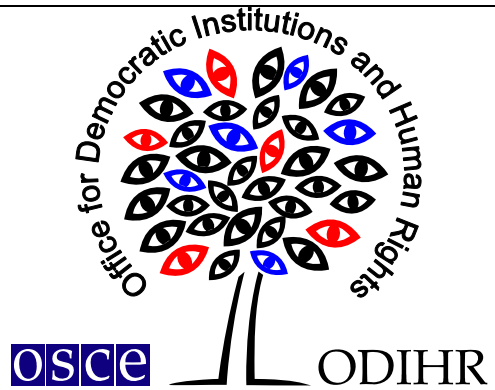


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**Opinion**  
**On the Draft Law on Combating Trafficking**  
**in Human Beings**  
**of the Republic of Ukraine**

**based on an English translation of the law  
provided by the OSCE Project Co-ordinator in Ukraine.**

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**1. INTRODUCTION**

1. *On 15 October 2009, the Ukrainian Minister for Family, Youth and Sports sent a letter to the ODIHR and the OSCE Project Co-ordinator in Ukraine in which he requested the ODIHR to review the draft Law and provide an opinion regarding its compliance with the international standards in combating trafficking in human beings and related fields. This Opinion is provided in response to this request.*
2. *Since 2008, an Interagency Working Group initiated by the Ukrainian Ministry for Family, Youth and Sports and supported by the OSCE Project Co-ordinator in Ukraine has been working on a draft Law on Combating Trafficking in Human Beings. This draft Law was discussed at a public hearing on 30 June 2009.*

**2. SCOPE OF REVIEW**

3. The scope of the Opinion covers only the above-mentioned Draft, which was submitted for review. Therefore, the Opinion does not constitute a full and comprehensive review of the question of combating human trafficking in light of all available framework legislation governing the issue in the Republic of Ukraine. The ensuing recommendations are based on the commitments of the OSCE in the field of human trafficking, on the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000<sup>1</sup>, and on the Council of Europe Convention on Action against Trafficking in Human Beings<sup>2</sup>.
4. The Opinion is based on an unofficial translation of the Draft. Errors from translation may result.
5. In view of the above, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Draft that the OSCE ODIHR may make in the future.

**3. EXECUTIVE SUMMARY**

6. In order to ensure the compliance of the Draft with international standards and obligations to which the Republic of Ukraine is signatory and has committed, it is recommended as follows:
  - A. to expand the scope of Article 1 to include the prosecution of potential human trafficking offenders and the rights and obligations of victims[par. 12];

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<sup>1</sup> See footnote 3 *infra*

<sup>2</sup> See footnote 4 *infra*

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- B. to clarify the wording of Article 3 and specify references to other legislation in this and other provisions of the Draft [par. 13];
- C. to expand and clarify terminology in Article 4 to include protection for victims and supposed victims of trafficking, as well as witnesses of human trafficking and persons collaborating with judicial authorities [par. 14];
- D. to make the wording of Article 5 consistent with international anti-discrimination provisions [par. 15];
- E. to number the different definitions contained in Article 2 and ensure consistency with other domestic legislation and international legal instruments [par. 17];
- F. to ensure full compliance of definitions in the Draft with international instruments [pars. 18, 19, 21]
- G. to amend Article 2 so that persons without full legal capacity are given the same treatment as children for the purposes of this law [par. 20];
- H. to ensure the definition of forced labour is brought into line with Article 4 of the European Convention on Human Rights and Article 2 of the ILO Convention (No.29) concerning Forced or Compulsory Labour as well as the Criminal Code provisions of Ukraine, if applicable [par. 23];
- I. to adapt the definition of slavery to the internationally used definition [par. 23];
- J. to clarify the definition of “servitude” [par. 24];
- K. to ensure that the term “solid grounds” in Article 2 corresponds with the term “reasonable grounds” used in international instruments [par. 25]
- L. to expand the notion of country residence to “temporary residence” [par. 26]
- M. to clarify the definition of “recruitment” in Article 2 [par. 28];
- N. to clarify the term “authorized person” in Article 2 [par 27];
- O. to specify the support granted to the Government Commissioner in Article 8 par. 3 [par. 30];
- P. to include in Article 10 par. 5 references to provisions on assistance to victims and supposed victims of trafficking in Section VI of the Draft [par. 31];
- Q. to clarify the tasks and criteria for selecting members of the Interagency Council defined in Article 11 [par. 33];
- R. to provide the Ombudsperson representative with the power to give recommendations on the proper implementation of the National Anti-Trafficking Monitoring Mechanism [par. 34];

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- S. to clarify the appointment procedure and selection procedure for members of the Supervisory Board for the assistance fund for trafficked persons (Article 13) [par. 35];
- T. to clarify the nature of “money obtained as security from persons suspected of or charged with committing human trafficking offences [par. 36];
- U. to include in domestic legislation on international adoption sufficient safeguards to prevent human trafficking in children [par. 39];
- V. to extend the tasks of health authorities under Article 22 to include free psychological services [par. 40];
- W. to amend the wording of Article 24 to clarify that free legal service will be provided to victims and supposed victims of trafficking [par. 41];
- X. to clarify Article 28 [par. 42];
- Y. to include in Section III a provision on the competences of correctional institutions [par. 43];
- Z. to clarify that information disseminated under Article 34 also includes information on criminal liability for trafficking in human beings and stress awareness of discrimination based on sex and of gender equality issues in Articles 34 and 35 [pars. 44, 45];
- AA. to expand Article 42 and Section VI to include the security, assistance and protection of supposed victims of human trafficking [par. 47];
- BB. to expand the wording of Article 45 to provide supposed victims of trafficking with immediate assistance and protection [par. 48];
- CC. to also provide security for witnesses and justice collaborators and for families of victims and supposed victims of trafficking, as well as witnesses of acts of trafficking [pars. 49, 50];
- DD. to clarify that the right to temporary stay for victims of trafficking in Article 48 does not bar individuals from seeking asylum and permits residence to be renewable based on the personal situation of the victim [par. 51];
- EE. to expand the confidentiality of information principle listed I Article 50 to also cover witnesses of acts of trafficking and persons collaborating with the police and judiciary [par. 53];
- FF. to ensure that while welcomed, the reflection period provides complete protection for victims of trafficking [par 54];
- GG. to reformulate Article 53 to make it compatible with international standards [par. 56] ;

- HH. to include in Section VII a provision on the presumption of the status of a child, when in doubt [par. 57] ;
- II. to review Article 66 [par. 59];
- JJ. prior to passing the law, to include a period of *vacatio legis*, a monitoring system and ensure that secondary legislation is ready by the time the law acquires effect [par. 61].

#### **4. ANALYSIS AND RECOMMENDATIONS**

##### **4.1. International Documents on Combating Trafficking in Human Beings**

7. Throughout the last decade, governments, international organizations and non-governmental institutions have realized that in order to combat the increasing trend of human trafficking, a common and comprehensive approach is needed. Their commitment to such an approach is reflected in various human rights instruments and documents, notably the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000<sup>3</sup> to the UN Convention against Transnational Organized Crime (hereinafter “the UN Palermo Protocol”), the Council of Europe Convention on Action against Trafficking in Human Beings of 2005<sup>4</sup> (hereinafter “the Council of Europe Convention”), as well as the OSCE Action Plan to Combat Trafficking in Human Beings<sup>5</sup> (hereinafter “the OSCE Action Plan”). The above human rights instruments have been ratified or signed by the Republic of Ukraine<sup>6</sup>.
8. The three main purposes of the UN Palermo Protocol are the prevention and combat of trafficking in persons, the protection of and assistance to the victims of human trafficking, and the promotion of cooperation among States Parties to meet the above objectives (Article 2). The OSCE Action Plan, while explicitly referring to the UN Palermo Protocol, also commits States to develop and implement National Referral Mechanisms, defined as national cooperative frameworks through which state actors in strategic partnership with civil society fulfill their obligations to protect and promote the human rights of trafficked persons<sup>7</sup>.
9. The Council of Europe Convention<sup>8</sup>, same as the UN Protocol, is a binding legal instrument. Apart from preventing and combating trafficking in human beings, it

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<sup>3</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Protocol adopted by GA resolution 55/25 of 15 November 2000: <http://www2.ohchr.org/english/law/protocoltraffic.htm>

<sup>4</sup> Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 16 May 2005: [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage)

<sup>5</sup> OSCE Permanent Council 462<sup>nd</sup> Plenary Meeting, PC.DEC/557 of 24 July 2003: [http://www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf)

<sup>6</sup> The Republic of Ukraine ratified the UN Protocol on 21 May 2004 and signed the Council of Europe Convention on 17 November 2005

<sup>7</sup> See also OSCE Ministerial Council Decision No. 14/06 of 5 December 2006 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach, where OSCE participating States are recommended to establish National Referral Mechanisms

<sup>8</sup> OSCE Ministerial Council Decision 13/05.

obliges States party to the Convention to protect the human rights of victims of trafficking and design a comprehensive framework to protect and assist victims and witnesses, and to ensure effective investigation and prosecution (Article 1). The Republic of Ukraine has signed the Convention and reference has thus been made to various provisions of the Convention to facilitate Ukrainian lawmakers' attempts to align domestic legislation with the main principles of this instrument in time for ratification and accession.

#### **4.2. General Comments**

10. At the outset, it should be noted that this Draft largely reflects international standards on combating human trafficking laid down in the above instruments. The Interagency Working Group is to be commended for preparing well-structured and largely transparent draft legislation that contains clear provisions on the competences of state and non-state bodies involved in the fight against trafficking in human beings, but also on the status and rights of victims of trafficking.
11. Nevertheless, there is still room for improvement with regard to certain individual provisions of the Draft. The following comments will highlight these provisions and outline how they may be enhanced.
12. Article 1 of the Draft sets out its scope of application and includes many aspects of combating trafficking in human beings regulated in the Draft, namely organizational and legal principles, competences of state and non-state officials and bodies and their coordination, and the legal status of trafficked persons. However, while the prosecution of crimes involving human trafficking is regulated in the Draft (Article 19), it is not included in the scope of application described in Article 1. It is thus recommended that in addition to Article 1 covering “organisational and legal principles of combating and preventing trafficking in human beings” it should also include the prosecution of potential offenders. Furthermore it is recommended that Article 1 define not only the legal status of victims of trafficking, but also their rights and obligations. Finally, similarly to the scope of the Council of Europe Convention<sup>9</sup>, Article 1 of the Draft should expressly state that it applies to all forms of trafficking in human beings, whether national or international and whether or not connected with organized crime.
13. Article 3 of the Draft outlines the legislation on combating trafficking in human beings in Ukraine. Next to the Draft, Article 3 also lists the Constitution of Ukraine, as well as “other laws of Ukraine” and international agreements deemed legally binding by the Verkhovna Rada of Ukraine. The vague referral to other legislation does not indicate which laws of Ukraine are being referred to, nor is it clear which laws will apply in which situation and which laws generally take precedence over others. It is recommended to clarify these vague references to other laws and their relationship found not only in Article 3, but also in other articles of the Draft<sup>10</sup> by stating the titles

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<sup>9</sup> See Article 2 of the Council of Europe Convention (cited in footnote 4)

<sup>10</sup> E.g. Article 6 (state policy to combat trafficking in human beings), Article 18 par. 2 (anti-trafficking measures undertaken by the central executive power body for internal affairs and structural units) and Article 19 par. 2 (anti-trafficking measures undertaken by the prosecution bodies), Article 20 par. 2 (anti-trafficking measures of the security service), and Article 21 par. 2 (anti-trafficking measures of the specially authorized central executive power body for state border guard services and its structural units). Other examples are Article 47 par. 7 (right to

of the laws concerned. The term “direct-action” norms used in Article 3 should also be clarified.

14. The general principles of the Draft are laid down in Article 4, which includes numerous relevant and important principles that need to be taken into account in the fight against human trafficking. However, certain principles that have been included in Article 4 so far apply only to “trafficked persons”, which as a term is not included in the list of definitions under Article 2 of the Draft. This term indicates that certain principles, e.g. respectful treatment without prejudice and the confidentiality of information, may only apply to persons who have been recognized as victims of trafficking and not to supposed victims of trafficking, witnesses of acts of trafficking and collaborators with judicial authorities. It is thus recommended to replace the term “trafficked persons” with the terms “victims of trafficking” and “supposed<sup>11</sup> victims of trafficking” and to include witnesses of acts of trafficking and collaborators with judicial authorities to this list. Moreover, Article 4 par. 1 (7) states that one of the principles of the Draft is ensuring that trafficked persons get assistance voluntarily. Unless by reason of translation, the meaning of this provision is unclear and should be re-considered.
15. Article 5 embodies a general non-discrimination principle with regard to the provisions of the Draft. It is noted that this provision does not include certain types of discrimination listed in international instruments ratified by Ukraine, for instance the European Convention on Human Rights<sup>12</sup> (hereinafter “the ECHR”) and Protocol No. 12 to the Convention<sup>13</sup>. Both of these texts include discrimination based on citizenship, as well as discrimination based on national origin or based on association with a national minority. In light of Ukraine’s obligations under the Convention and its protocols, it is recommended to adapt the general principle of non-discrimination to the wording of the above instruments.
16. Paragraph 2 to Article 5 is welcomed in that it states that assistance to trafficked persons shall not be conditional on *inter alia* whether or not they “entered *and* stay in Ukraine legally”. Since there may be situations where a person enters Ukraine legally and his/her stay only becomes illegal afterwards, it is recommended to replace the word “and” with the word “or”.

#### **4.3. The Structure and Wording of Terminology in Article 2 of the Draft**

17. Definitions of terms used in the Draft are laid down in Article 2, which lists 31 definitions, but does not contain any numbering of paragraphs or definitions. This can lead to difficulties in applying and in particular in citing the different parts of Article 2. Given the length and at the same time the importance of this article, it is thus recommended to number the different paragraphs and definitions.

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appeal against refusal to grant status of trafficked person), Article 54 (trafficked persons’ right to compensation for damages) and Article 64 (responsibility for offences in the sphere of combating human trafficking).

<sup>11</sup> The unofficial English translation uses the term “supposed”, however, international documents use the term “presumed” and it is assumed that the Draft Law is intended to reflect the meaning of the term “presumed”, in accordance with international law and standards. For the purposes of consistency the term “supposed” shall be used throughout.

<sup>12</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ratified by the Republic of Ukraine on 11 September 1997

<sup>13</sup> This Protocol contains a general prohibition of discrimination and was ratified by Ukraine on 27 March 2006.

18. In Article 2, it is noted that numerous definitions for trafficking in human beings and trafficking in children reflect the definitions contained in the UN Palermo Protocol and ensuing international instruments and documents<sup>14</sup>. Certain definitions such as those of slavery, servitude, forced labour and trafficking, to name a few, already exist in the Ukrainian criminal legislation. Before this Draft is finalized, the definitions contained in Article 2 should be compared to those in criminal and other domestic legislation to ensure consistency, always bearing in mind how certain definitions are formulated in international instruments.
19. At the same time, certain definitions would benefit from a stronger congruence with the definitions in the above international instruments, to avoid difficulties in interpretation. For example, the definition of trafficking in Article 2 qualifies the respective actions mentioned in its first sentence as trafficking even subject to the trafficked person's *prior* consent. While consent is often mentioned in international instruments such as the UN Palermo Protocol<sup>15</sup> and the Council of Europe Convention<sup>16</sup>, the relevant provisions never specify that such consent needs to have been given *prior* to the act of trafficking. It is recommended to delete this specification.
20. Furthermore, it is recommended to specify in Article 2 that for the purposes of this law, persons without full legal capacity shall be protected from human trafficking in the same way as children. This group of persons should also be included in the list of groups at risk of human trafficking under Article 2.
21. It is welcomed that Article 2 includes additional examples of exploitation that are not listed in the UN Palermo Protocol and other instruments. Indeed, international instruments such as the UN Palermo Protocol and the Council of Europe Convention state that their examples are exploitation "at a minimum" and thus leave room for national legislation to target other forms of exploitation<sup>17</sup>. However, also here it is recommended, for clarity's sake, to adopt the definition contained in Article 3 a) of the UN Palermo Protocol, which already includes most elements of the Draft's definition of sexual exploitation<sup>18</sup> and to delete the current separate definition of sexual exploitation under Article 2 of the Draft.
22. As for the definition of forced labour contained in Article 2, it is noted that this definition contains only two exceptions (military service and other civil duties as required by law). International instruments such as the ECHR, or ILO Convention (No.

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<sup>14</sup> According to 3 a) of the UN Protocol, trafficking in persons is the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Article 3 (a)). Exploitation within the meaning of this Article "shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

<sup>15</sup> See Article 3 b) of the UN Palermo Protocol

<sup>16</sup> See Article 4 b) of the Council of Europe Convention

<sup>17</sup> See also the Council of Europe's Commentary on the Provisions of the Convention, par. 85: [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp#P682\\_62048](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#P682_62048)

<sup>18</sup> See footnote 14

- 29) concerning Forced or Compulsory Labour<sup>19</sup> however, contain four exceptions – next to the ones mentioned above, these are work required to be done in the ordinary course of detention and any service exacted “in the case of an emergency or calamity threatening the life or well-being of the community”. It is recommended to amend the definition of forced labour in Article 2 so as to be consistent with the pertinent definition in Article 4 of the ECHR. Assumably the crime of forced labour may also be found in the Criminal Code of Ukraine, thus it should be ensured that the definitions are consistent with each other, as mentioned in paragraph 18 above.
23. It has also been positively noted that the definition of practices similar to slavery is largely identical to the definition found in Article 1 of the UN Supplementary Convention on the Abolition of Slavery, the Slaved Trade, and Institutions and Practices Similar to Slavery<sup>20</sup>. The only part of this Convention’s definition not included in Article 2 of the Draft is Article 1 d), which states that “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” shall also be seen as a practice similar to slavery. As there do not appear to be any pertinent reasons for excluding this aspect of practices similar to slavery from the Draft, it is recommended to include it in Article 2.
24. The definition of servitude is set down as “a combination of labour conditions and/or obligation to work or provide services, which a person cannot avoid or change.” The term “labour conditions” appears to be very vague and should be clarified. The case law of the European Court of Human Rights (hereinafter “the ECtHR”) may be of assistance in achieving clarity here, e.g. judgment in the case of *Siliadin v. France*, where servitude was defined as “an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of “slavery”<sup>21</sup>.
25. The inclusion of the term “supposed victim of trafficking” in the Draft and its pertinent definition under Article 2 is very much welcomed, as are the rights and assistance that this group of persons has access to throughout the Draft. However, unless by reason of translation, it is recommended that the article uses the terminology and thus the attached specific meaning, established in international law. While “supposed victim of trafficking “ is assumed to be referring to what is know in international law as “presumed victim of trafficking”<sup>22</sup>, it should be ensured that the term “solid grounds” corresponds in meaning and essence to “reasonable grounds” as stipulated in Article 10 par. 2 of the Council of Europe Convention. .

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<sup>19</sup> Article 2 of the Convention, adopted by the General Conference of the International Labour Organisation on 28 June 1930. Entered into force on 1 May 1932. Ratified by Ukraine on 10 August.1956

<sup>20</sup> This Convention was adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956. The adoption itself took place on 7 September 1956 and the Convention entered into force on 30 April 1957: <http://www2.ohchr.org/english/law/slavetrade.htm>

<sup>21</sup> See *Siliadin v. France*, ECtHR judgment of 26 July 2005, par. 124

<sup>22</sup> See Mohammed Mattar: *Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective*, 2006, Booklet published by the Protection Project of the Johns Hopkins University Paul H. Nitze School of Advanced International Studies, p. 16. This booklet lists five different forms of victims: Victims, derivative victims, vulnerable victims, potential victims and presumed victims.

26. In Article 2, the country of origin of victims of trafficking is defined as “the trafficked person’s country of citizenship or permanent residence”. However, there may also be situations where a victim merely had temporary residence in another country but is otherwise stateless or cannot return to his/her country of citizenship for other reasons. In order to cover such situations as well, it is recommended to expand the above definition to include countries where a trafficked person had temporary residence, if for the above reasons a return to his/her country of citizenship is not possible.
27. The identification of a trafficked person shall be conducted by an “authorized person”, relying on certain information. While it is assumed that this authorized person will be either the Government Commissioner (Article 9) or its territorial offices (Article 10), it is recommended to define the term “authorized person” in Article 2 or to otherwise refer to one of the above provisions.
28. According to Article 2, recruitment shall mean “invitation on the “free of charge” basis. This part of the definition is unclear and should be clarified.

#### **4.4. Implementation of the State Policy on Combating Human Trafficking**

29. Section II of the Draft lists the different state institutions involved in implementing state policy on combating trafficking in human beings. The main coordinating body in this field shall be the Government Commissioner for Combating Trafficking in Human Beings, established under Article 7 of the Draft in order to implement state policy in the field of human trafficking.
30. Article 8 par. 3 specifies that the Government Commissioner’s activities shall be supported by a relevant division in the Secretariat of the Cabinet of Ministers. In order to clarify the level of support that needs to be given to the Government Commissioner, it is recommended to specify in this provision the type of support granted (only administrative or also with regard to other aspects of the Commissioner’s tasks) and whether a new division within the Secretariat will be created specifically for the Government Commissioner. It is recommended to add a provision that will help ensure that the Government Commissioner will receive sufficient funds so as to be able to fulfil his/her functions adequately.
31. According to Article 10, territorial offices of the Government Commissioner shall be set up all over Ukraine. Article 10 par. 5 specifies that the territorial offices shall provide supposed victims of human trafficking with information about Ukraine’s legislation, in particular relevant criminal and civil proceedings. In order to provide complete protection to victims and supposed victims of human trafficking, it is recommended to include in Article 10 par. 5 a reference to relevant provisions which provide more detailed measures of assistance to victims and supposed victims of trafficking under Section VI of the Draft.
32. It is essential that territorial offices provide victims of trafficking and supposed victims of trafficking with a complete assessment of their situation and with possible consequences of their cooperation with the police, such as potential dangers on co-operation with law enforcement. In this way, they will be able to make an informed choice in this matter.

33. Article 11 provides for the creation of an Interagency Council (advisory body) for Combating Trafficking in Human Beings to improve the efficiency of the combat against human trafficking. This body is formed by the Cabinet of Ministers, which shall approve the composition of the Council. While Article 11 specifies who is entitled to be a member of this Council (representatives of the agents of combating human trafficking, international organizations, scholars and researchers with expertise in relevant areas), it does not provide any concrete information on the tasks of this Council and its area of competences as opposed to those of the Government Commissioner. This should be clarified, as should the criteria for accepting or refusing potential members.
34. Article 12 outlines the competences of a special representative of the Ombudsperson responsible for implementing the National Anti-Trafficking Monitoring Mechanism. This representative shall monitor the activities of the Government Commissioner, his/her territorial offices and other agents involved in the combat against human trafficking. Based on the monitoring results, he/she shall prepare annual reports on the status of state anti-trafficking policy implementation, which shall be incorporated into the Ombudsperson's annual reports. In order to make this monitoring activity more effective, it is recommended that the special representative of the Ombudsperson conclude his/her reports by giving recommendations on improving certain aspects of the state anti-trafficking policy, if he/she considers that there is room for improvement.
35. Article 13 regulates the creation of an assistance fund for trafficked persons, which shall be managed by the Government Commissioner. According to Article 13 par. 5, a Supervisory Board composed of representatives of agents involved in combating trafficking in human beings shall supervise the formation of the fund and use of the money. Article 13 states that the Cabinet of Ministers shall establish the procedure for forming and using the fund, but does not clarify which body is responsible for establishing the Supervisory Board and appointing its members. In order to avoid a conflict of interest, the board should not be appointed by the Cabinet of Ministers, as this body is already responsible for appointing the Government Commissioner. The Supervisory Board could instead be appointed by the President or the Parliament.
36. Furthermore, in order to ensure transparency in the use of the fund's money, it is recommended to include in Article 13 an indication as to which agents could qualify for membership of this board. In order to avoid a conflict of interest, the Government Commissioner and his staff (including territorial offices) should not be allowed to become members of the board. Balanced supervision could be ensured by requiring that at least half of the board members will be from non-governmental institutions.
37. According to Article 13 par. 8 (1), the fund shall be formed at the expense of state budget revenues from money obtained as security from persons suspected of or charged with committing human trafficking offences, or from defendants in human trafficking cases. The nature of this security payment is not clear, unless it is synonymous to bail paid to avoid detention during investigations or court proceedings. If this security payment is effected by persons who have not yet been convicted of a crime, it should be clarified whether it may need to be reimbursed as damages should an accused person be found innocent before court.

#### **4.5. Competences of State Bodies in Combating Human Trafficking**

38. Section III deals with the competences of various State bodies involved in combating human trafficking.
39. Article 15 lays down the competence of the central executive power body for family affairs and structural units. While this provision focuses on awareness-raising and assistance to victims of human trafficking, it does not include any measures to control international adoption to avoid trafficking of children “masked” as adoptions. It is recommended to ensure that domestic legislation on international adoptions contains sufficient safeguards to prevent such abuse and that awareness-raising activities be extended to orphanages.
40. Article 22 outlines the competences of the central executive power body for public health and its structural units. One of the tasks of this body is rendering free medical services, including emergency aid, to trafficked and supposedly trafficked persons. Since Article 46 par. 2 (2) and Article 48 par. 1 (2) provide supposedly trafficked persons and trafficked persons with free psychological services as well, it is recommended to adapt the wording of Article 22 to include free psychological services.
41. According to Article 24 par. 2, the central executive power body in charge of implementing public legal policy, and its structural units, shall ensure free legal assistance to trafficked persons. Since Article 46 par. 2 (2) foresees that supposedly trafficked persons are also provided with free legal assistance, it is recommended to amend Article 24 par. 2 so that free legal assistance is provided to both trafficked persons and supposedly trafficked persons.
42. Article 28 states that in order to provide assistance and protection to trafficked persons, the central executive power body in charge of providing operational support to courts, and its structural units, shall “ensure the improved practice of organizing courts’ work with trafficked persons”. This task is very vague and does not reveal how the above body will help ensure that assistance and especially protection of trafficked persons is enhanced. It is recommended to clarify this provision.
43. While Section III covers various competences of different state bodies involved in combating human trafficking, it does not foresee special competences for penitentiaries and detention centres. In order to identify victims of human trafficking who may have been arrested, it is extremely important to also ensure the cooperation of such institutions. Staff should receive training on how to recognize potential victims of human trafficking. Upon identification of an inmate as a victim or supposed victim of human trafficking, correctional institutions should cooperate with judicial and prosecution authorities so that, in line with Article 53 of the Draft, he/she is provided with legal counsel. In this way, if found to have acted under duress, he/she can be exempted from further punishment. It is thus recommended to include in Section III a provision on the competences of correctional institutions.

#### **4.6. Mechanisms to Prevent and Fight Human Trafficking and to Protect its Victims**

44. Section IV of the Draft deals with human trafficking prevention mechanisms, which consist in a situation analysis followed by awareness-raising activities. With regard to

the latter (Article 34), it is noted that while this provision includes disseminating information on responsibility for trafficking in human beings, it is not clear whether this also includes the dissemination of information on criminal liability for trafficking in human beings.

45. Furthermore, in line with Article 6 of the Council of Europe Convention<sup>23</sup> on measures to discourage demand for human trafficking, it is recommended to stress, during awareness-raising activities (Article 34 of the Draft) and measures to discourage demand (Article 36 of the Draft), the “unacceptable nature of discrimination based on sex and its disastrous consequences [and] the importance of gender equality”. Also, next to informing the public of the rights of trafficked persons, public awareness of reintegration measures for such persons should also be enhanced. It is recommended to amend Article 34 accordingly.
46. Section VI outlines the assistance and protection provided to victims of trafficking. In this context, it is worth mentioning that the assistance and protection provided in this Draft in most instances reaches and at times surpasses what is required by international anti-trafficking standards, which is welcomed. In particular the 6 months’ temporary stay granted to foreign trafficked persons and the possibility of its prolongation if required is to be commended. Also, the reflection period of 30 days granted to trafficked persons by Article 51 of the Draft corresponds to the minimum reflection period foreseen e.g. in Article 13 par. 1 of the Council of Europe Convention and is, as also required by the latter provision, without prejudice to the victim’s right to stay in Ukraine (Article 51 par. 4).
47. Since Articles 45 and 46 provide for assistance and protection to persons who have not yet acquired the status of victims of trafficking, it is recommended to adapt the title of Section VI to cover assistance and protection to *supposed* victims of trafficking as well.
48. Under Article 45, agents combating trafficking in human beings shall, upon having identified a supposed victim of human trafficking, ensure that immediate assistance is rendered to this person as required. In order to ensure this person’s safety immediately, it is recommended to amend Article 45 so that supposed victims of trafficking are provided with immediate assistance *and protection*.
49. In this context, it is noted that with regard to security and protection, Article 28 of the Council of Europe Convention favours an encompassing approach, meaning that States should not only protect victims of trafficking (or supposed victims) from potential retaliation or intimidation, but also persons collaborating with the judiciary, investigators or prosecutors, witnesses of acts of trafficking and where necessary, the families of victims and witnesses of trafficking. Next to the protection of supposed victims of trafficking, it is thus recommended to specifically include in the Draft protection for the above-mentioned categories of persons as well.
50. In this context, it is paramount that the State implements any measures as may be necessary to ensure and offer various kinds of protection to the above groups of persons. These may include physical protection, relocation, or identity change<sup>24</sup>.

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<sup>23</sup> See footnote 4

<sup>24</sup> See Article 28 par. 2 of the Council of Europe Convention

Victim/witness protection provisions in other legislation should be adapted accordingly, where necessary.

51. Article 48 contains a very comprehensive and encompassing list of rights of trafficked persons including *inter alia* the right to information, assistance and shelter. Under par. 2 (2), foreign individuals granted the status of trafficked persons have the right to stay in Ukraine for 6 months. This temporary right to stay may be prolonged if required, in particular due to the involvement of the respective person in criminal proceedings as victims or witnesses, whereas according to Article 14 (1) (a) of the Council of Europe Convention, stay should be prolonged also based on the personal situation of the victim.
52. Furthermore, in order to give maximum effect to Article 48, it should be clarified that this permit to stay temporarily in Ukraine does not bar individuals from seeking and enjoying asylum should they wish to<sup>25</sup>. At the same time, the relevant immigration legislation should be adapted to ensure that trafficked persons are not expelled.
53. The confidentiality of information principle laid down in Article 50 of the Draft so far only applies to victims of trafficking and supposed victims of trafficking. In the interests of a proper administration of justice, it is recommended that, as far as practicable, information about witnesses of acts of trafficking and persons collaborating with the police and judiciary should also be treated confidentially. In general, personal data regarding the above groups of people should be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>26</sup>. Special measures should be taken to ensure that the identity of child victims of trafficking is only disclosed under very exceptional circumstances<sup>27</sup>.
54. Article 51 provides trafficked persons with a 30-days' reflection period allowing them to make an informed decision on whether or not to cooperate with law enforcement bodies. It is noted that in Article 51, the reflection period begins on the day when a person acquires the status of trafficked person. This reflection period is also mentioned in Article 13 of the Council of Europe Convention, but here it begins once "there are reasonable grounds to believe that the person concerned is a victim", thus *before* a person is identified as a victim. From a practical point of view, this difference in definition does not appear to be disadvantageous to supposed victims of human trafficking, since under Article 46, they already appear to enjoy some of the same rights as victims of trafficking. Nevertheless, given the outlined difference in understanding, it is recommended to review the process once more to ensure that protection of supposed victims of trafficking is secured.

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<sup>25</sup> See Article 14 par. 5 of the Council of Europe Convention

<sup>26</sup> As stated in Article 11 par. 1 of the European Convention (see footnote 4). The Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) has so far been signed, but not ratified by the Republic of Ukraine. For the text of the Convention, see <http://conventions.coe.int/treaty/EN/Treaties/Html/108.htm>

<sup>27</sup> Article 11 par. 2 of the European Convention states that "Each Party should adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victims of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child."

55. Article 52 guarantees assistance to trafficked persons in criminal proceedings, e.g. free services and legal counsel, as well as personal security. This enhances the victims' standing during proceedings. As required in both the Palermo Protocol and the Council of Europe Convention<sup>28</sup>, the appropriate criminal legislation should ensure that this assistance enables victims of trafficking to present their views and concerns and have such views/concerns considered at appropriate stages during criminal proceedings against offenders.
56. Article 53 of the Draft states that, if a trafficked person, while in a human trafficking situation, was forced to commit an offence or misdemeanour, his/her legal counsel shall undertake all legal measures to make this person exempt from responsibility or punishment, or to get his/her punishment mitigated. This article essentially imposes an obligation on a victim's legal counsel, but does not in itself protect the victim from penalties, as envisaged by Article 26 of the Council of Europe Convention<sup>29</sup>. It is thus recommended to reformulate Article 53 to the effect that recognized victims of trafficking shall be exempt from punishment for their involvement in unlawful activities as a consequence of being in a human trafficking situation, if they were compelled to participate in such activities through threat or duress, as stated in Article 26 of the Council of Europe Convention.
57. It should be noted at this point that the Draft has devoted a special section, namely Section VII, to combating trafficking in children. The lawmakers are to be commended for this section, which provides special treatment for trafficked children, always bearing in mind the best interests of the child, as well as the vulnerable situation and special needs of children. The only recommendation with regard to this section is that it should include a provision stating that when the age of a victim or supposed victim of trafficking is uncertain and there are reasons to believe that he/she is a child, he/she shall be presumed to be a child and accorded special protection pending verification of his/her age<sup>30</sup>.

#### **4.7. Responsibility in the Sphere of Combating Human Trafficking**

58. Next to provisions on the prevention and fight against human trafficking, and protection and assistance to victims, Section IX of the Draft also includes provisions on criminal, civil and administrative responsibility for human trafficking, leading to amendments of criminal and other legislation. In particular the detailed provision on liability of legal entities (Article 65) is welcomed.
59. Article 66 of the Draft lays down responsibility for conscious use of the results of exploitation, which includes goods, works or services produced or provided by persons recognized as victims of human trafficking while they were being exploited. The aim of this provision is clear – if the use of the results of exploitation entails criminal liability, this could lead to a reduction of demand for goods, works and services provided or prepared by trafficked persons. The respective international law

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<sup>28</sup> See Article 6 2 b) of the UN Palermo Protocol and Article 12 1 e) of the Council of Europe Convention

<sup>29</sup> Article 26 of the Council of Europe Convention states that "Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so"

<sup>30</sup> See Article 10 par. 3 of the Council of Europe Convention (footnote 4)

instruments – mainly the UN Palermo Protocol and the Council of Europe Convention – largely leave this issue to the legislative discretion of individual states.

60. What should be borne in mind, when proposing to introduce this measure is that in practice it could be very difficult to prove that users were aware that they were using goods, works or services of trafficked persons. Particularly in the cases of users of goods or of works provided by companies, it will be hard to prove such a conscious use. This should be weighed against the fact that many individuals witnessing cases of human trafficking may no longer come forward to report such cases if their use of goods, works or services would entail criminal responsibility. Ultimately, legislating for such a measure is within the discretion of the state. What may be considered if the provision is introduced is to at least include herein a caveat for witnesses willing to assist prosecution authorities in bringing human traffickers to justice<sup>31</sup>.

#### **4.8. Transitional Provisions**

61. In addition to the existing transitional provisions laid down in Section X, it is recommended to include in the Draft a *vacatio legis* provision, meaning the deferment of the entry into force of the law to at least six months to ensure that the competent authorities will have enough time to prepare for implementing the new law.
62. It would also be beneficial for the law to include a monitoring mechanism, allowing for an assessment of its operation following e.g. two years of its implementation. Practice in many OSCE participating States has shown that continual revision and strengthening of laws will ensure that measures introduced by new legislation are working in practice.
63. Finally, it is recommended that prior to passing the Draft, the availability of sufficient funds to implement the Law on Combating Trafficking in Human Beings be borne in mind. It is further recommended that in order to prevent the Law from being implemented inconsistently or arbitrarily, secondary regulations are ready at the time when the Law will acquire effect, in particular as regards certain articles of concern which are the subject of this Opinion.

*[END OF TEXT]*

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<sup>31</sup> In extension of Article 28 pars 1 b) and c) of the European Convention and Article 4.1 of the OSCE Action Plan, witnesses and persons reporting criminal trafficking offences should be protected not only from intimidation and retaliation, but also from criminal liability

**LAW OF UKRAINE**

**On Combating Trafficking in Human Beings**

**Section I**

**GENERAL PROVISIONS**

**Article 1. Scope of Application**

This Law shall define organisational and legal principles of combating trafficking in human beings; the competence of state power and local self-government bodies, their officials and employees, non-governmental organisations; principles of coordination of their activities aiming to counteract human trafficking, as well as the legal status of trafficked persons.

**Article 2. Definition of Terms**

For the purposes of this Law, the terms below shall be used in the following meaning:

“Trafficking in human beings (human trafficking)” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of 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. These actions shall be qualified as trafficking in persons even subject to the trafficked person’s prior consent, as they are detrimental to human will, honour and dignity.

“Trafficking in children” shall mean the recruitment, transportation, transfer, harbouring or receipt of a person under 18 years of age for the purpose of exploitation or gain.

“Child” shall mean any person under 18 years of age (minor).

“Exploitation of persons” shall mean all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, experimenting on persons without their consent, adoption for gain, forced pregnancy, engagement in criminal activities, use in military conflicts, etc.

“Forced labour” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him/herself voluntarily, with the exception of military service and performing other civil duties as required by law.

“Sexual exploitation” shall mean the engagement of a person in prostitution, sexual servitude, or the production of pornographic materials 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.

“Slavery” shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

“Practices similar to slavery” shall mean the following:

debt bondage – the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

serfdom – the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

any institute or custom whereby:

1) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group;

2) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise;

3) a woman on the death of her husband is liable to be inherited by another person.

“Servitude” shall mean a combination of labour conditions and/or obligation to work or provide services, which a person cannot avoid or change.

“Victim of human trafficking (trafficked person)” shall mean any person who has been subjected to trafficking in human beings and who has been recognised as such by the relevant authority according to this Law.

“Supposed victim of human trafficking” shall mean any person about whom there are solid grounds to believe that he/she has been subjected to trafficking in human beings.

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“Vulnerable situation” shall mean a person’s condition caused by his/her physical or psychological state or by external circumstances, which take away or limit his/her ability to comprehend his/her actions (inactivity) or have control over them, to make free-will independent decisions, resist violent or other unlawful actions; as well as concurrence of adverse personal, family or other circumstances.

“Country of origin” shall mean the trafficked person’s country of citizenship or permanent residence.

“Country of destination” shall mean a state in the territory of which the trafficked person is subjected to exploitation.

“Country of transit” shall mean a state through the territory of which the trafficked person is transported.

“Combating trafficking in human beings” shall mean a system of measures aiming to eliminate trafficking in human beings by preventing it, fighting against it, as well as providing assistance and protection to trafficked persons.

“Agents of combating trafficking in human beings” shall mean the state power and local self-government bodies, their officials and employees, non-governmental organisations, legal entities and natural persons that – in line of their duty, aims and objectives of their professional or other activities – take all or some of the measures constituting the counteraction to trafficking in human beings. Agents of combating trafficking in human beings include agents of prevention of human trafficking, agents of fight against human trafficking and agents providing assistance and protection to trafficked persons.

“Trafficker” shall mean a person who engages in human trafficking or finances such activities, or obtains an economic or other profit from them.

“Group at risk of human trafficking” shall mean a group of particularly vulnerable persons most likely to become subjected to trafficking in human beings. The risk group comprises children, in particular orphans and children deprived of parental care, children from low-income families, homeless and street children, children with special needs; unemployed persons of working age; rural residents; low-income persons; persons with low education level; labour migrants, especially irregular ones; persons who illegally go abroad or enter and stay in Ukraine; persons who use dating services, including in foreign countries, and marriage mediation services; persons in modelling business; persons in entertainment business; persons engaged in prostitution; previously trafficked persons etc, especially women belonging to the above categories.

“Spheres with high risk of human trafficking” shall mean spheres of activities related to the movement of persons, primarily abroad, in the sectors of tourism, employment and

education, adoption, entertainment, dating services, marriage mediation services, modelling business, transportation.

“Prevention of trafficking in human beings” shall mean a system of measures aiming to eliminate causes of and conditions for human trafficking.

“Fight against trafficking in human beings” shall mean a system of measures aiming to identify cases of human trafficking and supposed victims thereof, as well as to identify traffickers and prosecute them.

“Assistance to victims or supposed victims of human trafficking” shall mean a system of measures aiming to provide medical, psychological, social, legal, informational and other support to trafficked or supposedly trafficked persons.

“Protection of victims or supposed victims of human trafficking” shall mean a system of measures aiming to prevent the infringement on the rights of trafficked or supposedly trafficked persons.

“Rehabilitation of victims of human trafficking” shall mean a set of medical, psychological, social, legal and other measures aiming to restore the trafficked person’s physical and psychological state and social functions.

“Identification of a supposed victim of human trafficking” shall mean finding out information, which gives ground to believe that a certain person has been subjected to trafficking in human beings.

“Identifications of a trafficked person” shall mean a set of measures whereby an authorized person, relying on information obtained from the supposedly trafficked

person or from other individuals and legal entities in possession of data about this person and on the analysis of available information, compares elements of the act committed against this person with the definition of human trafficking, assesses the probability of the person’s having been subjected to this act and concludes that the person has been trafficked.

“Recruitment” shall mean the invitation on the “free of charge” basis, employment, hiring, involvement or engagement by any means, including unlawful ones, into any kind of activity or organisation, including an illegal one.

“Victimization” shall mean an increased risk for a person to become subjected to trafficking in human beings due to a concurrence of circumstances or specially created objective or subjective conditions favourable for that.

“Special protection of the child” shall mean a system of measures of intensive assistance to trafficked children aiming to ensure the child’s best interests with due regard for his/her age, mental and physical development and special needs.

“Placement of children” shall mean the placement of orphaned children and children deprived of parental care, which ensures their best interests, through adoption, taking custody or guardianship, referral to foster families, family-type orphanages, to social protection institutions for orphans and children deprived of parental care.

Other terms shall be used in the meaning given to them in the laws of Ukraine.

### **Article 3. Legislation on Combating Trafficking in Human Beings**

The legislation on combating trafficking in human beings comprises the Constitution of Ukraine, this Law and other laws of Ukraine and international agreements deemed legally binding by the Verkhovna Rada of Ukraine. The provisions of this Law are direct-action norms.

### **Article 4. General Principles**

1. Activities aiming to combat trafficking in human beings shall be guided by the following principles:

- 1) promoting, protecting and respecting human rights, in particular the right to privacy, security, assistance and effective judicial relief;
- 2) paying special attention to the group at risk of human trafficking and spheres with high risk of human trafficking;
- 3) treating trafficked persons with respect and without any prejudice;
- 4) avoiding re-victimization of trafficked persons;
- 5) providing trafficked persons with an opportunity to utilize all kinds of compensation for moral and material damage within criminal, civil, administrative and other proceedings;
- 6) ensuring confidentiality of information on trafficked persons and their relatives;
- 7) ensuring that trafficked persons get assistance voluntarily;
- 8) facilitating cooperation of concerned state power and local self-government bodies among themselves and with non-governmental and international organisations; ensuring that they provide assistance to trafficked persons on the basis of common agreement and information sharing.

2. If trafficked persons or witnesses of trafficking in human beings are children, all measures applied to them shall be guided by the principles proclaimed in the UN Convention on the Rights of the Child, in particular the principles of ensuring the best interests of the child and his/her participation in decision-making.

3. If the person's age is unknown and there are reasons to believe that this person is a child, he/she shall be treated as a child and given special assistance until his/her age is ascertained.

#### **Article 5. Non-Discrimination Principle**

1. The provisions of this Law, in particular on rendering assistance and protection to trafficked or supposedly trafficked persons, shall be implemented without any discrimination on the basis of race, colour, religion, political and other opinion, sex, ethnic and social origin, property status, place of residence, language and other status.

2. Assistance to trafficked persons shall not be conditional on whether or not they entered and stay in Ukraine legally, engage in prostitution or any other illicit activity.

### **Section II**

#### **IMPLEMENTATION OF STATE POLICY TO COMBAT TRAFFICKING IN HUMAN BEINGS**

#### **Article 6. State Policy to Combat Trafficking in Human Beings**

1. State policy to combat trafficking in human beings shall be defined by the Constitution of Ukraine, this Law, other laws of Ukraine and Ukraine's obligations under international agreements.

2. The Verkhovna Rada of Ukraine and President of Ukraine shall formulate the state policy on combating trafficking in human beings. The Cabinet of Ministers of Ukraine shall ensure the implementation of anti-trafficking policy.

3. The State shall take measures to prevent and fight against trafficking in human beings and to provide assistance to trafficked persons.

#### **Article 7. Status of the Government Commissioner for Combating Trafficking in Human Beings**

1. For the purposes of coordinating activities in combating human trafficking and implementing the state policy in this sphere, a position of the Government Commissioner for Combating Trafficking in Human Beings (hereinafter referred to as "the Government Commissioner") shall be established.

2. The Government Commissioner's decisions, made within his/her competence, shall be compulsory for the agents of combating trafficking in human beings. All drafts of secondary legislation in the sphere of combating human trafficking shall be agreed with the Government Commissioner.

3. The Government Commissioner's activities shall be financed from the State Budget.

**Article 8. Organisational Principles Underlying Activities of the Government Commissioner for Combating Trafficking in Human Beings**

1. The Government Commissioner for Combating Trafficking in Human Beings shall report to the Cabinet of Ministers of Ukraine.

2. The Cabinet of Ministers shall appoint and dismiss the Government Commissioner on the proposal of the Prime Minister of Ukraine.

3. The Government Commissioner's activities shall be supported by a relevant division in the Secretariat of the Cabinet of Ministers.

4. The Government Commissioner's activities shall be governed by the Regulations on the Government Commissioner for Combating Trafficking in Human

Beings approved by the Cabinet of Ministers of Ukraine.

**Article 9. Duties and Powers of the Government Commissioner for Combating Trafficking in Human Beings**

1. The Government Commissioner shall perform the following duties:

coordinate the implementation of state policy on combating trafficking in human beings;

ensure the conformity of measures and activities aiming to combat human trafficking with the provisions of national and international legislation on human rights and their guarantees.

2. In order to perform these duties, the Government Commissioner shall:

supervise the implementation of this Law;

draft secondary legislation conducive to the implementation of this Law;

draft a five-year national action plan to combat trafficking in human beings, coordinate and monitor its realisation;

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coordinate activities in the sphere of combating human trafficking by various agents of combating trafficking in human beings, and foster cooperation amongst them;

facilitate cooperation between agents of combating trafficking in human beings, on the one hand, and enterprises, institutions and organisations operating in the spheres of high risk of human trafficking, on the other;

promote cooperation among authorities and organisations responsible for combating human trafficking in the countries of origin, transit and destination, international organisations acting in the sphere of combating human trafficking;

present, at the international level, the State's activities in the sphere of combating human trafficking;

prepare and submit to the consideration of the Cabinet of Ministers of Ukraine proposals on the scope of funding of measures and activities geared towards the implementation of this Law;

organise data collection and research of the nature and scale of trafficking in human beings, causes of human trafficking and best practices of combating human

trafficking, and, proceeding from them, develop proposals on combating trafficking in human beings;

analyse and summarise reports from the territorial offices of the Government Commissioner, central executive power bodies that implement this Law and the national action plan to combat trafficking in human beings, and submit an annual report to the Cabinet of Ministers of Ukraine and copies thereof to concerned executive power bodies (government agencies). The report shall also be submitted to the President of Ukraine and Verkhovna Rada of Ukraine for their information;

collect information from non-governmental and international organisations acting in the sphere of combating human trafficking in Ukraine;

monitor measures and activities aiming to combat human trafficking for their conformity with the provisions of international and national legislation on human rights and their guarantees and, in the case of non-conformity, ensure the necessary response;

define priorities for information and awareness-raising campaigns on trafficking in human beings;

facilitate the organisation of training for officials and employees of the state power and local self-government bodies involved in combating trafficking in human beings;

develop the National Referral Mechanism for Trafficked Persons and coordinate its implementation;

develop and approve criteria for the identification of supposedly trafficked persons;

develop criteria for the identification of trafficked persons;

analyse social needs of the regions and submit proposals on setting up shelters for trafficked persons to the Council of Ministers of the Autonomous Republic of Crimea, local state administrations;

give consent to the establishment of shelters for trafficked persons by local self-government bodies, enterprises, institutions and organisations, civil society organisations or individuals;

make decisions to grant, extend, deny the granting or extension of, and withdraw the status of trafficked person;

submit, to the competent public authorities, petitions about allowing an eligible trafficked person to stay in Ukraine as specified in Article 57, Part 3 of this Law;

make decisions as to whether a trafficked child-foreigner should be allowed to stay in Ukraine, returned to the country of origin or relocated;

develop and approve questionnaires described in Article 47, Part 2 of this Law;

ensure centralised record and set up a centralised database on persons who have applied for the status of trafficked person and those who obtained this status;

exercise control over the operations of the Assistance Fund for Trafficked Persons;

where the identification of a trafficked person, search for a trafficked child's family and his/her reunion with the family require that competent authorities of foreign states be contacted, the Government Commissioner shall exercise powers vested in him/her by Article 63, Part 2 of this Law.

#### **Article 10. Territorial Offices of the Government Commissioner for Combating Trafficking in Human Beings**

1. The Cabinet of Ministers of Ukraine shall set up territorial offices of the Government Commissioner for Combating Trafficking in Human Beings in all oblasts of Ukraine, the cities of Kyiv and Sevastopol, and adopt regulations on the territorial offices.

2. The territorial offices of the Government Commissioner shall be accountable to and supervised by the Government Commissioner.

3. The territorial offices of the Government Commissioner shall employ experts in psychology, law, social work and medicine.

4. The territorial offices of the Government Commissioner, within their respective territories, shall perform the following duties:

identify trafficked persons;

organise assistance to trafficked persons and facilitate their protection;

implement the mechanism of referring trafficked persons to institutions that render assistance and protection.

5. In order to perform these duties, the territorial offices of the Government Commissioner shall:

provide supposed victims of human trafficking with information about Ukraine's effective anti-trafficking legislation and specifics of criminal and civil proceedings in cases related to trafficking in human beings;

hold interviews with supposed victims of human trafficking in order to identify them as trafficked persons;

collect and analyse data on supposed victims of human trafficking in order to identify them as trafficked persons;

based on the identification, prepare conclusions as to whether the status of trafficked person should be granted or denied;

submit to the Government Commissioner their conclusions and recommendations about granting or denying the status of trafficked person;

explain to individuals granted the status of trafficked person the importance of contacting the law enforcement bodies;

develop a short-term and long-term individual rehabilitation plan for each trafficked person;

monitor the implementation of short-term and long-term individual rehabilitation plans for trafficked persons;

refer trafficked persons to institutions rendering assistance and protection; ensure that they get medical, psychological, legal, social and other necessary assistance and interpretation services free of charge;

draw up a plan of immediate assistance to and protection of a supposedly trafficked child;

search for the trafficked child's family, assist in his/her family reunion and in placement of parentless children.

#### **Article 11. Interagency Council for Combating Trafficking in Human Beings**

1. In order to improve the efficiency of combating human trafficking, the Cabinet of Ministers of Ukraine shall form an interagency advisory body – the

Interagency Council for Combating Trafficking in Human Beings (hereinafter referred to as “the Council”).

2. The Council shall be comprised of representatives of the agents of combating human trafficking, international organisations, scholars and researchers with expertise in relevant areas.

3. The Cabinet of Ministers of Ukraine shall approve the personal membership of the Council and procedures for including or excluding its members.

#### **Article 12. National Anti-Trafficking Monitoring Mechanism**

1. The National Anti-Trafficking Monitoring Mechanism shall be implemented by a special representative of the Ombudsman for Human Rights.

2. The Ombudsman's Representative for Combating Human Trafficking shall monitor the activities of the Government Commissioner, his/her territorial offices and other agents of counteraction to human trafficking and, based on the monitoring results, shall prepare annual reports on the status of state anti-trafficking policy implementation, to be incorporated into annual reports of the Ombudsman for Human Rights.

3. The Ombudsman for Human Rights shall approve regulations on the Ombudsman's Representative for Combating Human Trafficking.

#### **Article 13. Assistance Fund for Trafficked Persons**

1. In order to ensure effective assistance to and protection of trafficked persons, a special Assistance Fund for Trafficked Persons (hereinafter referred to as “the Fund”) shall be formed.

2. The aim of the Fund is to finance activities and measures aiming to render assistance and protection to trafficked persons, compensate them for damages in the cases and amounts that go beyond sectoral funding.

3. The Fund shall be established in the amount, equivalent to at least ten thousand minimum salaries, and shall be used exclusively for the purposes designated in paragraph 2 of this Article. The money unspent in any current budget year shall be carried over to form the Fund in the following budget year.

4. The Fund shall be managed by the Government Commissioner for Combating Trafficking in Human Beings.

5. In order to supervise the formation and use of the Fund money, a Supervisory Board shall be established of representatives of agents of combating trafficking in human beings.

6. The Cabinet of Ministers of Ukraine shall establish the procedure for forming and using the Fund.

7. No trafficked person shall be denied payment of the Fund money in accordance with this Law for the reason of non-availability of funds.

8. The Fund shall be formed at the expense of the state budget revenues from:

1) the money obtained as security from the suspects, the charged or the defendants in human trafficking cases and seized in the order established by law;

2) the proceeds of sale of property seized from persons adjudged guilty of trafficking in human beings;

3) the money obtained in fines paid by business entities operating in the high risk spheres as provided for in Article 65 of this Law;

4) the money received from international organisations;

5) charity donations by legal entities and individuals;

6) other sources not prohibited by law.

9. The Assistance Fund for Trafficked Persons shall have the right of recourse against a person found guilty of human trafficking, in the amount of paid compensation.

#### **Article 14. Cooperation among Agents of Combating Trafficking in Human Beings**

1. The agents of combating trafficking in human beings shall cooperate in the process of combating human trafficking, each being in charge of counteraction to human trafficking within its respective competence.

2. While exercising their authority in the sphere of counteracting human trafficking, the state power bodies shall cooperate with non-governmental and international organisations. The state power bodies can, to the extent allowed by laws of Ukraine, delegate to non-governmental organisations some of their powers in respect of taking measures to prevent human trafficking, provide protection and assistance to

trafficked or supposedly trafficked persons, and reintegrate trafficked persons. The delegation of such powers to non-governmental organisations shall entail the transfer to them of relevant financial, material and technical, other resources required for exercising these powers.

3. The main areas of cooperation shall be as follows:

1) exchanging information, with due regard for confidentiality, on cases of trafficking in human beings, causes of and conditions for human trafficking, methods used by traffickers, necessary assistance to trafficked persons;

2) developing joint programmes and plans of combating trafficking in human beings;

3) organising joint activities aiming to combat human trafficking;

4) co-funding activities aiming to combat human trafficking;

5) sharing best practices of combating trafficking in human beings.

### **Section III**

#### **COMPETENCE OF THE STATE POWER BODIES IN COMBATING TRAFFICKING IN HUMAN BEINGS**

##### **Article 15. Competence of the Central Executive Power Body for Family Affairs and Its Structural Units**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public policy on family, children, youth, gender equality, physical culture and sport (hereinafter referred to as “the central executive power body for family affairs”) and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

organise information campaigns, including in the mass media, and education programmes, primarily for the groups at risk of human trafficking and representatives of the spheres with high risk of trafficking in human beings;

ensure the establishing and maintenance of “hotlines”, consulting offices under the state power and local self-government bodies, other agents of combating human trafficking, subject to their consent;

ensure the dissemination of information materials through employment centres, passport services, check-points at the state border of Ukraine, Ukraine’s diplomatic missions abroad, other institutions and organisations;

take measures conducive to eliminating causes of human trafficking, in particular domestic violence and gender discrimination;

license the rendering of dating services, including in foreign countries, marriage mediation services, and control the business entities’ compliance with pertinent licensing requirements;

take measures to raise awareness of combating trafficking in children amongst parents and persons substituting them, individuals that are in permanent contact with children in the spheres of education, health, social security, justice and law enforcement, sport, culture and leisure.

2. In order to provide assistance and protection to trafficked persons, the central executive power body for family affairs and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the rendering of free social and psychological assistance to trafficked persons and supposed victims of human trafficking;

provide organisational and methodological support to shelters for trafficked persons set up pursuant to Article 55 of this Law.

#### **Article 16. Competence of the Central Executive Power Body for Education and Its Structural Units**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public policy on education, science and technical research, innovation activities and intellectual property (hereinafter referred to as “the central executive power body for education”) and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

develop and implement education and awareness raising programmes on combating trafficking in human beings for educational institutions;

develop and disseminate educational and training materials for officials and employees of the state power and local self-government bodies involved in combating trafficking in

human beings, and for individuals that are in permanent contact with the groups at risk of human trafficking in the spheres of education, health, social security, sport, culture and leisure;

identify children at risk of human trafficking and conduct prevention work with these children, their parents or persons substituting them;

take measures to raise awareness of combating trafficking in children amongst parents and persons substituting them, individuals that are in permanent contact with children in the spheres of education, health, social security, justice and law enforcement, sport, culture and leisure.

2. In order to provide assistance and protection to trafficked persons, the central executive power body for education and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure that trafficked persons exercise their right to education and vocational training;

provide free psychological counselling to trafficked children.

#### **Article 17. Competence of the Central Executive Power Body for Labour and Its Structural Units**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public policy on employment and labour migration, social security of the population, mandatory state social insurance (hereinafter referred to as “the social insurance”), social labour relations and supervision of compliance with labour legislation, remuneration of labour, work measurement and incentives, occupational classification, working conditions, pension, social services to the population, collective bargaining and regulation of socio-economic interests of employees and employers, social dialogue development (hereinafter referred to as “the central executive power body for labour”) and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

conduct information campaigns, including in the mass media, and education programmes, primarily for the groups at risk of human trafficking and representatives of the spheres with high risk of trafficking in human beings;

establish and maintain “hotlines” and consulting offices;

ensure the dissemination of information materials through employment centres;

monitor the use of labour for its compliance with legal requirements in order to detect and terminate covert exploitation of persons;

license the services of modelling agencies and control the business entities' compliance with pertinent licensing requirements;

organise, on the basis of social partnership, negotiations with employers on introducing codes of conduct for their employees that provide, *inter alia*, for unacceptability of hushing up suspicions about facts of human trafficking.

2. In order to provide assistance and protection to trafficked persons, the central executive power body for labour and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

facilitate job placement and vocational training of trafficked persons;

issue work permits to foreigners and stateless persons who have become victims of human trafficking in Ukraine.

#### **Article 18. Competence of the Central Executive Power Body for Internal Affairs of Ukraine and Its Structural Units**

1. In order to prevent trafficking in human beings, the central executive power body in charge of formulating and implementing public policy on protection of human and civil rights and freedoms, maintenance of public order and security, defence of property, public and state interests from criminal encroachment, road traffic safety, citizenship, immigration and passport work, counteraction to illegal migration (hereinafter referred to as "the central executive power body for internal affairs") and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

analyse and assess causes of and preconditions for human trafficking;

counteract illegal migration;

help to minimise unprotected work in informal sector;

plan, organise and exercise on-going control over the operations of private employment agencies that place Ukrainian citizens in jobs abroad, tourist and modelling agencies, agencies that provide dating services, including in foreign countries, and marriage mediation services;

disseminate to the general public information about responsibility for trafficking in human beings and conscious use of the results of trafficked persons' exploitation.

2. In order to fight against trafficking in human beings, the central executive power body for internal affairs and its structural units shall undertake measures envisioned by the Ukrainian legislation.

3. In order to provide assistance and protection to trafficked persons, the central executive power body for internal affairs and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the immediate withdrawal of persons, who supposedly are in the situation of human trafficking, from this situation and refer them to a suitable territorial office of the Government Commissioner.

**Article 19. Competence of the Prosecution Bodies of Ukraine**

1. In order to prevent trafficking in human beings, the prosecution bodies of Ukraine, in addition to their powers envisioned by the Ukrainian legislation, shall:

analyse and assess causes of and preconditions for human trafficking;

disseminate to the general public information about responsibility for trafficking in human beings and conscious use of the results of trafficked persons' exploitation.

2. In order to fight against trafficking in human beings, the prosecution bodies of Ukraine shall undertake measures envisioned by the Ukrainian legislation.

3. In order to provide assistance and protection to trafficked persons, the prosecution bodies of Ukraine, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the immediate withdrawal of persons, who supposedly are in the situation of human trafficking, from this situation and refer them to a suitable territorial office of the Government Commissioner.

**Article 20. Competence of the Security Service of Ukraine**

1. In order to prevent trafficking in human beings, the Security Service of Ukraine, in addition to their powers envisioned by the Ukrainian legislation, shall:

analyse and assess causes of and preconditions for human trafficking;

disseminate to the general public information about responsibility for trafficking in human beings and conscious use of the results of trafficked persons' exploitation.

2. In order to fight against trafficking in human beings, the Security Service of Ukraine shall undertake measures envisioned by the Ukrainian legislation.

3. In order to provide assistance and protection to trafficked persons, the Security Service of Ukraine, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the immediate withdrawal of persons, who supposedly are in the situation of human trafficking, from this situation and refer them to a suitable territorial office of the Government Commissioner.

**Article 21. Competence of the Specially Authorised Central Executive Power Body for State Border Guard Service and Its Structural Units**

1. In order to prevent trafficking in human beings, the specially authorised central executive power body for state border guard service and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the dissemination of information materials on the threats of trafficking in human beings through check-points at the state border of Ukraine.

2. In order to fight against trafficking in human beings, the specially authorized central executive power body for state border guard service and its structural units shall undertake measures envisioned by the Ukrainian legislation.

3. In order to provide assistance and protection to trafficked persons, the specially authorized central executive power body for state border guard service and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the immediate withdrawal of persons, who supposedly are in the situation of human trafficking, from this situation and refer them to a suitable territorial office of the Government Commissioner;

identify ways and routes for the safe return of foreigners and stateless persons, who have become victims of human trafficking in Ukraine, to their countries of origin.

**Article 22. Competence of the Central Executive Power Body for Public Health and Its Structural Units**

1. In order to provide assistance and protection to trafficked persons, the central executive power body in charge of the implementation of public policy in the sphere of health protection, sanitary and epidemiological wellbeing of the population, development, production, quality control and realisation of pharmaceutical products and medical equipment (hereinafter referred to as “the central executive power body for public health) and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the rendering of free medical services, including the emergency aid, with due regard for special needs of different categories of trafficked and supposedly trafficked persons.

**Article 23. Competence of the Central Executive Power Body for International Relations and Ukraine’s Diplomatic Missions Abroad**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public policy on Ukraine’s international relations and coordination of relevant activities, in particular those geared towards achieving strategic aims of Ukraine’s foreign policy regarding Ukraine’s entry into the European space and creating conditions for Ukraine’s accession to the European Union (EU) and North Atlantic Treaty Organisation (NATO) (hereinafter referred to as “the central executive power body for international relations”) and Ukraine’s diplomatic missions abroad, in addition to their powers envisioned by the Ukrainian legislation, shall:

study, on the permanent basis, the best practices and experience of foreign countries and international organisations in combating trafficking in human beings so as to inform the agents of combating human trafficking accordingly;

disseminate informational materials on the threats of trafficking in human beings.

2. In order to provide assistance and protection to trafficked persons, the central executive power body for international relations and Ukraine’s diplomatic missions abroad, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the provision of primary medical aid, psychological, legal and other assistance to the citizens of Ukraine who stay abroad and are supposed victims of human trafficking;

facilitate the provision of temporary shelter to the citizens of Ukraine who stay abroad and are supposed victims of human trafficking, pending their return to Ukraine;

provide the citizens of Ukraine with the necessary documents for their subsequent return to their home country;

identify ways and routes for the safe return of foreigners and stateless persons, who have become victims of human trafficking in Ukraine, to their countries of origin.

**Article 24. Competence of the Central Executive Power Body in Charge of Implementing Public Legal Policy and Its Structural Units**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public legal policy and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

disseminate to the general public information about responsibility for trafficking in human beings and conscious use of the results of trafficked persons’ exploitation.

2. In order to provide assistance and protection to trafficked persons, the central executive power body in charge of implementing the public legal policy and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the provision of free legal assistance to trafficked persons.

**Article 25. Competence of the Central Executive Power Body in Charge of Implementing Public Policy in the Spheres of Culture, Tourism and Language**

1. In order to prevent trafficking in human beings, the central executive power body in charge of implementing public policy on culture, tourism, as well as of the public language policy, and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

disseminate informational materials on the threats of trafficking in human beings.

**Article 26. Competence of the Specially Authorised Central Executive Power Body in Charge of Implementing Public Policy in the Sphere of Information and Publishing**

1. In order to prevent trafficking in human beings, the specially authorized central executive power body in charge of implementing public policy in the sphere of information and publishing, in addition to their powers envisioned by the Ukrainian legislation, shall:

conduct information campaigns on the threats of human trafficking in the mass media.

2. In order to provide assistance and protection to trafficked persons, the central executive power body in charge of implementing public policy in the sphere of information and publishing, in addition to their powers envisioned by the Ukrainian legislation, shall:

promote respect for the principle of confidentiality of information on trafficked persons in the mass media.

**Article 27. Competence of the Specially Authorised Central Executive Power Body for Organising Special Communications and Protecting Information, and Its Structural Units**

1. In order to provide assistance and protection to trafficked persons, the specially authorised central executive power body for organising special communications and protecting information, and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the protection of information on trafficked persons from unauthorised access.

**Article 28. Competence of the Central Executive Power Body in Charge of Providing Operational Support to Courts and Its Structural Units**

1. In order to provide assistance and protection to trafficked persons, the central executive power body in charge of providing operational support to courts and its structural units, in addition to their powers envisioned by the Ukrainian legislation, shall:

ensure the improved practice of organising courts' work with trafficked persons.

**Article 29. Powers and Responsibilities of the Council of Minister of the Autonomous Republic of Crimea and Local State Administrations**

The Council of Minister of the Autonomous Republic of Crimea and local state administrations, acting within their respective competence, shall:

provide support to the territorial offices of the Government Commissioner;

cooperate with the territorial offices of the Government Commissioner to ensure the implementation and operation of the National Referral Mechanism in their respective territories;

set up shelters for trafficked persons on the Government Commissioner's request and ensure their operation.

**Article 30. General Powers of Agents of Combating Trafficking in Human Beings**

1. The agents of combating trafficking in human beings, within their respective competence, shall carry out activities envisaged by Article 45 of this Law.

2. The agents of combating trafficking in human beings shall submit to the Government Commissioner annual reports on their anti-trafficking activities.

3. The agents of combating trafficking in human beings shall organise training programmes for their employees who could contact with trafficked persons in line of their duty; the training programmes shall cover the issues of identification of supposed victims of human trafficking and of providing assistance and protection to them within the National Referral Mechanism.

4. The agents of combating trafficking in human beings shall finance measures and activities aiming to provide assistance and protection to trafficked persons, within their respective budgets, and through participation in decision-making by the Supervisory Board of the Assistance Fund for Trafficked Persons.

5. In order to promote trafficked persons' rights, the state power bodies shall be entitled to order services from non-governmental organisations experienced in rendering such services, and to allocate adequate resources for these non-governmental organisations' anti-trafficking activities, in particular through financing such services on the contractual basis at the expense of the budget funds earmarked for providing assistance and protection to trafficked persons.

## **Section IV HUMAN TRAFFICKING**

### **PREVENTION MECHANISMS Article 31. Areas of human trafficking**

#### **prevention**

Prevention of trafficking in human beings shall imply the implementation of organisational, legal, socio-economic, educational, research, informational and other activities and measures, and shall be realised in the following areas: situation analysis, awareness raising, reduction of the vulnerability of the population, discouraging of the demand.

### **Article 32. Agents of Prevention of Human Trafficking**

The agents of prevention of human trafficking shall be as follows:

the Government Commissioner and his/her territorial offices,

the central executive power body for family affairs and its structural units,

the central executive power body for education and its structural units,

the central executive power body for labour and its structural units,

the central executive power body for internal affairs of Ukraine and its structural units,

the prosecution bodies of Ukraine,

the Security Service of Ukraine,

the specially authorised central executive power body for state border guard service and its structural units,

the central executive power body for international relations and Ukraine's diplomatic missions abroad,

the central executive power body in charge of implementing public legal policy and its structural units,

the central executive power body in charge of implementing public policy in the spheres of culture, tourism and language,

the specially authorised central executive power body in charge of implementing public policy in the sphere of information and publishing,

the Council of Ministers of the Autonomous Republic of Crimea,

local executive power bodies,

local self-government bodies, non-

governmental organisations, enterprises,

institutions and organisations, individuals.

### **Article 33. Situation Analysis**

The situation analysis aiming to develop effective measures for combating human trafficking shall include:

collecting data and conducting research of the nature and scale of trafficking in human beings;

analysing and assessing conditions and causes of human trafficking;

analysing and assessing consequences of trafficking in human beings;

other measures and activities.

### **Article 34. Awareness Raising**

1. Awareness raising shall imply the dissemination of information about:

the essence and nature of trafficking in human beings;

situations, in which a person could be subjected to human trafficking;

the ways of avoiding such situations or coming out of them;

potential consequences of human trafficking;

trafficked persons' rights;

responsibility for trafficking in human beings and conscious use of the results of trafficked person's exploitation;

other provisions of the anti-trafficking legislation.

2. The awareness raising activities shall include:

conducting informational campaigns, including in the mass media, and education programmes, primarily for the groups at risk of human trafficking and representatives of the spheres with high risk of trafficking in human beings;

establishing and maintaining "hotlines", consulting offices under the state power and local self-government bodies, other agents of combating trafficking in human beings, subject to their consent;

disseminating information materials through employment centres, passport services, check-points at the state border of Ukraine, Ukraine's diplomatic missions abroad, other institutions and organisations;

developing and implementing education and awareness raising programmes on combating trafficking in human beings for educational institutions;

developing and implementing training programmes for officials and employees of the state power and local self-government bodies involved in combating human trafficking, and for individuals that are in permanent contact with the groups at risk of human trafficking in the spheres of education, health, social security, sport, culture and leisure;

other measures and activities.

**Article 35. Reducing Vulnerability of the Population**

Reducing vulnerability of the population shall imply:

alleviating poverty, unemployment, homelessness and neglect; improving socio-economic conditions and living standards in accordance with the national legislation;

promoting equal rights and opportunities in education, socio-economic and other spheres, eliminating all forms of discrimination;

facilitating legal labour migration, counteracting irregular migration and minimising unprotected work in informal sector;

licensing the provision of dating services, including in foreign countries, of marriage mediation services and the organisation of modelling activities; stipulating in the

licensing requirements the licensee's obligation to properly inform their clients and models so as to protect them from the risk of getting into situations of human trafficking;

other measures and activities.

### **Article 36. Discouraging the Demand that Leads to Trafficking**

Discouraging the demand that fosters exploitation of persons and leads to human trafficking shall imply:

prohibiting the conscious use of trafficked persons' services or goods produced by them,

disseminating to the general public information about responsibility for conscious use of the results of trafficked persons' exploitation;

detecting and terminating covert exploitation of persons through monitoring the use of labour for its compliance with legal requirements;

urging enterprises, institutions and organisations to introduce codes of conduct for their employees that provide, *inter alia*, for unacceptability of hushing up suspicions about facts of human trafficking.

### **Article 37. Other Measures Aiming to Prevent Human Trafficking**

Human trafficking prevention activities shall also include any other activities and measures aiming to eliminate causes of and conditions for trafficking in human beings.

## **Section V**

### **MECHANISMS FOR FIGHT AGAINST HUMAN TRAFFICKING**

#### **Article 38. Fighting Against Human Trafficking**

The fight against trafficking in human beings shall imply the implementation of organisational, operational-investigative, procedural, research and analytical, informational and other activities and measures.

#### **Article 39. Agents of Fight Against Human Trafficking**

The agents of fight against human trafficking shall be as follows:

the central executive power body for internal affairs of Ukraine and its structural units,

the prosecution bodies of

Ukraine, the Security Service of

Ukraine,

the specially authorised central executive power body for state border guard service and its structural units.

#### **Article 40. Objectives of Fight Against Trafficking in Human Beings**

Objectives of fight against trafficking in human beings shall include:

detecting offences related to trafficking in human beings;

ensuring the security of persons taking part in criminal trial of human trafficking cases;

investigating crimes related to trafficking in human beings;

prosecuting and punishing traffickers and other offenders involved in human trafficking;

ensuring the restoration of trafficked persons' rights;

informing the general public and public authorities on results of activities and measures aiming to fight against human trafficking;

identifying causes of and conditions for trafficking in human beings and undertaking measures to eliminate them.

#### **Article 41. Interagency Database on Offences Related to Human Trafficking**

With a view to fostering effective fight against human trafficking, an interagency database on offences related to human trafficking shall be set up. The Cabinet of Ministers of Ukraine shall approve the procedures for its operation and use.

#### **Article 42. Ensuring Security of Trafficked Persons**

The agents of fight against trafficking in human beings, within their respective powers, shall undertake measures to ensure security of persons recognised as victims of human trafficking and all other parties of criminal litigation as required by Article 50 of this Law.

### **Section VI**

**MECHANISMS FOR PROVIDING ASSISTANCE AND PROTECTION TO  
TRAFFICKED PERSONS**

**Article 43. National Referral Mechanism for Trafficked Persons**

1. In order to render effective assistance and protection to trafficked persons, a National Referral Mechanism for Trafficked Persons (hereinafter referred to as “the National Mechanism”) shall be created.

2. The National Mechanism shall be construed as a system of coordination and cooperation whereby the agents of combating trafficking in human beings provide assistance and protection to trafficked persons. The National Mechanism implementation shall include the identification and analysis of the trafficked persons’ needs and the finding of bodies or institutions capable of meeting them.

3. While implementing this Section, the agents of combating trafficking in human beings shall take into consideration trafficked persons’ age, gender and special needs.

4. The National Mechanism shall be developed by the Government Commissioner, in cooperation with other agents of combating trafficking in human beings, and approved by the Cabinet of Ministers of Ukraine.

5. The Government Commissioner shall coordinate the National Mechanism implementation so as to ensure the proper identification of (supposed) victims of trafficking, protection of and assistance to trafficked persons.

**Article 44. Agents Providing Assistance and Protection to Trafficked Persons**

The agents providing assistance and protection to trafficked persons shall be as follows:

the Government Commissioner and his/her territorial offices,

the central executive power body for family affairs and its structural units,

the central executive power body for education and its structural units,

the central executive power body for labour and its structural units,

the central executive power body for internal affairs of Ukraine and its structural units,

the prosecution bodies of Ukraine,

the Security Service of Ukraine,

the specially authorised central executive power body for state border guard service and its structural units,

the central executive power body for public health and its structural units,

the central executive power body for international relations and Ukraine's diplomatic missions abroad,

the central executive power body in charge of implementing public legal policy and its structural units,

the specially authorised central executive power body in charge of implementing public policy in the sphere of information and publishing,

the specially authorised central executive power body for organising special communications and protecting information, and its structural units,

courts having jurisdiction over criminal cases related to human trafficking,

the central executive power body in charge of providing operational support to courts and its structural units,

the Council of Ministers of the Autonomous Republic of Crimea,

local executive power bodies,

local self-government bodies,

non-governmental organisations,

enterprises, institutions and organisations.

#### **Article 45. Identification of Supposed Victims of Human Trafficking**

1. The agents of combating trafficking in human beings, within their respective powers, shall undertake measures to identify supposed victims of trafficking in human beings and refer them to the territorial offices of the Government Commissioner by informing these persons about their eligibility for applying to the territorial offices, and,

subject to their consent, notify a relevant territorial office of the Government Commissioner.

2. The agents of combating trafficking in human beings, having identified a supposedly trafficked person, shall inform him/her about his/her rights, as well as protection and assistance opportunities, in particular about the procedure for obtaining the status of trafficked person.

3. In the event of identifying a person who, supposedly, is in the trafficking situation, agents of combating trafficking in human beings, within their respective powers, shall take immediate measures to withdraw him/her from this situation.

4. The agents of combating trafficking in human beings that have identified a supposed victim of human trafficking shall ensure that immediate assistance is rendered to this person as required.

5. Criteria for identifying supposed victims of human trafficking shall be developed and approved by the Government Commissioner.

#### **Article 46. Rights of Individuals Seeking the Status of Trafficked Persons**

1. Persons who consider themselves victims of human trafficking have the right to apply to a territorial office of the Government Commissioner for obtaining the status of trafficked person.

2. Individuals seeking the status of trafficked persons shall have the right to personal security, respectful treatment and free provision of the following:

1) information on their rights and available opportunities in the language they understand;

2) first medical aid, psychological, legal and other assistance, irrespective of whether or not they are registered;

3) temporary shelter in institutions for trafficked persons pending the decision on granting the status of trafficked person to them.

3. A foreign national or a stateless person applying for the status of trafficked person, in addition to the rights stipulated in part 2 of this Article, shall be entitled to:

1) obtain interpretation services free of charge;

2) stay temporarily in Ukraine pending the decision on granting the status of trafficked person to him/her.

4. In addition to the rights specified in Parts 2 and 3 of this article, a child-applicant for the status of trafficked person shall also enjoy the rights provided for in Section VII of this Law.

5. It shall be prohibited to keep an applicant for the status of trafficked person in detention facilities, except for the cases stipulated by law and provided this person is kept separately from the others.

**Article 47. Procedure for Obtaining, Extending and Losing the Status of Trafficked Person**

1. Within five working days of receiving information about the supposed victim of human trafficking, the territorial office of the Government Commissioner shall conduct identification of this person and send its proposal on granting or denying him/her the status of trafficked person to the Government Commissioner, together with its conclusion on the identification results.

2. In order to conduct identification of a trafficked person, the territorial office of the Government Commissioner shall interview him/her, collect and analyse all available data. The interview shall be based on a questionnaire, whose form and contents shall be approved by the Government Commissioner. A copy of the filled-in questionnaire shall be attached to the proposal on granting or denying the status of trafficked person.

3. If it is temporarily impossible to interview the supposed victim of human trafficking for reasons beyond control of the territorial office of the Government Commissioner, the interview shall be held as soon as such reasons cease to exist. The territorial office of the Government Commissioner shall notify the Government Commissioner of the reasons for postponing the interview.

4. If it is impossible to interview the supposed victim of human trafficking because of their chronic mental disease, temporary mental disorder, dementia, feeble-mindedness or any other ailing state of mind, or minority age, the territorial office of the Government Commissioner shall conduct the identification of the person based on other data.

5. The Government Commissioner shall make a decision on granting or denying the status of trafficked person within 10 working days of receiving the relevant proposal from the territorial office of the Government Commissioner. The Government Commissioner shall make the decision on granting or denying the status of trafficked person based on the materials mentioned in Parts 1 and 2 of this Article. If the materials are insufficient for decision-making, the Government Commissioner shall instruct the concerned territorial office of the Government Commissioner to collect additional information.

6. If the decision is made to grant the status of trafficked person, a standard certificate, whose form is approved by the Cabinet of Ministers of Ukraine, shall be issued to the applicant.

7. In the case of refusal to grant the status of trafficked person, the applicant shall have the right to appeal against the decision in the order established by law.

8. The status of trafficked person shall be granted for the period of up to one year, on the basis of the trafficked persons' identification criteria developed by the Government Commissioner and approved by the Cabinet of Ministers of Ukraine. The validity of the granted status can be extended subject to the Government Commissioner's decision ensuing

from a substantiated request to this effect from the territorial office of the Government Commissioner.

9. The status of trafficked person shall be deemed lost in the following cases:

1) when the period, for which the status was granted or extended as specified in Part 8 of this Article, expires;

2) when it transpires that the decision on granting or extending the status was founded on misleading information or false documents, which were submitted by the applicant and which had substantial impact on decision-making. Individuals who submitted such information or documents can be made liable in accordance with the effective legislation.

10. The obtaining and loss of the status of trafficked person shall not be conditional on obtaining or loss of the person's status in the criminal or civil proceedings. Nor shall it be linked to any privileges, benefits and other forms of assistance provided by the government as envisaged by other laws.

#### **Article 48. Trafficked Persons' Rights**

1. Individuals granted the status of trafficked persons shall have the right to personal security, respectful treatment and free provision of the following:

1) information on their rights and available opportunities in the language they understand;

2) medical aid, psychological, legal and other assistance as required;

3) temporary shelter in institutions for trafficked persons for the period of up to six months, which period can be prolonged by the decision of the territorial office of the Government Commissioner, if required, in particular, due to their involvement in the criminal proceedings as victims or witnesses;

4) one-time financial aid in the amount of five minimum salaries;

5) assistance with employment and exercising their right to education and vocational training.

2. Foreigners and stateless persons granted the status of trafficked persons, in addition to the rights listed in Part 1 of this Article, shall also be eligible for:

1) free interpretation services;

2) temporary stay in Ukraine for the period of up to six months, which period can be

prolonged, if required, in particular, due to their involvement in the criminal proceedings as victims or witnesses;

- 3) temporary employment;
- 4) safe return to their country of origin in decent conditions.

3. In addition to the rights, specified in parts 1 and 2 of this Article, a child granted the status of trafficked person shall also enjoy the rights stipulated in Section VII of this Law.

4. Assistance to the trafficked person shall not be conditional on:

1) whether or not this person cooperates with the law enforcement bodies and is involved in criminal proceedings, except for the cases cited in item 3) of Part 1 and item 2) of Part 2 of this Article;

2) whether or not this person has ID papers.

#### **Article 49. Individual Plan of Assistance to Trafficked Person**

1. The territorial offices of the Government Commissioner shall develop an individual short-term and long-term assistance plan for each trafficked person.

2. The short-term plan shall be drawn immediately after the identification of the supposedly trafficked person (or after his/her resorting to competent authorities), and include a list of urgent assistance measures.

3. The long-term plan shall be drawn immediately after the granting of the “trafficked person” status and include information on the duration of rehabilitation period, necessary measures of medical aid, psychological, legal, social and other assistance.

#### **Article 50. Confidentiality of Information**

1. Employees of the territorial offices of the Government Commissioner and other individuals who, in line of their duty, come to know confidential information about trafficked or supposedly trafficked persons shall not disclose this information without the concerned person’s consent.

2. Individuals guilty of disclosing confidential information about trafficked persons shall be made liable according to the effective Ukrainian legislation.

3. In reports on trafficked or supposedly trafficked persons, it shall be prohibited to mention, directly or indirectly, any data allowing to identify such persons.

4. Information exchange among the state power and local self-government bodies envisaged in this Law and other laws of Ukraine, and reports on identifying a supposedly trafficked person sent to the Government Commissioner or his/her territorial offices on that person's consent shall not be deemed a breach of confidentiality.

#### **Article 51. Reflection Period**

1. Trafficked persons shall have the right to a 30-day reflection period for making an informed decision regarding their cooperation with the law enforcement bodies.

2. Territorial offices of the Government Commissioner shall provide applicants for the status of trafficked persons with information about current anti-trafficking legislation, specifics of the criminal and civil proceedings in human trafficking cases.

3. The reflection period shall start on the day of the applicant's obtaining the status of trafficked person.

4. The decision by a foreigner or stateless person who obtained the "trafficked

person" status not to resort to the law enforcement bodies shall be without prejudice to his/her right to stay in the territory of Ukraine granted to him/her in accordance with Article 48, Part 2, item 2) of this Law.

#### **Article 52. Assistance to Trafficked Persons in Criminal Proceedings**

1. At all stages of the criminal proceedings, the territorial office of the Government Commissioner shall provide the trafficked person with free services of a legal counsel, social worker and interpreter, if need be.

2. Persons involved in the criminal proceedings in cases related to human trafficking shall have the right to personal security according to the Ukrainian legislation.

#### **Article 53. Measures Aiming to Exempt Trafficked Persons from Responsibility**

If a trafficked person, while being in the human trafficking situation, was forced to commit an act qualified as an offence or administrative misdemeanour, his/her legal counsel shall undertake all measures envisioned by law to get this person exempt from responsibility or punishment, or to get his/her responsibility mitigated.

#### **Article 54. Trafficked Persons' Right to Compensation for Damages**

1. Trafficked persons shall be entitled to the compensation for their material and moral damage as stipulated by law.

2. If the damage cannot be compensated at the expense of the party at fault, it shall be compensated from the Assistance Fund for Trafficked Persons.

#### **Article 55. Shelters for Trafficked Persons**

1. In order to ensure the exercising of rights stipulated by this Law, including the right to personal security and temporary refuge, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, on the Government Commissioner's proposal, shall set up shelters for trafficked persons. The Government Commissioner shall put forward a proposal to set up a shelter for trafficked persons based on the analysis of social need existing in a respective region.

2. Shelters for trafficked persons can also be set up by local self-government bodies, enterprises, institutions and organisations, civil society organisations and individuals subject to the Government Commissioner's consent. Such shelters shall be registered in the order established by law.

3. The Cabinet of Ministers of Ukraine, on the Government Commissioner's proposal, shall approve model regulations on shelters for trafficked persons.

#### **Article 56. Return of Ukrainian Citizens – Supposed Victims of Human Trafficking – to Ukraine**

1. Ukrainian diplomatic missions abroad, in cooperation with the Ministry of Internal Affairs of Ukraine and other competent Ukrainian authorities, shall provide the citizens of Ukraine with the documents necessary for their further return to their home country; render required counselling and legal assistance.

2. In order to ensure the supposedly trafficked persons' return to Ukraine, the competent Ukrainian authorities shall cooperate with corresponding authorities and organisations in foreign countries and with international organisations.

3. If Ukrainian citizens who are supposed victims of human trafficking have no money for travelling back to Ukraine, Ukrainian diplomatic missions abroad, through the Ministry of Foreign Affairs of Ukraine, shall notify the Government Commissioner accordingly; the Government Commissioner for Combating Trafficking in Human Beings shall explore the possibility to finance their return from the Assistance Fund for Trafficked Persons and take a relevant decision.

#### **Article 57. Repatriation of Trafficked Foreigners and Stateless Persons**

1. If the trafficked person is a foreigner or a stateless person, the Government Commissioner, based on the long-term plan of assistance to this person, shall conclude what period of stay in Ukraine is required for his/her rehabilitation.

2. Upon the expiry of the above period, competent authorities shall take measures, within their powers, to ensure the person's safe return to his/her country of origin.

3. If the Government Commissioner has solid grounds to believe that the life, physical or mental health, freedom or inviolability of the trafficked foreigner or stateless person could be jeopardised in the case of his/her return to the country of origin upon the expiry of the allowed period of stay in Ukraine, the Government Commissioner shall help this person to get a permit for staying in the territory of Ukraine until such jeopardising circumstances cease to exist.

4. The person who was permitted to stay in Ukraine according to Part 3 of this Article and has uninterruptedly stayed in the territory of Ukraine for three years upon obtaining the "trafficked person" status shall have the right to getting an immigration permit in the order established by law.

## **Section VII COMBATING TRAFFICKING IN**

### **CHILDREN**

#### **Article 58. Special Principles of Combating Trafficking in Children**

In addition to the general principles laid down in Article 4 of this Law, and non-discrimination principle defined in Article 5 of this Law, combating trafficking in children shall be guided by the following special principles:

respect for the rights of the child stipulated by international agreements deemed binding by the Verkhovna Rada of Ukraine and the Ukrainian legislation;

respect for the trafficked child's opinion about the measures applied to him/her with due regard for his/her age, mental and physical development and interests;

promoting the child's right to family;

explaining to the trafficked child his/her rights and responsibilities in a clear way understandable to him/her;

ensuring confidentiality of the child's personal information and the data that would allow to identify the child as a victim of human trafficking, with due regard for provisions of Article 50 of this Law.

#### **Article 59. Prevention of Trafficking in Children**

1. The state power bodies, within their respective competence, shall undertake the necessary social, legal psychological, pedagogical and other measures to detect and eliminate

causes of and conditions for trafficking in children.

2. The state power bodies, within their respective competence, shall undertake measures to identify children at risk of human trafficking and conduct prevention work with such children, their parents or persons substituting them.

3. The state power bodies, within their respective competence, shall develop and implement education and awareness raising anti-trafficking programmes in educational institutions.

4. The state power bodies, within their respective competence, shall undertake measures to raise awareness of combating trafficking in children amongst parents and persons substituting them, individuals that are in permanent contact with children in the spheres of education, health, social security, justice and law enforcement, sport, culture and leisure.

#### **Article 60. Procedure for Reporting on Trafficked Children and Children at Risk of Human Trafficking**

1. Bodies and services for minors' affairs, specialised institutions for children and individuals that are in permanent contact with children in the spheres of education, health, social security, justice and law enforcement, sport, culture and leisure, other individuals in possession of information about a supposedly trafficked child shall, without delay and with due regard for confidentiality, report this information to the territorial office of the Government Commissioner.

2. The territorial office of the Government Commissioner shall undertake measures to inform the child's parents or persons substituting them that their child is a supposed victim of human trafficking or belongs to the group at risk of human trafficking.

3. If there are grounds to suspect that the child's parents or persons substituting them are implicated in the child trafficking, the territorial office of the Government Commissioner shall notify the law enforcement bodies accordingly.

4. The territorial office of the Government Commissioner shall inform the state power and local self-government bodies, insofar as their respective competence is concerned, about a need to take measures for protecting the rights and ensuring the best interests of the child.

#### **Article 61. Assistance to Trafficked Children**

1. The State shall ensure support and assistance to the child from the moment suspicion arises that he/she could have been trafficked to his/her complete rehabilitation.

2. Upon receiving information about a supposedly trafficked child, the territorial office of the Government Commissioner shall take immediate action to

identify the person of the child, assess the situation and adopt a plan of urgent assistance measures for the period pending a decision on granting him/her the status of trafficked person.

3. If a supposedly trafficked child is orphaned, deprived of parental care or separated from his/her family, the territorial office of the Government Commissioner shall, without delay, inform child care authorities thereof, for them to appoint a guardian or caretaker.

4. If a supposedly trafficked child is separated from his/her family, the territorial office of the Government Commissioner, and in the cases specified by Article 9, Part 2, paragraph twenty seven of this Law – the Government Commissioner, shall take immediate action to search for the child's family and facilitate the family reunion.

5. Bodies and services for minors' affairs, specialised institutions for children as well as education, public health and social security institutions shall develop and implement individual assistance programmes for trafficked children.

6. Public authorities, within their powers, shall ensure that trafficked children have an opportunity to exercise their right to education.

7. In order to promote the trafficked children's rights, the Council of Ministers of the Autonomous Republic of the Crimea, local state administrations shall, on the Government Commissioner's request, set up specialised shelters for trafficked children. Such shelters can be established on the basis of the existing specialised institutions for children.

8. Public authorities, within their powers, shall ensure a proper placement of trafficked children who are orphaned or deprived of parental care.

#### **Article 62. Return, Retaining or Relocation of Trafficked Children**

1. If the trafficked child identified in Ukraine is a foreigner or a stateless person, the Government Commissioner, acting on the petition of a relevant territorial office, shall make one of the following decisions:

- to return the child to his/her country of origin,
- to retain the child in Ukraine,
- to relocate the child to a third country.

2. The trafficked child shall be liable to returning to their country of origin provided that, prior to his/her return, his/her parents or persons substituting them or a competent child protection body in the country of the child's origin agreed to it and are able to undertake

responsibility for the child and provide proper protection and assistance to him/her.

3. The trafficked child shall be liable to retaining in Ukraine when his/her return to the country of origin is impossible and when there are conditions for the child's integration in Ukraine.

4. The trafficked child shall be liable to relocating to a third country when it is impossible to return him/her to the country of origin or to have him/her integrated in Ukraine, or when the above options are not in the child's best interests. The child's relocation to a third country shall be conditional on that country's consent and ability to undertake responsibility for the child and provide proper protection and assistance to him/her.

5. While making a decision on returning, retaining or relocating the trafficked child, the competent authorities shall take into consideration the child's opinion and give due regard to his/her age, physical and mental development and best interests.

## **Section VIII**

### **INTERNATIONAL COOPERATION**

#### **Article 63. International Cooperation in Combating Human Trafficking**

1. Ukraine shall take part in international cooperation to combat trafficking in human beings at the national, regional and local levels.

2. The Government Commissioner and his/her territorial offices shall be authorised to conclude cooperation agreements, establish direct ties with competent authorities in foreign countries, international organisations as envisioned by the legislation of Ukraine.

3. International cooperation of the agents of combating trafficking in human beings shall be defined in accordance with the international agreements of Ukraine.

4. The State shall support and encourage cooperation in the sphere of combating trafficking in human beings.

5. International organisations can, as per established procedures, be invited to participate in the development and implementation of joint anti-trafficking programmes.

## **Section IX**

### **RESPONSIBILITY IN THE SPHERE OF COMBATING HUMAN TRAFFICKING**

**Article 64. Responsibility for Offences in the Sphere of Combating Human Trafficking**

Persons guilty of committing offences related to human trafficking shall bear criminal, administrative, civil or other responsibility as stipulated by law.

**Article 65. Responsibility of Legal Entities for Offences Related to Human Trafficking**

1. Authorities issuing licenses for certain types of business activities in spheres with high risk of human trafficking shall apply financial sanctions to business entities that:

1) provide transportation services and failed to check that each passenger has the required travel document or, where necessary, ID papers and, in the case of international travel – a permit to enter the country of destination and any transit country, as the result of which a person was subjected to human trafficking –

in the amount of one hundred to one hundred and fifty non-taxable minimum personal incomes;

2) provide dating services, including in foreign countries, and marriage mediation services or deal in modelling business, and failed to properly inform their clients and models so as to protect them from the risk of getting into situations of human trafficking, as the result of which a person was subjected to human trafficking –

in the amount of fifty to one hundred non-taxable minimum personal incomes or in the amount of up to fifty per cent of their revenue (profit) from this business activity;

3) operate as tour agents or tour operators or as private employment agencies placing workers in jobs abroad, and fail to properly inform their clients about the risks of human trafficking, illegal stay abroad, illegal employment abroad, about bodies and organisations providing protection and assistance to trafficked persons and Ukraine's diplomatic missions abroad, as the result of which a person was subjected to human trafficking –

in the amount of fifty to one hundred non-taxable minimum personal incomes;

4) conceal from the law enforcement bodies information about a person's attempts to cross the border without ID papers and/or the travel document required for

entering the country of destination or any transit country, and a permit to enter such countries, or about detecting any other indications of human trafficking -

in the amount of one hundred to one hundred and fifty non-taxable minimum personal incomes.

2. A business entity providing transportation services shall be exempt from responsibility for committing a delict specified in item 1) of Part 1 of this Article, provided that:

- 1) the entity representative had sufficient grounds to believe that the transported passenger's documents were the travel documents required for entering the country of destination;
- 2) the transported passenger had got properly drawn travel documents at the time of boarding or the last boarding on the vehicle to leave for the country of destination.

#### **Article 66. Responsibility for Conscious Use of the Results of Exploitation**

1. The conscious use by an individual of goods, works or services produced or provided by persons recognised as victims of human trafficking while they were exploited, or the use of other results of their exploitation shall entail administrative responsibility stipulated by law.

2. The conscious use by an individual of goods, works or services produced or provided by a child recognised as a victim of human trafficking while he/she was exploited, or the use of other results of his/her exploitation shall entail criminal responsibility stipulated by law.

3. The acquiring, storing and transferring by a business entity of goods, works or services produced or provided by persons recognised as victims of human trafficking while they were exploited, or the use of other results of their exploitation shall entail a fine in the amount of one hundred and fifty non-taxable minimum personal incomes.

### **Section X**

#### **FINAL AND TRANSITIONAL PROVISIONS**

1. This Law shall enter into force on
2. Amendments shall be incorporated into the following laws of Ukraine:

1) The Code of Administrative Misdemeanours of Ukraine (80731-10), (80732-10) (Vidomosti Verkhovnoyi Rady Ukrayinskoyi RSR (VVR), 1984, Annex to #51, P. 1122) shall be supplemented with an article on responsibility for the conscious use of goods, works and services produced or provided by persons recognised as victims of human trafficking

while they were exploited, or the use of other results of their exploitation.

2) The Criminal Code of Ukraine (2341-III) (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR), 2001, ##25-26, P. 131) shall be supplemented with an article on responsibility for the conscious use of goods, works and services produced or provided by persons recognised as victims of human trafficking while they were exploited, or the use of other results of their exploitation.

3) Article 20, Part 2 of the Code of Criminal Court Procedure of Ukraine (1001-05), (1002-05), (1003-05), Vidomosti Verkhovnoyi Rady Ukrayinskoyi RSR (VVR), 1961, #2, P. 15) shall be supplemented with a phrase “in cases related to human trafficking” after the phrase “sex offence cases”.

4) Article 11 of the Law of Ukraine “On Ombudsman for Human Rights” (#776/97-BP) (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR), 1998, #20, P.99) shall be edited to read as follows:

**Article 11. Ombudsman’s Representatives**

The Ombudsman shall have the right to appoint his/her representatives, funded within the allocated budget approved by the Verkhovna Rada of Ukraine.

The Ombudsman shall appoint his/her Representative for Combating Human Trafficking in accordance with the Law “On Combating Trafficking in Human Beings”.

Activities, powers and responsibilities of the Ombudsman’s representatives shall be governed by the Regulation on Representatives of the Ombudsman for Human Rights and the Regulation on the Ombudsman’s Representative for Combating Human Trafficking approved by the Ombudsman.

5) Article 4, Part 2, item 7) of the Law of Ukraine “On Migration” (2491-14) (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR), 2001, #41, P.197) shall be supplemented with a phrase “or the status of trafficked person” after the phrase “or a shelter in Ukraine”.

6) Article 9 of the Law of Ukraine “On Licensing Certain Types of Business Activities” (1775-14) (Vidomosti Verkhovnoyi Rady Ukrayiny (VVR), 2000, #36, P.299) shall be supplemented with item 79 regarding the licensing of dating services,

including in foreign countries, marriage mediation services, and with item 80 regarding the licensing of modelling business.

3. Within three months after this Law enters into force, the Cabinet of Ministers of Ukraine shall:

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form the Interagency Council for Counteracting Trafficking in Human Beings, approve the Regulation on Interagency Council for Counteracting Trafficking in Human Beings;

bring its regulations (secondary legislation) in conformity with this Law;

ensure the adoption of regulations (secondary legislation) that are necessitated by this Law and fall within its competence;

ensure that pertinent regulations are revised by concerned ministries and other executive power bodies, and brought in conformity with this Law.

4. Within six months after this Law enters into force, the Cabinet of Ministers of Ukraine shall:

adopt regulations on the Government Commissioner for Combating Trafficking in Human Beings and appoint the Government Commissioner for Combating Trafficking in Human Beings;

adopt regulations on the Assistance Fund for Trafficked Persons;

adopt regulations on the interagency database on offences and misdemeanours related to human trafficking.

5. Within one year after this Law enters into force, the Cabinet of Ministers of Ukraine shall:

establish territorial offices of the Government Commissioner for Combating Trafficking in Human Beings and adopt regulations on a territorial office of the Government Commissioner for Combating Trafficking in Human Beings.

6. Within six months after this Law takes effect, the Ombudsman for Human Rights shall approve regulations on the Ombudsman's Representative for Combating Human Trafficking and appoint the Ombudsman's Representative for Combating Human Trafficking.

6. This Law shall apply to all trafficked persons, including those trafficked prior to the entry of this Law into force.