

TRAFFICKING IN HUMAN BEINGS – LATEST DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE EUROPEAN UNION’S LEGAL AND POLICY FRAMEWORK – SELECTIVE SUMMARY

KATARZYNA CUADRAT-GRZYBOWSKA, PHD¹

OFFICE OF THE EU ANTI TRAFFICKING COORDINATOR. EUROPEAN COMMISSION

1. INTRODUCTION AND CONTEXT

The European Union recognises trafficking in human beings as a severe violation of fundamental rights. It is the only form of organised crime explicitly prohibited in the EU Charter of Fundamental Rights², hence addressing trafficking in human beings means upholding fundamental rights.

Trafficking in human beings is addressed both in relation to illegal migration³ as well as in relation to police and judicial cooperation⁴ (respectively Article 79 and 83 of the Treaty). It is a complex transnational phenomenon⁵ with implications which individual countries cannot effectively address on their own, thus requiring effective and constant joint efforts and multi-disciplinary cooperation of different actors active in this field. It is a phenomenon which requires a comprehensive and pro-active approach at all levels: national, regional, European, international.

Furthermore, trafficking in human beings is referred to in the European Agenda on Security⁶ and the European Agenda on Migration⁷.

Based on the Eurostat Working Paper⁸ covering the reference period of 2010-2012, 30 146 women, men, girls and boys were registered as victims of trafficking in the EU Member States. 80% of victims were female, 70% of traffickers were male. 16% of

1 The information and views set out in this article are those of the author and do not necessarily reflect the official opinion of the European Union. Neither the European Union institutions and bodies nor any person acting on their behalf may be held responsible for the use which may be made of the information contained therein.

2 Article 5 (3) of the Charter of Fundamental Rights of the European Union stipulates that “Trafficking in human beings is prohibited.”

3 Article 79 of the Treaty on the functioning of the European Union (consolidated version)

4 Article 83 of the Treaty on the functioning of the European Union (consolidated version_

5 Trafficking in human beings does not need to involve the crossing of the external borders of the European Union or have a cross-border element.

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security, April 2015; https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_agenda_on_security_en.pdf

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, May 2015; http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

8 Eurostat working paper, Trafficking in human beings, 2014 edition; https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_-_eurostat_-_2014_edition.pdf

registered victims were children, girls and boys. Data also prove that the most widespread form of exploitation is sexual exploitation (69%), of which women and girls are the vast majority of victims (95%). Over 1000 child victims were trafficked for sexual exploitation. Trafficking for labour exploitation constitutes 19% of the reported cases, primarily affecting men and boys (71%), followed by other forms, like trafficking for engaging into criminal activities or for selling of children. Almost two thirds of the victims (65%) come from countries within the EU (intra-EU trafficking). 8805 people were prosecuted for trafficking in human beings over 2010-2012. There were 3855 convictions reported over the same period.

2. EU AND POLICY LEGAL FRAMEWORK TO ADDRESS TRAFFICKING

The European Union has developed over the last years a comprehensive legal and policy framework to address trafficking in human beings, in particular by adopting the Directive on preventing and combating trafficking in human beings and protecting its victims⁹ (Directive or the Anti-trafficking Directive) and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016¹⁰ (EU Strategy).

It should be emphasised that the European Union law is victims centred, gender specific, child sensitive and human rights based. The Anti-Trafficking Directive, adopted after the Lisbon Treaty¹¹, is a milestone instrument at EU level. The deadline for transposition of the Directive expired on 6 April 2013. The European Commission is proactively monitoring the transposition processes in the Member States and is currently analysing the information received from the Member States. The Commission will report to the European Parliament and the Council on the extent to which the Member States comply with the Directive in 2016.

The EU Strategy provides a coherent framework to assist the Member States in the implementation of the Directive. It focuses on priority areas and concrete actions to be carried out in partnership with EU institutions and bodies as well as Justice and Home Affairs Agencies (JHA Agencies) and more widely in cooperation with a variety of other stakeholders, including civil society organisations. The EU Strategy has been endorsed by the Justice and Home Affairs Council Conclusions of 25 October 2012. Reflecting the comprehensive approach of the Directive, the priorities of the Strategy cover: 1) identification, protection and assistance to victims of trafficking; 2) prevention, including demand reduction; 3) ensuring and enhancing investigation and prosecution of traffickers; 4) coordination and cooperation among key actors ensuring policy coherence; 5) increasing knowledge to ensure effective response to emerging concerns related to all forms of THB. The actions encompassed are the result of a thorough examination of measures and policies that were already in place, extensive consultation

9 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf

10 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016; http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf

11 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community; <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2007:306:FULL&from=EN>

with the Member States, civil society, scholars, international organisations, National Rapporteurs or Equivalent Mechanisms (NREMs) and other stakeholders. The views of victims of trafficking are also incorporated in the Strategy.

To ensure the continuation of the work and efforts in this area, the preparatory work for a post- 2016 Strategy is ongoing and its publication is envisaged for the end of 2016.

The Commission presented the Mid-term Report on the implementation of the EU Strategy¹² which takes stock of actions launched or implemented until October 2014 and of the work carried out within EU Institutions, JHA Agencies, Member States and civil society. It covers actions both within the European Union as well as with non-EU countries as per the implementation of the Action Oriented Paper on strengthening the EU external dimension on action against THB¹³. The objective of the Report, which was an initiative of the Commission, was to present the work that has been done so far up to now and share that information with all stakeholders concerned.

The European Union appointed an EU Anti-trafficking Coordinator¹⁴, Dr Myria Vasiliadou, to provide an overall strategic policy orientation in the field of trafficking in human beings. The EU Anti-trafficking Coordinator oversees the implementation of the EU Strategy and ensures visible coherence and strengthened coordination on policies and actions within the Commission, other EU institutions, bodies and JHA Agencies, non-EU countries, and regional and international organisations.

Partnerships with the civil society are crucial in the efforts to address trafficking in human beings. For this reason, the European Commission launched in 2013 the EU Civil Society Platform against trafficking with the participation of more than one hundred civil society organisations from EU Member States and selected neighbouring priority countries.¹⁵ The latest biannual meeting of the Civil Society Platform was held on 21 October 2015 as part of the events organised to mark the Ninth EU Anti-trafficking Day.

Furthermore, the Anti-Trafficking Directive and the EU Strategy towards the Eradication of Trafficking in Human Beings recognise the fundamental role of the private sector and stakeholders in preventing and combating trafficking in human beings and protecting and assisting its victims, in particular in their efforts to reduce demand for trafficking in human beings and develop supply chains that do not involve trafficking in human beings. Article 5 of the Directive contains provisions relating to legal obligations of businesses such as the liability of legal persons for trafficking in human beings' offences and the sanctioning of legal persons. This includes trafficking in human beings for all forms of exploitation, for the purpose of forced labour and slavery included. It is of

12 Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings; https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission_staff_working_document_-_mid-term_report_on_the_implementation_of_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf

13 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings, 2009; https://ec.europa.eu/anti-trafficking/eu-policy/action-oriented-paper-strengthening-eu-external-dimension-against-trafficking-human-beings_en

14 More information about the EU Anti-trafficking Coordinator on the anti-trafficking website: https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

15 More information on the activities of the Platform can be found on our website: <http://ec.europa.eu/anti-trafficking/>

utmost importance to ensure that this provision of the Directive is fully transposed and meaningfully implemented in all Member States.

Partnerships with non-EU countries are also at the heart of the EU Strategy to address trafficking in human beings. The European Union is a global actor and a major donor of aid. The Office of the EU Anti-trafficking Coordinator together with the European External Action Service (EEAS) focuses on the external dimension of the EU anti-trafficking policy. At the moment, projects on trafficking in human beings are funded under financial instruments dealing with cooperation with third countries. The Action Oriented Paper (AOP) aims to strengthen the commitment and coordinated action of the EU and the Member States to prevent and combat all forms of THB in partnership with third countries, regions and organizations at international level. The second implementation report of the AOP in 2012 included a list of priority countries and regions for further strengthening and streamlining cooperation for addressing the phenomenon. Together with EEAS and relevant Commission's services, the Office of the EU Anti-trafficking Coordinator have mobilised the EU Delegations (EUDEL) in the priority countries to participate actively in the coordination and implementation of agreed actions using as much as possible existing resources and mechanisms. EU DEL are encouraged to ensure a close follow-up of EU funded projects on trafficking in human beings, beyond the standard project monitoring mechanisms already in place. In addition, regular exchange of information between the host country authorities and the EU DEL on policies and interests related to trafficking in human beings is encouraged.

The legal and policy framework puts **victims at its heart**. For this reason, and amongst many initiatives, including substantial funding in the area of victim assistance, protection and support, the European Commission published on 15 April 2013 an Overview of the rights of the victims of trafficking in human beings¹⁶. The document contains user-friendly information on labour, social, residence and compensation rights that victims of trafficking hold under EU law. Such information can be used by victims and practitioners (NGOs, the police, immigration authorities, labour inspectors, border guards, health and social workers) working in the field of trafficking in human beings. The document contributes to the effective realisation of established rights by helping authorities in EU Member States to deliver the assistance and protection that victims need and deserve. It includes a non-exhaustive list of victims' social, labour and migrant rights, as well as international protection rights.

Identification of victims of trafficking is fundamental in the area of trafficking in human beings. In order to ensure better coordination and increase coherence, in September 2013 the Commission published a Reference document on the Guidelines for the identification of victims of trafficking in human beings, especially for border guards and consular services¹⁷. The document provides a list of indicative guidelines, refers to the existing handbooks and manuals and lists the projects on the identification of victims, in particular those targeting consular services and border guards, and thus encouraging their systematic use by the respective officials. In order to avoid duplication and to ensure that the Commission's document is of practical use to front

16 The EU rights of victims of trafficking in human beings, European Commission, 2013; http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf

17 Reference document, Guidelines for the identification of victims of trafficking in human beings, especially for border guards and consular services, European Commission, 2013; http://ec.europa.eu/anti-trafficking/eu-policy/guidelines-identification-victims_en

line officers, the document contains only indicative guidelines presented in a concise way. The document also complements and synergistically interacts with other work streams such as the funded projects for the development of comprehensive guidelines to facilitate a pan-European Union coordinated approach.

Encouraging the Member States to follow the money including via conducting regular and systematic financial (including asset tracing) investigations and to increase the number of prosecutions and convictions in the THB area

The European Agenda on Security (EAS)¹⁸ as well as other relevant documents including the Europol's Strategic Document¹⁹ stress the fact that trafficking in human beings is a highly profitable form of crime. THB is a financially and demand driven crime which renders astronomical profits²⁰ to traffickers. It exists because of the profits and the demand which fosters all forms of exploitation.

Based on Europol's Report on the future of organised crime (March 2015)²¹, trafficking in human beings *“will remain a significant source of revenue for OCGs”*, thus is presented as a “stable market”. The report reads further, *“the persisting demand for ever-cheaper goods and services, combined with intensified competition between suppliers, drives down prices and creates new opportunities for exploitation.”*

In this context, it is important to mention that trafficking in human beings has been identified as one of the EU priority crimes under the EU Policy Cycle on Serious and Organised Crime 2014-2017. Under this framework, the European Multidisciplinary Platform against Criminal Threats (EMPACT)²² on trafficking in human beings constitutes a very useful operational platform for Member States' law enforcement authorities aiming at strengthening their operational activities against this phenomenon based on the operational action plans which are implemented by the law enforcement authorities participating in the project, together with Europol and other JHA Agencies as well as the European Commission. Proactive work on financial investigations related to THB is addressed in this operational framework.

The EU legal and policy framework addressing trafficking in human beings emphasizes the need to follow the money involved in THB including by conducting more proactively financial (including asset-tracing) investigations related to THB cases,

18 The European Agenda on Security emphasises that “trafficking in human beings is an extremely pernicious but highly lucrative form of crime”.

19 Europol Strategic Document “The *THB financial business model – Assessing the current state of knowledge*” July 2015; https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/europol_financial_business_model.pdf

20 Based on the available sources, in particular the Europol Strategic Document “The *THB financial business model – Assessing the current state of knowledge*”, “it is challenging to make estimate on the overall profits derived from the trafficking in human beings activities in the EU. (...) some Member States do provide financial assessments, but “in most cases the data is incomplete and lacks a consistent methodology for calculation”. Some estimates and figures on profits are however reported by Europol and open sources. Based on Europol's document as well as the estimates from ILO, the estimated profit globally of THB related sexual exploitation is 25.8 billion euro. The estimated profits of THB for sexual exploitation in EU and developed countries amounts to 23.5 billion euro. The estimated profit globally on all forms of trafficking in human beings is 29.4 billion euro. A trafficker's average annual income is about 70 000 euro.

21 <https://www.europol.europa.eu/content/exploring-tomorrow%E2%80%99s-organised-crime>

22 More information can be found at <https://www.europol.europa.eu/content/eu-policy-cycle-empact>

increasing the number of THB investigations and prosecutions as well as exploring more the links between THB and other forms of organised crime²³. This work is also strongly embedded in the European Security Agenda.

The European Commission has, on numerous occasions, encouraged the Member States to conduct in a systematic and regular way financial investigations related to THB²⁴. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 is also highlighting the importance of increasing prosecution of traffickers and ensuring more regular, systematic and proactive financial investigation on trafficking in human beings.

3. REPORTS TO BE PUBLISHED IN THE COURSE OF 2016

The European Commission intends to publish three reports related to trafficking in human beings, in 2016:

- A report on the situation of trafficking in human beings in the EU, based on information from Member States, as per Articles 19 and 20 of Directive 2011/36/EU.
- A report, as per Article 23 par 1 of Directive 2011/36/EU, assessing the extent to which the Member States have taken the necessary measures in order to comply with the Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals
- A report assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of THB, accompanied if necessary by adequate proposals.

In addition, as mentioned earlier, the post-2016 Strategy is envisaged for 2016.

4. CONCLUSION

The European Union has a *zero tolerance* approach to trafficking in human beings.

The EU legal and policy framework against trafficking in human beings clearly addresses the need for a **comprehensive, coherent and coordinated approach** in this field.

Effective actions against trafficking in human beings, focusing equally on prevention, protection and prosecution, require close cooperation between Member States including MS law enforcement authorities, all the relevant services of the Commission, JHA Agencies that signed the Joint Statement on cooperation on THB²⁵, international partners, civil society and the private sector. The Commission and the EU Anti-trafficking Coordinator ensure that this approach is fully implemented.

23 See Midterm Report on the implementation of the EU Strategy

24 In a nutshell, financial investigations can serve as a tool for gathering evidence. Evidence gathered from money trails might provide the necessary additional proof, thus relieving victims of the burden of testifying in court. Tracing the transfers of money can show who is sending money to whom, how often and how much. Investigations of this kind are a useful instrument for identifying the financial structures and disrupting criminal networks.

25 https://ec.europa.eu/anti-trafficking/eu-policy/joint-statement-heads-eu-justice-and-home-affairs-agencies_en

BIBLIOGRAFÍA

Press release: High Level Conference Marks Ninth EU Anti-Trafficking Day

<http://ec.europa.eu/anti-trafficking/node/4920>

Study on case-law on trafficking for the purpose of labour exploitation

http://ec.europa.eu/anti-trafficking/publications/study-case-law-trafficking-purpose-labour-exploitation_en

Study on high-risk groups for trafficking in human beings

<http://ec.europa.eu/anti-trafficking/node/4921>

Study on prevention initiatives on trafficking in human beings

<http://ec.europa.eu/anti-trafficking/node/4922>

Fecha de recepción: 10/10/2015. Fecha de aceptación: 17/12/2015