

Collecting data on the implementation of anti- child trafficking legislation and policies

Ladies and gentlemen,

The main objective of the FRA is to provide evidence based assistance and expertise to the institutions and Member States of the European Union on fundamental rights issues, such as Trafficking in Human Beings (THB), a modern slavery and a gross violation of fundamental rights.

The FRA, which was established in 2007, started work on THB by engaging in research on child trafficking. This research applied a specific set of indicators developed as part of the FRA's child rights indicators aiming to identify the most relevant, reliable and comparable EU data available.

In regard to THB the Agency developed indicators covering four key issues, namely **victim identification, victim protection, prosecution of perpetrators** and the **prevention of trafficking**.

These indicators were applied in the Agency's report on Child Trafficking in the European Union published in July last year. Allow me very briefly to present some key results:

On victim identification:

First, regarding the **existence of a data collection mechanism**, based on a comprehensive definition of THB that includes, for example, trafficking for sexual and economic exploitation, for illegal activities, for forced marriage, for child adoption, for organ trade, etc; the research found that only eight MSs has a specific data collection mechanism in place, while three more were developing one. In addition, some data on THB is collected by the police or border guards in certain MSs.

Second, regarding the **number of children identified as trafficked** per EU MS per year, disaggregated by form of trafficking, age, gender, country of origin, disability or special needs, etc. The clandestine nature of the crime of THB and its overlap with other illegal activities, for example prostitution or smuggling, make estimating the prevalence of THB highly problematic. In addition, as Europol noted in its December 2009 report, major forms of THB, such as for labour exploitation, have traditionally not been a priority for law enforcement action, although there are actual cases, where labour trafficking takes an extreme form of slavery. The difficulties in identifying trafficking victims can be illustrated by the numbers published in some countries: For example, the UK's Human Trafficking Centre identified between April and September 2009 347 victims of human trafficking: 74% female and 30% minors under 16 years old. In Ireland the Anti-Human Trafficking Unit reported for 2009, 66 potential and suspected THB cases, 88% were female, while 26% were minors.

Third, regarding **evidence of specialised identification training** for law enforcement, welfare officers and social workers, health professionals, and NGO staff; the research found that although most MSs did offer different types of training, there was often no clear and coherent training strategy for all professional actors involved; four MSs did not offer any training at all, at least for law enforcement.

On **victim protection**:

First, regarding **evidence of a formalised best interest determination process** involving the child concerned directly; the research found that practices differ significantly among MSs: most apply the principle of the best interests according to their own legal practice based on national child protection and welfare legislation, and in some cases, e.g. in Germany, Spain, France, Italy and Ireland based on relevant case law.

Second, regarding **evidence of legal provisions ensuring a right to stay**; the research found that in almost half the MSs a residence permit is issued only if victims cooperate with the police and prosecution. However, such arrangements ignore that victims may not be in a position to cooperate with authorities and fail to address the danger that the victim may suffer reprisals if redelivered into the hands of traffickers after an unsuccessful investigation. In a significant number of MSs no children at all were granted even temporary stay on grounds of trafficking in the period 2000-2007, while ten MSs had no statistics on the number of children being granted temporary stay on grounds of trafficking.

Third, regarding **evidence of a comprehensive, formalised National Referral Mechanism**; the research found that 9 MSs had no such formalised and standardised referral system and for a further 4 MSs no information was available.

On the **prosecution of perpetrators**:

First, regarding the **number of convictions based on child trafficking cases**; the research showed that conviction statistics for child trafficking are often conflated with statistics for other offences like smuggling and prostitution making it difficult to apply this indicator. However, the available figures indicate that there are generally very few final convictions in child trafficking cases and these could be detected in only 4 MSs between 2000 and 2007, while in 5 MSs it emerges that no final convictions were issued. In one Member State no case of child trafficking was even identified and/or prosecuted. Quite often arrests do not lead to either prosecution or convictions. For example, the Pentameter 2 results for the UK show that of the 406 individuals arrested, 67 were charged with THB (not specifically related to children), but only 15 were convicted and sentenced from 9 months to 11 years.

Second, regarding **compensation paid to trafficked children**; the research found that significant differences between MSs: while the majority of MSs provide victims with the right to claim compensation, this has usually to be done through a civil claim; specific data on the amounts granted is not available with the exception of the Netherlands; providing compensation seems to be the exception rather than the rule.

On the **prevention of child trafficking**, the results of some key indicators showed in general all MSs have implemented various awareness raising activities, although these did not always prove to be effective in reaching potential child victims. Various MSs operate hotlines, helplines and websites to report trafficking cases, but only 11 MSs participate in the 116 000 European hotline number for missing children. The available funding for relevant national action plans varies considerably and specific information is not always available.

In closing I would like to underline that for the FRA the Commission's proposal represents a fundamental step forward in both combating trafficking and in protecting and assisting victims.

More specifically, Article 7 of the proposal concerning non-prosecution and non-application of penalties to the victim needs to be commended as an important improvement to the status quo. As our report has stressed a formalised policy of non-punishment is an important measure to ensure that victims can begin to trust state authorities and evade the influence of the traffickers. Also, Article 10 of the proposal on assistance and support for victims of trafficking and articles 12 to 14 specifically for child victims of trafficking are key improvements to the status quo. The definition of trafficking in Article 2 is a significant improvement reflecting our Agency's key opinions to include begging, exploitation in criminal activities and the removal of organs. In addition, the Directive could also include reference to a form of trafficking which especially affects children, namely exploitative forms of adoption.

In the context of the enlarged competences of the Union after the adoption of the Lisbon Treaty the proposed Directive could also consider the issue of migration status and related residence permits for victims of trafficking, especially children from third countries: A secure residence right for trafficking victims is the cornerstone for an effective counter-trafficking policy. The 2009 Europol OCTA report stressed that "[...] where child victims have been identified it has been observed that their willingness to cooperate with the authorities is almost non-existent." The FRA has emphasised that trafficking victims are more likely to trust authorities and escape their dependence from the traffickers, if they can be confident to have a secure right of residence. The European Commission's recent Action Plan on Unaccompanied Minors (2010-2014) notes that in the negotiations on the

revision of the asylum acquis the EU should adopt higher standards of protection for unaccompanied minors, including those trafficked.

Finally, the proposed Directive contains in Article 19 a reporting clause which tasks the Commission with submitting a report based on information received from the Member States. As our work has shown, problems in counter-trafficking are not confined to the correct transposition of legislation, but concern mainly its effective implementation on the ground. Thus Article 19 of the Proposal could explicitly ask the Commission to take into account data and information provided by the European Union Agency for Fundamental Rights together with evidence from EUROPOL, EUROJUST, FRONTEX and civil society. This would follow the example of the EU's Racial Equality Directive, where Article 17 provides a 'model' for a more comprehensive and robust information and data collection requesting that the Commission's report shall take into account, as appropriate, the views of key stakeholders, including the FRA.

Thank you for your attention