

THE FIGHT AGAINST HUMAN TRAFFICKING IN THE EU

AN EMPIRICAL ANALYSIS OF THE ANTI- TRAFFICKING DIRECTIVE TRANSPOSED IN GERMANY AND ROMANIA

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Table of Contents

CHAPTER 1: RATIONALE AND STRUCTURE OF THE THESIS.....	4
1.1 Introduction	4
1.2 Research Question	5
1.3 Research Design	8
1.4 Some necessary clarifications.....	12
CHAPTER 2: THB IN THE CONTEXT OF THE EU.....	15
2.1 THB defined and addressed.....	15
2.1.1 International legal framework on THB	15
2.1.2 EU legal framework	17
2.2 Critical views of the EU measures.....	21
2.3 Transposition process described	23
2.3.1 Transposition duty	23
2.3.2 Overview of the transposition instruments in Germany and Romania	24
2.4 Implementation of Anti-Trafficking policy in Germany and Romania	25
2.4.1 Institutional and Legal Framework and National Anti-trafficking policy	25
2.4.2 Anti-trafficking Directive Transposition	29
2.4.3 Critical views over the transposition measures	31
CHAPTER 3: FACTORS AFFECTING TRANSPOSITION AT THE EU LEVEL.....	37
3.1 The Directive Itself.....	37
3.1.1 Nature of the directive	37
3.1.2 Complexity of the Directive	38
3.1.3 Deadline	38
3.1.4 Commission/ Council decision-making.....	39
3.1.5 Decade.....	39
3.2 Communication Problems	40
3.3 Legislation Problems	41
3.4 European Court of Justice.....	41
3.5 Voting rule.....	42
CHAPTER 4: FACTORS AFFECTING TRANSPOSITION AT THE NATIONAL LEVEL... 	43
4.1 National Implementing specific.....	43
4.1.1 Type of legal instrument.....	43
4.1.2 Number of legal Instrument	44
4.1.3 Issue linkage.....	44
4.1.4 Connection	45
4.2 Institutional and actor configuration.....	46
4.2.1 Veto players.....	46
4.2.2 Parliament	48
4.2.3 Administrative constraints.....	49
4.2.3.1 Coordination Problems	49
4.2.3.2 Internal Problems	50
4.2.3.3 The civil servants	50

4.2.3.4	Level of corruption	51
4.2.4	Corporatism high degree	51
4.2.5	Attitude towards the EU	52
4.2.6	Priority of EU directives.....	52
4.2.7	Discouragement.....	53
4.3	Goodness of Fit hypothesis.....	53
	CHAPTER 5: DISCUSSION.....	54
	CHAPTER 6: CONCLUSION.....	57
	REFERENCES	59
	APPENDIX	64
	Appendix A: National Implementation Measures.....	64
	Appendix B: Voting result in the Council of the European Union	68
	Appendix C: Legislative process of the Anti-trafficking law in Germany	68
	Appendix D: Analysis Summary results.....	70

Chapter 1: Rationale and Structure of the Thesis

1.1 INTRODUCTION

Trafficking in human beings (THB) is a transnational crime which raises a major global problem. It is often committed within the framework of cross border organized crime and makes almost 2.5 million victims every year worldwide. (*A Global Alliance Against Forced Labour*, 2005, p. 46).

According to statistics, human trafficking is globally rising and subsequently the European Union is also affected. Despite various measures and mechanisms adopted at the European level, THB is a booming business in the EU.

For more than two hundred years, policing and crime control have represented the central symbol of national sovereignty. In today's European Union, fighting crime is no longer a national undertaking. Member States have to make cooperation possible and accessible among national police and judicial authorities in order to effectively address crime in the EU. Due to the fact that the law enforcement policy represents a highly politicized sphere, Member States have proven to be reluctant to restrict their national sovereignty.

The current provisions of the trafficking in human beings are provided by the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims (hereafter anti-trafficking Directive), which replaced the Council Framework Decision 2002/629/JHA. Once fully implemented by the Member States, the directive was expected to have considerable effect. Although the transposition date has passed, few Member States have notified full transposition of the Directive.

In order to assess the implementation process, this study will answer the following research question: What are the most important obstacles that hinder the Member States analysed in this report to transpose the EU Anti-Trafficking Directive in a timely and precise way?

In doing so, the present thesis provides an empirical analysis of the measures taken for the implementation of the Directive 2011/36EU in Germany and Romania. The

transposition of the directive will be analysed in concordance with a model of factors based on previous implementation studies (Beek 2007; Kaeding 2006; Mastenbroek 2003, 2005; Falkner et al. 2004, 2006; Steunenberg 2005; Steunenberg, & Kaeding, 2009). This model gathers the already confirmed hypothesis on EU directives transposition and tests whether these elements are creating transposition problems in the case of the Anti-Trafficking directive.

The thesis will add to the research on transposition and compliance of the EU directives, by building on the research of Oliver Treib (2007). Treib (2007) identifies four ‘worlds of compliance’ in Europe classifying Germany as ‘world of domestic politics’ and some of the East-European countries as ‘world of dead letters’. This thesis postulates that based on the results of the Anti-trafficking Directive analysis, Germany is indeed part of the ‘world of domestic politics’, while Romania belongs to the ‘world of dead letters’. Romania was not included in Treib’s research as it has only been possible to study the behaviour of countries from Central and Eastern Europe after accession in the few years since their joining the EU and Romania had just joined the EU in 2007. This presumption will be emphasized in the following section.

This chapter outlines the Research Question (Section 1.2), the Research Design (Section 1.3). Section 1.4 presents a brief literature review illustrating some necessary clarifications.

1.2 RESEARCH QUESTION

Trafficking in human beings is a transnational organized crime concerning ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of coercion for the purpose of exploiting them’ within the sex industry of labour market under slavery-like practices (UN, 2000). The States which are concerned with the THB networks are categorised as countries of origin, transit or destination.

According to the first report on trafficking in human beings in Europe, published in 2013 by the European Commission, in the period between 2008 and 2010, 23.632 people were identified or presumed victims of trafficking in the EU.

The European officials have acknowledged that fighting THB is a core interest for the EU and various strategies and instruments have been set up in order to prevent, protect and prosecute individuals involved in human trafficking.

The report also points out that the number of cases brought to justice is disproportionate to the number of reported victims. The number of people being trafficked in and to the EU increased by 18% from 6,309 in 2008 to 9528 in 2010, while the number of convictions decreased by 13 % from 1,534 in 2008 to 1,339 in 2010 over the same period. The same concern is highlighted by Eurojust, the EU judicial cooperation unit, which has reported that there are seemingly small numbers of investigations/prosecutions of THB cases in the EU (Eurojust Strategic Meeting on THB, 2012). Looking from the judicial perspective, its clandestine nature and the lack of transparency and harmonization of criminal law systems in Europe make prosecutions difficult (“Europe Reconsiders Prostitution as Sex Trafficking Booms”, 2008).

The current provisions of the trafficking in human beings are provided by the anti-trafficking Directive, which replaced the Council Framework Decision 2002/629/JHA. According to Bressan’s study (2012), all the EU countries are compliant with most of the requirements set by the anti-trafficking directive. The Directive corresponds to the UN Protocol and brings in line the definition of trafficking, prevention of the offence, prosecution of offenders, jurisdiction and rules concerning victim protection, and assistance in the context of criminal law. Once fully transposed, the new EU legislation has the potential to have a concrete impact on the lives of the victims and to prevent others falling victim to this crime. The Directive also foresees the establishment of a national rapporteur or equivalent mechanism reporting on trends, gathering data and measure the impact of anti-trafficking activities in each Member State.

Despite the worrying background of the human trafficking in EU and regardless of the potential the new legislation might have once implemented, only 6 out of the EU Member States have fully transposed the EU Anti-Trafficking Directive into their national legislation by the time the deadline expired on 6th April 2013.

This situation raises a main concern, namely: why haven’t the Member States implemented the Directive? From a broader perspective, this concern lies within the growing body of literature of compliance and transposition issues. For the purpose of this study, the research question, as mentioned above, is: What are the most important obstacles

that hinder Germany and Romania to transpose the EU Anti-Trafficking Directive in a timely and precise way?

The thesis will approach the study of policy implementation seeking to provide a comparative analysis of the implementation process of the Anti-Trafficking Directive in Germany and Romania. Before embarking into research design specifications, it is appropriate to pause briefly to discuss their selection. First of all, for the current study, these two countries represent an interesting comparison as Romania is one of the origin countries for human trafficking in Europe (European Commission, 2013), while Germany is a destination country. Furthermore, in Germany, the vast majority of victims (over 85%) are EU citizens mainly from Romania and Bulgaria. Secondly, another interesting association comes from the fact that Germany was one of the top countries in the implementation of the EU Directives, while Romania is one of the last.

Last but not least, the in-depth study of Treib (2007) which presents findings from a comparative project on the transposition, enforcement and application of EU legislation, considers the 15th Member States of the EU after the fourth enlargement. Romania has joined the EU in its fifth enlargement, thus an analysis over the transposition of an EU directive in Romania would be of a great value to the research on the ‘world of compliance’ in the EU. As Treib (2007) established that the four Eastern and Central European countries analysed, namely Czech Republic, Hungary, Slovakia and Slovenia are part of a ‘world of dead letters’, this thesis postulates that Romania will also fall in this category. Countries belonging to this cluster may transpose EU Directives in a compliant manner, depending on the prevalent political constellation among domestic actors, but then there is non-compliance at the later stage of monitoring and enforcement.

At the same time Germany proves to be part of the ‘world of domestic politics’. For the countries falling in this cluster, domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU Directive tends to happen on the basis of a fresh cost–benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply.

Furthermore, in order to provide the comparative analysis, a model of factors affecting the transposition process will be tested.

1.3 RESEARCH DESIGN

This thesis will incorporate primary and secondary research. The secondary research consists of the already developed theoretical framework, namely the literature on policy implementation. As mentioned earlier, the model of factors which will be tested, will be developed based on already tested and confirmed hypotheses (Elke ter Beek 2007; Kaeding 2006; Mastenbroek 2003, 2005; Falkner et al. 2004, 2006; Steunenberg 2005; Steunenberg, & Kaeding, 2009). The growing body of literature on the difficulties Member States have while transposing the directive have identified a number of variables explaining implementation delay. For instance, Kaeding (2006) explains the transposition pattern of the EU directives by bringing some order into a multitude of competing explanation and identifying three categories of explanatory factors in Europeanization, implementation and compliance literature: European directive itself, the national implementing specific variables and institutional and actor configurations.

Beek (2007) discusses the different studies of the implementation problems in the Member States and offers an integrated model of factors structured in four general clusters. Both of these extensive literature reviews are relevant for the thesis' purposes as it provides the basis for the primary research to be used, namely the case studies on Romania and Germany. According to the model emphasized by Beek (2007), the factors highlighted by the literature on transposition problems are gathered under four clusters.

Independent of the model of factors, consideration is furthermore given to the 'goodness of fit' hypothesis. The 'goodness of fit' hypothesis formulates that if a directive requires only minor changes to the arrangements already in place at the domestic level, we should therefore expect smooth implementation without any major problems. If considerable reforms to the existing rules and regulations are called for, however, domestic resistance is likely to arise and implementation should hence be seriously hampered by long delays or significant flaws in terms of substantive accuracy (Treib 2003). Beek (2007) discusses the importance of this factor and argues that getting a good 'goodness of fit' between the EU directives and the national legislation is very difficult. After having conducting the analyse of the Anti-Trafficking Directive in regards to the model of factors, a discussion will also be given around the application of the 'goodness of fit' hypothesis on the case of the Directive in Romanian and Germany.

Based on the factors structured by Kaeding (2006) and Beek (2007), this study introduces the following model to be used in the analysis of the transposition of Anti-

Trafficking directive in Germany and Romania. The model has been defined by incorporating the variables identified by Kaeding and Beek into two levels of analysis, narrowly European level and National level. Whether the factors were duplicating or there was no possibility of retrieving empirical data to test their applicability, the factors were left out of the analysis.

Table 1. Factors affecting transposition at the EU level

Source: Author's elaboration on hypotheses presented by Kaeding (2006) and Beek (2007)

European Level	The Directive itself	Nature of directive		The transposition delay is greater for 'new' directives than for amendments.
		Complexity of directive	Number of recitals	The more recitals a directive has, the more time is needed to transpose the directive.
		Deadline		The more time a member state has to transpose a directive, the less likely is a delay.
		Commission/Council decision-making		Commission directives are transposed faster than either Council or Council and EP directives.
		Decade		The more recent a directive is agreed upon in the Council, the probability of a transposition delay increases.
	Communication problems		Communication problems with Brussels and lack of feedback between EU decision-makers and national authorities cause difficulties in the transposition process.	
	Legislation problems		The DG's focuses exclusively on their own activities leading to conflicting requirements in the directives and transposition delays.	
	European Court of Justice		The ECJ judgments on implementation measures can cause delay in transposition.	
	QMV	Voting rule	With the introduction of QMV, the transposition process got more and more delayed.	

Table 2. Factors affecting transposition at the national level

Source: Author's elaboration on hypotheses presented by Kaeding (2006) and Beek (2007)

		National Level		
		National Level		
National Level	National implementing measure specific	Type of legal instrument	The fewer actors involved in the making of a legal instrument, the faster the transposition process.	
		Number of legal instruments	The more national implementing measures used to be transposed, the more likely transposition delays.	
		Issue linkage	If the Member State tries or transposes a directive in connection with other issues, that issue linkage can cause implementation delays.	
		Connection	If the task definition between the concerned ministries is unclear, the more likely the transposition delays.	
		Veto players	The higher the number of institutional veto players, the greater the delay in transposing EU law.	
	Institutional and actor configuration	Parliament		The transposition will be faster if the national parliament is involved in the negotiation phase.
		Administrative constraints	Coordination problems	If a single player coordinates the transposition process- which is called hierarchical coordination- no substantial delays are expected.
			Internal problems	The existence of "Chinese Walls" between the stages of preparation and transposition affects the transposition speed.
			The civil servants	If civil servants have more experience with transposition, less time is needed to transpose a directive.
Level of corruption			The higher the level of corruption in a member state, the slower the transposition process.	
Corporatism high degree		A high degree of corporatism speeds up the transposition process.		
Attitude towards the EU	The higher the overall support for the country's EU membership, the faster the transposition process.			
Priority of EC directives	When there is political priority for the transposition of directive, there is acceleration on the transposition speed.			
Discouragement	The higher number of Member States not transposing the directive, the more likely the transposition will be delayed.			

Beek (2007) also argues that for further research on the subject of implementation of EU directives, secondary research is not enough and that a primary research or a field study should be conducted. Moreover, she points out that an interesting case would be Romania, as one of the Member States which, in 2007 as a new Member state had the worst implementation rate according to statistics on the national implementing measures (European Commission, 2007).

Although in 2007 Romania had a backlog of 5.07%, being last among the other Member States, in 2014 the country has a transposition deficit of 1% with the EU average

set to 0.5%. Germany has a 0.6% transposition deficit and even if it had always a higher implementation rate, for the purpose of this study it represents an interesting case as at the moment of writing the country hasn't reported any national provisions for the implementation of the Anti-Trafficking directive. On the contrary, Romania has reported transposition measures taken at the national level in line with the Directive. It is worth mentioning that whether there is a reference to national execution measures does not necessarily mean that these measures are either comprehensive or in conformity (EUR-Lex).

For the analysis of the transposition of the Anti-trafficking Directive the effective deadline is the normal transposition deadline as recorded in EUR-lex. EUR-lex records data on the national implementation measures (NIM) notified by each member state in regard to every directive. A directive is considered to be non-transposed within the deadline if no NIMs were found in the database or if the latest NEM was adopted after the deadline had passed (Toshkov, 2008). Because member states sometimes report national legislation as a NEMs even if it had only a superficial connection to the directive, whether it will be possible to detect, the study will point out if this is the case of NEMs submitted by Germany and Romania.

To sum it up, this study will apply the model of factors proposed above in two comparative case studies of Romania and Germany analysing the factors which posed problems to the transposition of the Anti-Trafficking Directive.

As regards the research methodology which will be used for the case studies, this consists of both qualitative and quantitative research. The data for the research will be selected from official publications, reports and archives of governmental institutions but also from scientific articles and literature. The selected data, both quantitative and qualitative data will be analysed by means of qualitative analysis, namely content analysis with regard to its latent content in which the underlying meaning will be interpreted (Babbie, 2007).

This study remains in the research tradition, without explicitly developing hypothesis about the implementation deficit of EU Anti trafficking directive, but builds on their insights by analysing the implementation development in regard with already identified features creating delays in transposition. Thus, the study makes a contribution to the empirical research on policy implementation, covering a gap in the literature.

1.4 SOME NECESSARY CLARIFICATIONS

In the following, a brief literature review of main concerns related to the crime of human trafficking within the framework of the EU but not limited to that, is seeking to give a better understanding of the topic and to set the scene for analysing the approach the Anti-Trafficking Directive has taken to fight against THB.

Studies have shown that the undertakings to combat trafficking in human beings require a comprehensive approach based on human rights (Rijken, 2011). The prosecution of the traffickers and the victims' protection are two main aspects of human rights which have to be addressed to strengthen the fight against THB. Smith (2010) argues that the current international law has disproportionately addresses the prosecution of traffickers at the expenses of the victims' human rights. This concern is also tackled by Cullen (2011) while framing the EU responses to the global emergency of THB. It is acknowledged that the EU has adopted various measures to support the implementation of international law. However, most of those emphasize the criminal law responses to the trafficking by overlooking the protection of the victims.

The first milestone of the international legislation to address human trafficking is the Palermo Protocol (UN Protocol to Prevent, Suppress, and Punish Trafficking in Person, Especially Women and Children) adopted by the United Nations in 2000. Although this was the first global effort in 50 years, since its adoption, the international concern over human trafficking has grown considerably (Smith,2010; Cullen,2011). The instruments and initiatives developed by the EU have followed the approach of the Palermo Protocol. As mentioned earlier, the current provisions of the trafficking in human beings are provided by the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims, which replaced the Council Framework Decision 2002/629/JHA. According to Bressan's study (2012), all the EU countries are compliant with most of the requirements set by the anti-trafficking directive. The Directive corresponds to the UN Protocol and brings in line the definition of trafficking, prevention of the offence, jurisdiction and rules concerning victim protection, and assistance in the context of criminal law.

However, the extension of definition in different legal acts has created challenges for both academics and practitioners (Cullen, 2011; Peers, 2011; Rijken, 2011; Smith, 2010). Before the UN Protocol was adopted, human trafficking was mostly related to

prostitution and sexual exploitation, leaving unaddressed the other forms of exploitation. Nevertheless, there are still difficulties in defining THB for labour exploitation. Neither the Palermo Protocol, nor the EU Directive uses the term labour exploitation as such (Rijken, 2011). Although, considering the explanation given in the Protocol, one can distinguish THB for different purposes (sexual exploitation, labour exploitation and removal of organs), there are areas of overlapping between the concepts of migration, smuggling, trafficking and slavery. Other concerns are raised by the fact that human trafficking is too easily associated with a contemporary form of slavery (Cullen, 2011). This aspect has also led to an overlap between research on human trafficking and research on modern slavery. According to Quirk (2007), as cited in Smith (2010), efforts are made to develop a coherent approach incorporating human trafficking and modern slavery.

As regards the most recent EU piece of legislation to combat human trafficking, EU Directive 2011/36/EU, researchers have indicated that appears to have little effect since core provisions such as prevention, broader victim assistance, discouraging demand, identification of victims, and international cooperation are not being tackled and included in EU Law (Peers, 2011). According to an analysis of the Directive 2004/81/EC for ‘the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities’, Chou (2008) pointed out that the EU efforts in combating trade in person failed to implement a comprehensive approach. On the contrary, the EU proposal for victims of trafficking has resulted in a measure that helps perpetuating the human trafficking phenomenon instead of supporting the EU authorities to obtain valuable information necessary to prosecute traffickers (Chou, 2008). However, an apparent and theoretical solution to combat human trafficking can be found in the further development of the international and national legal frameworks (Peers, 2011). Also, according to Shelley (2010), as cited in Marinova & James (2012), there are too limited resources allocated within EU to research and analyse trafficking from a multidisciplinary and comprehensive perspective.

Furthermore, looking at some of the aspects which made THB flourish, strong consideration should be given to the concept of globalization. At first glance, globalization and open boundaries have ‘helped’ organized crime to cross borders and consequently increased the vulnerability of societies (Bruggeman & Den Boer, 2011). As human trafficking is nowadays committed in an international context, modern communication, reduced costs of transportation and the abolition of the borders control

in the EU after the Schengen Convention, have facilitated evolution of criminal channels (Rijken, 2003). As a consequence of the globalization, the states have also changed their role of the nation state, being forced to give up the concept of complete sovereignty. For more than two hundred years, policing and crime control have represented the central symbol of sovereignty. Nowadays, the nation state is no longer able to maintain alone its public law and order (Crawford, A. (1999). On one hand, to be able to fight against an organized crime such as human trafficking, international police cooperation and coordination represent a core aspect. On the other hand, states are conservative in adapting their practices and generally reluctant to adopt treaties that limit their sovereignty (Smith, 2010). To put it in a nutshell, globalization has opened more than just the borders of the economic trade market, and while the nation state is no longer able to stand alone against organized crime, the concept of sovereignty still represents a highly sensitive and politicized sphere.

This brief literature review has unpacked the main concerns related to the crime of human trafficking within the framework of the EU, as well as on a global level. It emphasized that to provide a comprehensive approach to combat human trafficking there are core issues to be address such as the protection of the victims, as well as the cooperation between states in criminal matters.

Chapter 2: THB in the context of the EU

This chapter provides an overview of previous research in the field of legislative instruments to combat THB. It acknowledges the development of the cutting-edge approach to fight against the crime, illustrating the downside of the measures adopted in the international and European setting. The review collates the definitions given to this phenomenon and clarifies to use of the term THB in this study. Pointing out the barriers of the impact of the legal instruments, the thesis will critically assess the EU measures to combat trafficking. Last but not least, it introduces the framework for the case studies by compiling transposition measures and indicators and clarifying the obligations laid down in the Anti-Trafficking directive.

2.1 THB DEFINED AND ADDRESSED

2.1.1 International legal framework on THB

The most relevant instruments of international legislation concerning the prevention and combating of THB in the EU are: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”) supplementing the UN Convention against Transnational Organized Crime of 2000; the Council of Europe Convention on Action against the Trafficking in Human Beings which entered into force on 1 February 2008 and the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

The international definition of THB was first introduced by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”). “Trafficking in persons” is defined in Article 3(a) as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability

or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

This definition encompasses three core elements necessary for a crime to fall under the human trafficking allegation: the action committed by the perpetrators - the recruitment in the home country, the transportation to the destination country, the accommodation and the handing over the persons from one perpetrator to another; the means used to enable that action - threat or use of force, deception, coercion and abuse of power; and the purpose of which the action is committed - exploitation. According to the Palermo Protocol, exploitation “shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or removal of organs”.

The Protocol represents the first international legal instrument addressing labor exploitation as a form of human trafficking. Formerly, THB was thought of as only referring to sexual exploitation. Although the Protocol was received as a victory among the scholars who wished to have a broad definition of human trafficking (Raymond and Marcovitch, 2000), there have been also others who have severely criticised it.

Analysing the wide range of means by which the trafficking can be committed, the definition is broad in a sense that there is no clear distinction between them. The means of inducement, translated in the definition as ‘position of vulnerability’ it is equal with the use any forms of coercion or force. Moreover, Article 3(b) of the Protocol enunciates that the consent of a victim to the intended exploitation is legally irrelevant. According to Hoyle et.al. (2011), although in theory, the Palermo Protocol represents a broad definition of trafficking, allowing the possibility that a person might be very well at the same time both a victim of trafficking and a choosing agent, in reality, the authorities responsible for identifying cases of human trafficking are employing a much narrower conceptualization.

The Palermo Protocol distinguishes trafficking from smuggling, for which a separate protocol was adopted (Protocol against the Smuggling of Migrants by Land, Air and Sea). Contrary to the definition of trafficking, in the case of ‘smuggling of migrants’ the consent of the victim is decisive, assuming that the relation between the smuggler agent and the smuggled person is a voluntary one.

Looking at the European dimensions, the definition in the UN Trafficking Protocol formed the basis for the Council Framework Decision on combating trafficking in human beings of 19 July 2002. The definitions that have been agreed at EU level include largely the same elements and like the Palermo protocol, the EU distinguishes between trafficking in human beings and facilitating illegal entry into a country. However, while the Council Framework Decision focusses on the of EU legislation in the areas of criminal law and criminal proceedings, the UN represents a more comprehensive approach addressing prevention, cooperation and border measures. Yet, the Council Framework Decision comprises more precise articles, reflecting its binding character on the EU Member States which have to implement the content of the Framework Decision into their national legal systems in order to comply with the obligations at the EU level. It is worth mentioning, that at the time the Council Framework Decision was adopted, a new Directive (2002/90/EC) defining the facilitation of unauthorised entry, transit and residence has accompanied the legislative efforts to combat trafficking.

Furthermore, while the EU measures have followed the Palermo Protocol, the Council of Europe Convention on Action Against Trafficking in Human Beings signed in 2005 by 47 Council of Europe Member States, several non-European States and the EU, entered into force in 2008 and represents the most comprehensive international instrument addressing human trafficking. The Convention provides a more victim-focused approach and is designed for European, rather than international implementation (Cullen, 2011). While the UN Protocol classifies THB as a transnational crime, both the Council of Europe Convention and the Council Framework Directive admits that the crime of THB does not have to be transnational in nature or committed by an organized crime group. An important instrument introduced by the Council of Europe Convention is the Group of experts on action against trafficking in human beings (GRETA), a monitoring system set up to supervise the implementation of the obligations laid down by the Convention.

2.1.2 EU legal framework

As briefly noted above, the EU had also stressed the seriousness of human trafficking. Since the Council Framework Decision, the EU had overcome a decade of significant legislative evolution, culminating with the recent Anti trafficking Directive.

Since the adoption of the Lisbon Treaty, the directive represents the first agreement between the Council and the European Parliament in the area of substantive criminal law.

Once the Lisbon Treaty entered into force in 2009, the three pillar structure of the EU was abolished and the decision making procedure, qualified majority voting or co-decision, previously used in matters of single market was extended to the criminal matters. Therefore, the EU and national measures in these areas became subject to the judicial review of the Court of Justice. In this context, the EU was given competence to establish certain criminal offences and to set minimum sentences overbidding national criminal law. Nevertheless, over past decade, the EU has been severely criticised for adopting a more securitarian approach towards fighting trafficking. Failing to achieve an integrated approach, namely, to provide a complete strategy to combat the crime based on both internal and external instruments, the EU has been accused of using legislative instruments such as the Council Framework Decision to limit irregular migration (Krieg, 2009). Before embarking into a critical analysis of the newest EU legislative measures to combat THB, is appropriate to complete the introduction of the most relevant legislative instruments governing the European dimension.

Shortly after the Council Framework Decision, the EU had adopted the 2004/81/EC Directive of 29 April 2004 concerning the third-country nationals who are victims of trafficking or who have been subject of an action to facilitate illegal immigration (hereafter victim of trafficking Directive). In this case, and whether the individual is cooperating with the competent authorities, he will be issued a residence permit.

After the Lisbon Treaty entered into force, an Action Oriented Paper (AOP) on strengthening the EU external dimension on action against trafficking in human beings was adopted on 30 November 2009. The paper recognizes the deficiencies the EU had faced over the last decade and proposes to bring together the internal and external actions in order to achieve an integrated multidisciplinary approach based on human rights.

The newest piece of legislation adopted by the EU against THB is the Directive 2011/36/EU which has replaced the Council Framework Decision. The Directive represents a much more substantial document than its predecessor, going further than the Council of Europe and UN measures and aiming at approximation of laws and penalties in this field in order to address more rigorous the prosecution of traffickers, to offer better protection and assistance to victims and to facilitate prevention. More than its predecessor, the Directive extends the definition of 'exploitation' including the exploitation of 'begging' or of criminal activities, or the removal of organs. In the preamble of the Directive, both the UN Protocol and the Council of the Europe

Convention are acknowledged as crucial steps in the process of enhancing international cooperation against human trafficking.

Article	Elements	What MS should implement
Art. 2	Definition	Revised definition of offences involving trafficking in human beings (broader than in the 2005 Council of Europe convention)
Art. 3	Incitement , aiding and abetting and attempt	Members States required to punish the Incitement , aiding and abetting and attempt
Art.4	Penalties	Increased criminal penalties for trafficking offences, maximum term of imprisonment of not less than 5 years; when aggravating circumstances 10 years
Art.5	Liability of legal persons	Legal persons can be held liable for the offences committed
Art. 6	Sanctions on legal persons	Legal persons held liable are subject to effective, proportionate and dissuasive sanctions.
Art. 7	Seizure and confiscation	MS are requirement to enable competent National law enforcement authorities to seize and confiscate items
Art. 8	Non-prosecution or non-application of penalties to the victim	Member States are required to ensure that their competent national law enforcement authorities have a right not to proceed with a prosecution or impose a penalty in the case of victims of trafficking who have been compelled to take part in criminal activities.
Art. 9	Investigation and prosecution	Investigation and prosecution are not dependant on reporting or accusation by a victim.

Art. 10	Jurisdiction	Jurisdiction for trafficking offences committed by one of its nationals, even if committed abroad and the conduct in question would not be considered a criminal offence in the place of commission;
Art. 12	Protection of victims in criminal investigations	Access is given to legal counselling and representation, witness protection programmes and secondary victimization is prevented
Art. 13-16	Child protection	Assistance and support for child victims which include, in certain circumstances, a requirement for Member States to appoint a guardian or representative responsible for the child's welfare and special protection measures for child victims involved in a criminal investigation or criminal proceeding.
Art. 17	Compensation to victims	Access is given to existing schemes of compensation.
Art. 18	Prevention	Appropriate measures are taken to 'discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings'
Art. 19	National Rapporteurs	National Rapporteurs are appointed to collect statistical data on trafficking in human beings and monitor and assess trends.
Art. 20-25	Coordination of the Union strategy	Establishment of an EU Anti-Trafficking Coordinator to collect data gathered by national rapporteurs, contribute to a biennial report on progress made across the EU in combating trafficking in human beings, and to coordinate the EU's anti-trafficking strategy

2.2 CRITICAL VIEWS OF THE EU MEASURES

In the context of EU, THB is considered a key priority both as an organised crime problem and a migration problem. Thus, trafficking partially overlaps with the disputable issue of how Member States should approach the flow of legal and illegal immigrants within their borders and this situation has many times raised concerns. While some scholars have argued that the EU lacks clear and univocal guidance based on the human rights legal framework, others have held that that the EU policy on trafficking is underpinned by a crime control approach. Nevertheless, it's a fact that the measures taken in the field of migration and criminal law were not enough to undermine THB in EU.

Firstly, as regards the EU Council Framework Decision 2002/629/JHA, the Commission has published a report of its implementation pointing out that substantial improvement is still needed (COM, 2008). The communication indicates a serious gap between the legislation in force and the actual implementation and while the criminal proceeding are not high enough, there is a critical lack of effective implementation in the field of victim assistance and protection. These evidences made it easy for speculations to arise, namely that the EU Council Framework Decision has been utilized to limit irregular migration and not to protect the human rights (Krieg, 2009).

Secondly, while analysing human trafficking from a migration perspective, Chou (2008) advocates that the current EU migration policy is most likely perpetuating the underlying factors behind the human trafficking phenomenon, rather than eliminating them. The victim of trafficking Directive has not made a significant contribution to its main goal of combating trafficking in persons as evidence show that it in practice the Directive was not as effective as set out to be. For instance, in the negotiation phase, the weaken the provisions of the Directive were undermined in the Council, leaving the Member States the possibility to maintain flexibility regarding the restrictions imposed on their national administration.

From another point of view, if the harmonization of the criminal provision on human trafficking would have been necessary to push back illegal immigration, the provisions of the FD could have been adopted in a Directive under the European Community Treaty. After the Amsterdam Treaty had introduced the Area of Freedom Security and Justice, a cross-pillar project bringing together the policies on immigration, asylum, border control, and visas under the Community pillar, the EU acquired the ability to adopt Directives over these fields. Unlike Directives, Framework Decisions don't have

direct effect which means that they are only subject to optional jurisdiction of the European Court of Justice (“ECJ”) and the Commission is not capable of bringing infringement proceedings against a Member State which has failed to transpose the Framework Decision. However, since the ECJ gave a preliminary ruling in the Case C-150/03 Pupino concerning the Council Framework Decision 2001/220 JHA it is argued that, although Framework Decisions can’t have direct effect, they can have indirect effect if certain requirements are met. Yet, before the Lisbon Treaty had abolished the pillar structure, the EU had fewer competences over the policy on human trafficking and judicial cooperation in criminal matters than on the immigration policy. Subsequently, providing an integrated approach by harmonizing the national legal frameworks in different fields and setting minimum provision has been a challenge for both the policy makers and the national authorities responsible for the transposition.

In response to most of these allegations comes the newly adopted Anti trafficking Directive. The provision of the Directive now corresponds and even goes further than the Council of Europe and the UN measures as regards the definition of trafficking, prevention of offence, jurisdiction and rules concerning victim protection and assistance in the field of criminal law by setting specific possible sentences. Certainly that this directive will be also subject to the academic scrutiny, however for the fact that now the EU measures on THB encompass a Directive on criminal measures, the provisions should be now more easily enforceable in the national courts and the ECJ than any other international instrument. While one might say that the so long expected integrated approach has been achieved, the implementation process will be the decisive step assessing the effectiveness of the Directive.

2.3 TRANSPOSITION PROCESS DESCRIBED

2.3.1 Transposition duty

EU Directives lay down certain end results that must be achieved in every Member State. The result of a Directive is binding, but there is a free choice of measures and instruments. The Directives are used to bring different national laws into line with each other and each directive specifies the date by which the national law must be adapted. In short, the way a directive is established is as follows: First, the Commission prepares a legislative proposal for a directive which is then sent to the Parliament to be adopted or amended. After the Parliament adopts a ‘Position of the European Parliament at 1st reading’ the proposal is sent to the Council, which may decide to accept Parliament’s position, in which case the directive is adopted or can be amended and the proposal returns to the Parliament. If the Council adopts Parliament’s position without changes, the legislative act is adopted and published as a Directive of the European Parliament and of the Council. It is worth mentioning that if the position adopted by the Council differs from that of the Commission, unanimity is required in the Council. Otherwise, the Council decides by qualified majority voting. Also, any amendments or rejection of the Council’s position must be approved by an absolute majority of MEPs (Article 294, TFEU).

Furthermore, after the directive has been established, is up to the Member states to implement it into the national legislation. The implementation process, which refers to ‘taking of all general and special measures needed to ensure the operation of EU law in a country’, incorporates several stages: the transposition duty, reference to the executed directive, the adaptation of national law, the provisions that have effect on material law, indication of the competent execution institution, administrative execution regulation and the legal protection provisions (Bekkers, 1993).

The term ‘transposition’ is used for the selection of the appropriate forms and means to achieve the result required by the EU directive (Mastenbroek 2003). Furthermore, the transposition duty, first stage of the implementation process, refers to incorporation of the directive’s provisions into the national laws and regulations. Each directive grants the Member States a period ranging from some months to several years to transpose the obligations. After the first stage has been accomplished, national or sub-national

implementation agencies need to become familiar with their monitoring and supervising tasks, the target groups of the policies must be informed about their rights and obligations. Furthermore, their behaviour needs to be monitored and in case of non-compliance, sanctioned (Haverland & Romeijn, 2007).

Member states have to guarantee timely and correct transposition of the EU directives under the principle of ‘sincere cooperation’ as comprised by the Article 4(3) TEU. The European Court of Justice considers timely transposition, that is, within the period prescribed by the directive, as an extremely rigorous obligation. It has argued in its case law that non-simultaneous implementation within all member states hinders the elimination of inequalities before the law and jeopardizes the uniform application of European Union law (Haverland & Romeijn, 2007).

2.3.2 Overview of the transposition instruments in Germany and Romania

In Germany EU directives are implemented in accordance with constitutional law and the legal procedures relation to national law and ministerial orders, as set out in the German constitution, or the state constitutions. The draft laws and ordinances are developed by the Ministry which is competent with respect to the subject matter of the EC directive and they are then agreed with the relevant Ministries (Asser Instituut, 2004). There is no specific ‘implementation act’. The EC directives are either implemented as laws (Gesetze) or ministerial orders (Rechtsverordnungen).

Similarly, there are no special implementing measures for EU directives in Romania besides the regular legislative instruments. Romania is implementing EU legislation by amending existing or introducing new laws (Legi), governmental ordinances or decisions (Hotarari de Guvern) and ministerial orders. However, in 2013 Romania introduced Law 373 on cooperation between the Parliament and the Government regarding European affairs which sets the guidelines of harmonizing national and European legislation and the subsidiarity scrutiny of the legislative proposals of the European Commission. Therefore, it’s the government responsibility to present annually its legislative agenda including the legislative proposals which are introducing the EU laws.

2.4 IMPLEMENTATION OF ANTI-TRAFFICKING POLICY IN GERMANY AND ROMANIA

2.4.1 Institutional and Legal Framework and National Anti-trafficking policy

In Germany, trafficking in human beings is a criminal offence since 1998, when the first articles explicitly referring to trafficking in human beings were introduced in the Criminal Code (art. 180b Trafficking in Human Beings, and art. 181- Serious Trafficking in Human Beings). These articles however only dealt with trafficking for sexual exploitation. In the same year, an article on child trafficking (art. 236 of the Criminal Code) was introduced that dealt with cases of gross negligence of care and procurement of adoptions of a child under the age of 18.

The current state of legislation reaches back to the amendment to the Criminal Code in February 2005, when also forms of exploitation other than sexual exploitation in THB were recognised: art. 232 of the Criminal Code now defines the crime of Trafficking in Human Beings for the purpose of sexual exploitation, art. 233 deals with Trafficking in Human Beings for the purpose of labour exploitation and art. 233a defines the Promotion of Trafficking in Human Beings in regard to trafficking for sexual and labour exploitation. By referring to Trafficking in persons under 21 years these articles also extended the legal definition of child trafficking to sexual and labour exploitation and set the respective age limit from 18 to 21 years.

Art. 233 states: '(1) Whoever exploits another person through a coercive situation or the helplessness that is associated with their stay in a foreign country to induce them into slavery, serfdom, or debt bondage, or to take up or continue work with him or a third party under working conditions that are strikingly disproportionate to the working conditions of other workers who perform the same or a comparable activity, shall be punished with imprisonment from six months to ten years. Whoever induces a person under twenty-one years of age into slavery, serfdom, or debt bondage, or to take up or continue work as designated in sentence 1 shall be similarly punished; (2) An attempt is punishable; (3) Section 232 subsections (3) through (5) shall apply mutatis mutandis.'

In addition, since 1997 Germany has a separate Transplant Act, which was last amended in 2001 and, under art. 17 and art. 18, prohibits trade in tissues and organs.

The penalties for human trafficking, alike those prescribed for other grave crimes, range from 6 months to ten year of imprisonment.

A reflection period of at least 30 days was introduced in October 2000 (art. 50, 2a of the German Residence Act), which grants the victims without a residence permit the right to remain in the country in order to decide whether they want to cooperate with the police in clearing up the offence or prepare for a safe return. During the reflection period, victims are provided with accommodation and with legal, medical and psycho –social assistance. If the victim agrees to testify in court, a residence permit on humanitarian grounds is granted (Residence Act, art. 25, par.4). However, this regulation only applies to persons who had entered the country legally. Others may be issued a “suspension of deportation” (Duldung) (art. 60a Residence Act), if they were accepted in a witness protection programme according to special cooperation agreements between police and counselling services (Bilger et al., 2010).

Moreover, since 2007, a residence permit can be issued to trafficked persons as long as the state prosecutor finds it appropriate. However, this is conditioned by the victim’s willingness to testify and can be cancelled if there is any contact between the victim and the persecutor. Although, during the time leading up to the legal proceedings the victim has access to education, vocational training and right to seek employment, in most of the cases this turns out to be really difficult to undertake due to limited employment offers.

As regards victim’s financial support, they can claim compensation from the state in a civil proceeding under the Victims of Crime Compensation Act or from the perpetrator by initiating an Adhesion Procedure within the criminal proceeding.

The German national strategy to combat human trafficking involves transposing Anti- trafficking policy measures into other policy tools. For instance, there have been 2 ‘Actions Plans of the Federal Government to combat Violence against Women’ which entered into force in 1999 and 2007 which comprised anti-trafficking actions.

The coordination of the national anti-trafficking strategy falls among the relevant ministries, mainly Federal Ministry of Interior, FM of Justice, FM for Family Affairs, Senior Citizens, Women and Youth, FM of Labour and Social Affairs, the Lander Ministries and the regional and federal police. In addition, in 1997, the government established the Federal Working Group on Trafficking in Women under the FM for Family Affairs (BLAG) which represents the only nationally coordinated inter-ministerial committee aiming to provide comprehensive policy recommendations on federal local level and coordinate specific anti-trafficking actions.

Although Germany hasn't established a National rapporteur nor an equivalent mechanism, the federal criminal police (BKA) publishes an annual report comprising cases of sexual and labour exploitation and providing a summary of current information on development within the field of human trafficking. According to the last report published (Menschenhandel Bundeslagebild 2013), there were 425 investigated cases which addressed the articles 232, 233, 233a of the Criminal Code and almost half of the perpetrators and the majority on the victims were nationals of Romania and Bulgaria. It is worth mentioning that although the number of cases investigated represented the lower number recorded since 2006, with the introduction of the Anti-trafficking directive the number is expected to grow as the area of human trafficking will cover cases of forced begging and transplant of organs.

Romania prohibits all forms of trafficking in person through Law No. 678/2001 on Preventing and Combating Trafficking in Human beings which was introduced in the Criminal Code in 2002 and amended in 2004 and later on in 2009 to include the specific provisions for all forms of trafficking in adults and children.

Art 12 (Law No. 678/2001) states: *Whoever recruits, transports, transfers, harbors or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter, commits a criminal violation of this Law and shall be punished with 3 to 12 years imprisonment and denial of a number of rights.(2) Whoever engages in trafficking in human beings under the following circumstances: a) traffics two or more persons at the same time; b) causes the victim to sustain serious bodily harm or serious health problems, shall be punished with 5 to 15 years imprisonment and denial of a number of rights. (3) If the violation in this Article has resulted in the victim's death or suicide, the offender shall be punished by 15 to 25 years imprisonment and denial of a number of rights.*

The later amendments of the Criminal Code from 2009 entered into force at 1st February 2014. With the amendments brought to the Law 678/2001 in 2010, the victim's definition has been included and the forms of exploitation have been broadened to include forced begging, removal of tissues or human cells and other activities that violate fundamental rights and liberties.

The changes brought to the Criminal code comprise specific sentences for all forms of trafficking. As such, any acts committed against minors including trafficking in minors, procurement, exploitation for begging, benefiting from the services of an exploited person, rape, sexual assault, sexual intercourse with a minor, sexual corruption of minors, and the recruitment of minors for sexual purposes are now laid down in the Chapter VII of the New Criminal Code under Trafficking and exploitation of vulnerable persons. The standard penalties for trafficking in persons as in the Law 678/2001 are suspension of certain rights and imprisonment for 3 to 12 years and for 15 to 25 years in case of aggravating circumstances.

Regarding the protection offered to victims, Romania does not provide residence permits to victims of trafficking. However, foreign citizens can be granted a tolerance regime allowing them to stay up to 6 months regardless they've entered the country illegally according to the refugees' status and regime in Romania. The initial period of accommodation and assistance in specialised centres has been increased from 10 days to 90 days is not subject to co-operation with the law enforcement or judiciary, but its renewal is. The stay can be extended upon request from law enforcement bodies, by up to 3 months or, for the duration of the criminal trial.

The latest developments of the Romanian national strategy to combat human trafficking have been adopted in 2012 and are aiming at modernizing the prevention measures against human trafficking and the protection and assistance offered to victims.

Also, the position of NATP (National Agency against Trafficking in Persons) has been enforced to monitor, evaluate and report on these efforts as well as having a key role in the referral mechanism. NATP has been set up in 2006 and directly subordinated to the Minister of Internal Affairs. In 2009, through the government decision No. 20/2009 the agency was placed under the General Inspectorate of Romanian Police. Later on, by Government Decision No. 460/2011 the NATP has been re-installed under the authority of the Minister of Internal Affairs and has been assigned the task of National Rapporteur. NATP's efforts to prevent human trafficking have focussed on raising awareness for both potential victims and the general public. For instance, the agency has implemented several campaigns as 'Your money makes the traffickers rich ... Your money kills souls' – from 2008 to 2009 aimed at informing the public about the consequences of sexual exploitation, labour and forced begging but also about the legal proceeding punishing trafficking in persons. Similarly, in 2010 a prevention campaign 'Trafficking in persons-

forgive no one' was launched to reduce the number of Romanian and Bulgarian victims trafficked in Italy and Spain.

The coordination of the anti-trafficking policy in Romania is also supported by the Inter-ministerial Working Group for Coordination and Evaluation of the Prevention Activities against Trafficking in Persons which was created in 2003 and brings together institutions as Ministry of Foreign Affairs, Ministry of Internal Affairs, Prosecutor General's Office, Ministry of Labour, Family and Social Protection, Ministry of Health and Ministry of Education, Research, Youth and Sport.

Last but not least, NATP is the national body which took the initiative to ensure the transposition of the provisions of the Anti-trafficking Directive into national legislation.

2.4.2 Anti-trafficking Directive Transposition

In short the Anti-trafficking Directive obliges member states to take measures in various aspects, as follows:

Firstly, trafficking in human beings is defined as punishable offence: the Member States must take the necessary measures to ensure that acts enumerated in the Art.2 (also just the attempt), are punishable. Whether the victim is a child under 18 the offences of trafficking must be punishable even if none of the means of coercion has been used. The directive introduces the certain behaviours which constitute exploitation (eg. forced labour, sexual exploitation). All these acts must be punishable by at least five years in prison, or at least ten if certain aggravating circumstances are present, such as the victim being a child. In addition to natural persons, it must be also possible to hold legal persons liable for these offences and the competent authorities in the member states must be entitled to seize and confiscate instrumentalities and proceeds from these offences.

As regards the prosecution, the member states shall, take the necessary measures to ensure that the competent authorities are entitled not to prosecute or impose penalties on victims of trafficking and that the investigation or prosecution of the offences are not dependant of the victims' testimonial. Also, the member state must ensure that persons, units and service responsible for investigating or prosecuting trafficking are adequately trained and have access to effective investigative tools.

Article 10, concerning the jurisdiction over the offences, states that the member states must establish its jurisdiction over the offences when this is committed (wholly or partly) in within their territory and when the offender is one of their national.

One important aspect emphasized by the directive is the assistance, support and protection for victims. The member state must ensure that assistance and support is provided to victims before, during and after the criminal proceeding. The same support should apply as soon as the authorities have a reasonable- grounds indication than an individual is a victim and the assistance is not conditional of the victim's willingness to cooperate in investigations or proceedings.

In order to research the trends in trafficking in human beings, member states must establish national rapporteurs or equivalent mechanisms which would carry out assessments, gather statistics and report.

Last but not least, the member states must take measures to discourage and reduce the demand of the forms of exploitation related to trafficking such as awareness-raising campaigns and cooperate with civil society organizations.

The deadline for transposition provided by the Art. 22 of the Anti-trafficking directive was 6 April 2013. This directive does not allow any extended periods to the member states to complete transposition.

According to EUR-lex, after the deadline passed, only six member states have submitted NEMs. At the end of April 2013 the Commission sent a Letter of formal notice art.258 (ex 226) to 13 member states (also Germany). According to art 258 TFEU, the letter of formal notice represents the first stage in the pre-litigation procedure during which the Commission requests a Member State to submit its observations on an identified problem regarding the application of EU law within a given time limit. As a consequence to date, twenty Member States have notified the Commission of the full transposition of the directive three have notified partial transposition. Until now, four Member States have still not communicated transposition measures to the Commission. The Commission is currently analysing the information received and will take all measures to ensure correct application of EU law, including by launching infringement procedures where necessary. Interesting for this study is the fact the Romania is one of the counties which have notified full transposition through 25 legal instruments, while Germany has notified partial transposition through one measure notified.

Furthermore, according to NM (National Implementing measures) database hosted by the European Commission, Germany reports on still having the implementation of the directive pending and also lists couple points where measures have to be taken: *‘the relevant criminal provisions must be extended to include human trafficking for the exploitation of criminal acts and begging. Human trafficking for the purposes of organ trading is also to be incorporated explicitly into the German Criminal Code. The Act to Combat Human Trafficking and Monitor Brothels (Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten), adopted by the German Bundestag on 28 June 2013 and designed to accommodate this need for a legislative response, can no longer enter into force because of the Bundesrat's convening of the Mediation Committee and the end of the parliamentary term. Full transposition of this Regulation is therefore reserved for the 18th legislative term.’*

In the same regard Romania states that that the Directive has been fully implemented before the deadline and underlines that instead of setting up national rapporteur: *‘Romanian authorities opted for an equivalent mechanism to a national rapporteur assigning this task to ANITP’.*

2.4.3 Critical views over the transposition measures

The next section addresses couple of the main reforms of the national systems in the light of the Anti-Trafficking directive. The analysis of the literal transposition of the Directive falls beyond the scope of the thesis. However, based on the reports published by Greta, the Group of Experts on Action against Trafficking in Human Beings evaluating the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings and also referring to and covering several prerequisites of the Anti-Trafficking Directive, neither Germany, nor Romania have fully implemented the Directive. The next section will discuss the main aspects where the countries are failing to fulfil the requirements of the Directive. Germany, as mentioned above did not notified transposition of the directive, nonetheless submitted one measure as NIM which has been adopted but not yet implemented (Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten). Therefore the views covered in this section relate to the current legislation.

Romania has notified the Commission of full transposition of the Anti-Trafficking Directive through 25 legal instruments. However, at a first glance, just seven of those measures were adopted after the Directive was given and as most of them haven't been initiated with the solely scope of transposing provisions of the Anti-trafficking directive.

Firstly, the Law No. 678 of 21 November 2001 on the Prevention and Combat of Trafficking in Human Beings does not transpose the full and identical definition of the THB. As also pointed out by the GRETA report (GRETA, 2012), although the Romanian law includes the three components: an action, the use of certain means and the purpose of exploitation, the 'vulnerability' of the victim is not tackled. Instead, the article 12(1) of Law No. 678 includes 'by taking advantage of that person's inability to defend him/herself or to express his/her will'. However the 'vulnerability' clause can have a larger scope and comprise the situation where a person expresses his/her will to be exploited or agrees just because he/she is has no acceptable alternative. Nevertheless, in the new Criminal Code, the provision on THB includes 'taking advantage of the vulnerability' of the victim. Moreover, the New Criminal Code provides that the victim's consent does not constitute justifying cause (Article 210 (2) of the New Criminal Code).

Regarding the penalties, the imprisonment sentence is of three to 10 years and interdiction of certain rights and in aggravating situations Article 12(2) provides for imprisonment of five to 15 years. However, the provision which establishes as an aggravating circumstances 'deliberately or by gross negligence endangered the life of the victim' does not appear in under the Romanian law.

Pursuant to the article 15(1) of the Anti -trafficking Law, any attempt to commit the offences set out in Articles 12 and 13 are as well punishable. Regarding the liability of legal persons, although the Criminal Code introduced in 2006 the provision of criminal liability of legal persons applicable to human trafficking related offences, there have been no cases when this provision was applied for the THB- related crimes. (Greta, 2012) Moreover, under the revised law the knowing use of services of trafficked persons is also criminalised, but according to the Romanian authorities, there have been no prosecutions under this provision.

Regarding the seizure and confiscation of assets obtained from THB offences, new legislation was introduced. European Commission's report on the 'Progress of Romania under Co-operation and verification mechanism' pointed out there are some weaknesses in the system of confiscation of assets, in particular due to the limited confiscation powers

(European Commission, 2011). For all the offences covered by the Anti-Trafficking Law, any instrumentalities and proceeds used or generated are subject to seizure. Law 28/2011 and Law 386/2009 have been introduced to improve the recovery activity of seized assets and regulate the extended confiscation. Extended seizure was introduced in Romanian Criminal Law through Law 63/17 April 2012 for modification and completion of the New Criminal Romanian Code and through Law 286/2009 regarding the Criminal Code. Therefore, from the legal stand point currently there are available modern instruments for judicial bodies and courts.

The non-prosecution provision is covered in the Romanian legislation and stipulates that a trafficked victim who has committed the offence of prostitution, begging, crossing the border illegally, should not be prosecuted for these offences as well as the investigation and prosecution in the THB- related cases are not dependant of the victim's testimony.

Regarding the assistance and support for victims, funding seems to be a problem for both of the countries. Despite the existence of the legal provisions in the Romanian legislation, in practice, according to Greta (2012) there are problems as regards victims' access to health and accommodation and not all the legislative provisions are guaranteed despite victims' readiness to cooperate with the law enforcement agencies. As regards the situation in Germany, according to KOK e.V., the measures to protect and promote the rights of the victims are also incomplete and insufficient, with clear deficiencies. Although there are around 48 specialised counselling centres designated to help victims of trafficking, their services remain available as long as they have sufficient funding, which is not always the case. In Romania, out of 11 centres for protection and assistance to victims only 6 are functioning and are available just to Romanian or EU nationals. Third-country nationals are accommodated in special facilities in the administrative detention centres, separately from detain foreign nationals or if they applied for protection in they can be accommodated in asylum seekers centres.

The Anti-trafficking Directive requires that should ensure that victims have to right to claim compensation. Although the Romanian law disposes that the victim has the right to apply for aid 60 days after the offence was committed, in practice this is difficult to obtain and ineffective. Also, the crime must have been committed on the territory of Romania and the victim must be EU national or residing legally in EU. Regarding the reflection period, the initial period of accommodation and assistance in specialised

centres, this has been increased from 10 days to maximum 90 days. However there is not specification about the minimum duration.

Yet more, the Directive strictly requires that the assistance provided should not depend on their willingness to cooperate with the authorities. However, the extension of the tolerance period in Romanian is mostly seen as a means to facilitate the authorities work and not as a way to protect the victims. The right to reside can be revoked if the criminal proceedings are interrupted for various reasons, having nothing to do with the victim's situation. In Germany, third country nationals are only granted a residence permit as long as they cooperate with prosecuting authorities. Moreover, the public prosecutor must confirm that the presence of the victim in Germany is indeed needed for the investigations. After the criminal proceedings are over the victim's right to reside is considered if there are legal motives that the person can't return to their country. Similar provisions apply if the victim is a child and minors from third country receive a residence permit just if they cooperate with the authorities. The Directive requires that in this case the child's best interest shall be the primary consideration.

Regarding the National Rapporteur or equivalent mechanism, NATP is responsible for measuring the results of anti-trafficking actions, reporting and cooperate with other organisations in this field. However, following the frequent changes in its status, made it more difficult to play a coordination role. This body should be mostly seen as an entity carrying out assessment tests, providing guidance in human trafficking topics and gathering statistical data on the victims of trafficking and not as not as a law enforcement agency, as it used to be subordinated to the General Inspectorate of Police.

According to the statement published by KOK e. V. (German Network and Coordination Office against Trafficking and Violence against Women in Migration) the National Rapporteur should be an independent body, not limited to the government's mandate or its political agenda (KOK e.v., 2014). Therefore, the body should not be exposed to any conflict of interest between its role and other potential interests different than its own. However, in the case of Romanian national rapporteur, one of NATP's responsibilities is to issue the Annual Report on the evolution and dimensions of the trafficking in persons which is later to be submitted to the Government for its approval. A further drawback regarding the setup of NATP is that data on in this filed is still gathered decentralised by other institutions. For instance, the Ministry of Justice is collecting the data on compensation granted as it's also the institution paying these

amounts. Therefore, Romania can't provide real time statistics on investigations, prosecution, convictions or compensation offered to victims. Most of the data gathered concerns the identification of victims and the assistance provided to them.

In the case of Germany, as a national rapporteurs hasn't been established, the Bund-Länder-Arbeitsgruppe Menschenhandel (BLAG), the working group of national and regional experts on trafficking in human beings, represents the only nationally coordinated inter-ministerial committee aiming at monitoring current measures, providing expertise of human trafficking topics and sharing policy recommendations. Their work is based on the reports provided by the federal Criminal Police (BKA) summarizing current information on developments within the field. However, the group is not designed to take any reporting, monitoring or coordination responsibilities.

According to KOK e.V. the government has not organised any large-scale anti-trafficking campaign but many of the civil society organisations have been running media campaigns to raise awareness and reach out the victims of trafficking (KOK e.v., 2014).

To put in a nutshell, on one hand, although the main legislative requirements laid down by the directive seem to be transposed in the Romanian legislation, their application in practice and their effectiveness is difficult to evaluate. On the other hand, Germany hasn't transposed the directive yet although there are several topics where new measures are needed.

In the case of Germany, the law introduced by the 17th parliamentary term (*Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten*) has not been adopted as there was no agreement between the Bundestag and Bundesrat since the law was not respecting the requirements of the Anti-trafficking Directive. In this case, the mediation procedure is convoked and the Mediation Committee (Vermittlungsausschusses) has to amend the bill in such way that both chambers are satisfied with the final result. The Mediation Committee is a body composed of members of the Bundestag and members of the Bundesrat. However, the legislative procedure concerning the law (*Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten*) was finished because of the end of the 17th electoral term. During the 18th electoral term the law was introduced again under the title (*Gesetz zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates*) and

with a narrow focus on human trafficking. Yet, although the 18th term started in October 2013, the new law was introduced in February 2015 and to the moment of writing, the law has not been signed. The last update on the legislative process dates to 15.04.2015 to a draft bill sent by chancellor Merkel to the president of Bundestag (See appendix C).

’ Therefore, Germany fails to respect EU legislation and the current analysis points out that the NIM sent to the Commission and as well as the information provided by Germany in the framework of human trafficking is misleading as the law has never been signed.

In the case of Romania, as previously mentioned, not all the reported measures are directly related to transposition of the Anti-trafficking Directive. For instance, law 678/2001 (Lege privind prevenirea și combaterea traficului de persoane) on preventing and combating human trafficking, has been previously amended through law 230/2010 which was initiated in 2008. After the Directive was adopted there was no amendment brought to this law, but the Criminal code was amended in relation to human trafficking. However, in 2013, a legislative proposal to further amend this law in line with the Anti-trafficking Directive was initiated and although the Legislative Council of the Parliament gave a favourable notice on the proposal, it was first rejected by the Senate and later on by the voting in the Chamber of Deputies.

Having acknowledged that both of the countries are failing to precisely meet the requirements of the directive, especially in the case of Romania where full transposition was notified, the next section analyses the factors affecting the transposition aiming to point out which could be the reasons Germany did not transpose the directive and possible factors which have influenced the transposition of the Directive in the case of Romania resulting in non-compliance.

Chapter 3: Factors affecting transposition at the EU level

This chapter discusses the factors on the EU level influencing the transposition of the Anti-Trafficking Directive. For each of the factors, a short overview on the previous literature and a hypothesis will be presented. Furthermore, this characteristic will be analysed in regard to the Anti-Trafficking Directive. The EU level factors illustrated below are rather used to explain why specific types of directives are delayed, but are unable to explain differences between the countries (Käding, 2006).

3.1 THE DIRECTIVE ITSELF

3.1.1 Nature of the directive

The transposition delay is greater for 'new' directives than for amendments.

According to some scholars (Steunenberg & Kaeding, 2009), the character of a directive is one of the factors which hinder the transposition process. Whereas the amendments of a directive are usually more technical and they require lesser policy development, a new directive introduces a new topic which sometimes can raise ambiguous obligations, and therefore can cause transposition delay or miss-implementation of the directive. The Directive under review represents, indeed, the first directive given by the EU in the field of human trafficking. Although the directive replaces the Council Framework Decision 2002/629/JHA, it introduces binding regulation on the Member states in order to harmonize the substantive criminal law in the community. Following the hypothesis, this characteristic of the directive can be the first aspect which affected the transposition process in Germany and Romania.

3.1.2 Complexity of the Directive

The more recitals a directive has, the more time is needed to transpose the directive.

Another factor which can explain delay in the transposition of the Directive is, according to Steunenberg (2005), Käding (2006), Bellis (2003) and Toshkov (2009) the level of detail of one directive or the political salience. This can be operationalized as the number of recitals. The recitals precede the articles of a directive and lay down the reasons for the operative provisions adopted by the directive. The Anti-tracking directive has 36 recitals. Therefore a high number of recitals reflects an extensive scope of the directive and the important issues it tackles. These are sometimes so specific that they become almost a third kind of law making (Bellis, 2003 as cited in Kaeding, 2006). According to Kaeding (2006), the recitals are sometimes used by the Member States and by the Commission to insert provisions which they failed to get into the text of the Directive. While the number of recitals are usually between 1 and 50, and the analysed directive has 36, thus another characteristic could have created delay in the Anti-trafficking directive transposition is the level complexity of the directive.

3.1.3 Deadline

The more time a member state has to transpose a directive, the less likely is a delay.

Next, another indicator known for causing delay in transposition is the deadline of the Directive. Naturally, the shorter the transposition deadline, the more likely the Member States will not have time to transpose the Directive. Therefore, sufficient transposition time is important especially as the number of directives is increasing. According to Käding (2006) despite the growing number of directives to be transposed in the last decade, the transposition time agreed upon in the Council has been decreased. However the current deadlines of the directives range between 6 months and two years. The deadline of the Anti –trafficking directive is the maximum deadline of 2 years thus, the time allowed for Member States to transpose this directive shouldn't have been a factor which affected transposition.

3.1.4 Commission/ Council decision-making

Commission directives are transposed faster than either Council or Council and EP directives.

Directives can be enacted by the Council, the European Parliament and the Council or the European Commission. The directives adopted by the Commission are delegated legislation, usually of less importance and scope as those adapt and update framework legislation already in place through other directives. The Directive in discussion is one of the Directives of the European Parliament and the Council as it concerns a politically sensitive issue whereas is defining criminal offences and sanctions in area of serious crime with a cross-border dimension (Mastenbroek, 2003). In the 'European Parliament resolution of 10 February 2010 on preventing trafficking', the Parliament called on the Council and the Commission to develop action against trafficking in human beings on the basis of a holistic approach centred on human rights and focusing on combating trafficking, prevention and protection of victims (European Parliament, 2010). Later on, the European Parliament adopted the text of the directive at the first reading under the ordinary legislative procedure (formerly known as decision procedure). The amendments adopted in plenary are the results of a compromise negotiated between the European Parliament and the Council. Therefore, the Anti-trafficking directive, being one the European Parliament and the Council directive adds another possible factor of delaying the transposition to the current analysis.

3.1.5 Decade

The more recent a directive is agreed upon in the Council, the probability of a transposition delay increases.

This hypothesis stresses the fact that in the last decade more and more legislation has been adopted at the EU level, hence the transposition deficit of the countries is increasing, and therefore one possible answer to delayed transposition is that countries are running behind implementing the new directives. As the directive in discussion was adopted on 5th April 2011 with the deadline on 6th April 2013, thus, for the purposes of this study represents a recent directive. In 2013, Romania had a transposition deficit of 1.1% and Germany was at 0.8%, while the EU average was at 0.7% (European Commission, 2015). According to the European Commission statistics on countries' average transposition delays, Romania registered 10.7 months while Germany 15.5 months. In both of the cases their average increased considerably, as in the last report

they added one long overdue directive to their backlog. Moreover, Germany is the third Member State with the highest transposition delay. Summing up, this hypothesis adds to the analysis another point of explaining the fact that Germany hasn't yet implemented the Anti-trafficking Directive.

3.2 COMMUNICATION PROBLEMS

Communication problems with Brussels and lack of feedback between EU decision-makers and national authorities cause difficulties in the transposition process.

To address this hypothesis, the analysis tackles the reports, supportive measures or any other relevant documents which concerned the implementation of the directive. Firstly, on June 2012 the Commission adopted the Communication 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016' which focussed on concrete measures that support the implementation of the Anti-Trafficking Directive and replaced the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings. Furthermore, in October 2012, the Council adopted Conclusions endorsing the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 representing a set of recommendations for EU Member States, relevant EU Agencies and the Commission. In 2013, the Commission published a Reference document on the Guidelines for the identification of victims of trafficking in human beings especially for border guards and consular services stressing the importance of early identification of victims of human trafficking. Last but not least, 2 Ad-Hoc Queries concerning the implementation of the Directive were requested by Slovenia and Estonia and both received an opinion from 22 other Member States (European Migration Network, 2012, 2014). All in all, this hypothesis does not hold evidences of affecting Directive's transposition.

3.3 LEGISLATION PROBLEMS

The DG's focuses exclusively on their own activities leading to conflicting requirements in the directives and transposition delays.

As in this case the one of the key players in drafting the directive is DG Justice, it is worth mentioning the development of this body. Initially, this was part of the DG Justice, Freedom and Security which was split in 2010 into DG Home Affairs and DG Justice. Later on, with the Commission's new term of office, the structure has been reorganised and DG Justice lost 2 policy areas as anti-drug policy (moved to DG Home) and equality policy – apart from gender equality – moved to DG Employment and Inclusion and incorporated some new responsibilities as consumer affairs and social responsibility to become DG Justice and Consumers (Peers, 2014). Having acknowledge all the structural changes brought to DG Justice in the last years, one can assume that this hypothesis could indeed apply to a directive as Anti-trafficking directive which tackles criminal law, human rights violations, victim's assistance and protection as well as child rights and national policy development of this issue. However, there were not complains or critics on this Directive, neither from Member States nor scholars addressing conflicting requirements of the Directive, therefore this factor will not be considered as significant factor in explaining delay.

3.4 EUROPEAN COURT OF JUSTICE

The ECJ judgments on implementation measures can cause delay in transposition.

According to some scholars (Steiner et al. 2012), the European Court of Justice, may be giving stricter rules on the judgments of implementation measures which might limit the freedom of choice for form and instruments of the Member States for implementing the directive. The national courts have the right to refer legal inquiries to the ECJ and the ECJ decides on the validity of the European Union Law, or the interpretation of the treaties in preliminary rulings. Up till now, there were no requests for the court to interpret the Directive in discussion. However, is worth mentioning that the Commission requested ECJ to open infringements procedures for late transposition in the case of Luxemburg and Spain and for failure to notify the Commission of measures to transpose the directive for Malta, Netherlands and Portugal. It's worth mentioning that Germany is not included in these measures as the country notified that the transposition is still pending, while in the case of Romania, the commission can open a case in front of the court if after analysing the measures implemented by the Member States, decides the this fails to

comply with EU Law. Therefore, at this stage, this hypothesis will be excluded for further consideration in the analysis.

3.5 VOTING RULE

With the introduction of QMV, the transposition process got more and more delayed.

With the entry into force of the Lisbon Treaty, quality majority voting- the voting procedure in the council – was extended to include more policies areas with previously required unanimity. The area of freedom security and justice, which used to be subject to unanimity has been moved under QMV. Voting under this procedure, each country has a specific number of votes depending on its size. For instance, Germany, France and United Kingdom have each 29 and while in total there are 352 votes, a proposal can be passed with 260. Although QMV is now used for most of the policy area, the hypothesis stresses the fact that when Member States are taking decision by unanimity, there are more likely to timely implement the EU directives rather than when the decision was reached by consensus. According to the results of the qualified majority voting procedure in the Council for the Adoption of the Anti-trafficking Directive there were 309 votes casted out of 345 with Denmark and UK not participating as they have opted –out for this Directive (Appendix B).

Chapter 4: Factors affecting transposition at the National Level

Following the analysis of the EU level factors, several hypothesis could explain why the Anti-trafficking directive is delayed. However, these are unable to explain the differences between the countries and therefore the analysis of the factors at the national level will also compare the Member States, Germany and Romania. Considering the fact that Romania has already notified transposition, the analysis uses the applicability of the following hypotheses to the Romanian case and can easily dismiss the factors that can't represent valid points for transposition in Germany.

4.1 NATIONAL IMPLEMENTING SPECIFIC

4.1.1 Type of legal instrument

The fewer actors involved in the making of a legal instrument, the faster the transposition process.

Member states transpose directives by taking national implementation measures. These can comprise several types of legislative instruments such as laws, government decisions and cabinet regulations, decisions of the Constitutional Court or other legal acts defining countries' legal framework. The type of the instrument a Member State uses to transpose a directive can also pose problems to transposition. For instance, different types of acts can take less or more time to take effect depending of the actors involved in adopting them. In Germany, the directives are usually implemented as laws (*Gesetze*) or ministerial orders (*Rechtsverordnungen*) and in Romania through laws (*Legi*) and governmental ordinances or decisions (*Hotarari de Guvern*). Kaeding (2006) has designed a category variable to test this hypothesis according to the number of actors involved. Therefore, legislative acts (laws) are taking longer time than government degree, followed by regulations taking the less time to implement. In the case of Anti-trafficking Directive, Germany has opted to adopt one law while Romania, solely looking at the measures taken after the adoption of the directive, has adopted 5 laws and 2 government decisions. Judging on this available information, this hypothesis does not represents a valid point into understanding delayed transposition as both of the countries have chosen

to adopt laws, unless Romania would be have a really high rate of adopting legislation or higher government effectiveness. According to Rowe & Jacoby (2013) the average duration between the introduction of bill and promulgation of a respective law in Germany is around 200 days. Unfortunately, there is no such information available regarding this procedure in Romania and a comparison of the duration of law- making process in the two countries won't be concluded relying on Kaeding's (2006) variables design. However, as both of the countries have adopted laws, an interesting indicator clarifying this hypothesis can be the government effectiveness. According to the Worldwide Governance Indicators, Government effectiveness is an aggregate indicator capturing among others the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies (Kaufmann et al., 2011). Therefore, while Romania has scored 53 points out of 100 on the government indicator for 2013, Germany reached 91. All in all, this hypothesis does not explain transposition delay for the scope of this analysis.

4.1.2 Number of legal Instrument

The more national implementing measures used to be transposed, the more likely transposition delays.

Following on the elaboration for the above hypothesis, this assumption does not explain transposition delay as Romania has adopted several implementing measures and reported timely full transposition while Germany has adopted one measure which will enter into force after the deadline has passed.

4.1.3 Issue linkage

If the Member State tries or transposes a directive in connection with other issues, that issue linkage can cause implementation delays.

Issue linkage means, according to Falkner (2004) that the Member States transposes or tries to transpose a directive in connection with other issues, which can cause a delay. For instance, the law adopted in Germany (*Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten*) refers also to prostitution. According to critics the rights of prostitutes are not protected and the regulations of brothels should be tighten (Deutscher Städte- und Gemeindebund, 2013). Furthermore, in the request of the

Bundesrat to the Conciliation Committee to review the before mentioned law it is stressed the fact that the previous prostitution law (Prostitutionsgesetz) hasn't sufficiently addressed the situation and still needs improvement and adaptation to the current changes, especially after the south European EU enlargement (Bundesrat, 2013). Therefore, one can argue that transposition of the Anti-trafficking Directive in Germany has been linked to addressing prostitution regulations. It's worth mentioning that the Anti- trafficking Directive does not concern improving the prostitution framework or monitoring this industry. To sum it up, this hypothesis can explain to an extend the delayed transposition in Germany as presumably addressing several issues into one law increases the duration of passing and implementing that law.

4.1.4 Connection

If the task definition between the concerned ministries is unclear, the more likely the transposition delays.

In transposing EU legislation the national ministries can also be involved in proposing legislation. In the case of Romania, all the national implementing measures adopted for the Anti-trafficking directive have been legislative projects or amendments initiated by the government. As previously mentioned, the NATP took the responsibility to coordinate the implementation, therefore one can assume that the task definition for implementation has been clear. Nevertheless, in the case of Romania, there is no information available about the national ministries involved in drafting the legislative proposals submitted by the Government to the Parliament and viewed as measure of consolidating the national framework in regard to the provisions of the Anti-trafficking.

In Germany, the proposed law (Gesetz zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten) that was notified as transposition measure, has been initiated by CDU/CSU and FDP parliamentary groups. However, according to the process of transposing directives in Germany this responsibility should have fallen under the ministry most concerned with the topic of the EU directive, namely the Ministry of Justice and Consumer Protection. The Ministry proposed the new bill in February 2015 (Gesetz zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates)

which is still under review. The bill was introduced with the mention that despite other further considerations of government parties regarding human trafficking, the bill in discussion will literally translate the provisions of the directive (Bundesministerium der Justiz und für Verbraucherschutz, 2015).

Therefore, there are evidences that the task definition might have been not clear regarding the transposition of the Directive in Germany and subsequently this led to a delay.

4.2 INSTITUTIONAL AND ACTOR CONFIGURATION

4.2.1 Veto players

The higher the number of institutional veto players, the greater the delay in transposing EU law.

This theory has been actively debated among scholars (Falkner, 2005; Kaeding, 2006; Tsebelis, 2005) seeking to explain impediments in transposition of EU legislation. It had also been operationalized through number of veto points or number of institutional veto players. On one hand, veto players are defined as actors or institutions whose consent is critical for any legislative changes. On the other, veto points are defined as an instance in the policy progress in which a piece of legislation may be rejected or delayed by the decision made at that point. For instance, if the members of the national parliament can overturn the decision of the government, this results in veto point for a country (Immergut, 1990). Kaeding (2006) tests this hypothesis and uses Schmidt's (1996) data on veto points. Schmidt's (1996) indicator ranges from 0 to 6 and is based on 6 variables ('1' = constraints, '0' = else): EU membership, degree of centralisation of state structure, difficulty of amending constitutions, strong bicameralism, central bank autonomy and frequent referenda (Schmidt 1996: 172) as cited in (Jahn, 2011). However, (Jahn, 2011) concludes that the veto player analysis is distinct from veto point analysis as conceptualisation, measurement and aggregation is higher while looking at veto player's analysis. For instance, Germany had 5 veto points, but 2 or 3 veto players depending on whether the Bundesrat is controlled by the same majority as the Bundestag. If there are two parties that represent majority in the Bundestag, and at the same time a third party is required for a majority in the Bundesrat, this party can be considered a veto player

(Tsebelis 2000). Similarly, Romania can score 4 veto points and has 2 veto actors. However, there can be a discussion on the applicability of these points or the usage of the veto powers in Romania. In this analysis, the constitutional courts and the presidents were left out as their veto powers are strictly related to constitutional concerns and as they are not acting on basis of political reasons. For instance in Romania, the president can turn down the promulgation of a law and send it back to the parliament for revision but the parliament can send the law back without making any amendments.

In Germany, the legislative proposals can be introduced in the Bundestag by the federal government or by a parliamentary party group of 5% of the Members of the Bundestag from one or more parties (Strøm, K., 2000). The power of the state is institutionalised in the Bundesrat, the body representing the Länder executives at the federal level. The members of the Bundesrat are not elected, but appointed as delegated members of the state government. Although the Germany's administrative units are very hierarchical, they are not centralised. Even though the legislative authority of the Bundesrat is subordinated to that of the Bundestag, it plays a vital legislative role as the Bundesrat participates in the adoption of most of the laws. Its participation depends on whether the law in discussion substantially affects the interests of the Länder and has an absolute veto. The federal government must also present all its proposals first to the Bundesrat and after approval the proposal can be passed to the Bundestag. As both chambers have a veto power, the draft bill is sent to the Mediation Committee and their proposed resolution has to be voted up or down by both chambers.

In Romania, laws are drafted by the MPs or by the Government. The parliament is bicameral with the Chamber of Deputies and the Senate. The bicameral Parliament of Romania is the only one in Europe where senators and deputies are elected by the same vote system, directly by the citizens, it representing the same population and it having a common mandate of four years (Dima, 2009). The draft bills are first submitted to the specific committees of the parliament according to the policy area they fall into and furthermore submitted for debate to the Chamber of Deputies or to the Senate after receiving an advisory opinion from the Legislative Council. If a draft law is approved in one chamber is sent to the other chamber which after the same procedures as in the first chamber, can approve or reject the same text or propose an amendment and bill is submitted to the parliament for voting. The law can go back to the first chamber just if its previous amendment was not agreed in the second chamber. Therefore the last chamber

decides over the bill content. If the law passes the Parliament, the Government and the President have the right to ask the Constitutional Court to give its assent if they consider the law unconstitutional. The president has also the right to ask the Parliament to revise the bill, but the Parliament has the right to send it back for promulgation without implementing any revisions (Art. 75, Romanian Constitution). It's worth mentioning that the first chamber that receives the law has to take a decision in 45 days. If the deadline has passed and there was no response, the draft bill are considered adopted.

The Senate and the Chamber of Deputies are elected by proportional representation in simultaneous elections, which produce almost identical returns in the two chambers (Bågenholm, 2008). Furthermore, the distribution is proportional in the parliament and the parliamentary committees thus the majority government rules a majority in the committees. Therefore, the government that rules a majority in the parliament should therefore not face many difficulties to get their draft bills through the parliament. Yet more, the veto powers of one of the chambers could be overruled if the government or a parliamentary majority would apply the urgency or extraordinary procedure in passing the law. All in all, although there is rather difficult to reject a law and the government can use several strategies to get their legal proposals through the parliament, the process can be delayed at all stages.

Summing up, the fact that Germany has more veto players and veto points than Romania could be one of the factors of delayed and postponed transposition in this case. Several authors argued that federalism increased the number of veto players (Tsebelis, 2005) and bicameralism has been found in explaining legislative deadlocks (Tsebelis & Money, 1997).

4.2.2 Parliament

The transposition will be faster if the national parliament is involved in the negotiation phase.

Nowadays all the member states have a European affairs committee (EAC) a procedure of scrutinizing all the European legislative acts. It's worth mentioning that the German Bundesrat was the first national parliament to set up a European affairs committee (EAC) in 1957. The committees' task is to engage the national parliaments at an early stage in the legislative process initiated at the European level. Once the legislative draft has been agreed between the Commission and the EU parliament, the Commission

sends it to the national parliaments for subsidiarity. This mechanism was introduced by the Lisbon Treaty which has strengthened the role of the national parliaments to enhance democratic legitimacy. National Parliaments have eight weeks to issue a reasoned opinion if they consider that the legislation does not comply with the principle of subsidiarity. The Commission stores all the documents of the scrutiny process on IPEX- the platform for EU parliamentary Exchange. Accordingly, neither Romania nor Germany had issued a reasoned opinion for the discussed Directive. However, in the case of Germany, there was a political dialogue between the Bundesrat and the Commission. Germany had expressed several concerns regarding the fact that Germany has already strong balanced laws to fight against human trafficking and that the fact the directive sets that 'child' means a person below 18 years of age, this is in discordance with the German law which differentiates between a person under 14, between 14 and 18 and over 18. Furthermore, the Bundesrat states that the rights of the victims are not an absolute objective and that conditions under which the directive recognise a victim are unclear as there can also be a differentiation of the gravity so the status of the victim and an exemption from punishment should not be immediately assigned.

Therefore, this hypothesis cannot explain a delay in transposition as the parliament was involved in the proposal phase of the directive. However, the response of the Bundesrat indicates that there can be a misfit between the German law and the provisions of the directive.

4.2.3 Administrative constraints

4.2.3.1 Coordination Problems

If a single player coordinates the transposition process- which is called hierarchical coordination- no substantial delays are expected.

As mentioned beforehand in the case of the Anti-trafficking-directive, in Romania, the National Agency against Trafficking in Persons (NATP) took the lead into analysing the provisions and coordinating the transposition of the Anti-trafficking Directive. In general, according to Law 373/2003 on cooperation between the Parliament and the Government regarding European, the Government takes the lead and presents to the parliament its

legislative agenda including the legislative proposals which are introducing the EU laws and coordinates the tasks among ministries.

In Germany, on the contrary, the transposition of the EU legislation is decentralized and coordination competence is given to the ministry most concerned with the topic of the EU directive. Therefore, the responsible ministry coordinates the tasks within his own jurisdiction or with other ministries and the two chambers of the parliament.

4.2.3.2 Internal Problems

The existence of "Chinese Walls" between the stages of preparation and transposition affects the transposition speed.

Mastenbroek (2003) argues that transposition can be delayed by the existence of ‘Chinese walls’ in the transposition process. These are represented by the different hindrances that could appear between the stages of the transposition and between the actors involved in the process. Yet, according to Mastenbroek (2003) possible evidences to dismiss the existence of ‘Chinese Walls’ are that the same civil servants/teams which negotiate a directive are involved in transposing it. For the purposes of this study, empirical evidences could not be found regarding the specific civil servants involved in the discussed directive. Therefore, considering that conceptualizing this argument with an index on transparency of the political process and comparing the countries would still bring added value to the analysis, consideration is given to the political transparency index compiled by Williams (2007). Acknowledging that while Germany has a score of 69 points (out of 100) as average for political transparency from 2000 to 2010 and Romania has a considerable lower score of 58 points, one can extrapolate that the chances of appearance the ‘Chinese Walls’ is higher in the transposition process in Romania. Hence, this hypothesis can’t explain the late implementation of the directive in Germany.

4.2.3.3 The civil servants

If civil servants have more experience with transposition, less time is needed to transpose a directive.

According to Käding, (2004) civil servants in Germany have a common background and training and the recruitment to the public offices is closely tied to the educational system. Furthermore, the higher level is formed by a majority of university –educated

officials as it used to be conditioned by the legal education. According to a comparative study points out that 60% of the top German civil servant are lawyers (Aberbach et al., 1990 as cited in Kaeding, 2004).

Although, this is similar in Romania and the majority of the civil servant are university-educated, the fact that Romania is to some extent a young Member State which came on the European stage with less than 20 years' experience of democracy, still lacks an efficient bureaucratic system. Furthermore, the civil servant are mostly politicized and the public perception of the civil servant is affected by the public distrust in the national politics and government. Furthermore, in Romania the personnel expenses are seen as the most important shares of public expenses and as the salaries remain low, the system is always exposed to corruption. As previously mentioned, information on the civil servants involved in drafting the directive couldn't be retrieved for the purposes of this study. However, one can summarize that these theory can't make a valid point into explaining transposition in Germany as, civil servants in Germany are usually more qualified, receive better trainings and therefore more experienced with implementing directives.

4.2.3.4 Level of corruption

The higher the level of corruption in a member state, the slower the transposition process.

The level of corruption is an important variable that can make a big difference in the capability of a country to effectively transpose legislation. Member States with high level of corruption are proven to be less effective, reluctant and slow in transposing EU directives. Interesting for this analysis is that Romania has a score of 43 points out of 100 and ranks 69th out of 175 countries worldwide, while Germany has 79 points and ranks 12th worldwide (TransparencyInternational, 2014). Therefore, this hypothesis does not explain the delay in transposition in Germany.

4.2.4 Corporatism high degree

A high degree of corporatism speeds up the transposition process.

Another factor that influences transposition of the EU directives are the interest groups. According to Duina (1997) as cited in Kaeding (2006) the time taken by a Member State to transpose depends of the fit between the directive and the organisation

of the interest groups and that a close and cooperative arrangement between the state and interest groups improves transposition. According to Roberts (2006), Germany has a score of 1.38 and Romania has 3.2. (data based on Lijphart (1999) index – the lower the score, the higher the degree of corporatism). Therefore, this factor also fails to explain the delay in transposition.

4.2.5 Attitude towards the EU

The higher the overall support for the country's EU membership, the faster the transposition process.

Naturally, the general support for the EU membership can be an interesting factor in explaining differences in transposition. This can be retrieved from the Eurobarometer data that reflects the overall satisfaction with the EU among the citizens of the member states. According to the Eurobarometer 66 (2006), 58% of the German population and 62% of the Romanians has a positive response to the EU membership support (European Commission, 2006). Interestingly, this factor can play a role in the transposition and in the discussed case can add to the explanation of late transposition in Germany.

4.2.6 Priority of EU directives

When there is political priority for the transposition of directive, there is acceleration on the transposition speed.

Following on the concept of the previous hypothesis, another feature is represented by the political priority given to the EU directives. When the ministers and the officials involved in the transposition are prioritising national politics rather than over the EU, the directives will not be timely incorporated into national policy. In the case of Anti-trafficking Directive, this factor could explain the late transposition in Germany. The fact that the Ministry of Justice has proposed a bill 2 years after the deadline has passed indicates that there was a low political priority for the directive. Therefore, one can assume that a delay in the transposition in Germany could be caused by the low political priority of the EU legislation.

4.2.7 Discouragement

The higher number of Member States not transposing the directive, the more likely the transposition will be delayed.

For the purposes of this analysis, conceptualizing the hypothesis with empirical evidences of discouragement in the communication between Member States during the transposition time is unattainable. However, it's worth using the fact that at the deadline, only 6 Member States have notified transposition. Nevertheless, this can be one of the causes that affected countries as Germany to delay the transposition.

4.3 GOODNESS OF FIT HYPOTHESIS

The 'goodness of fit' hypothesis formulates that if a directive requires only minor changes to the arrangements already in place at the domestic level, we should therefore expect smooth implementation without any major problems. If considerable reforms to the existing rules and regulations are called for, however, domestic resistance is likely to arise and implementation should hence be seriously hampered by long delays or significant flaws in terms of substantive accuracy (Treib 2003). Beek (2007) discusses the importance of this factor and argues that getting a good 'goodness of fit' between the EU directives and the national legislation is very difficult. However, the fewer the changes in the administrative application procedures, the fewer the difficulties while transposing the directive. Based on Mastenbroek (2003), to conceptualize this hypothesis, this analyses differentiates between two possibilities: if the Member state has transposed or planned to transpose the Directive though one completely new law the degree of misfit is higher than of the Member State is amending exiting laws. Therefore, in the case Romania, the degree of misfit was low as the country has notified timely transposition with 25 legislative measures. Out of these, just 7 are introduced after the directive and they are not adopted to solely transpose the directive as they include other topics as well such as Law on Labour Code. On the contrary, in the case of Germany, the bill proposed for transposition, 2 years after the deadline, is solely dedicated to transpose the directive. Therefore, one can argue that the late transposition in Germany comes from a high degree of misfit as there are not amendments planned for existing laws but a new bill to be introduced on fighting human trafficking.

Chapter 5: Discussion

Following the analysis elaborated in the thesis, this section presents a summary of the theories that have proven to hinder transposition. As mentioned previously, on one hand, the cluster of the EU level factors affecting the transposition can be used to explain why specific directives are delayed, but are unable to explain differences between the countries. On the other hand, the cluster of factors affecting transposition at the national level can point out and explain these differences. Therefore, considering the fact the Romania had transposed the directive, the cluster of factors at the national level were verified through a comparative analysis aiming at finding out the obstacles in transposition in Germany.

In the case of the Anti-Trafficking Directive, the factors clustered at the EU level are: the nature of the directive as it is a new directive and not an amendment; its complexity through the number of recitals it presents; the fact that this Directive has been called on by the Parliament thus represents a political sensitive matter and last but not least the fact that is a new directive and considering the fact the average of the transposition deficit has for the first time reached its lowest value of 0.5%, one can assume that Member States are still catching up on implementing past directives. Table 2 summarises the factors at the EU level that could have hindered transposition of the Anti-Trafficking Directive.

European Level	The Directive itself	Nature of directive		The transposition delay is greater for 'new' directives than for amendments.
		Complexity of directive	Number of recitals	The more recitals a directive has, the more time is needed to transpose the directive.
		Commission/Council decision-making		Commission directives are transposed faster than either Council or Council and EP directives.
		Decade		The more recent a directive is agreed upon in the Council, the probability of a transposition delay increases.

Table 2. Factors at the EU level affecting transposition of EU Anti-Trafficking Directive

Furthermore, at the national level, the following factors have been identified to further explain the transposition delay in the case of Germany. For instance, in the case

of the Anti-trafficking directive although the first bill proposed and meant to implement the directive was also covering the legal provisions on brothels and prostitution, one can argue that transposition of the Anti-trafficking Directive in Germany has been linked to addressing prostitution regulations therefore this issue linkage was one of the impediments to a timely transposition. Moreover, other difficulties have arisen from the lack of hierarchical coordination and unclear tasks definition in the transposition process proven by the fact that the first bill was introduced by one of the parliamentary groups, just so later on would be proposed by the Ministry of Justice.

The high number of veto players in Germany is also a factor that can pose problems to a timely transposition as countries that have a strong bicameralism, federal division of competences take usually more time for transposition. Although Romania, has also a strong bicameralism, following the theories proposed by Tsebelis (2000) on veto players and Schmidt's data on veto points, Germany has 5 veto points, but 2 or 3 veto players depending on whether the Bundesrat is controlled by the same majority as the Bundestag, while Romania can score 4 veto points and has 2 veto actors. Therefore, passing a bill in Germany could turn to be more difficult than in Romania.

Moreover, the decreasing support and satisfaction with the EU, the low priority of the EU directives on the national stage and the fact that at the deadline 6 member states have notified transposition are the other factors adding to the analysis and explaining a delay in transposition. The fact that the Ministry of Justice proposed a bill to implement the directive 2 years after the deadline proves that that priority of the directive was not high. Based on the factors illustrated in the analysis and their applicability to the case of Germany, one can argue that the German officials have firstly considered that their legal framework in place is consistent with the EU Directive and found the requirements of the directive hard to translate to the national law. Furthermore, as there are evidenced that a national reform to introduce a new approach to fight trafficking was under review which would have also incorporate the provisions of the directive, low priority was given to the directive and the bill proposed for the literal transposition of the directive 2 years after the deadline came as the last option to comply with EU law before infringements procedure would have been initiated against the Member State.

Table 3 summarises the factors which were tested and proved to explain the delayed transposition at the national level.

National Level	National implementing measure specific		Issue linkage	If the Member State tries or transposes a directive in connection with other issues, that issue linkage can cause implementation delays.	
			Connection	If the task definition between the concerned ministries is unclear, the more likely the transposition delays.	
	Institutional and actor configuration		Veto players	The higher the number of institutional veto players, the greater the delay in transposing EU law.	
			Administrative constraints	Coordination problems	If a single player coordinates the transposition process- which is called hierarchical coordination- no substantial delays are expected.
			Attitude towards the EU		The higher the overall support for the country's EU membership, the faster the transposition process.
			Priority of EC directives	When there is political priority for the transposition of directive, there is acceleration on the transposition speed.	
			Discouragement	The higher number of Member States not transposing the directive, the more likely the transposition will be delayed.	

Table 3. Factors at the national level affecting the transposition of the EU Anti-Trafficking Directive

Chapter 6: Conclusion

The thesis analyses the transposition of the EU Anti-trafficking Directive in two Member States, Germany and Romania. The comparison of the transposition process in Germany and Romania makes an interesting research topic as, on the subject of human trafficking, Romania is a country of origin, while Germany is a country of destination and, on the matter of transposition of EU Law, Romania is one of the least performing Member States, while Germany was one of the leading ones. Yet more, 2 years after the expiring deadline of the Anti-trafficking directive, Germany hasn't transposed the directive whereas Romania had notified full transposition.

Starting with the research questions, namely which are the most important obstacles that hinder Germany and Romania to transpose the EU Anti-trafficking directive in a timely and precise way, the analysis follows the Commission's data on transposition and points out several factors which led to a delayed transposition, as explained in the previous section. According to the data on the NIM recorded by the Commission, Romania states that the transposition of the Directive has been completed before the deadline, therefore the analysis focuses on spotting the obstacles that Germany had encountered and hasn't notified transposition yet. Therefore, the analysis applies the hypotheses to both of the case studies to easily dismiss through comparison the theories that can't represent valid points for the transposition delay in Germany.

A directive is considered to be non-transposed within the deadline if no NIMs were found in the database or if the latest NIM was adopted after the deadline had passed as in the case of Germany. Whether there is a reference to national implementing measures does not necessarily mean that these measures are either comprehensive or in conformity with EU law.

Moreover, member states sometimes report national legislation as a NIMs even if it had only a superficial connection to the directive. This applies to some extent in the case of Romania which had notified 25 transposition measures while just 7 of those measures were adopted after the deadline. Nevertheless, in the case of Romania the directive is considered transposed and the Commission will evaluate this transposition in 2016. Based on the legal framework analysis elaborated in this study, the main legislative

requirements laid down by the directive seem to be transposed in the Romanian legislation, however, their application in practice and their effectiveness is difficult to evaluate at this stage. It is worth mentioning, that Romania also has 53 actions pending before the court for infringement of obligation, and 32 of these are on the transposition or the incorrect implementation of EU law. Therefore in the case of Romania, full transposition does not necessarily mean full compliance with the requirements of EU law at the enforcement level as the high level of corruption in the country raises serious problems when applying and enforcing of the laws and regulation.

To put it in a nutshell, this study adds to the research on transposition and compliance of the EU directives, enforcing the theories of Treib (2007) who classifies the Member States into four 'world of compliance'. Germany is categorised as 'world of domestic politics' and some of the East-European countries as 'worlds of dead letters'. This thesis confirms that based on the results of the Anti-trafficking Directive analysis, Germany is indeed part of the 'world of domestic politics', while Romania belongs to the 'world of dead letters'. Romania was not included in Treib's research as the country joined the European Union at a later stage and therefore this study fills a gap in the scientific literature on transposition in Romania. Falling in the category of 'world of dead letter', Romania may transpose EU Directive in a compliant manner depending on the prevalent political constellation among domestic actors, but then there is non-compliance at the later stage of monitoring and enforcement. At the same time Germany proves to be part of the 'world of domestic politics'. For the countries falling in this cluster, domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU Directive tends to happen on the basis of a fresh cost-benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply.

This study is limited to analysing the patterns on transposing the EU Anti-trafficking Directive in Germany and Romania and therefore more research is needed in order to conclude a European response to the fact that on a topic as human trafficking, just 6 Member States have notified timely transposition.

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Appendix

APPENDIX A: NATIONAL IMPLEMENTATION MEASURES

Germany:

Transposition deadline: 06/04/2013

1. Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs

Legal act: *Gesetz*; Official Journal: *Bundesgesetzblatt Teil 1 (BGB 1)*, number: 32, Publication date: 29/06/2013, Page: 01805-01808, Entry into force: 01/09/2013; Reference: (MNE(2013)58302)

Romania:

Transposition deadline: 06/04/2013

1. Lege privind prevenirea și combaterea traficului de persoane

Legal act: *Lege*, number: 678; Official Journal: *Monitorul Oficial al României*, number: 783, Publication date: 11/12/2001, Page: 00007-00011, Entry into force: 15/12/2001; Reference: (MNE(2013)52466)

2. Legea asistenței sociale

Legal act: *Lege*, number: 292; Official Journal: *Monitorul Oficial al României*, number: 905, Publication date: 20/12/2011, Page: 00002-00023, Entry into force: 24/12/2011; Reference: (MNE(2013)52467)

3. Lege privind Codul civil - republicată

Legal act: *Lege*, number: 287; Official Journal: *Monitorul Oficial al României*, number: 505, Publication date: 15/07/2011, Page: 00005-00304, Entry into force: 01/10/2011; Reference: (MNE(2013)52468)

4. Lege privind cooperarea judiciară internațională în materie penală - republicată

Legal act: *Lege*, number: 302; Official Journal: *Monitorul Oficial al României*, number: 377, Publication date: 31/05/2011, Page: 00002-00064, Entry into force: 30/08/2004; Reference: (MNE(2013)52469)

5. Lege privind Codul Muncii - republicată

Legal act: *Lege*, number: 53; Official Journal: *Monitorul Oficial al României*, number: 345, Publication date: 18/05/2011, Page: 00023-00047, Entry into force: 01/03/2003; Reference: (MNE(2013)52470)

6. Lege privind statutul judecătorilor și procurorilor - republicată

Legal act: *Lege*, number: 303; Official Journal: *Monitorul Oficial al României*, number: 826, Publication date: 13/09/2005, Page: 00001-00016, Entry into force: 27/09/2004; Reference: (MNE(2013)52471)

7. Ordin al ministrului internelor și reformei administrative, al ministrului muncii, familiei și egalității de șanse, al ministrului educației, cercetării și tineretului, al ministrului sănătății publice, al președintelui Autorității Naționale pentru Protecția Drepturilor Copilului, al procurorului general al Parchetului de pe lângă Înalta Curte de Casație și Justiție și al ministrului justiției pentru aprobarea Mecanismului național de identificare și referire a victimelor traficului de persoane

Legal act: *Ordin*, number: 335; Official Journal: *Monitorul Oficial al României*, number: 849, Publication date: 17/12/2008, Page: 00037-00047, Entry into force: 17/12/2008; Reference: (MNE(2013)52472)

8. Hotărâre privind aprobarea Standardelor naționale specifice pentru serviciile specializate de asistență și protecție a victimelor traficului de persoane

Legal act: *Hotărâre de Guvern*, number: 1238; Official Journal: *Monitorul Oficial al României*, number: 715, Publication date: 23/10/2007, Page: 00016-00026, Entry into force: 23/10/2007; Reference: (MNE(2013)52473)

9. Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor

Legal act: *Lege*, number: 211; Official Journal: *Monitorul Oficial al României*, number: 505, Publication date: 04/06/2004, Page: 00008-00012, Entry into force: 01/01/2005; Reference: (MNE(2013)52474)

10. Ordonanța de urgență a Guvernului privind regimul străinilor din România - republicată

Legal act: *Ordonanță de urgență*, number: 194; Official Journal: *Monitorul Oficial al României*, number: 421, Publication date: 05/06/2008, Page: 00001-00032, Entry into force: 26/01/2003; Reference: (MNE(2013)52475)

11. Lege pentru ratificarea Convenției Națiunilor Unite împotriva criminalității transnaționale organizate, a Protocolului privind prevenirea, reprimarea și pedepsirea traficului de persoane, în special al femeilor și copiilor, adițional la Convenția Națiunilor Unite împotriva criminalității transnaționale organizate, precum și a Protocolului împotriva traficului ilegal de migranți pe calea terestră, a aerului și pe mare, adițional la Convenția Națiunilor Unite împotriva criminalității transnaționale organizate, adoptate la New York la 15 noiembrie 2000

Legal act: *Lege*, number: 565; Official Journal: *Monitorul Oficial al României*, number: 813, Publication date: 08/11/2002, Page: 00002-00025, Entry into force: 08/11/2002; Reference: (MNE(2013)52476)

12. Lege privind protecția martorilor

Legal act: *Lege*, number: 682; Official Journal: *Monitorul Oficial al României*, number: 964, Publication date: 28/12/2002, Page: 00008-00011, Entry into force: 27/01/2003; Reference: (MNE(2013)52477)

13. Lege privind protecția și promovarea drepturilor copilului

Legal act: *Lege*, number: 272; Official Journal: *Monitorul Oficial al României*, number: 557, Publication date: 23/06/2004, Page: 00001-00019, Entry into force: 01/01/2005; Reference: (MNE(2013)52478)

14. Lege privind ratificarea Convenției Consiliului Europei pentru protecția copiilor împotriva exploatării sexuale și a abuzurilor sexuale, adoptată la Lanzarote la 25 octombrie 2007 și semnată de România la Lanzarote la 25 octombrie 2007

Legal act: *Lege*, number: 252; Official Journal: *Monitorul Oficial al României*, number: 885, Publication date: 29/12/2010, Page: 00002-00011, Entry into force: 01/01/2011; Reference: (MNE(2013)52479)

15. Hotărârea Guvernului pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state

Legal act: *Hotărâre de Guvern*, number: 49; Official Journal: *Monitorul Oficial al României*, number: 117, Publication date: 16/02/2011, Page: 00003-00053, Entry into force: 16/02/2011; Reference: (MNE(2013)52480)

16. Ordin al secretarului de stat al Autorității Naționale pentru Protecția Drepturilor Copilului pentru aprobarea Standardelor minime obligatorii privind managementul de caz în domeniul protecției drepturilor copilului

Legal act: *Ordin*, number: 288; Official Journal: *Monitorul Oficial al României*, number: 637, Publication date: 24/07/2006, Page: 00041-00060, Entry into force: 24/07/2006; Reference: (MNE(2013)52481)

17. Hotărâre privind organizarea și funcționarea Agenției Naționale împotriva Traficului de Persoane

Legal act: *Hotărâre de Guvern*, number: 460; Official Journal: *Monitorul Oficial al României*, number: 331, Publication date: 12/05/2011, Page: 00010-00011, Entry into force: 12/05/2011; Reference: (MNE(2013)52482)

18. Hotărârea Guvernului privind aprobarea Strategiei naționale împotriva traficului de persoane pentru perioada 2012–2016 și a Planului național de acțiune 2012–2014 pentru implementarea Strategiei naționale împotriva traficului de persoane pentru perioada 2012–2016

Legal act: *Hotărâre de Guvern*, number: 1142; Official Journal: *Monitorul Oficial al României*, number: 820, Publication date: 06/12/2012, Page: 00002-00026, Entry into force: 06/12/2012; Reference: (MNE(2013)52483)

19. Lege privind prevenirea și combaterea criminalității organizate

Legal act: *Lege*, number: 39; Official Journal: *Monitorul Oficial al României*, number: 50, Publication date: 29/01/2003, Page: 00001-00005, Entry into force: 28/02/2003; Reference: (MNE(2013)52484)

20. Hotărâre pentru aprobarea Regulamentului de aplicare a dispozițiilor Legii nr. 678/2001 privind prevenirea și combaterea traficului de persoane

Legal act: *Hotărâre de Guvern*, number: 299; Official Journal: *Monitorul Oficial al României*, number: 206, Publication date: 31/03/2003, Page: 00007-00012, Entry into force: 31/03/2003; Reference: (MNE(2013)52485)

21. Lege pentru modificarea și completarea unor dispoziții din Codul Penal

Legal act: *Lege*, number: 197; Official Journal: *Monitorul Oficial al României*, number: 568, Publication date: 15/11/2000, Page: 00001-00002, Entry into force: 15/11/2000; Reference: (MNE(2013)52939)

22. Lege pentru modificarea și completarea Codului penal, precum și pentru modificarea și completarea altor legi

Legal act: *Lege*, number: 278; Official Journal: *Monitorul Oficial al României*, number: 601, Publication date: 12/07/2006, Page: 00001-00009, Entry into force: 11/08/2006; Reference: (MNE(2013)52940)

23. Codul de procedură penală - republicat

Legal act: *Cod*; Official Journal: *Monitorul Oficial al României*, number: 78, Publication date: 30/04/1997, Page: 00002-00078, Entry into force: 01/01/1969; Reference: (MNE(2013)53057)

24. Lege pentru modificarea și completarea Codului penal al României și a Legii nr. 286/2009 privind Codul penal

18. Wahlperiode

Vorgangstyp: Gesetzgebung

Gesetz zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates

Initiative: Bundesregierung

Aktueller Stand: Dem Bundestag zugeleitet - Noch nicht beraten

GESTA-Ordnungsnr.: C051

Zust.-Bedürftigkeit: Nein, laut Gesetzentwurf (Drs 54/15)

Wichtige Drucksachen: BR-Drucksache [54/15](#) (Gesetzentwurf)
BT-Drucksache [18/4613](#) (Gesetzentwurf)

Plenum: 1. Durchgang BR-Plenarprotokoll [932](#) S. 135A - 135B

Sachgebiete: Recht

Inhalt:

Umsetzung einer EU-Richtlinie zur Bekämpfung des Menschenhandels: Ausweitung der Strafvorschrift auf Menschenhandel zum Zwecke der Begehung von Straftaten und der Bettelei sowie Übernahme der Strafvorschrift betr. Menschenhandel zum Zwecke des Organhandels aus dem Nebenstrafrecht, Erweiterung der Qualifikationstatbestände;

Änderung §§ 6, 232, 233 und 233a Strafgesetzbuch sowie Folgeänderung § 100c Strafprozessordnung

Bezug: Richtlinie 2011/36/EU vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates (ABl. L 101, 15.04.2011, S. 1) Wiedervorlage des Gesetzentwurfs auf BT-Drs 17/13706 in der Fassung der Beschlussempfehlung auf BT-Drs 17/14193 unter Verzicht auf die Regelungen zu Prostitutionsstätten (GESTA 17. WP C177)

Schlagwörter:

Gesetz zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates; Innerstaatliche Umsetzung von EU-Recht; Menschenhandel; Organhandel; Organisierte Kriminalität; Richtlinie der EU; Strafgesetzbuch; Strafprozessordnung; Straftat

Vorgangsablauf

BR - Gesetzentwurf

Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend)
13.02.2015 - BR-Drucksache [54/15](#)

Ausschüsse: Rechtsausschuss (federführend), Ausschuss für Frauen und Jugend

BR - Empfehlungen der Ausschüsse

12.03.2015 - BR-Drucksache [54/1/15](#)

BR - 1. Durchgang

27.03.2015 - BR-Plenarprotokoll [932](#) , TOP 19, S. 135A - 135B

Beschluss: S. 135B - Stellungnahme: Änderungsvorschläge (54/15), gemäß Art. 76 Abs. 2 GG

BR - Beschlussdrucksache

27.03.2015 - BR-Drucksache [54/15\(B\)](#)

BT - Gesetzentwurf

Urheber: Bundesregierung, Bundesministerium der Justiz und für Verbraucherschutz (federführend)

15.04.2015 - BT-Drucksache [18/4613](#)

Anl.: Stellungnahme des BR und Gegenäußerung der BRg

APPENDIX D: ANALYSIS SUMMARY RESULTS

Applicability of the hypotheses in the case of Anti-trafficking directive and their and their correlation in explaining transposition delays in the case of Germany through a comparison with Romania.

			Applicability to the Anti-Trafficking directive		
European Level	The Directive itself	Nature of directive	The transposition delay is greater for 'new' directives than for amendments.	Valid	
		Complexity of directive	Number of recitals	The more recitals a directive has, the more time is needed to transpose the directive.	Valid
		Deadline		The more time a member state has to transpose a directive, the less likely is a delay.	Not valid
		Commission/Council decision-making		Commission directives are transposed faster than either Council or Council and EP directives.	Valid
		Decade		The more recent a directive is agreed upon in the Council, the probability of a transposition delay increases.	Valid
		Communication problems		Communication problems with Brussels and lack of feedback between EU decision-makers and national authorities cause	Not valid

		difficulties in the transposition process.		
	Legislation problems	The DG's focuses exclusively on their own activities leading to conflicting requirements in the directives and transposition delays.	Not valid	
	European Court of Justice	The ECJ judgments on implementation measures can cause delay in transposition.	Not valid	
	QMV	Voting rule	With the introduction of QMV, the transposition process got more and more delayed.	Not valid

National Level	National implementing measure specific	Type of legal instrument	The fewer actors involved in the making of a legal instrument, the faster the transposition process.	not valid	
		Number of legal instruments	The more national implementing measures used to be transposed, the more likely transposition delays.	not valid	
		Issue linkage	If the Member State tries or transposes a directive in connection with other issues, that issue linkage can cause implementation delays.	valid	
		Connection	If the task definition between the concerned ministries is unclear, the more likely the transposition delays.	valid	
	Institutional and actor configuration	Veto players	The higher the number of institutional veto players, the greater the delay in transposing EU law.	valid	
		Parliament	The transposition will be faster if the national parliament is involved in the negotiation phase.	not valid	
		Administrative constraints	Coordination problems	If a single player coordinates the transposition process- which is called hierarchical coordination- no substantial delays are expected.	valid
			Internal problems	The existence of "Chinese Walls" between the stages of preparation and transposition affects the transposition speed.	not valid

		The civil servants	If civil servants have more experience with transposition, less time is needed to transpose a directive.	not valid
		Level of corruption	The higher the level of corruption in a member state, the slower the transposition process.	not valid
	Corporatism high degree	A high degree of corporatism speeds up the transposition process.	not valid	
	Attitude towards the EU	The higher the overall support for the country's EU membership, the faster the transposition process.	valid	
	Priority of EC directives	When there is political priority for the transposition of directive, there is acceleration on the transposition speed.	valid	
	Discouragement	The higher number of Member States not transposing the directive, the more likely the transposition will be delayed.	valid	