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KOMISIJA EVROPSKIH SKUPNOSTI

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SPOROČILO KOMISIJE EVROPSKEMU PARLAMENTU IN SVETU

Boj proti trgovini z ljudmi – integrirani pristop in predlogi za akcijski načrt

BOJ PROTI TRGOVINI Z LJUDMI – CELOVIT PRISTOP IN PREDLOGI ZA AKCIJSKI
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I. UVOD

Cilj tega sporočila je nadaljnja¹ krepitev zaveze Evropske unije² in držav članic preprečevanju in boju proti trgovini z ljudmi za namene spolnega izkoriščanja in izkoriščanja delovne sile, kot je opredeljeno v Okvirnem sklepu z dne 19. julija 2002 o boju proti trgovanju z ljudmi³, ter zaščiti, podpori in rehabilitaciji žrtev trgovine.

Sporočilo je osnovano na priznanju, da je za uspešno reševanje vprašanja trgovine z ljudmi potreben integriran pristop, ki temelji na spoštovanju človekovih pravic in upoštevanju globalne narave tega vprašanja. Ta pristop zahteva usklajeno politično ravnanje, zlasti na področju svobode, varnosti in pravice, zunanjih odnosov, razvojnega sodelovanja, zaposlovanja⁴, enakopravnosti med spoloma ter nediskriminacije. Prav tako ima namen okrečiti obsežen javno-zasebni dialog na tem področju.

Tako ravnanje je zahtevano v Haaškem programu⁵, ki ga je novembra 2004 potrdil Evropski svet in v katerem sta Svet in Komisija pozvana, naj v letu 2005 razvijeta načrt za skupne standarde, najboljše prakse ter mehanizme za preprečevanje in boj proti trgovini z ljudmi ter za okrepitev boja proti nezakonitemu priseljevanju⁶.

Namen tega sporočila, ki je bilo navedeno v Akcijskem načrtu Sveta in Komisije o izvajanju Haaškega programa⁷, je prispevati k vzpostavitvi tega načrta. Sporočilo upošteva celoten akcijski načrt za boj proti nezakonitemu priseljevanju in trgovini z ljudmi iz leta 2002 kot tudi posvetovanje ter priporočila, navedena v poročilu Skupine strokovnjakov za trgovino z ljudmi⁸ iz decembra 2004⁹, ki jo je Komisija ustanovila ob koncu leta 2003.

II. TEMELJNI CILJ: VARSTVO ČLOVEKOVIH PRAVIC

V središču politike EU proti trgovini z ljudmi so žrtve trgovine, njihove potrebe in pravice. To pomeni predvsem jasno zavezo institucij EU in držav članic, da bodo upoštevale *pristop, ki temelji na človekovih pravicah*, ter ga spodbujale v svojih zunanjih odnosih in razvojnih politikah.

Člen 5(3) Listine Evropske unije o temeljnih človekovih pravicah¹⁰ prepoveduje trgovino z ljudmi v okviru nedotakljivosti človekovega dostojanstva, ki je eno glavnih vodil nacionalnih ustav in mednarodnih instrumentov varstva človekovih pravic in ki so zavezujoči za države članice.

Glede na mednarodno pravo in zaveze država, ki dopušča trgovino z ljudmi ali ne sprejme nobenega učinkovitega ukrepa, da bi jo preprečila, krši človekove pravice¹¹.

Institucije EU in države članice aktivno izvajajo politike krepitve prepovedi trgovine z ljudmi, vključno z zaščito dejanskih in potencialnih žrtev na ravni EU kot tudi na regionalni in mednarodni ravni.

Državljeni tretjih držav, ki so žrtve trgovine z ljudmi a nimajo pravnega statusa bivanja v EU, ne smejo biti izključeni iz take zaščite¹², zlasti če so sodelovali s pristojnimi organi držav članic in pričali proti osebam, ki so trgovale z njimi. Poleg tega takim oseba, ne sme biti dejansko onemogočeno uveljavljanje svojih pravic, na primer za ukrepanje proti storilcu ali za uveljavljanje nadomestila ali iskanje azila.

Za zagotovitev skladnosti z zgoraj navedenimi načeli po vsej EU je bistven redni nadzor in spremljanje na strokovni ter na politični ravni.

Svet mora, v tesnem sodelovanju s Komisijo in na osnovi poglobljenega dialoga s civilno družbo¹³, vsaj enkrat na leto organizirati politično razpravo o politiki

EU boja proti trgovini z ljudmi ter ovrednotiti njeno skladnost s standardi človekovih pravic in potrebo po nadaljnjem ukrepanju, npr. izboljšanje shem pomoči, zaščite in socialnega vključevanja¹⁴.

O tem vprašanju se upravičeno razpravlja v političnem dialogu s tretjimi državami na podlagi klavzule o bistvenih elementih človekovih pravic, ki je vključena v trgovinske sporazume EU in sporazume EU o sodelovanju, ter v večstranskih forumih¹⁵.

Skupnost mora okrepiti politični dialog s partnerskimi državami na dvostranski in večstranski ravni glede dimenzije človekovih pravic v trgovini z ljudmi in politiki boja proti trgovini z ljudmi ter še naprej obravnavati to vprašanje na regionalnih in večstranskih forumih.

Evropska pobuda za demokracijo in človekove pravice je v letu 2005/2006 temu vprašanju posvetila posebno pozornost ter predvidela posebno podporo v okviru kampanje „Spodbujanje kulture človekovih pravic“.

Institucije EU in države članice morajo okrepiti prizadevanja za reševanje vprašanja trgovine z ljudmi znotraj EU in v odnosih s tretjimi državami, npr. s krepitvijo prizadevanj za podporo pobud boja proti trgovini z ljudmi preko razvojnega sodelovanja.

III. RAZSEŽNOST ORGANIZIRANEGA KRIMINALA

Trgovina z ljudmi je hudo kaznivo dejanje proti osebam¹⁶, ki ga je potrebno obravnavati kot obliko organiziranega kriminala, povezanega z drugimi hudimi kaznivimi dejanji, in kot jasno prednostno nalogo organov kazenskega pregona. Visoki dobički iz izkoriščanja delovne sile in spolnega izkoriščanja¹⁷ so pogosto predmet pranja denarja in lahko trgovcem omogočajo sodelovanje v drugih kriminalnih dejavnostih ter pridobivanje gospodarske, socialne ali celo politične moči¹⁸.

Trgovina z ljudmi se mora spremeniti iz „dejavnosti organiziranega kriminala z malo tveganja in visokim dobičkom“¹⁹ v dejavnost z veliko tveganja in nizkim dobičkom. Organi kazenskega pregona morajo uporabiti vsa razpoložljiva sredstva in zmogljivost²⁰ za uveljavitev prepovedi trgovine z ljudmi, da bi odvzeli gospodarsko korist, in da bi zasegli in zaplenili sredstva²¹, če je nastal finančni dobiček. Preiskavi trgovine z ljudmi mora zato biti pri strokovnih preiskovalnih tehnikah zagotovljena enaka prednost kot drugim področjem organiziranega kriminala in uvesti je treba specialistične preiskovalne tehnike in strategije za prekinitev.

Za učinkovit boj proti trgovini z ljudmi²² morajo države članice pri svojih organih kazenskega pregona zagotoviti potrebne organizacijske strukture²³ s specializiranim²⁴ osebjem in ustreznimi finančnimi sredstvi. Svet mora, na podlagi ocen Komisije in v okviru pristojnosti Unije, zagotavljati redn nadzor ter razvijati standarde in merila.

Trgovina z ljudmi za namene izkoriščanja delovne sile zahteva nove vrste specializacije in sodelovanja s partnerji, npr. agencije odgovorne za nadzor delovnih pogojev in finančne preiskave povezane z nepravilnostmi glede delovne sile²⁵.

Protikorupcijske strategije morajo biti sestavni del vsake politike boja proti trgovanju²⁶.

Institucije EU in države članice morajo spodbujati boj proti trgovini z ljudmi kot prednostno nalogo v odnosih med organi kazenskega pregona s tretjimi državami²⁷.

Pričanje žrtve je zelo pomemben dokaz proti trgovcu z ljudmi. Glede na povečano tveganje za žrtev, ki priča²⁸, je izziv najti načine, da bodo žrtve pripravljene pričati in hkrati zagotoviti njihovo varnost, brez da bi izpostavljali njih ali njihove svoje tveganju²⁹.

Države članice morajo zagotoviti zaščito in pomoč žrtvam, ki pričajo, kot sestavni del učinkovitega pregona in nadalje razvijati proaktivne preiskave, ki temeljijo na pridobivanju informacij in niso odvisne od pričanja žrtev³⁰.

Evropski organi razpolagajo s posebnimi pristojnostmi in specializiranim osebjem. Eurojust ima pristojnost glede trgovine z ljudmi³¹. Vloga Europol je še posebej pomembna³². Zagotavlja lahko dostop do informacij v zbirkah podatkov in nudi operativno podporo preko izmenjave informacij ter strokovnih nasvetov³³. Olajšuje izmenjavo informacij in zagotavlja operativne analize državam članicam ter pripravlja strateška poročila na podlagi informacij, ki so jih zagotovile države članice, predložil Europol ali so bile zbrane iz drugih virov. Vendar je pretok informacij od držav članic do Europol majhen v primerjavi s številom preiskav. Zdi se, da preiskave temeljijo bolj na spontanem dvo- ali večstranskem sodelovanju in da se redne strukture ter mehanizmi štejejo zgolj za možnosti. Obstaja samo en dosje analitičnega dela, ki ga v imenu držav članic upravlja Europol in se osredotoča zlasti na trgovino z ljudmi³⁴.

Države članice morajo zagotoviti, da nacionalni organi kazenskega pregona redno vključujejo Europol v izmenjavo informacij, skupne operacije in skupne preiskovalne skupine ter izrabljajo potencial Eurojusta za olajšanje pregona trgovcev z ljudmi.

Evropski načelniki policije morajo redno nadzirati operativno sodelovanje med državami članicami in, kjer je to primerno, oblikovati priporočila za njegovo izboljšanje.

Evropska policijska akademija (CEPOL) mora še naprej redno organizirati posebno usposabljanje za osebje v organih kazenskega pregona.

Institucije in organi EU kot tudi države članice morajo podpreti in okrepiti regionalne oblike policijskega sodelovanja predvsem preko programov kot je AGIS.

Samo 15 držav članic je bilo 4. avgusta 2005 pogodbenic Protokola ZN proti trgovini z ljudmi in samo 13 držav članic je bilo pogodbenic Protokola ZN o tihotapljenju migrantov. Komisija je predlagala sklenitev teh protokolov s strani Evropske skupnosti³⁵ avgusta 2003³⁶, vendar Svet zaradi nesoglasja glede obsega pristojnosti Skupnosti v zvezi z določbami teh protokolov še ni sprejel ustreznega sklepa.

Svet mora čim prej³⁷ sprejeti predlog sklepa o sklenitvi Protokola ZN proti trgovini z ljudmi v imenu ES, ki ga je 22. avgusta 2003³⁸ predložila Komisija.

Instrumenti ES za boj proti pranju denarja, zlasti za krepitev odziva kazenskega prava, kot je nova direktiva, ki jo pred kratkim predlagala Komisija, bodo oblikovali podlago za reševanje finančnih posledic trgovine z ljudmi³⁹. Nov Okvirni sklep Sveta o zaplembi premoženjske koristi, pridobljene s kaznivim dejanjem, pripomočkov za kazniva dejanja in lastnine⁴⁰ je treba v celoti uporabljati. Delo projektne skupine za finančno ukrepanje, zlasti delovne skupine za tipologije (WGTYP), ki se med drugim osredotoča na *metode pranja denarja, povezane s trgovanjem z ljudmi*, mora biti nadzirano in ocenjeno, da bi se razvile nadaljnje politične in operacijske možnosti boja proti trgovini z ljudmi.

IV. RAZSEŽNOST NEZAKONITEGA PRISELJEVANJA

Kaznivo dejanje trgovine z ljudmi ima pogosto transnacionalno razsežnost, saj se številne žrtve trgovine selijo ali pripeljejo čez zunanje meje. Zaradi tega je preprečevanje in boj proti trgovini z ljudmi bistven element prizadevanj EU za izboljšanje pregledov in nadzora na zunanjih mejah ter za okrepitev boja proti nezakonitemu priseljevanju.

Tihotapljenje migrantov in trgovina z ljudmi sta povezana z dejstvom, da ju pogosto organizirajo kriminalne združbe, ki delujejo mednarodno, in sta del organiziranega kriminalnega fenomena, povezanega s povpraševanjem po poceni in nezakonitih storitvah. Kar zadeva delovanje takih združb pri olajševanju nedovoljenega vstopa, tranzita in bivanja, igrata Direktiva 2002/90/ES z dne 28. novembra 2002⁴¹ in Okvirni sklep iz istega dne⁴² pomembno vlogo pri preprečevanju teh kriminalnih dejavnosti.

Svet je leta 2002 sprejel celovit akcijski načrt za boj proti nezakonitemu priseljevanju in trgovini z ljudmi v EU⁴³, v katerem je naveden obsežen seznam ukrepov in dejavnosti, ki segajo od vizumske politike, izmenjave informacij, ukrepov, povezanih z mejami, do vprašanj vračanja in kazenskih sankcij proti trgovcem z ljudmi. Številni ukrepi, predlagani v akcijskem načrtu iz leta 2002, so bili izvedeni⁴⁴, zlasti: (1) Direktiva 2004/81/ES z dne 29. aprila 2004⁴⁵, ki opredeljuje pogoje za izdajo dovoljenja za bivanje državljanom tretjih držav, ki so žrtve trgovine z ljudmi ali so bili vpleteni v akcije nezakonitega priseljevanja in ki sodelujejo s pristojnimi organi ter (2) Uredba (ES) št. 491/2004 z dne 10. marca 2004⁴⁶ o ustanovitvi programa AENEAS za finančno in tehnično pomoč tretjim državam na področju migracij in azila, ki izrecno omogoča sofinanciranje projektov, povezanih s preprečevanjem in bojem proti trgovini z ljudmi.

Enak celovit pristop je mogoče najti v Protokolu ZN o tihotapljenju migrantov kot tudi v Protokolu ZN proti trgovini z ljudmi⁴⁷, ki odražata globalno priznavanje problema in ju morajo vsi akterji v EU čim prej ratificirati.

Da bi se boj proti trgovini z ljudmi okrepil, je potrebno sprejeti naslednje ukrepe, povezane z nadzorom meja in upravljanjem priseljevanja:

Države članice morajo – za izboljšanje položaja žrtev trgovine z ljudmi – pospešiti prenos Direktive 2004/81/ES⁴⁸.

Komisija bo upoštevala možnost rednega organiziranja sestankov strokovnjakov iz držav članic za izmenjavo informacij o sredstvih in metodah, ki se uporabljajo za namene tihotapljenja migrantov, da bi prišli do praktičnega sklepa glede preprečevanja in boja proti trgovini z ljudmi, npr. glede novačenja in prevoza žrtev. Evropska agencija za zunanje meje (FRONTEX) in Evropska policijska akademija (CEPOL) morata biti v svojih programih usposabljanja še posebej pozorni na te fenomene.

Države članice morajo, na podlagi prihodnje Uredbe o vzpostavitvi kodeksa Skupnosti o pravilih gibanja oseb preko meja⁴⁹, zagotoviti, da bo posebna pozornost namenjena učinkovitejšim in bolj ciljno usmerjenim pregledom na zunanjih mejnih prehodih EU glede potencialnih žrtev trgovine z ljudmi. Agencija FRONTEX bo pri tej nalogi pomagala državam članicam. FRONTEX mora pri usklajevanju in organiziranju skupnih operacij ter poskusnih projektov na zunanjih mejah in pri izpolnjevanju svoje funkcije glede analize tveganja upoštevati potrebo po boju proti trgovini z ljudmi. EUROPOL in FRONTEX morata na tem področju sodelovati v okviru svojih pristojnosti.

Svet mora čim prej uvesti biometrične identifikatorje v vizumih in na dovoljenjih za bivanje EU, saj varnejši dokumenti pripomorejo k identifikaciji žrtev trgovanja.

Svet, Evropski parlament⁵⁰ in Komisija morajo v skladu s svojimi pristojnostmi čim prej dokončati razvoj skupnega vizumskega informacijskega sistema.

Konzularno osebje v državah izvora mora sodelovati in izmenjevati izkušnje ter se usposablja za prepoznavanje vlog za vizume, ki bi lahko imele za posledico trgovino z ljudmi⁵¹.

V. POSEBNE SKUPINE, ZLASTI ŽENSKÉ IN OTROCI

Spodbujanje nediskriminacije, vključno z enakopravnostjo med spoloma, pravicami otrok, domorodcev in manjšin⁵², je še posebej pomembno, saj je veliko žrtev ali potencialnih žrtev trgovine z ljudmi žensk, otrok ali posameznikov, ki pripadajo etničnim skupinam ali manjšinam, in so lahko izpostavljeni diskriminaciji v okolju, iz katerega izvirajo. Trgovina z ljudmi ni nujno kaznivo dejanje, vezano na spol, saj so moški, zlasti dečki, tudi žrtve spolnega izkoriščanja in izkoriščanja delovne sile. Vendar je trgovina z ženskami in deklicami, zlasti za dobičkonosno spolno izkoriščanje, široko razširjena.

Institucije EU in države članice morajo spodbujati na spol vezane strategije preprečevanja kot ključen element boja proti trgovini z ženskami in deklicami. To vključuje izpolnjevanje načel enakopravnosti med spoloma in odpravljanje povpraševanja po vseh oblikah izkoriščanja, vključno s spolnim izkoriščanjem in izkoriščanjem delovne sile v gospodinjstvih⁵³.

Znotraj EU je treba še naprej uporabljati programe, kot je Daphne, za finančno podporo projektom, ki obravnavajo trgovino z ljudmi kot nasilje nad otroki, ženskami in drugimi rizičnimi skupinami, medtem ko mora biti posebna pozornost usmerjena v razvojno sodelovanje.

Položaju trgovine z otroki je treba znotraj Evrope posvetiti posebno pozornost in dodatno raziskovanje. Občine, ki se soočajo s problemom prisilnega dela otrok (vključno s težakim delom v različnih industrijskih panogah (sweat shops), beračenjem, žeparstvom in prostitucijo), je treba dejavno podpirati. Rešitve za obravnavanje tega problema je treba razviti v tesnem sodelovanju z državami izvora otrok.

Kazniva dejanja, povezana s trgovino z otroki, zlasti siljenje otrok v prostitucijo ali sodelovanje v spolnih dejanjih z mladoletnimi prostitutkami, so že bila obravnavana v okvirnih sklepih Sveta o boju proti trgovini z ljudmi in boju proti spolnemu izkoriščanju otrok in otroški pornografiji⁵⁴. Vendar je stopnja usklajevanja precej omejena.

Komisija se bo leta 2006, ko bo ocenjevala izvajanje okvirnih sklepov Sveta o boju proti trgovini z ljudmi in boju proti spolnemu izkoriščanju otrok in otroški pornografiji, v svojih ocenjevalnih poročilih osredotočila na potrebo po nadaljnji krepitvi pravnega okvirja, ki posebej obravnava trgovino z otroki in s tem povezana kazniva dejanja, zlasti prisilo otrok v prostitucijo in sodelovanje v spolnih dejanjih z mladoletnimi prostitutkami, ter bo, kadar je potrebno, predložila ustrezne predloge.

Vprašanje trgovine z otroki⁵⁵ je potrebno reševati v luči Listine Evropske unije o temeljnih človekovih pravicah, ki poudarja otrokove največje koristi kot najpomembnejšo nalogo pri vseh ukrepih, ki se nanašajo na otroke⁵⁶. Konvencija o otrokovih pravicah iz leta 1989

(CRC)⁵⁷ kot najpomembnejši mednarodni instrument otrokovih pravic vključuje določbe o trgovini z otroki⁵⁸. Konvencija se uporablja za vsakega otroka, mlajšega od 18 let, kar je enak pristop, kot ga ima Komisija. Protokol ZN proti trgovini z ljudmi je treba razumeti v luči CRC, ob upoštevanju drugih ustreznih mednarodnih instrumentov, kot sta Neobvezni protokol o prodaji otrok, otroški prostituciji in otroški pornografiji z dne 25. maja 2000 ter Konvencija ILO o prepovedi najhujših oblik dela otrok in takojšnjem ukrepanju za njihovo odpravo⁵⁹, kot tudi Haaške konvencije o varstvu otrok in sodelovanju pri meddržavnih posvojitvah. Ukrepi, ki jih je na tem področju sprejelo 46 držav članic Sveta Evrope na svojem srečanju v Varšavi, morajo biti upoštevani, zlasti triletni akcijski program o otrocih in nasilju.

Institucije EU in države članice morajo zagotoviti, da politika EU glede boja proti trgovanju odraža pristop otrokovih pravic, osnovan na splošno priznanih načelih, zlasti tistih v Konvenciji ZN o otrokovih pravicah. Tak pristop je treba zato uporabljati za vsako osebo, mlajšo od 18 let. Zagotoviti je treba tudi usklajevanje z akcijskim programom Sveta Evrope (2006–2008) o otrocih in nasilju⁶⁰.

V okviru upravljanja meja je treba posebno pozornost nameniti *mladoletnikom brez spremstva* ali otrokom, ki potujejo brez spremstva neposrednega družinskega člana⁶¹, kot je določeno v pred kratkim sprejeti *Uredbi o vzpostavitvi kodeksa Skupnosti o pravilih gibanja oseb preko meja*⁶². Komisija bo kmalu⁶³ obravnavala zaščito otrok v posebnem sporočilu.

Razvojno sodelovanje mora učinkovito prispevati k reševanju žalostnega stanja otrok, žrtev trgovine, v državah v razvoju.

Komisija mora zagotoviti, da državne in regionalne strategije, kadar je to primerno in možno, okrepijo strategije obravnavanja dejavnikov, ki lajšajo trgovino z otroki, kot je nevpisovanje v matično knjigo ali pomanjkanje dostopa do osnovnega izobraževanja⁶⁴.

VI. ZANESLJIVI PODATKI

Politika EU glede boja proti trgovanju mora temeljiti na jasni podobi dejanske razsežnosti problema na ravni EU in globalni ravni⁶⁵. Vendar natančnejši podatki niso na voljo⁶⁶ in podatki organov kazenskega pregona, čeprav so pomembni, ne zadostujejo⁶⁷. Svet je leta 2003 pozval Komisijo in države članice, naj spodbujajo ukrepe za vzpostavitev sistema nadzora trgovine z ljudmi, da bi nacionalni organi s stalnim in rednim zbiranjem zagotovili posodobljene podatke⁶⁸. Ob upoštevanju statističnega akcijskega načrta iz leta 2003⁶⁹ in podatkov Eurostata s področja migracij⁷⁰, ki zajemajo nekatere vidike tega pojava, je prvi korak za skladen statističen sistem sistematično zbiranje in analiza podatkov – razčlenjenih po starosti, spolu in drugih ustreznih vidikih⁷¹ – iz različnih virov, na podlagi splošnih smernic, centraliziranih na nacionalni ravni. Kadar se podatki na državni ravni ustrezno zbirajo, je bistveno, da se zbirajo in primerjajo na evropski ravni⁷², kot je tudi pomembno sodelovanje s tretjimi državami, mednarodnimi organizacijami in nevladnimi organizacijami na ravni EU¹ in globalni ravni. Države članice morajo imeti na razpolago neodvisne institucije, npr. nacionalni poročevalci ali uradi s sistematičnim zbiranjem podatkov, vključno od nevladnih organizacij, in z nadzorovanjem učinkov nacionalnih akcijskih načrtov.

Komisija bo upoštevala obstoječe organe na ravni EU in morebitno prihodnjo vlogo Eurostata v zvezi s proučevanjem možnosti zbiranja in primerjave ustreznih podatkov na državni ravni, da bi se tako na ravni EU zagotovil primeren nadzor.

Bodoča Agencija Evropske unije za temeljne pravice⁷³ mora – v skladu s svojimi pristojnostmi in v tesnem sodelovanju z bodočo Evropsko migracijsko mrežo (EMN)⁷⁴ kot tudi s skupino strokovnjakov za trgovino z ljudmi – zbirati in analizirati podatke o trgovini z ljudmi. V sodelovanju s Komisijo in državami članicami mora razvijati metode za izboljšanje primerljivosti in zanesljivosti podatkov na evropski ravni.

Skupnost in države članice morajo v svojih odnosih s tretjimi državami (zlasti v razvoju) in ključnimi mednarodnimi organizacijami spodbujati tak pristop.

VII. USKLAJEVANJE IN SODELOVANJE

Potrebne so⁷⁵ primerne strukture usklajevanja in sodelovanja, ki pa se od države do države lahko razlikujejo, dokler zagotavljajo učinkovito uresničevanje glavnih ciljev politike boja proti trgovanju, zlasti pravilno identifikacijo in napotitev žrtev trgovanja na mehanizme zaščite in podpore. Te strukture morajo združiti in vzpostaviti ravnotežje med različnimi interesi vključenih institucij in organizacij.

Javno-zasebno sodelovanje

Organizacije civilne družbe igrajo po vsej EU in po celem svetu ključno vlogo pri pomoči žrtvam trgovanja⁷⁶. Odnos med temi organizacijami, nadalje organizacijami delodajalcev in organi kazenskega pregona, temelji na medsebojnem razumevanju in zaupanju.

Države članice morajo utrjevati sodelovanje javnih organov z organizacijami civilne družbe, povezanimi s preprečevanjem in bojem proti trgovini z ljudmi, npr. z določitvijo vzajemno dogovorjenih pravil, ki spodbujajo medsebojno razumevanje in zaupanje. Kadar je to primerno, je treba vključiti tudi organizacije delodajalcev in predstavnike posebnih industrij.

Komisija bo nadaljevala in krepila dialog z organizacijami civilne družbe na tem področju, zlasti s pomočjo skupine strokovnjakov za trgovino z ljudmi in foruma o organiziranem kriminalu.

Svet mora, poleg prispevka Komisije, sprejeti smernice EU in/ali evropski vzorčni protokol o sodelovanju⁷⁷, da bi se tovrstno sodelovanje olajšalo po vsej EU in v tretjih državah.

Sodelovanje na državni ravni

Skupina strokovnjakov daje poseben poudarek vzpostavitvi *nacionalnih mehanizmov za napotitev kot instrument nacionalnega sodelovanja*⁷⁸, kot je priporočeno že v akcijskem načrtu OVSE glede boja proti trgovini z ljudmi⁷⁹.

Države članice morajo proučiti možnost glede vzpostavitve nacionalnih mehanizmov za napotitev, ki zagotavljajo identifikacijo in napotitev žrtev trgovanja, v zvezi s tem bi lahko tudi struktura vladnega sodelovanja pripravila, uskladila in ovrednotila nacionalne politike in prispevala k mehanizmu, ki obravnavajo posamezne pritožbe⁸⁰.

Sodelovanje na ravni EU

Mehanizmi sodelovanja in usklajevanja na državni ravni morajo sestavljati podlago za ustrezen mehanizem na ravni EU, ki bi zagotavljal strokovne nasvete in obsežen javno-zasebni dialog⁸¹.

Komisija bo proučila ustrezen mehanizem usklajevanja in sodelovanja na ravni EU, ki zagotavlja razvoj minimalnih standardov in meril, ocenjevalne kroge politik držav članic glede boja proti trgovanju ter navedbo področij prednostnega ukrepanja, zlasti glede podpore in zaščite žrtev.

*Sodelovanje z državami izvora, tranzitnimi državami in ciljnim državami*⁸²

Komisija bo v okviru programa AENEAS, in kadar je to primerno in možno, nadaljevala z usmerjanjem drugih tematskih ali geografskih sredstev Skupnosti za delovanje v tretjih državah s ciljem preprečevanja in boja proti trgovini z ljudmi, zaščite in pomoči žrtvam ter spodbujanja sodelovanja med temi državami in EU.

Kadar je ustrezno, mora Komisija zagotoviti, da se trgovina z ljudmi ter politični okvir boja proti trgovini z ljudmi in strategije za njegovo preprečevanje ter zmanjšanje ocenijo v strategijah o zmanjševanju revščine, državnih ter regionalnih strategijah in okvirnih programih in njihovih pregledih.

Skupnost mora – zlasti preko razvojne politike EU, ki se osredotoča na doseganje primarnega cilja zmanjšanja revščine in razvojnih ciljev novega tisočletja – še naprej financirati ukrepe, ki obravnavajo dejavnike, zaradi katerih so osebe izpostavljene trgovini z ljudmi, npr. revščina, pomanjkanje dostopa do osnovnega in visokega izobraževanja, razlike med spoloma, odrekanje pravice do državljanstva, diskriminacija ter pomanjkanje dostopa do storitev in enakih možnosti.

Sodelovanje na regionalni in globalni ravni

Sodelovanje je treba na globalni ravni⁸³ dodatno okrepiti, zlasti s spodbujanjem in nudenjem pomoči tretjim državam za hitro ratifikacijo in izvajanje *Protokola ZN proti trgovini z ljudmi* in s podpiranjem dela Posebnega poročevalca ZN za vprašanje trgovine z ljudmi, predvsem ženskami in otroki.

Komisija bo še naprej sodelovala s Svetom Evrope⁸⁴ in OVSE, zlasti v okviru *zavezništva proti trgovini z ljudmi*, ki ga je začel Posebni predstavnik OVSE glede boja proti trgovini z ljudmi.

Institucije EU in države članice morajo

- **še naprej sodelovati z zadevnimi mednarodnimi organizacijami, npr. ZN, OVSE in Svet Evrope; Unija bo izkoristila zlasti strokovna znanja Sveta Evrope na področjih, na katerih se v okviru njegove pristojnosti⁸⁵ zahteva ukrepanje.**
- **osredotočiti se na ustrezne mehanizme usklajevanja in sodelovanja, ki temeljijo na ustreznih mednarodnih instrumentih.**
- **še naprej spodbujati regionalne pobude, ki bi lahko dopolnile in navdihnile široko sodelovanje EU, npr. nordijsko baltska projektna skupina proti trgovini z ljudmi⁸⁶, pobuda sodelovanja v jugovzhodni Evropi⁸⁷, vseevropski budimpeštanski postopek⁸⁸, dialog „5+5“ med državami zahodnega Sredozemlja⁸⁹ in sredozemski dialog o tranzitnih migracijah⁹⁰.**

PRILOGA

Endnotes

¹ Regarding previous measures at EU level reference has to be made to three communications in 1996, 1998 and 2000 - COM (96) 567 final of 20.11.1996; COM (98) 726 final of 9.12.1998; COM (2000) 85 final, Brussels, 21.12.2000 - as well as to a number of legislative proposals from the Commission, which formed the basis of important EU/EC legislation:

Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1);

Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.1.2004, p. 44);

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

Other legal acts that strengthened the standing of victims in criminal proceedings and compensation procedures are particularly relevant for the fight against trafficking in human beings:

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 1);

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

The Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women stressed the need to, inter alia, eradicate gender inequalities (OJ C 260, 29.10.2003, p. 4).

Furthermore, the EU counter-trafficking policy has become an essential part not only in the area of freedom, security and justice but also regarding employment and social affairs, EU enlargement, external relations (Stabilisation and Association Process, Partnership and Cooperation Agreements with NIS, Action Plans against Organised Crime with Russia (2000) and on Justice and Home Affairs with Ukraine (2002), the European Neighbourhood Policy, the Euro-Mediterranean Partnership) and development (such as the Cotonou Agreement (2000) and the EU-Africa Dialogue).

Since 1996 considerable funding has been allocated to projects promoting the prevention of and the fight against trafficking in human beings in EU Member States and third countries, but to a lesser extent in Developing Countries:

STOP (1996-2000) and STOP II (2001-2002), a programme of incentives, exchanges, training and cooperation for persons responsible for combating trade in human beings and the sexual exploitation of children (OJ L 322, 12.12.1996, p. 7; OJ L 186, 7.7.2001, p. 7):

AGIS (2003-2007), a framework programme on police and judicial cooperation in criminal matters (OJ L 203, 1.8.2002, p. 5):

Daphne (2000-2003) and Daphne II (2004-2008) programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (OJ L 34, 9.2.2000, p. 1; OJ L 143, 30.4.2004, p. 1):

EQUAL: Guidelines for the second round. Communication from the Commission establishing the guidelines for the second round of the Community Initiative EQUAL concerning transnational co-operation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market - Free movement of good ideas (COM/2003/840), in particular Chapter 7.2.

For instance: Under the Tacis programme (NIS) about € 10M have been allocated over the period 2002-2004 (Belarus, Moldova, Ukraine, Russia, for specific anti-trafficking of human beings projects focussing on prevention, prosecution and protection. Under the 8th ACP programme, Benin has benefited from a € 2M project against trafficking in children. € 5M have been allocated for South Africa.

² Hereinafter referred to as EU.

³ Article 1(1) of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1):

“1...the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

(a) use is made of coercion, force or threat, including abduction, or

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory

labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.”

This definition reflects the elements of the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (UN Trafficking Protocol) but excludes trafficking in human beings for the removal of organs. This aspect will be looked at by the Commission in more detail in the light of a Europol report on trafficking in human organs.

⁴ More and more attention is paid to trafficking in human beings for the purpose of labour exploitation. See Report (Note 6, below), e.g. Recommendations 29, 73 and Chapter 2, especially page 52; furthermore ILO: A Global Alliance against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2005.

⁵ The Hague Programme on strengthening the area of freedom, security and justice; (OJ C 053, 03/03/2005 p.1).

⁶ The Hague Programme on strengthening the area of freedom, security and justice - paragraph 1.7.1 *in fine*; (OJ C 053, 03/03/2005, p.7).

⁷ Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union – 5th hyphen letter c) (OJ C 198, 12.08.2005, p.14).

⁸ Established by the Commission in 2003 (OJ L 79, 26.3.2003, p. 25; OJ C 205, 30.8.2003, p. 3.) further to the Brussels Declaration of 2002 on Preventing and Combating Trafficking In Human Beings (OJ C 137, 12.6.2003, p. 1.); hereinafter referred to as Experts Group.

⁹ Report of Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004); hereinafter referred to as Report; published on the website of the Commission, DG JLS:

http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm.

¹⁰ OJ C 364, 18.12.2000, p. 9. According to Explanations relating to the Charter, Article 5 (3) stems directly from human dignity and takes into account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. On the other hand, one has to take into account the non-binding legal status of the Charter and that according to a classical doctrine only States could violate individual human rights. The Charter’s provisions are addressed to the Member States only insofar as they are implementing Union law. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union.

¹¹ At least seven International Conventions related to the prevention of human trafficking have been signed and mostly ratified by EU Member States (Convention on the Rights of the Child with the Optional Protocol, The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, Palermo Convention against Transnational Organised Crime and Trafficking Protocol, ILO Convention No 182 and the Convention on Eradication on all forms of Discrimination Against Women). and advocate for further provisions not ratified as yet e.g. addressing trafficking in human organs and tissues. A reference has to be made as well to “The European Convention on Human Rights and Biomedicine, 1997” and the Additional protocol concerning Transplantation of Organs and Tissues of Human Origin (2002), whose Article 22 concerns trafficking in organs and tissues.

Furthermore the Rome Statute of the International Criminal Court extends the jurisdiction of the Court on the enslavement as a crime against humanity. Enslavement is defined as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children” (Article 7.2).

Recital 3 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings points out that it comprises serious violations of fundamental human rights; OJ L 203, 1.8.2002, p. 1.

¹² See also Report, recommendations 17, 114.

¹³ See Report, recommendation 10 concerning the development of a “human rights impact assessment model” in cooperation working with trafficked persons and human rights institutions.

¹⁴ See Report, recommendations 89 – 115.

¹⁵ Such as the UN Commission on Human Rights (CHR) and UN General Assembly Third Committee. At the annual sessions of the Third Committee and CHR in 2004, the EU co-sponsored resolutions on Trafficking in women and girls and the resolution on the rights of the child which incorporates aspects relating to trafficking. The CHR also appointed a new Special Rapporteur on Trafficking.

¹⁶ See endnote 1, which refers to the definition in Article 1 of the Council Framework Decision on combating trafficking in human beings.

¹⁷ See also: Trafficking in human beings for sexual exploitation : A Europol perspective <http://www.europol.eu.int/publications/SeriousCrimeOverviews/2004/THB.pdf>;

Furthermore, for labour exploitation: ILO, A Global Alliance against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2005, e.g. page 46, no. 221.

¹⁸ Further to the Framework Decision on combating trafficking in human beings and the one on sexual exploitation of children and child pornography (OJ L 203, 1.8.2002, p. 1; OJ L 13, 20.1.2004, p. 44) Member States are adapting their legislation, including punishment by terms of imprisonment if the offence has been committed in aggravated circumstances: Article 3 of the Council Framework Decision on combating trafficking in human beings; Article 5 of the Council Framework Decision on combating the sexual exploitation of children and child pornography. Different approaches prevail regarding the legalisation or criminalization of the purchase of sexual services in general or the criminalisation of the purchase of sexual services of forced prostitutes (see f.i. Sweden: Law That Prohibits the Purchase of Sexual Services, see also Gunilla Ekberg, The Swedish Law That Prohibits the Purchase of Sexual Services, in Violence Against Women, Vol. 10 No. 10 October 2004, p. 1187-1218.).

¹⁹ Trafficking in Human Beings: A Europol Perspective – January 2004, p. 1. Published:

<http://www.europol.eu.int/publications/SeriousCrimeOverviews/2004/OverviewTHB2004.pdf>

²⁰ The Experts Group (Report, recommendation 118) advises to continuously devote a certain percentage of these resources to the fight against trafficking in human beings.

²¹ Report, p. 118.

²² Report, recommendations 117, 118.

²³ The Experts Group refers to the Italian Direzione Investigativa Antimafia and the French Office central pour la repression de la traite des êtres humains (OCRTEH) as best practices. Report, p. 122.

²⁴ For possible guidance see Report, p. 122.

²⁵ Report, recommendation 116.

²⁶ Report, p. 125 and recommendation 122.

²⁷ Notably in line with the so-called “Libreville Declaration,” http://www.acpsec.org/fiji/gabon/final_gb.htm.

²⁸ Stressed on several occasions, e.g. in No. 14, fourth, sixth and last indent, of the Brussels Declaration (OJ C 137, 12.6.2003, p. 7, 8); Report, p.119.

²⁹ Report, p. 111-114, 119.

³⁰ However, relevant measures should not be misinterpreted and used to legitimise or suggest a disregard for the need to protect and assist a victim of trafficking. Report, p. 123 and recommendation 119.

³¹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, Article 4(1); OJ L 63, 6.3.2002, p. 1.

³² The general competence of Europol covers trafficking in human beings (Art. 2(2) of the Europol Convention).

³³ At international level Interpol offers similar services, see <http://www.interpol.int/Public/THB/default.asp>.

³⁴ Within another Analytical Work File there is a possibility for Europol to collect and store data depending upon the nationality of the trafficker.

³⁵ Hereinafter referred to as EC.

³⁶ COM (2003) 512 final of 22.8.2003.

³⁷ On the basis of Articles 62 (2) and 63 (3), in conjunction with 300 (2) and (3) TEC.

³⁸ COM (2003) 512 final of 22.8.2003.

³⁹ Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004) 448 final, Brussels, of 30.6.2004).

⁴⁰ OJ L 68, 15.3.2005, p. 49. Article 3, which provides for extended powers of confiscation under certain conditions, refers to the Framework Decision on combating trafficking in human beings.

⁴¹ OJ L 328, 5.12.2002, p. 17.

⁴² OJ L 328, 5.12.2002, p. 1.

⁴³ OJ C 142, 14.6.2002, p. 23.

⁴⁴ The most recent overview on the state of implementation is to be found in the Commission’s 2004 annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents, SEC (2004) 1349 final of 25.10.2005.

⁴⁵ OJ L 261, 6.8.2004, p. 19.

⁴⁶ OJ L 80, 18.3.2004, p.1.

⁴⁷ UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime; signed in Palermo on 12 to 15 December 2000 by all EU Member States and the European Community.

⁴⁸ Deadline for transposition according to the act: 6 August 2006.

⁴⁹ A new regulation (“Border Code”), which will be based on the Commission proposal COM (2004) 391 final of 26 May 2004, will seek to clarify, restructure, consolidate and develop existing legislation on border controls on persons, which have been developed within the Schengen intergovernmental framework and integrated into the Treaty since May 1999.

⁵⁰ Hereinafter referred to as EP.

⁵¹ See Report, Recommendations 68 and 76.

⁵² The UN Committee on the Rights of the Child has stressed in several occasions the vulnerability of children belonging to minorities notably because of poor access to education and lack of birth registration. The Permanent Forum on Indigenous Issues in its session of 2003 recommended to the UN system to address the issue of trafficking of indigenous women and girls as a matter of concern.

⁵³ See UN Trafficking Protocol, Article 9 (5); furthermore: Resolution of the UN Commission on the Status of Women (CSW) of 11 March 2005 on Eliminating Demand for Trafficked Women and Girls for All Forms of Exploitation.

⁵⁴ OJ L 203, 1.8.2002, p. 1; OJ L 13, 20.1.2004, p. 44.

⁵⁵ Seriousness and extent of child trafficking for sexual and economic exploitation (child labour, prostitution, pornography, cheap labour, begging, pick pocketing, drug selling, organ trafficking, etc.) as well as for illegal adoption (Report, p. 67, 68) became clear, inter alia, at a Roundtable on EU Action against Child Trafficking and Related Forms of Exploitation, on 26 May 2004 under the auspices of the EU Forum for the Prevention of Organised Crime (Supported by the UNICEF Innocenti Research Centre, the International Federation Terre des Hommes, Save the Children and Child Focus, which were able to base their presentations on a number of research projects, for example, International Federation Terre des Hommes, Kids as commodities? Child Trafficking and What to about it, by Mike Dottridge, 2004, and Lost Kids, Lost Futures, The European Union’s Response to Child Trafficking, by Mirjam van Reisen and Ana Stefanovic, 2004; ECPAT, Joint East West Research on Trafficking in Children for Sexual Purposes in Europe: The Sending Countries, by Murieann O’Briain, Anke van den Borne, Theo Noten, 2004; IOM Report on Trafficking in Unaccompanied Minors in Ireland, by Dr. Pauline Conroy, 2004; UNICEF Innocenti, Trafficking in Human Beings, Especially Women and Children, in Africa, 2003, and Child Trafficking in West Africa: Policy Responses, 2002. Presentations and conclusions of the Roundtable are published on the website of the Commission, DG JLS:

http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.htm

More recently, developments caused by HIV/AIDS epidemic and complex emergencies and natural disasters like the Tsunami disaster in the Indian Ocean in December 2004 have recalled the specific vulnerability of children to trafficking. For further information: UNICEF Innocenti, <http://www.childtrafficking.org/>; Save the Children, <http://www.savethechildren.org/>; or Terre des homes, <http://tdh.ch/cms/index.php?&L=0>.

⁵⁶ Article 24 (2) of the Charter. Moreover, anti trafficking legislation as adopted in the first and the third pillar of the EU includes specific provisions on children. Articles 1 (3) and (4), 3 (2)(b), 7 (2) and (3) of the Council Framework Decision on combating trafficking in human beings; Council Framework Decision on combating the sexual exploitation of children and child pornography; Articles 2 (f) and 10 of Council Directive 2004/81/EC of 29 April 2004. These provisions recognise the more limited capacities of children to fully understand the consequences of their actions. Even when a child agrees to be trafficked and/or exploited, consent cannot be assumed and should never be used against the child. In the case of children the use of force, coercion or deception is not required for a trafficking offence.

The Commission, within its competencies, will strengthen the financial support for projects specifically addressing child trafficking. In particular, the Daphne II Programme will up to 2008 continue to support European organisations that develop measures and actions to prevent or to combat all types of violence against children and to protect the victims and groups at risk.

⁵⁷ Hereinafter referred to as CRC. More detailed information concerning contents and status of ratification on the websites of UNHCHR (<http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>) or UNICEF (<http://www.unicef.org/crc/crc.htm>).

⁵⁸ According to the CRC children are not only (real or potential) victims in need of protection but they also have rights that are clearly set out in the CRC: the promotion of the best interests of the child (Art. 3), the non-discrimination principle (Art. 2), the right to participate (Art. 12), the right to survival and development (Art. 6). The views of the child must be given due weight in accordance with his/her age and maturity in consistence with Article 12 of the CRC. The CRC contains specific provisions (Articles 32, 33, 34, 35, 36) dealing with exploitation, abuse and trafficking. With regard to the definition of “exploitation” the CRC states the right of the child to be protected from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” as well as from all forms of sexual exploitation and sexual abuse, in particular the

exploitation of children in prostitution or pornography. Other relevant articles include the right to protection of children deprived of their family (Art. 20) and the non use of detention (Art. 37).

⁵⁹ Report, p. 69. Other relevant international instruments are:

Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000. Contents and status of ratifications: <http://www.unhchr.ch/html/menu2/dopchild.htm>. The Report (p. 68) points out that it goes further than the UN Trafficking Protocol as it includes crimes that are not of a transnational nature and that do not involve organised criminal groups and it also covers the transfer of organs and illegal adoption. Additionally, it states that the consent of the child is not relevant as long as the overall objective is the exploitation of the child. ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182 (1999). Full text and status/ratifications of the Convention on the ILO website under: <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>. Child forced labour is one of the main causes and consequences of Human trafficking. Harmonisation of relevant legislation at regional level might also be beneficial for freeing child labourers and stop trafficking. On this specific aspect an important initiative, the Libreville Declaration, supported by the European Commission and by the ILO IPEC (International Programme for the Elimination of Child labour) took place in February 2003. Ministers from Benin, Burkina Faso, Cameroon, Ivory Coast, Gabon, Mali and Togo joined forces to denounce the issue of child-trafficking in French-speaking West and Central Africa. The meeting focused on the necessity of harmonising legislations at national level in those specific African regions in order to fight trafficking of children and child labour.

⁶⁰ We will take specific action to eradicate all forms of violence against children. We therefore decide to launch a three year programme of action to address social, legal, health and educational dimensions of various forms of violence against children. We shall also elaborate measures to stop sexual exploitation of children, including legal instruments if appropriate and involve civil society in this process.” (Warsaw Summit Action Plan).

⁶¹ See Report, recommendations 85, 86.

⁶² See FN 60. In the new “Border Code” , the provisions on external border controls have been strengthened, by specifying that further investigation shall be carried out by border guards when “there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them”.

⁶³ End 2005/beginning 2006

⁶⁴ The EU can rely on a solid framework of international obligations and commitments as a basis for such engagement: in addition to the almost universal ratification of the CRC and substantial ratifications of other instruments by third countries, 190 national delegations to the UN General Assembly Special Assembly made specific commitments to eliminate trafficking and sexual exploitation of children.

⁶⁵ See Report, Recommendations 35 – 42.

⁶⁶ Neither the Commission nor Europol nor any other EU mechanism, such as CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration, set up by a decision of the Ministers responsible for immigration on 30 November and 1 December 1992..), is able to publish precise figures about the EU-wide extent of trafficking in human beings. Although the CIREFI data collection contains a category on facilitated aliens including, but not solely relating to, those who have been trafficked, it is currently impossible to distinguish between trafficked and non-trafficked persons and so the usefulness of this data collection for tracking the human trafficking phenomenon is rather low. Europol stated that the nature of the crime makes it difficult to estimate exactly how many victims are trafficked in the EU as well as the rest of the world but there are reasons to believe that they should be counted in the hundreds of thousands of thousands. The assumptions underlying present estimates of the extent at European or global level are however unclear. See Frank Laczko (IOM), Human Trafficking: The Need for Better Data, November 1, 2002, Migration Information Source, published under: <http://www.migrationinformation.org/Feature/display.cfm?ID=66>

⁶⁷ Data on trafficking in human beings should not only facilitate an assessment of law enforcement activities but of the entire anti-trafficking policy including measures related to prevention, to protection and support of victims or to the impact of voluntary or forced return. Therefore, it is also important to know, for example, how many trafficked persons benefited from support provided by civil society organisations, how many benefited from a residence permit and under what conditions, how many returned to their countries of origin and what happened to them after three, five or even more years. Finally, it might be useful to know the financial implications of anti-trafficking measures.

⁶⁸ OJ C 260, 29.10.2003, p. 4.

⁶⁹ COM (2003) 179 final of 15.4.2003.

⁷⁰ See the Commission’s proposal for a Regulation on Community statistics on International migration and asylum, COM (2005) xxx of xx July 2005.

⁷¹ For instance, data disaggregated by ethnicity may provide empirical evidence to what extent ethnic minorities or indigenous peoples fall more easily victim to human trafficking and may allow conclusions regarding the discrimination of such groups. Furthermore, UNICEF has stressed that when traditional community bonds are eroded by lack of effective official protection and economic marginalization, indigenous women and children may be particularly at risk, especially those in remote rural areas or close to national borders (“Ensuring the rights of indigenous children”, Innocenti Research Centre, 2004)

⁷² Report, chapter 3.8, p. 76 and chapter 3.8.1, p. 77, in particular recommendations 35-37.

⁷³ Communication from the Commission, The Fundamental Rights Agency, A public consultation document, Brussels, 25.10.2004, COM (2004) 693 final.

⁷⁴ Project under preparation of Commission services.

⁷⁵ Report, Chapter 3.6. Stressed in the Brussels Declaration (OJ C 137, 12.6.2003, p. 3) and recognised by UN (Articles 10 and 11 of the UN Trafficking Protocol), OSCE (Ministerial Council, Decision No. 2/03, Combating Trafficking in Human Beings, 2 December 2003; Decision No. 13/04 The Special Needs for Child Victims of Trafficking for Protection and Assistance, 7 December 2004), Council of Europe Convention on Action against Trafficking in Human Beings adopted by the Committee of Ministers on 3 May 2005 (http://www.coe.int/T/E/human_rights/trafficking/).

⁷⁶ The useful role of victim support organisations has already been recognised in Article 13 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 4.). In number 6 (d) of its Conclusions of 8 May 2003 the Council urges Member States to provide assistance, where appropriate, in close cooperation between state authorities and independent specialised organisations (NGOs) and to encourage further development of the sharing of best practices (OJ C 137, 12.6.2003, p. 1). A workshop under the auspices of the EU Forum for the Prevention of Organised Crime on 30 June 2003 demonstrated that both trafficked persons and law enforcement agencies can benefit from the involvement of civil society organisations

(http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum2003_en.htm). Some Member States have established mechanisms based on specific criteria to formally recognise or register civil society organisations that are involved in relevant public-private cooperation and entrusted with particular task. In other Member States the cooperation is less regulated. However, replies to a questionnaire of the Commission (Council Working Document 11793/03 CRIMORG 57 MIGR 73) showed that in many EU Member States competent authorities cooperate in a more or less systematic and regular way with civil society organisations.

⁷⁷ See also no. 13, ninth indent of the Brussels Declaration, OJ C 137, 12.6.2003, p. 7. as well as G. Vermeulen and H. De Pauw, Cooperation between civil society organisations and law enforcement services in the area of missing sexually exploited children, Possibilities and limits from a European perspective, Antwerp-Apeldoorn 2004, in particular p. 85-94. Although focusing on sexually exploited and missing children the proposals made for such protocols should be taken into account in the context of trafficking in human beings.

⁷⁸ See Report, Chapter 3.6.1 and Recommendations 35-37.

⁷⁹ Endorsed by the OSCE, Ministerial Council, Decision No. 2/03, Combating Trafficking in Human Beings, 2 December 2003; more detailed information in: National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, Warsaw 2004.

⁸⁰ See Report, recommendations 30, 31, 34.

⁸¹ The Experts Group proposed a European Anti Trafficking Network. See Report, recommendation 33 and Explanatory Paper 6. Such network shall consist of contact points designated by each Member State and by the Commission, include governmental and non-governmental agencies and cover the areas of prevention and victim assistance as well as law enforcement and police and judicial cooperation. The Experts Group refers to the example of the European Crime Prevention Network (Council Decision of 28 May 2001 setting up a European crime prevention network, OJ L 153, 8.6.2001, p.1; more detailed information: http://europa.eu.int/comm/justice_home/eucpn/home.html). Other options are the use of existing bodies such as Experts Group itself or the EU Forum for the Prevention of Organised Crime.

⁸² See also European Parliament resolution of 28 April 2005 on the Annual Report on Human Rights in the World 2004 and the EU's policy on the matter (2004/2151(INI))”, in particular no. 184, 185

⁸³ A tripartite plus meeting in 2003, convened by UNOG, was extremely helpful and facilitate the coordination between all the organisations that are active in this area. For more detailed information:

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/6031593A6D26A507C1256CD1003BA09D?opendocument>

<http://www2.unog.ch/news2/documents/newsen/dg0310e.htm>

⁸⁴ In this regard it has to be recalled that, on 3 May 2005, the Committee of Ministers of the Council of Europe adopted a Convention on action against trafficking in human being. This Convention has been opened for signature at the Summit of Council of Europe Heads of State and Government held in Warsaw on 16 and 17 May 2005. It has so far (July 2005) been signed by 15 States, including 8 EU Member States (Austria, Cyprus, Italy,

Luxembourg, Malta, Poland, Portugal, Sweden). It is not yet in force which requires 10 ratifications, including by 8 Council of Europe Member States.

⁸⁵ Guidelines on the relations between the Council of Europe and the European Union, adopted as part of an Action Plan in the Third Summit of the Council of Europe in Warsaw, 16 – 17 May 2005.

⁸⁶ This initiative was set up in 2002 at political level with emphasis on practical measures and the achievement of tangible results. According to the terms of reference a state secretary or the equivalent should represent each participating country as enhancing the treatment of the issue on a political level belongs to the three main objectives of the initiative. More detailed information, including the terms of reference and already adopted recommendations, on website of the Task Force:

http://www.against-trafficking.org/templates/news.aspx?page_id=251.

⁸⁷ SECI, for more detailed information: <http://www.secicenter.org/html/index.htm>.

⁸⁸ For more information:

<http://www.icmpd.org/default.asp?nav=budapest&folderid=376&id=49&subfolderId=245>.

⁸⁹ This dialogue, which has been launched in 1990, brings together the Governments of France, Italy, Spain, Portugal, Malta, Mauritania, Morocco, Algeria, Tunisia and Lybia, and it serves the purpose to hold annual meetings at ministerial level to discuss trans-mediterranean issues of mutual interest. At their annual meeting in Malta on 30 June 2005, it was agreed to deepen and speed-up the cooperation on combating illegal immigration.

⁹⁰ For more information : <http://www.icmpd.org/default.asp?nav=budapest&folderid=362&id=-1>.