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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.10.2008
COM(2008) 657 final

COMMISSION WORKING DOCUMENT

**Evaluation and monitoring of the implementation of the EU Plan on best practices,
standards and procedures for combating and preventing trafficking in human beings**

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This paper responds to the request from the Council contained in the Council conclusions adopted by the JHA Council on 8-9 November 2007, which called for the Commission to issue of an "evaluation and monitoring report of the EU Plan¹, with a view to ensuring that action against human trafficking will continue in 2008". In December 2007, the Commission circulated a questionnaire to Member States asking for updated information on the implementation of national anti-trafficking policies. Other bodies responsible for implementing some of the actions provided for by the Action Plan were also consulted.

This paper gives an overview of anti-trafficking measures in the EU area and Norway. The first section examines the state of play of anti-trafficking policy in the Member States; the second section looks at the implementation of actions by EU bodies; the third puts forward indications for the continuation of anti-trafficking measures.

1. THE STATE OF PLAY OF ANTI-TRAFFICKING POLICY IN THE EU MEMBER STATES AND NORWAY

The following is an analysis of the replies to the Questionnaire circulated by the Commission. 23 EU Member States and Norway provided answers.²

1.1. National legislation

Trafficking for the purpose of sexual exploitation has been targeted since 1997. All EU countries have now recognised this form of trafficking as a specific criminal offence, different from exploitation of prostitution, and punished more severely.

Approximation of legislation is also underway in the field of trafficking for labour exploitation, which consists of the recruitment and transfer of people and their subsequent exploitation in coercive or inhuman conditions.

Legislation on victims' support has also been introduced in a number of countries. However, the protection of victims from prosecution or criminal sanctions for offences committed as a consequence of their situation as trafficked persons appears to be insufficient. In addition, the lack of victims' assistance schemes indicates the need for more effective regulation (see section 1.4.).

1.2. Prevention

Many countries have undertaken actions targeting prevention, some in cooperation with NGOs - information and awareness raising campaigns, and training for law

¹ EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, OJ C 311, 9.12.2005.

² All the figures included in the replies are contained in Annex. With a few exceptions, namely Sweden and Belgium, the figures are not gender-sensitive. Many countries do not dispose of disaggregated figures for children. It is not always clear if the requested figures are not available or if there are no cases.

enforcement agencies, in particular Instruments used on a lesser scale seem to be radio and TV broadcast. Much less has been done in the countries of origin of victims. Long-term preventive measures are still insufficient, especially measures aimed at promoting gender equality.

1.3. Investigation and Prosecution

In 2006, the highest figures concerning investigation and prosecution of trafficking for the purpose of sexual exploitation were recorded in AT (128), BE (291), BG (291), DE (353), IT (214), PT (65), and UK (54). The total number of cases investigated in the EU was 195 in 2001, 453 in 2003, 1.060 in 2005, and 1.569 in 2006.³ Despite the upward trend, the number of criminal proceedings is still not high enough to reflect the presumed scale of the crime, especially given the fact that about 500.000 people might be trafficked to Europe every year according to IOM estimates. In 2006, 180 cases were recorded of this offence being committed against children.⁴ As regards trafficking for labour exploitation, the legislative framework has been recently completed, and thus implementation is even less advanced. The conclusion has to be that , trafficking in human beings is still a low-risk crime concerning both trafficking for sexual and labour exploitation

Many countries have bilateral agreements for the exchange of investigative information and police cooperation in general. Joint investigation teams are a rarity.. However, other forms of police cooperation have recently been put in place in a number of countries (CY, HU, IT, LV, LT, NL, SI, SE, UK), including through Europol and Interpol.

Information concerning victim police protection is not satisfactory. Generally speaking, Member States say that victim protection programmes exist, and victims of trafficking have access to such programmes. However, very few countries are able to give the number of victims who have received protection, which is very low (FI 5, LV 1, PL 11). One particular, and positive, case is Italy, where all victims who were placed in the social integration programmes (2,039 in 2005 and 2,143 in 2006) also received police protection.

Replies regarding compensation show that there is also a gap in this field between legislation and enforcement. While the right to compensation is ensured by legislative measures, and many countries even have a public fund for compensation (AT, BE, BG, CZ, DK, FI, FR, HU, LV, LU, MT, NL, PT, SK, SE, UK), the only available figures show that the number of victims of trafficking who have received compensation is very low (DK 1, FR 5, NL 18, UK 4, NO 2).

1.4. Victim support

The majority of countries have adopted legislative measures in the field of victimsupport. In particular, all Member States (except for ES and LU) have communicated full transposition of the Directive 2004/81/EC on residence permit issued to victims of trafficking.⁵ National legislation now provides for a reflection

³ In some countries the figures include trafficking for labour exploitation. It is possible that a number of cases of trafficking for sexual exploitation are still prosecuted as cases of exploitation of prostitution, due to the difficulty of gathering evidence.

⁴ These figures are certainly underestimated as many countries do not dispose of disaggregated data for children.

⁵ OJ L 261, 6.8.2004. DK, IE and UK are not bound by it.

period in accordance with the Directive. Italy has a system which allows victims direct access to a residence permit. The duration of the reflection period ranges from 30 days to 6 months. However, only five countries dispose of relevant figures. The total number in 2006-2007 was 56, of which 30 cases were in Norway. Even taking into account the high number of figures of victims who directly received a residence permit in Italy and the estimated number of people who were granted a reflection period between 2003 and 2006 in the UK (155), the reflection period still seems to remain to be implemented in most countries.⁶ This may well imply that the majority of identified victims are immediately deported, which is inconsistent with human rights standards, implies that an important source of evidence is lost, and constitutes a clear breach of the Directive.

Where the granting of residence permits is concerned, all countries except DK, LU, PL and UK provide for such a permit for victims of trafficking. The duration ranges from 40 days (SK) to 1 year (NL, SI, ES, PT, NO). In most countries the duration is 6 months (AT, CY, CZ, FI, FR, PL, SE, IT) and is renewable for various periods, usually depending on the personal situation of the victim. In all countries except PL victims have access to the labour market during the validity of the residence permit, in conformity with the Directive.

Figures concerning assisted victims are still inadequate. The vast majority of countries do not even dispose of figures. The exact numbers of victims who have received support in recent years have only been provided by AT (162), BE (121), BG (81), CZ (14), FI (9), IT (2.143), LT (96), PL (10), SL (40), and NO (37). A few countries have taken measures that can be considered to be a real response; but at EU level the situation is still largely unsatisfactory. On the other hand, in countries such as AT, BE, IT, BG, and UK, which have a significant number of assisted victims, figures on criminal proceedings are also higher (see 1.3). Therefore, further regulation might be necessary in order to ensure more effective victim support mechanisms.

1.5. Safe and assisted return

Only a few countries are able to give figures on assisted return of victims. Some countries (BE, CZ, DK, FR, IT, NL, SI, SE, UK, NO) have funded different kinds of programmes aimed at promoting the social integration of victims in their countries of origin. In many countries risk assessment by law enforcement agencies before return is not regulated, or have very limited implementation (BE 3, CZ 6, SI 2).

1.6. National coordinating mechanisms

National coordination is managed differently in each country. In most countries an inter-agency coordinating body has been appointed, and therefore a multi-disciplinary approach is normally ensured at government level. However, the national machinery still seems to be inadequate as far as monitoring mechanisms are concerned. Two countries (NL and SE) have appointed National Rapporteurs and eight indicate the appointment of comparable mechanisms (BE, BG, CY, CZ, DK,

⁶ Lack of substantial implementation seems not only to concern countries where the relevant legislation has only recently been passed (CY, FR, DK, DE, HU, LV, MT, PT), but also countries where legislation has been in force for some years. It shall be recalled that this section only constitutes a first preliminary assessment based on questionnaires filled in by Member States. A study on the implementation of a group of ten Directives including Directive 2004/81/EC will be finalised soon, and a more in-depth assessment will be subsequently carried out.

FI, PT, UK). This situation might have a negative impact on the quality of the data collected.

1.7. Conclusions

The past years have witnessed a dynamic process of approximation of legislation in the Member States, in the field of both criminal law and victim assistance. However, the figures available indicate a serious gap between the legislation in force and actual implementation. Figures concerning criminal proceedings are still not high enough. In the field of victim assistance and protection, in particular, a critical lack of effective implementation must be underlined.

On the other hand, figures show that in countries where there are a significant number of assisted victims, statistics on criminal proceedings are higher. This implies that a human rights-centred approach is needed not only to protect victims' rights but also in the interest of justice. The Commission is considering revising the Framework Decision on trafficking, also with a view to ensuring more effective victims' support mechanisms.

The trend towards more international law enforcement and judicial cooperation is positive, although substantial improvement is still needed. Weak points still remain victims' police protection, compensation, and police risk assessment before return.

Member States now dispose of government coordination mechanisms, while monitoring systems still need to be established or improved.

2. THE IMPLEMENTATION OF THE EU ACTION PLAN

This section follows the structure of the EU Action Plan, and analyses the implementation of measures relating to each objective by EU bodies.

2.1. Coordination of EU action

2.1.1. *To establish common priorities and improve the effectiveness of EU action*

Concerning the sharing of information about priority origin and transit countries, in October 2006 Europol sent an intelligence collection plan and subsequently produced a strategic report.

European funding is a major tool for promoting the effectiveness of EU action. Trafficking in human beings has been a priority in the "Prevention of and fight against crime" programme (ISEC) for 2007 and 2008. Nine proposals directly related to trafficking were selected for funding in 2007, and another three concerned related issues. The total amount of allocated funds was EUR 3.102.484,78.

In addition, two studies have been funded and these will be available in 2009. The first aims to analyse the relation between legislation on prostitution and trafficking. The second concerns an assessment of the extent of different types of trafficking including for labour exploitation, begging and organ removal. Following a European

Parliament recommendation.⁷ another study has been launched with a view to assessing the feasibility of a European helpline. The European Parliament has earmarked 2 Million euro within the ISEC programme to cover the costs of such a Hotline. The Assessment Manual "Measuring Responses to Trafficking in Human Beings in the European Union" is the result of a study also funded by the Commission in 2007

2.1.2. To ensure an ongoing debate on the subject, including the human rights issues

EU Anti-Trafficking Day has been set as on 18 October each year. The Day is an occasion for awareness raising and networking for all organisations active in the prevention and fight against trafficking. The first Anti-trafficking day in 2007 focused on a human rights-centred approach to anti-trafficking policy.

2.1.3. To ensure common standards across the EU

On 24 July 2006 a Council Decision was adopted on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime.⁸

As for the signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings,⁹ so far 10 EU Member States (AT, BG, CY, DK, FR, LV, MT, PT, RO, SK) have ratified the Convention. 15 EU Member States (BE, FI, DE, GR, HU, IE, IT, LT, LU, NL, PL, SI, SE, ES, UK) signed the Convention.

2.2. Scoping the problem

2.2.1. To improve the knowledge on the scale and nature of trafficking in human beings

Various initiatives have been taken to establish the conditions for the issuing of Guidelines on data collection. In particular, a sub-group of the Experts Group on criminal statistics¹⁰ was set up to deal with crimes against persons. The Commission joined forces with the ILO to launch the DELPHI method of establishing agreed indicators for each type of trafficking. EUROSTAT will be involved at a later stage.

Europol is currently involved in two initiatives: an ICMPD-led project focusing on data collection in South-East Europe and a project led by the Austrian government in partnership with the IOM aimed at developing Guidelines for data collection.¹¹

The European Migration Network (EMN) launched an ad-hoc query among Member States and has developed a Common Research Template.¹²

⁷ 16 November 2006, P6-TA(2006)0498

⁸ OJ L 262, 22.9.2006.

⁹ Made in Warsaw 2005, entered into force on 1/2/2008.

¹⁰ 2006/581/EC Commission Decision of 7 August 2006 setting up a group of experts on the policy needs for data on crime and criminal justice – OJ L 234, 29.8.2006.

¹¹ The outcome of the DELPHI exercise and the AT project will be taken into account by the Commission for the issuing of Guidelines on data collection.

¹² MIGRAPOL – European Migration network – Doc 142.

2.3. Preventing trafficking

2.3.1. To address the root causes of trafficking

The Commission has financed a wide range of initiatives aimed at addressing the root causes of trafficking such as poverty, exclusion, social inequalities and gender discrimination. It also funds projects directly focusing on the prevention of trafficking in a large number of third countries, often implemented by civil society organizations. In addition, the Commission has financed a number of initiatives designed to improve the economic, legal and political position and promote the rights of the most vulnerable groups, namely children, women, migrants and indigenous people.

2.3.2. To prevent trafficking in countries of origin, transit and destination

See previous paragraph.

2.3.3. To enable identification of victims early to prevent exploitation

As far as the Visa information system (VIS) is concerned, VIS is scheduled to be available for operation from the end of May 2009. As regards victim identification, a seminar was held in Brussels under the Austrian Presidency with experts from governments and NGOs providing services for victims where best practices in the field of identification and support for victims were discussed. The Finnish Presidency held a seminar focused on child identification.¹³ The UK Presidency organised a Strategic Meeting with Eurojust on the implementation of the EU action plan by prosecutors. Another strategic meeting was co-organised by the Slovenian Presidency and Eurojust on victim protection.

2.4. Reducing Demand

2.4.1. To develop the expertise on reducing demand for labour exploitation

After four years of productive work of the Experts Group on Trafficking in Human Beings, a new Group of Experts has been appointed in 2008,¹⁴ including specific expertise in the field of labour exploitation.

2.4.2. To reduce the demand for trafficked persons in destination countries

Member States were requested by the Council to report on best practice on community engagement to deter trafficking.¹⁵

2.5. Investigating and prosecuting

2.5.1. To improve the strategic and tactical intelligence picture

Europol is cooperating on a regular basis with Interpol. In respect of the submission by the Member States of information and data to Europol, beside the contributions to the concerned Analytical Work File,¹⁶ there have been 127 MS contributions to the

¹³ The conclusions of the Finnish seminar on identification of children at risk can be found in document 15024/06.

¹⁴ Commission Decision of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings, OJ L 277, 19.10.2007; Commission Decision of 22 July 2008 on the appointment of members of the Group of Experts on Trafficking in Human Beings, OJ L 194/12, 23.7.2008.

¹⁵ Information is available in the document 6282/1/07.

¹⁶ Analytical Work File (AWF) Phoenix was opened in June 2007 with a focus on trafficking. 2 MS have signalled their support for this work file and the AWF is currently supporting a number of diverse investigations.

Europol Information System (EIS) on trafficking cases since the Information System went live in April 2006.

The Organised Crime Threat Assessment (OCTA) has been published and disseminated to all MS twice, in 2006 and in 2007. Trafficking in human beings has been identified as a criminal market that should be prioritised and attract focused attention at EU level.

Europol/Frontex cooperation has been focused on combating facilitated illegal immigration, but none of the related initiatives is directly related to trafficking.

2.5.2. To improve the ability of Member States to investigate trafficking effectively

Following the proposal from the CEPOL Annual Programme Committee, in 2006 the Governing Board established an experts working group which issued the final version of a Module Description for senior officials training in June 2007.

2.5.3. To improve the operational cooperation between Member States on trafficking

See Section 1.

2.5.4. To enable more effective cooperation in investigations and prosecutions

As far as Europol is concerned, the 2008 and 2009 objectives of Europol's competent Crimes against Person Unit are specifically linked to the EU plan.

Regarding the role of Eurojust, 71 new cases of trafficking in human beings have been recorded in 2007. This is a substantial increase on the 32 new cases in 2006. Eurojust also held 10 coordination meetings in 2007 specifically for cases dealing with trafficking and smuggling, which makes up more than 10% of Eurojust's coordination meetings.

Essential aspects regarding developments in the legal framework on trafficking in the Member States were examined in section 1. For its part, the Commission is considering revising FD on combating trafficking in human beings.¹⁷

2.6. Protecting and supporting victims of trafficking

2.6.1. To ensure frontline staff have the right tools and expertise to identify victims

See section 2.3.3.

2.6.2. To build and strengthen effective links between organisations providing support and reintegration services and Member States

A questionnaire was disseminated by the Finnish Presidency, in an effort to map services available to victims. A first list of coordinating bodies in the governments, and a list of service providers with the relevant contact points are now available¹⁸. Agreement was reached under the German Presidency to publish the relevant links on the JLS website.

Victim identification and assistance was a priority for the Commission in 2007 and for the first Anti-Trafficking Day. In particular, the Commission presented "Recommendations on the identification and referral to services of victims of

¹⁷ OJ L 203, 1.8.2002.

¹⁸ 18 December 2007, 13124/07 REV 1– CRIMORG 139.

trafficking in human beings",¹⁹ which call for the establishment of national mechanisms based on cooperation between governments and civil society organisations.

2.7. Returns and reintegration

2.7.1. To share knowledge and experience about available reintegration schemes in source countries and risk assessment process carried out before return

See Chapter 1.

2.8. External relations

2.8.1. To enhance anti-trafficking action in relations with third countries.

A number of Country Strategy Papers and Regional and National Indicative Programmes have included direct references to trafficking and to strengthening strategies to address factors facilitating trafficking. The fight against trafficking and smuggling constitutes one of the priorities of several bilateral European Neighborhood Policy Action Plans of the EU, for example with Egypt, Ukraine and Moldova.

The EU regularly engages with third countries on the issue of trafficking in the course of its bilateral political dialogue. The Commission has supported local initiatives such as the Coordination Mekong Ministerial Initiative against Trafficking process (COMMIT) in South Asia, the implementation of National Anti-Trafficking Action Plan in the Western Balkans, as well as supporting the South African government's efforts against trafficking. At the level of the African Union, the Commission has supported the Ouagadougou Action Plan adopted in November 2006.

Under the TAIEX instrument a number of actions involve cooperation with third countries. On this subject, TAIEX organised ten events in 2006 and 2007.

The "Action Plan on Children's Rights in EU External Action" highlights the issue of child trafficking as one priority area. Under the thematic programme "Investing in People" a call for proposal has been launched on child trafficking and children in armed conflicts.

2.9. Conclusions

All stakeholders involved in the implementation of the EU Action Plan have taken action and achieved some results. However, some measures have not yet been implemented. Moreover, it is still difficult to assess the real impact of actions that have been implemented on the actual development of anti-trafficking policy.

Although the Commission and the Council have been particularly active in the field of victim assistance and protection, the factual situation shows substantial weaknesses.

¹⁹ The Recommendations are available on JLS website at the following address: ec.europa.eu/justice_home/news/information_dossiers/anti_trafficking_day_07/documents_en.htm

While discussing new strategies for future action, implementation at national level plays a crucial role.

3. CONTINUATION OF THE EU'S ANTI-TRAFFICKING POLICY

In the light of the above mentioned analysis, the Commission suggests concentrating efforts in the short term on a few key actions, which have been identified taking into account the weak points highlighted in this paper. A new strategy will be set up on the basis of the results achieved by the end of 2009.

- 3.1. To establish National Rapporteurs or equivalent mechanisms, with a view to monitoring trends of trafficking and the results of anti-trafficking policy on the basis of agreed criteria and indicators (Commission, Member States)
- 3.2. To establish or strengthen national mechanisms for identification and referral to services of victims of trafficking, based on agreements between law enforcement and civil society stakeholders adopting a gender perspective and a human rights approach (Commission, Presidency, Member States)
- 3.3. To establish or strengthen child protection systems aimed at effectively exploring whether there are reasons to suspect that trafficking has occurred in any case in which a child is exploited in prostitution, the sex industry, labour, begging, illicit activities or any other form of exploitation (Commission, Member States)
- 3.4. To support and provide sufficient funding for NGOs that provide assistance to trafficked persons; to support efforts made by NGOs to establish a more structured network, and recognise such a network as a major interlocutor (Commission, Member States)
- 3.5. To organise systemic training of the key stakeholders involved in the identification of trafficking cases, with a special focus on trafficking for labour exploitation (Europol, Cepol, Member States)
- 3.6. To enhance coordination of investigation and prosecution, including by promoting the use of Europol and Eurojust resources (Presidency, Europol, Eurojust)
- 3.7. To strengthen current action concerning external relations, in particular in the Western Balkans and with the EU's Eastern neighbours, as well as with countries in North-Africa, including by removing obstacles to judicial co-operation in criminal matters. To encourage the inclusion of the fight against trafficking in the political and cooperation dialogue, in Country Strategy Papers and in the poverty reduction and cooperation strategies with partner countries (Commission, Presidency)