill is enacted.

As outlined under Article 4, the related legislative development of the Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 creates trafficking-related offences akin to trafficking of children for the purpose of criminal exploitation. The legislation, though welcomed, lacks provision for the assistance and protection of child victims, including protection from punishment for offences the child was forced to commit. The Commission reiterates the call to recognise the interplay between the offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 and the Criminal Law (Human Trafficking) Act 2008 as part of a continuum of the exploitation of children for criminal gain.³⁴⁹

In contrast to the legislation, the NAP contains several explicit child-specific actions and objectives. The application of the BIC is included under the ‘Prevention Pillar’ in relation to identification efforts and the training of professionals who may come into contact with children.³⁵⁰ The Commission welcomes this important inclusion, which should also be central to actions dedicated to the assistance and protection of child victims of trafficking in the criminal justice system.

The Commission welcomes the inclusion of the best interest of the child principle within the Third National Action Plan to Prevent and Combat Human Trafficking 2023-2027 and calls for this principle to be embedded in every policy, action and strategy involving child victims of trafficking, and children at risk of trafficking within the national child protection system, in regard to prevention, assistance and protection in the criminal justice process. In particular, the Commission recommends that the best interest of the child principle is explicitly included in the child-specific National Referral Mechanism Operational Guidelines, as well as in the policy being developed by Tusla’s Working Group on Child Trafficking.

³⁴⁸ UN (2000) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Articles 8.1 (d) and 8.

³⁴⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 68

³⁵⁰ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 1.10

Efforts to Develop a Child Trafficking Response

In 2023, approximately 20 asylum seekers and refugee children disappeared from State care, of whom three ‘aged-out’ (turned 18) during their missing period.³⁵¹ By the end of 2023, over 300 unaccompanied minors – a cohort who are highly vulnerable to human trafficking and exploitation – were under State care.³⁵² Children are recognised among those at heightened risk of becoming victims of trafficking, including due to being targeted by organised criminal groups seeking to recruit and exploit them. In response, the European Commission encourages the development of specific policies within the *national child protection system* to prevent the trafficking of children, including of those in State care,³⁵³ which the State (Tusla) is reportedly engaging with.

The NAP adopted in 2023 introduced a number of actions directly applicable to child victims. Under ‘Prevention’, the plan requires that all professionals in contact with children be qualified in recognising victims of trafficking and acting in the child’s best interests. In relation to ‘Prosecution’, the Department of Justice, An Garda Síochána and relevant state departments, agencies and CSOs must reflect relevant statutory provisions such as the Children’s First Act 2015³⁵⁴ in the NRM Operational Guidelines.³⁵⁵

In the NAP, An Garda Síochána and Tusla must increase capabilities to locate missing children vulnerable to human trafficking by enhancing collaboration and data exchange, and reviewing missing child cases to identify potential links with human trafficking.³⁵⁶ The Plan also contains several commitments in relation to the provision of assistance, support and protection to child victims of trafficking. It establishes that engagement with victims should be in a victim-centred, trauma-informed, gender- and child-specific and culturally competent manner, through use and awareness of cultural mediators and accompaniment services.³⁵⁷

³⁵¹ Devlin P. (2023) ‘[Over 60 migrant children missing after disappearing from State care](#)’ The Journal (14 December)

³⁵² Department of Children, Equality, Disability, Integration and Youth (2023) ‘[Unaccompanied Minors and Separate Children](#)’ Dáil Éireann Debate (14 December)

³⁵³ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Preamble

³⁵⁴ It must be noted that the Children’s First Act only makes reference to trafficking a child for the purposes of sexual exploitation. It does not include any other form of trafficking such as for labour exploitation or forced criminality. For this reason we have previously recommended that all forms of trafficking (as a serious form of child abuse) be explicitly included in Children First Guidelines and all associated training. This is a serious omission, and we are disappointed that there are no commitments in the National Action Plan to rectify this.

³⁵⁵ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 3.1.2

³⁵⁶ [Ibid.](#), Action 3.7

³⁵⁷ [Ibid.](#), Action 2.9

The plan commits to the review and implementation of an enhanced operational response to the assistance and protection of child victims by Tusla and An Garda Síochána that meets the needs of child victims.³⁵⁸ Tusla and the HSE are to review the care provisions relating to child victims under the revised National Referral Mechanism to ensure that the expected increase in the number of identified child victims following the new mechanism will not negatively impact the level of care that child victims receive.³⁵⁹ The Department of Education must support child victims by enabling their access to the education system in a timely manner.³⁶⁰ Lastly, for the protection of trafficked children in the criminal justice system the Office of the Director of Public Prosecutions, An Garda Síochána and relevant agencies must consider additional supports for child victims of trafficking.³⁶¹

Overall, the NAP establishes ambitious goals and commitments that could see the identification, assistance, support and protection of child victims of trafficking significantly enhanced. The multi-agency and coordinated approach to the assistance of children and young people is particularly commendable.

In 2023, the Child and Family Agency Tusla established a working group to ‘examine and progress’ Tusla commitments under the NAP with the following goals:

1. to develop a guidance document for frontline staff to be able to detect indicators of child trafficking;
2. to develop metrics that allow the extraction of numerical data in relation to child victims known to Tusla services;
3. to review the Children First notification policy with An Garda Síochána to include ‘suspected victims of child trafficking’ as a reason for notification and investigation; and
4. to develop a framework for the regular training of frontline staff likely to encounter child victims of trafficking.

The multi-agency group includes Tusla staff, An Garda Síochána, and the only child trafficking specialist CSO, MECPATHS. The Commission has observed this work and has provided evidence-based materials in relation to international obligations and academic research on child trafficking where necessary. We welcome the commitment and efforts of Tusla’s staff to improve the Agency’s response to child victims of trafficking, which is very necessary.

³⁵⁸ [Ibid.](#), Action 2.14

³⁵⁹ [Ibid.](#), Action 2.14.2

³⁶⁰ [Ibid.](#), Action 2.15

³⁶¹ [Ibid.](#), Action 3.8.2

Conclusions on Unconditional Assistance to Child Victims

The Commission has previously recommended that Tusla develop separate procedures to provide assistance, support, and protection to child victims of trafficking which apply to all children irrespective of their country of origin and/or application for international protection. It was recommended that these procedures be gender and exploitation sensitive. The Commission is pleased to see the work and progress the Agency has accomplished over 2023 on this issue; a clear demonstration of commitment to addressing child trafficking in Ireland.

The Commission has repeatedly called for the State to amend the legislation to insert child trafficking for sexual exploitation into Section 2 of the Criminal Law (Human Trafficking) Act 2008 following its removal from Section 3 of the Child Trafficking and Pornography Act 1998, in order to capture all forms of child trafficking under the same law and to provide greater clarity in the definition of trafficking of children.

The Commission recommends that the Best Interest of the Child assessment framework³⁶² is used to assess children at risk, potential child victims of trafficking, and identified victims of trafficking, including age-disputed minors, irrespective of their immigration status.

The Commission recommends that, in addition to the child trafficking specific response, the State undertakes steps to strengthen the general child protection system response to children at risk of human trafficking.

Age of Child Victims (Article 13(2))

The Commission understands that age assessment is complex but crucial and necessary work, which needs to be completed. The age of a person determines access to specific rights, protections and entitlements and the State has a responsibility to ensure such access. In the case of age-disputed minors, the Government and, in particular, Tusla as the agency responsible for the welfare and protection of children, should promptly complete age assessment, while assisting such young persons with a presumption of minority. A meaningful application of the benefit of the doubt and the presumption of minority by the State, as mandated by Article 13(2) of the EU Anti-Trafficking Directive, would ensure that young people, including those potential victims of child trafficking that are having their age assessed, have immediate access to child protection and support services, until and unless it

³⁶² OSCE/ODIHR (2022) [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons](#). Warsaw: OSCE Office for the Democratic Institutions and Human Rights, pp. 340–371

is proven that they are not a child. The Commission explores the present rules and practice on age assessment in significant detail in this section.

There is no agreed procedure to ascertain the age of a person who lacks the means to evidence their age. This includes situations where there is doubt as to whether the person is a young adult or a child. The law has remained unchanged during the reporting period with the provisions relating to the estimation of age of separated and unaccompanied minors confined to the International Protection Act 2015 (as amended) – when an international protection officer encounters an applicant believed to be a child, but lacks evidence to establish their age, the person is referred to Tusla under Section 14(2) as a child in need of care and protection. In turn, Tusla undertakes an Eligibility for Services Assessment. Under the Child Care Act 1991, Tusla is responsible for the welfare of unaccompanied and separated children and is required to undertake an assessment to establish the child’s care and protection needs.³⁶³ In 2023, the International Protection Office referred 185 children to Tusla for assessment, most of them from Afghanistan (72), South Africa (45) and Nigeria (14).³⁶⁴

Due to the absence of sufficient regulation detail, confusion persists concerning the roles of the International Protection Office and Tusla in relation to which national authority is responsible for making a determination as to the age of an age-disputed minor. The Commission is of the view that no clear statutory responsibility has been assigned to any authority. This is so despite the proven higher vulnerability to exploitation and human trafficking of separated, unaccompanied and age-disputed minors under State care.³⁶⁵

³⁶³ The current legislative framework for the determination of age is contained in Sections 13 to 15 and 24 of the International Protection Act 2015, and Sections 3 and 32 of the Child Care Act 1991. The IPO is responsible for determining whether an applicant for international protection is a child or an adult for the purpose of their application during the interview. Section 13, 2015 Act provides for the preliminary interview of IP applicants. Section 14(1) establishes the IPO obligation to notify Tusla when it appears that the applicant is a child; children cannot apply for IP by themselves. At this stage, the IP officer has an obligation to notify Tusla. Upon this notification, Section 14(2) establishes the presumption of minority of the child and the Child Care Act 1991 is applicable. Section 3 of the 1991 Act establishes Tusla’s statutory responsibility to promote the welfare of children not receiving adequate care and protection. This responsibility translates into the agency’s obligation to undertake an eligibility assessment to determine whether those separated and unaccompanied children referred from the IPO are eligible for the services Tusla provides. Following the assessment, if Tusla determines that the child is eligible for services (determines the minority of the young person), Tusla may consider whether an IP application must be made under Section 15(4) of the IPA 2015. When the child is deemed ineligible for services, Tusla notifies the IPO without providing a report and the person must apply for IP as an adult under Section 15(1). Section 24 of the IP Act 2015 allows the IPO to arrange for the age assessment of a person when there is reasonable cause when Tusla has lodged an application for IP for an unaccompanied or separated minor. In the age examination established in Section 24 of the 2015 Act, Tusla’s role is to give consent for that assessment. According to the Agency, Section 24 has never been invoked.

³⁶⁴ Department of Justice (2024) [Written Answer to Parliamentary Question: International Protection](#) (8 May 2024)

³⁶⁵ Canning, M., Keenan, M. and Breslin, R. (2023) [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#). Dublin: SERP.

Conversely, when a child of uncertain/unestablished age is not coming through the international protection system, there is no obligation on Tusla to assess that child's age and eligibility to services. This gap has potential implications for the implementation of the human trafficking law protecting child victims, including through age assessment and consequent decisions regarding assistance, because not all child victims seek international protection in the State.

In cases of uncertainty, the EU Anti-Trafficking Directive requires that the State apply a presumption of minority when there are reasons to believe that the presumed victim is a child.³⁶⁶ In addition, Recital 22 mandates immediate access to assistance, support and protection, recognising the particular vulnerability of child victims of trafficking.³⁶⁷

A recent judgment of the European Court of Human Rights ('ECtHR') established that:

'the age of a person is a means of personal identification and ... the procedure to assess the age of an individual alleging to be a minor, including its procedural safeguards, is essential in order to guarantee to him or her all the rights deriving from his or her minor status'.³⁶⁸

Accordingly, the Court held that the principle of presumption of minority (including the application of the benefit of the doubt) involves an obligation for States to ensure that procedural safeguards are applied when assessing the age of a person. The precise application of the presumption of minority would ensure that the person is firstly treated as a child, and secondly as a migrant. The Court has also recognised the very harmful consequences of wrongly identifying children as adults, *inter alia*, curtailing their access to fundamental rights like child-specific services such as adequate shelter or education. The Commission has previously highlighted the risks of wrongly assessing an unaccompanied or separated child, which results in denied access to support and protection and their placement in direct provision with adults.³⁶⁹

Recent Developments on Age Assessment

The NAP is silent on the age assessment of persons where their age is disputed. Regrettably, the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023³⁷⁰ does not mention age

³⁶⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 13.2

³⁶⁷ [Ibid](#), Recital 22

³⁶⁸ [Darboe and Camara v. Italy - 5797/17](#)

³⁶⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 159

³⁷⁰ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

(estimation) assessments as part of the efforts to identify and assist victims of human trafficking. This is a missed opportunity to provide legislative clarity on this important issue. On this note, the Commission draws attention to its recommendation on the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 that the State must use the law to establish an age-estimation procedure predicated on the presumption of minority. It is disappointing to see that this recommendation has not been taken on board by the Government, despite it being re-issued by the Joint Oireachtas Committee on Justice in recommendation number 20 on the said General Scheme:

‘20. The Committee further recommends that the guidelines should explicitly adopt the principle of the ‘benefit of the doubt’ regarding age determination of young applicants. The presumption of minority should be applied unless and until an age-assessment test proves otherwise’.³⁷¹

While the presumption of minority is a welcome amendment, the absence of an age assessment procedure remains.

Tusla’s Intake Eligibility Assessment (‘IEA’)

Following a consultation process with relevant stakeholders that included regulators, the IPO and CSOs specialising in migration, the Tusla Office of Legal Services and Independent Counsel has re-developed its guidelines on ‘Intake Eligibility Assessments’ (‘IEA’).³⁷² A partial implementation of the IEA began in early 2023 and is to be reviewed in early 2024. Tusla has committed to the full implementation of these guidelines in 2024.

The IEA guidance³⁷³ is a procedure to be applied by Tusla social workers assisting separated and unaccompanied minors seeking international protection. It also aims to provide clarity on the role of Tusla in undertaking eligibility assessments. The IEA is undertaken by members of the Separated Children Seeking International Protection team and the aim is to determine whether the person is a child in need of care and protection services provided by Tusla.

According to Tusla, the IEA adopts four principles:

- › A child-centred approach;
- › Dignity and respect for the child;
- › Safety and protection of other children in care; and

³⁷¹ Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 11

³⁷² Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Refugees and Integration](#), p. 75

³⁷³ Denominated ‘Procedural Guidance and Assessment Framework for the Determination of Eligibility for Services under the Child Care Act 1991 for Separated Children Seeking International Protection’

› Data protection.

Under the strengthened child-centred approach, Tusla recognises the need to place the best interests of the child at the core of the assessment, including being sensitive to the child's needs, allowing the child to take breaks and set the pace of the assessment, and undertaking the assessment in an age-appropriate manner including in a language the child fully understands. The latter may require interpretation services to allow the child to express their own views, wishes and opinions and to make an informed decision to participate in the assessment.

The guidance makes it clear that the age determination of a child is not part of Tusla's IEA. In case of doubt in relation to the stated age, or when there is extensive evidence contradicting the claimed age, there might be a requirement to 'explore whether they are a child as part of the assessment'. When this is the case, the IEA is suspended until Tusla ensures that the person has an advocate.³⁷⁴

The Commission looks forward to the full implementation of the IEA guidance by Tusla and the review of the impact it might have for separated and unaccompanied minors who lack the means to prove their age but require child-specific assistance following the principle of assumption of minority, as established by international law. We welcome this new process, which is of utmost importance as it might have the capability to contribute to addressing the current shortcomings experienced by those minors whose age is in dispute. The Commission looks forward to reviewing the guidance and its implementation, including to determine whether minors whose age is in dispute have guaranteed access to education and the allocation of a social worker to ensure that their best interests are respected at all times.

Reports of Failed Age Assessment

The Commission is very concerned that there are cases where age-disputed minors are being accommodated in adult accommodation. As of June 2023, healthcare CSO Safetynet,³⁷⁵ which provides assistance to migrants through pop-up clinics and other settings, had attended to at least 800 migrant children in need of healthcare. According to the charity, the main challenges that migrant children face from a healthcare perspective is that their *minority* status is being questioned; in other words, their age is not being believed. Minors whose age is

³⁷⁴ Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Refugees and Integration](#), p. 75

³⁷⁵ Safetynet Primary Care is a medical charity that delivers quality care to those marginalised in society without access to healthcare, including migrants. For more information on Safetynet please see <https://www.primarycaresafetynet.ie/>

in dispute are presenting as children in the CSO clinics but they are not being recognised as minors by the State. The State's lack of recognition of them as children makes them extremely vulnerable.

In a submission to the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth by Safetynet, the charity provided eight case studies arising from interviews conducted by a staff nurse with international protection child applicants whose age was in dispute.³⁷⁶ In these cases, children aged between 15 and 17 were placed in adult accommodation (one of them reportedly sleeping on the streets for 12 nights until receiving medical attention). Most of them were unable to enrol in school or access other child-specific services. Direct quotes from the children demonstrate their high levels of anxiety and vulnerability due to accommodation placements with adults. They expressed feelings of isolation and uncertainty, with long waits for the authorities to provide a final answer on their age assessment. In several cases, Safetynet staff contacted the International Protection Office and/or Tusla to raise concerns in relation to these children, and their wellbeing.

Case studies reported by Safetynet illustrate the urgent need for the State to establish a clear, child-centred and need-specific age-assessment process:

'Safetynet GP saw Boy B again in September 2022, noting that he struggles being on his own, feels afraid in the adult accommodation centre, says 'everybody is bigger than me', he has no social supports, says has no friends, says there is not much to do in the hotel, does not like it there and would much rather be in accommodation with other people his age. From meeting him today, it is unequivocally clear to me that B is a vulnerable unaccompanied minor. His physical appearance is consistent with a 15 yr old. His social engagement, behaviour, eye contact and rapport are all congruent with the level of maturity expected for a 15 yr old also. We contacted Tusla who informed us that if he is in adult accommodation he was "deemed an adult" by the state.'

'Girl C doesn't feel safe in the adult accommodation. Finds it hard to look after herself due to her age. She reports that people are drinking in the accommodation, she finds it intimidating. C came here alone. Mood – feeling down, missing siblings and mum. C was seen a few weeks later by another GP who concurred with the first GP on level of maturity. C is living at this time in self-catering accommodation for adult women. She reported: "I do not feel safe there – when I am in pain or sick there is no one there to help me. They [other residents] took my money – they threatened me to give my money to them."'³⁷⁷

³⁷⁶ Safetynet Primary Care (2023) [Challenges facing Children seeking Protection: Not being believed! Interviews with age disputed minors among International Protection Applicants](#)

³⁷⁷ Safetynet Primary Care (2023) [Challenges facing Children seeking Protection: Not being believed! Interviews with age disputed minors among International Protection Applicants](#)

IHREC's Engagement with Policy Makers on Age Assessment

In early 2024, the Commission, in its role as Ireland's national human rights and equality institution, wrote to the IPO and Tusla on the issue of age assessment, requesting information on the IPO's understanding of its statutory role, the procedural safeguards required, as well as the referral pathways in relation to assessment of age-disputed minors.³⁷⁸ In its communication to Tusla, the Commission requested information specifically in relation to the eligibility assessments of age-disputed minors in the international protection process, specifically: Tusla's guidelines; the accommodation of this vulnerable cohort; staff training; and the age assessments within the context of child trafficking and the new National Referral Mechanism.

Despite Tusla's efforts in developing the IEA Guidance which contains what is effectively an age-assessment section (or exploration of whether the person is a child when required) in all but name, there continues to be an absence of a clear, child-centred procedure to determine the age of young people. In their response to the Commission, Tusla highlighted that age assessments require a multidisciplinary and multi-agency approach in which they will participate. They maintained their position that they are not *solely* responsible for any type of age assessment in the State.

According to Tusla, unaccompanied minors over 16 years of age are placed in Special Emergency Arrangements ('SEA'), including minors whose age is in dispute, those undergoing (or applying for) eligibility assessments and those awaiting determination. According to Tusla, minors whose age is disputed are neither referred back to the IPO, nor placed in adult accommodation. SEA are essentially emergency settings where a child/young person is accommodated in a non-statutory or non-procured placement, such as hotels, B&Bs, holiday centres, activity centres, Tusla non-registered properties or privately leased properties.³⁷⁹ Regrettably, other age-disputed minors or young people are placed in IPAS adult accommodation. Staying in IPAS adult accommodation³⁸⁰ means that, while their age is being determined, these young people are not able to enrol in school or access mental health services due to not being placed *under Tusla's care* and therefore not having an assigned social worker, in direct contravention of the Directive requirement to presume they are a child

³⁷⁸ Irish Human Rights and Equality Commission to Chief International Protection Officer, Mr Dixon, dated 18 January 2024, RE: Assessments of Age-Disputed Minors; Irish Human Rights and Equality Commission Letter to Tusla Separated Children Seeking International Protection Unit, dated 18 January, RE: Eligibility assessments of age-disputed minors in the protection process

³⁷⁹ Byrne L. (2024) '[Babies in State Care Placed in Private Unregulated Settings](#)', RTÉ (9 May)

³⁸⁰ Owing to the current accommodation crisis these settings are mostly in private emergency accommodation not subject to HIQA inspections and managed by adequately trained staff.

unless proved otherwise. In comparison, unaccompanied and separated children in State care are placed with families or in residential accommodation managed by Tusla. They are also enrolled in school and can access medical services through their social worker.

Tusla has called for legislative or policy reform in regard to the provision of care, protection and accommodation for separated and unaccompanied children.³⁸¹ In our recent engagement with Tusla, the Commission was informed that the Agency's SCSIP team are developing a residential centre for minors whose age is in dispute – those undergoing an eligibility assessment by Tusla – to determine whether they can access the services provided under the Child Care Act 1991.³⁸² The SCSIP also clarified that the presumption of minority always applies when the IPO refers a person to Tusla. This represents a welcome approach that needs to be implemented with great urgency.

Of particular concern is the group of unaccompanied or separated minors undergoing an age assessment who are soon to turn 18 years old, because it means the end of State care for them. While Tusla provides 'aftercare services'³⁸³ to assist those in the care of the State who are turning 18 in the near future, concerns persist regarding those who are being treated as adults (being placed in IPAS accommodation without access to a social worker) until their age assessment is resolved or until they turn 18. Upon turning 18 and despite potentially arriving in Ireland as a child, this cohort of young people would not have had State child-specific protection and support at any point during their residence in Ireland.

Conclusion on Age assessment Considerations

The Commission welcomes the inclusion of presumption of minority in legislation. However, the Commission continues to be concerned by the lack of clarity and safeguarding for young people who arrive to Ireland who may lack the requisite documentation to prove their age. To address this problem, and to ensure the identification and protection of potential child victims of trafficking, the Commission has repeatedly called for a functioning age-estimation assessment process. In particular, the Commission has expressly called for the inclusion of the definition of 'age-estimation assessment' within the 2023 National Referral Mechanism Bill.³⁸⁴

³⁸¹ Dáil Éireann Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Challenges Facing Refugees and Migrant Children in Ireland: Discussion](#) (27 June)

³⁸² Source: Tusla 2024

³⁸³ Up to until the age of 21 and extendable to 23 when the person is in further education or training. For more information please see <https://www.tusla.ie/services/alternative-care/after-care/what-are-aftercare-services/>

³⁸⁴ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#), pp. 23–24

The Commission agrees with the recommendations issued by the Joint Committee on Children, Equality, Disability, Integration and Youth in their Report on Refugees and Integration³⁸⁵ and calls for:

- › the allocation of additional resources to Tusla to assist in their response to the unprecedented increase of young people in need of care, assistance and protection in Ireland, including for separated and unaccompanied age-disputed minors;
- › the establishment of a shelter for age-disputed people where they are treated as minors and not adults, and to end the placement of age-disputed minors in adult accommodation;
- › healthcare professionals to be provided with guidance around their role and pathways of advocacy, support and treatment of age-disputed minors;
- › age-disputed minors to be allocated an advocate or Tusla social worker with capacity to ensure their access to child-specific and appropriate services, including but not limited to education and mental health support.

The Commission reiterates its recommendation that specific guidelines on the criterion officers use to determine when a person may be a child, and when an adult is entitled to ‘take responsibility’ for a child, be drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training.

³⁸⁵ Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Refugees and Integration](#), pp. 80–81

Assistance to Child Victims (Article 14)

Original Directive Article 14 Assistance and support to child victims	Recast Directive Article 14 Assistance and support to child victims
<p>1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.</p>	<p>1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child, including programmes to support their transition to emancipation and adulthood in order to avoid re-trafficking. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.</p>

Individual Assessment (Article 14(1))

The identification and assistance of child victims of trafficking has remained unchanged during 2023.³⁸⁶ The EU Anti-Trafficking Directive requires the Government/Tusla to undertake an individual assessment that discerns the special circumstances of each child trafficking victim in order to ensure that specific assistance measures contribute to assisting the child in their short- and long-term recovery. The NAP requires Tusla and An Garda Síochána to

³⁸⁶ For more information on the Commission's analysis on the identification of child victims of human trafficking please see IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 124; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 150–151

implement an enhanced and coordinated response to provide assistance to child victims of trafficking.³⁸⁷ Regrettably, the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 does not contain any specific measures or actions for the assistance, support and protection of presumed and identified child victims of trafficking. The Commission has previously called for the amendment of the Bill to provide a minimum suite of services that both child and adult victims are entitled to, *inter alia*, immigration permissions, the right to seek international protection, safe and appropriate accommodation, health assistance and legal aid.³⁸⁸

State's Response to the Assistance and Support of Child Victims of Trafficking

Tusla's Separated Children Seeking International Protection (SCSIP) team remain responsible for victims of child trafficking referred to and/or detected by the Agency. The team liaise directly with An Garda Síochána's Garda National Protection Service Bureau (GNPSB) when suspicions of child trafficking arises. The team uses a 'Screening Form' when a separated or unaccompanied minor is referred to their services in order to establish the service-delivery threshold.³⁸⁹ The screening form can result in the categorisation of the child case as 'trafficking' and following a reasoned decision, the social worker must indicate if the case has to be notified to An Garda Síochána without delay for, among other reasons, identifying indicators of child trafficking. The social worker who has conducted the screening procedure signs the form, which is also approved by the Social Work Team Leader. The SCSIP team also uses a separate 'Risk Assessment Matrix on Separated Children at Risk of Trafficking', which is used as a tool for identification of potential child victims of trafficking. However, the Commission is concerned by the use of this Assessment Matrix by Tusla social workers; the document has not been updated in the last three years and contains an erroneous definition of child trafficking that includes the presence of the 'means' element to identify potential child victims – despite this not applying to child victims. As part of its immediate response to victims of child trafficking, Tusla seeks care orders and, when possible, family placements, for presumed and identified victims. As per the Assessment Matrix used by the team for presumed child trafficking victims, these children have access to a series of measures to assist them in the short term: initial intake assessment to check for trafficking indicators; appropriate accommodation placement (considering the child's needs and risks, location, monitoring and safety); outside placement monitoring, risk of going missing from State care; age assessment; legal advice and representation, if applicable; health assistance (physical

³⁸⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 2.14

³⁸⁸ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#), pp. 38–42

³⁸⁹ The form includes date of referral, details of the child (nationality, ethnicity, language, etc.); the referral source (IPO, Immigration, Port/Airport authorities or other); category (protection and welfare, unaccompanied minor, separated child seeking international protection, trafficking, child reunification, Dublin III reunification, advice and consultation and inappropriate referral) and prioritisation (low, medium and high); summary; decision.

and access to therapeutic services); education; use of and access to money; contact with community. It is uncertain whether child victims of trafficking have access to any specific long-term services that can assist with their physical and psychosocial recovery, as mandated by the Directive.

With the exception of the Intake Eligibility Assessment presented earlier in this section, to our knowledge no other policy or guidance document of relevance to child trafficking assistance has been developed in the reporting period (it must be noted that the Agency is currently developing guidelines for the detection of child trafficking as part of its overall enhanced response, but these are not applicable yet).

The right to psychological assistance for all victims of trafficking is established in Article 11, applying to adult and child victims of trafficking. For children, the UN Convention on the Rights of the Child establishes the right of all children to access healthcare services as well as the obligation on responsible authorities to periodically review the treatment provided to children under their care or protection.³⁹⁰ In Ireland, the Child and Adolescent Mental Health Services (CAMHS) is in charge of providing assessment and treatment for children up to 18 years old who experience mental illness such as anxiety, psychosis, or depression.³⁹¹ In September 2023 the HSE launched the CAMHS Hubs to provide intensive brief mental health interventions to support CAMHS teams in situations of acute mental health crisis.³⁹²

During childhood there is an increased vulnerability to mental health issues due to early brain development and the potential lasting effects into adulthood.³⁹³ Children in care might be exposed to trauma from childhood, which can be compounded by periodic movement between placements.³⁹⁴ Migrant children have prevalence rates of mental distress including post-traumatic stress disorder, depression and anxiety that vary depending on gender, age, country of origin, etc.³⁹⁵ Tusla advocates for the prioritisation by CAMHS of children in care (which includes separated and unaccompanied minors) due to complex needs and have reported long waits for such referrals.³⁹⁶

Every child victim of trafficking should have access to psychological support without delay, ensuring their long-term recovery from the trafficking ordeal. The Commission supports the

³⁹⁰ UN Convention on the Rights of the Child, Articles 24–25

³⁹¹ For more information about CAMHS please see: [HSE About CAMHS](#) [website]

³⁹² Health Service Executive (2023) [HSE CAMHS Hub Model of Care](#), p. 4

³⁹³ Mental Health Commission (2023) [Independent Review of the provision of Child and Adolescent Mental Health Services \(CAMHS\) in the State by the Inspector of Mental Health Services](#), p. 25

³⁹⁴ [Ibid.](#), p. 112

³⁹⁵ [Ibid.](#), p. 113

³⁹⁶ [Ibid.](#), p. 112

Mental Health Commission recommendations on vulnerable children, especially potential and identified victims of trafficking, calling for:

- › Every child in care to be supported by the HSE to receive CAMHS services that are child-centred and in the location of their choice.
- › The establishment of a National Clinical Programme and Clinical Lead for Mental Health of asylum seekers, refugees and migrants.
- › The provision of protected time, resources, mental health skills and appropriate training for those frontline professionals already providing CAMHS services for child asylum seekers, refugees and migrants.³⁹⁷

The Commission also echoes the concerns raised by the Ombudsman for Children on the lack of specialised counselling services for child victims of sexual assault and the non-consideration of child sexual abuse as a mental health issue by the HSE.³⁹⁸ The Commission supports the Ombudsman for Children’s overall recommendation that:

‘The State should ensure that the new National Youth Mental Health Office is adequately resourced to implement without delay the recommendations made by the Independent Review, including the immediate and independent regulation of CAMHS in line with international standards by the Mental Health Commission; and create a ring-fenced, child-specific budget for mental health with targeted supports for the most vulnerable.’³⁹⁹

Clarity on assistance to child victims is expected through the development of operational guidance for the revised National Referral Mechanism which observes the specific needs of child victims⁴⁰⁰ and provides for enhanced care packages for them. The Commission will follow closely the application of these commendable intentions.

Accommodation of Child Victims

Tusla has reported the preferred use of family placements for child victims of trafficking. The recast Directive recognises the additional risk of placing children in need of State care in residential and closed-type institutions, as they are exposed to risk of trafficking and re-

³⁹⁷ Mental Health Commission (2023) [Independent Review of the provision of Child and Adolescent Mental Health Services \(CAMHS\) in the State by the Inspector of Mental Health Services](#), p. 15

³⁹⁸ Ombudsman for Children (2024) [Ombudsman for Children’s Report to the UN Committee on Economic, Social and Cultural Rights](#), p. 8

³⁹⁹ [Ibid.](#), p. 9

⁴⁰⁰ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 2.14.3

trafficking.⁴⁰¹ The recast Directive also encourages the development of specific plans to prevent the trafficking of children, including of those in residential or closed-type institutions as part of the national child protection system.⁴⁰²

The placement of children in State care institutions increases the children's vulnerability to their trafficking and re-trafficking during and after their placement in those residences.⁴⁰³ Children might be targeted by traffickers through phone calls, visits or use of other residents.⁴⁰⁴ It has been documented that children and young people, especially girls, in residential care settings are being targeted, in a coordinated manner, by organised groups of predatory men for the purpose of their sexual exploitation.⁴⁰⁵ The Commission concurs with the Sexual Exploitation Research Programme recommendation on the need for the Health Information Quality Authority (HIQA) 'to undertake immediate audit of all residential care centres and assess the risk' of all forms of exploitation and trafficking.⁴⁰⁶ Best practice dictates that all child victims of trafficking, including those presumed victims, be provided with safe and appropriate accommodation which is child-specific within 24-hours of being detected.⁴⁰⁷

In addition to care institutions, the Commission is also concerned about Tusla's use of unregulated accommodation or SEAs to accommodate children and young people who present with complex needs.⁴⁰⁸ Concerns have been raised about the provision of residential care by private companies through B&Bs and rental and holiday properties, which not only might not be adequate for children but might not meet requirements governing children's homes or be subject to oversight.⁴⁰⁹

Most recently, there have been accounts of the Agency placing babies and toddlers in this type of accommodation, with Barnardo's guardian team reporting concerns about the level of care and the negative impact it has on trauma recovery.⁴¹⁰ According to experts, staff at SEA

⁴⁰¹ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Preamble 17

⁴⁰² [Ibid](#), Preamble 33

⁴⁰³ [Ibid](#), Preamble 17

⁴⁰⁴ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 167

⁴⁰⁵ Canning, M., Keenan, M. and Breslin, R. (2023) [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#), p. 4

⁴⁰⁶ [Ibid](#) p. 62

⁴⁰⁷ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 167

⁴⁰⁸ [Committee of Public Accounts to examine 2022 Financial Statements of Tusla, the Child and Family Agency](#) (2024) Dáil Éireann Debate (28 February)

⁴⁰⁹ Power J. (2023) ['Government concern over 'formalised' emergency Tusla accommodation'](#), the *Irish Times* (9 October)

⁴¹⁰ Byrne L. (2024) ['Babies in State care placed in private unregulated settings'](#), RTÉ (9 May)

placements, although trained in Children First,⁴¹¹ do not require qualifications as high as those required in Tusla’s residential care homes. Additionally, staff turnover is elevated and this affects the level of care received by children, as the new staff might not be aware of the children’s needs or views.⁴¹² The Agency is working to reduce its reliance on this type of accommodation,⁴¹³ in a situation where, as of April 2024, of the 166 children resident in SEA settings, 105 are unaccompanied. The Commission is unaware whether any presumed or identified victim of trafficking has or is currently residing in an SEA.

Tusla continues to demonstrate a solid commitment to improving its response to child victims, which already involves undertaking an individual assessment to offer immediate and short-term measures to the child. Among those assistance measures should be safe and appropriate accommodation as well as psychosocial support to treat mental health, measures which overall are in need of improvement.

The Commission remains concerned about potential EEA and Irish national child victims of trafficking. In 2023 Tusla continued approaching the detection, assistance and protection of child victims of trafficking from a primarily immigration and international protection perspective. While the Commission welcomes Tusla’s efforts to improve its response to child victims of trafficking through the establishment of a Child Trafficking Working Group, a policy or procedure that fully captures the State’s obligations to child victims of trafficking as mandated by the Anti-Trafficking Directive remains yet to be published.

The Commission reiterates its recommendation that Tusla develops a child trafficking-specific procedure which contains short-term and long-term assistance measures to ensure the physical and psychosocial recovery of all child victims of trafficking, in sufficient detail.

The Commission recommends that the State provides the necessary support for Tusla to reduce their reliance on Special Emergency Arrangement accommodation and ensures access to safe and appropriate accommodation that is child-centred for presumed and identified child victims of trafficking.

The Commission recommends that the Health Information Quality Authority performs an urgent audit of all the State care residential centres to assess the risk of exploitation and human trafficking, as recommended by the Sexual Exploitation Research Programme ‘Scoping Study on the Exploitation of Children and Young People in Ireland’.⁴¹⁴

⁴¹¹ Department of Children, Equality, Disability, Integration and Youth (2024) [Children in Care](#) (23 April)

⁴¹² Byrne L. (2024) ‘[Babies in State care placed in private unregulated settings](#)’, RTÉ (9 May)

⁴¹³ Department of Children, Equality, Disability, Integration and Youth (2024) [Children in Care](#) (23 April)

⁴¹⁴ Canning, M., Keenan, M. and Breslin, R. (2023) [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#). Dublin: SERP

The Commission recommends that the State develops specific strategic plans aimed at preventing the trafficking of all children in Ireland, especially trafficking of children in State care accommodation, without regard to their country of origin or immigration status.

Views of the Child (Article 14(1))

The provision of support and assistance to child victims of trafficking must take into account the child's views, needs and concerns regarding a durable solution for their future. Children must be able to express their views in a meaningful manner in regard to matters that concern them, such as the support they might receive. Concerns at EU level highlight that children are not sufficiently listened to and their views not taken into account enough in relation to matters relevant to them.⁴¹⁵ The EC recommends Member States to empower children by taking their views into consideration 'in accordance with their age and maturity, and by ensuring in particular the engagement of children in the development, monitoring and evaluation of child protection strategies, policies, programmes and services'.⁴¹⁶ The Council of Europe recommends the development of accessible documents and resources that enable children to fully access information, express their views and participate, including through consultations with children and information sessions on how their views have been taken into consideration.⁴¹⁷ Article 12 of the Convention on the Rights of the Child establishes the right of children to express their own views in all matters affecting them and for those views to be given due weight in accordance with age and maturity.

National Response to Children's Views

The guidance used by Tusla's social workers and other professionals in contact with children vulnerable due to various circumstances, including child trafficking, contains several references to the views and needs of the children, as well as practice notes and relevant research points on how to take into account those individual views and needs.⁴¹⁸ The Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison on Children

⁴¹⁵ European Commission (2021) [EU Strategy on the Rights of the Child](#), p. 2

⁴¹⁶ European Commission (2024) [Commission Recommendation of 24.4.2024 on Developing and Strengthening Integrated Child Protection Systems in the Best Interest of the Child](#), para. 3

⁴¹⁷ Council of Europe (2022) [Council of Europe Strategy for the Rights of the Child \(2022–2027\) 'Children's Rights in Action: from Continuous Implementation to Joint Innovation'](#), p. 11, p. 24

⁴¹⁸ Tusla (2018) [Child Protection and Welfare Practice Handbook 2](#). In relation to children with parents with learning or intellectual disabilities (p. 20), children with disabilities (pp. 46–49), children with mental health issues (including self-harm and suicide (pp. 52–53), children from abroad needing protection (p. 82), and Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Young People (p. 90)

First⁴¹⁹ also contains references to the child's views under specific circumstances.⁴²⁰ The Agency's Intake Eligibility Assessments have to be guided by a child-centred approach, which involves undertaking the assessment in an age-appropriate manner and in a language the child fully understands to ensure that they can express 'views, wishes and opinions and make an informed decision to participate in the process'. The guidance establishes that 'the child's views will be given due weight in accordance with their age and maturity during the assessment process', including through the child's independent advocate who, in response, is to ensure that the child's views are made clear. In relation to the assessment of a person's age, the document also observes that in this case the child's views should be given full consideration and be reflected in the assessment process according to age and maturity.⁴²¹

The NAP is silent on the views of child victims of trafficking. However, the Plan generally refers to the incorporation of victim/survivor input to ensure victims/survivors' voices inform the implementation of the actions.⁴²² This commitment, which is greatly welcomed by the Commission, intends to invite the views of victims in shaping the national anti-trafficking response. To engage child victims in a similar manner will require special actions.

To ensure they are listened to and that their best interests are always considered, the Commission recommends that presumed and identified child victims of trafficking have access to a Children's Legal Advisor, in addition to a legal guardian.⁴²³ The role of the Children's Legal Advisor is to advocate for their rights, guaranteeing that the views and needs of the child are respected throughout all stages of the process.⁴²⁴

Transition into Adulthood and Avoidance of Re-Trafficking

The recast EU Anti-Trafficking Directive has added a rather relevant element in Article 14(1) in relation to ageing out child victims of trafficking. It requires Member States to protect older

⁴¹⁹ Tusla (2017) [Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison on Children First](#)

⁴²⁰ In relation to child protection conferences (p. 17), within the notification form for child protection and welfare concerns from An Garda Síochána to Child and Family Agency (p. 32) and vice versa (p. 37).

⁴²¹ Source: Tusla 2024

⁴²² Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 4.6.1

⁴²³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 163

⁴²⁴ Children's Legal Advisors are recognised or accredited professionals, with demonstrable knowledge of the National Referral Mechanism and relevant law that acts as an intermediary for the child throughout the process. They apply a child-centre and trauma-informed approach, working to build a relationship of trust with the child victim and ensuring their informed participation in the process; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 163

child victims from re-trafficking by offering support ‘in their transition to emancipation and adulthood’.

Tusla provides aftercare services to assist young people in their transition from childhood into adult life. People in Tusla’s care are entitled to aftercare service based on the assessment of their needs, from 18 to 21 years, extendable to 23 when the person is in education.⁴²⁵ The best interests of the child and the views of the child are guiding principles in the provision of aftercare services by Tusla. Other best practice principles include the welfare of the child, the right to be informed and to meaningful consultation, and the right to be supported in the transition into adulthood.⁴²⁶

The Child Care Act 1991 established a statutory duty on Tusla to provide aftercare services to individuals leaving care following an assessment by Tusla to determine this need. Section 45 of the 1991 Act specifies that this aftercare assistance be extended until the person attains the age of 21 or until the completion of the course of education in which they are engaged. The section details the aftercare services: providing visits or assistance; arranging the completion of the course of education and contributing to their maintenance while in this education; placing the person in a trade, calling or business and financially contributing when the payment of a fee is a requisite; arranging accommodation; and co-operating with housing authorities to plan accommodation.

The Child Care (Amendment) Act 2015, Section 45 (1) provides that Tusla shall prepare an aftercare plan for an eligible child or adult which contains the assistance that might be provided. According to Tusla’s National Aftercare Policy, the service is voluntary, with young adults having the right to decide if they would like to engage and to re-engage up to the age of 21 years of age.⁴²⁷

Tusla’s aftercare plan is a written document prepared by the aftercare worker with the eligible person, based on the assessment of needs, which clearly details the supports required by the person in their transition to adulthood.⁴²⁸ The plan outlines their needs in relation to education, training and employment, health and wellbeing, personal and social development, accommodation, finance and budgeting, social network and supports, family access and contact and support from other services.⁴²⁹ A request to review the aftercare plan can be submitted and following a positive determination, it is required for the plan to be reviewed

⁴²⁵ Tusla (2017) [National Aftercare Policy for Alternative Care](#), p. 6

⁴²⁶ [Ibid](#), p. 4

⁴²⁷ [Ibid](#), p. 6

⁴²⁸ [Ibid](#), p. 19

⁴²⁹ [Ibid](#)

within three months.⁴³⁰ The review takes place within a structured meeting or as part of the process with the full participation of the child or young adult, with best practice recommending to ensure that the review ‘takes place in a manner that is conducive to a positive outcome’.⁴³¹

Separated and unaccompanied children under Tusla’s care are also eligible for aftercare services. Once the person reaches 18 years or at the end of the current school year, the young adult is discharged from State care and is entitled to reside in direct provision accommodation, where they would be able to access Tusla’s aftercare services with the exception of financial support, which is provided as part of their international protection claim.⁴³²

Conclusions on Durable Solutions for Child Victims

The Commission greatly welcomes the introduction of a reference to ageing out children in the recast Anti-Trafficking Directive. The inclusion of an obligation for Member States to provide assistance and support to child victims of trafficking in their transition to adult life to avoid re-trafficking, demonstrates the need to carefully consider the specific aftercare needs of young adult victims of trafficking.

Tusla has a statutory duty to provide aftercare assistance to children and young adults, following a positive assessment of needs. The Agency has established guidance documents that provide a working framework for frontline social workers and other professionals involved in aftercare services. To comply with Article 14(1) of the recast Anti-Trafficking Directive, the Agency should consider reviewing and updating its Guidance on ‘Complex Needs in Aftercare’ to include child victims of trafficking.

The Commission reiterates its recommendation that every child victim is appointed a ‘Children’s Legal Advisor’ at the earliest stage of their referral to the National Referral Mechanism to ensure that the identification, assistance and protection during the process respects the views and best interest of the child.

The Commission recommends that Tusla supports child victims of trafficking in their emancipation and adulthood with aftercare plans that specifically protect them from being re-trafficked, as mandated by the recast EU Anti-Trafficking Directive.

The Commission recommends that the child victims of trafficking are afforded access to the full range of aftercare services, irrespective of the duration or the legal basis upon which they

⁴³⁰ [Ibid](#), p. 20

⁴³¹ [Ibid](#), pp. 21–22

⁴³² [Ibid](#), p. 8

have entered the care of the Tusla – the status as a child victim of trafficking should satisfy all eligibility requirements.

Education for Child Victims of Trafficking (Article 14(1))

Article 14(1) requires providing access to education for all child victims of trafficking, as well as for the children of victims of trafficking who are in receipt of assistance and support as per Article 11 of the Directive. The European Commission recognises the value of education to assist in the full reintegration of victims of trafficking into society.⁴³³

All children in Ireland have a right to access free primary and secondary education provided by the State, no matter their country of origin or immigration status.⁴³⁴ Under the Department of Education, the regional education and language teams support Ukrainians, third-country nationals and international protection applicant children in allocating school places and supporting schools to meet the needs of these children.⁴³⁵ For children for whom English is their second language, the Department of Education provides support to schools with additional posts.⁴³⁶ In recognition that some students might be at an educational disadvantage (such as child victims of trafficking), the Department continues with the ‘Delivering Equality of Opportunity in Schools’ (DEIS) Programme, which includes support in relation to meals, books, literacy and numeracy, extra funding or more staff for the schools.⁴³⁷ The Ombudsman for Children has reported concerns that disadvantaged children in non-DEIS schools are not receiving the same supports, and has recommended the State to identify further supports for this cohort.⁴³⁸ Schools also have psychologists from the National Educational Psychological Service (NEPS), who provide educational psychological support.⁴³⁹ The Department of Education has recently published guidance for primary schools that provide education for children who are beneficiaries of temporary protection (children from

⁴³³ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Preamble 22; [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Preamble 18

⁴³⁴ Constitution of Ireland, Article 42.4

⁴³⁵ Department of Education (2023) [Educational Provision for Children from Ukraine, International Protection Applicants and Children with Recognised Status Guidance for Primary Schools September 2023](#)

⁴³⁶ Dáil Éireann Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Challenges Facing Refugees and Migrant Children in Ireland: Discussion](#) (27 June)

⁴³⁷ Department of Education (2023) [Schools in the DEIS Programme Parents’/Guardians’ Information Note](#)

⁴³⁸ Ombudsman for Children (2024) [Ombudsman for Children’s Report to the UN Committee on Economic, Social and Cultural Rights](#), p. 9

⁴³⁹ Department of Education (2024) [National Educational Psychological Service \(NEPS\)](#) [website]

Ukraine) or applicants for international protection, and children whose immigration status is refugee, subsidiary protection, or permission to remain.⁴⁴⁰

For further and third-level education, in 2023 asylum seekers had access to the International Protection Student Scheme 2023/2024 from the Department of Further and Higher Education, Research, Innovation and Science (application deadline was 30th November). The Scheme was applicable to students in the international protection system or at leave to remain (not deportation order) stage who were undertaking or wished to pursue a post-leaving certificate course, an undergraduate course or a postgraduate course.⁴⁴¹ The students must have applied for international protection three years before the start of the course and there were income restrictions. International protection applicants also have access to the Voluntary Training Opportunities Scheme when they are holders of a Temporary Resident Card (TRC) and a work permit.⁴⁴² Those with Stamp 4 and refugee status might also have access to other government financial support for further education including Student Universal Support Ireland (SUSI), under certain eligibility criteria. In 2023, victims of trafficking identified and assisted through the current National Referral Mechanism who were holders of a temporary residence permit, continued not to be eligible for some educational supports.⁴⁴³

The NAP establishes that the Department of Education should support child victims of trafficking with education, providing access to the education system in a timely manner.⁴⁴⁴

In the case of third-level education, the Department of Justice has committed, with support from the Department of Further and Higher Education, Research, Innovation and Science, to identify and review the obstacles that victims of trafficking face when aiming to access tertiary education in developing the revised National Referral Mechanism.⁴⁴⁵ CSOs have reported that holders of a residence permit based on their identification as victims of trafficking (as established in the current NRM Administrative Immigration Arrangements) are excluded from accessing State support (Student Universal Support Ireland ('SUSI')).⁴⁴⁶ According to one organisation, the exclusion from this financial support is the main barrier for victims of trafficking to access tertiary education. The Commission notes that the draft NAP

⁴⁴⁰ Department of Education (2023) [Educational Provision for Children from Ukraine, International Protection Applicants and Children with Recognised Status](#)

⁴⁴¹ Department of Further and Higher Education, Research, Innovation and Science (2024) [International Protection Student Scheme \(for FE/HE Students\) 2023/2024](#) [website]

⁴⁴² Irish Refugee Council, [Education State \(Government Funding\)](#) [website]

⁴⁴³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 163–164

⁴⁴⁴ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#), Action 2.15

⁴⁴⁵ [Ibid.](#), Action 4.2.1

⁴⁴⁶ For more information see <https://www.susi.ie/>

had included an explicit reference to SUSI in Action 4.3.2 and regrets its removal from the final approved plan. We look forward to the State's review of the barriers that victims of trafficking encounter in accessing third-level education, including access to SUSI and other financial supports, given the numerous benefits that being in education has for the recovery and reintegration into society of those victims/survivors.⁴⁴⁷

The Commission reiterates its recommendation that all child victims of trafficking are afforded the same access and supports to primary and post-primary education, training and employment as Irish nationals.

The Commission recommends that the State guarantees access to Student Universal Support Ireland for identified victims of human trafficking who wish to pursue tertiary education, regardless of the immigration permission they hold.

⁴⁴⁷ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 164

Appointment of a Guardian (Article 14(2))

Original Directive Article 14 Assistance and support to child victims	Recast Directive Article 14 Assistance and support to child victims
2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.	2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child. Member States shall ensure that, in case of a conflict of interest between the guardian or the representative and the child victim, a different guardian or representative is appointed.

Article 14(2) provides for the appointment of a guardian or representative for child victims as soon as they are formally identified as victims and when the parents or those with parental responsibility cannot ensure the best interests of the child, as a result of a conflict of interest. The EU Anti-Trafficking Strategy 2021–2025 calls for the ‘speedy appointment of guardians’ for child victims of trafficking.⁴⁴⁸

The European Commission has provided guidance on the provision of guardianship for child victims, describing the guardian as defined by the UN Committee on the Rights of the Child:

‘An independent person who safeguards a child’s best interests and general well-being and to this effect complements the limited legal capacity of the child. The guardian

⁴⁴⁸ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025](#)

acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child'.⁴⁴⁹

Guardians are those responsible for ensuring the child victim's overall wellbeing and safeguarding the child's best interests, and those in charge of exercising legal representation, including by complementing the child's limited legal capacity.⁴⁵⁰ The recast Directive has increased the protection of child victims by requiring that Member States appoint a different guardian/representative for the child victim when a conflict of interest arises with the person originally appointed.

Other Practice Examples

In the UK, the charity Barnardo's is contracted by the Government to deliver the Independent Child Trafficking Guardianship (ICTG) service under the UK 2015 Modern Slavery Act. The service aims to build trusting relationships with child victims; help child victims navigate the criminal, immigration and social care services; give practical support (housing, health and education); give emotional and psychological support; train professionals working with children to spot signs of trafficking and know how to assist child victims.⁴⁵¹ Children are referred to this service following a first referral to the UK National Referral Mechanism as soon as there are concerns that the child might be a victim of trafficking.⁴⁵²

Recent research has evaluated the benefits and limitations of Barnardo's ICTG service based on child victims of trafficking outcomes: long-term safeguarding and protection, wellbeing and recovery.⁴⁵³ The study found that the service: provides valuable data on how human trafficking affects children in England and Wales; is delivered in a multi-layered provision of support that achieves positive outcomes for child victims; and is flexible as it allows children to navigate it to achieve varied outcomes at different times and degrees according to the child's needs. All young people engaged in the research reported that the ICTG services supported them to achieve positive outcomes on issues important to them.⁴⁵⁴ A 17-year-old child victim of trafficking engaged in the services reported:

⁴⁴⁹ European Union Agency for Fundamental Rights (2019) [Children Deprived of Parental Care Found in a Member State Other than Their Own](#), p. 12

⁴⁵⁰ [Ibid.](#), p. 50

⁴⁵¹ [Barnardo's UK Child Trafficking](#) [website] <https://www.barnardos.org.uk/get-support/support-for-parents-and-carers/child-abuse-and-harm/child-trafficking>

⁴⁵² Skeels A., Huxley K. and Slott H. (2024) [Outcomes for Children and Young People Affected by Modern Slavery: An analysis of ICTG service support in England and Wales](#), p. 9

⁴⁵³ [Ibid.](#), p. 58

⁴⁵⁴ [Ibid.](#), p. 59

‘... you know, before I met you, I never trusted anybody at all, because of the experience that I went through, being exploited, and being abused. So, I never believed that anyone would help me, but after meeting you, you made me feel that I can trust in you. I could talk to you. I could confide in you and all that because of the support that you gave me and have been giving me.’⁴⁵⁵

In Ireland, no new development on the provision of guardianship for identified child victims of trafficking has occurred in 2023. As previously stated, the National Referral Mechanism Bill is not child-specific and thus has no mention on the provision of this service – or any other entitlement,⁴⁵⁶ and neither does the NAP.⁴⁵⁷ The Commission has previously recommended that a clear outline of statutory services to be afforded to child victims of trafficking be incorporated within law and policy, including when a child is unaccompanied or separated, or when those with parental responsibilities are directly implicated in their trafficking or show a conflict to ensuring the best interests of the child.⁴⁵⁸ Tusla continues showing significant progress and efforts to raise awareness on child trafficking among staff and is currently developing internal guidance on the detection and identification of child victims; however, the provision of specific services, assistance and protection is not yet reflected in this undertaking.

Ireland does not follow the European guardianship model.⁴⁵⁹ According to Tusla, each child under State care is allocated a social worker who has the overall care responsibility for the child, including respecting their best interests. When a child victim is identified by An Garda Síochána and no adult has parental responsibility for the child, Tusla takes that child into care, following an assessment to discern the need of care and protection. Tusla’s SCSIP team applies an ‘equity of care’ principle in regard to separated and unaccompanied minors, which means that all children in Ireland are afforded the same standard of care provision as any other child in care. According to Tusla, the application of this principle, which involves extended care and support for the child through the allocation of a social worker, greatly exceeds the service provided by the EU guardianship model. Concerns arise when the Department of Children/DCEDIY recognises that not all separated and unaccompanied minors accommodated in Special Emergency Arrangements (an especially at-risk cohort due to their separation from parents/guardians) and housed in non-appropriate accommodation

⁴⁵⁵ [Ibid](#), p. 54

⁴⁵⁶ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

⁴⁵⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023–2027](#)

⁴⁵⁸ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 165

⁴⁵⁹ Unaccompanied or separated minors entering the European Union are assigned a representative or guardian that take parental responsibility and have the mandate to take important decisions for the child in their best interest.

such as hotels or B&B, actually have access to an allocated Tusla social worker.⁴⁶⁰ On the application of the ‘equity of care’ principle, the Ombudsman for Children has highlighted that some children have special vulnerabilities and different circumstances that require a different framework,⁴⁶¹ which would be the case for child victims of trafficking. The Commission is aware of Tusla social workers (guardians) supporting child victims of trafficking under State care in their engagement with some state agencies such as the Legal Aid Board, or assisting in the referral to specialist therapeutic services. In this regard, Tusla reported a lack of specialist therapeutic services for child victims of trafficking for sexual exploitation and a lack of a clear pathway to ensure that identified child victims have access to residence permits (Stamp 4) instead of experiencing the international protection system.

The Commission recommends that the social workers allocated to child victims of trafficking should be trained and fully aware of the full suite of support services and statutory entitlements that child victims should have access to, including health support and immigration permissions.

The Government has an opportunity to distinctly present the child-specific statutory assistance and protection services, as required by EU law, in the Operational Guidelines of the National Referral Mechanism currently in development. The inclusion of those specific entitlements and services would assist Tusla social workers to positively assist child victims in accessing the required services for their recovery. The guidelines should also observe the mandate to appoint a guardian/allocate a social worker, when applicable, as soon as a child victim is identified. This appointment or allocation to presumed and identified child victims would ensure the child’s wellbeing, best interests and safeguarding, be it through the appointment of an independent figure or through the allocation of a Tusla CORU⁴⁶² registered social worker.

The Commission reiterates its recommendation that any appointed guardians or social workers allocated to children who are potential and identified victims of trafficking are regularly trained, as well as availing of professional supervision.

⁴⁶⁰ Department of Children, Equality, Disability, Integration and Youth (2023) [Written Answer to Parliamentary Question: Emergency Accommodation](#) (9 April 2024)

⁴⁶¹ Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Pre-legislative Scrutiny of the General Scheme of a Child Care \(Amendment\) Bill 2023](#), p. 82

⁴⁶² CORU is Ireland’s multi-profession health regulator. For more information see <https://coru.ie/about-us/what-is-coru/>

Child Victim's Family (Article 14(3))

Original Directive Article 14 Assistance and support to child victims	Recast Directive Article 14 Assistance and support to child victims
3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.	3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Directive 2012/29/EU to the family.

The family of identified child victims of trafficking who are in Ireland also have access to assistance and support as established by Article 14(3). The recast Anti-Trafficking specifies that, when appropriate, Article 4 of the EU Victims of Crime Directive should apply to the family of the child victim in relation to receiving information without delay from their first contact with a Competent Authority on their rights and entitlements.⁴⁶³

The Commission is not aware of any update in law or policy that regulates the right that families of child victims of trafficking in Ireland have to access assistance, protection and support over the reporting period. The Commission is not aware of the family circumstances of the five child victims identified in 2023 and whether they were entitled to and received any support from the State, as mandated by Article 14(4) of the Directive. Generally, Tusla engages with the parents/guardians of children receiving protection and welfare services, addressing the child's needs with the participation of the family.⁴⁶⁴ When the issue involves a child victim of trafficking specifically and as reported by Tusla, the Agency is developing a policy to guide the reunification procedure abroad following an assessment which might involve the undertaking of welfare checks by staff local to where the family are living. This service is in

⁴⁶³ This include information on the type of support and from whom, including medical, psychological and alternative accommodation; procedures to make a complaint for criminal offences; access to protection and protection measures; access to legal advice and other information; access to compensation; access to interpretation and translation; procedures to make a complaint when there is a breach of their rights during by a Competent Authority within a criminal procedure; contact details to obtain communications about their case; access to restorative justice service; and reimbursement of expenses.

⁴⁶⁴ Tusla (2018) [Child Protection and Welfare Practice Handbook 2](#), pp. 2–7

addition to the offer of a family ‘search’ for separated and accompanied minors. Child victims of trafficking might require assurance that their families will be also supported, which might require considerations under the revised NRM. The Commission has previously called for the extension of access to legal assistance to family members of child victims of trafficking.⁴⁶⁵

The Commission reiterates its recommendation that specific rights are extended to the family of child victims, as an integral part of child victim assistance, and that the access to this assistance is clearly outlined in the National Referral Mechanism Operational Guidelines.

⁴⁶⁵ IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 15

Protection of Child Victims in Criminal Proceedings (Article 15)

Original Directive Article 15 Protection of child victims of trafficking in human beings in criminal investigations and proceedings	Recast Directive Article 15 Protection of child victims of trafficking in human beings in criminal investigations and proceedings
<p>1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.</p>	<p>Unchanged</p>
<p>2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.</p>	<p>Unchanged</p>
<p>3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:</p> <p>(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;</p> <p>(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;</p> <p>(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;</p>	<p>Unchanged</p>

<p>(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;</p> <p>(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;</p> <p>(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.</p>	
<p>4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.</p>	Unchanged
<p>5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:</p> <p>(a) the hearing take place without the presence of the public; and</p> <p>(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.</p>	Unchanged
<p>6. This Article shall apply without prejudice to Article 12.</p>	Unchanged

Article 15 contains multiple provisions that strengthen the protection of child victims during a criminal investigation and throughout the criminal justice process. These provisions require: the appointment of a representative for the child in criminal proceedings (Article 15(1)); securing legal counselling and free legal representation without delay (Article 15(2)); a range of measures in interviewing child victims (Article 15.3); video-recorded evidence (Article 15(4)); anonymity in court procedures to protect child victims (Article 15(5)). These provisions are similar to, although stronger than, the protections required for adult victims within the criminal justice system, detailed in Article 12 above. It is also worth noting that the recast Directive has made no changes to Article 15. As such, the protections required for children during investigation and proceedings will remain the same.

As outlined in the First and Second National Evaluation Reports, where a child is in the care of their safe parent/guardian it is they who are tasked with representing the child during criminal investigations and proceedings.⁴⁶⁶ However, where the parent/guardian's role creates a conflict of interest it is the responsibility of Tusla to ensure that children have a suitable representative during the criminal investigation and any subsequent proceedings. It may also be the case that the child chooses not to have their parent/guardian represent them; in that instance there is provision for them to be accompanied by an 'appropriate adult' – further detailed below.

Tusla has informed us that identified child victims of trafficking are usually subject to a full care order (Section 18)⁴⁶⁷ and are appointed a social worker. There are other ways in which a child can be taken into the care of the State. Some children enter care under Section 4 'Voluntary care order' or Section 5 'Accommodation for homeless children'.⁴⁶⁸ This has particular relevance for the requirement that 'a competent authority appoint a representative for a child victim of trafficking'. The legal basis upon which a child has been taken into the care of the State affects the degree to which Tusla exercises its authority.

Representative for the Child in Criminal Proceedings (Article 15(1))

Where a child is placed into care under a full care order (Section 18), Tusla will 'have the like control over the child as if it were his parent'⁴⁶⁹ and thus can be said to represent the child, as per Article 15(1) EU Anti-Trafficking Directive. In contrast, where a child has come into the care of Tusla under Section 5, then Tusla is only required to take 'such steps as are reasonable to make available suitable accommodation for him'.⁴⁷⁰ The latter situation may not satisfy the obligation to appoint a 'representative' to the child. While the legal basis upon which a child is in care may in itself determine whether the child could be said to have been appointed a 'representative', perhaps the more pressing issue is whether the child has been allocated a social worker, who would de facto become their 'representative' within the meaning of the Directive. There appears to be an increase in the numbers of children who are not allocated a social worker within a reasonable period of time.⁴⁷¹ Of particular concern are the numbers of

⁴⁶⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 15(1)

⁴⁶⁷ Child Care Act 1991 (Amended)

⁴⁶⁸ Child Care Act 1991 (Amended)

⁴⁶⁹ Section 18(3)(a) of the Child Care Act 1991 (Amended)

⁴⁷⁰ Section 5 of the Child Care Act 1991 (Amended)

⁴⁷¹ Department of Children, Equality, Disability, Integration and Youth (2024) [Written answer to Parliamentary Question: Child Protection](#) (30 April)

unaccompanied children without an allocated social worker – a cohort at particular risk of having been trafficked or at risk of trafficking. Plainly, without the allocation of a social worker, child victims cannot be said to be represented during the criminal investigation and proceedings.

It has been reported that ‘*most often*, it is the social worker who acts in *loco parentis* to support the child during the investigation and legal proceedings’ [emphasis added].⁴⁷² We do not have specific information on the legal basis upon which each child victim of trafficking is under the care of Tusla. Nor do we have information on whether a social worker was assigned to each child and how long the child waited for this allocation. Thus, it is not possible to determine whether these child victims can be said to be ‘represented’ as per the requirements of Article 15(1). It is imperative that every child victim (presumed, identified and at risk of human trafficking) in the care of the state be allocated a social worker who can ‘represent’ them. It is also essential that every child victim – whether in the care of the State or of their parent/guardian – be fully represented.

The Commission recommends that every child who is identified or presumed to be a victim of trafficking and is in the care of Tusla is appointed a social worker who has received specialist and accredited training in child trafficking.

Legal Assistance to Child Victims (Article 15(2))

We have continuously emphasised the need for a system of Child Legal Advisors, while we recognise that child victims have equal access to Civil Legal Aid⁴⁷³ as adult victims. This is provided for in Section 26(3)(b) of the Civil Legal Aid Act 1995. As the section applies equally to all victims, irrespective of whether or not they are a child, it cannot be said to be child-specific.⁴⁷⁴ This approach does not give effect to the higher protection afforded to child victims under Article 15(2). Importantly, the 1995 Act does not provide legal aid to parents/guardians of children (where they lack the sufficient maturity to give instructions).⁴⁷⁵

⁴⁷² GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), p. 40. It is worth noting that there is no statutory definition of the term *loco parentis*. Although, it is generally understood to refer to an individual, not the parent, who assumes parental rights, duties, and obligations without going through the formal process of, for example, adoption of the child. It refers to any situation where one person assumes the moral responsibility to provide for the material needs of another but it is not binding in law see *Hollywood v Cork Harbour Commissioners* [1992] 1 IR 457

⁴⁷³ Section 26(3)(b) of the Civil Legal Aid Act 1995

⁴⁷⁴ Section 26(3)(b) of the Civil Legal Aid Act 1995

⁴⁷⁵ Section 26(3)(b) of the Civil Legal Aid Act 1995

Additionally, for children under the care of the State, Tusla is not currently obliged to seek legal aid on behalf of a child victim. As such, the lack of child-specific legal aid is of deep concern and requires consideration.

We have been informed that one child victim of trafficking received the services of the Anti-Trafficking team within the Legal Aid Board (LAB); the LAB also received a second referral in relation to a child victim of trafficking (at the time when this information was provided to the Commission, engagement with Tusla on the referral had not yet taken place).⁴⁷⁶ This is somewhat concerning – as there were five children identified in 2023. As such, it would appear that only one of these victims received legal services from the Legal Aid Board. We remain concerned that child victims are not always receiving the legal supports they are entitled to and that they require. For this reason we have highlighted the need for a statutory obligation, similar to that of 23D(5)(b) of the Child Care Act 1991, which requires Tusla to provide the child in their care with access to a solicitor or a legal representative.⁴⁷⁷

Additionally, we have noted that the 1995 Act does not provide legal aid to parents/guardians of children (where they lack the sufficient maturity to give instructions).⁴⁷⁸ For children in the care of Tusla there is no obligation that Tusla seek legal aid on behalf of a child victim, although we have been informed by Tusla that this usually occurs. We have been informed that in cases where the victim of trafficking is a child then contact is made between the Legal Aid Board and the allocated Tusla social worker and consultations between the LAB and the child victim client take place in the presence of the allocated Tusla social worker. A suitable location for the consultation is decided upon whether this be the solicitor's office or another place identified by the social worker.⁴⁷⁹

The Commission recommends that the Operational Guidelines that accompany the new National Referral Mechanism include a specific obligation and procedures that require the child victim's appointed social worker to arrange that the child receive legal advice from the Legal Aid Board, without delay.

The Commission recommends that funding is made available to the Legal Aid Board to enable them to establish a system of Children's Legal Advisors. This is essential to ensure that child victims of trafficking receive age-appropriate and trafficking-specific legal advice and support, on all criminal matters and for the purposes of claiming compensation.

⁴⁷⁶ Source: Legal Aid Board 2024

⁴⁷⁷ It is noted that this requirement is in relation to where a child is in the care of the State and they have committed an offence, but is used to demonstrate a possible statutory provision.

⁴⁷⁸ Civil Legal Aid Act 1995

⁴⁷⁹ Source: Legal Aid Board 2024

The Commission recommends that reform of Civil Legal Aid extend the provisions in section 26(3A) of the Civil Legal Aid Act 1995 to the (safe) parent/guardians of child victims of trafficking.

Interviews with Child Victims (Article 15(3))

In our First and Second National Evaluation Reports we have written extensively on the Directive obligations which require that interviews with child victims take place without delay,⁴⁸⁰ in a place designed for that purpose,⁴⁸¹ by or through professionals trained for that purpose,⁴⁸² where possible with the same persons,⁴⁸³ and that the number of interviews be limited and carried out only where strictly necessary for the purposes of what is strictly necessary⁴⁸⁴ for criminal investigations and proceedings.⁴⁸⁵

To our knowledge, there have been no changes to the operating procedures during the reporting period and there continue to be a number of specialised and victim-centred facilities where interviews with vulnerable victims are carried out.⁴⁸⁶ There appears to be good practice among An Garda Síochána in interviewing children with members making significant efforts to adapt their approach by modifying their language to ensure the child's understanding and adapting the environment or interview room in which the interview is carried out.⁴⁸⁷ The research also highlights existing specialised expertise and experience among An Garda Síochána.⁴⁸⁸

Given their profound vulnerability and the trauma experienced by child victims of trafficking we have called for child victims of trafficking to be explicitly included in the Barnahus model.⁴⁸⁹ Currently, the Barnahus model of service is only available in the West of Ireland.⁴⁹⁰

⁴⁸⁰ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 15.3\(a\)](#)

⁴⁸¹ [Ibid.](#), Article 15.3(b)

⁴⁸² [Ibid.](#), Article 15.3(c)

⁴⁸³ [Ibid.](#), Article 15.3(d)

⁴⁸⁴ [Ibid.](#), Article 15.3(e)

⁴⁸⁵ See IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁴⁸⁶ These are located separately from Garda stations, across the country.

⁴⁸⁷ Kilkelly U. and Force L. (2020) [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#), p. 47

⁴⁸⁸ [Ibid](#)

⁴⁸⁹ The service brings together Tusla, An Garda Síochána and the HSE in the same child-friendly facility, providing specialist interviews, medical assessments and child therapy. Tusla – [Barnahus \[website\]](#)

⁴⁹⁰ The service is available in Donegal, Leitrim, Sligo, Roscommon, Mayo, Galway, Clare, Limerick and part of Tipperary. For more information on the Barnahus services see <https://www.tusla.ie/barnahus/>

In April 2023, the Government published the Inception Report for the European Union/Council of Europe Joint Project ‘Support the implementation of the Barnahus project in Ireland’.⁴⁹¹ This project seeks to support the expansion of the Barnahus model of service in Ireland. In addition to the dedicated centre in Galway, two further locations in the East and South will provide national coverage and access for victims and families to the service. This is a very welcome development and we hope for the swift rollout of the Barnahus model nationwide and for it to be made available to include supports for child victims of trafficking.

The Commission reiterates its recommendation that all child trafficking victims, irrespective of the form of exploitation they were subjected to, are included in the ‘Barnahus model’ already operating in the State, as well as the roll out of the model nationwide.

Article 15(3)(f) requires that child victims be accompanied by a representative or adult of their choice during the interview for criminal investigation and proceedings unless this is unfeasible, and this is set out in Section 18 of the Criminal Justice (Victims of Crime) Act 2017.⁴⁹² In the absence of a parent, guardian or other authorised person, the relevant authority shall arrange for another ‘appropriate person’ to accompany a child victim at any interview or at court proceedings at which the victim is required to be present. The Act is vague as to what is meant by an ‘appropriate person’, simply requiring that the person be a relative of the child, or any other person, who is 18 years or over.⁴⁹³

On this matter, the Commission, in our submission to the Committee Against Torture, has drawn attention to the requirement under the Children Act 2001 that children have a parent, guardian or ‘other adult’ with them while they are being interviewed by members of An Garda Síochána. The Custody Regulations also address the provision of support for people considered vulnerable due to their age or disability, including where a parent/guardian is not readily available.⁴⁹⁴ This person is referred to by various terms across the relevant provisions, including ‘adult’, ‘responsible adult’ or ‘appropriate adult’, and their role and functions are not clearly defined.⁴⁹⁵

⁴⁹¹ Department of Justice (2023) [‘National Barnahus model of service to ease trauma for children who have been sexually abused Publication of Inception Report for the European Union/Council of Europe Joint Project’](#) (25 April)

⁴⁹² The Criminal Justice (Victims of Crime) Act 2017 transposes into Irish law Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

⁴⁹³ Section 18(4) of the Victim of Crime Act 2017

⁴⁹⁴ Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, S.I. No. 119/1987.

⁴⁹⁵ Dehaghani R. and Newman D. (2019) [Can – and Should – Lawyers be Considered ‘Appropriate’ Appropriate Adults](#) 58(1), pp. 3–24

The Policing Authority has called for statutory clarification:

‘as to who constitutes an “appropriate adult”; and what role they are expected to play.’⁴⁹⁶

Similarly, the Garda Inspectorate has highlighted that, in circumstances where a parent or guardian was unavailable, some Gardaí reported that:

‘they would try to contact another relative, some said they would call a local Peace Commissioner, while others gave examples of contacting a priest, a local business person or a social worker to fulfil this role.’⁴⁹⁷

Such individuals asked to perform the role were not trained or Garda vetted to do so.⁴⁹⁸ The Inspectorate has recommended the establishment of a formal scheme, comprising trained and vetted people who are available during and outside office hours, to safeguard the rights, entitlements and welfare of children in custody.⁴⁹⁹

We welcome the additional protections for the rights of children proposed under the Garda Síochána (Powers) Bill, including the definition of an ‘appropriate person’ and requirements on notification.⁵⁰⁰ However, in light of the issues arising in practice, we are of the view that, rather than simply mention an ‘appropriate person’, the legislation should create an appropriate adult scheme in line with those operated in the UK and other jurisdictions.⁵⁰¹

In addition we have raised concerns around Sections 14 and 15 of the International Protection Act, specifically the ambiguity surrounding when a person is ‘taking responsibility’ for a

⁴⁹⁶ Professor U. Kilkelly and Dr L. Forde, [Children’s Rights and Police Questioning: A Qualitative Study of Children’s Experiences of being interviewed by the Garda Síochána](#), p. 48. The report also noted that, contrary to Statute, delays can occur between the child’s arrest and the time contact is made with his/her parent or guardian (p. 39).

⁴⁹⁷ Garda Síochána Inspectorate (2021) [Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations](#), pp. 51–57. The Report noted that during one visit, the Inspectorate spoke to a security guard from a local shopping centre who was present to undertake the adult’s role, but they had not been told this and had no understanding of what this entailed.

⁴⁹⁸ Garda Síochána Inspectorate (2021) [Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations](#), p. 56

⁴⁹⁹ [Ibid](#)

⁵⁰⁰ The Bill aims to ensure that an ‘appropriate person’ is notified before, or as soon as possible after, any of the powers under the Act are exercised in respect of a child. It also provides that a child cannot consent to the use of a Garda power (where it requires consent) without also having the consent of a parent or guardian of the child. An appropriate person is defined as ‘a parent or guardian of the child or, where a parent or guardian of the child cannot be contacted, another adult reasonably named by the child’

⁵⁰¹ In the UK, this is provided for in the Codes of Practice for Police and Criminal Evidence Act 1984. The benefit of a properly regulated scheme is that it creates standards, consistency and permanence in the provision of this vital safeguard to those in need. See the [Submission of Dr Vicky Conway, DCU on the General Scheme of Garda Síochána \(Powers\) Bill](#).

child.⁵⁰² Considering all these elements in the round compounds the need for a clear and robust system to ensure that child victims of trafficking are, at all times, accompanied by an ‘appropriate adult’ during all stages of the criminal process.

To our knowledge, there are only two organisations that provide support to children during the court and trial process. Children at Risk in Ireland (‘CARI’) provides a child-centred therapy and counselling service to children, families and groups who have been affected by child sexual abuse. They also provide a national helpline (Mon.–Fri. 9.30–5.30). CARI is the only specialist child sexual abuse agency in Ireland and has been in operation since 1989.⁵⁰³ The Accompaniment Support Service for Children (ASSC) was set up in 2020 to address the needs of young people within the criminal justice system. The ASSC provides accompaniment and advocacy for young people and their families directly before, during and directly after their time in the criminal justice system.⁵⁰⁴

While there are specialist CSO services available, these are underfunded, not geographically spread, and only specialise in victims of child sexual abuse. Of course, while child victims of trafficking for sexual exploitation may benefit from services provided by CARI, it remains the case that child victims of other forms of trafficking will have limited to no access to specialist supports. The services of ASSC, while essential, only apply directly before, during and directly after a criminal trial.

The Commission reiterates its recommendation that an ‘appropriate adult scheme’ is introduced, modelled on the UK National Appropriate Adult Network to ensure that all children, including child victims of trafficking, are protected and accompanied at every stage of the criminal investigation and prosecution. This is in addition to the appointment of a Children’s Legal Advisor.

⁵⁰² The Commission recommend specific guidelines be drawn up to provide clarity on Sections 14 and 15 of the International Protection Act 2015. Providing clear guidance on the criterion on which officers use to determine when a person may be a child, and as to when an adult is entitled to ‘take responsibility’ for a child. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training. IHREC (2022) *Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive*, p.135

⁵⁰³ It has a main office in Limerick, a secondary office in Dublin, an outreach centre in Wexford. It was reported in November 2023 that Children at Risk Ireland (‘CARI’) may have to ‘begin the process of closing down this week’ due to a funding shortfall. In June 2024, Minister for Children announced the allocation of funding from Dorman Accounts to 90 community organisations that offer counselling, psychotherapy and therapeutic services to children and young people experiencing social or economic disadvantages; CARI received €32,000.

⁵⁰⁴ For information on ASSC see <https://assc.ie/about/>

The Commission recommends that specialist support organisations with expertise in supporting child victims of trafficking must be provided with sufficient, multiannual funding to ensure children receive the support they need to recover from what they have endured.

Video-Recorded Evidence (Article 15(4))

To our knowledge there have been no cases of child trafficking that have reached trial. For that reason, it is not possible to comment on the specific treatment of child victims with regard to video-recorded interviews. That being said, we recognise that there are limited provisions for the use of video-recording as evidence at trials for child victims under 14 years.⁵⁰⁵

Court Hearings in Child Trafficking Cases (Article 15(5))

Article 15(5) seeks to protect child victims of trafficking during the court proceedings through requiring that cases be heard *in Camera* as well as by allowing the child victim to participate and be heard during the process remotely through the use of communication technologies. The provision strengthens the general protections in court hearings required for all victims of trafficking contained in Article 12 of the Directive.

There has been no material change to the protections available to child victims of trafficking during court hearings during the reporting period. Section 257 of the Children Act 2001 allows for the court to exclude all persons (with a few exceptions)⁵⁰⁶ from the hearing when a child is called as a witness and child victim/witnesses can give evidence via video-link in criminal trials under Section 13 of the Criminal Evidence Act 1992, as reported in the First and Second Evaluation Reports.⁵⁰⁷

⁵⁰⁵ Section 16 of the Criminal Evidence Act

⁵⁰⁶ Officers of the court, persons directly concerned in the proceedings, bona fide representatives of the press and such other persons (if any) as the court may in its discretion permit to remain.

⁵⁰⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 141; IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

Measures for Unaccompanied Minors (Article 16)

Original Directive Article 16 Assistance, support and protection for unaccompanied child victims of trafficking in human beings	Recast Directive Article 16 Assistance, support and protection for unaccompanied child victims of trafficking in human beings
1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.	Unchanged
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.	Unchanged
3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.	Unchanged
4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.	Unchanged
5. This Article shall apply without prejudice to Articles 14 and 15.	Unchanged

Unaccompanied and separated minors are a cohort that is especially vulnerable to human trafficking and as such are recognised in Article 16 of the Anti-Trafficking Directive. Article 16 applies to unaccompanied and separated child victims of trafficking, who are entitled to: assistance measures that take into account their personal and special circumstances as unaccompanied child victims; a durable solution based on an individual assessment of their best interests; the appointment of a guardian when necessary; and the appointment of a representative within the criminal proceedings. These are in addition to the protections outlined in Articles 14 and 15, which detail the entitlements of all child victims of trafficking, regardless of their immigration status.

The European Commission recognises the compounding of children’s vulnerability when they are separated or unaccompanied, and calls on Member States to provide comprehensive support and assistance, especially in the children’s transition from state care into adulthood, and during their experiences navigating the criminal justice system.⁵⁰⁸ Minors who lack parental or guardianship care on their arrival to Ireland must be considered at immediate risk of exploitation and human trafficking, among other harms and abuse.⁵⁰⁹ The appointment of a representative or guardian for separated and unaccompanied minors without undue delay is an essential protective measure to ensure that the child’s best interests, rights and overall wellbeing are safeguarded.⁵¹⁰

In September 2023, the Special Rapporteur on Child Protection underlined the issue of separated children and unaccompanied minors as ‘particularly pressing in respect of child protection in Ireland at present’.⁵¹¹ Recognising the significant increase in separated and unaccompanied minors requiring accommodation and services, the Rapporteur expressed particular concerns in regard to:

‘a lack of oversight in Tusla’s management of reports to Gardaí of suspected abuse of unaccompanied minors in State care from Ukraine and other countries seeking asylum; Tusla could not be assured it was notifying Gardaí “in a timely manner” of suspected sexual or physical abuse of child refugees and asylum seekers in its care’.⁵¹²

In 2023, at least 197 unaccompanied children arrived in Ireland.⁵¹³ 70 of these sought international protection and 127 sought temporary protection.⁵¹⁴ As of the beginning of 2024, 115 unaccompanied or separated children were in special emergency accommodation

⁵⁰⁸ European Commission (2024) [Commission Recommendation of 24.4.2024 on Developing and Strengthening Integrated Child Protection Systems in the Best Interest of the Child](#), para 17, para 50

⁵⁰⁹ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 44

⁵¹⁰ Council of Europe and EU Agency for Fundamental Rights (2023) [Children in Migration: fundamental Rights at European Border. Joint Note by the Council of Europe and the European Agency for Fundamental Rights](#), p. 9

⁵¹¹ [Opening Statement to the Joint Committee on Children, Equality, Disability, Integration and Youth](#)
Caoilfhionn Gallagher KC, Special Rapporteur on Child Protection 20th September 2023

⁵¹² [Ibid](#)

⁵¹³ In a previous written answer the Department of Justice shared that ‘in 2023 approximately 250 unaccompanied persons under the age of 18 presented to officers of the Border Management Unit at Dublin Airport’ all referred to Tusla and over 50% of them were unaccompanied minors fleeing the war in Ukraine. Department of Justice and Equality (2024) [Written Answer to Parliamentary Question: Departmental Data](#) (18 January)

⁵¹⁴ Department of Justice and Equality (2024) [Written Answer to Parliamentary Question: Unaccompanied Minors and Separated Children](#) (24 April). The process of seeking Temporary Protection in Ireland is separated from international protection; the EU Temporary Protection Directive was activated in March 2022 following Russian’s invasion of Ukraine

provided by Tusla.⁵¹⁵ It must be remembered that among these unaccompanied and separated minors may be child victims of human trafficking. In early December 2023, 316 unaccompanied children in Tusla's care were accommodated in different settings: 29 children were in foster care, 26 were in supported lodgings, 61 were in residential settings, and 200 were in special emergency placements (hotels, Airbnbs, B&B, etc.).⁵¹⁶

The Joint Committee on Children, Equality, Disability, Integration and Youth recently stated the need to include special provision for the delivery of care to unaccompanied minors in the Childcare (Amendment) Bill.

The Commission supports the Joint Committee recommendations, including the need for:

- › The General Scheme to include specific provisions for protecting unaccompanied minors.
- › The status of a child as an unaccompanied minor itself to be enough to enable him or her to go into care.
- › Upon leaving care, their status as care leavers to override their status as international protection applicants for the purposes of eligibility for aftercare.⁵¹⁷

Tusla's SCSIP team responds to the needs of unaccompanied and separated minors arriving to Ireland by offering care and protection while they are in the care of Tusla, assisting them with integration into Irish life, and supporting them in their international protection application. The team is also responsible for presumed child victims of trafficking. Tusla has reported that it is strengthening its screening process to identify indicators of human trafficking and enhancing interagency collaboration with the Garda Síochána National Protection Services Bureau in relation to cases where indicators of trafficking are detected.

In November 2023, the SCSIP team consisted of eight people. There were two principal social workers, one responsible for oversight of the intake and assessment team, and the second in charge of a newly established 'Active on Duty' team comprising;⁵¹⁸ one team leader (reporting to the principal social workers), two social workers, two social care workers and a family support practitioner.⁵¹⁹ Tusla reported to the Commission that all members of the SCSIP Team have been trained by the CSO MECPATHS on child trafficking as well receiving regular

⁵¹⁵ Department of Children, Equality, Disability, Integration and Youth (2024) [Written Answer to Parliamentary Question: Children in Care](#) (29 February)

⁵¹⁶ Department of Children, Equality, Disability, Integration and Youth (2023) [Written Answer to Parliamentary Question: Unaccompanied Minors and Separated Children](#) (14 December)

⁵¹⁷ Joint Committee on Children, Equality, Disability, Integration and Youth (2023) [Report on Pre-legislative Scrutiny of the General Scheme of a Child Care \(Amendment\) Bill 2023](#), p. 82

⁵¹⁸ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 5

⁵¹⁹ [Ibid](#)

webinars delivered by An Garda Síochána in relation to the established processes for the identification and assistance of victims of human trafficking.

HIQA reported that despite some improvements observed during its inspection of the service in November 2023 compared to the previous visit nine months before:

‘[too] many children experienced delay in having their needs for help and protection promptly assessed and met. Tusla did not ensure that resources were deployed effectively, and there continued to be an absence of strong senior management oversight and leadership of the front door service provision and practice. There were blockages in children’s cases transferring from the intake and assessment team to the alternative care teams’.⁵²⁰

The Commission recognises that Tusla’s SCSIP team are experiencing a significant increase in the numbers of unaccompanied children presenting to the service⁵²¹ and this has impacted their ability to appropriately respond to the specific needs of each child. Data provided to HIQA indicates that in November 2023, the intake and assessment team had 261 cases open in the service, of which 64 were allocated a social worker and the remaining 197 children awaited this allocation.⁵²²

The Commission is not able to establish whether any of the five child victims (two European and three third-country nationals) of trafficking who were identified in 2023 were unaccompanied minors. If that was the case, we do not know whether these children were allocated a social worker on the basis of their status as recognised victims of trafficking.

Since the development of the Intake Eligibility Assessment,⁵²³ Tusla’s SCSIP team evaluates all referrals of unaccompanied and separated children referred to them from the International Protection Office. The team’s assessment determines whether the person is a child eligible to receive the services of Tusla.

⁵²⁰ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 11

⁵²¹ Devlin P. (2024) ‘[500% increase in migrant children arriving alone in Ireland claiming asylum](#)’, Noteworthy (30 April)

⁵²² Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 24

⁵²³ Eligibility for Services for Separated Children Seeking Asylum. For further information see Article 13 analysis on this Report

Tusla has reported that all staff have been trained in the use of the Intake Eligibility Assessment. The Agency has provided briefing webinars to relevant stakeholders. The policy was due to be reviewed in early 2024. The Commission is not aware whether such review has occurred. Where a child is deemed to have met the eligibility requirements, the Separated Children Team are tasked with developing an emergency care plan that outlines the child's specific needs, the steps that must be taken to meet them, and what form of accommodation is needed. HIQA has reported that these care plans have not been routinely produced and gives examples of the impact the absence of such have had on children. These include missed opportunities to develop relevant strategies that address the specific vulnerabilities of children, for example, going missing from care.⁵²⁴ where a third child made a disclosure of trafficking during the eligibility assessment, there was a delay of one month in a notification being sent to An Garda Síochána. Furthermore, the notification did not document all the details provided by the child and no strategy meeting had been arranged. Further assurances were sought on this case by the inspector and a safety plan was to be developed and a strategy meeting organised'.⁵²⁵

Given the specific needs and increased vulnerability of child victims of trafficking to re-trafficking, this is of utmost concern for the Commission.

Once a child has been assessed as being eligible for services, these children are screened for trafficking indicators using the Risk Assessment Matrix on Separated Children at Risk of Trafficking. As noted in the First National Evaluation Report, this is the only trafficking-specific screening procedure that is systematically embedded into Tusla's procedures.⁵²⁶ While we recognise that Tusla is in the process of developing a trafficking-specific procedure, it is worth highlighting that the Risk Assessment Matrix on Separated Children at Risk of Trafficking erroneously includes the 'means' in the definition of trafficking of children, which the Commission has flagged already.

The Commission recommends that Tusla ensures that all internal policies on human trafficking are legally accurate, and that the new child trafficking policy is rolled out equally across the whole organisation, including, but not limited to unaccompanied and separated children.

⁵²⁴ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 26

⁵²⁵ [Ibid](#), p. 31

⁵²⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 126

Care Orders

Tusla has reported to us that it seeks care orders when trafficking indicators are detected during the screening and assessment of unaccompanied and separated minors. Under Section 4 of the Child Care Act 1991, Tusla will seek a ‘voluntary’ care order for unaccompanied minors. A Section 4 care order gives Tusla the ability to exercise legal capacity for the minor. Importantly, there is a statutory obligation to have regard to the wishes of the parent or person *in loco parentis* in providing care to the child. In practice, this means that Tusla is required to seek consent from parents in the country of origin or third-country concerning key decisions affecting the child in relation to their health and education, such as consent for travel outside the jurisdiction and engagement in after-school activities.⁵²⁷ If Tusla is not in contact with the family, it must seek a court order to dispense with parental consent. Alternatively, Tusla may seek a full care order, which is provided for in Section 18 of the 1991 Act. This involves Tusla applying to the District Court to obtain a care order for a child who has been seriously neglected or abused. A Section 18 care order grants to Tusla legal guardianship of the minor. We have been informed by Tusla that where an unaccompanied child has been identified as a victim of trafficking then a full care order is sought by them and a social worker is assigned. Presently, we do not have sufficient data on how many child victims of trafficking have been subject to either a Section 4 ‘voluntary’ order, or a Section 18 full care order. It is also not entirely clear whether parental consent has been given for the granting of Section 4 orders.

According to Section 5 of the Child Care Act 1991, when a child appears not to have accommodation available and unless the child is taken into care by the Agency under a different provision of the Act, Tusla shall take such steps as are reasonable to make available suitable accommodation. Section 5 only refers to the provision of accommodation for children found in a homeless situation, and it does not involve Tusla taking such children into care. **Extensive use of Section 5 to accommodate unaccompanied and separated children has been reported, which translates into Tusla technically not taking this cohort of children under State care.**⁵²⁸ Tusla has informed the Ombudsman for Children that, as of 28th February 2023, it has accommodated 74 unaccompanied children from Ukraine under Section 5 of the 1991 Act.⁵²⁹ The Commission has no information whether or not Section 5 was used for any child victim or potential child victim of trafficking.

⁵²⁷ Corbett, M. (2018) [Children in voluntary care: an essential provision but one in need of reform](#), Irish Journal of Family Law, Vol. 21, No. 1, pp. 9–16.

⁵²⁸ Ombudsman for Children (2023) [General Scheme of the Child Care \(Amendment\) Bill: Observations by the Ombudsman for Children’s Office](#), p. 9

⁵²⁹ [Ibid](#)

Family Reunification

When appropriate, family reunification (in Ireland or in the country of origin) is a durable solution for a child victim of trafficking, and one that is required by Article 16(2).⁵³⁰ Tusla has recently developed a new internal family reunification policy to establish safe practices. The guidance has been in operation since October 2023 and aims to ensure that applications are considered in a timely manner, that assessments are supported by evidence (identity document, when available), and that the vulnerable situation in which children might find themselves is recognised. The guidance also provides for prioritisation, when applicable.⁵³¹

Unaccompanied minors in Ireland are only entitled to family reunification under Sections 56 and 57 of the International Protection Act 2015. We have issued a number of recommendations on family reunification, including the need for a review of the barriers faced by unaccompanied and separated children in seeking family reunification.⁵³²

Trafficking knowledge and expertise is essential to ensure children are protected from being reunited with family members who may have been complicit in their trafficking. Conversely, much family reunification may be an integral aspect of assisting a child victim to recover. In recognising the importance of reunification of child victims with (safe) family members, there are good practice examples which the State could consider. For example, identified victims in Romania have the right to be treated with respect and professionalism, and to benefit from individualised protection, support, financial compensation and restoration of rights, with family members of victims enjoying the same rights.⁵³³

In our submission on the National Referral Mechanism Bill, we raised the need for specific provision of family reunification to victims of trafficking.⁵³⁴ This is important not just for victim recovery, but also as a means of protecting children and family members, who are often threatened with violence and retaliation by traffickers. Additionally, it is a way to fully protect and reassure witnesses in criminal investigations and prosecutions.

⁵³⁰ Groarke S. and Arnold S. (2018) [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#), p. 77

⁵³¹ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 33

⁵³² IHREC (2023) [Policy Statement on the Right to Family Reunification under the International Protection Act 2015](#), pp. 23–24

⁵³³ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 107

⁵³⁴ IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

Accommodation

The Commission is extremely concerned about the accommodation of unaccompanied and separated minors in Special Emergency Arrangements operated by for-profit providers. Moreover, the findings from the HIQA report show that Tusla staff has to rely on staff employed by the private providers of accommodation to obtain necessary information on the progress and wellbeing of children.⁵³⁵ This is particularly worrying due to the high turnover of staff at those emergency placements, as well as personnel not having equivalent qualifications to those working in Tusla's statutory accommodation services.⁵³⁶ This arrangement places potential child victims of trafficking at an increased risk with their needs potentially not being addressed or taking a lengthy time for this, as Tusla social workers who are meant to be responsible for child victims' assistance and protection care are not overseeing the children's vulnerabilities. **As of April 2024, out of 166 accommodated children in Special Emergency Arrangements, 105 are unaccompanied and separated children seeking international protection.**⁵³⁷ This is an extremely serious situation.

Health

All unaccompanied minors in Ireland have access to healthcare through the provision of a medical card that is issued by the HSE, including the allocation of a GP. In addition to this, unaccompanied minors under Tusla's care undergo a medical assessment/screening by a GP as part of their intake process into care, in order to assess any special needs and to arrange the referral to specialised services.⁵³⁸ The medical card is also meant to provide access to specialised services for sexual violence, torture or other related trauma and medical screening of child victims of trafficking is meant to include a psychological assessment and access to counselling services.⁵³⁹ **HIQA highlighted in its report that the HSE withdrew the medical services for separated and accompanied minors in 2023 and as of November 2023, no replacement for such medical screening was put in place.**⁵⁴⁰ This is very concerning and a potential breach of the right of unaccompanied and separated minors,

⁵³⁵ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 25

⁵³⁶ Byrne L. (2024) ['Babies in State Care Placed in Private Unregulated Settings'](#), RTÉ (9 May)

⁵³⁷ [Ibid](#)

⁵³⁸ Groarke S. and Arnold S. (2018) [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#), p. 73

⁵³⁹ [Ibid](#)

⁵⁴⁰ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 29

including potential child victims of trafficking, to access medical care. As mandated by Articles 16(1) and 14(1), Member States shall take the necessary actions to support child victims of trafficking in their physical and psychological recovery.

Children Missing from Care

As reported by a news outlet, from January to November 2023 there were 20 unaccompanied or separated migrant children went missing from State care and only six Garda appeals for information on their whereabouts.⁵⁴¹ As of early November 2023, 20 children who went missing had not been found – 17 missing children were under 18, three missing children became adults (no longer being searched for by Tusla) – and 22 missing children were found and returned to care.⁵⁴² Tusla has also reported that significant and unprecedented number of unaccompanied and migrant children are presenting to their services in need of assistance, with 318 minors of this cohort under Tusla’s care by November 2023.⁵⁴³ **As of end of April 2024 there were 19 children missing from care in Tusla’s SCSIP service (in addition to 12 children missing from mainstream care).**⁵⁴⁴ Children missing from State care are at a higher risk of becoming victims of child trafficking.

For a number of years a mechanism has been in place for children missing from care, the ‘Children Missing from Care, a Joint Protocol Between An Garda Síochána and the Health Service Executive Children and Family Services’ Protocol. Tusla staff have reported that missing children are reported to An Garda Síochána. However, HIQA inspectors have found that there was no follow-up after the reporting, as required by the Protocol and Children First, such as Tusla convening strategy meetings, and absence of an agreed approach with An Garda Síochána when assessing the degree of risk and vulnerability when an unaccompanied minor goes missing.⁵⁴⁵ Most recently, Tusla reported having developed a procedure ‘for children in care escalation’ that aims to enhance the safeguarding of unaccompanied children through improved information sharing and more timely responses, and training initiatives to improve the service.⁵⁴⁶

⁵⁴¹ Devlin P. (2023) ‘[Over 60 migrant children missing after disappearing from State care](#)’, The Journal (14 December)

⁵⁴² [Ibid](#)

⁵⁴³ [Ibid](#)

⁵⁴⁴ Department of Children, Equality, Disability, Integration and Youth (2024) [Written Answer to Parliamentary Question: Child and Family Agency](#) (30 April 2024)

⁵⁴⁵ Health and Information Quality Authority (2023) [Report of an inspection of a Child Protection and Welfare Service: Separated Children Seeking](#), p. 27

⁵⁴⁶ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), pp. 15–16

The Minister for Children has also recently reported on the An Garda Síochána review of Operation Cosnaim, aimed at tracing children missing from State care,⁵⁴⁷ and has engaged with the Tusla Chief Executive and the National Child Safeguarding Strategic Liaison Committee, which works with An Garda Síochána.⁵⁴⁸ The Minister also shared that whenever a child goes missing from care, an immediate case conference between An Garda Síochána, Tusla and other relevant agencies is conducted.⁵⁴⁹ Tusla reported to HIQA in November 2023 that An Garda Síochána and Tusla’s Separated Children Team continue to build on their collaborative efforts, following the established processes in line with the Protocol, including meetings to discuss risk and concerns.⁵⁵⁰ One occasion involved a child who ran away from placement; the child was immediately reported missing and authorities from a different jurisdiction alerted in view of the fact that the child presented trafficking-for-labour-exploitation indicators.⁵⁵¹

Conclusion on Unaccompanied Minors

Not all unaccompanied and separated children are allocated a social worker.⁵⁵² It is unclear whether all presumed (indicators detected by Tusla or other government or state agency) and formally identified (by An Garda Síochána) child victims of trafficking are allocated a social worker. When child victims are not allocated a social worker there is increased risk that their best interests and other child-specific entitlements under the EU Anti-Trafficking Directive are not being respected, as it makes it difficult for the Agency to provide comprehensive monitoring of the child’s wellbeing and their specific and arising needs, following the initial intake assessment. The lack of monitoring and access to healthcare assistance of unaccompanied and separated minors, including those missing from State care, is a concern for the Commission, as they are at a heightened risk of becoming child victims of trafficking.

The Commission recommends that the State ensures that intake assessments for all unaccompanied children are conducted in a child-friendly manner, by trained professionals, and that applications for legal residency, when applicable, are promptly processed.

The Commission reiterates its recommendation that the State develops national guidelines on ensuring the rights of unaccompanied children.

⁵⁴⁷ [Ceisteanna ar Sonraíodh Uain Dóibh - Priority Questions: Children in Care](#) (29 February 2024)

⁵⁴⁸ Sherlock C. (2023) ‘[Garda operation for missing children ‘under review’](#)’, Breakingnews.ie (14 December)

⁵⁴⁹ [Ibid](#)

⁵⁵⁰ Health Information and Quality Authority (2024) [8511 Separated Children Seeking International Protection - Child Protection and Welfare Services, 14 November 2023](#), p. 32

⁵⁵¹ [Ibid](#)

⁵⁵² [Ibid](#), p. 36

The Commission reiterates its recommendation that the State reviews its system of family reunification involving unaccompanied children, with a view to broadening the definition of “family member”, simplifying application procedures to ensure that the best interests of the child are a primary consideration in all related decisions.

The Commission reiterates its recommendation that the new National Referral Mechanism removes the need for unaccompanied child victims of trafficking of 15 years of age or younger to wait three years prior to their application for a more durable residence status, in the spirit of EU Anti-Trafficking the Directive.

The Commission reiterates its recommendation that Tusla ensures that any decision regarding application for International Protection on behalf of an unaccompanied child victim of trafficking is taken only after a consultation with a qualified lawyer/Children’s Legal Advisor.

The Commission recommends that the State sufficiently resource and staff Tusla’s Separated Children Seeking International Protection Team, in order to ensure they are capable of addressing children’s specific needs.

Access to Compensation (Article 17)

Original Directive Article 17 Compensation to victims	Recast Directive Article 17 Compensation to victims
Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.	Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Member States may establish a national victims fund or a similar instrument, in accordance with their national legislation, in order to pay compensation to victims.

In the spring of 2023, the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive. Ireland does not compensate victims of trafficking for pain and suffering and:

‘[t]he existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses, and not pain and suffering’.⁵⁵³

There have been no changes or improvement in the implementation over the reporting period and all conclusions in our submission to the Law Reform Commission remain valid.⁵⁵⁴ This section presents a brief recap of the analysis. It is encouraging that the NAP acknowledges the deficiencies in the avenues of compensation for victims of trafficking. It states that ‘not all may be optimum for the specificities of victims of trafficking’ and goes on to propose under Action 2.8 a review of the compensation avenues for victims of ‘all forms of exploitation’.⁵⁵⁵ The latter is very important because the circumstances and the legal framework for the different forms of exploitation differ. The Commission welcomes this review and the commitment to legislative amendments, if required, and will be following the developments in this arguably problematic area.⁵⁵⁶

⁵⁵³ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

⁵⁵⁴ IHREC (2023) [Submission on Compensating Victims of Crime to the Law Reform Commission on their Fifth Programme of Law Reform](#)

⁵⁵⁵ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 29

⁵⁵⁶ Ibid

To our knowledge, no victim of trafficking has received any compensation for the harm they have suffered. In theory, although not in practice, there are three ‘available’ avenues for claiming compensation: the Criminal Injuries Compensation Scheme, Section 6 of Criminal Justice Act 1993, and civil legal action. However, none of these appears fit for purpose.

Separately, employment-related compensation *may* be available to *some* victims of trafficking for the purposes of forced labour. This avenue must be viewed as distinct from compensation arising from trafficking offences and we return to this matter below.

In March 2023, we made two comprehensive submissions, one on Compensating Victims of Crime to the Law Reform Commission on the Fifth Programme of Law Reform and a second one to the Independent Review of the Legal Aid Scheme, which includes recommendations on compensation.⁵⁵⁷ While we welcomed the review of criminal compensation by the Law Reform Commission, we are disappointed by the announcement that ‘it is not possible to confirm a delivery date at this point for this report, though [the Commission] will reassess potential delivery dates in June [2024]’.⁵⁵⁸

In our submission to the Law Reform Commission, we outlined the barriers faced by victims/survivors of trafficking and made a number of recommendations for reform. We highlighted, *inter alia*, the lack of awareness by victims/survivors of their right to claim compensation,⁵⁵⁹ a general lack of understanding of the criminal and civil compensation proceedings for victims/survivors,⁵⁶⁰ and the lack of legal representation to make such claims,⁵⁶¹ as just some of the obstacles faced by victims/survivors.⁵⁶²

The almost complete absence of legal representation to pursue compensation – as distinct from legal information – is a significant barrier faced by victims in Ireland. For this reason, we have highlighted above, and elsewhere, the urgent need to expand the remit of the Legal Aid Board to offer legal advice, assistance and, where necessary, representation to victims of human trafficking in all relevant matters, including criminal and civil proceedings, and before

⁵⁵⁷ Provided in Appendix 2 ‘Compensating Victims of Trafficking’, IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); IHREC (2023) [Submission to the Independent Review of Civil Legal Aid Scheme](#)

⁵⁵⁸ Dáil Éireann Debate (2024) [Victim Support Services](#)

⁵⁵⁹ During the Survivors’ Consultation performed in 2021–2022, the National Rapporteur learned that survivors were not informed about their right to compensation.

⁵⁶⁰ European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 15

⁵⁶¹ GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 24

⁵⁶² IHREC (2023) [Submission on Compensating Victims of Crime to the Law Reform Commission on their Fifth Programme of Law Reform](#)

the Workplace Relations Commission ('WRC') (see our recommendation at the start of this section). Article 12(2) of the Directive, discussed above, is clear that victims/survivors 'should be given access without delay to ... legal representation, including for the purpose of claiming compensation'. Evidently, this is still not the case in Ireland.

In addition to the recommendation for expanded legal representation, we also made specific recommendations relating to the need to urgently expand the reform of the Criminal Injuries Compensation Scheme⁵⁶³ and Section 6 compensation orders.⁵⁶⁴ Despite some reform, it remains the case that 'pain and suffering' is not covered by the Criminal Injuries Compensation Scheme.⁵⁶⁵ It also remains the case that Section 6 compensation orders are the exception and not the norm in criminal trials.⁵⁶⁶

Compensation plays a crucial role in combatting human trafficking as one of the key factors that contribute to the recovery of victims. Best practice involves compensating victims of trafficking in a pecuniary manner, covering both material injuries (such as the cost of medical treatment or unpaid wages) and non-material injuries (such as pain and suffering resulting from the trafficking ordeal),⁵⁶⁷ which is often especially severe for victims of trafficking for the purposes of sexual exploitation.⁵⁶⁸ For this reason, compensation is a necessary and important aspect of victims' access to justice.⁵⁶⁹

⁵⁶³ In 2021, the Minister for Justice, Helen McEntee, T.D., published the revised Criminal Injuries Compensation Scheme, see Department of Justice (2021) [Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme](#) [press release] 20 April. These changes, *inter alia*, increased the number of Tribunal members, strengthened the requirements for reasons for decisions, extends the Scheme to dependents of a victim who has died due to a violent crime to receive a payment, and shortened the application period to two years for 'exceptional' circumstances. On this latter point and following the decision in *Bowes and Brophy v Criminal Injuries Compensation Tribunal & Ors* [2022] IEHC 703 the Minister for Justice amended the Terms of Reference of the Scheme. The Technical change to Scheme are available: <https://www.gov.ie/en/publication/a50e0-criminal-injuries-compensation-scheme-technical-change-to-scheme/>. In Budget 2023, the Government announced an additional €2 million in funding for the Tribunal, bringing the total allocation for 2023 to €13 million.

⁵⁶⁴ Criminal Justice Act 1993

⁵⁶⁵ Government of Ireland website, 'Criminal Injuries Compensation Tribunal. Support & Reporting. Criminal Injuries Compensation Tribunal', <https://www.victimscharter.ie/support-reporting/criminal-injuries-compensation-tribunal/>

⁵⁶⁶ For a full discussion see Appendix 2, IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁵⁶⁷ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 20

⁵⁶⁸ Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

⁵⁶⁹ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 20

The Commission reiterates its recommendation that the Law Reform Commission consider the specific needs of trafficked victims in its review of compensation, for all types of exploitation, and especially in regard to: the inclusion of ‘pain and suffering’ as a ground for compensation from the Criminal Injuries Compensation Scheme, ensuring provision is made for acquiring expert witness reports to substantiate claims related to these claims.

The Commission reiterates its recommendation that the use of Section 6 Orders⁵⁷⁰ as a means of compensating victims within the criminal process⁵⁷¹ needs reform, and an examination of the potential benefits of providing separate legal representation to the victim/witness for this purpose.

The recast Directive significantly amends Article 17 with respect to the avenues of compensation, and it repeals Article 7 pertaining to seizures and confiscation of assets. This was on foot of the signing and coming into force of the Asset Recovery and Confiscation Directive⁵⁷² in 2024.⁵⁷³ Ireland has not yet opted in to this Directive.

According to INTERPOL, transnational organised crime has grown and become more sophisticated, driven by advances in technology, the evolution of criminal activity and increased connections between criminal groups.⁵⁷⁴ Arguably, the decision to opt out of the Directive by Ireland may be seen as a missed opportunity for greater harmonisation in this important area. Despite this, Ireland does have a robust domestic mechanism to freeze and seize assets where these assets can be shown to be the proceeds of criminal conduct, also known as non-conviction confiscation.

As noted in the First National Evaluation Report and in the compensation paper in [Appendix 2](#) of the Second National Evaluation Report,⁵⁷⁵ in addition to seizure and confiscation by the Criminal Assets Bureau, Section 9 Confiscation Orders⁵⁷⁶ – known as conviction-based confiscation – is yet another important tool that must be used to disrupt trafficking activities.

⁵⁷⁰ Criminal Justice Act 1993

⁵⁷¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

⁵⁷² [Directive \(EU\) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation](#)

⁵⁷³ Member States having 30 months to fully transpose the Directive

⁵⁷⁴ INTERPOL (2023) [The Vienna Declaration: Challenging the rise of transnational organized crime](#).

⁵⁷⁵ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#). For a full discussion see Appendix 2, IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#).

⁵⁷⁶ Such Orders allow a Court to order a convicted person to pay such sum as the court sees fit to the Exchequer to be used at the discretion of the Minister for Finance, Criminal Justice Act 1994

It is encouraging that Action 3.4 of the third NAP commits to identifying possible ‘assets and [seizing them] where relevant as the proceeds of human trafficking and as provided under legislation’, and there is also a commitment to ‘liaise with international counterparts, when appropriate’.⁵⁷⁷ A good example of this cooperation are the joint efforts of the Office of the Director of Public Prosecutions and An Garda Síochána with Nigerian law enforcement authorities to progress potential asset seizure proceedings for the purpose of victim restitution. Although we have been informed that this process is at a preliminary stage, it remains unclear whether it will be possible for Irish authorities to seize the relevant assets.⁵⁷⁸

Asset seizure and confiscation of proceeds of trafficking is a vital and effective way to deter and disrupt the business model of traffickers. However, in the Irish context there appears to be a wide separation between the confiscation of assets and the compensation available to victims. For this reason, we have previously highlighted the absence of ring-fenced funds/assets for compensating victims directly.⁵⁷⁹ This, coupled with the tremendous barriers faced by victims in obtaining compensation, must be addressed if Ireland is to fully transpose Article 17 of the recast Directive, which optionally requires the establishment of ‘a national victims fund or a similar instrument’.

The Commission recommends that proceeds from seizure and confiscation orders relating to trafficking activities – both pre and post-conviction orders - are ring-fenced and used to establish a ‘Victims of Trafficking Fund’, either as a standalone scheme or as part of the reformed Criminal Injuries Compensation Scheme to support victims directly, and for other trafficking-related social supports.

Employment-Related Compensation

Separately, employment-related compensation *may* be available to *some* victims of trafficking for labour exploitation. This avenue must be viewed as distinct from compensation arising from trafficking offences. Employment-related compensation can be sought either in the Workplace Relations Commission or, at the direction of the Minister, in the District Court.⁵⁸⁰ However, this avenue may only be available to some victims of trafficking. For

⁵⁷⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 3.4

⁵⁷⁸ US State Department (2024) [2024 Trafficking in Persons Report: Ireland](#)

⁵⁷⁹ Council of Europe (2005) Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, para. 198

⁵⁸⁰ Section 2B(5) of the Employments Act 2003 (amended)

example, it is not open to victims of trafficking for criminal or sexual exploitation to seek redress in the Workplace Relations Commission.

To the Commission's knowledge, no victim of trafficking for labour exploitation has been compensated for the harm endured, whether in a criminal or tortious action.⁵⁸¹ While victims of employment law breaches *may* be compensated through the Workplace Relations Commission and (arguably stolen) salaries recovered, this is not a viable or appropriate avenue for most victims of labour exploitation and certainly not for victims of other types of trafficking.

'The court [WRC] says [my employer] owes me 28,000, he has to pay to me, but the employer says he doesn't want to pay me. He keeps saying I don't have money to pay me. I didn't receive a single penny. Not a single penny in my hand'.

Survivor

In the recent Workplace Relations Commission decision of *Sharanjeet Kaur v Bombay Limited t/a Bombay House*,⁵⁸² the complainant Ms Kaur was awarded €143,268 for several breaches of her employment rights. The Adjudication Offer held that multiple employment law breaches occurred while Ms Kaur was in the employ of the respondent, including discrimination on gender grounds – she was both harassed and sexually harassed contrary to the Employment Equality Act 1998, unfair dismissal contrary to the Unfair Dismissals Act 1977, unlawful wage deductions contrary to the Payment of Wages Act 1991, and breaches of the National Minimum Wage Act 2000. Two members of An Garda Síochána were present at the hearing for the Ms Kaur's protection and they informed the Adjudication Officer that they had received a complaint of witness intimidation and that they were investigating a complaint of trafficking. They confirmed that a criminal investigation into this complaint was ongoing. On foot of an application from the respondent for the matter to be heard *in private*, the Adjudication Officer ruled the hearing should be conducted in public as it concerned employment matters which were separate from any criminal matters and that while An Garda Síochána were engaged in an investigation, there were no ongoing criminal matters or criminal proceedings before the courts. It could be argued that public hearings could be

⁵⁸¹ For full analysis of the limitations of tortious action please see Appendix 2: Compensating Victims of Trafficking (Article 17) Extract from the Commission's Submission on Compensating Victims of Crime made to the Law Reform Commission on their Fifth Programme of Law Reform IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁵⁸² ADJ-00045992, March 19, 2024

inappropriate and in some cases dangerous for future witnesses in criminal proceedings against traffickers. While we are aware that Adjudication Officers have the power to decide that hearings be conducted in private, specialist CSOs have shared with the Commission concerns in this regard. In 2023, the MRCI strongly contributed to the Workplace Relations Commission's decision to allow requests for protection of the identity of a claimant who was a potential victim of trafficking. This decision is important, according to the MRCI, as it could facilitate the victim to take a case against their trafficker and to recover unpaid wages, in the absence of other compensation.⁵⁸³

'We want to tell the government to find a way to help us to get a job here. We came mainly to work so if something like that can happen we would appreciate help to get a job to do, because we basically have nothing in our hands at the moment. We have wives and children, we have family back home. We came in with the hope to work, with the enthusiasm to be able to get something, and to also be able to take care of them. If we come in and we don't have nothing in our hands, we are going to go empty handed that would be very disturbing'.

Survivors

In the related cases of *Mohamed Shokr Ghonin v Richard Brannigan*⁵⁸⁴ and *Khaled Elgamy v Richard Brannigan*,⁵⁸⁵ the Workplace Relations Commission rejected the two complainants' wage claims on the basis that the evidence provided was not strong enough to back up their claims that they had worked 20 hours a day at sea on a prawn boat. While the Adjudication Officer accepted that elements of the records of time worked which were submitted as evidence were unreliable and plain wrong, he was 'not provided with sufficient hard evidence to make any, much less a 'careful calculation'. However, they were both awarded €3,500 for employment law breaches including €2,500 for a breach of the Working Time Act for the company's failure to provide for public holiday entitlements, and a further €1,000 each for breaches of the Terms of Employment (Information Act). Their respective claims for €61,649.96 and €65,326.31 for shortfalls in the minimum wage were rejected.

⁵⁸³ Source: MRCI 2024

⁵⁸⁴ ADJ-00034912, March 14, 2024

⁵⁸⁵ ADJ-00036011, March 14, 2024

It is clear from these recent decisions that only certain employment-related compensation awards in the context of labour exploitation cases are suited to being adjudicated upon before the Workplace Relations Commission. While there is a danger that awards such as these legitimise traffickers or exploiters as valid employers due to their employment-related nature, given the lack of redress within the criminal justice system for victims of labour exploitation or trafficking, it is important that this civil avenue of redress is not closed off to them. Unfortunately, the reality is that very often complainants who receive employment-related compensation awards will never actually receive the money, for a variety of reasons. However, there are options available to recoup the money in instances such as these.

The Commission recommends that civil legal aid is extended to include hearings before the Workplace Relations Commission.

Prevention of Human Trafficking (Article 18)

Article 18 of the EU Anti-Trafficking Directive obliges Member State to take specific actions directed at prevention of the human trafficking crime in their territories. Prevention and the fight against trafficking in human beings is a priority for the European Union and requires special efforts, such as the development of general and common EU indicators for the identification of victims or the exchange of best practices between relevant stakeholders. Article 18 establishes that appropriate measures should be taken to reduce the demand that fosters all forms of exploitation, including through the internet. Such measures include, *inter alia*, education, awareness raisings campaigns, research, and regular training for government officials.

This section outlines the significant and diverse prevention efforts undertaken in Ireland in the reporting period, taking into account the recast EU Anti-Trafficking Directive, which amends and strengthens article 18 by introducing two new provisions, Article 18a on mandatory penalties for the use of services provided by a victim of trafficking in human beings, and Article 18b on regular and specialised training for professionals likely to come into contact with victims of trafficking. This section reports on the State actions to prevent trafficking in 2023, taking into account the direction of agreed change in this area. The demand reduction based on penalties against the ‘use’ of services is additionally unpacked in the final part of this section, in light of the amendment to mandatory provision in the recast Directive.

Prevention Measures (Articles 18(1) and 18(2))

Original Directive	Recast Directive
Article 18 Prevention	Article 18 Prevention
1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.	1. Member States shall take appropriate measures, taking into account the specificities of the various forms of exploitation, such as education, training and campaigns, where relevant with specific attention to the online dimension, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.	2. Member States shall take appropriate action, in a gender-sensitive and child-friendly way, including through the internet, such as information and awareness-raising campaigns, research and education programmes, including the promotion of digital literacy and skills, and where appropriate in cooperation with relevant civil society organisations and other stakeholders such as the private sector, aimed at raising awareness and reducing the risk of people, especially children and persons with disabilities, becoming victims of trafficking in human beings.

Articles 18(1) and 18(2) provide a range of prevention measures to be used by Member States in order to combat and prevent human trafficking. Education, training, awareness raising campaigns, research and education programmes are the specific actions that Member States must take to reduce and discourage the demand that fosters all forms of exploitation and reduce the risk of people, especially children from becoming victims of human trafficking.

The NAP contains a section ('pillar') dedicated to prevention which aims to work 'towards the elimination of human trafficking and its demand' by training, awareness raising, reduction of vulnerability and reduction of demand for services.⁵⁸⁶ The plan recognises awareness raising as a key action in the detection of victims. It commits to disseminate information on

⁵⁸⁶ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 16

trafficking indicators in several languages, and to support the development of campaigns.⁵⁸⁷ The document also commits to reducing the vulnerability of groups at risk of trafficking such as migrants entering Ireland in search of employment opportunities; it aims to address root causes of vulnerability through engagement and support of relevant stakeholders such as CSOs or overseas Governmental programmes.⁵⁸⁸ Awareness on human trafficking indicators among all professionals in contact with children and working on child-related matters is a child-specific prevention effort of the plan, which the Commission particularly welcomes.⁵⁸⁹

The NAP contains 10 overall commitments in relation to prevention, each with several specific actions that must be implemented by concrete bodies comprising, *inter alia*, the Department of Justice, An Garda Síochána, the Health Service Executive, the Department of Defence, the Department of Enterprise, Trade and Employment, the Department of Foreign Affairs, as well as support from CSOs and other relevant stakeholders.

The prevention pillar's overall objectives include:

- › Training for all workers that might encounter victims of trafficking;
- › Dissemination of information to raise awareness on trafficking indicators and facilitate identification;
- › Awareness raising and evaluation;
- › Monitoring of technological developments on human trafficking;
- › Monitoring of potential emerging patterns of human trafficking in relation to migrant workers;
- › Reduction of vulnerability;
- › Demand reduction;
- › Socially responsible public procurement;
- › Strengthening of the role of trade unions and employers' representatives in the prevention of trafficking for labour exploitation; and
- › Identification of child victims of trafficking.⁵⁹⁰

The recast Directive has strengthened the provisions that mandate the prevention of trafficking in human beings with a reinforced intersectional perspective through the lens of gender, age and disability. The recast Directive calls for prevention measures to be targeted and differentiated to efficiently address the specificities of each form of trafficking.⁵⁹¹

⁵⁸⁷ [Ibid](#), pp. 16-17

⁵⁸⁸ [Ibid](#), p. 17

⁵⁸⁹ [Ibid](#), p. 21

⁵⁹⁰ [Ibid](#), pp. 24-27

⁵⁹¹ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), Preamble 28

Article 18(1) of the recast Directive mandates taking into account the specificities of the various forms of exploitation and paying special attention to the online dimension in actions such as education, training and campaigns. Article 18(2) of the recast Directive requires that appropriate prevention measures are applied in a gender-sensitive and child-friendly manner, it requires the promotion of digital literacy skills, and cooperation with relevant stakeholders including the private sector. It demands that work be carried out in relation to risk reduction with regard to those people at risk of becoming victims, special attention to persons with disabilities and children as an example.

Awareness Raising Campaigns

The Government did not develop any nation-wide annual campaign in 2023. Neither was specific funding made available for CSOs for the particular purpose of awareness raising. The Department of Justice continued the maintenance of the Blue Blindfold website.⁵⁹²

The International Organization for Migration ('IOM'), with funding support from the Department of Justice maintained the anti-trafficking campaign 'Anyone Trafficked'; the website counted 833 unique visitors in 2023. The IOM presented at 'Voice of Migrants: the Challenges of Inclusion and Human Trafficking', and screened the short film 'Anyone: Deceived' with 100 attendees. Directed at all victims of crime, the Department of Justice launched in 2023 the campaign 'Know your rights' across TV, radio and social media, promoting the victimscharter.ie website, which outlines rights and services available.⁵⁹³

The Workplace Relations Commission held 44 information sessions on employment rights with relevant groups in 2023 and over 1.1 million people visited their website.

In November 2023, during the 16 days of activism against violence against women, Ruhama produced a series of short videos for social media platforms to contribute to the online campaign 'In Our Own Words'.

In March 2023, the Immigrant Council of Ireland held a conference on migrant victims of gender-based violence, including human trafficking, in Galway.⁵⁹⁴ A range of experts participated in the conference including representatives of Women's Aid and the Department of Justice. A panel on 'Experiences of migrants in addressing gender-based violence' featured the 'peer-to-peer' support – the value of migrant women as direct providers of support to

⁵⁹² For more information see <https://www.blueblindfold.ie/>

⁵⁹³ Department of Justice (2023) '[Minister Harris Launches Major New Campaign Highlighting Rights and Supports for Victims of Crime](#)' [press release]

⁵⁹⁴ Immigrant Council of Ireland (2023) '[Needs of Migrant Women Must Be Central to the Response to Gender-Based Violence, says Immigrant Council](#)' [press release]

others, in gender-based violence situations. At the conference, the Immigrant Council also launched a toolkit for service providers working with migrant victims of gender-based violence; the resource gives frontline workers an enhanced understanding of residence permissions and support available for migrant women victims of gender-based violence.⁵⁹⁵

The Government has committed to support the development and evaluation of campaigns to raise awareness of the indicators of human trafficking as well as the supports available for victims with An Garda Síochána and CSOs in the NAP.⁵⁹⁶

The Commission recommends that the Department of Justice, following the mandate of the recast EU Anti-Trafficking Directive and where appropriate, seeks the collaboration of the private sector, especially in relation to trafficking for labour exploitation, to develop awareness raising campaigns.

In this regard, we welcome the commitment of the Government to engage with trade unions and employers' representative bodies to establish the role they can play in preventing trafficking for labour exploitation.⁵⁹⁷

The NAP has specific objectives in relation to raising awareness, the dissemination of information and the facilitation of the identification of victims of human trafficking. It establishes that the Department of Justice and relevant Departments and State agencies in cooperation with CSOs, will update guides and leaflets for staff working with communities identified as being vulnerable to trafficking.⁵⁹⁸ The information in those leaflets must be current, accurate, disseminated widely and made available in different languages, developed specifically for migrants with indicators of trafficking at points of entry.⁵⁹⁹ The Department of Justice and An Garda Síochána will also support the development and evaluation of awareness raising campaigns on the indicators of human trafficking and the supports available for victims, and develop information raising approach for hard to reach victims and communities.⁶⁰⁰

In 2023, Ruhama participated in several national and EU-level stakeholder consultations on the development of relevant policies and laws to combat trafficking for human beings and

⁵⁹⁵ Immigrant Council of Ireland (2023) [Migrants and Gender Based Violence and Human Trafficking: A Toolkit for Service Providers Working with Non-EEA Migrants in Ireland](#)

⁵⁹⁶ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.3.1

⁵⁹⁷ [Ibid.](#), Action 1.9.1

⁵⁹⁸ [Ibid.](#), Action 1.2.1

⁵⁹⁹ [Ibid.](#), Action 1.2.1

⁶⁰⁰ [Ibid.](#), Action 1.3.1

sexual exploitation. These include the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023,⁶⁰¹ the General Scheme of the Domestic, Sexual and Gender-Based Violence Agency Bill 2023,⁶⁰² the National Observatory on Violence Against Women – Review of the Third National Domestic, Sexual and Gender-Based Violence Strategy, the European Commission Adoption of the Review of the Anti-Trafficking Directive,⁶⁰³ the EU Directive on Violence Against Women,⁶⁰⁴ and the initial report on the regulation of prostitution in the EU and GREVIO (Group of experts on Action against Violence against Women and Domestic Violence) shadow report in respect to Ireland.⁶⁰⁵

To mark EU Anti-Trafficking Day, the IOM organised a conference to launch a report on human trafficking between Ireland and Northern Ireland with a panel discussion by a group of experts from the Sexual Exploitation Research Programme, Ruhama, An Garda Síochána, Migrant Help Northern Ireland and the Commission. The report explored the issue of human trafficking on the island of Ireland and issued a number of recommendations such as stronger partnership, increased victim protection and development of prevention measures, including systems for data collection.⁶⁰⁶ The research was funded by the Department of Justice under project ‘Protect II – Prevention of and raising awareness on gender-based violence against migrants and minority groups’.

In October 2023, the Commission in its role as National Rapporteur, organised a briefing session in Leinster House to mark the EU Anti-Trafficking Day and to raise awareness on human trafficking among politicians. We presented our submission on the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023. It highlighted five areas that needed to be addressed to guarantee adequate protection and assistance for victims of human trafficking: to lower the identification threshold to ‘reasonable grounds’, to include assistance in law, to provide immigration permissions, to provide for age-estimation assessments and to include a statutory defence for victims of trafficking who have committed a crime as a direct consequence of them being trafficked.⁶⁰⁷

⁶⁰¹ [Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

⁶⁰² [Domestic, Sexual and Gender-Based Violence Agency Act 2023](#)

⁶⁰³ European Parliament (2024) [Legislative Train Schedule: Proposal for a directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#) In “Promoting our European Way of Life”

⁶⁰⁴ European Parliament (2024) [Legislative Train Schedule: Legislative proposal on combating violence against women and domestic violence](#) In “A New Push for European Democracy”

⁶⁰⁵ Irish Observatory on Violence Against Women (2022) [National Observatory on Violence Against Women and Girls: Shadow Report on GREVIO in respect of Ireland](#)

⁶⁰⁶ Chisholm A., Burland. P., Dew J., Stephenson T., (2023) [A Study on Human Trafficking between Ireland and Northern Ireland](#). International Organization for Migration, London.

⁶⁰⁷ IHREC (2023) [The Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#)

Research

Researchers from the Sexual Exploitation Research Programme (SERP)⁶⁰⁸ in partnership with Ruhama service users and staff launched an in-depth study on the process of leaving prostitution and the challenges this entails for women embarking on this journey and the professionals that are supporting women in their exit.⁶⁰⁹ The research exposed the harms and trauma consequences of extended exposure to prostitution and offered a range of recommendations on the provision of services to support women.⁶¹⁰

In relation to child trafficking, SERP also published a study on the sexual exploitation of children and teenagers in the care of the State by organised criminal groups. The research was based on 14 interviews with frontline staff and organisations that work with children in care, with senior Gardaí and Tusla management also being consulted. The report found that children and more particularly girls accommodated in residential care facilities or those that go missing from State care ‘are being targeted for sexual exploitation in an organised manner by coordinated networks, or gangs, of predatory men.’⁶¹¹ The research was funded by Community Foundation Ireland.

The NAP includes an objective for the Department of Justice to support research into the potential scale of undetected human trafficking.⁶¹² Child trafficking, trafficking for labour exploitation including forced begging, trafficking for criminal activities and trafficking for novel forms of exploitation (forced surrogacy, forced marriages and illegal adoptions) and how these present in Ireland are currently under-explored issues that require a coordinated effort to enhance prevention via different actions such as informed and evidence-based research. We believe that the Government should facilitate the research on underexplored forms of exploitation in Ireland.

⁶⁰⁸ For information on the Sexual Exploitation Research Programme see <https://serp.ie/>

⁶⁰⁹ Breslin R. and Canning M. (2023) [Pathways to Exit: A Study of Women’s Journeys Out of Prostitution and the Response to their Complex Support Needs](#)

⁶¹⁰ For information on the Community Foundation Ireland see <https://www.communityfoundation.ie/>

⁶¹¹ Canning, M., Keenan, M. and Breslin, R. (2023) [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#). Dublin: SERP

⁶¹² Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 4.14

Other Initiatives

The HSE Social Care Team has started a pilot project of joint welfare visits with the Garda National Protective Services Bureau Organised Prostitution Investigation Unit; the aim is to provide support and increase the identification of those trafficked for sexual exploitation.

A related pilot started in May 2023 where a caseworker from Ruhama was made available in the Women's Health Service clinic twice a week, which has been extended for a further six months. the HSE Anti Human Trafficking Team secured funding to recruit a project worker and a ICT/Digital Content officer to strengthen their online presence and increase their reach, which is due to start in 2024.

The above action is in line with the NAP requiring the HSE to develop an online presence for reaching vulnerable and hard to reach victims, in order to increase access to medical and social services.⁶¹³

An Garda Síochána and Ruhama commenced a pilot initiative in 2023 where representatives from Ruhama accompany officers from the Organised Prostitution Investigation Unit on welfare checks in suspected brothels in Dublin, Limerick and Galway. The purpose of these welfare-oriented checks is to assist potential victims of trafficking for sexual exploitation, inform them about their rights, offer support and assistance, and explain that these are not conditional on engagement with An Garda Síochána.

Over 2023, MRCI continued its advocacy for a fairer employment permit system, engaging with the Government and other stakeholders through the stakeholder forum on human trafficking organised by the Department of Justice to highlight the specificity of TLE. MRCI also liaised with the Workplace Relations Commission on how victims of trafficking can be better protected during the adjudication process.

The NAP contains a commitment for An Garda Síochána and the Department of Justice to use relevant events such as EU Anti-Human Trafficking Day or the UN World Day against Trafficking in Persons, to enhance the general public awareness on trafficking in human beings.⁶¹⁴ Additionally, the Plan also requires both bodies and relevant Departments and Agencies to ensure that all resources in relation to human trafficking are available and kept up to date on the respective official websites.⁶¹⁵ This has been a recommendation of the Commission, and we welcome the inclusion of the commitment in the NAP.

In 2023, Tusla established a working group to examine and progress the Agency's obligations concerning child trafficking. The objectives of this working group are to develop a guidance

⁶¹³ [Ibid](#), Action 1.3.2

⁶¹⁴ [Ibid](#), Action 1.2.2

⁶¹⁵ [Ibid](#), Action 1.3.5

document on child trafficking to raise awareness and knowledge among frontline workers, to develop appropriate metrics to provide information on child victims of trafficking known to Tusla services, to examine the notification documentation between Tusla and An Garda Síochána on child victims of trafficking, and to develop a framework to support the regular training for frontline staff likely to encounter child victims of trafficking. Tusla, An Garda Síochána and MECPATHS are members of the working group. The working group have made significant progress during the reporting period on the development of a guidance draft and the roll out of a training programme for all Tusla staff on raising awareness of child trafficking and relevant indicators (in partnership and provided by MECPATHS). Throughout the year, we have witnessed the commitment of Tusla's staff and their efforts to enhance their response to child trafficking and the instrumental expertise that MECPATHS and An Garda Síochána have contributed to achieving this aim. These efforts must conclude without delay and must result in tangible results for child victims and the Commission will be closely monitoring them

The *Health & Social Care Education and Human Trafficking group* was established in 2022. The group has two main objectives, to create awareness and recognition by health professionals for their role in assisting in the identification and care of victims of human trafficking, and to ensure that the everyday practice of nurses and other health professionals is underpinned by education in undergraduate and postgraduate curricula. Over 2023, the group has lobbied for the Department of Health to become a competent authority, in addition to the Health Service Executive, under the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, which establishes a revised National Referral Mechanism. We agree with this recommendation, which would ensure that most, if not all, healthcare professionals in Ireland would have awareness on the indicators of human trafficking and would contribute to the detection of potential victims when accessing healthcare services. Research has shown that between 50% and 80% of human trafficking victims access healthcare services during their exploitation ordeals.⁶¹⁶ Health care professionals, researchers, CSOs and State agencies participate in the working group, and the Commission participates in an observatory capacity. The group made significant progress over the reporting period establishing relationships with relevant stakeholders at national and international level that contributed to awareness raising on the need to educate healthcare professionals on human trafficking among State agencies, legislators, and policy makers.

⁶¹⁶ Anthony B. (2018) [*On-Ramps, Intersections and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking*](#). p. 17

Education/Education Programmes

Article 18(2) of the recast Directive mandates taking action through education programmes aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking. We reiterate our call for the inclusion of a human trafficking module on the reformed Social, Personal and Health Education ('SPHE') and Relationships and Sexuality Education ('RSE') Programmes for primary and post-primary education.⁶¹⁷ The Commission has also called for the development of public awareness and educational programmes for young people, especially girls, to highlight the risks on social media platforms of being groomed and recruited into the sex trade.⁶¹⁸

Over 2023, MECPATHS strengthened its partnerships with third level institutions (Trinity College Dublin, University of Limerick, University College Dublin, University of Galway, South East Technological University, Munster Technological University, Mary Immaculate College, Queens University Belfast and Dundalk Institute of Technology) to educate Social Work, Social Policy, Law and Education students on human trafficking. Froebel Department of Primary and Early Childhood Education at Maynooth University, which provides undergraduate postgraduate degrees, launched a partnership with MECPATHS in 2023 on Anti-Child Trafficking Awareness. The workshop is participatory, provides opportunities for discussion in relation to complex issues and its relevance for future educators. Attendees received a certificate upon completion.

Conclusions on Prevention measures

On the background of multiple positive developments and significant efforts in Ireland, the lack of nationwide awareness raising campaigns in 2023 continues to be a challenge in prevention. While the maintenance of the Blue Blindfold and Anyone Trafficked websites is valuable and necessary, no effort has been shown to design a new, coordinated and nationwide initiative to increase awareness amongst the public on what human trafficking is and its indicators. CSOs have raised the lack of coordination and collaboration in prevention efforts as the main obstacles over the reporting period. While the Commission welcomes the Government's commitment to engage with and provide funding to CSOs assisting victims on progressing new initiatives,⁶¹⁹ funding for awareness raising projects is also important.

⁶¹⁷ IHREC (2024) [Contribution to the European Commission's 5th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#), p. 18

⁶¹⁸ [Ibid](#)

⁶¹⁹ Government of Ireland (2023) National Action Plan to Prevent and Combat Human Trafficking 2023-2027, Action 4.1.2

The recast Directive mandates the development of prevention measures with an intersectional approach (at the minimum, the intersection of gender, age, disability) that take into account the specificity of each form of exploitation. Initiatives by CSOs and State agencies focused mainly on trafficking for sexual exploitation. We note the lack of awareness raising and research regarding child trafficking, trafficking for labour exploitation, trafficking for criminal activities, and other forms of exploitation that are less commonly identified in Ireland. In addition, there is a general absence of education initiatives for primary and secondary education, with no programmes developed in 2023 to the Commission's knowledge.

The recast Directive also mandates a focus on the online dimension of human trafficking for prevention measures. CSOs have reported that prevention measures that highlight the use of technology in 2023 have been made in relation to violence against women. The new Coimisiún na Meán (Online Safety Commission)⁶²⁰ and the Online Safety and Media Regulation Act 2022 have been highlighted as opportunities to develop prevention actions that pay specific attention to the online dimension of the crime. The Government is committed to evaluating new technologies to combat trafficking with the assistance of An Garda Síochána, the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, Coimisiún na Meán and the Department of Justice, as highlighted in the NAP.⁶²¹ In addition to this welcomed action, the Commission reiterates its call for the National Anti-Trafficking Coordinator (Department of Justice) in collaboration with experts to develop a detailed review and guidance on how the current legislation is applicable to the online dimension of human trafficking, especially for sexual exploitation.⁶²²

The Commission reiterates its recommendation that the Government explores the feasibility of establishing a dedicated 24/7 hotline to report all forms of human trafficking crimes, including providing information and support. One such way may be through expanding and resourcing existing 24/7 services to meet this need.

The Commission recommends that the Department of Justice develops and coordinates annual nationwide campaigns focused on the online dimension of trafficking that are directed at hard-to-reach sectors and vulnerable groups such as children, young people, disabled people and migrants.

The Commission reiterates its recommendation that dedicated multiannual funding is made available to Civil Society Organisations to develop awareness raising campaigns in their areas

⁶²⁰ For more information on Coimisiún na Meán ('CNAM') see <https://www.cnam.ie/>

⁶²¹ Government of Ireland (2023) *National Action Plan to Prevent and Combat Human Trafficking 2023-2027*, Action 1.4.1

⁶²² IHREC (2024) *Contribution to the European Commission's 5th Progress Report on the Fight against Trafficking in Human Beings in the European Union*, p. 18

of expertise that highlight the specificities of each form of exploitation and/or encourage the utilisation of their expertise in the development of such campaigns.

The Commission reiterates its recommendation that accredited trafficking training is embedded into professional education programmes of relevant courses such as medicine, social work, and law.

The Commission recommends that the Government facilitates and encourages research into under-explored forms of exploitation and how they present in Ireland including trafficking for labour exploitation and forced begging, trafficking for criminal activities and trafficking for novel forms of exploitation (illegal adoptions, forced marriages, and exploitative surrogacy) in order to enhance understanding across relevant stakeholders and contribute to its prevention.

The Commission reiterates its recommendation that awareness raising campaigns aimed at younger audiences within educational institutions are developed and rolled out nationwide.⁶²³

⁶²³ The Commission welcomes the inclusion of specific Actions on awareness raising campaigns in the National Action Plan

Training of Government Officials (Article 18(3))

Original Directive Article 18 Prevention (Training)	Recast Directive Article 18b Training (Article 18(3) removed and replaced by 18b)
<p>3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.</p>	<p>1. Member States shall promote or offer regular and specialised training for professionals likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, court staff, assistance and support services, labour inspectors, social services and healthcare workers, aimed at enabling them to prevent and combat trafficking in human beings and to avoid secondary victimisation, and to detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, and gender-, disability- and child-sensitive.</p> <p>2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall encourage both general and specialised training for judges and prosecutors involved in criminal proceedings aimed at enabling them to prevent and combat trafficking in human beings and avoid secondary victimisation, and to detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, and gender-, disability- and child-sensitive.</p>

Article 18(3) of the Directive mandates the regular training of government officials likely to come into contact with victims or potential victims of trafficking, to enable them to identify and assist those victims. The first action of the NAP is for the Department of Justice, together with all other relevant Departments, agencies and CSOs, to train all who might encounter victims.⁶²⁴ The NAP specifies that such training will be delivered by professionals, including CSOs that have specific competency and experience in dealing with human trafficking in Ireland.⁶²⁵ The training will take into account cultural sensitivities, specific needs (such as those of child victims), current developments, trends, and challenges.⁶²⁶ It must be noted that

⁶²⁴ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1

⁶²⁵ [Ibid](#)

⁶²⁶ [Ibid](#)

the recast Directive strengthens this provision by designating a separate new Article to it (Article 18b), which will be presented in this section.

The recast Directive has removed Article 18(3) on the training of government officials and introduced a dedicated new Article 18b making such training regular and specialised. The training is for professionals likely to come into contact with victims or potential victims of human trafficking (specifically frontline police officers, court staff, assistance and support services, labour inspectors, social services and healthcare workers), in order to enable them to prevent human trafficking - more specifically to enable them to avoid secondary victimisation, and to detect, identify, support and protect the victims. The recast Directive requires this training to be human rights based, victim-centred, and gender-, disability- and child sensitive. In addition, Article 18b(2) mandates the same training for judges and prosecutors involved in criminal proceedings.

The European Commission has previously highlighted the importance of systematic training for law enforcement, justice practitioners and other stakeholders on the specific elements of the crime through simulation-based practical exercises to increase coordination, detection, reporting and improve the overall handling of human trafficking cases.⁶²⁷ The European Strategy underlines that training in a multi-stakeholder environment assists in taking into account victim's perspectives and needs in line with applicable procedures.⁶²⁸

The NAP identifies specific professionals that are likely to come into contact with victims and potential victims in regard to their needs for training: An Garda Síochána, the Office of the Director of Public Prosecutions, the labour inspectors within the Workplace Relations Commission, immigration officers from the Department of Justice Border Management Unit and those officers from the Garda National Immigration Bureau, and healthcare and social care workers as well as staff from the Civil Registration Service within the Health Service Executive.⁶²⁹

For the identification of child victims of trafficking, the NAP refers to the inclusion, not limited to, of social workers, family support workers and social care workers.⁶³⁰ While the NAP does not mention that such staff in relation to child trafficking must be employed by the Tusla specifically, it is the Commission's understanding that an important proportion of those

⁶²⁷ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Empty on the EU Strategy on Combating Trafficking in Human Beings 2021-2025](#)

⁶²⁸ [Ibid](#)

⁶²⁹ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1

⁶³⁰ [Ibid](#), Action 1.10

frontline professionals will be part of the Agency. As mentioned earlier, over 2023, Tusla has increased its efforts to equip personnel to recognise the signs of child trafficking.

The NAP elaborates that the training must be delivered by professionals with relevant competency and experience in dealing with human trafficking, taking into account cultural sensitivities and specific needs of vulnerable groups, and considering the current developments, trends and challenges on human trafficking.⁶³¹ The Commission greatly welcomes this important commitment from the Department of Justice in that regard included in the NAP.

We believe that specialised, accredited training should be embedded as part of the professional development of staff in relevant State agencies, State Departments, and specialist CSOs. All regulatory bodies (including State Departments) in charge of regulating relevant professions or occupations in Ireland in relation to law practitioners,⁶³² health care professionals (including social workers and social care workers),⁶³³ education professionals,⁶³⁴ law enforcement (An Garda Síochána, immigration officers, labour inspectors from the Workplace Relations), child protection practitioners (from Tusla and other Departments and specialist CSOs) must be provided with victim-centred anti-human trafficking training that allows for the detection of signs of human trafficking and how to make a referral to the appropriate services for suspected victims.⁶³⁵ The Private Security Authority is an example of a regulatory body that follows this approach, being the first State Agency to embed mandatory anti-child trafficking training (designed and provided by MECPATHS) for all those seeking to obtain a licence to work in the Door Supervisor, Event Security and Security Guarding Sectors.⁶³⁶

The Commission recommends that National Council for Curriculum and Assessment introduce awareness raising training on trafficking in human beings for children aged from 6-18 years old in Primary, and Secondary cycles.

⁶³¹ [Ibid](#), Action 1.1

⁶³² Including but not limited to the Law Society of Ireland, the Judicial Council, the Court Service of Ireland, and Honourable Society of King's Inns.

⁶³³ Including but not limited to the Department of Health, the Medical Council of Ireland, the Nursing and Midwifery Board of Ireland, the Medical Council, the CORU (Radiographer & Radiation Therapist, Dietitians Registration Board, Occupational Therapist Registration, Speech and Language Therapists Registration Board, Social Workers Registration Board, Medical Scientists Registration Board, Physiotherapist Registration Board, Optical Registration Board and others), the Pre-Hospital Emergency Care Council, the Pharmaceutical Society of Ireland and the Mental Health Commission.

⁶³⁴ Including but not limited to the Teaching Council.

⁶³⁵ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Empty on the EU Strategy on Combating Trafficking in Human Beings 2021-2025](#)

⁶³⁶ The Private Security Authority (2023) [‘Launch of New Human Trafficking Awareness Raising Training for the Security Industry’](#) (18 October) [press release]

The Commission recommends that professional regulatory bodies for relevant professions including court staff, health and social care professionals, and law enforcement promote and offer regular and specialised training on identifying and preventing trafficking in human beings as part of the professional development curriculum, especially to those likely to encounter victims and potential victims of trafficking.

In addition to the training provided to law enforcement and prosecutors, as committed to in the National Action Plan 2023-2027 to Prevent and Combat Human Trafficking, The Commission reiterates its recommendation that judges are trained on a victim-centred, trauma-informed approach in relation to law enforcement efforts and trials, including their sensitisation to the severity of human trafficking crimes.

Summary of the Trainings delivered to Officials and Practitioners

Department of Justice

The Border Management Unit within the Department of Justice is responsible for frontline immigration duties at Dublin Airport (An Garda Síochána has the responsibility in the rest of the ports of entry into the country). All newly recruited Immigration Control Officers in 2023 received online training on the indicators of human trafficking through an eLearning module on human trafficking awareness for first responders provided by the UK Border Force. Border Management Unit officers attended all-day training on prostitution and human trafficking for sexual exploitation provided by Ruhama. Additionally, officers travelled to London Stansted Airport to witness a UK Border Force operation on human trafficking to gather intelligence and raise awareness in relation to exploitation in the construction industry.

The Department of Justice Ukraine Response Team attended training provided by the Organised Prostitution Investigation Unit of the Garda National Protection Services Bureau in May 2023. An Garda Síochána provided an overview of their role in combating human trafficking and how the unit is structured and resourced. The training focused on how human trafficking is defined and the manner in which persons become victims of trafficking, indicators of human trafficking, the difference between smuggling and human trafficking and the scale of the crime within Ireland.

An Garda Síochána

In 2023, 39 members of An Garda Síochána attended bespoke training on trafficking and the commercial sex trade, including on the current legislation governing human trafficking and sexual exploitation, provided by Ruhama.

Under the NAP, An Garda Síochána will develop a training framework for all its members to receive adequate training on human trafficking and will ensure that training on human trafficking continues to be part of the curriculum for new recruits in the Garda College, with refresher trainings provided at appropriate intervals.⁶³⁷ In addition, An Garda Síochána will have to continue providing professional training on the non-punishment principle in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings.⁶³⁸ The Commission is not aware of the provision of such training in 2023.

The Garda National Immigration Bureau will have to ensure that Port Authorities and Airport Authorities (all staff at ports of entry) receive training in relation to human trafficking and its indicators to recognise possible victims of human trafficking; the training provision must take into account current developments, trends and challenges.⁶³⁹ According to the Garda Commissioner, a total of 59 members of An Garda Síochána were trained as Immigration Officers assigned to Dublin Port (25), Rosslare Europort (10) and Cork ports (24) in 2023.⁶⁴⁰ It is not clear whether all of these Immigration Officers were trained on human trafficking and its indicators for the detection of suspected victims, over the reporting period.

Health Service Executive

Over 2023, staff from the HSE attended several training sessions relevant to increasing their awareness and enhancing their knowledge on human trafficking. Three staff members of the Anti-Human Trafficking Team attended training provided by the Organisation for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights in relation to addressing human trafficking risks in light of the military attack on Ukraine. The training included an introduction to the National Referral Mechanism Handbook, Trauma-Informed Responses to Human Trafficking including a Self-Care and Lifestyle Balance Inventory, and the Trauma Informed Code of Conduct for All Professionals Working with Survivors of Human Trafficking.

Four staff of the same team also attended a Sexual Health Foundation course, which explored broader aspects of sexual wellbeing, including sexual values, self-esteem, power and control within relationships, consent, sexuality and the law. One staff member of the team attended a training session on understanding young people and pornography delivered by the National Youth Council. During the reporting period, two staff attended mandatory Children First for Mandated Persons training; which is due for completion by staff every three years.

⁶³⁷ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1.2

⁶³⁸ [Ibid.](#), Action 1.1.3

⁶³⁹ [Ibid.](#), Action 1.1.5

⁶⁴⁰ Department of Justice and Equality (2024) [Written Answer to Parliamentary Question: Human Trafficking](#) (14 May 2024)

HSE staff also undertook mandatory training as part of their employment to contribute to their professional and personal development. The Executive National Social Inclusion Office is currently developing a training programme on Domestic, Sexual and Gender Based Violence, which includes awareness raising on human trafficking. Module one of the training is available on the HSE learning platform HSE Land.

The NAP mandates the HSE to develop a training plan for healthcare professionals, social care professionals, and Civil Registration Services staff, to support them to identify potential victims of human trafficking, the supports available for victims, and care pathways.⁶⁴¹

International Protection Accommodation Services (IPAS)

The International Protection Accommodation Services did not report receiving any relevant training on trafficking in human beings over 2023. The Commission notes however, that Assessment Officers, most staff from the Resident Welfare Team, and other personnel from the International Protection Accommodation Services, attended training by An Garda Síochána in the fourth quarter of 2022 and the same training was arranged to be delivered for existing and new staff in quarter one of 2024.

International Protection Office

International Protection Officers attended the same training provided by the Organised Prostitution Investigation Unit of the Garda National Protection Services Bureau in May 2023, as the Department of Justice Ukraine Response Team.⁶⁴²

Panel members and caseworkers at the International Protection Office received training on gender-based violence provided by the Dublin Rape Crisis Centre which covered, *inter alia*, interview techniques and management of disclosure in a supportive and grounding manner, trauma and memory in victims/survivors, range of potential traumas experienced by refugees, beliefs and attitudes about rape and trauma, the impact of sexual violence, sexual violence as a weapon of war and oppression, and dealing with ‘silence’ at interviews.

⁶⁴¹ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1.6

⁶⁴² Overview of their role on combating human trafficking and how the unit is structured and resourced. The training focused on how human trafficking is defined and the manner in which persons become victims of trafficking, indicators of human trafficking, the difference between smuggling and human trafficking and the scale of the crime within Ireland. The training provided signs to be aware of in order to detect exploitation and also included sample cases to enhance the understanding of attendees. An Garda Síochána provided information on the legislation that underpins their responsibility combating this crime and the relevant of multi-agency cooperation to prevent and combat human trafficking.

Legal Aid Board

The Legal Aid Board provided training for interns in relation to indicators of human trafficking during the spring and summer of 2023. For the Board's external consultative panel, the organisation also provided training on international protection and human trafficking related services. In addition to these, the Legal Aid Board attended several meetings and conferences with relevant stakeholders during the reporting period on human trafficking and related issues including with other State agencies and Departments.

Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions is represented on the Global Experts Consortium on Prosecuting Human Trafficking⁶⁴³ organised by Justice and Care and the McCain Institute for International Leadership at Arizona State University. In February 2023, a representative from the Office of the Director of Public Prosecutions attended the inaugural Global Prosecutors Consortium on Human Trafficking Summit, where they spent three days participating in scenario-based trainings. The training allowed participants to work together developing a victim-centred approach to prosecute a complex and hypothetical human trafficking case. During the training, attendees also learned about the myth of the 'perfect victim' and its negative impacts and the need to apply gender sensitive approaches to combat trafficking.

In June 2023, six members of the specialised human trafficking team at the Office of the Director of Public Prosecutions attended a two-day practical workshop on 'Strengthening the Capacity of National Partners in Ireland and Enhancing the Investigative Capacity and Prosecution of Trafficking in Persons Cases', organised by the IOM Ireland. Leading professionals from the UK provided the training, covering the Irish national context, new European trends and developments, the experience of Romanian prosecution office, and ways to enhance international cooperation.

Two senior lawyers of the Office of the Director of Public Prosecutions attended a three-day study trip to Romania with members of An Garda Síochána Human Trafficking and Investigation and Co-ordination Unit and representatives from IOM Ireland to share experiences, discuss ongoing cases and meet relevant stakeholders. The identification of

⁶⁴³ Leading prosecutors participate in the Consortium to discuss challenges and opportunities on the investigation and prosecution of human trafficking cases. The objectives of the Consortium include align the best available evidence for prosecuting human trafficking cases with a victim-centred approach; the development of specific and targeted policy recommendation; and building a vibrant global practitioners' network of experience human trafficking prosecutors. For more information on the Consortium see [Global Consortium on Prosecuting Human Trafficking](#) [website]

victims, methods of investigation, and international cooperation were key issues discussed during the stay.

In December 2023, a member of the Human Trafficking Unit within the Office of the Director of Public Prosecutions provided lawyers in the Office with training. The focus was on the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2023 and the NAP, with the aim of increasing the knowledge and awareness across a broad spectrum of staff within the Office of the Director of Public Prosecutions.

Under the NAP, the Office of the Director of Public Prosecutions, with An Garda Síochána, must continue professional training on the non-punishment principle in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings.⁶⁴⁴

Private Security Authority

In October 2023 and coinciding with EU Anti-Trafficking Day, the Private Security Authority⁶⁴⁵ launched a human trafficking awareness raising training for the security industry, developed especially for the Authority by MECPATHS. The Private Security Authority is the first statutory agency in Ireland to request mandatory anti-child trafficking training for all licensed Security Personnel in Ireland including Door Supervisor, Event Security and Security Guarding sectors. The online module has a duration of 35 minutes and it focuses on understanding child trafficking within the global and Irish contexts; learning how child trafficking intersects with the private security industry, awareness of child trafficking indicators; and understanding clear reporting procedures when necessary.

Tusla

In 2023, Tusla established a partnership with MECPATHS to train staff on human trafficking. The organisation delivered seven face-to-face human trafficking workshops for frontline screening staff and residential care staff, including private providers. It is estimated that approximately 400 staff availed of this training in 2023. In addition to those, MECPATHS has also delivered four anti-trafficking webinars targeted at social work staff, with around 450 staff availing of this training between 2022 and 2023. All members of Tusla's Separated Children Seeking International Protection section have been trained by MECPATHS and have also received training from An Garda Síochána. Tusla's Workforce Learning and Development team, in conjunction with the Tusla National Office, have made available to staff the three-

⁶⁴⁴ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.1.3

⁶⁴⁵ The Private Security Authority is the statutory body with responsibility for licensing and regulating the private security industry in Ireland. For more information see <https://www.psa-gov.ie/>

hour awareness-raising workshop on ‘Trafficking-Hidden in Plain Sight,’ developed by MECPATHS which is especially targeted at frontline screening staff and residential care staff.

MECPATHS has trained 574 Tusla staff over 2023 on child trafficking awareness. MECPATHS established an evaluation process to obtain feedback from Tusla’s staff and providers attending their training workshops in order to assess the impact and plan the work for the following year. MECPATHS found that 100% of respondents found the workshop relevant to their area of work. When asked about their understanding of child trafficking before and after the workshop, all respondents reflected that they had acquired an increased understanding; 17.8% declared themselves as experts on child trafficking prior the session with 23.4% stating the same after the workshop. When respondents were asked about what they learned, they answered - surprised to discover the prevalence of child trafficking in Ireland and the crime to not require border crossing or, worry about the severity of the problem and the lack of resources to identify and support victims. Other respondents expressed the need to name child trafficking in their work and the importance of wording the issue in the professional reports they produce to highlight concerns about a child being potentially trafficked.

In relation to the identification of child victims of trafficking, the NAP mandates all relevant State Departments and agencies to ensure that all professionals in contact with children and working on child-related matters are qualified in dealing with and recognising child victims of trafficking and act in the best interest of the child.⁶⁴⁶

Workplace Relations Commission

Over 2023, a number of new inspectors joined the Workplace Relations Commission’s Labour Inspectorate to fill standing vacancies; a number of these newly appointed inspectors have received training in the identification of indicators of trafficking in human beings.

According to the NAP, the Workplace Relations Commission will have to review the training on human trafficking that it currently provides to staff, and ensure that the training continues to be part of the baseline of education provided to newly recruited labour inspectors, as well as the provision of refresher training sessions at appropriate intervals.⁶⁴⁷

⁶⁴⁶ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), Action 1.10.1

⁶⁴⁷ [Ibid](#), Action 1.1.4

Training provided by specialist CSOs to officials

The NAP contains an obligation for the Department of Justice to provide funding for CSO-led training and coordination of such training.⁶⁴⁸

Immigrant Council of Ireland

The Immigrant Council of Ireland delivered anti-trafficking training over 2023 with the aim of raising awareness of the crime of trafficking, transferring knowledge on the indicators and signs of trafficking, the rights of victims, and understanding what to do when a person comes into contact with a suspected victim of trafficking. Participants availing of the training included staff from the public sector, the private sector, frontline CSOs, and students from third level institutions: undergraduates and postgraduates from the social and healthcare, legal, and hospitality sectors. The Immigrant Council of Ireland trained over 281 individuals over the reporting period including 132 from the public and private sectors, and 149 from five third-level institutions.

The Immigrant Council of Ireland provided a survey for participants before taking the training that showed that over 78% had no knowledge or understanding of what human trafficking was or the signs and indicators of the crime. In a survey, post-trained participants indicated that in addition to obtaining greater insight and understanding of the crime of trafficking in human beings, they were also aware of the fact that human trafficking could in fact happen anywhere and to anyone.

MECPATHS

As a dedicated training and advocacy organisation on child trafficking, MECPATHS has trained 3,869 frontline professionals in 2023, from both Government and other non-statutory agencies, to raise awareness and understanding of child trafficking and its indicators. Personnel trained by MECPATHS are from Tusla, the Health Service Executive, Inner City Organisation Network, the Health Inspection Quality Authority, Kerry Diocesan Youth Services, Archways, Sexual Violence Centre Cork, Private Security Authority, Mercy University Hospital Cork. The organisation has also trained 695 emerging professionals from Shannon College of Hotel Management, Trinity College Dublin, University College Dublin, Mary I, University College Cork, South East Technological University and Maynooth University.

⁶⁴⁸ [Ibid](#), Action 1.1.8

Ruhama

During 2023, Ruhama provided training to frontline professionals about knowing the signs of human trafficking and responding to and supporting victims in a trauma-informed way. The training had two modules, one on the Irish sex trade and one in the principles of trauma-informed care. Participants in the training included social care workers who work across addiction, homelessness and migration services, healthcare professionals, An Garda Síochána, and staff working at direct provision accommodation centres. Ruhama provided 15 sessions with 149 participants.

Ruhama also provided a different training on the impact and risk of sexual exploitation as a result of conflict, focused on trafficking and exploitation of women and children in the context of war. The training was a response to the ongoing war in Ukraine but applicable to any conflict or crisis. 183 participants attended the training over 15 sessions. Overall, Ruhama has provided training to 1,126 participants over 2023.

Conclusions on Training of Officials

The NAP adopts a welcome approach to address the current seemingly disjointed approach to training with a view to achieving greater impact and avoid repetition. In particular, the commitment of the Department of Justice to coordinate training at inter-agency level to ensure cohesion and clarity and to develop a training framework represents a pragmatic approach to increase the detection of suspected victims of trafficking.⁶⁴⁹

The Commission reiterates its recommendation that all members of the new National Referral Mechanism Operational Committee receive regular mandatory Anti-Trafficking training.

The Commission reiterates its recommendation that all statutory bodies with responsibilities towards victims and survivors of human trafficking adopt a formal, coordinated, systematic, and mandatory approach to training their staff, based on evaluated needs and on measurable implementation plans.

⁶⁴⁹ [Ibid](#), Action 1.1.1

Criminalising Users of Services of Trafficked Victims (Article 18(4))

Original Directive Article 18 Prevention (Criminalising Users of Services of Trafficked Victims)	Recast Directive Article 18a Offences concerning the use of services provided by a victim of trafficking in human beings (Article 18(4) removed and replaced by 18a)
<p>4. In order to make the preventing and combatting of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.</p>	<p>1. Member States shall take the necessary measures to ensure that, when it is an intentional act, the use of services provided by a victim of an offence referred to in Article 2 constitutes a criminal offence, where the victim is exploited to render such services and the user of the services knows that the person providing the service is a victim of an offence referred to in Article 2.</p> <p>2. Member States shall take the necessary measures to ensure that an offence as established in accordance with paragraph 1 is punishable by effective, proportionate and dissuasive penalties.</p>

Article 18(4) contains a legal obligation to reduce the incentives for trafficking by targeting demand,⁶⁵⁰ which is an accepted major root cause of trafficking in human beings.⁶⁵¹ There is a need to unpack the term ‘reduction of demand’ in order to understand better this provision, which appears to be a special prevention measure. This section includes a short analysis of the provision as it applies to the two most frequent forms of exploitation – trafficking for sexual and trafficking for labour exploitation. The OSCE observes that the Palermo Protocol establishes a concept of demand that moves beyond only the ‘demand for trafficking’ or the

⁶⁵⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 153

⁶⁵¹ Committee on the Elimination of Discrimination against Women (2020) *General Recommendations No.38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, CEDAW/C/GC/38, p. 7

‘demand for sexual exploitation.’⁶⁵² If demand reduction is to be effective, it means ‘reducing the economic attraction of the institutions into which people may be coerced by traffickers.’⁶⁵³ Addressing demand and reducing the size of the commercial sex trade per se is an effective anti-trafficking measure.⁶⁵⁴ Recital 25 provides that Member States should establish and/or strengthen policies to prevent trafficking in human beings, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of people becoming victims of trafficking in human beings, by means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education.⁶⁵⁵

Demand Reduction in the Directive (Article 18(4))

According to Article 18(4) of the original Directive, Member States have an obligation ‘to at least consider criminalising those who knowingly use the service of victims of trafficking.’⁶⁵⁶ It does not impose mandatory obligations upon Member States to establish as a criminal offence the use of services, which are objects of exploitation under Article 2. It merely provides that Member States *shall* consider taking measures to establish as a criminal offence the use of services, which are objects of exploitation under Article 2. This was identified as a weak point in the implementation of the EU Anti-Trafficking Directive. For this reason, the Directive was amended to provide for mandatory criminal offences to punish the use of services from victims of trafficking (recast Directive, Article 18a).

GRETA notes that the criminalisation of the use of services can have a normative effect and increase public awareness of human trafficking issues, in addition to having a punitive function and that State parties which have introduced this provision into their national legislation should disseminate information about it and promote its application in practice.⁶⁵⁷

⁶⁵² OSCE (2021) [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#). Vienna, p. 11.

⁶⁵³ Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M. (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: European Commission, p. 20

⁶⁵⁴ Aronowitz, A. and Koning, A. (2014) ‘[Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation.](#)’ *International Review of Penal Law* 85

⁶⁵⁵ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Recital 25

⁶⁵⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 153

⁶⁵⁷ GRETA (2020) [9th General Report on GRETA’s Activities](#), p. 49

Those who directly use and abuse the victims, as well as those who act as promoters, facilitators, the profiteers, and those who create and contribute to creating an enabling environment (the users) must be addressed in the national response in order to successfully reduce the demand and prevent trafficking.⁶⁵⁸

The ‘user’ of exploited services in the context of trafficking for forced labour is often many degrees separated from the trafficking victim, whereas in the context of sexual exploitation, the end ‘user’ is in direct and intimate contact with the victim.⁶⁵⁹ Therefore, it is reasonable to pursue efforts to criminalise ‘users’ in the context of trafficking for forced labour within the supply chains and to criminalise the user (the buyers) of sexual services, respectively.⁶⁶⁰

Very often, the end users of services provided by a victim of trafficking for labour exploitation are consumers who purchase the products. These users do not have the same proximity to the victim as the user of a service provided by a victim of trafficking for sexual exploitation would. In these instances, the trafficking occurred at some point within the company’s or business’ activities and supply chains and therefore, the responsibility should lie with the company or business for failing to conduct due diligence with regard to their business activities and supply chains. Under Article 18 of the Directive, these companies and businesses would be the ‘knowing users of the service’ provided by victims of trafficking for labour exploitation. Therefore, it is more practicable to pursue these companies and businesses who fail to conduct due diligence into their supply chains and activities in their capacity as legal persons under Articles 5 and 6 of the Directive.

Legislation in Ireland

Ireland’s legislative measures to tackle demand remain decisive but focussed on targeting demand for sexual exploitation.⁶⁶¹ Article 18(4) was transposed into Irish law through the Criminal Law (Sexual Offences) Act 2017, which criminalises the purchase of sexual services with a person who is a victim of human trafficking.⁶⁶² Importantly, the Act also decriminalises the selling of sexual services.⁶⁶³ This Act is the most comprehensive legislation that aims to

⁶⁵⁸ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 153

⁶⁵⁹ [Ibid](#)

⁶⁶⁰ [Ibid](#)

⁶⁶¹ [Ibid](#), p. 23

⁶⁶² IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 197

⁶⁶³ [Ibid](#)

reduce the demand driving commercial sexual exploitation.⁶⁶⁴ The provisions contained in Part 4 of the 2017 Act have the potential to disrupt the demand for such services and increase the State's ability to tackle organised prostitution.⁶⁶⁵ It is a critical step in fulfilling the State's obligations in relation to demand.⁶⁶⁶ After the repeated delays in the delivery of the review of Part 4 by an appointed independent expert,⁶⁶⁷ in February 2024, the Department of Justice announced that their Data and Research Unit would provide the review by utilising the submissions received and research and work already produced, in pursuit of efficiency.⁶⁶⁸ The Minister for Justice highlighted that the review should discern whether further measures are needed to protect persons engaged in the sex industry. The review is expected to be completed by Q3 of 2024. The Commission awaits the relevant findings of the review of Part 4, as mandated by Article 18(4) of the Directive.

No similar legislation has been enacted to tackle the demand, which lies at the core of trafficking for labour exploitation.

The State reported that when detaining or arresting individuals in commercial sex and that when persons are arrested with regard to suspicion of involvement in the purchase of sex, brothel-keeping, or the organisation of prostitution, they are screened for indicators of trafficking. The new provisions of the 2017 Act targeting the demand for sexual services also sees those who are 'sellers' in prostitution decriminalised.⁶⁶⁹ An Garda Síochána reports that the criminalisation of the purchase of sexual services has been a factor in increasing the awareness of human trafficking issues and the visibility of Garda investigators within that community and they carried out operations targeting the purchase of sexual services and brothel-keeping offences in 2022. Arrests of persons who purchased sex were made and consequential court proceedings will arise.⁶⁷⁰ The increased awareness around this issue is an important element in the efforts to reduce the demand for sexual exploitation.

The NAP states despite the purchase of sexual services being criminalised in Ireland by the 2017 Act, it is a stark reality that there are still a number of individuals who purchase sex on a

⁶⁶⁴ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 155

⁶⁶⁵ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), 197

⁶⁶⁶ *Ibid*, p. 236

⁶⁶⁷ Irish Legal News (2024) '[Department of Justice to complete sex work review itself](#)' (28 February)

⁶⁶⁸ Conneely A. (2024) '[Review of sex work law to be completed later this year by Department –Minister](#)', RTÉ (27 February)

⁶⁶⁹ Source: The Department of Justice 2024

⁶⁷⁰ Source: The Department of Justice 2024

regular basis.⁶⁷¹ The Department of Justice commits to beginning campaigns on awareness of the harm and illegality of purchasing sex, and will support CSO-led campaigns in this area.⁶⁷²

Article 18(4) is also reflected in the prevention pillar of the NAP that includes reduction in the demand for services of victims of human trafficking.⁶⁷³ The NAP notes that it is a clear reality that the demand for the services of victims of trafficking fuel the business model of traffickers.⁶⁷⁴

To reduce the demand for services of those trafficked for labour exploitation; the Department will examine and identify enhancements to existing employment permit procedures through which migrant workers may leave potentially exploitative situations and will also engage with trade unions and employers' representative bodies to establish what role they can play.⁶⁷⁵ The problem of trafficking for labour exploitation and its prevention through demand reduction is considered further in [Chapter 4](#).

The Commission reiterates its recommendation that the State must proactively implement the relevant provisions of the Criminal Law (Sexual Offences) Act 2017 to reduce the demand that fosters trafficking for sexual exploitation, alongside increased support to exit pathways for people affected, including potential victims of trafficking. This must include at a minimum:

- › legal, psychological and medical support;
- › access to exit programmes;
- › emergency and social housing;
- › financial assistance;
- › regularised immigration status with the right to work; and
- › access to training and employment.

⁶⁷¹ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#), p. 18

⁶⁷² [Ibid](#); Linked to Action 1.1.3 in the Third National Strategy on Domestic, Sexual and Gender Based Violence

⁶⁷³ [Ibid](#), p. 16

⁶⁷⁴ [Ibid](#), p. 18

⁶⁷⁵ [Ibid](#)

Strengthened Demand Reduction under the Recast Directive (Article 18a(1))

Article 18a(1) of the recast Directive creates a new offence making it mandatory for Member States to make the knowing use of services provided by victims of trafficking a criminal offence. When the act is intentional, the use of services provided by a victim of an offence under Article 2 constitutes a criminal offence where the victim is exploited to render such services and the user knows that the person providing the service is a victim of an offence under Article 2. This would cover users of services provided by victims of trafficking for sexual exploitation. It could also apply to users of services provided by victims of trafficking for labour exploitation with regard to the activities or supply chains of companies or businesses.

Recital 26 of the recast Directive highlights the importance of criminalising the use of services when the user possesses the knowledge that the person providing the service is a victim of an offence concerning trafficking in human beings. The Recital establishes that the criminal offence is part of a comprehensive approach to reduce demand with the aim of tackling the high levels of demand that foster all forms of exploitation. The aim is to develop a coherent policy response to tackle demand that fosters trafficking in human beings and to further reinforce the criminal justice efforts across Member States to reduce such demand. Recital 26 also provides that criminalisation should target only the use of services provided within the framework of exploitation that are covered by the offence of trafficking in human beings and the offence should not therefore apply to customers purchasing products produced under exploitative labour conditions, as they are not the users of the service. It also provides that in national law, Member States can criminalise the purchase of sexual acts.

Recital 9 addresses the already existing legal framework within the scope of the definition of trafficking in human beings, in the context of crimes committed with the use of information and communication technologies. Examples include the recruitment and exploitation of victims, the organisation of their transport and accommodation, advertising victims online and reaching out to potential clients, controlling victims and communication between perpetrators, including all related financial transactions. In order to address this modus operandi of traffickers, law enforcement needs to improve its digital capabilities and expertise to keep up with these technological developments. Member States are also invited to consider the use of preventative measures, in particular those with the aim of discouraging demand, that address the issue of abuse of online services for the purpose of trafficking in human beings.

Recital 28 of the recast Directive provides that prevention and demand-reduction actions should be targeted and differentiated to efficiently address the specifics of various traffickand in order to achieve the objective of discouraging and reducing the demand that fosters trafficking, it is important that Member States consider taking appropriate action targeting

potential and current users, such as offering specifically designed awareness-raising campaigns.

Article 18a(2) of the recast Directive provides that Member States shall take the necessary steps to ensure that this offence as established in Article 18a(1) is punishable by effective, proportionate and dissuasive penalties. However, this Article does not elaborate upon what these penalties might look like.

While the inclusion of Article 18a(1) is a welcome development, arguably in practice it would be very difficult to prosecute the user, as it would be very difficult to prove that they possessed the requisite knowledge. Article 18a(1) does not provide for recklessness, which is defined as unjustified risk taking.⁶⁷⁶ A person acts recklessly with respect to: (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur: and it is in the circumstances known to him unreasonable to take the risk.⁶⁷⁷ If recklessness were included as a component of Article 18a(1), the burden would fall upon the end user to rebut this presumption that they were reckless as to whether or not the person providing the service was a victim of trafficking. If recklessness were to be included, this would result in the user of the service no longer being able to solely rely on the defence of being unaware that the person rendering the service was a victim of trafficking but they now also would also be required to rebut the presumption of recklessness. Recklessness is not included under Part 4 of the 2017 Act either. The inclusion of recklessness in Article 18a(1) would make the evidential burden more practicable.

While the Commission welcomes the inclusion of Article 18a(1) into the recast Directive, there is a risk that it could water down the criminal offence of the knowing use of the service provided by a victim of trafficking, which in effect could render the offence meaningless. The State must take this into account when transposing Article 18a(1) of the recast Directive.

The Commission recommends that when the State is transposing Article 18a(1) of the recast EU Anti-Trafficking Directive, that the concept of ‘recklessness’ is considered to make the evidential burden more practicable, thus making the offence of the knowing use of services provided by victims of trafficking easier to prove.

The Commission recommends that the State ensures the new offence established by Article 18a(1) of the recast EU Anti-Trafficking Directive is transposed and applicable to all forms of trafficking; it is crucial that the penalties provided for in Article 18a(2) should be sufficiently dissuasive to act as a deterrent to those who may wish to commit the crime established in

⁶⁷⁶ [Lexis Nexis definition of ‘recklessness’ \[website\]](#)

⁶⁷⁷ [Ibid](#)

Article 18a(1) and that this new offence is not transposed in such a way so as to render its impact meaningless.

As stated above, there is no provision in the recast Directive criminalising the end user of services provided by victims of labour exploitation. Recital 26 of the recast Directive specifically provides that criminalisation should not apply to customers purchasing the products produced under the exploitative labour conditions.

While the recast Directive does seek to criminalise the end users of services when they know that the service is provided by victims of trafficking for labour exploitation, Articles 5 and 6 of the recast Directive do provide for the possible inclusion of criminal sanctions on the companies and businesses in their capacity as users in the context of their activities and supply chains and as legal persons (see analysis of Article 5 and Article 6). Both the Corporate Sustainability Due Diligence Directive and the Ban on Forced Labour Regulation impose civil penalties.

The Commission recommends that the State introduces the criminal sanctions or measures as provided for in Article 5 and Article 6 of the recast EU Anti-Trafficking Directive with regard to the responsibilities owed by companies and businesses implicated in the use of services of trafficked people, in the context of their activities and supply chains.

Funding to Specialist Anti-Trafficking Organisations

In 2023, the Department of Justice allocated funding totaling €5.8m to more than 60 organisations for support of victims of crime, including victims of human trafficking, which represents an increase of 25% on the previous total fund of €4.6m that was made available in 2022.

Importantly for this Report, the State provided increased funding to specialist organisations to enhance their anti-trafficking work, especially in victim assistance and training. Ruhama, MRCI, the Immigrant Council of Ireland, and Doras Luimni, all of whom work directly with victims of trafficking, benefited from such funding. The estimated increase in comparison to 2022 is 20%, which continues the upward trend in provision of funding.

Table 5: Funding to Specialised Service Organisations

	2019	2020	2021	2022	2023	
Ruhama	350k	433k	610k	705k 16% increase	980k 39% increase	Services to victims of trafficking for sexual exploitation
Migrant Rights Centre of Ireland	85k	89k	84k	115k 38% increase	130k 13% increase	Services to victims of trafficking for forced labour and criminal activities
Immigrant Council of Ireland	0	0	120k	121k	127k 5% increase	Legal services for victims of trafficking and GBV
IOM Ireland	unknown	unknown	250k	536k 114% increase	536k (Note: this figure has not been verified)	Cultural mediator service, benefitting the international protection process
Doras	unknown	unknown	unknown	unknown	125k (Note: first inclusion of data)	Awareness raising, training and victim advocacy
Total	435k	521k Increase of 17%	1M Increase of 50%	1.5M Increase of 27%	1.77M Increase of 20% (estimated)	

Chapter 2

Human Trafficking for Forced Criminality in Ireland: A Rapid Literature Review

Introduction

Trafficking for Forced Criminality or Trafficking for Criminal Activities ('TCA') is a key safeguarding and human rights issue, which presents numerous challenges. It is also a somewhat overlooked subsection of human trafficking, with much policy, media and research focus directed at trafficking for sexual exploitation and, to a lesser extent, labour exploitation.⁶⁷⁸ That said, there has been a recent research and policy upswing in the UK around 'county lines' drug dealing, and in Ireland around drug-related intimidation. These two drug market activities involve the exploitation of vulnerable people and can include elements of human trafficking. This is not new, however, and vulnerable people have long been exploited to do risky and disagreeable tasks connected to a variety of illicit activities, from fraud and money laundering to theft and manufacturing counterfeit goods.⁶⁷⁹

There is scant Irish research on the phenomenon. Recent studies have, however, begun mapping child criminal exploitation and drug-related intimidation, and the recent Criminal Justice (Engagement of Children in Criminal Activity) Act 2024 highlights political concern around exploitation of children for criminal activities. The Minister of State, James Browne, said of the Act:

'I am so pleased to see this new legislation passing through the final stages of the Oireachtas. This Government is committed to address the damaging practice of adults grooming children for the purposes of committing crime. It is only right to make punishable the harm caused to children by drawing them into a life of crime.'⁶⁸⁰

Minister for Justice Helen McEntee said of a three-year extension to the Greentown Programme and the Act:

'I am committed to breaking the link between criminals and the vulnerable young people they seek to recruit, and the extension of this programme, along with the enactment of new legislation to create specific offences for grooming of children into

⁶⁷⁸ Cockbain, E., Bowers, K. and Dimitrova, G. (2018) Human trafficking for labour exploitation: The results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence. *Journal of Experimental Criminology*, 14(3), 319–360; EUCPN (2022) Preventing Trafficking in Human Beings: Labour and Criminal Exploitation. Brussels: EUCPN; RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#)

⁶⁷⁹ See Rodríguez-López, S. (2020) *Telling victims from criminals: Human trafficking for the purposes of criminal exploitation*. In Winterdyk, J. and Jones, J. (Eds.). *The Palgrave International Handbook of Human Trafficking*. Palgrave, pp.303–318.

⁶⁸⁰ Department of Justice (2024) ['Minister McEntee and Minister Browne welcome passage of legislation to combat grooming of children for the purposes of crime'](#) (6 March)

crime, sends a strong message to communities that grooming children into criminal activity will be tackled.’⁶⁸¹

The Act is limited to powers to prosecute and it does not provide support to child victims targeted for engagement in criminality. Instead, the State has committed significant resources to support communities affected by this problem. Given the manifestation of the problem in Europe, it remains to be seen if extra efforts would be necessary to ensure that children of migrant background could also benefit from the support.

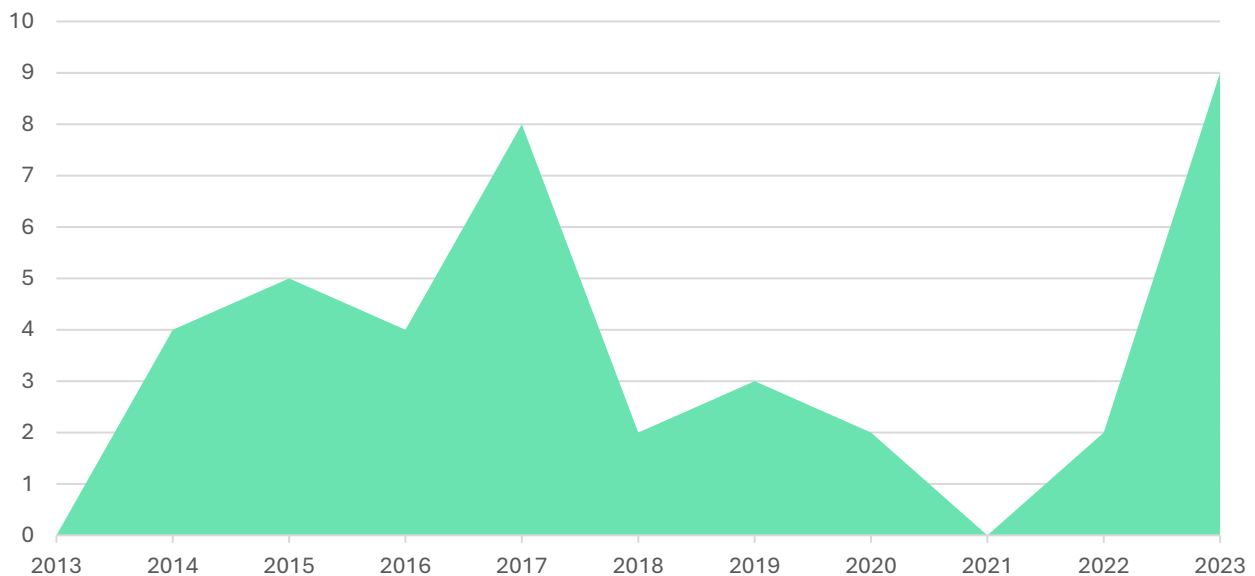
While the Act is important, it fails to acknowledge the exploitation of adults. The literature reviewed for this chapter shows that criminal networks are adaptable. They exploit a broad range of vulnerable children and adults, and sometimes change the demographic of those they are exploiting to avoid detection. The cases described in this chapter detail the exploitation of elderly men and young mothers, of middle-aged fathers, and students. They are all vulnerable, but present different vulnerabilities. Some are deceived or coerced early in the process, others consent and are coerced once they question their exploiters. Others never realise they are being exploited. It is hoped that this chapter will highlight the harms and complexity of TCA and provide a foundation upon which broader discussions can develop. Overall, this chapter shows that much more needs to be done to counter the harms caused by human trafficking for criminal activities.

The chapter is structured as follows: section two reviews existing legal and academic definitions of TCA, before providing a working definition; section three reviews the limited academic, grey and media literature on the prevalence and structure of criminal exploitation within Irish drug markets. This section focuses upon the prevalence and mechanisms of TCA in Ireland. The chapter concludes in section four with a number of recommendations to better address and combat trafficking for the purposes of criminal exploitation in Ireland.

In Ireland, TCA has been the third most commonly identified type of exploitation. About 6–7% of all cases officially identified in Ireland are for the purposes of the exploitation of criminal activities. In 2023, this form of trafficking picked up again, after five years of low numbers of identified victims of this form of human trafficking. Notably the data for 2023 includes three cases of female minors, which tallies with the analysis in this chapter.

⁶⁸¹ Department of Justice (2024) [‘Minister McEntee extends Greentown Programme for further three years’](#) (26 January)

Diagram 2: Trafficking for Criminal Activities from 2013–2023 (absolute numbers)



Defining Human Trafficking for Criminal Activities

Definitions of human trafficking are well developed, both within law and academia. Most researchers accept, and use, the definition presented in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), an Optional Protocol to the Convention against Transnational Organized Crime (hereafter the Palermo Protocol). This section will first define TCA before highlighting some conceptual issues which need addressing. As TCA is at a conceptually early stage, agreeing on an operational definition should be a priority as definitions provide the conceptual foundations for both understanding the phenomena and countering harms caused.⁶⁸²

In 2009, the UN Model Law Against Human Trafficking, aimed at assisting countries in their implementation of the Palermo Protocol,⁶⁸³ introduced the concept of the ‘abuse of a position of vulnerability’, which meant taking advantage of the vulnerable position a person is placed in, and clarified that the Palermo Protocol included a non-exhaustive list of forms of

⁶⁸² Decker, S.H. (2015). *Human trafficking: Contexts and connections to conventional crime*. *Journal of Crime and Justice*, 38(3), 291–296.

⁶⁸³ UNODC (2009) [Model Law against Trafficking in Persons](#). Vienna: UNODC.

exploitation. It also added eight additional forms of exploitation, including ‘use in illicit or criminal activities’.⁶⁸⁴

The Fundamental Charter of Human Rights of the European Union (Article 4) prohibits slavery and forced labour including trafficking in human beings. This places an obligation on Ireland to ensure an appropriate legal framework is in place to counter and investigate *all* forms of human trafficking.⁶⁸⁵

Binding for Ireland, of course, is the definition in the EU Anti-Trafficking Directive of 2011 (recently recast), which builds upon this international instrument by expanding and concretising the definition of human trafficking. EU Directive 2011/36/EU updated its definition of human trafficking⁶⁸⁶ by including ‘[the] exploitation of criminal activities’, defined as:

The exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.⁶⁸⁷

The EU Directive, therefore, excludes exploitation which does not directly generate financial gain, such as acts of terrorism or political violence.⁶⁸⁸ This said, it may include those exploited to commit acts of violence within markets (i.e. to intimidate or harm competitors). The final sentence reminds us that the act and means of human trafficking must also be present, or, in the case of children, the act alone. Therefore, evidence of exploitation alone may be insufficient to designate an act TCA, in the case of both adults and children.

⁶⁸⁴ The other seven were: forced or servile marriage; forced or coercive begging; use in armed conflict; ritual or customary servitude; forced pregnancy; biomedical research. UNODC (2009). Model Law against Trafficking in Persons. UNODC: Vienna.

⁶⁸⁵ European Court of Human Rights (2010) *Rantsev v Cyprus & Russia* (Application no. 25965/04); ECtHR (2021). *VCL & AN v UK* (Applications No. 77587/12 & 74603/12).

⁶⁸⁶ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#)

⁶⁸⁷ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Recital 11

⁶⁸⁸ Non-financial acts of violence, such as terrorism or protest should be explored in a separate research project. This is an area which has received fairly minimal research attention, and has tended to focus on child soldiers.

Human trafficking is defined in Ireland under the Criminal Law (Human Trafficking) Act 2008 and its amendments. Importantly for the current discussion, the Department of Justice confirmed that: ‘There is no requirement for a person to have crossed an international border for trafficking to have taken place – it can and does take place within national borders.’⁶⁸⁹ That is, internal trafficking within Ireland is an offence under the Criminal Law (Human Trafficking) Act. This is important for TCA, as it allows for exploitation *within* Ireland.

In 2013, Ireland transposed the EU Directive by amending the 2008 Act. The amendment identifies three additional categories of exploitation: trafficking for the purposes of forced begging as a form of labour exploitation and ‘forcing a person to engage’ in ‘an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain’.⁶⁹⁰ The Criminal Law (Human Trafficking) (Amendment) Act 2013 changed the definition of exploitation from the Criminal Law (Human Trafficking) Act 2008 in Section 1 to include forcing a person to engage in an activity (inside or outside the State) that constitutes an offence that is engaged in for financial gain. The Irish Department of Justice uses the term ‘trafficking for forced criminality’ on its website,⁶⁹¹ distinct from the EU term ‘trafficking for criminal activities’.

Conceptual clarity is limited by the interchangeable use of terms describing this crime across various legal, policy and research documents: ‘Human trafficking for criminal exploitation’, ‘trafficking for the purposes of exploitation for criminal activities’, and ‘human trafficking for forced criminality’.

While each term implies something slightly different, the core concept tying these together is that they are all focused on services or commodities, which are prohibited under law, outside of sexual exploitation, organ removal, illegal adoption or exploitative surrogacy. TCA is thus defined by whether the form of labour is criminalised. If the enterprise is illegal, it is forced criminality. If it is legal, then it is forced labour. Exploitation for criminality and labour may, however, best be viewed on a spectrum, and some individuals are exploited in both licit and illicit enterprises.

Begging is an obvious example. The Criminal Justice (Public Order) Act 2011 provides for a criminal offence of begging where harassment or obstruction is used, and the offence of organising begging, in Section 5, which includes forcing another person to beg. Under the Criminal Law (Human Trafficking) (Amendment) Act 2013, Section 1 includes begging under

⁶⁸⁹ [Blue Blindfold](#) [website]

⁶⁹⁰ The Criminal Law (Human Trafficking) (Amendment) Act 2013, Section 1

⁶⁹¹ [Blue Blindfold](#) [website]

its definition of labour exploitation rather than forced criminality. Directive 2011/36/EU also classifies begging as a form of forced labour.⁶⁹²

In 2018, Ireland opted into the Reception Conditions Directive 2013/33/EU, which contains specific provisions for the special reception needs of vulnerable protection applicants including possible victims of human trafficking. Further legislative changes include the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023. The Bill proposes changes to the administration of law and evidence in relation to sexual offences. This Bill also provides for a presumption of minority in cases of exploitation so that a person is taken to be a child if reasonable grounds to believe this exist, and for the creation of a ‘Trusted Partner’ status with certain organisations.

A final consideration is that not all forced criminality is human trafficking. Human trafficking requires

- › the **act** (i.e. recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons);
- › the **means** (i.e. 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); and
- › the **purpose** – exploitation (i.e. the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs).

Of course, in the case of children it is only the act and exploitation that are required. Often this may require some geographical movement of people, whether across or within national borders, but according to the definition, movement is not necessarily required.

Criminal exploitation of people exists without the trafficking of people. The Greentown intervention project has highlighted this phenomenon in Ireland.⁶⁹³ As such, an individual deceived by a drug dealer into storing a firearm could be a victim of forced criminality, but not necessarily a victim of TCA. This distinction can, however, be difficult to uncover and grey areas exist, especially in the drug trade, which is itself a transactional enterprise with contraband moved between and within jurisdictions.

⁶⁹² [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 11; The Criminal Law (Human Trafficking) (Amendment) Act 2013, Section 1

⁶⁹³ See Redmond, S. (2020) [‘How Irish crime gangs are a hidden threat to child well-being’](#) RTÉ (21 January)

TCA, and forced criminality, suffer four serious conceptual limitations, which should be explored and debated.

First, in some respects, TCA can be viewed as a subcategory of trafficking for labour exploitation. The act, means and purpose of exploitation for labour and criminal activity remain the same, the difference being that one is for licit enterprise and the other for illicit enterprise. Focusing on a licit (labour exploitation)/illicit (forced criminality) dichotomy, however, risks overlooking informal enterprise. Would a person exploited in an unregulated, non-tax-paying nail bar or garage be classified as exploited for labour or criminality? Individuals working in such industries may be committing regulatory offences (linked to immigration and employment permit, business establishment and tax compliance, safety breaches, etc.) rather than criminal offences. This may not be an important distinction for safeguarding of victims, but will influence data collection and research, and the prosecution of perpetrators. Importantly, a clear picture of what is going on is essential for developing countermeasures. This will also be a major issue regarding which enforcement agency will be involved in discovery, investigation and prosecution (for example the Workplace Relations Commission or An Garda Síochána). An Garda Síochána will rarely be involved in regulatory offences, which are monitored by labour inspectors, yet joint inspections with An Garda Síochána indicate otherwise. In Ireland, the Workplace Relations Commission's Inspection Services are responsible for compliance with employment legislation. As a result of the adopted approach, labour investigators may lack the skills, investigation powers or resources to tackle organised labour exploitation, while An Garda Síochána tends to focus on the criminal enterprises that the exploited person (the potential victim) is involved in. The GRETA Report on Ireland notes the limited number of labour inspectors as inhibiting investigations into labour exploitation.⁶⁹⁴ The lack of available legal precedent further hinders interpretation of cases, while insufficient practitioner training and skill may exacerbate difficulties in identifying the issue, gathering accurate data, and gathering the evidence necessary for prosecution. One report into forced labour noted that this presents a major issue for prosecutorial evidence as it is vital to secure witness statements from the victims themselves and corroborate those statements with supporting evidence.⁶⁹⁵

Second, emphasising the 'forced' element in the Irish legal context (not required by the EU Directive) places too much focus on one means of trafficking at the expense of others. 'Threat or use of force' is but one means to exploit individuals to commit criminal acts, and

⁶⁹⁴ GRETA (Group of Experts on Action against Trafficking in Human Beings) (2022). Third Evaluation Report—Ireland: Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings. Council of Europe, p.5

⁶⁹⁵ Milieu Ltd (2015). Study on Case-Law Relating to Trafficking in Human Beings for Labour Exploitation. European Commission.

emphasising force potentially excludes coercion, fraud, deception and abuse of vulnerability. This is not intentional. The ILO definition clarifies that forced labour is meant to include ‘all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered him or herself voluntarily’. It is also clear that deception or fraud refers to both the ‘nature of the work or services’ (e.g. individuals promised work in construction but given work on cannabis farms) and working conditions (e.g. must work long hours, locked into premises), and that coercion includes the ‘non-violent or psychological use of the force’.⁶⁹⁶ A recent Irish study found deception to be the most frequently used means of exploitation.⁶⁹⁷ This may present operational impacts. For example, under-trained police or judiciary may take a literal approach and exclude victims who have not been physically forced. They may not identify a person who agreed to cultivate cannabis for profit as being deceived and/or subjected to more implicit coercive control. TCA will, thus, be used throughout this Report, as the emphasis is placed on the exploitation rather than the force element, on the purpose (exploitation) and the range of ‘means’ rather than the means of force alone.

Third, TCA may set too wide a net. It may include people being coerced, deceived or forced to engage in everything from pick-pocketing and metal theft to violent protests, acts of terrorism and gang-related murder. It may therefore be useful to think of TCA as split along two broad categories (Table 6): human trafficking for *exploitation into illicit enterprise* and human trafficking for *exploitation into violent acts*. These can overlap. For example, a study in Limerick found young people being directed by drug dealers to intimidate rivals and local communities regarding wholesale of drugs.⁶⁹⁸ Following EU Directive 2011/36/EU,⁶⁹⁹ acts of terrorism and political violence should be a separate category, with forced criminality referring to crimes committed with an overall objective of financial reward rather than political gain.

⁶⁹⁶ UNODC (2009) [Model Law against Trafficking in Persons](#). Vienna: UNODC, p.11–12.

⁶⁹⁷ Breen J. M., et al. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland. Limerick: Mary Immaculate College](#)

⁶⁹⁸ Hourigan, N. (2011) *Understanding Limerick: Social Exclusion and Change*. Cork University Press

⁶⁹⁹ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#)

Table 6. Sample of Activities, split into Exploitation for Enterprise and Exploitation for Violence

Exploited into illicit enterprise	Exploited into violent acts
Counterfeiting	Assault
Drug cultivation or manufacture	Criminal damage
Drug dealing or smuggling	Intimidation
Fraud	Murder
Money laundering	Storing weapons
Pick-pocketing	
Theft	

Fourth, vulnerability is a cornerstone of policy, practice and research on TCA, but is often left undefined. The UN Model Law defines a ‘vulnerable position’ as including individuals who:

- › Entered a country illegally or without documentation;
- › Are pregnant;
- › Have ‘physical or mental disease or disability’;
- › Are addicted;
- › Have reduced ‘capacity to form judgements’ because they are children or have ‘illness, infirmity or a physical or mental disability’; and
- › Are in a ‘precarious situation from the standpoint of social survival’.⁷⁰⁰

Children are an important population in the vulnerable category, and the most vulnerable may be those with an accumulation of vulnerabilities.

In Ireland, vulnerable persons are defined in two pieces of legislation. The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 introduced mandatory reporting requirements when people become aware of certain serious offences against a child or vulnerable person. A vulnerable person is defined in Section 1(a, b) as someone:

- (a) ‘Suffering from a disorder of the mind, whether as a result of mental illness or dementia’;
- (b) With an intellectual disability; or
- (c) With ‘an enduring physical impairment or injury’.

⁷⁰⁰ UNODC (2009) [Model Law against Trafficking in Persons](#). Vienna: UNODC

The disability, injury or impairment must be ‘of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to An Garda Síochána or both’.

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 introduced a requirement for persons working with children or vulnerable persons to be pre-vetted by An Garda Síochána prior to engagement in work. The above definition was expanded to include persons who, because of physical or mental impairment, require ‘assistance with the activities of daily living including dressing, eating, walking, washing and bathing’. Neither Act includes in its definitions situations of financial or social vulnerability although the international research literature is very clear that, in many instances of human trafficking, victims often seek to escape poor economic circumstances.

This section has shown how, unlike human trafficking for sexual exploitation and labour exploitation, TCA is conceptually undeveloped and overly broad.

While these issues should be resolved – at national, regional and international levels – this chapter employs the term ‘TCA’. The working definition adopted here is as follows:

‘A form of human trafficking – including the act (i.e. recruitment, movement of people, harbouring persons) and means (i.e. threat, coercion, fraud, deception, abuse of power) – where the purpose is exploitation to commit acts which are subject to criminal penalties, excluding forced labour in regulated enterprises, organised prostitution or other kinds of sexual exploitation, organ removal, exploitative surrogacy and illegal adoption. HTCE is connected to labour exploitation, and differs only by the legality of the purpose. It can be split into illicit enterprise and acts of violence connected to illicit enterprise’.

The element of financial gain is of relevance according to the national and EU legal frameworks. It must also be noted that in regard to children, the ‘means’ (i.e. threat, coercion, fraud, deception, abuse of power) does not apply.

Human Trafficking for Criminal Exploitation in Ireland

In 2014, one report concluded that ‘there is a dearth of official information’ on TCA in Ireland, and that specialist CSOs and media reports focus predominantly on cannabis cultivation.⁷⁰¹ Little has changed since, although there has been greater focus on exploitation within local drug markets. Our systematic search of relevant or related literature yielded limited results:

- › A series of studies by Redmond and colleagues **surveyed local Gardaí** to investigate the structure and prevalence of child criminal exploitation in local crime networks.⁷⁰² This research did not identify internal trafficking;
- › Six studies focused specifically on drug-related intimidation, of which exploitation is an element. One study compared official data and interviews with practitioners, people who use drugs, and their families.⁷⁰³ The second reviewed 140 intimidation case reports from 132 Drug Task Forces and conducted focus groups with over 150 people.⁷⁰⁴ The third interviewed young people presenting for drug treatment.⁷⁰⁵ The fourth conducted an online survey alongside practitioner focus groups and four interviews with people who had experienced intimidation.⁷⁰⁶ The fifth and sixth conducted practitioner and community surveys, alongside interviews with those affected by intimidation.⁷⁰⁷ These studies did not focus on internal trafficking of persons, but some evidence emerged.
- › One relevant study in 2014 has focused on exploitation in cannabis farms, interviewing an undisclosed number of practitioners.⁷⁰⁸

Our review found no Irish research focused specifically on drug smuggling. As no studies have interviewed or surveyed those involved in TCA (outside of exploitation within local markets) almost all of what we know comes from official or media sources. The lack of independent

⁷⁰¹ RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#)

⁷⁰² [The Greentown Study, 2016–2022](#) [website]

⁷⁰³ Robinson, J. and Doherty, J. (2023) *Drug and Alcohol Trends Monitoring System (DATMS) 2022: Year 7*. Dublin: Blanchardstown Local Drug and Alcohol Task Force

⁷⁰⁴ Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide.

⁷⁰⁵ James, P. D., Comiskey, C. and Smyth, B. P. (2019) ‘Debt on me head’: *A qualitative study of the experience of teenage cannabis users in treatment*. *Journal of Addictions Nursing*, 30(3), 211–218.

⁷⁰⁶ McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North East Inner City*. Dublin: Ana Liffey Drug Project

⁷⁰⁷ Brennan, R. and Van Hout, M.C. (2021) *An Evaluation of the Drug Related Intimidation Initiative (DRII) in North Inner City Dublin (NEIC)*. Dublin: Ana Liffey; Brennan, R. (2022) ‘Singing from the Same Hymn Sheet’: An evidence Base for the Development of an Interagency Drug Related Intimidation (DRI) Specific Training Programme in the SICDATF Area. Dublin: South Inner City Dublin Drug and Alcohol Taskforce.

⁷⁰⁸ Migrants Rights Centre Ireland (2014) [Trafficking for Forced Labour in Cannabis Production: The Case of Ireland](#)

research, employing primary data, is a significant gap in our understanding of the prevalence and mechanics of TCA, and limits capacity to develop or evaluate effective countermeasures.

Cannabis Cultivation

As there is only one study of cannabis farming in Ireland listed above, this section draws predominantly from a systematic search of all Irish newspapers for the period 2004–2023. The results of this limited analysis appear to follow a similar trend witnessed in the UK, and follow recorded Garda data.

In total, 176 newspaper articles provided information on 52 individuals who appeared before the courts for cannabis cultivation between 2008 and 2023. The average age was 37, the youngest was 16 and oldest 65; 87% (N=45) were male, 6% (N=3) female and gender was not mentioned for some. The majority were foreign nationals with 86% from China or Vietnam. Evidence of varying levels of exploitation was given in 40 cases. This ranged from explicit exploitation (i.e. torture, physical abuse) to red flags for exploitation (i.e. missing travel documents and no English). The average prison sentence was 4.1 years, although several had part of the sentence suspended and five were given a full suspended sentence on condition they leave the State immediately.

Commercial cannabis cultivation was first identified in Ireland around 2008/2009.⁷⁰⁹ Commercial cannabis farms were apparently first discovered in Northern Ireland before moving to the Republic in response to PSNI crackdowns.⁷¹⁰ Displacement effects should not be overemphasised, however, and this move was arguably driven more by market forces than by law enforcement.

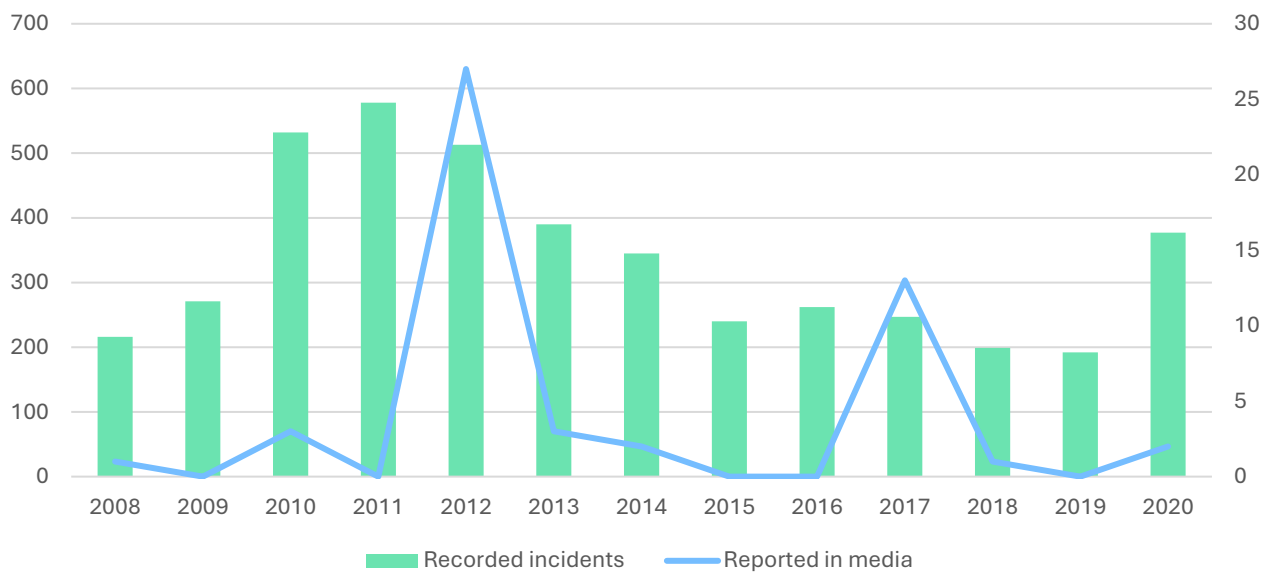
Commercial cannabis farm seizures increased significantly between 2010 and 2014. This corresponds with both Garda data on recorded drug manufacture and cultivation and the number of media database hits (Diagram 3). Indeed, of the 176 Irish newspaper articles identified in our search, 50% were published between 2012 and 2014. This may not necessarily reflect seizures, but rather Gardaí promoting operations, such as Operation Nitrogen,⁷¹¹ during a period when cannabis farming was a ‘hot topic’.

⁷⁰⁹ Lally, C. (2011) ‘[Cannabis farm largest yet discovered](#)’ *Irish Times* (18 March); Gorey Guardian (2009). Chinese man was responsible for EUR140,000 worth of cannabis plants (28 October)

⁷¹⁰ Irish Examiner (2014) ‘[Cannabis growhouses report: weeding out crime](#)’ *Irish Examiner* (27 January); Lally, C. (2008) [700 cannabis plants found in Monaghan house](#) *Irish Times* (1 October); Lally, C. (2009) [Eight held as Gardaí find drug farms in house](#). *Irish Times* (12 March); Lally, C. (2010) Teenager questioned over drugs discover. *Irish Times* (23 August)

⁷¹¹ Launched in 2010, Operation Nitrogen sought to tackle ‘Vietnamese-dominated’ cannabis cultivation: *Irish Times* (2010) Ireland’s growing industry. *Irish Times* (30 October)

Diagram 3: Drug Cultivation and Manufacture Trends: Ireland (2008–2020). Comparison of Recorded Garda and Media Data



Gardaí attributed rising cultivation between 2008 and 2019 to ‘the involvement of Chinese gangs’.⁷¹² The groups converted rented or purchased houses and flats,⁷¹³ or disused warehouses,⁷¹⁴ and installed individuals from China or Vietnam as gardeners.⁷¹⁵ This strategy worked as the country was in economic recession, so property was plentiful and cheap.⁷¹⁶ Some cannabis farm owners were based in Northern Ireland and the UK,⁷¹⁷ or part of wider networks based in the UK.⁷¹⁸

Signs of Exploitation

Several journalists reported gardeners being exploited and trafficked.⁷¹⁹ By 2014, 72% of individuals in custody for cannabis cultivation were Asian nationals.⁷²⁰ Many did not have

⁷¹² Irish Independent (2009) Murder, gun crime and rape on the increase. *Irish Independent* (1 May)

⁷¹³ Lally, C. (2009) Eight held as Gardaí find drug farms in house. *Irish Times* (12 March); Schiler, R. (2021). Three homes linked to cannabis greenhouse gang are seized by CAB. *Irish Independent* (17 February)

⁷¹⁴ *Irish Examiner* (2012) Four men held after cannabis plants worth EUR800k found in former factory. *Irish Examiner*, (14 March)

⁷¹⁵ *Irish Examiner* (2014) Cannabis greenhouses report: weeding out crime. *Irish Examiner* (27 January)

⁷¹⁶ Ibid

⁷¹⁷ Lally, C. (2012) Gardaí arrest 50 people in drugs raids, *Irish Times* (21 November)

⁷¹⁸ Riegal, R. and Brady, T. (2012) Gardaí seek to prove triad link to cannabis greenhouses. *Irish Independent* (12 December)

⁷¹⁹ Cusack, J. (2013) Ireland: It’s a great country for a criminal. *Irish Independent* (12 May)

⁷²⁰ RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#), p. 36

passports or identification, were paid low wages, spoke little English and ‘expressed confusion to Gardaí over precisely where they had been in Ireland’.⁷²¹

Gardaí often reported during court cases that gardeners lived in poor conditions. One Detective Sergeant told the *Irish Examiner* in 2014 that most consented to be smuggled into the country but were then exploited and ‘left there for months on end. From a human perspective, it’s quite sad to see.’⁷²² Some were reportedly free to move,⁷²³ others were locked into farms.⁷²⁴ One Chinese man, who was locked into a warehouse, told Gardaí that he would have remained if the door was open because he feared ‘the masters’.⁷²⁵ Another man was threatened after leaving the farm (an industrial park unit) to meet his wife. She was also threatened.⁷²⁶ Some reported being paid,⁷²⁷ others reported not being paid the money promised.⁷²⁸ Five men, across two cases, reported being tricked by replying to adverts advertising jobs for regular gardeners.⁷²⁹ Research on human trafficking in Ireland found deception was the most common mean of exploitation, with few victims being locked into rooms.⁷³⁰

In 2016, Europol-EMCDDA (EU Drug Agency) reported a European trend whereby Southeast-Asian networks coerce ‘illegal immigrants to work as gardeners in cannabis plantations, often in harsh conditions. Many of the immigrants used in this way are bonded by debt and work in cannabis production sites as a way to pay for their passage to Europe.’⁷³¹ The most common route from Vietnam was overland to China, then by air to Russia and overland in trucks through Europe: ‘These lengthy and traumatic journeys, often punctuated by periods of

⁷²¹ Riegal, R. and Brady, T. (2012). Gardaí seek to prove triad link to cannabis growhouses. *Irish Independent* (12 December)

⁷²² *Irish Examiner* (2014) Cannabis growhouses report: Gardeners little more than ‘slaves’. *Irish Examiner* (27 January)

⁷²³ *Irish Times* (2013) From fishing in Vietnam to a cannabis grow house in suburban Dublin. *Irish Times* (4 November)

⁷²⁴ *Irish Times* (2013) Cannabis gardener gets six years. *Irish Times* (19 October); Lally, C. (2019) EUR40,000 seized in CAB drug gang operate ration. *Irish Times* (16 May)

⁷²⁵ Corkman (2013) Drug farm pair were kept as virtual slaves; in debt pair were locked up to tend warehouse. Corkman (4 July)

⁷²⁶ *Irish Times* (2012) Migrants were ‘tricked’ into cannabis work. *Irish Times* (11 December)

⁷²⁷ Roche, B. (2012) Men jailed for drug plants. *Irish Times* (20 October)

⁷²⁸ *Irish Times* (2012) Migrants were ‘tricked’ into cannabis work. *Irish Times* (11 December); *Irish Examiner* (2014) Cannabis growhouses report: Gardeners little more than ‘slaves’. *Irish Examiner* (27 January); *Irish Independent*, (2012) Pair jailed for growing EUR400,000 of cannabis. *Irish Independent* (27 October)

⁷²⁹ Brennan, D. (2012). Chinese farmers tricked into growing cannabis. *Irish Independent* (11 December); Roche, B. (2012) Men jailed for drug plants. *Irish Times* (20 October)

⁷³⁰ Breen J. M., et al. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland. Limerick: Mary Immaculate College](#)

⁷³¹ EMCDDA and Europol (2016) *EU Drug Markets Report*. Luxembourg: EMCDDA and Europol, p. 67

exploitation, can disorientate victims and impair an individual's ability to recall details of their routes and their entry into the country.⁷³²

For example, in 2013, the *Irish Times* ran a story about Ninh Pham. The 60-year-old fisherman from rural Vietnam came to Europe to find his daughter. While living in the UK he accepted an offer of work and was smuggled to Ireland in a truck. His travel documents and passport were confiscated before he was taken to a farm in a converted house in Dublin, rented through a letting agency. He was allowed to leave the house once a week to buy food, and was told his passport would be returned after the harvest. He could then leave. He pleaded guilty to cultivating cannabis, but claimed he did not know it was illegal in Ireland. The judge 'accepted Pham had been forced to grow the plants' but sentenced him to one year of imprisonment.⁷³³

US State Department human trafficking reports between 2017 and 2020 have reported: 'Vietnamese and Chinese individuals who are convicted for cannabis cultivation often report indicators of forced labour, such as document retention, restriction of movement, and non-payment of wages.'

While the 'arrest of Irish people' at cannabis farms was initially 'highly unusual',⁷³⁴ by 2014 Garda intelligence indicated Irish nationals were cultivating their own cannabis in greater quantities.⁷³⁵ It appears that Asian networks were pushed from the market⁷³⁶ and/or provided local criminal groups with labour and expertise,⁷³⁷ a trend witnessed in a number of countries.⁷³⁸ Media reporting on cannabis farm seizures declined as the market shifted from Asian to domestically-run farms).

The paucity of research on contemporary cannabis cultivation makes it difficult to assess mechanisms or prevalence with any confidence. It is possible, however, that when Asian networks managed larger farms, using foreign labour, they were visible and became a political

⁷³² RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#), p. 16

⁷³³ *Irish Times* (2013) From fishing in Vietnam to a cannabis grow house in suburban Dublin. *Irish Times* (4 November)

⁷³⁴ Lally, C. (2011) Cannabis farm largest yet discovered. *Irish Times*, 18 March.

⁷³⁵ In 2009, two cannabis farms were identified as being run by local drug dealers in Cork and Meath: Lally, C. (2009) Eight held as Gardaí find drug farms in house. *Irish Times* (12 March)

⁷³⁶ Brennan, D. (2012) Chinese farmers tricked into growing cannabis. *Irish Independent* (11 December)

⁷³⁷ Cusack, J. (2013) Ireland: It's a great country for a criminal. *Irish Independent* (12 May); *Irish Independent* (2011) Green shoots for the crime gangs. *Irish Independent* (2 September); Lally, C. (2010) Teenager questioned over drugs discover. *Irish Times* (23 August); PSNI (Police Service of Northern Ireland) and An Garda Síochána (2014) [Cross Border Organised Crime](#)

⁷³⁸ EMCDDA and Europol (2016) *EU Drug Markets Report*. Luxembourg: EMCDDA and Europol.

priority, culminating in Operation Nitrogen.⁷³⁹ Arrests were often limited to ‘low-hanging fruit’. Gardeners rather than organisers or owners were arrested.

While groups previously invested in one or two larger farms, commercial cultivation may now be spread across multiple smaller premises. This trend has been witnessed in the UK, where economically vulnerable people are paid to house plants in their homes.⁷⁴⁰ It is plausible that drug debts could be used as leverage (see below). This potential development provides challenges, as smaller farms are more difficult to identify. It may also represent a shift from exploiting migrant labour to exploiting vulnerable Irish nationals to tend, or house, cannabis farms. Those housing cannabis farms in working class communities may seem even further from the stereotyped human trafficking victim. It is also possible that this could change again in the future. Drug markets are adaptable and change quickly.

A recent report by the Azure Forum found that Asian groups continued to be active in Irish and British cannabis markets.⁷⁴¹ For example, in 2021 the Criminal Assets Bureau (‘CAB’) seized properties (in Dublin, Tipperary, Cork) belonging to a ‘Chinese crime group’ who managed farms in the UK and Ireland. Two suspects absconded:⁷⁴² one was considered a ‘major player in organising cannabis cultivation’ in the UK and Ireland.⁷⁴³

In 2022, a senior Garda reported that they had ‘encountered both Vietnamese and, in lesser numbers, Chinese nationals at raids on cannabis growhouses, and strongly suspect that at least some of these individuals may have been trafficked – though they have been very reluctant to engage with the authorities’.⁷⁴⁴ In 2019, the *Irish Times* reported that Vietnamese gardeners with no immigration status ‘have been the victims of human trafficking’ and ‘are often locked into the growhouses and live in squalid conditions while being remunerated very poorly’.⁷⁴⁵ In 2020, an Irish man, arrested in Curragh, was paid to feed two Vietnamese workers and collect and distribute cannabis.⁷⁴⁶ Also in 2020, two Albanian nationals were

⁷³⁹ Senior Gardaí reportedly called cannabis farming one of the country’s main law enforcement challenges: *Irish Independent* (2012) Gardaí seize cannabis worth EUR5m during growhouse raids. *Irish Independent* (25 October)

⁷⁴⁰ Ancrum, C. and Treadwell, J. (2017) Beyond ghosts, gangs and good sorts: Commercial cannabis cultivation and illicit enterprise in England’s disadvantaged inner cities. *Crime, Media, Culture*, 13(1), 69–84.

⁷⁴¹ Chance, A. (2022) *Exploring Serious and Organised Crime Across Ireland the United Kingdom*. Dublin: Azure Forum, p. 28; for example Lally, C. (2019) Eur40,000 seized in CAB drug gang operation. *Irish Times* (16 May)

⁷⁴² Schiler, R. (2021) Three homes linked to cannabis growhouse gang are seized by CAB. *Irish Independent* (17 February)

⁷⁴³ Foy, K. (2021) CAB raids target the ‘Cannabis Queen’ of Ireland. *Irish Independent* (17 July)

⁷⁴⁴ Chance, A. (2022) *Exploring Serious and Organised Crime Across Ireland the United Kingdom*. Dublin: Azure Forum, p. 28

⁷⁴⁵ Lally, C. (2019) Eur40,000 seized in CAB drug gang operation. *Irish Times* (16 May)

⁷⁴⁶ *Irish Times* (2020) Man charged over cannabis cultivation. *Irish Times* (6 November)

arrested at a cannabis farm. They were released in 2021 when identified as victims of human trafficking.⁷⁴⁷

In a more recently identified trend, Bracken reported that ‘70 children who arrived on their own in Ireland over the past seven years to seek asylum’ had ‘disappeared from State care’. A ‘security source’ told the reporter that some children are ordered to abscond if placed in care, and some become cannabis gardeners.⁷⁴⁸ This new development requires further exploration, as the exploitation of children in State care is an issue which has been highlighted across Europe.⁷⁴⁹

Responses and Punishment

In 2023, the US State Department reported that while Gardaí identified ‘some trafficking victims’ in cannabis farms’, including at least one victim in 2022, there continued to be other instances reported by GRETA and CSOs where victims of forced criminality were not recognised as such. CSOs urged the Government to complete the identification process for victims in cannabis production facilities prior to arresting and processing these individuals.⁷⁵⁰ This is not unique to Ireland. Burland has shown how cannabis gardeners in the UK are often prosecuted, even when evidence of exploitation and trafficking are clear. This is partly because cannabis farmers are ‘the furthest away from fulfilling the characteristics of the perfect stereotypical victim’.⁷⁵¹

Many Gardaí interviewed by journalists and/or presenting evidence in court seemed aware that gardeners were exploited. Some judges identified gardeners as victims of exploitation and/or trafficking, yet sentenced them to prison. Most spent long periods in custody before their trial, as they were unable to pay for bail or had no identification documents. For example, sentencing data from the Dublin Circuit Criminal Court showed how, between 2011 and 2013, two-thirds of 24 identified gardeners claimed to have been exploited or maltreated; yet all received prison sentences.⁷⁵² In 2013, 36 of 50 people in custody for cannabis

⁷⁴⁷ US State Department (2022) [Trafficking in Persons Report](#)

⁷⁴⁸ Bracken, A. (2021) Dozens of child asylum seekers vanish without trace since 2014. *Sunday Independent* (March 7)

⁷⁴⁹ Setter, C. (2019) *Child trafficking in the UK*. In Craig, G., Balch, A., Lewis, H. and Waite, L. (Eds.). *The Modern Slavery Agenda*. Policy Press, pp. 121–144

⁷⁵⁰ US State Department (2023) [2023 Trafficking in Persons Report: Ireland](#)

⁷⁵¹ Burland, P. (2019) *Still punishing the wrong people: The criminalisation of potential trafficked cannabis gardeners*. In Craig, G., Balch, A., Lewis, H. and Waite, L. (Eds.). *The Modern Slavery Agenda*. Policy Press pp. 167–186.

⁷⁵² Gallagher, C. (2013) Almost half of those convicted of cannabis growing are Asia migrants. *Irish Times* (4 November)

cultivation were ‘of Asian origin’, and only ‘a few’ had been investigated for human trafficking.⁷⁵³ The Migrant Rights Centre of Ireland raised concerns about this situation, prompting the Gardaí to conduct an internal review in 2014 of their decisions to not ‘identify Asian men convicted and serving prison sentences here for cannabis growing as victims of human trafficking’.⁷⁵⁴

In 2019, the US State Department reported that the Gardaí had reviewed 70 cannabis cultivation cases ‘for possible trafficking indicators’ but did not ‘identify any victims or overturn any prosecutions as a result of these reviews’.⁷⁵⁵ The review came in response to a test case brought in the High Court whereby a Chinese national discovered in a cannabis farm in 2012 claimed his detention was unlawful and argued that he should avoid prosecution, as a victim of human trafficking. The Court heard how he agreed to work abroad to repay the debt after his family were threatened by money lenders. He reported being verbally and physically assaulted during months of travelling by air and sea. His lawyers highlighted several indicators of human trafficking: he was locked into the farm; his living quarters were unclean; he spoke no English; he was unsure of his location; he was never paid; he did not possess travel documents. The judge identified the man as exploited and in servitude but found no evidence of human trafficking because he was free to move, at times, and could not remember the dates he was trafficked.⁷⁵⁶ The Irish Human Rights and Equality Commission argued that ‘the Gardaí and the Court seem to have misapplied the definition of human trafficking in deciding whether he was a victim of trafficking’.⁷⁵⁷ Indeed, inconsistencies are common in human trafficking victim statements – the trafficking process is often disorientating, traumatic and frightening – and few traffickers lock victims away: the implied threat can be sufficient.

The Irish judiciary appears able to identify exploitation and trafficking within cannabis farms, but is often unable or unwilling to negate prosecution, at least in those cases reported in the national and local press. For example, in 2018 a judge concluded that two Vietnamese nationals, aged in their 40s and 50s, were ‘desperate men’ who seemed ‘to have had no rights’; ‘they were preyed upon’, had low ‘moral culpability’ and ‘little or no option but to participate in this crime’. They were sentenced to two-and-a-half years’ imprisonment because the value of the cannabis was high and they understood cannabis cultivation was

⁷⁵³ Migrants Rights Centre Ireland (2014) [Trafficking for Forced Labour in Cannabis Production: The Case of Ireland](#)

⁷⁵⁴ Irish Examiner (2014) Trafficking fears over drug case convictions. *Irish Examiner* (18 October)

⁷⁵⁵ US State Department (2019) [2019 Trafficking in Persons Report: Ireland](#)

⁷⁵⁶ RACE (2014) [Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples](#)

⁷⁵⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

illegal. The men had already spent almost one year on remand and would be deported upon release from prison.⁷⁵⁸

In another case, two Irish nationals were sentenced to 7 and 12 years for their involvement in a cannabis farm. Three Chinese gardeners were each sentenced to seven years' imprisonment, with the final six suspended 'on condition they each leave the country immediately'. They had been in custody for one year, so would have been immediately deported.⁷⁵⁹ While deportation may appear better than prison, evidence from the wider human trafficking literature suggests a likelihood they would be re-trafficked, may be stigmatised by their community and/or may have incurred debts for the seized cannabis.⁷⁶⁰

In the Commission's submission on the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, we recommended that the Bill be amended to include a specific defence for victims of trafficking where they have committed crimes as a direct consequence of being trafficked.⁷⁶¹ In the submission, the Commission expressed disappointment that the recommendation of the Joint Committee was not reflected in the Bill.⁷⁶² The Committee recommends that, to adhere to the non-punishment principle, the Bill should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes as a direct result of being trafficked. The legislative process of this Bill should also examine the feasibility of extending the expungement of criminal convictions to other forms of human trafficking.⁷⁶³ In line with GRETA's recommendation to adopt a specific legal provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to take part in such activities, and/or to develop detailed, updated guidance for policy officers and prosecutors on the aims and scope of the non-prosecution provision,⁷⁶⁴ and in light of the likely criminalisation of victims of trafficking by the Irish criminal justice system, a statutory defence could strengthen the application of non-prosecution.⁷⁶⁵ Given the clandestine nature of trafficking, it will always be the case that not all victims are formally identified and may only come to light once they have entered the criminal justice system;

⁷⁵⁸ Hayse, I. (2018) Migrants jailed over (Euro) 1.8m drug grow house. *Irish Independent* (10 April)

⁷⁵⁹ Wexford People (2017) Man spared jail for role in cannabis factory. *Wexford People* (7 February)

⁷⁶⁰ Hales, L. and Gelsthorpe, L. (2012) *The Criminalisation of Migrant Women*. Cambridge Institute of Criminology

⁷⁶¹ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#), p. 46

⁷⁶² *Ibid*, p. 44

⁷⁶³ Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 12

⁷⁶⁴ GRETA (2017) [Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), para. 207

⁷⁶⁵ IHREC (2023) [Submission on the Criminal Law \(Sexual Offences and Human Trafficking\) Bill 2023](#), p. 46

such a defence would act as a safety net ensuring that victims of trafficking are not themselves criminalised.⁷⁶⁶

Exploitation within Local Drug Markets

This section explores four forms of exploitation within street-level drug dealing networks. Some of the examples given below involve exploitation with no evidence of geographical movement; however, some individuals do seem to be exploited into moving drugs internally within Ireland or were trafficked into the country to sell drugs.

Lithuanian Organised Crime Group ('OCG')

In 2020, a joint police operation between Lithuania, the UK and Ireland, supported by Europol, dismantled an OCG involved in heroin trafficking and dealing across the island of Ireland,⁷⁶⁷ including in urban and rural areas⁷⁶⁸ of Belfast, Cork, Dublin and Waterford.⁷⁶⁹ The OCG organised 'at least' 65 street dealers who were primarily Lithuanians 'from vulnerable social backgrounds'. Many had 'been trafficked' into Ireland specifically to sell drugs⁷⁷⁰ and the OCG was suspected of trafficking women into Ireland for sexual exploitation.⁷⁷¹

The OCG leader was based in Lithuania with members supervising local street dealers. For example, one gang member – who was extradited to Lithuania for drug trafficking, human trafficking, and money laundering charges – 'controlled a group of seven drug dealers'. He 'allegedly beat up one of the trafficking victims ... for losing a batch of heroin and disobeying orders'. Lithuanian authorities identified the exploited street dealers as made vulnerable by economic insecurity, addiction to alcohol or drugs and/or being recently released from prison. They spoke little or no English, their money was controlled, their passports confiscated and they were subjected to physical and psychological abuse.⁷⁷²

⁷⁶⁶ [Ibid](#)

⁷⁶⁷ Eurojust (2020) [Criminal Network Dismantled in Lithuania](#) (27 August); The UK and Ireland

⁷⁶⁸ MacNamee, G. (2021) [Lithuanian mafia gang 'all but gone' in Ireland following garda clampdown](#). The Journal, (14 April); Murphy, A. (2020) [Arrest made in Middleton as part of operation to curb international organised crime](#). Echo (27 August)

⁷⁶⁹ PSNI (2020) Chief Constables Report to Northern Ireland Policing Board (3 December)

⁷⁷⁰ Eurojust (2020) [Criminal Network Dismantled in Lithuania](#) (27 August); The UK and Ireland

⁷⁷¹ MacNamee, G. (2021) [Lithuanian mafia gang 'all but gone' in Ireland following garda clampdown](#). The Journal, (14 April)

⁷⁷² Gallagher, C. (2022) Lithuanian man accused of trafficking vulnerable people into Ireland to sell heroin extradited. The *Irish Times* (22 September); also MacNamee (2019) [Lithuanian heroin gang moves significant quantities of drugs to Kerry](#). The Journal (31 January)

In an earlier case, in 2013, Doras Luimní had become aware of 10 cases coming before the courts of young Eastern European men who had come to Ireland searching for work, but then been ‘ordered’ to sell drugs. The exploiters threatened the men and their families back home with harm if they did not cooperate. One judge commented that the men were being exploited, but should serve a prison sentence because they had committed criminal acts.⁷⁷³

Child Criminal Exploitation by Drug Dealers⁷⁷⁴

In 2021, the Oireachtas Children’s Committee heard of young people being groomed by drug dealers to store and move drugs. At the committee hearing, Barnardo’s Chief Executive Suzanna Connolly said:

‘We’re well aware of what we would call the grooming of young people into inappropriate, short term, attractive propositions to them because it gives them money, it can give them a sense of status and also give them a sense of excitement.’⁷⁷⁵

Blanchardstown Local Drug and Alcohol Task Force reported an increase in children dealing drugs in Dublin 15 since 2016. The average age of drug runners was 10 years in 2021, with the youngest recorded runner aged just eight years old. The average age of a drug dealer was 16. Most runners and dealers were male. A runner is a drug courier in a retail market, often a young person.⁷⁷⁶ Drug dealers are individuals or groups who sell or supply controlled drugs/substances of any type, in any quantity.⁷⁷⁷ They can be small-time dealers who sell quantities to offset the costs of their own drug use, or they can be highly organised groups that operate like an organised crime business.⁷⁷⁸ Greater social status, ‘easy money’ and having older family members who sold drugs were key reasons for initial involvement in drug dealing and running.⁷⁷⁹

A study in Dublin identified a grooming process whereby older drug dealers ask younger people to do something relatively innocent – to hold something small – with requests

⁷⁷³ Doras Luimní (2015). [No Chances, No Choices: Human Trafficking and Prostitution in Limerick](#). Limerick: Doras Luimní

⁷⁷⁴ This section limits to research in the Republic of Ireland. For research in Northern Ireland see: Walsh, C. (2023) *From contextual to criminal harms: Young people’s understanding and experiences of the violence of criminal exploitation*. Crime Prevention and Community Safety, 25(3), pp. 282–304.

⁷⁷⁵ McCurry, C. (2021) Calls for homeless legislation reforms to put children first. PA Newswire (9 November)

⁷⁷⁶ Connolly, J. and Donovan, AM. [Illicit Drug Markets in Ireland](#)

⁷⁷⁷ An Garda Síochána [‘What is Drug Dealing?’](#) [website]

⁷⁷⁸ Ibid

⁷⁷⁹ Robinson, J. and Doherty, J. (2023) *Drug and Alcohol Trends Monitoring System (DATMS) 2022: Year 7*. Dublin: Blanchardstown Local Drug and Alcohol Task Force; also Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide

becoming gradually more hazardous.⁷⁸⁰ Participants in a life-history study in Cork reflected on wanting to store drugs for older peers as children. While some of the men retrospectively identified this as exploitative, as young people they perceived involvement with older peers as providing credibility, belonging and purpose. Association with drug dealers helped them develop masculine reputations as ‘hard-men’, which helped them traverse often dangerous street lives. The men had all experienced cumulative adverse childhood experiences, and lived in economically deprived communities where there was little trust in the Gardaí.⁷⁸¹

Greentown Study

Researchers at the University of Limerick, in a series of studies employing Garda data,⁷⁸² identified adults within local criminal networks systematically targeting, grooming and recruiting local children to conduct criminal activities.

The studies found that individual cumulative vulnerabilities increased the risk of children being exploited. These included poor adult supervision, parental alcohol and drug abuse, parental imprisonment, parental neglect and family involvement in criminality. Local communities were characterised by social exclusion, economic deprivation and lack of trust in the Gardaí, compounded by fear of local crime networks.⁷⁸³

The criminal networks groomed and exploited children from within their own families or used younger family members to ‘recruit’ vulnerable non-family members from wider social networks. In some cases, this began at primary school age. Thematic risk factors suggested that pathways to serious and prolific offending by children are shaped by a combination of: family ties to criminality, individual risk factors, proximity to the criminal network, and existing pro-criminal norms. Once engaged in the criminal network, different techniques were used to maintain engagement, including financial and social rewards (i.e. access to drugs, money,

⁷⁸⁰ Bowden, M. (2019) *The Drug Economy and Youth Interventions: An Exploratory Research Project on Working with Young People Involved in the Illegal Drugs Trade*. Dublin: Technological University Dublin

⁷⁸¹ Cambridge, G., Lynch, O. and Windle, J. (2022) *The Desistance Journey: Into Recovery and out of Chaos*. Springer.

⁷⁸² See O’Meara-Daly, E., Redmond, S. and Naughton, C. (2020) *Lifting the Lid on Bluetown*. Government Publication; Naughton, C.M., Redmond, S. and O’Meara-Daly, E. (2023) *The Greentown Project: Building evidence to inform intervention design for juveniles caught-up in local criminal networks*. *International Journal of Offender Therapy and Comparative Criminology*, 67(1), pp. 17–33; Naughton, C. and Redmond, S. (2021) [How can we stop criminal gangs exploiting up to 1,000 Irish kids?](#) RTÉ Brainstorm; Redmond S. (2016) *Lifting the Lid on Greentown*. Government Publication

⁷⁸³ These findings have been reflected in ethnographic research: Hourigan, N. (2011) *Understanding Limerick: Social Exclusion and Change*. Cork University Press.

validation and respect, status) coupled with, when necessary, fear, intimidation, coercion, debt-obligations and physical violence.

The original Greentown study, for example, identified a local criminal ('A2') who sold drugs wholesale and lent money. The debts from drug sales and money lending were used to coerce people into committing criminal acts, including theft, shoplifting and drug dealing. A2 was also grooming children, including two aged 12 and 15. These children enjoyed the status and protection of their association with A2, and were victimising others through violence, intimidation and burglary.⁷⁸⁴

A related study of Garda Juvenile Liaison Officers suggested that the tactics identified by the Greentown study were recognisable in a number of urban and rural communities around the country. This study estimated that approximately 1,000 children throughout the country were being groomed into crime by predatory adults, sometimes by family members. Children being exploited by adults accounted for one-eighth of youth diversion scheme caseloads. It found that children involved in the most serious offending presented multiple vulnerabilities and had complex needs.⁷⁸⁵

Utilising Sparrow's 'Wicked Problem' concept and his strategic approach,⁷⁸⁶ Redmond and colleagues used this data to develop an intervention strategy. Currently being piloted, it focuses on four pillars:⁷⁸⁷

- a) Pillar One: Disruption of criminal networks through police activities focused on the main criminal actors identified;
- b) Pillar Two: Tailored family intervention programmes, using Family Therapy, to support both the child and their immediate family to develop coping mechanisms and social skills to counter the criminal influence exerted on them while developing self-determination;
- c) Pillar Three: Development of pro-social opportunity structures by providing educational, health and medical support to families. This includes supporting those with mental health issues and helping families integrate more effectively with education; and
- d) Pillar Four: Development of community efficacy. This is designed to help the broader community take a role in dealing with local community issues, rebuilding Garda

⁷⁸⁴ Redmond S. (2016) Lifting the Lid on Greentown. Government Publication

⁷⁸⁵ Naughton, C. and Redmond, S. (2017) National Prevalence Study. University of Limerick

⁷⁸⁶ Sparrow, M.K. (2008) The Character of Harms: Operational Challenges in Control. Cambridge University Press.

⁷⁸⁷ [Greentown Project 2019–2020](#) [website]

legitimacy and improving the capacity and capability of the affected community to withstand and repel network influence.

Importantly, the study acknowledged the ineffectiveness of repressive policing of children: ‘The fear generated by the network toward children far outweighs any deterrent effect generated by sanctions offered by the criminal justice system.’⁷⁸⁸

Exploitation and Drug-Related Intimidation

Drug-related intimidation, often involving drug debts, has been the most widely explored phenomenon related to exploitation within the Irish literature. The extent of funded research on this topic is indicative of the level of political attention given to it. The 2023 Citizens Assembly on Drugs recommended the Government ‘prioritise the objective of tackling the source and impact of drugs-related intimidation and violence, and take a zero-tolerance approach’.⁷⁸⁹ Zero-tolerance is, however, a blunt tool and ignores that young people can often be exploited to intimidate people for others.

Connolly and Donovan found, in 2014, that drug-related intimidation had become more common through increased willingness of drug dealers to provide drugs on credit.⁷⁹⁰ Robinson and Doherty found that drug-related intimidation had increased in frequency since 2016 and may explain increased incidences of children running and dealing drugs.⁷⁹¹ However, Brennan and Van Hout framed drug-related intimidation as a ‘long-standing’ issue.⁷⁹² Brennan astutely draws parallels with the UK by noting how county lines drug dealing, while a uniquely British phenomena, is underscored by drug-related intimidation.⁷⁹³

People become indebted after buying drugs on credit, or if drugs are seized or stolen from someone storing, transporting or selling them.⁷⁹⁴ Debts can be large or small. One study

⁷⁸⁸ Redmond, S. (2020) [How Irish crime gangs are a hidden threat to child well-being](#). RTÉ Brainstorm

⁷⁸⁹ Citizens Assembly (2023) *Report of the Citizens’ Assembly on Drugs Use*. Dublin: Government Publications

⁷⁹⁰ Connolly, J. and Donovan, A.M. (2014) *Illicit Drugs Markets in Ireland*. Dublin: National Advisory Committee on Drugs and Alcohol

⁷⁹¹ Robinson, J. and Doherty, J. (2023) *Drug and Alcohol Trends Monitoring System (DATMS) 2022: Year 7*. Dublin: Blanchardstown Local Drug and Alcohol Task Force, p. 147.

⁷⁹² Brennan, R. and Van Hout, M.C. (2021) *An Evaluation of the Drug Related Intimidation Initiative (DRII) in North Inner City Dublin (NEIC)*. Dublin: Ana Liffey, p. 11.

⁷⁹³ Brennan, R. (2022) ‘Singing from the Same Hymn Sheet’: An evidence Base for the Development of an Interagency Drug Related Intimidation (DRI) Specific Training Programme in the SICDATF Area. Dublin: South Inner City Dublin Drug and Alcohol Taskforce.

⁷⁹⁴ Connolly, J. and Donovan, A.M. (2014) *Illicit Drugs Markets in Ireland*. Dublin: National Advisory Committee on Drugs and Alcohol; Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide; McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North*

identified young people being intimidated over €50 debts.⁷⁹⁵ Intimidation is not always economically rational, but comes from drug dealers not wanting to appear weak; which they view as opening them to victimisation.⁷⁹⁶ Recorded intimidation has included differing levels of physical violence, threats of violence, property damage and sexual violence.⁷⁹⁷ The level of threat likely depends on who is involved.

There can be victim/perpetrator overlaps.⁷⁹⁸ Most drug dealers must also buy drugs. Being indebted to more powerful actors places them in vulnerable positions, especially if the drug dealer has another vulnerability, such as being a child or addicted to drugs.

Furthermore, McCreery and colleagues identified that many did not see themselves as victims of intimidation because violent retaliation for failure to repay debts was viewed as a standard consequence for non-payment. Equally, many of those intimidating others did not see themselves as involved in intimidation, but rather as simply collecting owed debts.⁷⁹⁹ Intimidation has become ‘normalised’.⁸⁰⁰ These issues combined make identifying intimidation tricky, although policies are moving in the right direction with the Garda *Drug Related Intimidation Reporting* programme, and the interagency *Drug Related Intimidation and Violence Engagement* programme.

A relatively small, but nonetheless sizeable, percentage of those being intimidated were ordered to ‘work off’ their debts by storing, transporting or selling drugs, weapons or money and/or to physically harm others. Ten percent of reported intimidation cases reviewed by

East Inner City. Dublin: Ana Liffey Drug Project; Robinson, J. and Doherty, J. (2023) Drug and Alcohol Trends Monitoring System (DATMS) 2022: Year 7. Dublin: Blanchardstown Local Drug and Alcohol Task Force.

⁷⁹⁵ James, P.D., Comiskey, C. and Smyth, B.P. (2019) ‘*Debt on me head*’: A qualitative study of the experience of teenage cannabis users in treatment. *Journal of Addictions Nursing*, 30(3), 211–218

⁷⁹⁶ Cambridge, G., Lynch, O. and Windle, J. (2022) *The Desistance Journey: Into Recovery and out of Chaos*. Springer.

⁷⁹⁷ Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide; McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North East Inner City*. Dublin: Ana Liffey Drug Project

⁷⁹⁸ Brennan, R. and Van Hout, M.C. (2021) *An Evaluation of the Drug Related Intimidation Initiative (DRII) in North Inner City Dublin (NEIC)*. Dublin: Ana Liffey; Brennan, R. (2022) ‘Singing from the Same Hymn Sheet’: An evidence Base for the Development of an Interagency Drug Related Intimidation (DRI) Specific Training Programme in the SICDATF Area. Dublin: South Inner City Dublin Drug and Alcohol Taskforce; McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North East Inner City*. Dublin: Ana Liffey Drug Project.

⁷⁹⁹ McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North East Inner City*. Dublin: Ana Liffey Drug Project

⁸⁰⁰ Brennan, R. and Van Hout, M.C. (2021) *An Evaluation of the Drug Related Intimidation Initiative (DRII) in North Inner City Dublin (NEIC)*. Dublin: Ana Liffey

Connolly and Buckley had been ‘forced to sell drugs’ and nine percent to hold drugs.⁸⁰¹ Two studies identified females being ‘coerced into performing sexual acts’ to repay debts.⁸⁰² Debt bondage was ‘a frequently cited issue’ arising from interviews conducted by McCreery and colleagues. One participant, a drug dealer, described coercing people to ‘work it off’ by couriering drugs within Ireland and internationally, and storing drugs at their homes. Participants in the Blanchardstown study reported children being forced to ‘hold drugs or firearms or distribute drugs’.⁸⁰³ Brennan and Van Hout recorded an incident of what would be called cuckooing in the UK: drug dealers taking control of a woman’s home and turning it into a drug-selling house.⁸⁰⁴

Debts can be engineered to extort money from people who use drugs or coerce them to do risky jobs.⁸⁰⁵ A common strategy is to manipulate individuals into positions of vulnerability by allowing them to amass significant drug debts.⁸⁰⁶ As this debt must be ‘paid off’ to square the debt, it creates a vulnerable individual from someone who was previously a consensual collaborator.

These studies collectively demonstrate that drug debts are used to leverage exploitation of children, young people and adults within some local Irish drug markets. Whether these are victims of TCA is more difficult to tell from these snippets of interview data, as there would need to be evidence of some local or regional geographical movement, harbouring or recruitment for exploitation for the situation to be TCA, although there is some evidence that this occurs. Furthermore, several studies demonstrate an issue identified in the British county lines literature: offenders and perpetrators sometimes overlap and few victims fit ‘ideal types’.⁸⁰⁷

⁸⁰¹ Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide, p. 12

⁸⁰² Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide, p. 12; McCreery, S., Bowden, M., and Keane, M. (2020) *Debts, Threats, Distress and Hope – Towards Understanding Drug-related Intimidation in Dublin’s North East Inner City*. Dublin: Ana Liffey Drug Project

⁸⁰³ Robinson, J. and Doherty, J. (2023) *Drug and Alcohol Trends Monitoring System (DATMS) 2022: Year 7*. Dublin: Blanchardstown Local Drug and Alcohol Task Force, p. 147

⁸⁰⁴ Brennan, R. and Van Hout, M.C. (2021) *An Evaluation of the Drug Related Intimidation Initiative (DRII) in North Inner City Dublin (NEIC)*. Dublin: Ana Liffey

⁸⁰⁵ Connolly, J. and Buckley, L. (2016) *Demanding Money with Menace: Drug-related Intimidation and Community Violence in Ireland*. Dublin: Citywide.

⁸⁰⁶ Naughton, C.M., Redmond, S. and O’Meara-Daly, E. (2023) *The Greentown Project: Building evidence to inform intervention design for juveniles caught-up in local criminal networks*. *International Journal of Offender Therapy and Comparative Criminology*, 67(1), pp. 17–33; Redmond S. (2016) *Lifting the Lid on Greentown*. Government Publication

⁸⁰⁷ Marshall, H. (2023) *Victim as a relative status*. *Theoretical Criminology*; Windle, J., Moyle, L. and Coomber, R. (2020) ‘Vulnerable’ kids going country: Children and young people’s involvement in county lines drug dealing. *Youth Justice*, 20(1–2), pp. 64–78

Conclusions and Recommendations

TCA is at a conceptually early stage, with a limited evidence base. It is arguably where human trafficking for sexual exploitation was 20 years ago. TCA is also a unique form of human trafficking, compared to other forms of human trafficking, because the principle of non-punishment is particularly important as it is easily breached. Stronger protection against unnecessary prosecution of victims of human trafficking crime and severe human rights violations are at the centre of adequate response and a cornerstone in the fulfilment of our international obligations. As such, our recommendations centre on building a foundation upon which targeted policies and interventions can be designed, implemented and evaluated.

These recommendations require long-term planning. There are no quick fixes. It is also worth returning to the systematic review of labour trafficking research, which identified numerous and diverse barriers to tackling trafficking, including: inadequate resourcing; limited awareness; unmet training needs; insufficient information sharing; ineffective collaboration; corruption; and confusion around what constitutes labour trafficking in the first place.⁸⁰⁸ Such barriers will present for TCA also.

Existing definitions of TCA are overly broad and ambiguous and there is no consensus on what TCA is, at national or European level. As with all aspects of human trafficking, recognising the problem is the first step.⁸⁰⁹ Evidence from across the academic literature identifies developing clear operational definitions as key to understanding and countering complex problems.⁸¹⁰

The next broad step, after the problem has been recognised by stakeholders, requires the development of expertise in identifying and preventing trafficking and exploitation, disrupting trafficking networks and supporting victims/survivors.⁸¹¹ Studies have shown that many practitioners limit their conceptualisation of trafficking to sexual exploitation, and training increases the identification of trafficking victims in this aspect.⁸¹²

⁸⁰⁸ Cockbain, E., Bowers, K. and Dimitrova, G. (2018) Human trafficking for labour exploitation: the results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence. *Journal of Experimental Criminology*, 14(3), pp. 319–360

⁸⁰⁹ Aronowitz, A.A. and Veldhuizen, M.E. (2021) *The human trafficking–organized crime nexus*. In Allum, F. and Gilmour, S. (Eds.). *Routledge Handbook of Transnational Organized Crime*. Routledge, pp. 232–252; also Villacampa, C. and Torres, N. (2017) *Human trafficking for criminal exploitation: The failure to identify victims*. *European Journal on Criminal Policy and Research*, 23(2), pp. 393–408.

⁸¹⁰ Decker, S. H. (2015) Human trafficking: Contexts and connections to conventional crime. *Journal of Crime and Justice*, 38(3), 291–296.

⁸¹¹ Aronowitz, A.A. and Veldhuizen, M.E. (2021) *The human trafficking–organized crime nexus*. In Allum, F. and Gilmour, S. (Eds.). *Routledge Handbook of Transnational Organized Crime*. Routledge, pp. 232–252.

⁸¹² Farrell, A. and Pfeffer, R. (2014) *Policing human trafficking: Cultural blinders and organizational barriers*. *Annals of the American Academy of Political and Social Science*, 653, 46–64; Villacampa, C. and Torres, N.

The process for identifying victims of TCA is not significantly different from other forms of human trafficking – the ILO indicators of forced labour are present in many cases discussed in this report⁸¹³ – but identification does require an understanding of contextual nuances within different offences. Identification requires an understanding that victims of TCA may not be ‘ideal victims’. They may have previous criminal records, be problematically using drugs or alcohol, be aggressive and violent, and/or may not identify themselves as exploited or as having been trafficked. Many will have initially consented and chosen to commit criminal acts, but faced coercion later in the process. Furthermore, not all victims present with the same vulnerabilities.

Effective policies and practices are built upon analysis of systematically collected data. A lack of useful information is a common factor in design and implementation failure.⁸¹⁴ This requires both systematic data collection by State bodies and additional funding for independent researchers to interview victims and perpetrators (both incarcerated and active).

Only once the definition is clear, practitioners are on the same page and data has been collected can effective policies and interventions be designed, implemented and (independently) evaluated.

Countering TCA and supporting victims requires a cooperative, multi-agency approach. This will include a range of State (HSE, An Garda Síochána, Customs, schools, etc.) and third-sector organisations. As business organisations can play a role in monitoring and disrupting TCA, they may also be involved to some degree.⁸¹⁵

Illicit drug markets, and other forms of illicit enterprise, are dynamic. They change and adapt to both law enforcement and new opportunities. As such, taskforces must constantly evaluate the situation and, be adaptable and responsive to changing environments.

TCA is not a ‘wicked problem’,⁸¹⁶ but a set of ‘wicked problems’. Each problem is complex and multifaceted, often including a range of different offences, but always requiring holistic responses. Crime prevention experts have found that effective crime prevention measures

(2017) *Human trafficking for criminal exploitation: The failure to identify victims*. *European Journal on Criminal Policy and Research*, 23(2), pp. 393–408.

⁸¹³ Abuse of vulnerability; deception; debt bondage; physical and sexual violence; restriction of movement; debt bondage; withholding of wages; retention of identity documents; intimidation and threats; isolation; abusive working or living conditions; excessive overtime: ILO (2012) [ILO indicators of Forced Labour](#)

⁸¹⁴ Bullock, K., Farrell, G. and Tilley, N. (2002) *Funding and Implementing Crime Reduction Projects*. London: Home Office.

⁸¹⁵ Aronowitz, A.A. and Veldhuizen, M.E. (2021) *The human trafficking–organized crime nexus*. In Allum, F. and Gilmour, S. (Eds.). *Routledge Handbook of Transnational Organized Crime*. Routledge, pp. 232–252.

⁸¹⁶ Sparrow, M.K. (2008) *The Character of Harms: Operational Challenges in Control*. Cambridge University Press.

often focus on narrow offences rather than broad areas, and employ distinct projects over broader programmes. They also warn against blindly adopting ‘off the peg’ interventions: ‘Context is all important, and something that works in one setting will not necessarily work in another.’⁸¹⁷ Good crime prevention starts with an evaluation of the mechanics of the offence, and design of local problem-oriented approaches to addressing the problem within a specific context. That is, an intervention targeting traffickers exploiting ‘drug mules’ will look very different to an intervention targeting cannabis farms exploiting foreign labour, which will look very different to an intervention targeting cannabis farms cuckooing local people’s houses. Producing crime scripts of individual offences can be an import element in understanding how exploitation works in minute detail at different stages of an offence.⁸¹⁸ Once the scale and scope of the problem has been identified, and crime scripts drawn, then experts and stakeholders can develop and then implement preventive interventions. Such an approach is, however, reliant upon systematically collected data.

Directive 2011/36/EU, Article 11(1) requires Member States not to prosecute or impose penalties for any involvement in criminal activity which people were compelled to as human trafficking victims. Article 11 also provides for early assistance and measures to identify victims.

Individuals who are fearful of their exploiters or scared by An Garda Síochána or prosecutors have little incentive to cooperate. Ensuring victims are supported and feel safe may prove an effective means of disrupting criminal networks.

The Irish and international literature is clear that vulnerable individuals are exploited within drug markets, whether trafficked or not. They can be made vulnerable by mental health difficulties, alcohol and drug addiction, financial strain, past trauma, or age (children and the elderly). Vulnerable people are more likely to be arrested as they are given the more dangerous and risky tasks. An Garda Síochána, Customs and Revenue, the Director of Public Prosecutions and other agencies must become more aware of these vulnerabilities. The identification of victims requires those coming into contact with them, especially during police interviews and later through the courts and prison system, to identify vulnerability. This requires members of An Garda Síochána to not only be trauma aware (i.e. to have a basic

⁸¹⁷ Clarke, R. and Knutsson, J. (2006) Putting Theory to Work: Implementing Situational Prevention and Problem-oriented Policing. Lynne Rienner, p. 4; also Bullock, K., Clarke, R.V. and Tilley, N. (2010) Situational Prevention of Organised Crimes. Willan.

⁸¹⁸ Hancock, G. and Laycock, G. (2013) *Organised crime and crime scripts: Prospects for disruption*. In Bullock, K., Clarke, R.V. and Tilley, N. (Eds). Situational Prevention of Organised Crimes. Willan, pp. 172–192.

understanding that trauma exists and how it affects individuals), but also trained to interview those who are made vulnerable and/or have experienced significant trauma.⁸¹⁹

For many, the ‘victim’ label is double edged. It can help them avoid prosecution, access services and compensation, and validate their experiences. Many who are exploited identify themselves as ‘hard’ and survivors who did ‘bad things’ to survive a tough world.⁸²⁰ Being labelled a victim can undermine their sense of self and may be perceived as a weakness.⁸²¹

As such, identification requires more than a one-off interview and ‘must be approached as a process’ whereby a range of professionals ‘gradually instil in the victim the necessary trust and confidence to explain the circumstances leading to the criminal conduct’.⁸²²

The Commission recommends that the Department of Justice establishes and coordinates a national taskforce, composed of academic experts, stakeholders from the state and civil society, and victims/survivors of trafficking. This taskforce should:

- › Generate discourse around Trafficking for Criminal Activities and clearly define the problem and concept. Competing definitions, and their operational meaning, in national and local contexts and for different offences must be included in the programme of work of the taskforce.
- › Include competing definitions, and their operational meaning, in national and local contexts and for different offences, in the programme of work for the taskforce.
- › Ensure that the findings of the taskforce feed up to the European level. This is essential as Trafficking for Criminal Activities is a national, regional and international issue, requiring international collaboration.
- › Once the issue has been conceptualised, an awareness raising campaign must follow to communicate to practitioners and the public what Trafficking for Criminal Activities is and how to identify it.
- › Develop a systematic data collection strategy be rolled out across all State agencies who may come into contact with victims of Trafficking for Criminal Activities. Not only will this

⁸¹⁹ See Villacampa, C. and Torres, N. (2019) Human trafficking for criminal exploitation: Effects suffered by victims in their passage through the criminal justice system. *International Review of Victimology*, 25(1), pp. 3–18.

⁸²⁰ Cambridge, G., Lynch, O. and Windle, J. (2022) *The Desistance Journey: Into Recovery and out of Chaos*. Springer.

⁸²¹ Marshall, H. (2024) *Child criminal exploitation and the interactional emergence of victim status*. *British Journal of Criminology*; Maxwell, N. and Wallace, C. (2021) *Child Criminal Exploitation in Wales*. University of Cardiff; Windle, J., Moyle, L. and Coomber, R. (2020) ‘Vulnerable’ kids going country: Children and young people’s involvement in county lines drug dealing. *Youth Justice*, 20(1–2), pp. 64–78.

⁸²² Villacampa, C. and Torres, N. (2017) *Human trafficking for criminal exploitation: The failure to identify victims*. *European Journal on Criminal Policy and Research*, 23(2), pp. 393–408.

allow estimations of prevalence and scope of the issue, but will support resource allocation and distribution. A multi-agency shared database should be developed.

The Commission recommends that a training programme is developed to assist practitioners in identifying signs of Trafficking for Criminal Activities, and how to respond, and emphasises the need for more specialist training in advanced interview techniques with vulnerable people-suspects. Many victims of Trafficking for Criminal Activities will be afraid to disclose information, may not identify as a victim, may be unaware they were exploited and/or may have experienced significant trauma.

The Commission recommends that the Department of Justice funds independent research to explore: the operation of various iterations of Trafficking Criminal Activities in an Irish context, how victims have experienced Trafficking for Criminal Activities, and evaluate existing programmes. Interviews with both perpetrators and victims should be a focus of such research.

The Commission recommends that both national and local operational taskforces should be convened to share formal data and informal knowledge and intelligence, and undertake joint exercises where needed.

The Commission reiterates its recommendation that the non-prosecution principle be put into statute. This is especially important for victims of Trafficking for Criminal Activities.

The Commission reiterates its recommendation that efforts are made to ensure early identification in cases of suspected Trafficking for Criminal Activities to avoid victims being incarcerated on remand.

Chapter 3

Emerging Forms of Trafficking: Exploitative Surrogacy



Introduction

Original Directive Article 2 Offences concerning trafficking in human beings	Recast Directive Article 2 Offences concerning trafficking in human beings
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.	3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the exploitation of surrogacy, of forced marriage, or of illegal adoption.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.	5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used. This paragraph shall not apply to the exploitation of surrogacy as referred to in paragraph 3, unless the surrogate mother is a child.

This Chapter introduces one of the most pertinent novel and emerging forms of trafficking - exploitation of surrogacy. It aims at providing an initial understanding of this area in the Irish context through the examination of the national legal framework provided by the Health (Assisted Human Reproduction) Bill 2022 ('AHR'), including its relevance to, and compliance with, the anti-trafficking provisions of the EU legislation. After consideration of whether the procedures outlined in the AHR Bill are sufficiently aligned to the newly introduced EU-level standards on exploitative surrogacy, the Chapter concludes with recommendations on actions and measures available to ensure sufficient safeguards are in place to prevent and combat trafficking for the purpose of reproductive exploitation through surrogacy.

The Commission reminds that in the focus of this report, including this chapter, are the **relevant developments of 2023 and key developments up to and including May 2024**. While the Bill may have advanced through the State's legislative process, the analysis and findings remain valid.

Forms of human trafficking and exploitation beyond that of sexual and labour exploitation are increasing in prominence across the European Union. The European Commission reported that these cases accounted for 11% of all cases of trafficking for the latest reporting period.

Such forms of exploitation were not previously included in the definition of Article 2(3) of the EU Directive 2011/36/EU explicitly. However, on the 23 April 2024, the recast text of the EU Directive was adopted, which expanded the trafficking definition by explicitly including new forms of exploitation, specifically forced marriage,⁸²³ illegal adoption, and surrogacy. There continues to be an urgent need for EU-level guidelines on the transposition of the recast Directive, including a common understanding on the new concepts, especially that of ‘illegal adoption’ and ‘exploitation of surrogacy’. There have been reports that offers of illegal adoptions for Irish resident couples have been made. Given the seriousness and potential harm this may cause, this requires further investigation and attention.⁸²⁴ While distinct, the issues surrounding adoption and surrogacy are intrinsically linked, and the regulatory framework of the former impacts the latter. Therefore, a complex understanding of the interplay between these processes is also necessary. They should not be seen as completely separate processes. Instead, they must both be examined to ensure there are sufficient protections to prevent exploitation and sale of children. This is especially important in the ever-evolving reproduction and family forming in the contemporary world, which is now distinctly global.

‘Forced marriage’ is already an offence under section 38 of the Domestic Violence Act 2018, and carries a penalty of up to seven years of imprisonment. The issues surrounding forced marriage have been known to the assistance services in Ireland for some time, with a small body of research and reports having been produced to date. By way of example, research involving five EU Member States,⁸²⁵ including Ireland was conducted in 2016.⁸²⁶ The study highlighted the blurred line that exists between exploitative sham-marriages for the purposes of immigration advantages and trafficking for forced marriage where coercion and exploitation were present. Of note is also a more recent report by AkiDwA which examined the dynamics of early and forced marriages based on reported and service encountered cases.⁸²⁷ More recently, we have been made aware of a forthcoming report on forced marriages by the Immigrant Council of Ireland, which is expected to be published in 2024. In light of the work already being undertaken to better examine the crime of forced marriages and related aspects, the Commission instead focuses this Chapter on the as yet underexplored novel form of human trafficking, namely ‘exploitation of surrogacy’.

⁸²³ Forced marriage is already an offence under section 38 of the Domestic Violence Act 2018 with a penalty of up to 7 years imprisonment.

⁸²⁴ O'Reily A. (2024) [Facebook Groups Offering to arrange Private Adoption and Forged Birth Certificates](#), *Irish Examiner* (16 June)

⁸²⁵ HEUNI (2016) [Exploitative Sham Marriages: Exploring the link between sham marriages and human trafficking](#)

⁸²⁶ Cosgrave, C., O'Connor, M and Yonkova, N (2016) [Exploitative Sham Marriages and Human Trafficking in Ireland](#), Immigrant Council of Ireland: Dublin.

⁸²⁷ AkiDwA (2020) [Early and Forced Marriages](#)

Exploitation of surrogacy now squarely falls within the ambit of human trafficking. Article 2(3) of the recast Directive provides as follows:

“Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the **exploitation of surrogacy**, of forced marriage, or of illegal adoption.”⁸²⁸

In its Fourth Progress Report, the European Commission (EC) concluded that human trafficking ‘*remains a crime with a significant gender dimension*’.⁸²⁹ The EC observed that among the less known forms of exploitation, cases of illegal adoption, forced and sham marriages, illegal surrogacy and forced pregnancy have been detected.⁸³⁰ The global surrogacy industry was estimated to be worth \$14 billion in 2022 and through its rapid expansion may reach \$129 billion by 2032, according to the research and consulting company Global Market Insights.⁸³¹ This is nearly a ten-fold increase within the coming decade.⁸³²

Throughout 2022, An Garda Síochána Human Trafficking Investigation and Coordination Unit committed to participating in operations focused on, *inter alia*, emerging and novel forms of exploitation including commercial surrogacy and the selling of babies.⁸³³ This Chapter will examine the sections of the AHR Bill as they relate to the recognition of international surrogacy agreements, Part 8 and other relevant sections. The analysis will focus on whether the proposed amendments are compatible with the obligations of the recast EU Anti-Trafficking Directive in relation to preventing and combating exploitation of surrogacy. Undoubtedly, the obligations of the State to protect and guarantee the broader set of rights of children born through surrogacy, and intended parents are, of course, equally relevant to this

⁸²⁸ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#), Article 2.3

⁸²⁹ European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 3

⁸³⁰ Forced and sham marriages mainly affect vulnerable migrant women as well as ethnic minorities such as Roma. Such victims are often additionally trafficked for sexual exploitation, labour exploitation or forced begging. . European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), pp. 5-6; Eurojust (2020) [Report on National Legislation and Eurojust Casework Analysis on Sham Marriages](#), p. 25

⁸³¹ Global Market Insights (2022) [Surrogacy Market - By Type \(Gestational Surrogacy, Traditional Surrogacy\), By Technology \(Intrauterine Insemination \(IUI\), In-vitro Fertilization \(IVF\)\), By Age Group, By Service Provider & Forecast, 2023-2032](#)

⁸³² The Economist (2023) [What’s driving the baby-business boom?](#) (21 September)

discussion and must be considered. However, these considerations are beyond the scope of this Chapter, which instead focusses on preventing the reproductive exploitation of the *surrogate mother* as this is in focus of the recast Directive. In making the amendment to the definition of the human trafficking exploitation, the Recast EU Anti-Trafficking Directive is clear that it relates to the exploitation of the surrogate woman:

‘More specifically, as regards trafficking for the exploitation of surrogacy, this Directive targets those who coerce or deceive women into acting as surrogate mothers’.⁸³⁴

Notwithstanding, it is important to recognise that any measures that effectively regulate and protect the rights of surrogate mothers to be free from exploitation will have the correlating effect of safeguarding children against being born through exploitation, and guards intended parents from fraud or complicity in exploitation and human trafficking.⁸³⁵ As such, undertaking a critique of the effectiveness of the proposed regulatory regime is also relevant to whether the protections are sufficient to safeguard children from abandonment and trafficking, and the exploitation of surrogates.⁸³⁶

Overview and Background to the Health (Assisted Human Reproduction) Bill 2023

The Committee on Assisted Human Reproduction (CAHR) made recommendations as far back as 2005.⁸³⁷ Despite this, successive governments failed to enact legislation addressing surrogacy arrangements. In October 2017, the Government approved the drafting of a Bill on

⁸³⁴ [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Recital 6](#)

⁸³⁵ POLITICO and the German news outlet WELT uncovered in an investigation into BioTexCom - the largest surrogacy company operating – abuses. Though operating in Ukraine, Biotexcom is not registered as a Ukrainian company. Lawyers and Ukrainian officials have been unable to regulate the company due to this technicality (Hawley 2019). Ukrainian officials temporarily placed the founder, Albert Tochilovsky, under house arrest in 2018, given credible suspicions of child trafficking and tax evasion. However, no proceedings have been brought against him, see Hawley, S (2019) [Damaged babies and broken hearts: Ukraine’s commercial surrogacy industry leaves a trail of disasters](#), ABC News (19 August); also see Gridneff I., Schultheis E. and Drabyk D. (2023) [Inside a Ukrainian baby factory](#) Politico (23 September)

⁸³⁶ While there is no large-scale data surrogate mothers have reported undergoing forced abortions of fetuses unwanted by clients, significant underpayment, unsafe and oppressive living environments provided by surrogacy agencies, poor health care for both birth and pregnancy-related complications, and long-term physical damage due to the surrogacy process. See Madeline R. (2018) [Ukraine’s ‘baby factories’: The human cost of surrogacy](#). Aljazeera (13 September). There are also consistent reports from India, Nepal, Thailand, and now Ukraine, of client parents abandoning unwanted children, particularly those with disabilities, see Hawley, S (2019) [Damaged babies and broken hearts: Ukraine’s commercial surrogacy industry leaves a trail of disasters](#), ABC News (19 August)

⁸³⁷ Report on the Committee on Assisted Human Reproduction (2005)

Assisted Human Reproduction and triggered associated areas of research, based on the published General Scheme of the Assisted Human Reproduction Bill (2017).⁸³⁸ As initiated, the Bill aimed to: regulate the area of Assisted Human Reproduction in order to assist people to have children safely; clarify the legal position of children born from these practices; and ensure research and new reproductive technologies are carried out within a prescribed ethical framework. This Bill also provided for the establishment of the Assisted Human Reproduction Regulatory Authority ('AHRRA'), which is intended to be the body responsible for ensuring compliance with the new regulatory framework in respect of a wide range of practices undertaken within this jurisdiction. The Joint Oireachtas Committee on Health published the *'Report on Pre-Legislative Scrutiny of the General Scheme of the Assisted Human Reproduction Bill'* in July 2019,⁸³⁹ following the completion of its pre-legislative scrutiny process, which had commenced in January 2018.

On foot of Government approval of a proposal from Minister McEntee, Minister O'Gorman and Minister Donnelly, the Special Oireachtas Joint Committee on International Surrogacy was established in February 2022. The Committee was to consider and make recommendations on measures to address issues arising from international surrogacy; it was scheduled to run for three months⁸⁴⁰ and published its report in July 2022.⁸⁴¹

Domestic Altruistic Surrogacy

The AHR Bill, as initiated, proposed a two-stage regulatory framework for domestic altruistic surrogacy. In brief, the regulation:

- › Prohibited commercial surrogacy, with only reasonable expenses permitted, i.e. medical expenses/travel expenses, which must be verified;⁸⁴²
- › Only applied to gestational surrogacy (as opposed to 'traditional' surrogacy). Therefore, the surrogate cannot be genetically related to the child born through a surrogacy arrangement;⁸⁴³

⁸³⁸ [General Scheme of the Assisted Human Reproduction Bill 2017](#)

⁸³⁹ Joint Committee on Health (2019) [Report on Pre-Legislative Scrutiny of the General Scheme of the Assisted Human Reproduction Bill](#)

⁸⁴⁰ Meetings of the Special Oireachtas Joint Committee on International Surrogacy: 9th June; 2nd June; 26th May; 19th May; 12th May; 5th May; 28th April; 21st April; 20th April; 14th April; 7th April 2022

⁸⁴¹ Joint Committee on International Surrogacy (2022) [Final Report on International Surrogacy](#)

⁸⁴² [Health \(Assisted Human Reproduction\) Bill 2022 as initiated](#), Section 54 and Section 55

⁸⁴³ Only gestational surrogacy is permitted – s. 62(3)(a)(i) states that a parental order can only be made where the gamete was created not using the surrogates egg. All parties must be habitually resident in Ireland.

- › The surrogacy arrangement must be pre-approved by the new AHRRA, and the approval lasts for two-years;⁸⁴⁴
- › There is a requirement that all parties receive independent legal advice;⁸⁴⁵
- › There is a requirement that all parties (intending parent/s and surrogate mother) must have been habitually resident in Ireland for last two years;⁸⁴⁶
- › Provided that surrogate mothers are only approved if:
 - They have previous experience of giving birth
 - They are over the age of 25 years
 - They are deemed suitable to act as a surrogate mother by an Assisted Human Reproduction counsellor
 - They are assessed and approved as ‘suitable’ by a registered medical practitioner;⁸⁴⁷
- › Intending parent(s) must be over 21 and they must not be able to gestate a pregnancy, or have health reasons for not doing so;⁸⁴⁸ and
- › Parental Orders are issued at birth and full details are recorded on a National Surrogacy Register. Information can be supplied directly to the child from age 16-years, or before with parental consent.⁸⁴⁹

International Surrogacy

In the three months of their work, the Joint Committee on International Surrogacy examination focused on four areas:

- › Overview of the current situation regarding international surrogacy;
- › The rights, interests and obligations of intending parents in future international surrogacy arrangements and of intending parents of existing children already born through international surrogacy arrangements;
- › The rights, interests and welfare of children born through international surrogacy; and
- › The rights, interests and welfare of surrogate mothers.⁸⁵⁰

⁸⁴⁴ [Health \(Assisted Human Reproduction\) Bill 2022 as initiated](#), Section 51

⁸⁴⁵ [Ibid.](#), Section 58

⁸⁴⁶ [Ibid.](#), Section 49

⁸⁴⁷ [Ibid.](#), Section 52

⁸⁴⁸ [Ibid.](#), Section 53

⁸⁴⁹ The information goes only one way. It is the child’s right to identity, not the surrogates. Once the parental order is made the relationship between the surrogate and the child is extinguished. [Health \(Assisted Human Reproduction\) Bill 2022 as initiated](#), Section 67 (3)

⁸⁵⁰ Joint Committee on International Surrogacy (2022) [Final Report of the Joint Committee on International Surrogacy](#), p. 12

Recommendations of the Joint Committee on International Surrogacy

The Joint Committee arrived at the finding that ‘failing to recognise international surrogacy arrangements will not limit their occurrence, even if domestic surrogacy is allowed’.⁸⁵¹ It recommended, *inter alia*, that amending the AHR Bill to include international surrogacy is the most ‘appropriate way’ to regulate international surrogacy.⁸⁵² To provide a route for intended parents to be recognised as the legal parents of the child, it also recommended that a parental order system should be used to transfer parentage from the surrogate to the intended parents.⁸⁵³ Further, the report recommends the final transfer of parental rights should not occur until after the birth, to ‘allay concerns around the sale and trafficking of children’.⁸⁵⁴ The report also states that surrogates should be able to withdraw their consent for the transfer of parental rights following the birth.⁸⁵⁵

In relation to establishing international surrogacy arrangements, for instances that took place before the proposed regulations, it recommended that the process for recognition should be quick, smooth and as close to automatic as possible.⁸⁵⁶

In relation to the risk of exploitation and coercion in cases of payment to the surrogate, the Committee recommended that the AHR Bill should reword ‘altruistic surrogacy’ to ‘compensated surrogacy’, and this should also apply to the international surrogacy arrangements.⁸⁵⁷

It recommends that these payments be made directly to the surrogate, are verifiable and arise directly from the circumstances of the pregnancy.⁸⁵⁸

The Committee stated its belief that the country of origin or socio-economic background of the surrogate should ‘not influence assumptions around their capacity to consent’.⁸⁵⁹

In their consideration of the ‘safeguards against exploitation’, the Select Committee proposed, *inter alia*, that the surrogacy arrangement should be legal in the country that it takes place. In the words of the Select Committee:

⁸⁵¹ Joint Committee on International Surrogacy (2022) [Final Report on International Surrogacy](#)

⁸⁵² [Ibid](#)

⁸⁵³ [Ibid](#)

⁸⁵⁴ [Ibid](#)

⁸⁵⁵ [Ibid](#)

⁸⁵⁶ [Ibid](#)

⁸⁵⁷ [Ibid](#)

⁸⁵⁸ [Ibid](#)

⁸⁵⁹ [Ibid](#)

‘No surrogacy arrangement should be entered into in a country which prohibits surrogacy, and this should be a bar to a Parental Order [being granted] in the event that a surrogacy arrangement is engaged in such circumstances’.⁸⁶⁰

‘This should not bar the exercise of judicial discretion in exceptional circumstances’.⁸⁶¹

The Select Committee also proposed, as stated earlier, that the final transfer of parental rights should not occur until after the birth, to allay concerns around the sale and trafficking of children.⁸⁶²

On the genetic link between the intended parents and the child born through surrogacy, the Committee held that there should be a requirement for a genetic link between a child born through international surrogacy and at least one intended parent. According to the Committee:

‘a post-birth parentage transfer provides better safeguards against the sale or trafficking of children, as set out in the Verona Principles, allowing the surrogate a short consideration period to withdraw her consent for the transfer of parentage’.⁸⁶³

Moreover, that a criminal sanction⁸⁶⁴ for intended parents in international surrogacy arrangements should be introduced, where the requirements of the regulation are not met.⁸⁶⁵

The Select Committee set out a list of what they considered to be ‘the core standards’, including that it is incumbent on the intended parents to provide *evidence* in order for the international surrogacy arrangement’ to be recognised in Ireland. These include evidence to the AHRRA:

- › that all parties to the arrangement have consented to it freely and fully, with the surrogate free to withdraw her consent following the birth no sooner than seven days and no later than 21 days following the birth;
- › that independent medical advice, legal advice and counselling on the implications of surrogacy have been received by the intended parents and the surrogate;
- › of the details of the intended parents, surrogate, and any gamete donors to be entered into the National Surrogacy Register;
- › that no payments have been made to the surrogate beyond reasonable expenses so that she is not left at a financial loss by the process, this includes an outline of the

⁸⁶⁰ [Ibid](#), Recommendation 6

⁸⁶¹ [Ibid](#), Recommendation 5

⁸⁶² [Ibid](#)

⁸⁶³ [Ibid](#), p. 38

⁸⁶⁴ The AHR Bill provides for penalties of (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding two years, or both.

⁸⁶⁵ Joint Committee on International Surrogacy (2022) [Final Report on International Surrogacy](#)

surrogate's financial position, including income and regular outgoings and details of all (non-refundable) reimbursements of expenses or compensation paid by the intended parents to the surrogate be made (pre-birth);

- › the surrogacy agencies itemise all expenses and fees paid by them for any professional services on behalf of the intended parents with the list of these expenses having to be submitted by the intended parents to the AHRRA; and
- › that the surrogacy arrangement is legal in the jurisdiction in which the arrangement will take place, and that the surrogate's right to bodily autonomy has been respected at all times.⁸⁶⁶

According to the Select Committee recommendations, if the AHRRA is satisfied with the submitted evidence, they shall issue a pre-authorisation certificate to the intended parents.⁸⁶⁷

The intended parents must inform the Department of Foreign Affairs of the surrogacy arrangement in order for them to facilitate preparation of Emergency Travel Certificate (pre-birth). Upon the birth of the child, the post-birth consideration period within which the surrogate must give her consent is between 7-21 days. During this time the surrogate may consent to confirm her agreement and if she so does she signs an affidavit.

A remote/online family court hearing for Parental Order applications is to be arranged to coincide with the due date of the child, no sooner than 7 days and no later than 21 day after the birth. The court is charged with examining the remaining evidence, including the affidavit and the pre-authorisation certificate. The court will also carry out 'best interest of the child test'. Then, if all requirements are satisfied, the Court may issue a Parental Order.⁸⁶⁸

Legislative Analysis of the Protections within the AHR Bill to Guard against Exploitation of Surrogacy in International Surrogacy Arrangements

The AHR Bill passed both Committee (Third Stage), and Report Stage (Fourth Stage) on 6 March 2024, and Final Stage (Fifth Stage) of the Dáil on 29 May 2024. This followed an extensive 256 amendments to the Bill.⁸⁶⁹ These amendments in large part incorporated the recommendations of the Joint Committee to provide for, *inter alia*, recognition of international

⁸⁶⁶ [Ibid](#)

⁸⁶⁷ [Ibid](#)

⁸⁶⁸ [Ibid](#)

⁸⁶⁹ [Health \(Assisted Human Reproduction\) Act 2024 \(Act 18 of 2022\) Health \(Assisted Human Reproduction\) Bill 2022 \(Bill 29 of 2022\)](#)

surrogacy arrangements through the two-stage process of pre-authorisation by the AHRRA, followed by the granting of a Parental Order once certain the conditions have been met.

It is apparent from the Joint Committee and Committee Stage debates in the Dáil that there is a clear understanding that Irish law is not capable of regulating what occurs in other countries. In fact, this was one of the guiding principles underpinning the work of the Joint Committee, wherein they state *‘that the Committee acknowledges that the State has no control over actions undertaken by individuals in other jurisdictions’*.⁸⁷⁰ Despite this clear recognition, that is precisely what Part 8 - providing for pre-authorisation by the AHRRA and the post-birth Parental Order by Irish Courts of International Surrogacy Agreements – intends and proposes to do. We raised serious concerns, in our role as Rapporteur, that there had not been sufficient regard paid to the State’s obligation to prevent and combat this form of human trafficking exploitation, and drew attention to the explicit obligations set out in the recast EU Anti-Trafficking Directive to prevent and combat exploitation of surrogacy. The Commission has written twice to Minister Donnelly, on 31 January⁸⁷¹ and on 11 April 2024,⁸⁷² yet has not received a response to the date of drafting of this Report. While we recognise that domestic surrogacy arrangements *may* be sufficiently regulated and the rights of those involved safeguarded, we remain concerned that the international surrogacy provisions cannot be regulated to an equivalent extent, leading to a double-standard of protection between international surrogacy arrangements and domestic surrogacy arrangements. Notably, the greatest levels of protection are being afforded to lower risk forms of surrogacy under domestic arrangements, and lower levels of oversight to the more risky international arrangements.

For the Commission, these concerns have been compounded by the manner in which the complex provisions were inserted into the AHR Bill: through 256 amendments at Dáil Committee Stage.⁸⁷³

When speaking to the substantive matters contained in the amendments the Minister recognised that the [new] Part 8 “is essentially a new Bill on international surrogacy” and that “this large group of amendments relates to the insertion of a brand new Part 8 into the Bill, which essentially has the scale and complexity of a stand-alone Bill.”⁸⁷⁴

⁸⁷⁰ Joint Committee on International Surrogacy (2022) [Final Report on International Surrogacy](#), p. 14

⁸⁷¹ [Commission letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee 31 January 2024, RE: Questions regarding the proposals to regulate international surrogacy amid EU-wide concerns for reproductive exploitation and trafficking;](#)

⁸⁷² [Commission letter to Minister of Health, Donnelly, cc. d Minister for Justice, McEntee 11 April 2024, RE: Revised EU Anti-Trafficking Directive Obligations to Prevent and Combat Exploitation of Surrogacy and Part 8 of the \(Amended\) Assisted Human Reproduction Bill – International Surrogacy.](#)

⁸⁷³ [Health \(Assisted Human Reproduction\) Bill 2022 As amended in the Select Committee on Health](#)

⁸⁷⁴ [Ibid](#)

This legislative approach is highly unusual, especially on a matter that is, by all accounts, a legal minefield full of complex human rights and ethical concerns.

We remain concerned that the insertion of Part 8 – International Surrogacy - would extend the legislation to a practice not permitted by any other EU State, in an area marred with increasing human trafficking. In particular, the Commission is concerned that this legislative approach may thwart other countries’ efforts to protect their own citizens from trafficking and reproductive exploitation. It is the duty of the Commission as National Rapporteur to raise these concerns with the State and into public discourse.

In his address to the Joint Committee, Dr Brian Tobin (National University of Ireland, Galway) made a number of important observations, relevant to the questions this Chapter explores:

‘[A]ttempting to reduce double standards by requiring a regulatory body like the Assisted Human Reproduction Regulatory Authority to confirm the domestic safeguards have been complied with before surrogacy takes place abroad have been rejected elsewhere as being impractical in the context of international surrogacy.’

‘[It] would also be contrary to ... international best practice for a domestic administrative process to pre-approve the legal parentage of a child born in the context of international surrogacy.’

‘[M]inisterial regulations designating certain international services destinations as equivalents and automatically recognising parentage established in such jurisdictions would likely be of very limited effect because few jurisdictions would fully qualify for recognition. Leaving aside the commercial element, some jurisdictions might qualify as equivalent as regards their pre-surrogacy safeguards for surrogates, such as medical and psychological evaluations and legal advice, but they would fall foul of a post-birth safeguard provided under the 2022 Bill, namely, that the surrogate is the legal parent and guardian of the child at birth and can refuse to consent to a parental order.’

‘The law in some commercial surrogacy destinations in Europe and the US that are popular with Irish intended parents strips the surrogate of her legal parentage prior to the birth of the child and does not allow her to revoke her consent freely after the birth to the intended parents having exclusive legal parentage. Such laws are at odds with Part 7* of the 2022 Bill and the requirements of international law. Further, since the publication of the Verona Principles in 2021, international best practice requires, in any event, that a post-birth best interests of the child determination is carried out by a court or competent authority where at least one state does not permit the specific arrangement. To my mind, any of the above suggestions appear inappropriate in the context of international surrogacy’

‘[L]egislation regulating domestic and international surrogacy should not be rushed.’

‘Going forward, I would agree with Professor Madden that the potential for double standards might best be mitigated by the establishment of a more favourable statutory regime for domestic surrogacy, because the one currently provided for in the 2022 Bill is unlikely to be availed of by many, if any, intended parents.’⁸⁷⁵

While we consider some of the most problematic provisions below, it stands as an overarching point that any domestic regulation that seeks to control surrogacy arrangements in other jurisdictions will likely be ineffective in preventing trafficking for exploitation of surrogates, is not considered best practice, and is unlikely to be capable of being meaningfully implemented.

Role of Intermediaries in International Surrogacy Arrangements

Section 97 of the AHR Bill reads:

‘Notwithstanding sections 93 and 96, the services of an intermediary in a surrogacy jurisdiction may be availed of by intending parents (or, in the case of a single intending parent, that intending parent) in a permitted international surrogacy only if—

(a) the provision of those services by that intermediary in that jurisdiction to those intending parents (or, in the case of a single intending parent, that intending parent) is so provided in accordance with the law of that jurisdiction, and (b) the fees paid to the intermediary for the provision of those services to those intending parents (or, in the case of a single intending parent, that intending parent) (in this paragraph referred to as the “relevant fees”) are reasonable having regard to all the circumstances of the case, including—

(i) the nature of those services,

(ii) the level of fees paid in that jurisdiction for services (if any) comparable to those services, and

(iii) where a legal, medical or counselling service (or any combination thereof) related to the permitted international surrogacy is provided in that jurisdiction to those intending parents (or, in the case of a single intending parent, that intending parent) through the intermediary, the relevant fees as a proportion of the combination of the relevant fees and the professional fees paid for the legal, medical or counselling

⁸⁷⁵ Dáil Éireann Joint Committee on International Surrogacy Debate (2022) [Potential Double Standards in Protections for Surrogate Mothers in Domestic Arrangements: Discussion](#) (26 May)

service (or, as the case may be, the combination of the professional fees paid for the legal, medical and counselling services)'.⁸⁷⁶

The UN Special Rapporteur on the sale and sexual exploitation of children writes:

'In theory, a truly "altruistic" surrogacy does not constitute sale of children, since altruistic surrogacy is understood as a gratuitous act, often between family members or friends with pre-existing relationships, and often without the involvement of intermediaries. Hence, in theory, altruistic surrogacy is not an exchange of payment for services and/or transfer of a child based on a contractual relationship. However, the development of organized surrogacy systems labelled "altruistic", which often involve substantial reimbursements to surrogate mothers and substantial payments to intermediaries, may blur the line between commercial and altruistic surrogacy. Therefore, labelling surrogacy arrangements or surrogacy systems as "altruistic" does not automatically avoid the reach of the Optional Protocol to the Convention on the Rights of the Child on the sale of children,⁸⁷⁷ child prostitution and child pornography, and it is necessary to appropriately regulate altruistic surrogacy to avoid the sale of children'.⁸⁷⁸

The Verona Principles define "commercial surrogacy" as follows:

'Commercial (or for profit) surrogacy exists where the surrogate mother agrees to provide gestational services and/or to legally and physically transfer the child, in exchange for remuneration or other consideration. One indication of commercial surrogacy is the involvement of for-profit intermediaries.'⁸⁷⁹ [emphasis added]

The Verona Principles further state:

'Activities of intermediaries can constitute or lead to the sale of the child:

a. due to the intermediaries' creation and control of commercial surrogacy markets and networks;

⁸⁷⁶ [Health \(Assisted Human Reproduction\) Bill 2022](#), Section 97

⁸⁷⁷ Article 1 CRC Optional Protocol: "States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol." Article 2: "For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".

⁸⁷⁸ Report of the UN Special Rapporteur on the sale and sexual exploitation of children, A/74/162, 15 July 2019, pp. 16- 17

⁸⁷⁹ International Social Service (2021) [Verona Principles](#), p. 7

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- b. if the intermediaries exercise such control over the surrogate mother and/or child as to be responsible for transferring the child for remuneration or any other consideration.
 - c. intermediaries and other professionals involved in surrogacy arrangements receive remuneration for services rendered which are excessive, according to the standards of comparable work in the same profession where the work is performed'.⁸⁸⁰
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If the intermediaries envisaged by Section 97 are allowed even a modest profit from surrogacy, then this would appear to be an indication of commercial surrogacy per the Verona Principles. In the Verona Principles, one of the indications of a commercial surrogacy is the “involvement of for-profit intermediaries.” While commercial surrogacy is not expressly prohibited under the Principles *per se*, the criteria illustrate how the involvement of intermediaries can lead to the ‘sale of a child’, and the Principles urge proper regulation of intermediaries to prevent such outcomes.

Irrespective of whether commercial surrogacy is prohibited by the Verona Principles, Section 93 (prohibition of commercial surrogacy) of the AHR Bill prohibits “any person” from giving or receiving payment, reward or consideration for “entering into or giving effect to the (surrogacy) agreement” in surrogacy arrangements. **There is a clear double standard concerning the involvement of intermediaries in domestic and international surrogacy arrangements, while prohibited in the former is expressly permitted in the latter.**

The Joint Committee was silent on the role of intermediaries in their recommendations. Notwithstanding the prohibition of the use of intermediaries in domestic surrogacy arrangements, the services of an intermediary are explicitly foreseen and allowed in ‘permitted international surrogacy’. This is where, in the context of the Bill however, the provision of the services by the intermediary is in accordance with the law of that jurisdiction and the fees are “reasonable” having regard to the nature of the services and the level of the fees paid in that jurisdiction for services which are comparable to those services provided. This approach seeks to disincentivise the most overtly unscrupulous operators who may be seeking windfall financial gains, however, for-profit intermediaries with reasonable profit levels are permitted in the Bill, which renders the international surrogacy arrangement ‘commercial’ according to the Verona Principles. Again, we reiterate our concern that this proposed approach is not capable of regulating what and how these intermediaries are operating in other countries.

⁸⁸⁰ [Ibid.](#) 14.11, p. 24

Reasonable Expenses

Sections 57 and 93 prohibit commercial surrogacy in domestic and international arrangements, respectively. Section 58 outlines an exhaustive list of what is meant by ‘reasonable expenses’ in a domestic surrogacy arrangement. Importantly, section 58(7) also provides that:

‘An expense is reasonable under any of subsections (2) to (5) only if—

(a) the expense is actually incurred, and

(b) the amount of the expense can be verified by receipts or other documentation’.⁸⁸¹

Similarly, section 94 provides for what is to be considered ‘reasonable expenses’ in an international arrangement:

‘(1) An obligation under a surrogacy agreement (SJ) to pay or reimburse the surrogate mother’s reasonable expenses is enforceable if the agreement was made before the transfer of the embryo to the surrogate mother.

(2) For the purposes of this Part, the reasonable expenses are the surrogate mother’s reasonable expenses associated with any of the following matters that are part of the surrogacy agreement (SJ):

becoming or trying to become pregnant;

(b) pregnancy or birth;

(c) entering into and giving effect to the agreement.

(3) The reasonable expenses of a surrogate mother associated with the pregnancy or birth referred to in subsection (2)(b) include the following:

(a) any pre-natal or post-natal medical expenses associated with the pregnancy or birth;

(b) any travel or accommodation expenses associated with the pregnancy or birth;

(c) the expense of reimbursing the surrogate mother for any net loss of income entailed in being the surrogate mother but only for the following periods:

(i) a period of not more than 6 months during which the birth happened or was expected to happen;

⁸⁸¹ [Health \(Assisted Human Reproduction\) Bill 2022](#)

(ii) any other period during the pregnancy or thereafter, not exceeding 12 months in total, when the surrogate mother was unable to work on medical grounds related to pregnancy or birth.

(4) The reasonable expenses associated with entering into and giving effect to a surrogacy agreement (SJ) referred to in subsection (2)(c) include the following:

(a) the expenses associated with the surrogate mother receiving AHR counselling (SJ) in relation to the agreement (whether before or after she entered into the agreement);

(b) the expenses associated with the surrogate mother receiving independent legal advice in relation to the agreement or a parental order related to the agreement;

(c) the expenses, including the reasonable travel and accommodation expenses, associated with the surrogate mother being a party to proceedings in relation to making a parental order related to the agreement.

(5) Subject to subsection (8), the reasonable expenses of the surrogate mother under any of subsections (2) to (4) shall include any other matters that may be prescribed.

(6) Where the Minister prescribes matters under subsection (5), he or she shall, in addition to having regard to the other provisions of this Act, have regard to reasonable expenses that may be incurred by the surrogate mother in relation to any one or more than one of the following:

(a) maternity clothing;

(b) paid housework or childcare undertaken by persons other than the surrogate mother and her spouse, civil partner or cohabitant (if any);

(c) pregnancy aids that assist in the comfort and well-being of the surrogate mother;

(d) any other expenses typically incurred in the course of a pregnancy.

(7) An expense is reasonable under any of subsections (2) to (5) only if—

(a) the expense is actually incurred, and

(b) the amount of the expense can be verified by receipts or other documentation.

(8) On and after the establishment day, the Minister shall not prescribe matters under subsection (5) except after consultation with the AHRRA'.⁸⁸²

Having regard to the provisions of section 94, it appears that the AHR Bill intends the surrogate mother to be reimbursed for reasonable expenses incurred in the country where

⁸⁸² [Health \(Assisted Human Reproduction\) Bill 2022](#)

she lawfully resides and where the surrogacy takes place. Two matters immediately arise, how could an Irish Court, or the AHRRA ensure that the payments were ‘reasonable expenses’? In addition, how would a surrogate mother be able to enforce her right to be reimbursed for these expenses?

Beyond these evidential and procedural issues, if an international surrogate mother was reimbursed having regard to what might be deemed ‘reasonable’ in an Irish context, this might give rise to the surrogacy being a commercial one, as the surrogate mother would be reimbursed for more that she would have spent locally. The economic disparity would have operated to her financial advantage, rendering the surrogacy commercial and therefore unlawful.

Contrariwise, if the surrogate mother resided in an economically underdeveloped country, the economic disparity vis-à-vis ‘reasonable expenses’ might operate to the intending parents’ financial advantage. The ‘reasonable expenses’ provision might operate as an incentive for intending parents to enter into surrogacy agreements with women from underdeveloped or less economically advantaged countries. This also implies commercialisation, which is as a matter of principle is deemed unlawful.

Approval of Surrogacy Jurisdiction

Section 81 provides for “approved surrogacy jurisdiction”, meaning a surrogacy jurisdiction for the time being approved under section 81. The AHR Bill lists the ‘matters which the AHRRA shall have regard’ and read:

‘(1) The AHRRA may, after consultation with the Minister and the Minister for Foreign Affairs and having regard to the matters specified in subsection (2) for the purposes of this subsection, by order approve a surrogacy jurisdiction specified in the order, with effect from a date specified in the order for the purpose, as a jurisdiction in which an international surrogacy may be undertaken if the AHRRA considers that such approval is appropriate in all the circumstances of the case.

(2) The matters which the AHRRA shall have regard to for the purposes of deciding whether or not to approve under subsection (1) a surrogacy jurisdiction as a jurisdiction in which an international surrogacy may be undertaken are as follows:

(a) the law of the jurisdiction relating to surrogacy, including whether or not that law—

(i) permits a commercial surrogacy referred to in section 93, and

(ii) requires intending parents or one of them (or, in the case of a single intending parent, that intending parent) to be resident or domiciled in the jurisdiction;

(b) without prejudice to the generality of paragraph (a), the protections afforded under the law of the jurisdiction to children that may be born as a result of AHR treatment (SJ) in the event of any such children not receiving adequate care and protection;

(c) the ability of the AHRRA to monitor compliance with the provisions of this Part of an international surrogacy undertaken in the jurisdiction;

(d) any civil or military activities, or potential civil or military activities, relating to the jurisdiction that may present a potential significant risk of harm to any person participating, in any capacity, in an international surrogacy undertaken in the jurisdiction;

(e) the law of the jurisdiction relating to medical professionals undertaking surrogacy in the jurisdiction, in particular whether there is a regulatory authority (howsoever described) exercising oversight of such professionals and the nature and degree of such oversight;

(f) the law of the jurisdiction relating to persons acting as intermediaries (if any) in the jurisdiction, in particular whether there is a regulatory authority (howsoever described) exercising oversight of such intermediaries and the nature and degree of such oversight;

(g) the extent to which the law of the jurisdiction—

(i) provides for the rights of pregnant women, including surrogate mothers, as regards their health, privacy and bodily autonomy,

(ii) makes no distinction, as regards the rights referred to in subparagraph (i), between pregnant women who are not surrogate mothers and pregnant women who are surrogate mothers, and

(iii) is enforced as regards the rights referred to in subparagraph (i).

(3) Subject to subsection (4), the AHRRA may, after consultation with the Minister and the Minister for Foreign Affairs, by order, revoke the approval under subsection (1) of a surrogacy jurisdiction specified in the order, with effect from a date specified in the order for the purpose, if, at a subsequent time, the AHRRA considers that, if that jurisdiction were not so approved and having regard to the matters specified in subsection (2) for the purposes of subsection (1), such approval would not be appropriate in all the circumstances of the case.

(4) The revocation under subsection (3) of the approval of a surrogacy jurisdiction under subsection (1) shall not affect an international surrogacy, undertaken in that jurisdiction, the subject of a surrogacy agreement (SJ) that has been approved under section 90 before the date, specified in the order concerned under subsection (3), on which that revocation takes effect.

(5) For the avoidance of doubt, it is hereby declared that the revocation under subsection (3) of the approval under subsection (1) of a surrogacy jurisdiction shall not be construed to prevent that jurisdiction from again being so approved'.⁸⁸³

The question of what countries are deemed, by the Minister, to be 'approved jurisdictions' will prove to be critical to how the law operates. Notably, the laws and regulations surrounding surrogacy across the world are in constant flux, and more often than not, it is a grey area. While there *may* be some jurisdictions that may meet some of the requirements of the Irish law, the majority of countries prohibit or are intending to prohibit commercial or transnational surrogacy. For example, India, Thailand, Nepal, and Cambodia are the most recent countries to prohibit commercial surrogacy, and surrogacy to foreign nationals due to evidence of trafficking and exploitation within the surrogacy markets. Georgia is expected to follow suit next year.⁸⁸⁴ There are other countries where the situation is decidedly less clear and continuously evolving. For example, Ukraine – previously a popular destination for Irish couples – is now not a safe option, yet people continue to travel⁸⁸⁵ with Biotexcom the largest commercial surrogacy company operating in Ukraine, estimated to account for 25 percent of the global surrogacy market.⁸⁸⁶

Then there are the countries without laws or regulations, the 'grey areas'. For example, in Kenya there is no formal law, although commercial surrogacy is 'permissible' and there are certain legal protections in place. In Malaysia, there is formal law; commercial surrogacy is "permissible" and legal guidelines are currently under review. In Nigeria, there is no formal law, although commercial surrogacy is 'permissible'. No country in the EU permits commercial surrogacy. Although, the problems with surrogacy were starkly highlighted recently in Greece, when eight people were arrested at a major fertility clinic in Crete, and are now under investigation for trafficking vulnerable women from countries like Georgia and Albania to become surrogates for foreign couples. Police say the women were brought to Crete under false pretences and made to undergo hormonal treatments, egg extraction and insemination for surrogacy.⁸⁸⁷ Greek investigators claim the clinic has exploited more than 160 women, orchestrated illegal adoptions and offered counterfeit IVF treatment to intending parents. The service was advertised widely on the internet, including on the 'Growing

⁸⁸³ [Health \(Assisted Human Reproduction\) Bill 2022](#)

⁸⁸⁴ Allen C. (2024) [Georgia's Proposed Ban Could Change the Landscape for Hired Pregnancies](#), *New Lines Magazine* (27 February)

⁸⁸⁵ [Ibid](#)

⁸⁸⁶ Blanco, S. (2018) [The dark side of Ukraine's surrogacy boom](#), *El País* (1 October)

⁸⁸⁷ McInerney S. (2023) [Concern surrogacy laws may lead to 'coercion' of intended parents](#), *RTÉ* (26 September)

Families' website, which said the Mediterranean Fertility Clinic had "an excellent surrogate support programme."⁸⁸⁸

Globally, Russia and Ukraine have more permissive laws, which permit commercial surrogacy – including for foreign intended parents. In 2020 alone, Ukrainian surrogacy companies held over a quarter of the global surrogacy market with the Ukrainian government not taking action despite concerns regarding unethical practices within the industry.⁸⁸⁹ Commercial surrogacy is legal for heterosexual couples that can prove a medical reason for their inability to have a child.⁸⁹⁰

It is hard to imagine which countries will actually meet requirements of the AHR Bill *de jure*, let alone *de facto*. While the efforts of the legislators to prevent against abuses are to be commended, it is arguable that the Bill creates a regime that is simply unworkable extra-jurisdictionally. The danger is that these regulations would be a form of 'light-touch' regulation in practice. Not only would this have the potential to increase the risk of exploitation of surrogates and the sale of children, but may also inadvertently put Irish courts and the AHRRA in the position of having given a 'stamp of approval' to dubious and exploitative arrangements in other countries.

There is a concern about whether, in seeking to protect against exploitative practices, the legislation is counter-productive. International surrogacy is predicated on payments being made to the surrogate mothers. Bar exceptional cases, it is unlikely that a woman would undertake a pregnancy on behalf of a stranger from another country, without being offered a significant incentive. It is a fiction to suggest otherwise, but that appears to be the basis on which the legislation is to operate.

A potential outcome, is that intended parents will continue to avail of the existing services internationally and will seek to circumvent the scrutiny of the AHRRA by making hidden payments to the surrogate mother, or to the intermediaries. Intermediaries, or others may work to devise methods and ways to 'comply' with the Irish regulations, but there may be little to no way of verifying whether these are accurate.

Thus, the proposed regime risks creating an outcome whereby intended parents, intermediaries and surrogate mothers will become parties to a fraud.

Within a clandestine market, it would be harder for the AHRRA to accurately assess the risk of exploitation of surrogate mothers; since all of the concerned parties would be hiding the true picture from the regulatory authority. This is of particular concern when considered alongside

⁸⁸⁸ [Ibid](#)

⁸⁸⁹ Lamberton E. (2020) [Lessons from Ukraine: Shifting International Surrogacy Policy to Protect Women and Children](#), *Journal of Public & International Affairs* (1 May)

⁸⁹⁰ Hawley, S (2019) [Damaged babies and broken hearts: Ukraine's commercial surrogacy industry leaves a trail of disasters](#), *ABC News* (19 August)

obligations on the Irish State arising from the recast EU Anti-Trafficking Directive. Ultimately, when this reality becomes apparent, the AHRRA must refuse to endorse the making of parental orders as it would not be satisfied that payments to surrogate mothers were confined to reasonable expenses, or that any other of the requirements were met such as the age of the surrogate, or the number of times she had acted as a surrogate, or the origin information of any donor gametes used. Alternatively, fictitious expenses and terms of the agreement could be submitted and accepted by the AHRRA. Depending on the approach adopted by the AHRRA, this may emerge as an unprincipled ‘*nod and wink Irish solution to an Irish problem*’, to use the expression of O’Donnell J (as he then was) in the case of *M.R & DR v. An tArd Chláraitheoir*.⁸⁹¹ This may therefore undermine both the rights of those involved, and the legitimacy of the authority of the AHRRA.

There is the question of what happens if people undertake non-permitted arrangements. Helpfully, the European Court of Human Rights (‘ECtHR’) has provided useful guidance on this matter. The ECtHR has been consistent in their case law that different means of respecting adult – child relationships established following surrogacy does *not* necessitate a State to institute a legal recognition of the parent-child relationship equal to that of parent-child relationships that do not involve surrogacy.

The choice of means by which to achieve recognition of the legal relationship between the child and the intended parents falls within the State’s margin of appreciation. The courts have accepted adoption and long-term fostering as examples of acceptable means.⁸⁹² The obligation for children born under a surrogacy arrangement to be adopted in order to ensure the recognition between the genetic mother and her child does not violate the mother’s right to private life.⁸⁹³ Thus, the ECtHR takes into account a number of factors, such as the public interest in preventing exploitation and whether there is a genetic relationship between the adult and the child. There are a number of considerations that must be balanced.

It must not be the case that regulations that intend to protect and guard against exploitation are simply ignored, or bent as this undermines the entire purpose and utility of regulating in this important area.

Although a large part of the debate centres on the payments made to surrogates, this is not, nor should it be the only concern. The inability to effectively regulate practices in other countries extends far beyond the issue of payment, which may or may not indicate exploitation. There are wider concerns about the control exercised over surrogates, and the

⁸⁹¹ [2014] 3 IR 533

⁸⁹² Advisory Opinion No. P16-2018-001, 2019, §§ 37-46; *K.K. and Others v. Denmark*, 2022, §§ 74-77

⁸⁹³ *D v. France*, 2020, §§ 63-72 applying the principles established in *Mennesson v. France*, 2014, and the *Advisory Opinion No. P16-2018-001*, 2019

risk of exploitation. There have been instances where women underwent selective reduction - the practice of reducing the number of fetuses in a multiple pregnancy - without their knowledge or consent. In the US, contract terms are negotiated by the surrogate and the intended parent or parents. However, disputes can arise regarding specific aspects of the arrangement, such as decisions regarding foetal reduction or termination. Surrogates claim to have been threatened with lawsuits if they do not fulfil the verbal, or contractual conditions of the contract.⁸⁹⁴ Surrogates have been required to live in surrogacy ‘hostels’ where they were physically monitored throughout the pregnancy.⁸⁹⁵ It is commonplace for surrogacy agreements to prescribe the surrogate mothers behaviour during pregnancy, including obstetrical care, abstinence from possibly harmful substances, amniocentesis and abortion⁸⁹⁶.

It is important to highlight that our concerns are not confined simply to the issues surrounding payments, but also on the limitations, or the inability of the AHR Bill to ensure the full range of regulatory protections that are intended to guard against exploitation and harm.

Review of the Operation of the Health (Assisted Human Reproduction) Bill, once Enacted

It is to be welcomed that section 6(1) provides that ‘The Minister shall, not later than 3 years following the passing of this Act, carry out a review of the operation of this Act, subject to *subsection (2)*, and that section 6(2) provides that ‘Where sections of this Act have yet to be commenced within the timeframe set out in *subsection (1)*, these sections shall not be subject to the review under *subsection (1)* but shall be subject to a subsequent review not less than 5 years following the passing of this Act.

Irrespective of our concerns, if the Bill passes through the Oireachtas, it is essential that the three-year review provide an evidence-based assessment of the performance of policies and legislation. Given the potential for harm and human rights violations, including human trafficking, coupled with the complexity of the regulation of international surrogacy arrangements, this must be a standalone review. Funding must be allocated to allow for an independent review that will report on how the law is operating ‘on the ground’. The review must assess whether, and in what manner the protections outlined in the Bill/Act are being applied and whether they are effective in guarding against exploitation and abuse of surrogate mothers and children born through such arrangements. This vital review mechanism must be established before the Act comes into force, with researchers assigned and given explicit

⁸⁹⁴ Malissa Cook refused to reduce the number of fetuses from three to two despite a request from the intended father; Yarwood M., (2016) [Surrogate carrying triplets brings lawsuit to prevent being sued for failing to abort](#), *Bionews* (11 January)

⁸⁹⁵ Bailey A. (2011) [Reconceiving Surrogacy: Toward a Reproductive Justice Account of Indian Surrogacy](#)

⁸⁹⁶ Van Zyl L. and Van Niekerk A. (2000) [Interpretations, Perspectives and Intentions in Surrogate Motherhood](#), *Journal of Medical Ethics*, p. 406

access to information and data for the purpose of carrying out this work. Interim findings of the three-year review must be made public on an annual basis, without restrictions other than the anonymising of the parties involved.

Reviews of existing legislation provide an evidence-based assessment of the performance of policies and legislation. Review findings support political decision-making and inform the design of possible future revisions. The systematic review of legislation has become a key policymaking tool at the EU level, most notably in the context of the EU's better regulation agenda.

On the one hand, it has been argued that Ireland is unable to regulate/oversee practices that are occurring in other countries; hence the call to include international surrogacy in this Bill. Yet, the Joint Committee on International Surrogacy in their final Report outline a list of requirements that *must* be met before a Parental Order is issued by an Irish court. For a Parental Order to be issued, the court must be "satisfied that all specified requirements are met *before* a parental order is granted" [emphasis added] and that "entering into an agreement in a country that prohibits surrogacy is a bar to applying for a parental order". The question remains, what happens when these requirements are not met? Alternatively, what happens when surrogacy is practiced in the 'grey' area, where it is neither prohibited nor sufficiently regulated in a country? Ultimately, it is argued that maintaining these minimum requirements is the last bulwark against the reproductive exploitation of women in the transnational commercial surrogacy industry.

The reality is that most surrogacy arrangements in other countries will *not* comply with these regulations and where they do, there are serious questions about whether they may be 'tick-box' compliant and not genuinely capable of upholding the human rights of women who act as surrogates and the children born from these arrangements.

Conclusions and Recommendations

The Commission welcomes the regulation of domestic assisted human reproduction and the establishment of the Assisted Human Reproduction Regulatory Authority. The Commission also acknowledges the need to recognise international surrogacy.

The Commission is concerned, however, that the provisions of the Health (Assisted Human Reproduction) Bill 2022 relating to international surrogacy may not have been sufficiently examined against the recast EU Anti-Trafficking Directive, which represents a binding legal framework of relevance to this Bill.

Given the very limited timeframe for the enactment of this legislation, we are concerned at the haste with which it appears that the Health (Assisted Human Reproduction) Bill 2022 is proceeding towards enactment, and at the potential impact that this might have on the opportunity for meaningful scrutiny of these important legislative proposals.

The Commission recommends that international surrogacy arrangements are subjected to at least the same minimum standards of ethics and protection as domestic surrogacy. In this regard, the Commission notes in particular the Bill's provisions for international intermediaries and for the payment of reasonable expenses.

Acknowledging the efforts of the legislature to provide significant protections for the parties involved in the Health (Assisted Human Reproduction) Bill 2022, the Commission recommends that the State carefully examines whether those protections are capable of being implemented and/or whether they are sufficient for the reality of the market this Bill seeks to regulate.

The Commission recommends that the State examines the deterrents mandated under the recast EU Anti-Trafficking Directive - including the criminalisation of the knowing use of services of trafficking victims - and how the Health (Assisted Human Reproduction) Bill 2022 and the Criminal Law (Human Trafficking) Act will need to be harmonised.

Taking into account the complexity and novelty of the issues involved – and their importance to the parties to surrogacy and to the State's obligations to combat human exploitation - the Commission recommends that the Government allows sufficient time for the input of all relevant stakeholders to be sought and for the provisions of the Health (Assisted Human Reproduction) Bill 2022 as they relate to international surrogacy to be properly debated. The Commission would welcome an opportunity to consult with our partners in the European Union, and in Private International Law (The Hague Conference) to work towards a harmonised approach to international surrogacy in which all persons involved are protected, especially the most vulnerable in these arrangements – the surrogate mothers and the children born through surrogacy.

If the Bill is passed, the Commission makes the following observations and recommendations:

- › Given the small number of countries that will faithfully be able to meet the requirements of the Health (Assisted Human Reproduction) Bill 2022, the Commission recommends that the Government explore bi-lateral arrangements with countries that meet these requirements. This may ensure greater protection to guard against exploitation, and will better safeguard the rights of surrogates, children born and intended parents in international surrogacy.
- › The review of how the legislation is operating will be critically important. As such, the Commission recommends that a Review Process be established before the commencement of the provision relating to international surrogacy. This review process

must be fully independent, sufficiently funded, and given access to all relevant information and data. Annual interim reports, and the final report must be made public.

Chapter 4

The Role of Business and Migrant Employment Regulation in Preventing Trafficking: A Review of Legal Instruments

Introduction

The purpose of this chapter is to provide a better understanding of the role business regulation can play in combatting human trafficking; specifically that of trafficking for the purpose of labour exploitation.

Business decisions such as outsourcing and subcontracting for the purposes of product cost reduction, and the restrictive regulations of the employment of third-country nationals, contribute to labour exploitation. The response to human trafficking in supply chains has been dominated by considerations of due diligence.⁸⁹⁷ The employment of third-country nationals is most commonly regulated through systems of work permits, which often create legally endorsed dependence on the employer. This could create a distorted dynamic conducive to exploitation in some cases.

After a brief overview of the crime of human trafficking for labour exploitation, we present a review of legal instruments with a focus on protection measures. In the first section we examine a selection of relevant national and EU-level legislation – the *Employers Sanctions Directive*⁸⁹⁸, the *Seasonal Workers Directive*⁸⁹⁹, and the *Employment Permits Bill 2022*⁹⁰⁰ – with a view to exploring the role they can play in preventing trafficking for the purpose of labour exploitation by protecting workers and potential victims of trafficking and closing exploitation niches. The focus of this Report, including this chapter, are the relevant developments of 2023 and, in some cases, early 2024 up to the month of May. While the Bill may have advanced through the State’s legislative process, we have ensured that the analysis and findings remain both relevant and valid.

In the second section, we briefly examine the Corporate Sustainability and Due Diligence Directive and the Regulation enabling the EU to prohibit the sale, import and export of goods made using forced labour, to determine the role these can play in combatting labour exploitation through prevention. We also present the Private Members’ Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021, as a national legislative development of relevance.

⁸⁹⁷ Van Buren, H. J., Schrempf-Stirling, J., & Westermann-Behaylo, M. (2021) *Business and Human Trafficking: A Social Connection and Political Responsibility Model*. *Business & Society*, 60(2), pp. 341–375

⁸⁹⁸ [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards and measures against employees of illegally staying third-country nationals](#)

⁸⁹⁹ [Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#)

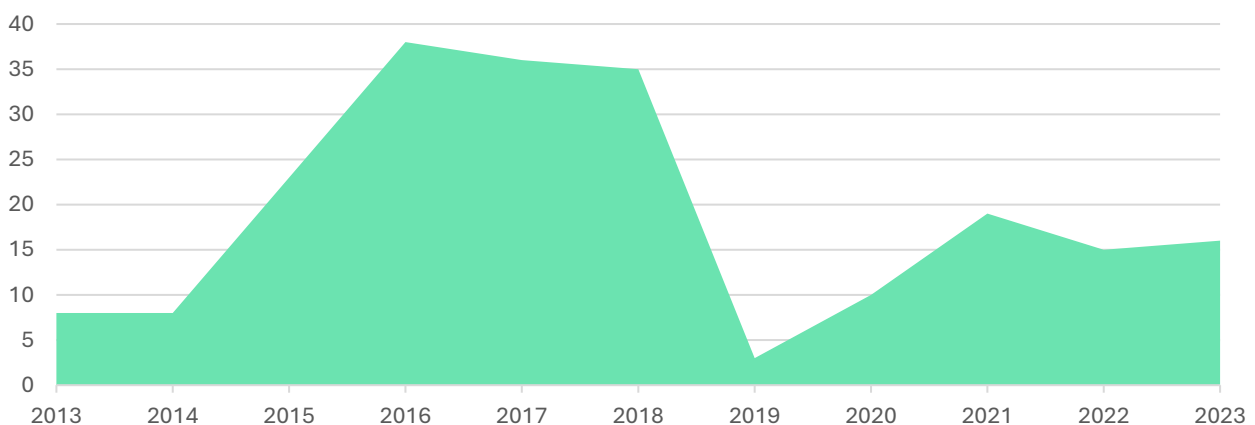
⁹⁰⁰ [Employment Permits Bill 2022](#)

Brief Overview of the Problem

Labour exploitation is the second most often reported type of trafficking in Ireland (around 38% of all cases). Many EU Member States recorded a large increase of cases since 2020.⁹⁰¹ Labour trafficking is often concentrated in specific businesses and sectors. The extraordinary increase in Germany was due to a multi-fold increase of suspected in logistics. It affects mostly low-paid and low-skilled workers. While instances of physical violence are rare, coercion, intimidation, control techniques, and abuse of vulnerability are often used as control techniques by traffickers. Victims of trafficking often live where they work, and the working conditions are often harsh and inhumane. The utilisation of information and communication technologies in this type of trafficking is on the rise, especially at the stage of recruitment. Fake promises and fake job offers are common tactics of deception.

Victims of trafficking for labour exploitation are notoriously difficult to identify. During the identification of such victims, at play is the balance between consent to employment irregularities (low-level offences) and severe exploitation (and human trafficking), which is often difficult to prove. It is problematic that in many cases the trafficked person is perceived by the authorities as being at liberty to leave the exploitative employment. Increasingly, the identification hinges on professionally carried out labour inspections, ideally by trained inspectors, deployed in sectors that are high risk for labour exploitation (see Chapter 1, Article 11(4) for more information on the work of the Workplace Relations Commission in Ireland).

Diagram 4: Trafficking for Labour Exploitation 2013-2023, according to Official Data



⁹⁰¹ Directorate-General for Migration and Home Affairs (2024) [Newly released data show an increase of trafficking in human beings](#)

The EU Strategy on Combating Trafficking for 2021-2025⁹⁰² identifies a number of sectors as high-risk for trafficking for labour exploitation. Such environments can include: the agricultural sector, construction, hospitality, the cleaning sector, domestic work, forestry, textile and garments, food manufacturing. The Commission has previously observed notable surges linked to operations of various production and supply sectors in Ireland (See Diagram 4). For example, in the past a data surge in 2015 was due to victims discovered in a temporary car wash business and in 2016, it was linked to a waste recycling plant where 23 victims were detected. Similarly, the higher numbers in 2017 and 2018 could be accounted for by suspected trafficking on fishing vessels and in the farming industry. More recently, specialist Civil Society Organisations have reported trafficking in the food production/processing industry, forestry and entertainment.

In Ireland, trafficking for labour exploitation is criminalised and the offence carries severe punishment, including up to life imprisonment. There have been no convictions for trafficking for labour exploitation to date. However, there have been an increased number of prosecutions in 2023. The Commission has made recommendations for a more diverse legal approach to the problem through the introduction of a standalone offence of forced labour (see Chapter 1, Article 4). Other efforts are in progress to address the exploitation in supply chains (for further information see references to the Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021 in Chapter 1).

Serious efforts to engage businesses with the concept of human rights and human trafficking are relatively recent. The UN Guiding Principles on Business and Human Rights are the most authoritative and widely adopted set of principles for responsible business on the international arena.⁹⁰³ Endorsed in 2011, they call on governments to identify, mitigate, and remedy actual and potential human rights abuses.⁹⁰⁴

The three guiding principles are grounded in:

- (a) States' existing obligations to respect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and

⁹⁰² European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combating Trafficking in Human Beings 2021- 2025](#)

⁹⁰³ UN Rule of Law on Human Rights, [Business and Human Rights](#)

⁹⁰⁴ [Ibid](#)

- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.⁹⁰⁵

The Commission has previously recommended⁹⁰⁶ that the State should conduct a comprehensive human rights-led revision of the State's National Action Plan on Business and Human Rights, in the wider context of the UN Guiding Principles on Business and Human Rights and of its obligations under Section 42⁹⁰⁷ of the Irish Human Rights and Equality Commission Act 2014. We are encouraged to see work underway for an updated National Plan on Business and Human Rights, which will be based on the latest standards agreed by the European Union.

The Commission views as encouraging that the new third National Action Plan to prevent and combat Human Trafficking 2023-2027⁹⁰⁸ includes an objective on socially responsible public procurement and engagement of trade unions and employers' representative bodies in prevention (see Table 7). We will follow these efforts closely, due to their vital importance in achieving an improved response to trafficking for labour exploitation.

⁹⁰⁵ UN Human Rights Office of the High Commissioner (2011) [Guiding Principles on Business and Human Rights Implementing the United Nations 'Protect, Respect and Remedy' Framework](#), p. 1

⁹⁰⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁹⁰⁷ The [Public Sector Equality and Human Rights Duty](#) places a statutory obligation on public bodies, in the performance of their functions, to have regard to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. Public procurement, as a function of public bodies, is subject to the Public Sector Duty. Public bodies bound by the Duty are therefore responsible to ensure that equality and human rights obligations equivalent to the Duty are included in agreements with contractual partners.

⁹⁰⁸ Government of Ireland (2023) [National Action Plan to Prevent and Combat Human Trafficking 2023-2027](#)

Table 7. Extract on Procurement from the National Action Plan to prevent and combat Human Trafficking 2023-2027

Overall Objectives	In relation to actions we will:	Timeline	Implementing Bodies & Supporting bodies
1.8 Socially responsible public procurement	1.8.1 Ensure that economic operators are excluded from participation in a procurement procedure where it has established or is otherwise known that they have been convicted of child labour and other forms of trafficking in human beings in the previous 5 years	Ongoing	All Government Departments and agencies
1.9 Strengthen the role of trade unions and employers' representative bodies in preventing trafficking for labour exploitation	1.9.1 Engage with trade unions and employers' representative bodies to establish what role they can play		Department of Justice Department of Enterprise, Trade and Employment ICTU, IBEC Support from NGOs as required

© National Action Plan to Prevent and Combat Human Trafficking 2023–2027, p. 27

The concept of forced labour as intrinsically linked to but distinct from human trafficking for labour exploitation has received an impetus by the adoption of the Protocol of 2014 to the Forced Labour Convention of 1930.⁹⁰⁹ On 4 February 2019, Ireland ratified the Protocol, thereby becoming the 29th country worldwide to ratify the Convention. Ratification means that the State is demonstrating its firm commitment to combatting forced labour in all its forms.

⁹⁰⁹ ILO (2019) [Ireland joins efforts to combat forced labour](#) (4 February)

The Protocol, adopted by an overwhelming majority by the International Labour Conference in 2014, calls on ratifying States to combat forced labour, including debt bondage, forced domestic labour or trafficking in persons; to protect victims; and to ensure their access to remedies and compensation.

At the time of its ratification, the Minister for Business, Enterprise and Innovation stated:

“Ireland recognises that forced labour undermines the principles of human rights. The State has a comprehensive suite of employment rights legislation and continues its efforts to eliminate human trafficking utilising the provisions of the Criminal Law (Human Trafficking) Act 2008 and the Criminal Law (Human Trafficking) (Amendment) Act 2013.”⁹¹⁰

While the national legal framework on employment rights is well developed, forced labour as a standalone offence does not exist. Therefore, forced labour can only be punished if the behaviour amounts to human trafficking, which the Commission identifies as a gap in the approach to tackling forced labour.⁹¹¹

The Employers Sanctions Directive

(Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals)

The Employers Sanctions Directive has been primarily designed as an instrument for tackling irregular migration and counteracting illegal immigration, and has many limitations.⁹¹² The Directive requires EU countries to prohibit the employment of non-EU nationals staying in the EU illegally.⁹¹³ Importantly however, the Directive also contains protective elements to redress injustices against migrants in an irregular situation. It is reminded that in reviewing this Directive, the Commission is interested in these elements of protection for workers found in exploitative situations, rather than the sanctions themselves. The obvious limitations of the Directive lie in its fixation with illegal migration of third-country nationals. Nonetheless, in the

⁹¹⁰ Department of Enterprise, Trade and Employment (2019) [Ireland agrees to ratify the ILO Forced Labour Protocol](#) (28 January)

⁹¹¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

⁹¹² [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards and measures against employees of illegally staying third-country nationals](#)

⁹¹³ [Ibid](#)

absence in Ireland of a defined status of a person subjected to forced labour⁹¹⁴ with the associated measures of assistance, the Commission is interested in the approach to workers' protections taken in this Directive. The Directive provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, while setting out criminal sanctions for serious cases of illegal employment such as employing workers in particularly exploitative working conditions, employing victims of human trafficking, or employing minors.⁹¹⁵ Ireland, along with Denmark and the United Kingdom, has not opted into the Directive. This means that Ireland is therefore not bound by it, or subject to its application. This decision has unfortunately resulted in lesser protections for undocumented migrant workers finding themselves in exploitative employment relative to the agreed standards of the Directive (in terms of recovery of wages for example).⁹¹⁶

The Directive places strict obligations upon employers.⁹¹⁷ Other measures include enhanced cooperation with third countries,⁹¹⁸ integrated management of operational borders, an effective return policy,⁹¹⁹ and reinforced legislation to fight against human trafficking.⁹²⁰ The Directive complements recent policy developments in the field of legal migration, with the Seasonal Workers Directive⁹²¹ being a notable example of the EU opening legal channels for low-skilled labour migration, typically in sectors such as agriculture or tourism.⁹²² The Directive also provides for a number of remedies and protective measures in favour of illegally employed third-country nationals, including back payment of taxes and salaries, and the facilitation of complaints (Article 6), which will be addressed below.

⁹¹⁴ Or a victim of forced labour in cases not amounting to human trafficking

⁹¹⁵ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025](#), p. 7

⁹¹⁶ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 245

⁹¹⁷ These obligations include: requiring employed non-EU nationals to produce a residence permit or other authorisation before taking up employment; to keep copies of the permit or authorisation for the duration of the employment, in the event of an inspection by national authorities; and to notify the authorities within the period set by the EU country when they employ a non-national (Article 4)

⁹¹⁸ European Commission (2011) [Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions The Global Approach to Migration and Mobility](#), COM (2011) 743 final

⁹¹⁹ European Commission (2013), [Communication from the Commission to the Council and the European Parliament on EU Return Policy](#), COM (2014) 0199 final

⁹²⁰ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims](#), OJ L 101, 15 April 2011, p. 1

⁹²¹ [Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#), OJ L 94, 28 March 2014, p. 375

⁹²² EU Commission (2014) Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/25/EC of 18 June 2009 providing for the minimum standards on sanctions and measures against employers of illegally staying third-country nationals (COM 2014) 0286 Final

The Directive centres on the responsibility of employers, which aligns its objectives to a certain extent with Articles 5 and 6 of the EU Anti-Trafficking Directive, which sanction legal persons implicated in exploitation and human trafficking.

Sanctions in the Employers Sanctions Directive

The Directive requires that the sanctions against employers should also reflect the seriousness of the offence and proportionally respond to the severity of the violation, increasing in cases of particularly exploitative working conditions including the employment of victims of trafficking.⁹²³ Based on these principles, the Directive defines minimum standards for financial (Article 5) and criminal sanctions against employers (Articles 9 and 10) and sets additional administrative measures, such as loss of public benefits or exclusion from public contracts (Article 7).⁹²⁴ Member States have flexibility in determining the actual level of sanctions, depending on the specific national situation, severity of the violation, or whether the employer is a natural or legal person.

While Article 3(1) and (2) require that Member States prohibit the employment of ‘illegally staying’ third-country nationals, Article 3(3) provides that a Member State may decide not to apply the prohibition on employment of illegally staying third-country nationals where their removal has been postponed and where they are allowed to work in accordance with national law.

Article 5 provides for financial sanctions that reflect the number of illegally employed persons, including repatriation costs, and it allows for lenient treatment in cases of a privately employed worker by an employer who is a natural person.

Article 7(1) provides a list of additional non-criminal necessary measures that Member States shall implement to ensure that employers shall also, if appropriate, be subject to the following measures including:

- › the loss of entitlement to some or all public benefits, aid or subsidies, for up to five years;
- › the exclusion from participation in a public contract for up to five years;
- › the recovery of some or all public benefits, aid, or subsidies granted to the employer for up to 12 months preceding the detection of illegal employment; and
- › the temporary or permanent closure of the establishments that have been used to commit the infringement, or temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified by the gravity of the infringement.

⁹²³ Ibid

⁹²⁴ Ibid

Article 7(2) provides that ‘Member States may decide not to apply paragraph 1 where the employers are natural persons and the employment is for their private purposes.’

The effectiveness of financial and other sanctions is questionable. The European Commission’s 2021 Communication highlights that due to information gaps regarding the application of financial sanctions against employers in practice,⁹²⁵ it is not possible to assess in a conclusive manner the impact in this area, and the limited information shows that there are significant differences in the size of the fines applied to legal persons per irregular migrant employed.⁹²⁶

Criminal sanctions under the Directive (which may take the form of criminal fines, prison sentences or other penalties) are applied to serious cases of illegal employment with aggravating circumstances such as employing a victim of trafficking.⁹²⁷ Article 9 provides that Member States shall ensure that infringement of the prohibition referred to in Article 3 constitutes a criminal offence when committed intentionally in each of the following circumstances as defined in national law:

- › when the infringement continues or is persistently repeated;
- › when the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals;
- › when the infringement is accompanied by particularly exploitative conditions;
- › when the employer uses work or services from an illegally staying third-country national with the knowledge that they are a victim of trafficking; and
- › if the infringement relates to the illegal employment of a minor.

Article 10(1) provides that these criminal penalties be effective, proportionate and dissuasive.

Article 11 extends liability to legal persons, essentially providing for vicarious liability on the part of the employer.

⁹²⁵ This difference in the level of fines depends on a variety of elements, such as the economic situation and the level of monthly minimum wage in a Member State; the type of employer also affects the level and nature of the sanctions. However, Member States should ensure that the difference in the level of sanctions is justified and the sanctions are effective, proportionate and dissuasive for each Member State. Member States with more stringent sanctions consider that higher financial sanctions are a good deterrent to illegal employment, whereas Member States applying lower sanctions or where the risk of sanctions is considered low in comparison to the potential profits from illegal employment found the sanctions not to be a sufficient deterrent. In order for Article 5 to be effective, it is essential that all Member States apply consistently higher sanctions, which demonstrably serve as a sufficient deterrent to those who seek to exploit.

⁹²⁶ European Commission (2021) [*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*](#), p. 5

⁹²⁷ [*Ibid*](#)

Article 12 obliges Member States to apply *effective and dissuasive penalties*, while it also gives Member States the option of deciding whether to name and shame employers who have been held criminally liable:

“a list of employers who are legal persons and who have been held liable for the criminal offence referred to in Article 9 is made public.”

Naming and shaming has the potential to serve as a deterrent.

The implementation of these measures across the Member States varies significantly.⁹²⁸

There are differences between the Member States in the severity of criminal sanctions, both in the length of a possible prison sentence and the amount of the fine applied.⁹²⁹ Like the financial sanctions, these sanctions are not synchronised across Member States. In addition, there is a significant gap in information concerning the application of criminal sanctions against employers in practice and the number of proceedings launched.⁹³⁰ The EU Commission encourages Member States to assess the level of financial and criminal sanctions set at national level to determine where they are effective, proportionate and dissuasive against illegal employment.⁹³¹

These elements point to the fact that the Directive had a limited impact in deterring illegal employment through sanctions and has not yet been able establish an efficient framework for effective, proportionate and dissuasive sanctions across the EU.⁹³²

Discussion

The criminalisation of employment under particularly exploitative working conditions differs from that of trafficking in human beings for labour exploitation. Under Article 2 of the EU Anti-Trafficking Directive, an offence of trafficking in human beings requires the presence of three constitutive elements: acts (recruitment, transport, transfer, harbouring or reception of persons), means (use of threat, force and other forms of coercion; abuse of a person’s position of vulnerability), and the purpose of exploiting the victim. Only when all three elements are shown to be present can an offence of trafficking in human beings be

⁹²⁸ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹³⁰ [Ibid](#)

⁹³¹ [Ibid](#)

⁹³² [Ibid](#)

established. This may raise evidential and prosecutorial challenges. For example, it might be difficult to prove the intention to exploit.

In contrast, for the purpose of Article 9(1)(c) of the Employers Sanctions Directive, it is sufficient to prove that there has been an act of certain gravity. There is no need to prove the employer's purpose to exploit the victim. Although particularly exploitative working conditions may be the result of trafficking in human beings, not all exploitation occurs in the context of trafficking. Nor have victims of particularly exploitative working conditions necessarily been coerced into working.⁹³³

The decision to investigate a case under criminal or administrative law has major consequences for the victim's residence status, as residence permits are granted mainly based on the victim's cooperation in criminal proceedings. Prosecution for offences at a lower level than trafficking also means that victims will not be able to avail of the assistance measures in the trafficking framework.

Liability of the Entire Chain of Employers

Very often the employer in question is a subcontractor and Article 8 extends the liability and sanctions to such situations, requiring also due diligence in subcontracting.

However, stakeholders find these provisions to have limited impact in the complaints procedures and determining chain liability, in view of the likelihood that a contractor who has carried out due diligence obligations would not be held liable, as allowed in Article 8(3).⁹³⁴ The EU Commission argues Member States should do more to hold main subcontractors liable for violations in the subcontracting chain.⁹³⁵ The Directive is not prescriptive on what due diligence consists of and the punitive nature needs to be stronger to serve as a deterrent. These provisions in the Directive have been recently further developed in regard to large companies under the recently adopted EU's Corporate Services Due Diligence Directive ('CSDDD'), which will be referred to later in this chapter.

⁹³³ European Union Agency for Fundamental Rights (2021) [Protecting Migrants in an Irregular Situation from Labour Exploitation. Role of the Employers Sanction Directive](#), p. 34

⁹³⁴ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹³⁵ [Ibid](#)

Protective Redress in the Employers Sanctions Directive

Under Article 13, there must be an effective mechanism for lodging complaints against exploitative employers.⁹³⁶

Article 13(1) requires Member States to:

‘ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge a complaint against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a Competent Authority of the Member State when provided for by national legislation’.

Article 13(2) requires Member States to:

‘ensure that third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings provided for with the objective of implementing this Directive’.

Practice shows that the most common party allowed to bring a complaint on behalf of workers or represent them in civil or administrative proceedings are specialist NGOs and trade unions. In Ireland, there is a mechanism whereby trade unions or specialist NGOs representing the worker can lodge a complaint against the employer in the Workplace Relations Commission.

The Directive emphasises that migrants in an irregular situation have the right to back payments of any outstanding remuneration, taxes and social security contributions (Article 6). Article 6(1) provides that in respect of each infringement in Article 3, the employer will be liable to pay any outstanding remuneration to the illegally employed third-country national and the agreed level of remuneration shall be presumed to be at least as high as the minimum wage as provided by law in the Member State, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either party can prove otherwise. Article 6(1) also provides that employers shall be liable to pay an amount equal to any taxes and social security contributions which would have been paid had the third-country national been employed and where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned. Article 6(2) obliges Member States to enact mechanisms to ensure that

⁹³⁶ Practice shows, the most common party allowed to bring a complaint on behalf of workers or represent them in civil or administrative proceedings are trade unions.

illegally employed third-country nationals may, subject to a limitation period, introduce a claim against their employer and eventually enforce a judgment against them for any outstanding remuneration including where they have/have been returned or when provided for by national legislation, and may call on the Competent Authority of the Member State to commence procedures to recover any outstanding remuneration without the need for them to introduce a claim. These are valuable avenues of redress for migrants who find themselves in an irregular situation, as very often, other options are unavailable. Article 6(3) presumes that the employment relationship lasted at least three months unless other evidence is available, i.e. the employer or employee can prove otherwise. However, a recent PICUM study in 15 EU Member States indicates that frontline NGOs in all Member States covered found that the presumption of three months' employment is rarely implemented in practice. Article 6(4) provides that third-country nationals can receive any back payment of remuneration once they have returned to their country of origin.

Article 6(5) allows Member States to grant temporary residence permits to irregular migrants, linked to the length of the relevant investigation of the judicial criminal procedure or the willingness to cooperate with the authorities. The European Union Agency for Fundamental Rights ('FRA') reported in 2015 that in some Member States, public authorities with powers of inspection can oblige the exploiter to pay remuneration due.⁹³⁷ The amount of the moral damages and compensation differs depending on the Member State, the length of the employment relationship, and the number of people involved.⁹³⁸ Compensation for moral damages decided in criminal proceedings does not replace civil law claims for unpaid work, as illustrated by a number of French cases.⁹³⁹

Findings from past FRA reports show that, compared to being awarded damages or back payments as a result of criminal proceedings, claiming compensation in the civil justice system is (even) more burdensome for the victim.

It is important that compensation for moral damages decided in criminal proceedings does not replace civil law claims for unpaid work.

Mediation and collective action, which trade unions or workers' organisations sometimes take on workers' behalf, also constitute ways to seek redress; these may be less time-consuming or intimidating for migrants in an irregular situation.

⁹³⁷ FRA (2015), [Severe labour exploitation: workers moving within or into the European Union State's obligations and victims' rights](#), p. 82

⁹³⁸ FRA (2019) [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), p. 19

⁹³⁹ [Ibid](#)

Access to Information

Ensuring that undocumented migrants are able to obtain information about their rights and that support mechanisms for lodging complaints and legal assistance are available is a prerequisite for effective access to justice, in particular for those who are victims of abusive employers.⁹⁴⁰ Article 6(2) requires Member States to inform workers ‘*systematically and objectively*’ about the employer’s duty to pay outstanding remuneration, taxes and social security contributions to migrant workers in an irregular situation.⁹⁴¹ It also requires them to notify workers about the available complaint mechanisms before the enforcement of any return decision.⁹⁴² According to the European Commission’s 2014 Communication, effective and adequate inspections are indispensable not only to tackling illegal employment, but also to ensuring that migrants in an irregular situation can exercise their rights.⁹⁴³

Unfortunately, these provisions are not adhered to appropriately. A majority of Member States only provide general information on employees’ rights and not targeted information that is relevant for the specific situation of irregular migrant workers.⁹⁴⁴ In some cases, the information is limited to occupational health and safety considerations, and does not include information on unpaid remuneration. This situation has a negative impact on irregular migrants, who are not sufficiently informed about the possibility of introducing a claim or receiving unpaid wages before their return to their country of origin. This low level of awareness of their rights heightens their susceptibility to exploitation.

The fact that the information provided to migrants is often limited, not systematically provided and too generic, negatively affects the aim of the Directive to provide objective and reliable information to migrants to exercise their rights.⁹⁴⁵ This inconsistent approach adopted by Member States further compounds the exploitation suffered by migrant workers.

⁹⁴⁰ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹⁴¹ FRA (2021) [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#)

⁹⁴² [Ibid](#)

⁹⁴³ European Commission (2014) [Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹⁴⁴ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), p. 9

⁹⁴⁵ [Ibid](#)

Detection of Illegal Employment and Enforcement of Its Prohibition – Preventive Measures

Inspections

Article 14 emphasises the importance of labour inspections as an effective tool in combatting labour exploitation, with Article 14(1) requiring Member States to ‘*ensure that effective and adequate inspections are carried out*’ in order to control the employment of illegally staying third-country nationals. **These inspections should not result in the immediate expulsion of victims of labour exploitation who are in an irregular situation.** The Directive attributes a key role to labour inspectors, who are required to conduct risk assessments on the employment sectors most at risk of exploitation.

Article 14(1) also provides that ‘*Such inspections shall be based primarily on a risk assessment to be drawn up by the Competent Authorities in the Member States*’. Article 14(2) aims to increase the effectiveness of inspections:

‘Member States shall, on the basis of a risk assessment, regularly identify the sectors of activity in which the employment of illegally staying third-country national is concentrated on their territory.’

Article 14(2) also provides that:

‘Member States shall, before 1 July each year, communicate to the Commission the inspections, both in absolute numbers and as a percentage of the employers for each sector, carried out in the previous year as well as their results.’

This provides an overview of how each Member State is performing in the context of labour inspections. FRA recommends that these inspections should not result in the immediate expulsion of victims of labour exploitation who are in an irregular situation.⁹⁴⁶ It is important that the victims are not immediately punished because of the actions of their employer. Joint inspections reported by labour inspectorates in some Member States are more likely to identify and protect potential victims of labour exploitation and refer them to support organisations.⁹⁴⁷ The entities involved in these joint inspections is very much dependent on the Member State, e.g. some Member States use labour inspectorates and specialised police

⁹⁴⁶ FRA (2019) [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#), p. 19

⁹⁴⁷ [Ibid](#), p. 31

units trained in labour exploitation and trafficking in human beings whereas others use labour inspectorates, the police and immigration authorities.⁹⁴⁸

Labour inspectorates play a crucial role not just in enforcement of law but also in raising awareness around the issue of migrants' rights through awareness-raising campaigns and inspections. The Workplace Relations Commission's work in Ireland is central in this regard. Very often, migrant workers are unaware that they are in an exploitative situation. The low level of knowledge of their rights by irregular migrants is one of the risk factors for labour exploitation, as they may be unable to identify such risks themselves. This points to a need to improve access to information, including by labour intermediaries, and placement agencies as well as enforcement authorities (including labour inspectorates) to provide information to irregular migrants on their rights and where to go for support and redress.⁹⁴⁹

Given that the Directive is silent on the definition of 'effective and adequate' inspections, the practice among Member States varies. Several factors are identified that limit the effectiveness of inspections: identification of economic sectors most at risk of illegal employment, the low levels of inspections carried out in the Member States, the lack of sufficient resources, and the difficulties in engaging with exploited migrants during inspections.⁹⁵⁰ The European Commission in 2021 concluded that the number of inspections carried out in the current system is unlikely to dissuade employers from hiring irregular migrants. It is essential that labour inspectorates be adequately resourced to allow them to carry out more inspections. Stakeholders⁹⁵¹ highlight that exploited workers are discouraged from reporting their situation during the inspections due to the risk of apprehension and return, in particular where inspections are carried out jointly by labour inspection and police/immigration authorities.⁹⁵²

Stakeholders therefore promote the idea of separating labour inspections and law enforcement/immigration activities by means of a 'firewall', which would guarantee that

⁹⁴⁸ [Ibid](#), p. 29

⁹⁴⁹ [Ibid](#), p. 26

⁹⁵⁰ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹⁵¹ Feedback provided by the European Trade Union Confederation (EUTC) in the targeted consultations and by Member States representatives at the meeting of the National Contact Points for migrant smuggling in February 2021.

⁹⁵² European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

irregular migrants detected during inspections would not be referred to immigration authorities for return procedure.⁹⁵³

According to experts interviewed for FRA's 2015 report⁹⁵⁴ on severe labour exploitation, one important factor contributing to widespread impunity for those exploiting migrant workers is a lack of reporting by victims due to the fear of losing their job and being returned to their countries of origin. This legitimate fear can be further used by the exploiter as a means to control the migrant worker. Therefore, Member States must be prepared to proactively carry out more workplace inspections targeting sectors at risk, and improve the effectiveness and accessibility of remedies for workers in an irregular situation.

According to a recent PICUM report,⁹⁵⁵ 13 of the 15 EU Member States it reviewed have inspection bodies with the authority to receive individual complaints relating to underpayment of wages, including overtime. The report adds that these bodies represent an important complaint mechanism for workers, with fewer barriers than taking the case to court. For example, the procedure would normally be quicker, not need legal representation and not include risk of liability for court costs. In Ireland, undocumented workers are precluded from bringing complaints before the Workplace Relations Commission or the Labour Court, which otherwise operates as an avenue for documented workers to bring a complaint. The complaint procedure for undocumented workers is separate and less straightforward.

Permits to Remain

Article 13(4) requires Member States to 'define in national law the conditions under which they may grant on a case-by-case basis, permits of limited duration linked to the length of the relevant national proceedings' to migrants in an irregular situation who are victims of particularly exploitative working conditions. In the majority of Member States, exploited third-country nationals must participate in criminal proceedings against the employer to be granted a residence permit.⁹⁵⁶ Residence permits are usually valid for six months or one year.⁹⁵⁷ Renewal of the residence permit is usually permitted until completion of the investigation or court proceedings.⁹⁵⁸ Linking the renewal to completion of the investigation or court proceedings is not ideal from the perspective of a victim of labour exploitation.

⁹⁵³ [Ibid](#)

⁹⁵⁴ [Ibid](#)

⁹⁵⁵ PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers can Access Justice](#), p. 32

⁹⁵⁶ FRA (2021) [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#), p. 44

⁹⁵⁷ [Ibid](#), p. 45

⁹⁵⁸ [Ibid](#)

In a number of Member States bound by the Directive, residence permits are available only for victims of trafficking in human beings, and there is no separate permit for victims of ‘particularly exploitative working conditions’. Therefore, victims have to meet the definition of ‘trafficking in human beings’ to be granted a residence permit (unless they can apply for a residence permit on other grounds provided by national law).

Risk Assessments

For inspections to be effective in detecting employment anomalies and ensuring irregular migrants’ protection, Member States should ensure they target the most at risk economic sectors, that they cover a significant number of employers in such sectors and are carried out at regular intervals.⁹⁵⁹ For this reason, all Member States should carry out comprehensive and regular risk assessments, looking also at new and emerging economic areas such as the platform economy, to identify risk sectors and communicate them to the Commission.⁹⁶⁰ It is important that the Workplace Relations Commission continues to play a very critical role in this area and continues analysing the various problematic sectors to determine which pose the highest risk in terms of exploitation and to deploy inspection resources accordingly.

The EU Seasonal Workers Directive

(EU Seasonal Workers Directive is Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions and entry and stay of third-country nationals for the purpose of employment as seasonal workers)

In 2014, the EU adopted the Seasonal Workers Directive, which sets out the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.⁹⁶¹

The Directive aims to support the effective management of migration flows for temporary seasonal migration.⁹⁶² Furthermore, it aims to ensure decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by

⁹⁵⁹ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#)

⁹⁶⁰ [Ibid](#)

⁹⁶¹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 248

⁹⁶² [Ibid](#)

defining the rights of seasonal workers, while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent.⁹⁶³ This is to be achieved through clearer and more harmonised rules and working conditions as set out in the Directive, to help prevent exploitation and to protect the health and safety of the workers.⁹⁶⁴ The Directive also encourages circular movement of seasonal workers between the EU and their countries of origin through the introduction of a facilitated re-entry procedure for subsequent seasons.⁹⁶⁵

Ireland decided not to opt in to the Directive and is therefore not bound by it. This section reviews the provisions of the Directive, with a focus on the protections afforded to seasonal workers of third countries that could reduce the risk of exploitation of such workers in seasonal labour.

A seasonal worker is defined in the Directive as a third-country national who retains their principal place of residence in a third-country and stays legally and temporarily in the territory of an EU Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term contracts concluded directly between that third-country national and the employer established in that EU Member State.⁹⁶⁶

Article 2(2) provides that Member States must list the sectors that are considered to be seasonal, and if appropriate, a list should be drawn up in consultation with the social partners. Recital 13 provides that seasonal work is typically found in sectors such as agriculture and horticulture, in particular during the planting or harvesting period, or tourism, especially during the busy period. These are also often very high-risk sectors in terms of trafficking for labour exploitation.

⁹⁶³ [Ibid](#)

⁹⁶⁴ [Ibid](#)

⁹⁶⁵ [Ibid](#)

⁹⁶⁶ According to the EMN Glossary (Version 7.0), a seasonal worker is defined as ‘A third-country national who retains their principal place of residence in a third-country and stays legally and temporarily in the territory of an EU Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that EU Member State.’ See: [Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#)

Protections Provided by the Directive

Equal Treatment

Article 23(1) provides that seasonal workers shall be entitled to equal treatment with nationals of the host Member State including terms of employment, minimum working age, working conditions, and back payment to be made by employers concerning any outstanding remuneration to the third-country national. However, Article 23(2) allows restrictions on equal treatment by limiting access to tax benefits, education and vocational training. Equality of treatment is the most general and also the most important set of rights for seasonal workers.⁹⁶⁷

A previous impact assessment upon which the proposal for the Directive was based argues that the economies of the EU Member States need around 100,000 third-country national temporary/seasonal workers per year.⁹⁶⁸ This highlights the vital role seasonal workers play in Member States' economies. The *raison d'être* of the Directive is the Member States' need for a labour force from third countries to do seasonal work, as it is extremely difficult to find national workers in the Member States willing to do this type of work.⁹⁶⁹ Therefore, the guarantee of equal treatment is *per se* problematic in the seasonal work sector: if there are no national workers with whom a comparison can be made, then what will be the practical content of the right to equal treatment of seasonal workers?⁹⁷⁰ This lack of comparator could result in migrant workers ending up in exploitative situations.

Conditions and Length of Stay

Application fees relating to migration are controversial, and excessive fees are seen as an indication of exploitation.⁹⁷¹ Article 19(1) provides that Member States may require the payment of fees for the handling of an application, but that the level of fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen *acquis*. Where these fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in

⁹⁶⁷ [Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#)

⁹⁶⁸ *Ibid*, p. 30

⁹⁶⁹ Brickenstein (2015) 'Social Protection of Foreign Seasonal Workers: from State to Best Practice', *Comparative Migration Studies*, 3:2, p. 1

⁹⁷⁰ Zoetewij-Turhan M. H. (2017) The Seasonal Workers Directive: '... but some are more equals than others', p. 35

⁹⁷¹ ILO (2010) [International labour migration: A rights-based approach](#), Geneva: *International Labour Office*, p. 78

accordance with national law. Given that debt bondage regularly features in cases of trafficking for labour exploitation, it is essential that this area be tightly monitored.

Recital 31 provides that the maximum duration of stay should be fixed by Member States and limited to a period of between five and nine months, which together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. It goes on to state that provision should be made to the effect that within that maximum duration of stay, an extension of the contract or change of employer is possible, provided that the admission criteria continue to be met and that this should serve to reduce the risk of abuse that seasonal workers may face if tied to a single employer and at the same time provide for a flexible response to employers' actual workforce needs. The possibility for seasonal workers to be employed by a different employer under the conditions laid down in this Directive should entail the possibility for them to seek employment in the territory of the Member State while unemployed.

Article 5 sets out the criteria for admission regarding employment of a seasonal worker for stays not exceeding 90 days. Article 5(1)(a) sets out the criteria for a valid work contract or job. Once in the EU, workers are entitled to extend their work contract or change employer, provided they meet the entry conditions and no grounds for refusal apply.⁹⁷² Within the maximum permitted stay, EU countries may allow workers to extend their contract with the same employer more than once, as well as to have contracts with more than one employer.⁹⁷³

Article 6 sets out the criteria and requirements for admission for stays exceeding 90 days (same criteria as Article 5(1)(a)). Article 14 provides that Member States shall determine a maximum period of stay of not less than five months and not more than nine months in any 12-month period. After expiration, the third-country national shall leave unless they have been issued with a residence permit for purposes other than seasonal work.

Re-entry

Article 16 allows for the facilitation of re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years and who respected the applicable conditions. This facilitation may include measures such as: an exemption from the requirement to submit one or more of the documents referred to in Article 5 or 6; issuing of several worker permits in a single administrative act; accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; and priority in examining applications for admission as a seasonal worker, including taking into

⁹⁷² EUR-Lex, [Employment as seasonal workers](#) [website]

⁹⁷³ [Ibid](#)

account previous admissions when deciding on applications with regard to the exhaustion of volumes of admission.

Changing Employer

Perhaps one of the more important protections afforded by the Directive is that it provides seasonal workers with the option to change employer. The ability of migrant workers to change employer is regarded as critical regarding whether or not they can actually enforce in practice the rights to which they are entitled on paper.⁹⁷⁴ Article 15(6) provides that Member States should allow seasonal workers to change employer once (within the period they have been given the permit for, or extending their stay) – unless the vacancy can be filled by other EU residents. It is important to note that the seasonal worker has a limited right to change employer within the same Member State.⁹⁷⁵ Articles 15(3) and 15(4) requires Member States to allow seasonal workers to extend the stay once when changing employers and the application can be made from within the Member State.

The right to change employers is important for seasonal workers whose working conditions are known to be tough – if these working conditions do not satisfy the requirements of the Directive, the easiest way to enforce the Directive’s rights would be for the seasonal worker to change employer.⁹⁷⁶ If a permit is linked to the one employer, the seasonal worker is made dependent on that employer, and will think twice before even complaining.⁹⁷⁷ It is critical for the seasonal worker to be allowed to change employer. The Directive further provides for the facilitation of complaints against an employer for not fulfilling their duties (Article 15(6)).

In addition, the Directive obliges Member States to provide for effective sanctions against the employer while ensuring that the employer remains liable to pay compensation to the seasonal worker in case the employer’s work authorisation is withdrawn by the authorities.⁹⁷⁸ While such a provision is designed to reduce the vulnerability of the seasonal worker, it must be properly transposed in order to be effective.⁹⁷⁹ As these sanctions currently do not have

⁹⁷⁴ J. Fudge, Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrants Workers, 34 Comparative Labour Law and Policy Journal (2012) 101–137

⁹⁷⁵ Zoetewij-Turhan M. H. (2017) *The Seasonal Workers Directive: ‘... but some are more equals than others’*, page 38

⁹⁷⁶ Fudge, J and Herzfeld Olsson. P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, pp. 460–461.

⁹⁷⁷ Guild, The EU’s Internal Market and the Fragmentary Nature of EU Labour Migration, in Costello and Freedland, Migrants at Work, p. 113

⁹⁷⁸ Article 17 read in conjunction with Article 9(2) and 9(3)(b), (c) and (d)

⁹⁷⁹ Guild, ‘What are the Member States doing regarding sanctions on employers of irregularly staying third-country nationals? [EU Law Analysis: What are the Member States doing regarding sanctions on employers of irregularly staying third country nationals?](#)

the desired dissuasive effect on employers, the right to change employer remains essential for seasonal workers, who will continue to have to fend for themselves.⁹⁸⁰

Facilitation of Complaints

To balance the discretion Member States have in allowing a seasonal worker a change of employer, the Directive has a provision on the facilitation of complaints against an employer not fulfilling their duties under the Directive, while at the same time offering protection to the complaining seasonal worker (Article 25).⁹⁸¹ Article 25 ensures there are effective mechanisms through which seasonal workers may lodge complaints against their employer either directly or through third parties who have, in accordance with national law, a legitimate interest in ensuring compliance. This is a very important protection as it is critical that seasonal workers have the option to make complaints. Seasonal workers have the same access as other workers in a similar position to measures protecting against dismissal or other adverse treatment.

Accommodation

Article 20, which is linked to the admission criteria under Article 6(1)(c), is designed to ensure that employers do not exploit migrant workers through excessive housing charges or providing unacceptable accommodation.⁹⁸² Article 20(1) places a mandatory obligation upon Member States to require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living. Article 20(2) contains a number of safeguards if the employer arranges the accommodation – the rent must not be excessive and must not automatically be deducted from the wages, a rental contract shall be provided, and the accommodation shall meet general health and safety standards. Given that the provision of substandard accommodation is often a feature and sign of trafficking for labour exploitation in terms of either its cost or quality, this Directive provides safeguards in this regard.

⁹⁸⁰ [Ibid](#)

⁹⁸¹ [Ibid](#), p. 36

⁹⁸² Fudge, J and Herzfeld Olsson. P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, p. 452

Problems with Enforcement

A concern highlighted regarding an enforcement related problem is that of labour supply chains, especially in the agricultural sector.⁹⁸³ Labour contractors often enter into arrangements with firms to supply them with a seasonal workforce.⁹⁸⁴ Although the seasonal worker's employment contract is with the labour supplier, the principal contractor often controls the work that is on offer. In situations where the labour supplier fails to pay wages, violates employment standards, or fails to adhere to the terms and conditions of employment, it is important for the seasonal workers to have a right of recourse against the principal contractor.⁹⁸⁵

Monitoring and Inspections

Article 24 provides that Member States must '*provide for measures to prevent possible abuses and to sanction infringements of this Directive*' and these measures include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice. Article 24(2) provides that:

'Member States shall ensure that services in charge of inspection for labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.'

Recital 49 recommends using risk assessments taking into account factors such as the sector in which a company operates and any record of past infringement.

Member States must be prepared to proactively carry out more workplace inspections targeting sectors at risk. It is essential that the labour inspectorates be adequately funded to allow them to do so.

Sanctions against Employers

Article 17 provides for sanctions against employers who have not fulfilled their obligations under the Directive as a deterrent to mistreatment of seasonal workers. These sanctions shall

⁹⁸³ J. Allain, A. Crane, G. LeBarron and L. Behbahani (2013) *Forced Labour's Business Models and Supply Chains*, London: Joseph Rowntree Foundation.

⁹⁸⁴ Fudge, J and Herzfeld Olsson, P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, p. 459

⁹⁸⁵ Ibid

be effective, proportionate and dissuasive. The Directive, however, does not elaborate on what would constitute this. Article 17(2) provides that if the offer of seasonal work is withdrawn pursuant to Article 9(2) and Article 9(3)(b), (c), and (d), the employer shall be liable to pay compensation.

Member States have the discretion to link the withdrawal of work authorisation to a range of employer behaviour.⁹⁸⁶ The employer is liable for any ‘outstanding’ obligations the employer would have had in respect of the authorisation had it not been withdrawn. This compensation protects the legitimate expectations of seasonal migrants in those Member States that link the withdrawal of work authorisations to violations of labour law and working conditions.⁹⁸⁷ It is designed to ensure that migrant workers do not have to ‘choose’ not to complain so as not to jeopardise these expectations.⁹⁸⁸

For employers who are in serious breach of their obligations under this Directive, these sanctions must include their exclusion from employing seasonal migrant workers.⁹⁸⁹

Article 8(2) sets out the criteria for rejection of an application for authorisation including the employer having been sanctioned for undeclared work/illegal employment, the employer’s business is being or has been wound up under national insolvency laws or no economic activity is taking place, or the employer has been sanctioned under Article 17. The only overlap with the Employers Sanctions Directive is in relation to where a State shall if appropriate, reject an application if the employer has been sanctioned for undeclared work or illegal employment.⁹⁹⁰ Article 8(5) provides that the interests of the seasonal worker must be taken into account. If it is within the sole authority of the Member State to determine whether it is appropriate to reject an application in a case where, for example, an employer has been sanctioned for employing undeclared workers, this is, in effect, a discretionary requirement.⁹⁹¹ The Directive does not stipulate who has the authority to determine appropriateness in this context.

Member States shall, if appropriate, withdraw the authorisation for the purpose of seasonal work where the employer has been sanctioned in accordance with national law and for

⁹⁸⁶ Fudge, J and Herzfeld Olsson. P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, p. 462

⁹⁸⁷ Ibid, p. 463

⁹⁸⁸ Ibid

⁹⁸⁹ Fudge, J and Herzfeld Olsson. P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, p. 462

⁹⁹⁰ This provision and its counterpart relating to withdrawing an application are the aspects of the Seasonal Workers Directive that overlap with Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers or illegally stating third-country nationals. In effect, they impose an additional sanction, the denial of the privilege to hire third-country nationals as seasonal workers, on employers who have been sanctioned for hiring undeclared workers.

⁹⁹¹ Fudge, J and Herzfeld Olsson. P, (2014) *The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights*, European Journal of Migration and Law 16, p. 455

undeclared work and/or illegal employment (Article 9(2)(a)), and this acts as a form of protection for migrant workers. Article 9(3)(b) provides that Member States may withdraw the authorisation where the employer has failed to meet its legal obligations including on labour rights and working conditions or terms of employment. Article 9(4) permits Member States to withdraw the authorisation if the third-country national applies for international protection.

Concerns

The Seasonal Workers Directive has been widely criticised by the European Trade Union Confederation, and across civil society for:

‘inequality between categories of third-country citizens based on their perceived value to the economy as conceptualised by EU legislation most likely infringes the fundamental rights of equality and non-discrimination which are at the heart of the EU integration model and protected by Articles 20 and 21 of the EU’s own Charter of Fundamental Rights.’⁹⁹²

Despite the fact that seasonal workers can stay in a particular Member State for up to nine months at a time, they are not permitted to bring their families with them. Given the aim of the Directive is to stimulate circular migration, the seasonal workers are not encouraged to integrate – or to put it more strongly, they are kept from integrating – into the society of the host Member State.⁹⁹³ The lack of integration of migrant workers has the potential to keep them isolated. Despite ILO recommendations to allow seasonal workers to bring their families with them,⁹⁹⁴ regardless of experiences with guest-worker regimes in the past,⁹⁹⁵ and notwithstanding the right to family life as recognised by the European Union and its Member States, the Directive does not contain a provision on family reunification.⁹⁹⁶ It is not clear why the EU assumes that the Directive will not lead to the same tragic results as the temporary work programme before it, where spouses and children preferred to reunite illegally instead of remaining apart for nine months per year.⁹⁹⁷

⁹⁹² Zoetewij-Turhan M. H. (2017) The Seasonal Workers Directive: ‘... but some are more equals than others’, p. 43

⁹⁹³ Ibid, p. 37

⁹⁹⁴ ILO (1974) [Conditions of work and life of migrant and seasonal workers employed in hotels, restaurants and similar establishments](#), p. 46.

⁹⁹⁵ Castles, *The Guest-Worker in Western Europe – An Obituary*, The International Migration Review, Vol. 20, No. 4 (Winter 1986), p. 761.

⁹⁹⁶ Zoetewij-Turhan M. H. (2017) The Seasonal Workers Directive: ‘... but some are more equals than others’ p.37

⁹⁹⁷ Ibid

Family benefits are, by default, the area where seasonal workers face most restrictions, as the Directive does not contain any provisions allowing for family reunification for seasonal workers, which means that in many Member States seasonal workers are not legally allowed to bring family members based on the grounds of family ties alone.⁹⁹⁸ As in most Member States, family benefits can only be claimed for family members who are residing⁹⁹⁹ in the EU, and this makes it virtually impossible for seasonal workers from third countries to claim family benefits.¹⁰⁰⁰

Conclusions

Despite the criticisms of the Seasonal Workers Directive in terms of how it is applied across the European Union, nonetheless it provides valuable protections to migrant workers. Arguably, the most important protections provided by the Directive are equal treatment, the facilitation of complaints against employers, the option for migrant workers to change employer, and the sanctions against employers. When implemented properly, these have the potential to offer some level of protection against labour exploitation, and potentially reduce the vulnerability to trafficking. In order for the Directive to achieve its aim, there needs to be a harmonised approach across Member States in terms of how it is applied.

Recent Developments in Ireland

The Employment Permits Bill 2022

Over the years, concerns have been long expressed about the State's employment permit system and the economic migration policy directed at third-country nationals.¹⁰⁰¹ The permit system operates from a vacancy-led perspective.¹⁰⁰² The 50:50 rule ensures that all companies give preference to domestic and EEA workers in the first instance.¹⁰⁰³ The system is designed to facilitate the entry of appropriately skilled non-EEA migrants to fill skills

⁹⁹⁸ European Commission (2020) [Attracting and protecting the rights of seasonal workers in the EU and United Kingdom, Synthesis Report for the ENM Study](#), p. 22

⁹⁹⁹ [Ibid](#)

¹⁰⁰⁰ [Ibid](#)

¹⁰⁰¹ MRCI (2014) Work Permits in Ireland; MRCI (2010) Ending the Race to the Bottom

¹⁰⁰² Houses of the Oireachtas Seanad Debates (2024) [Employment Permits Bill 2022: Committee Stage](#) (22 May 2024)

¹⁰⁰³ [Ibid](#)

shortages.¹⁰⁰⁴ However, this objective must be balanced by the need to ensure that there are no suitably qualified Irish/EEA nationals available to undertake the work and that the shortage is a genuine one.¹⁰⁰⁵ Particular criticisms have been levelled against the multi-tiered approach to rights attached to different Employment Permits. Also of concern is the imbalance of power under the current system tying a worker to an employer and limiting the worker's mobility as factors conducive to exploitation. Problems also remain with employment progression and access to redress, which in turn is creating inequality and segregation in the labour market.¹⁰⁰⁶ This imbalance combined with the State's emphasis on immigration control in the workplace can leave migrant workers in very vulnerable and difficult situations, sometimes amounting to exploitation.¹⁰⁰⁷ There have been calls for the introduction of sectoral Employment Permits to remove the power imbalance between worker and employer so that workers can leave poor working conditions and change employment within a sector to a better job, as well as recommendations for parity between all workers on Employment Permits – high and essential skilled – in respect of mobility and family reunification rights.¹⁰⁰⁸

The Employment Permits Bill 2022¹⁰⁰⁹ recently passed the Oireachtas. The main purpose of the Bill is to consolidate and update the existing legislative framework concerning Employment Permits, repeal the Employment Permits Act of 2003 and 2006, and make certain changes intended to modernise the employment benefits system and the granting of an employment permit.¹⁰¹⁰ The aim is to improve efficiency in obtaining Employment Permits for both employees and employers, and the consolidation of the highly complex body of legislation.

The Bill is largely based upon recommendations made in the 2018 Review of Economic Policy.¹⁰¹¹ These include the introduction of a Seasonal Employment Permit to fill certain labour shortages and a more responsive system which is easier to modify.¹⁰¹² It has also been recommended that the Employment Permits (Amendment) Act 2014 is amended to make clear that complaints by undocumented workers should come within the remit of the

¹⁰⁰⁴ Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendments\) Bill 2019](#), p. 17

¹⁰⁰⁵ [Ibid](#)

¹⁰⁰⁶ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 253

¹⁰⁰⁷ [Ibid](#)

¹⁰⁰⁸ MRCI (2006) No Way Forward: Identifying the problem of trafficking for forced labour in Ireland

¹⁰⁰⁹ [Employment Permits Bill 2022](#); [Employment Permits Act 2024 \(Act 17 of 2024\)](#) [Employment Permits Bill 2022 \(Bill 91 of 2022\)](#)

¹⁰¹⁰ Houses of the Oireachtas, [Library and Research Service Bill Digest, Employment Permits Bill 2022](#)

¹⁰¹¹ [Ibid](#)

¹⁰¹² [Ibid](#)

Workplace Relations Commission and they should be protected from immigration consequences when making a complaint.¹⁰¹³

The Bill provides the option to change employer, introduces a Seasonal Employment Permit, and facilitates a more agile Employment Permits system through the movement of operational details from primary to secondary legislation for easier modification, as labour market needs require.¹⁰¹⁴ The new change of employer option will allow workers to move to a new employer after a prescribed period, planned to be nine months, without the need to apply for a new permit.¹⁰¹⁵ It is envisaged that this flexibility and transferability will strengthen the employment rights of migrant workers.¹⁰¹⁶

The Bill has relevance to the prevention of human trafficking and related vulnerability to exploitation in at least two aspects – employment mobility for increased prevention and new provisions being proposed for seasonal workers, which usually concerns high-risk sectors. The employment permit system has long been in need of reform in order to enable worker mobility, progression, and access to redress. The Joint Committee on Enterprise, Trade and Employment, in their pre-legislative scrutiny of the Bill, issued a number of recommendations.¹⁰¹⁷ They recommended that rather than introducing the Seasonal Employment Permit, the scope and terms of the General Employment Permit be adapted to meet the need for seasonal employment. The protections and provisions under the existing General Employment Scheme must not be diminished, and workers' rights must not be undermined. The Committee did not see sufficient evidence to support the proposed introduction of the waiver to the 50:50 rule and if such a waiver were to be introduced, it should only be applied following certification by a relevant enterprise agency that the circumstances in law are met, and the worker has been made aware of his or her rights in language understandable and accessible to him or her, and a review of the operation should be undertaken by that agency after one year of operation. The Committee believed that the proposal to amend the labour market needs test and other operational details by way of regulations would lead to a lack of transparency and make scrutiny by the Committee and others more difficult.

The Committee recommended that the scope of regulations should be restricted by primary legislation to limited operational features, that a draft of any proposed such regulations be presented to the Houses of the Oireachtas for scrutiny, and that the proposal should not lead to any diminution of the rights of workers. The Committee recommended that workers with

¹⁰¹³ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 253

¹⁰¹⁴ Houses of the Oireachtas Seanad Debates (2024) [Employment Permits Bill 2022: Committee Stage](#) (22 May)

¹⁰¹⁵ [Ibid](#)

¹⁰¹⁶ [Ibid](#)

¹⁰¹⁷ Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#)

General Employment Permits are provided with the same rights as those on a Critical Skills Permit. A holder of a General Employment Permit should have the right to gain access to the labour market after two years instead of five, which would make it easier for them to challenge substandard conditions. The Committee recommended that General Employment Permit holders should be given improved rights in relation to family reunion and the access of family members to the labour market, and the Minister for Enterprise, Trade and Employment and the Minister for Justice should address this matter in conjunction with this Bill.

The Committee was concerned about work permits being linked to a particular employer and in particular, where it comes to an end and the employee has difficulty in securing a renewal of the permit. While the Committee recognised the need to safeguard the position of the employer in such situations, the rights of the employee should also be protected, perhaps by giving them an earlier right of access to the labour market, or the right to move employer within the term of the permit. The Committee would like to see the concept of conditionality in the work permit system developed, so that sectors repeatedly using them would develop strong human resources policies to develop local talents and strong opportunities for professional development. The protection and enhancement of the position of employees should be at the centre of proposals to amend the employment permit system. In 2022, the Commission wrote to the Chair of the Joint Committee and the Minister of State for Business, Employment and Retail to recommend increased mobility for work permit holders by way of sectoral (or occupational) work permit as a means of prevention against erosion of rights and exploitation.

Increased Protections Proposed in the Employment Permits Bill

Change of Employer

Perhaps one of the most important protections introduced by the Bill is the option of changing employer under Section 27. It provides for this option where a foreign national has been granted a General Employment Permit or a Critical Skills Employment Permit when the prescribed period has elapsed since they first commenced employment in the State pursuant to an employment permit. The application to change employer may be made either by the new employer or by the foreign national. An application shall not be made unless an offer of employment in the State has been made in writing to the foreign national by the new employer within such period preceding the application, as may be prescribed. It is intended that this period will be nine months and that this measure will protect migrant workers from unfair treatment by their employer.¹⁰¹⁸ When the Minister approves the change of employer application, the foreign national shall commence employment with the new employer within a

¹⁰¹⁸ Houses of the Oireachtas Seanad Debates (2024) [Employment Permits Bill 2022: Committee Stage](#) (22 May)

prescribed period. Once the Minister approves the application, they shall amend the name of the employer on the permit to specify the name of the new employer.

Section 29 provides for the option of changing an approved seasonal employer. The terms under which this application can be made are the same as for a General Employment Permit. This applies when a Seasonal Employment Permit has been granted to the foreign national and where that permit is in force and will remain in force for at least three weeks from the date of making the application. The application can be made by the foreign national and shall not be made unless an offer of employment within the State has been made in writing within such period preceding the application, as may be prescribed. When the application is approved by the Minister, the foreign national shall commence employment with the new employer within a prescribed period and the name of the employer shall be amended on the permit.

This is a big improvement from the current mobility situation. Presently, a change can only be made by way of a new application for an employment permit after 12 months have elapsed since taking up employment in the State with their first employer.¹⁰¹⁹ Additionally, safeguards exist for permit holders to change employer within the bounds of an existing employment permit when faced with abusive or exploitative situations.¹⁰²⁰ The Bill, once enacted, will allow holders of General Employment Permits and Critical Skills Permits to transfer employment through a simplified procedure.¹⁰²¹ The amendment will allow the transfer to happen without the requirement to apply for a new employment permit.¹⁰²²

The proposed changes are an improvement, even though they fall short of the mobility that could be afforded by an occupational permit, as the link with a particular employer persists. While we welcome this reform, we will monitor with interest how this will be implemented in practice. It is critical that migrant workers have the right to change employers and that this is made as easy as possible in order to reduce the erosion of rights and exploitative work-related practices, as a potential precursor of labour trafficking.

Other Protections

Section 60 prohibits penalisation and an employer is not permitted to penalise or threaten penalisation against the employee for making a complaint to An Garda Síochána or the Minister that a provision is not being complied with or for giving evidence in any proceedings. Section 63 obliges an employer to keep, and have available for inspection by an authorised officer, books and records.

¹⁰¹⁹ Source: Department of Justice 2024

¹⁰²⁰ Ibid

¹⁰²¹ Ibid

¹⁰²² Ibid

In various debates on the issue, it was stated that family reunification is not a matter for the Department of Trade, Enterprise and Employment, but rather one for the Department of Justice. As a matter of principle, the Commission considers family reunification for long-term workers in the State as a precondition to integration, as common sense and as an issue of human dignity, fairness and respect for the family in Ireland.

On a positive note, the Ministers for Justice, and Trade and Employment announced that eligible spouses and partners of General Employment Permit holders have the right to work in Ireland provided they were granted Stamp 3 permission under the non-EEA Family Reunification policy. The spouses and partners will now be registered on a Stamp 1G.¹⁰²³

Seasonal Employment Permits

Despite opposition, the Bill has introduced Seasonal Employment Permits. While Ireland has not opted into the Seasonal Workers Directive, the Department of Enterprise, Trade and Employment states that the amendments are aligned with the Seasonal Workers Directive in terms of employee rights, employee protection and scheme design.¹⁰²⁴ The Bill provides that an employment permit may be granted to provide for the employment in the State of a foreign national who is employed by an approved seasonal employer in a seasonally recurrent employment. The foreign national must not be paid less than national minimum wage. The employer will directly provide any payment for either board and accommodation, or both. The employer will pay for health insurance in respect of a foreign national should they require medical treatment for illness or injury during the period for which the Seasonal Employment Permit is in force. A person or a business who wishes to apply to employ a foreign national under a Seasonal Employment Permit shall apply each year for approval as a seasonal employer. The Minister may refuse to approve a person/business as an approved seasonal employer where the person/business has not made appropriate arrangements to provide accommodation for the foreign nationals proposed to be employed under a Seasonal Employment Permit or has not made the appropriate arrangements to provide for health insurance for the period for which they will be in the State. It will be a short-term employment permission for a third-country national to work in the State for a maximum of seven months per calendar year and provides for the return of the worker each season, renewable across multiple years. It is designed to support sectors in addressing labour shortages and has been developed in consultation with stakeholders. It was stated that extra resources have been provided to the Workplace Relations Commission and it is expected that the Workplace

¹⁰²³ Migrant Rights Centre Ireland (2024) [Changes to Employment Permits to Allow Spouses to Work](#) (16 May)

¹⁰²⁴ Houses of the Oireachtas Dáil Debates (2024) [Employment Permits Bill 2022: Report and Final Stages](#) (31 January)

Relations Commission will be proactive regarding Seasonal Employment Permit inspections.¹⁰²⁵ The Commission welcomes the commitment to providing extra resources to the Workplace Relations Commission.

The Department of Trade, Enterprise and Employment is planning to ensure that the rights of seasonal workers are upheld and to introduce a rights-based pilot scheme in 2025, which will be designed with the aim of ensuring stringent protection for seasonal migrant workers.¹⁰²⁶ The pilot scheme will initially only be made available to the horticultural sector and will be restricted to a small number of employers and workers, so it can be thoroughly assessed afterwards.¹⁰²⁷

As stated above, additional resources have been provided to the Workplace Relations Commission.¹⁰²⁸ The findings of any such inspections as well as the outcome of the broader assessment of the pilot will provide the Department with the necessary information to assess the scheme, particularly in relation to the protection of rights for those on Seasonal Employment Permits.¹⁰²⁹

On foot of a proposed amendment to the Bill, officials in the Department have been instructed to implement a proposal around referencing the right to join a union in the employment rights information already provided to employment permit holders.¹⁰³⁰ Specific to the Seasonal Employment Permit, trade unions and migrant organisations will be invited to join the oversight advisory group.¹⁰³¹

Concerns have been raised surrounding the introduction of the Seasonal Employment Permit. As referenced above, the Joint Committee on Enterprise, Trade and Employment recommended that instead of introducing a Seasonal Employment Permit, the scope and terms of the General Employment Permit be adapted to meet the need for seasonal employment.¹⁰³² The protections and provisions under the existing General Employment Scheme must not be diminished, and workers' rights must not be undermined.¹⁰³³ As discussed, the Department intends to introduce a rights-based pilot scheme that will be

¹⁰²⁵ Houses of the Oireachtas Dáil Debates (2024) [Employment Permits Bill 2022: Report and Final Stages](#) (31 January)

¹⁰²⁶ Houses of the Oireachtas Seanad Debates (2024) [Employment Permits Bill 2022: Report and Final Stages](#) (28 May)

¹⁰²⁷ [Ibid](#)

¹⁰²⁸ [Ibid](#)

¹⁰²⁹ [Ibid](#)

¹⁰³⁰ [Ibid](#)

¹⁰³¹ [Ibid](#)

¹⁰³² Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#), p. 4

¹⁰³³ [Ibid](#)

initially only be made available to the horticultural sector, and will be monitored and evaluated.¹⁰³⁴ The Department believes that the introduction of Seasonal Employment Permits is a positive step, due to Ireland being an outlier in Europe in this regard.¹⁰³⁵

In the Seanad debate, the Minister stated that moving the requirement of the *labour market needs test* to regulations is being examined.¹⁰³⁶ The Committee was concerned that the proposal to amend the market needs test and other operational details by way of regulations would lead to a lack of transparency and make scrutiny by the Committee and others more difficult; therefore, the Committee recommends that the scope of such regulations should be restricted by primary legislation to limited operational features. A draft of any such proposed regulations must be presented to the Houses of the Oireachtas for scrutiny and any proposal should not lead to a diminution in the rights of workers.¹⁰³⁷

It appears that the Department has implemented the Committee's recommendation regarding the right to move employer within the terms of the permit, which is a welcome move.

The Commission reiterates its recommendation that Seasonal Employment Permits should not be introduced, or at the very least that the use of such permits is limited, and that the standards are on par with those agreed by EU Member States.

Redress

Section 59 of the Employment Permits Bill 2022 provides for a court to make an order providing recompense for work done or services rendered. The Minister may at their own discretion institute civil proceedings in the name, and on behalf of, the foreign national with their consent. Section 59 reflects section 2B of the Employment Permits Acts 2003-2014, in that it provides for civil proceeding to be initiated by the Minister in any court or competent jurisdiction for an amount of money to recompense the foreign national for work done and services rendered during the period for which the foreign national was in the employment without an employment permit.¹⁰³⁸ Following the decision of the Labour Court in *TA Hotels*

¹⁰³⁴ Houses of the Oireachtas Dáil Debates (2024) [Employment Permits Bill 2022: Report and Final Stages](#) (31 January)

¹⁰³⁵ [Ibid](#)

¹⁰³⁶ Houses of the Oireachtas Seanad Debates (2024) [Employment Permits Bill 2022: Report and Final Stages](#) (28 May)

¹⁰³⁷ Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#), p. 5

¹⁰³⁸ Section 59 of the *Employment Permits Bill 2022* seeks to provide a route for migrant employees, without valid immigration permissions, to recover monies owed to them by their employer. The Bill empowers such

Limited et al.,¹⁰³⁹ it would appear settled law that employees without valid immigration permissions will be prevented from bringing employment rights claims through the statutory bodies set up to deal with such claims.¹⁰⁴⁰ The consequences of this decision reach far beyond victims of trafficking, by severely undermining the protections for irregular migrant workers per se. Likewise, this may affect victims of trafficking who wish to recoup unpaid wages owed to them. Notably, this will not be an avenue for all forms of trafficking (such as those trafficked and exploited in illegal trades such as the drug or sex trade). However, it may have particular relevance for some victims, particularly in the context of labour exploitation and those who may not wish (or are unable or unsuccessful) to pursue criminal proceedings against their exploiters.¹⁰⁴¹ The lack of protections for irregular migrants inevitably create an anomalous situation in which employers found in breach of labour laws may face lesser financial penalties where they have employed undocumented workers. A serious question arises for the State as to whether the current framework provides an incentive for potentially rogue employers involved in human trafficking chains.¹⁰⁴²

A decision of an Adjudication Officer under Section 41 of the Workplace Relations Act 2015 in relation to a contravention of Section 60(3) (penalisation) shall declare that the complaint was or, as the case may be, was not well founded, require the employer to take a specified course of action, or require the employer to pay to the employee compensation of such amount (if any) as the Adjudication Officer considers just and equitable having regard to all of the circumstances. Section 41 of the Workplace Relations Act 2015 deals with presentation of complaints and referral of disputes. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015 on appeal from a decision of an adjudication officer shall affirm, vary or set aside the decision of the adjudication officer.

employees (or the Minister for Enterprise, Trade and Employment) to take “civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.” However, “Civil Proceedings” does not include claims brought before the Workplace Relations Commission or the Labour Court because “[i]n law, the Labour Court was not such a court” but is instead a “quasi-judicial tribunal exercising a specialist jurisdiction in respect to statutory employment rights.” The Labour Court’s reasoning was that “civil proceedings” were not defined by the Acts to include the Labour Court. The Labour Court considered that the Acts used “civil proceedings” only to distinguish from criminal proceedings.

¹⁰³⁹ *TA Lynam’s Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam’s Hotel v Preeti Khoosye* [2019] 12 JIEC 0408

¹⁰⁴⁰ Such as the WRC and the Labour Court.

¹⁰⁴¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 117- 118

¹⁰⁴² *Ibid.*, p. 118

Discussion of the Protections contained in the Employment Permits Bill 2022, the Employers Sanctions Directive, and the Seasonal Workers Directive

Both the Employers Sanctions Directive and the Seasonal Workers Directive contain provisions that protect and offer redress to third-country national workers who have been mistreated by their employers. The State has opted out of these Directives at the time of their adoption. This has deprived Ireland of the stimulus to adhere to the standards agreed by the EU Member States, especially those standards concerning protection and redress for workers, but also the associated monitoring, reviews and reporting that accompanies the implementation of such legal instruments. While it was stated in one of the Dáil debates that the legal framework of the Bill was informed by the Seasonal Workers Directive, it would appear that the only real similarity is that it provides the opportunity for seasonal migrant workers to change employer. The Bill also provides for a number of penalties, some of which are similar in nature to the Employers Sanctions Directive and the Seasonal Workers Directive.

The Employers Sanctions Directive provides for redress and criminal sanctions and financial compensation. While the Bill does provide for penalties for a breach of the legislation, it does not list the different situations in which sanctions must be imposed, as is set out in the Employers Sanctions Directive. The Bill provides for a court ordering payment for work done or services rendered – an improvement from the current rules, which make it very hard for undocumented workers to recover the wages for the work that was done, if these have been withheld (stolen) by a rogue employer.

It is anticipated that the Workplace Relations Commission will play a pivotal role in the implementation of the Bill, as necessary. Both the Employers Sanctions Directive and the Seasonal Workers Directive provide for the integral role labour inspectorates play in the fight against trafficking for labour exploitation. In order for the Workplace Relations Commission to fulfil a similar role, it is essential that staff be adequately trained and resourced to do so (see Chapter 1, Article 11(4) for more details on our position).

Notwithstanding the reservations expressed in relation to the Seasonal Employment Permit, the Commission will monitor with interest how the scheme will apply in practice. It is essential that given such permits will now be introduced, they are used on a limited basis and standards are on par with those agreed by the EU Member States. The Seasonal Workers Directive can provide guidance on this.

Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021

As stated elsewhere in the Report, there is currently no legislation in Ireland to specifically tackle the demand that fosters trafficking for labour exploitation. The Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021, which is currently at Third Stage, has the potential to address demand in relation to the user of services in the context of businesses' supply chains, from labour exploitation. Under this Bill, businesses would be required to report annually on the measures taken to, *inter alia*, guarantee products are free from human trafficking (including the exploitation of children).¹⁰⁴³ It provides for “to provide for transparent reporting by undertakings in relation to the risk of labour exploitation and human trafficking occurring in their supply chains or in any part of their businesses and of the steps taken by them to ensure such activities do not take place and to provide for connected matters”. Under the proposed section 3 (transparency in supply chains), the Minister can make regulations requiring businesses with a prescribed turnover to publish a labour exploitation and trafficking statement.¹⁰⁴⁴ The Bill enables the Minister to issue guidelines on the duties imposed by this measure and requires the Minister to publish any such guidelines on the Minister's website. The guidelines may include further provision about the kind of information which may be included in a labour exploitation and trafficking statement. An undertaking that contravenes regulations under the legislation will be guilty of a summary offence and liable to a fine. This is a measure that is not available in some of the legislative provisions elsewhere.¹⁰⁴⁵ A summary offence is an offence under criminal law. We continue to consider this development an area of particular interest and will continue to monitor its development. We note that the new EU Strategy for Combatting Trafficking in Human Beings 2021-2025 has identified such measures as a priority.¹⁰⁴⁶

As stated above, while it is not possible or practicable to criminalise the end user of services of trafficking for labour exploitation, it is however possible to look at the responsibilities owed by businesses and companies as legal persons on reduction of demand for human trafficking in their activities and supply chains.¹⁰⁴⁷ There have been developments recently at European level within this area. These include the recent adoption of the CSDDD and the Ban on Forced Labour Regulation, which will be reviewed in the following section.

¹⁰⁴³ [Ibid.](#), p. 74

¹⁰⁴⁴ [Ibid.](#)

¹⁰⁴⁵ Houses of the Oireachtas Dáil Éireann Debates (2023) [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021: Second Stage](#) (28 September)

¹⁰⁴⁶ European Commission (2021) [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings](#) 2021-2025, p. 7

¹⁰⁴⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 197

Recent Developments on Business Responsibility at European Union Level

As stated under the discussion of Article 18(4) of the EU Anti-Trafficking Directive above, the end user of the services of people exploited in the context of trafficking for labour exploitation is often very many degrees separated from the trafficking victim. There are rare exceptions to this. It is neither possible nor practicable to criminalise the end user (the client or the consumer) in these circumstances. Therefore, in order to tackle the demand which fosters the exploitation that leads to labour trafficking, it is essential to look at due diligence within supply chains and the responsibilities of businesses and companies in relation to their activities in their capacity as legal persons, as discussed under Articles 5 and 6 in Chapter 1. Both the CSDDD and the Regulation prohibiting products made with forced labour in the EU¹⁰⁴⁸ have the potential to support the anti-trafficking response.¹⁰⁴⁹

The Corporate Sustainability Due Diligence Directive

(Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance))

Following protracted negotiations, and as the result of a political compromise, the CSDDD¹⁰⁵⁰ was approved by the Council on 23 May 2024 and Member States will have two years to transpose it. The CSDDD covers both human rights and environmental aspects. Under the final text, the Directive applies to very large EU companies of more than 1,000 employees and a turnover exceeding €450 million (Article 2(1)(a)) and non-EU companies with a net turnover of more than €450 million in the EU (Article 2(2)(b)).¹⁰⁵¹ The key elements of the CSDDD include personal scope, material scope, substantive due diligence, scope of due diligence and ‘chain of activities’, stakeholder engagement, enforcement and civil liability, financial institutions, and corporate governance.¹⁰⁵² It will also apply to a company that does not meet these thresholds but is the ultimate parent company of a group which reaches these thresholds (Article 2(1)(b) and 2(2)(b)), as well as companies that have entered into

¹⁰⁴⁸ European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 10

¹⁰⁴⁹ IHREC (2023) [Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 74

¹⁰⁵⁰ [Texts adopted - Corporate Sustainability Due Diligence - Wednesday, 24 April 2024 \(europa.eu\)](#)

¹⁰⁵¹ Holly G. (2024) [The EU Corporate Sustainability Due Diligence Directive: Maximising Impact Through Transposition and Implementation](#). The Danish Institute of Human Rights

¹⁰⁵² [Ibid](#)

franchising or licensing agreements in the EU in return for royalties amounting to more than €22.5 million in the EU, and a net turnover of more than €80 million (Article 2(2)(c)). This represents about 5,000 companies or 0.05% of companies in the EU.¹⁰⁵³

There will be a phase in plan pursuant to Article 37. After three years, transposition laws would apply to companies of more 5,000 employees on average and a turnover of more than €1.5 billion. After four years, transposition laws would apply to companies of more than 3,000 employees and a turnover of more than €900 million. After six years, the European Commission will review the implementation of the law and possibly introduce revisions to selected aspects. While this is a significantly reduced scope and much longer timeline for application, the final text has retained the general approach of the CSDDD, where stricter obligations are imposed on larger companies which are perceived to have sufficient resources to comply, with the expectation that they will bring smaller companies along through their business relationships.¹⁰⁵⁴

Regarding material scope, companies should identify impacts by reference to the rights contained in the International Bill of Human rights and the ILO Core Conventions.

One of the core components of the CSDDD is the obligation to conduct due diligence. Companies are required to put in place a policy framework (Article 7), identify the impacts they (may) have on human rights and the environment (Article 8), take appropriate measures to prevent or bring an impact to an end (Article 10 and 11), carry out meaningful engagement with stakeholders (Article 13), maintain a notification and complaints procedure (Article 14), monitor the effectiveness of due diligence (Article 15), and communicate on their due diligence (Article 15).¹⁰⁵⁵

The due diligence process must cover not only a company's own operations and the operations of its subsidiaries, but also business partners in its so-called 'chain of activities'. This entails the activities of upstream business partners that relate to the products and services of the company in question, and specific activities of the downstream business partners (Article 3(g)).¹⁰⁵⁶

Stakeholder engagement is one of the most critical means of ensuring that effective approaches to due diligence are adopted. Member States must designate one of more Supervisory Authorities to supervise compliance (Article 24(1)). Article 25(1) also specifies

¹⁰⁵³ This estimate is based on calculations from SOMO, with data from Eurostat and Orbis, cited in Brunetti A (2024) '[Scope of EU supply chain rules cut by 70% ahead of key Friday vote](#)', Euractiv (15 March)

¹⁰⁵⁴ Holly G. (2024) [The EU Corporate Sustainability Due Diligence Directive: Maximising Impact Through Transposition and Implementation](#), The Danish Institute of Human Rights

¹⁰⁵⁵ [Ibid](#)

¹⁰⁵⁶ [Ibid](#)

that Supervisory Authorities must have adequate powers and resources to discharge their functions.¹⁰⁵⁷

The final agreement includes the financial sector but in a limited way. Financial institutions are required to conduct their due diligence on their own operations and their supply chains, rather than being asked to consider the impact of investments, loans, insurance or other financial services (i.e. their downstream activities). This is a critical shortcoming in the deal as these areas are at the core of the business activities of a financial institution.

The European Commission's proposal for a number of corporate governance elements were omitted from the final text.

The CSDDD contains an obligation on Member States to require that companies provide remediation where a company has caused or jointly caused an adverse impact and while the CSDDD is not prescriptive as to how Member States could implement this, Supervisory Authorities must be equipped with powers to order remediation.

The CSDDD will require firms and their upstream and downstream partners, including supply, production and distribution partners, to prevent, end or mitigate their adverse impacts on human rights and the environment. Such impacts will include slavery, child labour, and labour exploitation. Member States will create or designate a supervisory authority to investigate and impose penalties on non-complying firms, which will include 'naming and shaming', and fines of up to 5% of companies' net worldwide turnover. Companies will be liable for damages caused by breaching their due diligence obligations and have to fully compensate their victims. Companies will be liable for damages and can be fined for non-compliance.¹⁰⁵⁸

Proposed Ban on Forced Labour Regulation

The ILO estimates that globally there are around 27.6 million people in forced labour, of whom 3.3 million are children.¹⁰⁵⁹ The proposed Ban on Forced Labour Regulation was approved by the European Parliament on 23 April 2024. The final text will have to be approved by the EU Council and it is anticipated that they will vote on the text in the latter half of 2024.

The Ban on Forced Labour Regulation relies on the 'forced labour' definition as set out in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization.¹⁰⁶⁰ The Ban on Forced Labour Regulation means that products made with forced labour will be banned from the EU single market. This Regulation will permit the EU to

¹⁰⁵⁷ [Ibid](#)

¹⁰⁵⁸ European Parliament (2024) [Due diligence: MEPs adopt rules for firms on human rights and environment](#) (24 April)

¹⁰⁵⁹ ILO (2019) [Ireland joins efforts to combat forced labour](#) (4 February)

¹⁰⁶⁰ [Texts adopted - Prohibiting products made with forced labour on the Union market - Tuesday, 23 April 2024 \(europa.eu\)](#);

prohibit the sale, import and export of goods made using forced labour. Member State authorities and the European Commission will be able to investigate suspicious goods, supply chains, and manufacturers. Crucially, if the product is deemed to be made using forced labour, it will no longer be possible to sell it on the EU single market (including online) and shipments will be intercepted at the EU's border. Manufacturers of banned goods will have to withdraw their products from the EU single market and donate, recycle or destroy them. Non-compliant companies could also be fined. The goods may be allowed back onto the EU single market once the company eliminates forced labour from its supply chains.¹⁰⁶¹

To ensure uniform application of a decision taken by one Member State throughout the Union market, the principle of mutual recognition applies and a decision taken by a Competent Authority in one Member State will be recognised by all other Member States, through a union-wide product ban. When economic operators comply, the decision is withdrawn and removed from the Forced Labour Single Portal. To ensure an effective allocation of investigations between Member States and Competent Authorities, and the Commission, Article 15 outlines an allocation mechanism based on the location of the suspected forced labour. Where the suspected forced labour takes place outside of the EU (93% of cases), the Commission will lead the investigations/field inspections. Where the suspected forced labour is taking place within the territory of a Member State, the Competent Authority of that Member State will lead on the investigation. At a national level, enforcement of the Regulation will rest on cooperation between labour inspectorates, market surveillance bodies and customs authorities. There will be a risk-based approach to investigations. Lead authorities will take into account the size and economic resources of economic operators. Economic operators subject to investigation will have to withdraw products from the market or remove the content from the online interface, and dispose of or replace the products concerned.¹⁰⁶²

Article 27 sets out penalties and provides that they shall be effective, proportionate and dissuasive. A number of factors shall be taken into account when deciding whether to impose penalties. Member States shall provide for pecuniary penalties. When these are imposed, they shall be based on the company's net worldwide turnover and the maximum limit shall not be less than 5% of the net worldwide turnover of the company in the financial year preceding. Any decision relating to this will be published.

Conclusions and Recommendations

We provide an overview of the role business and employment regulations can play in combatting trafficking for labour exploitation. Serious efforts to engage with businesses in this

¹⁰⁶¹ European Parliament (2024) [Products made with forced labour to be banned from EU single market](#) (23 April)

¹⁰⁶² Department of Enterprise, Trade and Employment (2024) [Proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market](#)

regard have only been a relatively recent occurrence. As reflected by the statistics, trafficking for labour exploitation is the second most reported type of trafficking in Ireland and is very often concentrated in specific businesses and sectors. As a result, business must play a central role in tackling this issue. This issue is further compounded by the fact that victims are notoriously difficult to identify and there has been no conviction for trafficking for labour exploitation to date in Ireland. The sectors identified as high-risk must continue to be closely monitored due to their susceptibility to exploitation.

Currently, there is no standalone offence of forced labour in Ireland, which has consistently been highlighted as a serious gap in the law. Labour exploitation is only classified as a criminal offence once it forms part of a trafficking offence under the 2008 Trafficking Act. This absence of a standalone offence of forced labour contributes to the blurring of the line between forced labour and trafficking for forced labour. A standalone offence of forced labour would ultimately provide greater protection to victims as forced labour would be prosecuted as a separate and distinct offence separate to that under the 2008 Act, which requires different evidential burdens to be satisfied.

The objectives contained within the NAP on socially responsible procurement and engagement of trade unions and employer' representative bodies in prevention is a very welcome development given they have the potential to significantly improve and support the anti-trafficking response.

It is critical that migrants in irregular situations be able to avail of protections. Despite the justified criticism for its preoccupation with illegal migration, the Employers Sanctions Directive provides minimal protections to migrant workers, most important of these being the facilitation of complaints, the option for third parties to engage on behalf of third-country nationals, and the right to back payments of any outstanding remuneration, taxes and social security contributions. The availability of civil avenues of redress is a hugely important protection for migrants. The Labour Court *TA Hotels Limited et al.*¹⁰⁶³ decision complicates this.

In order for migrants to be sufficiently informed and aware of their rights as provided in the Employers Sanctions Directive, it is vital that there is uniformity across Member States in how this information is provided. In opting out of EU standards such as the above mentioned Directive, the State must ensure that the protections and rights afforded to migrant workers in Ireland do not fall below the EU-wide consensus on what these protections and rights should be.

Despite criticisms levelled against the Seasonal Workers Directive regarding its application across the European Union; its protections (equal treatment, facilitation of complaints,

¹⁰⁶³ t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye [2019] 12 JIEC 0408

option to change employer), when implemented properly and uniformly across Member States, have the potential to prevent exploitation.

Criticisms have long been levelled against the employment permit system in Ireland in terms of it being too multi-tiered and creating a power imbalance by tying a worker to a particular employer, thereby limiting mobility. The Employment Permits Bill's main purpose is to consolidate and update the existing employment legislation and seek to modernise the current employment system. It introduces a number of new protections, with perhaps the most important being the option to change employer, which will hopefully lead to more employment mobility, thereby increasing prevention potential. Despite numerous concerns expressed in relation to its susceptibility to exploitation, the Bill introduces a Seasonal Employment Permit. It is crucial that Seasonal Employment Permit standards must either be on a par with or exceed those systems in Member States where Seasonal Employment Permits are utilised.

Due to the impracticality of criminalising end users of services provided by victims of trafficking for labour exploitation, the focus must shift to businesses and companies in terms of their responsibilities owed in terms of their activities and supply chains in order to tackle demand. The Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021 has the potential to address this. Recent EU-wide efforts examined businesses' responsibilities towards human rights and the resulting CSDDD and the Ban on Products made with forced labour Regulation, despite the compromises in reaching consensus, are welcomed by the Commission. Both have the potential to assist and support the anti-trafficking response. The Commission, however, is of the view, that the opportunity for a greater synchronicity with the human trafficking framework has been missed. This potentially weakens the preventative indirect effect these EU standards will have on trafficking for the purposes of labour exploitation.

The Commission reiterates its recommendation that Seasonal Employment Permits are not introduced, or at the least that such Permits are introduced on a limited basis, while the standards are on a par with those agreed by the EU Member States. The Commission recommends that the State observes the minimum standards agreed by the EU Member States.

The Commission recommends that the State considers all the available learning and good practices from the implementation of Seasonal Workers Permits and the Seasonal Workers Directive in the other EU Member States since 2014.

The Commission recommends that the State maintains a closer synchronisation with other matters of regulation of third-country nationals' employment by participating in and opting in to legal agreements of the EU, given that they represent minimum standards that the countries are free to exceed.

The Commission reiterates its recommendation that a standalone offence is introduced in Irish law for holding a person in slavery, servitude or forced or compulsory labour.

The Commission recommends that the State moves quickly to operationalise the permits allowing for a simple change of employer.

The Commission recommends that the Employment Permit system is reformed towards greater mobility of migrant workers, for example sectoral work permits, as a means of prevention against abuse and exploitation

The Commission reiterates its recommendation that the State considers the introduction of a specific “migrant exploitation protection permit” to enable migrant victims of exploitative employment situations to leave those situations quickly.

The Commission reiterates the recommendations proposed by the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons through reducing the demand fostering trafficking for labour exploitation be considered by the State. Measures such as, establishing civil and criminal liability for online platforms¹⁰⁶⁴ and mandating online platforms to conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks; report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission reiterates its recommendation that the State develops a research strategy to help fill knowledge gaps related to human trafficking, specifically the experiences of victims of human trafficking for the purpose of labour exploitation, in the Irish context.

¹⁰⁶⁴ As defined by Art 2(h) of the Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about of the exploitation. OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking (2020) [*Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools*](#). Vienna

The Commission reiterates its recommendation that a National Strategy/Forum on Technology and Human Trafficking is developed.

The Commission reiterates its recommendation that this Strategy/Forum should contain a roadmap to tackle the abuse of technology by traffickers for the purposes of labour exploitation, including the staffing, training and resources that will be required, the areas of online activity that will be initially targeted for attention, the research agenda that will be conducted and the legislative gaps that will be addressed.

Glossary



AGS – An Garda Síochána (Irish police)

AHR – Health (Assisted Human Reproduction)

AHRRRA – Assisted Human Reproduction Regulatory Authority

ASSC – Accompaniment Support Service for Children

BIC – Best Interest of the Child

CAB – Criminal Assets Bureau

CAMHS – Child and Adolescent Mental Health Services

CAHR – Committee on Assisted Human Reproduction

CARI – Children at Risk in Ireland

CNAM - Coimisiún na Meán (Ireland's Online Safety Commission)

CSDDD – EU's Corporate Services Due Diligence Directive

CSOs – Civil Society Organisations

DCEDIY – Department of Children, Equality, Disability, Integration and Youth

DP – Direct Provision

DPP – Director of Public Prosecutions

DPSUs – Divisional Protective Service Units

DSGBV – Domestic, Sexual and Gender-Based Violence

EC – European Commission

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

EEA – European Economic Area

EMCDDA – European Monitoring Centre for Drugs and Drug Addiction

EU – European Union

Eurojust - European Union Agency for Criminal Justice Cooperation

FEMM – European Parliament Committee on Women's Rights and Gender Equality

GNPSB - An Garda Síochána Garda National Protective Services Bureau

GP – General Practitioner Doctor

GRETA – Council of Europe Group of Experts on Action against Trafficking in Human Beings

GREVIO – Council of Europe Group of Experts on Action against Violence against Women

HIQA – Health Information and Quality Authority

HSE – Health Service Executive

HSE AHTT - HSE Anti-Human Trafficking Team

HSE WHS – HSE Women’s Health Service

ICI – Immigrant Council of Ireland

ICT – Information and Communication Technology

IEA – (Tusla) Intake Eligibility Assessment

IHREC – Irish Human Rights and Equality Commission

IOM – International Organization for Migration

IPAS – International Protection Accommodation Service

IPO – International Protection Office

ITF – International Transport Workers’ Federation

JURI – European Parliament Committee for Legal Affairs

LAB – Legal Aid Board

LIBE – European Parliament Committee on Civil Liberties, Justice and Home Affairs

LRC – Law Reform Commission

MRCI – Migrant Rights Centre of Ireland

NAP – National Action Plan

NRM – National Referral Mechanism for the Identification and Assistance of Victims of Trafficking

OPIU – An Garda Síochána Organised Prostitution Investigation Unit

OSMRA – Online Safety and Media Regulation Act 2022

PSNI – Police Service of Northern Ireland

SCSIP – (Tusla) Separated Children Seeking International Protection unit

SEA – Special Emergency Arrangements

TCA – Trafficking for Criminal Activities

TEU – Treaty on European Union

TFEU - Treaty on the Functioning of the European Union

TFM – Trafficking for Forced Marriages

TLE – Trafficking for Labour Exploitation

TSE – Trafficking for Sexual Exploitation

UN – United Nations

UNODC – United Nations Office on Drugs and Crime

WRC – Workplace Relations Commission

Figures, Tables and Diagrams



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Appendix 1



Submission to the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023, IHREC, October 2023

Scan the QR code to view the full submission or access the link:

<https://www.ihrec.ie/app/uploads/2023/09/Criminal-Law-Sexual-Offences-and-Human-Trafficking-Bill-2023.pdf>



Appendix 2



Factsheet 1: Combined Official Data for 2013-2023

Trends in Human Trafficking

The diagrams are based on official data regarding victims of trafficking recorded in Ireland by the State. The period includes data from January 2013 to December 2023 in order to align to the case reclassification undertaken by the State. The Department of Justice and An Garda Síochána are the sources of the data.

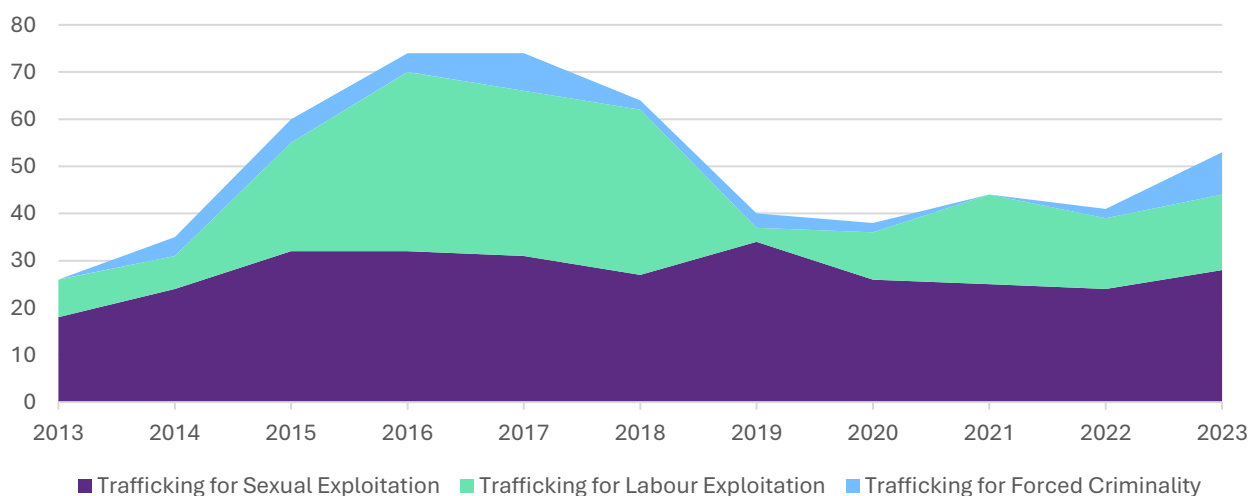
Types of Exploitation over the Years

Data trends have remained mostly consistent over the last eleven years (2013-2023). Ireland remains primarily a destination for trafficking in persons. In total, 566 people have been officially identified as victims of trafficking since 2013.

Multiannual data from the National Referral Mechanism for the Identification and Assistance (NRM) of victims of trafficking shows that the most frequently detected forms of trafficking in Ireland continue to be trafficking for the purpose of sexual exploitation (TSE, 55%), trafficking for the purpose of labour exploitation (TLE, 38%), and trafficking for the purpose of criminal activities (TCA, 7%).

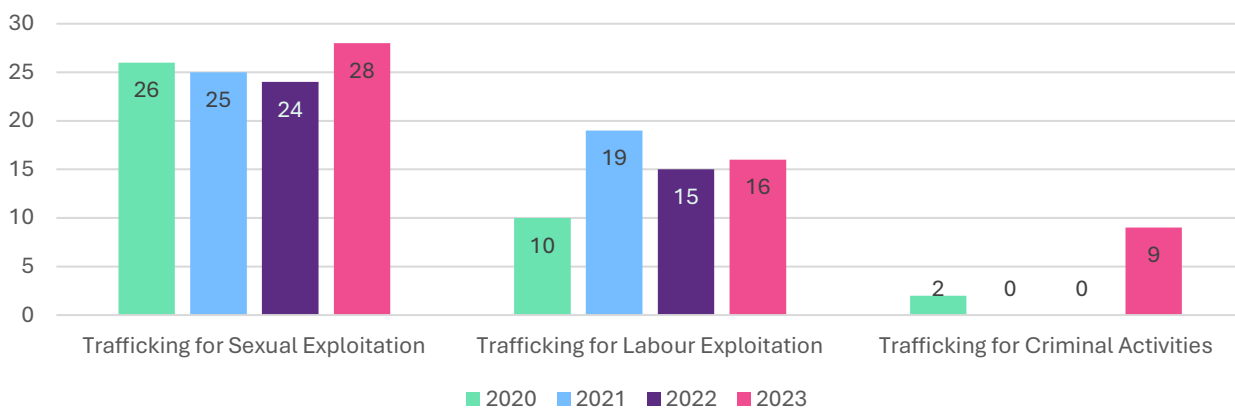
The total number of victims of trafficking in 2023 represents a 20% increase from 2021, and a 26% increase from 2022. This is a significant change that has occurred within a relatively short period of time. This also demonstrates that the capacity to identify victims of trafficking in Ireland has increased lately.

Diagram 1: Trends in Types of Exploitation 2013-2023



Over the last three years, TSE and TLE show a slight increasing and decreasing trend, respectively. The more notable change has occurred in respect of TCA, which has risen from 0 (in 2021) to 9 (in 2023) victims of trafficking. TCA represents 17% of all victims of trafficking identified in 2023, which is significant. We have included a special overview of TCA in [Chapter 2](#) of this Report. For further information on number distribution see the Comprehensive Data Table included in Factsheet 4.

Diagram 2: Types of Exploitation in 2020, 2021, 2022 and 2023

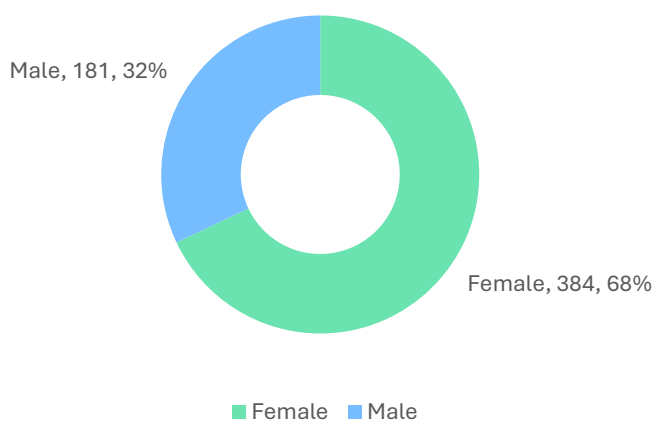


Gender Dimension

Human trafficking continues to be a highly gendered and racial act; more women than men are trafficked in Ireland, and the vast majority of victims are of a migrant background.

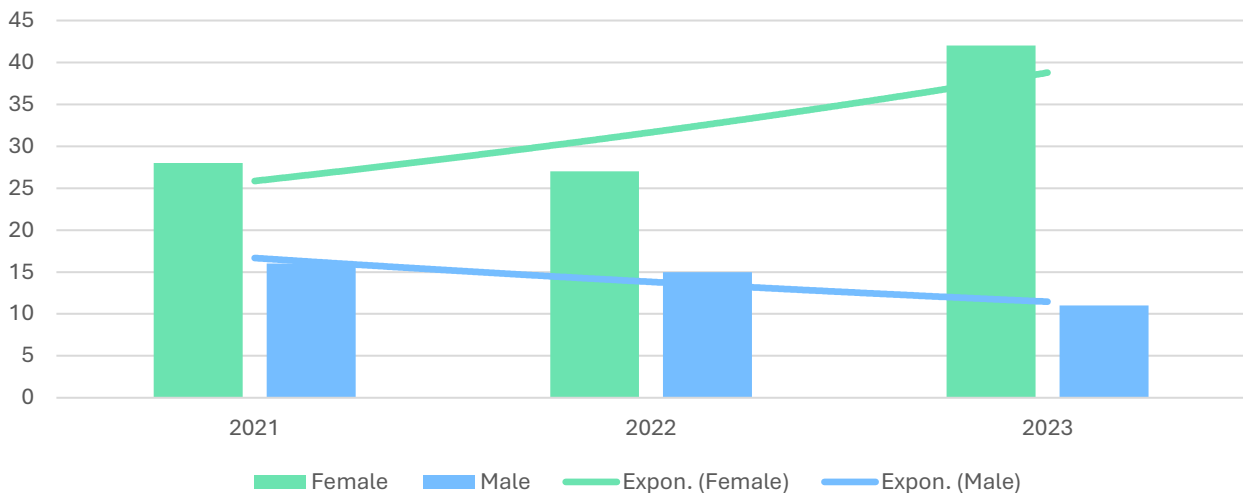
The national multiannual official data demonstrates the highly gendered aspect of human trafficking, which proves to be a consistent trend in Ireland (as well as in the EU). Overall, more women (68%) fall victim of human trafficking than men (32%). Over the years, there has been only one case of a transgender victim of human trafficking officially recorded.

Diagram 3: Victims 2013-2023, by Gender



There is an increase in identified female victims overall. For illustration, the number of female victims between year 2021 and year 2023 increased by one third. **In 2023 alone, female victims represented almost 80% of the identified victims.** This trend was understandably accompanied by a slight decrease in male victims identified.

Diagram 4: Trends in Gender of Victims over 2021, 2022 and 2023



Based on the profile of identified victims, TSE remains the most gendered type of human trafficking exploitation, affecting over 96% female victims. TLE is also gendered but to a lesser extent, with 68% male victims and 32% female. In TCA, female victims are the majority (66%).

Diagram 5: Trafficking for Sexual Exploitation, 2013-2023, by Gender

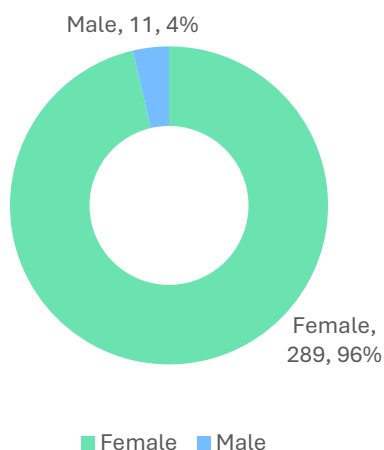
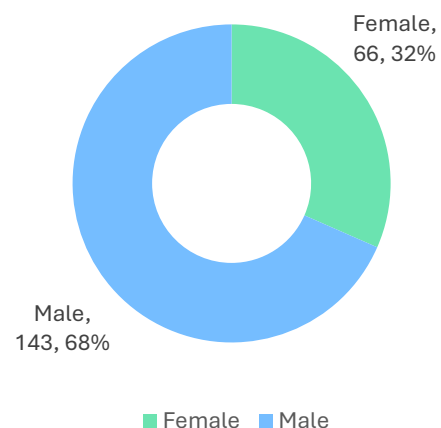


Diagram 6: Trafficking for Labour Exploitation, 2013-2023, by Gender



Age of Victims

Children represent 8% of all victims of trafficking identified in Ireland. 44 children have been officially recognised as victims of trafficking in Ireland since 2013 (among a total of 566

victims identified). This is significantly less than the most recent EU average (15%). Similarly to the gender demographics in adults, the data shows that more girls than boys are trafficked at 9% and 5% of all victims, respectively. 77% of child victims of trafficking are girls. No child victims of trafficking were identified in 2020 and 2021. In 2022 and 2023, five child victims of trafficking were identified each year as suspected victims of trafficking – eight girls and two boys. The majority of these were victims of TSE (6), followed by TCA (3), and TLE (1).

Diagram 7: Victims of Trafficking by Gender and Age, 2013-2023

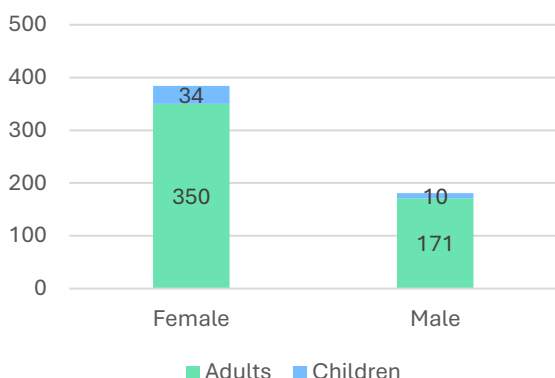
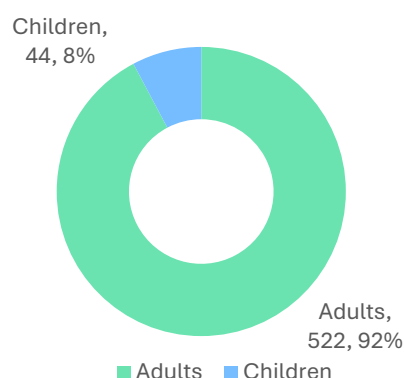


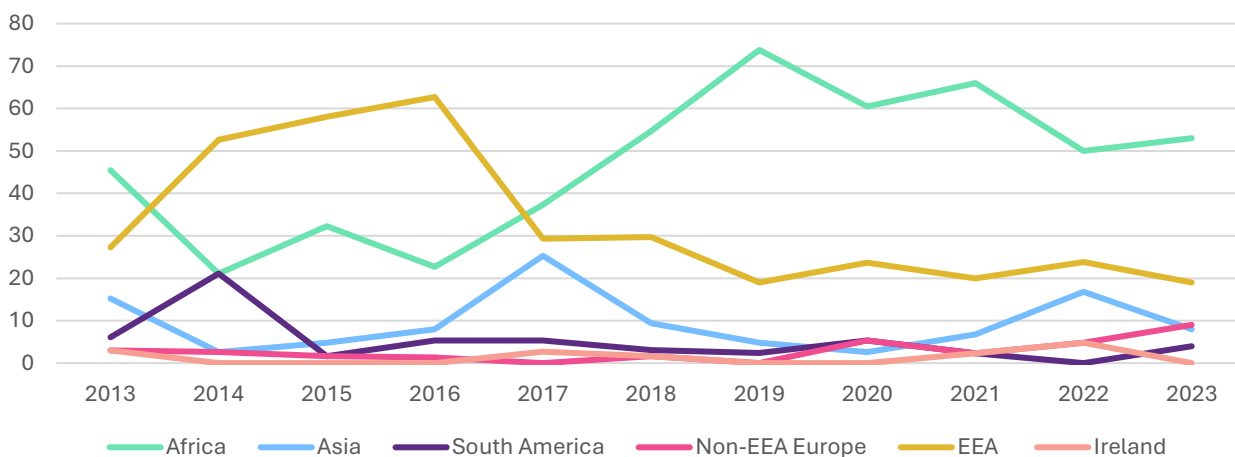
Diagram 8: Victims of Trafficking by Age, 2013-2023



Origin of Victims

Africa and the European Economic Area (EEA) and, to a lesser extent, Asia, Europe (non-EEA), and Latin America, are the most common regions of origin for victims of trafficking in Ireland. Most victims of TSE are from the African continent, while the EEA region is significant in terms of TLE. TCA mainly affects people from Asia and the EEA. Isolated cases of Irish nationals are also observed, which includes two cases of child trafficking for sexual exploitation in 2022. No cases of Irish nationals have been recorded in 2023.

Diagram 9: Trends in Regions of Origin of Victims 2013-2023



Factsheet 2: 2023 Official Data at a Glance

2023 Official Data at a Glance

The diagrams below illustrate the official data of the State, based on the victims of trafficking in the National Referral Mechanism (NRM) in 2023.

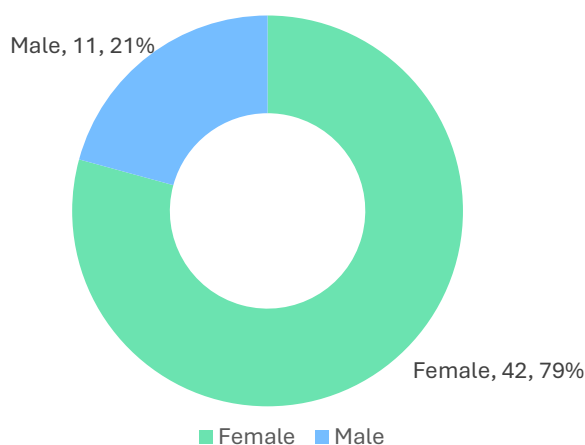
Number of Victims Identified

The State reported that there were 53 cases officially accepted in the National Referral Mechanism (NRM) for victims of trafficking in 2023. This represents a significant increase of 20% compared to 2022. Overall, the number of identified victims has increased in comparison to the preceding years (42 in 2022 and 44 in 2021). Studies have found that the annual data represents an underestimate of around 40%, due to the clandestine nature of the crime and the complexity in detecting and confirming victims. The overall number of recorded cases depends on the parameters of the NRM which is currently under review. It is expected that, once revised and properly implemented, the new mechanism will lead to an increased number of victims bringing us closer to the levels of reality.

Gender

In line with the existing trends, the majority of victims identified in 2023 were female (79%). There was a stark increase (by 33%) in female victims across all forms of trafficking from the previous year (in trafficking for sexual exploitation (TSE) from 24 to 28, in trafficking for labour exploitation (TLE) from three to eight and in and trafficking for the purpose of criminal activities (TCA) from zero to six). There was a slight decrease in male victims identified overall, including in the primarily male-dominated TLE (from 12 to 8).

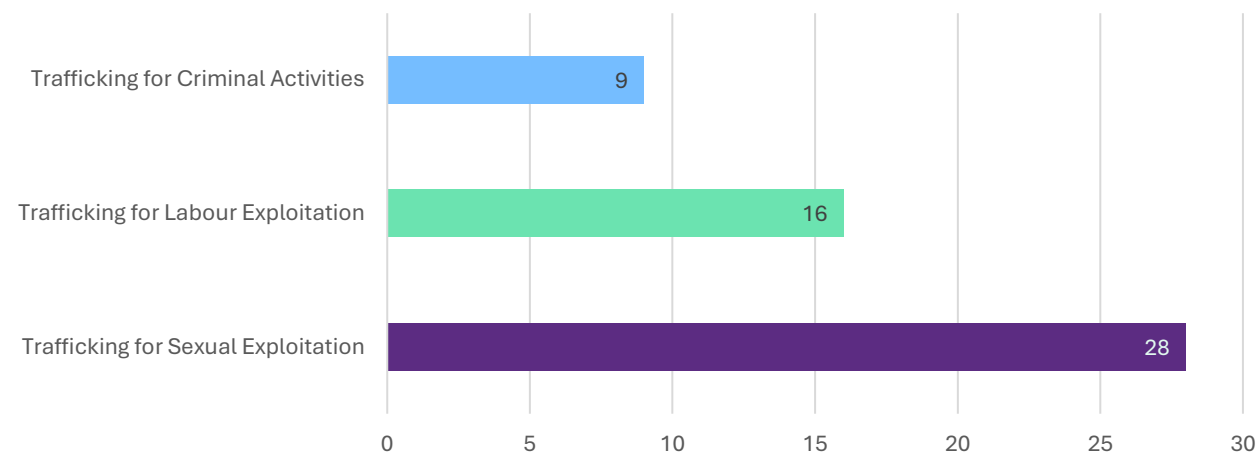
Diagram 1: Victims of Trafficking in 2023, by Gender



Types of Exploitation

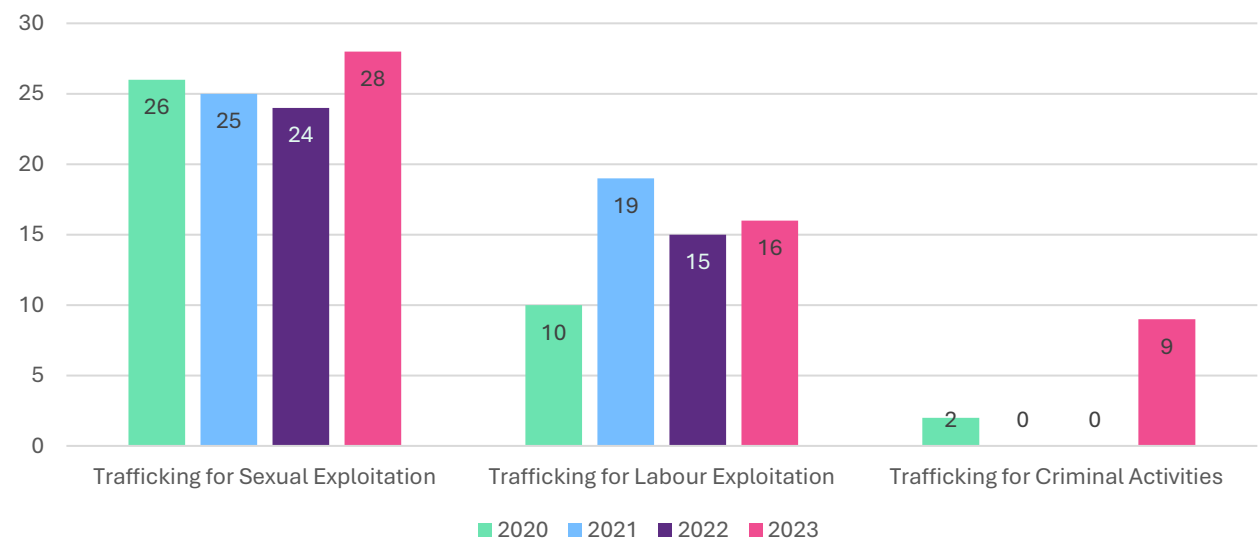
The overall increase in the number of detected victims in 2023, is largely due to an increase in TSE (by 16%) and by the quadrupling of the cases of TCA. Six female victims of TCA were identified, representing the first female victims of this type of exploitation since 2019.

Diagram 2: Victims of Trafficking in 2023, by Exploitation



In 2023, TSE remains the most reported type of exploitation in the NRM (53% of all cases), followed by TLE (30%). Of note is TCA, which from very low levels since 2018, has emerged representing 17% of the cases in 2023. This is illustrated in Diagram 3 below. In this regard, the situation in Ireland mirrors the EU where novel and less usual forms of exploitation, such as forced marriages and illegal adoption are on the rise.

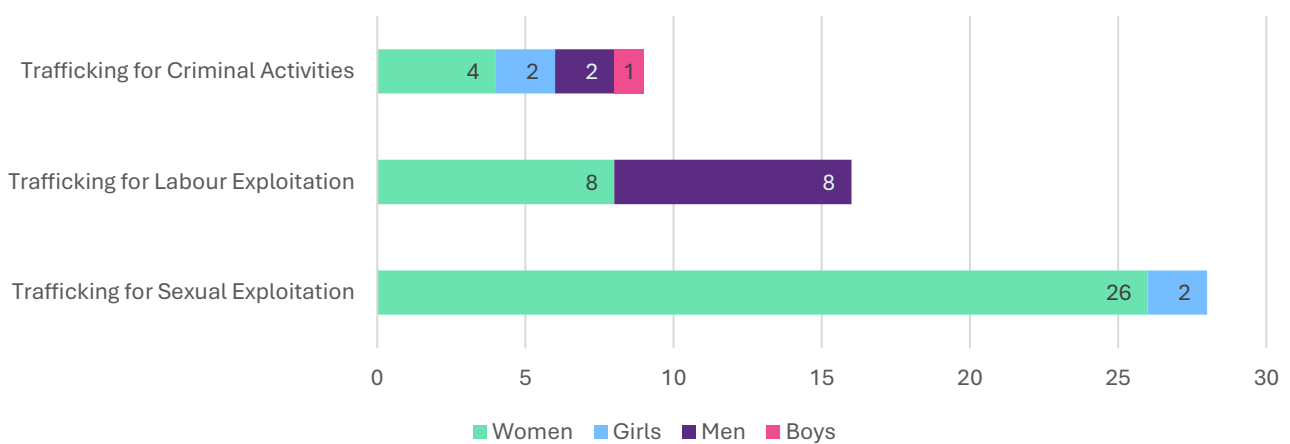
Diagram 3: Trends in Types of Exploitation, 2020-2023



Age of Victims

In 2023, we had five reported cases of trafficking of child victims (9% of all cases) – four girls and one boy. This is the same number of minors and the same gender ratio as last year (2022). The presence of children among the victims is concerning but not surprising. The average rate at which we identify child victims is lower than the EU average. It is expected that this will change with the upskilling of Tusla and its formal inclusion in the new NRM. Increased efforts in training are reported for 2023.

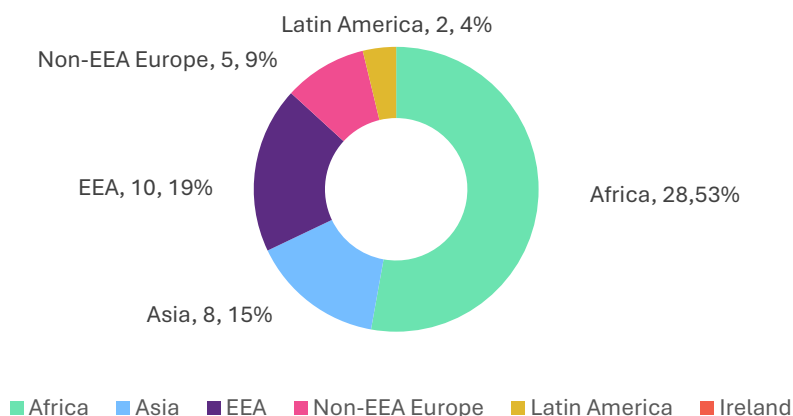
Diagram 4: Victims of Trafficking in 2023, by Exploitation, Gender and Age



Regions of Origin

Africa, the EEA and Asia were the main regions of origin of victims in 2023. Non-EEA Europe and Latin America are also represented. Africa remains by far the most prevalent source region for victims detected in Ireland. No Irish nationals were identified as being victims in 2023.

Diagram 5: Victims of Trafficking in 2023, by Region of Origin



The data consistently indicates that Africa is the most represented region of origin for TSE, while the EEA and Asia are the most represented regions in TLE. Asia is a notable region of origin for both TSE and TLE, and the sole region for TCA. Interestingly, more than half of the victims in TCA were from the EEA.

Diagram 6: Victims of Trafficking for Sexual Exploitation in 2023, by Region of Origin

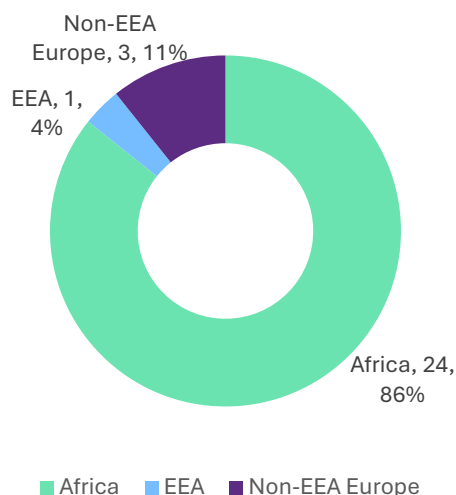
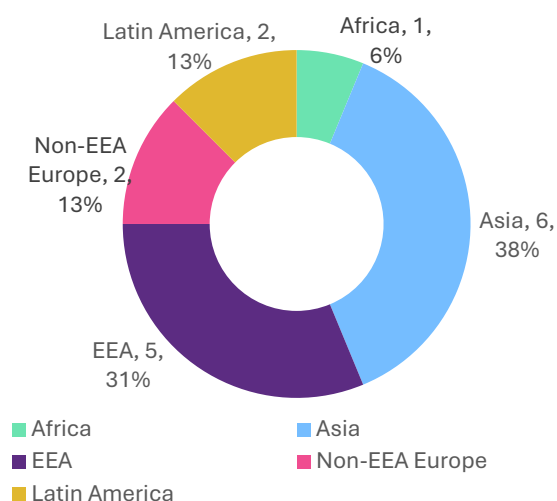


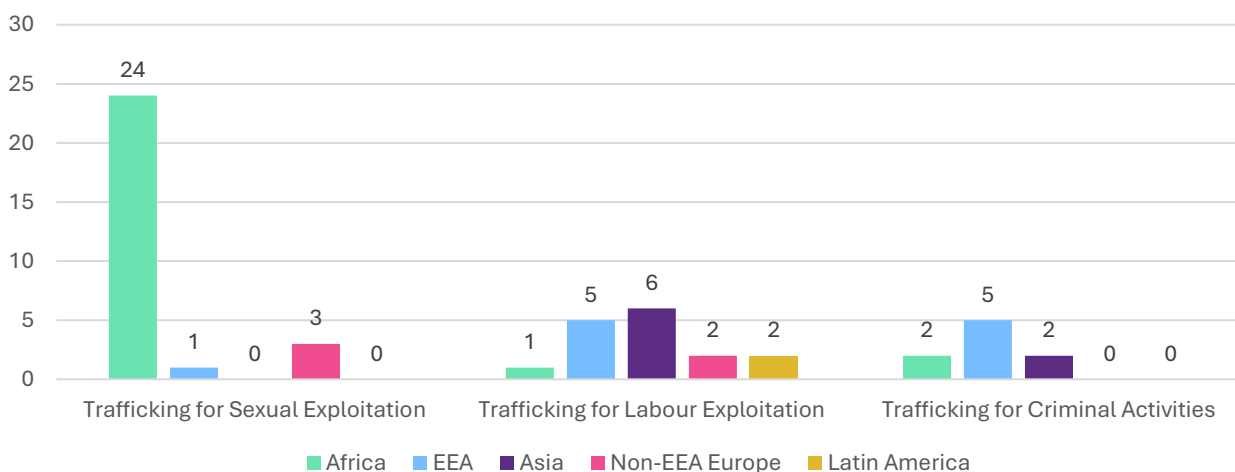
Diagram 7: Trafficking for Labour Exploitation in 2023, by Region of Origin



As in previous years, victims of TSE are predominantly from African countries. Asia and the EEA are the main regions of origin for victims of TLE.

For the first time since the Commission began presenting trafficking data, TCA is dominated by victims from the EEA. TCA presents interesting data that will be worth watching closely in the foreseeable future.

Diagram 8: Victims of Trafficking in 2023, by Region of Origin and Form of Exploitation



Factsheet 3: Specialist Civil Society Organisations' Data 2023

Civil Society Data for 2023

Data for 2023 was provided by four specialist Civil Society Organisations (CSOs) – Ruhama, Migrant Rights Centre of Ireland (MRCI), Immigrant Council of Ireland (ICI) and the International Transport Workers' Federation/Ireland (ITF). These organisations have been consistently contributing to the data collection work of the Commission. This has been vital for the fulfilment of the role of the Rapporteur in line with Article 19 of the EU Anti-Trafficking Directive, mandating the 'gathering of statistics, including in cooperation with CSOs'. The Commission hopes that in the future more CSOs could develop data systems and contribute to the national data collection efforts.

It must be explained from the outset that it is currently impossible to reconcile the official data received from the State with the data provided by specialist CSOs. No central data system exists at present. The Commission has recommended that with the revised NRM (expected to be launched in 2024), a uniform data system be established to capture all suspected cases and to avoid repetition.

Data Analysis

In 2023, the aforementioned four specialist CSOs provided assistance to 212 suspected victims of trafficking, distributed among them as shown on Diagram 1. Of these cases, 76 were new cases. A 'new case' denotes that the victim was encountered by the service for the first time in 2023. The rest, 136, were ongoing cases where the victims have been engaged with the service before 2023 (presented in Diagram 2).

Diagram 1: Caseload of Specialist CSOs in 2023 (Number of Victims supported by organisation)

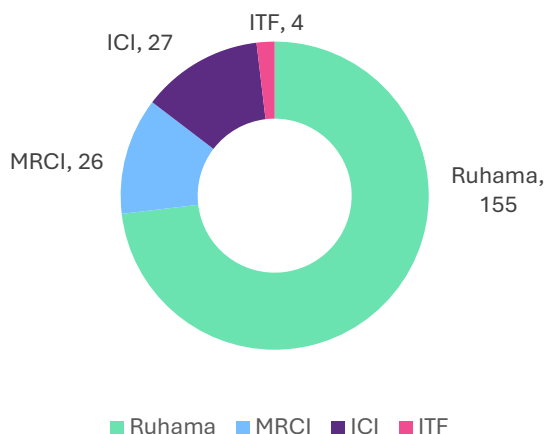
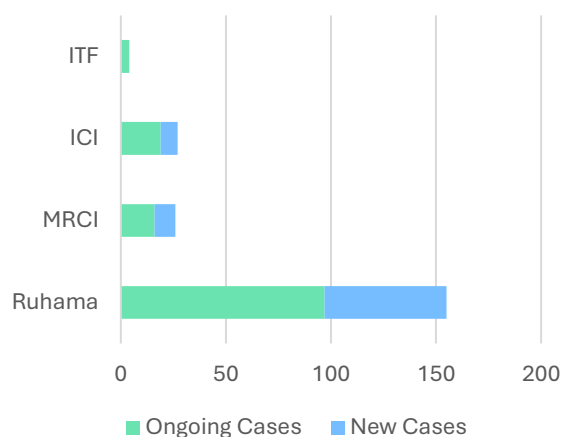


Diagram 2: New and Ongoing Cases of Victims of Trafficking supported by CSOs in 2023



CSOs are taking on increased caseloads: Data indicates that in 2023, the specialist CSOs have increased their caseloads compared to previous years, 13% more than 2022 (188 cases). There is also an increase in the new cases taken on in 2023 as compared to 2022, representing a difference of 15% (66 vs 76 cases). The Commission has welcomed the increased funding by the State to the CSOs and acknowledges the increased commitment to victim support services among CSOs.

Trafficking for sexual exploitation continues to dominate national statistics: Trafficking for sexual exploitation (TSE) is the most often identified form of exploitation, followed by trafficking for labour exploitation (TLE) and other rarer forms such as trafficking for criminal activities (TCA) and trafficking for forced marriages (TFM) (Diagram 3). Increased efforts are needed to detect and support victims of TLE and other types of human trafficking, in addition to TSE.

The data also indicates that increased and sustainable investment in services for victims of trafficking recovering from sexual and gender-based violence is needed.

Diagram 3: All Victims of Trafficking supported by CSOs in 2023 by Type of Exploitation

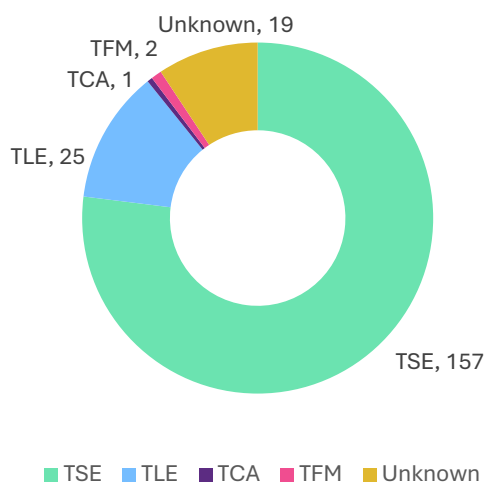
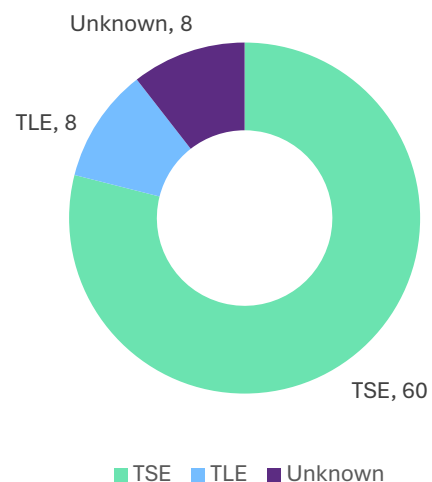


Diagram 4: New Cases of Victims of Trafficking supported by CSOs in 2023 by Type of Exploitation



Significantly more women than men are trafficked in Ireland: In 2023, the cases supported by CSOs show that more women are trafficked than men (based on available data, in 27 out of 212 cases, information on gender was not submitted). A similar ratio applies to the gender breakdown of the new cases taken on in 2023 by the CSOs. **This indicates that the gender-specific services for women require continuous investment.**

Diagram 5: All Victims of Trafficking supported by CSOs in 2023, by Gender

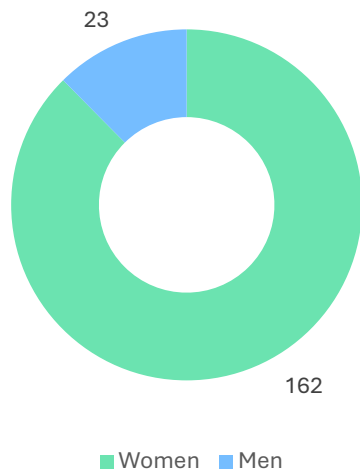
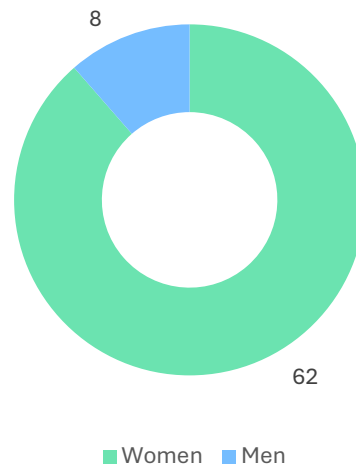


Diagram 6: New Cases of Victims of Trafficking supported in 2023, by Gender



Sectors of exploitation: In TSE, the primary exploitation environment is prostitution (the sex industry). In the case of TLE, there are diverse sectors of the economy present in the data (as shown in the diagrams). **Investment in targeted efforts for screening these sectors could represent a viable strategy to address TSE and TLE.**

Diagram 7: All Victims of TLE supported in 2023, by Sectors of Exploitation

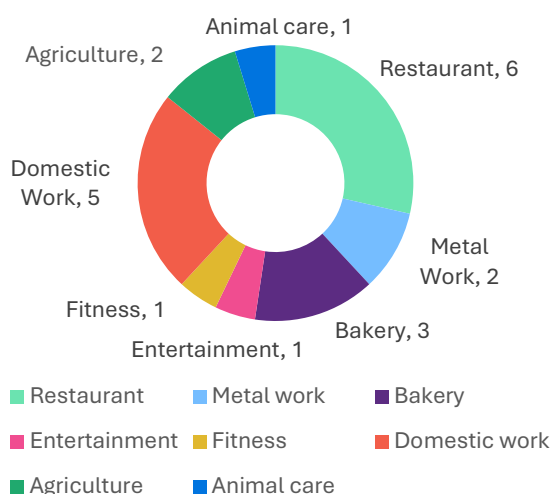
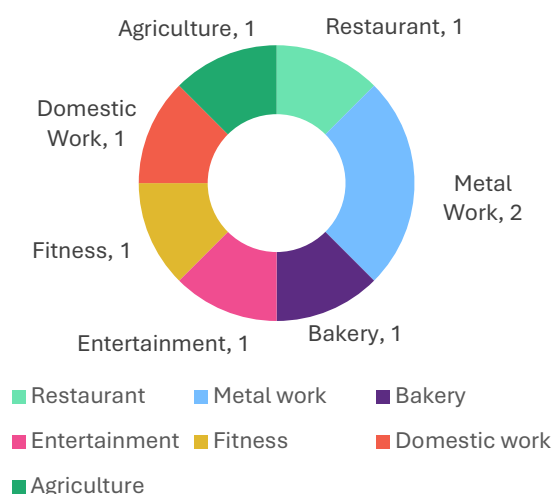


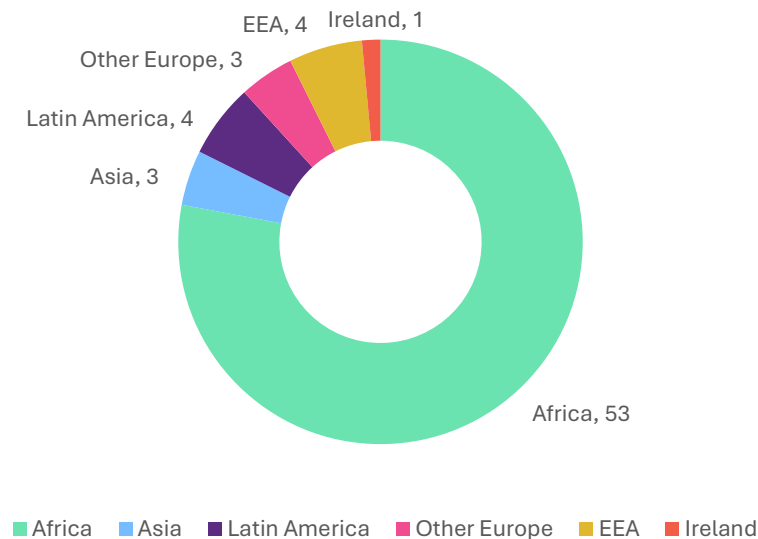
Diagram 8: New Victims of TLE supported in 2023, by Sectors of Exploitation



Regions of origin of victims: Data on new cases collected from the CSOs for 2023 shows that the African continent continues to be the main source region for victims of trafficking in Ireland (based on available data, in eight of the cases, the source region was not known). Other regions of note are the European Economic Area (EEA), Latin America, non-EEA Europe, and Asia.

The proportion of identified victims from Africa has increased significantly in 2023, reaching 78%. By comparison, in 2022, victims from Africa represented 68% of the cases. This is primarily accounted for by the frequent appearance of Africa as a source region in the cases of TSE, as shown below.

Diagram 9: Regions of Origin of the New Cases supported by CSOs in 2023



Regions of origin in Trafficking for Sexual Exploitation and Trafficking Labour Exploitation:

In line with statistics to date, Africa is the most represented source region in TSE, accounting for 88% of these cases. In TLE, Latin America, Asia, and the EEA are represented in 2023.

Diagram 10: Diagram 31. New Cases of TSE supported by CSOs in 2023, by Region of Origin

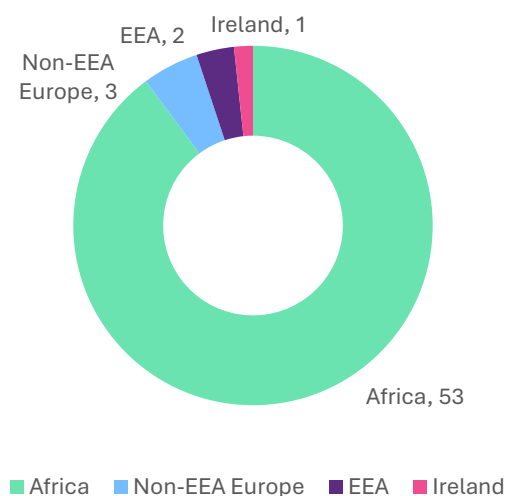
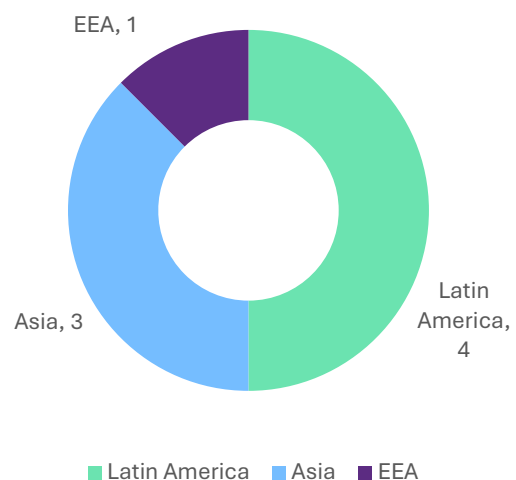


Diagram 11: Diagram 32. New cases of TLE supported by CSOs in 2023, by Region of Origin



Factsheet 4: Comprehensive Data

Year	Victims (adults and children)	TSE	TLE	TFB	TCA	TOR	TSE/TLA/TCA combined	Unknown	Total by year	Children	Annual percentage of children
2013	Female	18	6				1	5	30	4	
	Male		2					1	3	1	
	Total	18	8				1	6	33	5	15%
2014	Female	23	3	1			1		28	2	
	Male	1	4		4			1	10	2	
	Total	24	7	1	4		1	1	38	4	11%
2015	Female	30	8		1		2		41	6	
	Male	1	15		4				20	1	
	Transgender	1							1		
	Total	32	23		5		2		62	7	11%
2016	Female	32	6				1		39	1	
	Male	0	32		4				36		
	Total	32	38		4		1		75	1	1%
2017	Female	28	11	1	5				45	3	
	Male	3	24		3				30		
	Total	31	35	1	8				75	3	4%
2018	Female	26	7						33	3	
	Male	1	28		2				31	2	
	Total	27	35		2				64	5	8%
2019	Female	33	2		3				38	7	
	Male	1	1				2		4	2	
	Total	34	3		3		2		42	9	21%
2020	Female	24	8		1				33		
	Male	2	2		1				5		
	Total	26	10		2				38		0%
2021	Female	24	4						28		
	Male	1	15						16		
	Total	25	19						44		0%
2022	Female	23	3			1			27	4	
	Male	1	12		2				15	1	
	Total	24	15		2	1			42	5	12%
2023	Female	28	8		6				42	4	
	Male	0	8		3				11	1	
	Total	28	16		9				53	5	9%
Combined Data 2013 - 2023	Female	289	66	2	16	1	5	5	384	34	9%
	Male	11	143		23		2	2	181	10	6%
	Transgender	1							1		
	Total	301	209	2	39	1	7	7	566	44	8%



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

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