



German nationwide activist coordination group
combating trafficking in women and violence
against women in the process of migration



Civil society commentary on the EU strategy towards the Eradication of Trafficking in Human Beings (COM (2012) 286 final)

As international civil society organisations and networks combatting trafficking in human beings, we are convinced of the crucial importance and necessity of the work of the European Union against trafficking.

We therefore take the occasion of the EU's 6th anti-trafficking day to wholeheartedly welcome the new EU strategy on trafficking in Human Beings and its ambitious aim to eradicate trafficking – a vision we share.

In the following text, we would wish to offer a number of recommendations and observations to guide the implementation of the strategy over the next years and, in particular, the possible Council conclusions on the strategy. As the strategy addresses both activities undertaken on EU level and on national level, this commentary focuses on a number of key activities best undertaken by the EU as well as activities requiring implementation on national level. It also highlights a number of issues where a priority or action needs further elaboration in order to be implemented according to a human rights-centred approach.

1. EUROPEAN ANTI TRAFFICKING LEGISLATION & JURISPRUDENCE: CORNERSTONE OF ANY EU STRATEGY

We welcome the Commission's intention to focus its activities on and around the directive 2011/36/EU and its implementation, as it indeed by the year 2013 will provide the best chance for achieving harmonisation.

We equally appreciate the clear anchoring of the directive in the recent jurisprudence, in particular the Rantsev judgement of the ECtHR.

A robust monitoring of national legislation and practices by the Commission in view of the transposition of the directive, as well as the spirit of the ECtHR's interpretation of the ECHR should be at the heart of the Commission's activity. In the next years, the setting up of a contact committee and the development of guidance on specific aspects of the directive will be the most important tools in this respect. Meanwhile we would hope that after 2013, the Commission will also make use of the full range of instruments foreseen in article 258 (TFEU) where necessary. As highlighted before, civil society organisations stand ready to assist in discussions on the implementation of the directive, e.g. by assisting in the deliberations of the contact committee of the directive.

2. KEY ACTIVITIES ON EU LEVEL

The Strategy states very clearly that the main responsibility for addressing trafficking in human beings lies with the Member States. The aspects of the directive best implemented by the EU therefore are limited and need to be carefully chosen. The strategy is right in focussing on those areas where it can through coordination add value, set new initiatives or through funding stimulate activities. It will remain crucial to

stimulate and monitor member states in their efforts and hold them accountable with reference to their obligations under EU law. At the same time, member states are encouraged to devise activities which go beyond the strategy.

2.1. Overarching principles

In designing its anti-trafficking policy and in advising, monitoring and evaluating member states on their respective policies, the Commission should take a participatory and evidence-based approach – an approach which was to some extent taken around the development of this very strategy.

Those actors which are implementing existing policy, those which will implement them in the future or will be affected by them should be consulted – this will include relevant government bodies and their frontline staff, NGOs and other civil society actors and last, but not least persons who have been affected or are deemed to be potentially affected by trafficking, including children and young people. This would include consultation of relevant stakeholders on how previously adopted anti-trafficking policies and measures might have had negative impact on their situation and their human rights.

It is recommended to create ongoing monitoring and evaluation mechanisms in all proposed anti-trafficking projects, especially those implemented on a member state level.

2.2. Referral

The close monitoring of the development of national referral mechanisms and the coordination of a transnational referral mechanism is one areas in which EU coordination could potentially add value. We wish to underline that such mechanism should be first and foremost protection-oriented and not serve as an excuse to expedite returns. Guidelines in this area should reinforce the protection-oriented spirit of the directive. When developing the NRM and guidelines, an assessment of the impact of the provided protection services by trafficked persons themselves (e.g. whether their needs were addressed and their safety was guaranteed) should form an essential part.

We in particular welcome efforts of the EU to consolidate knowledge on the rights of trafficked persons and make it available in a user-friendly form. It should however be noted that these rights include the right to seek international protection – an aspect specifically mentioned in the anti-trafficking directive, but not mentioned in the strategy. We would hope that these as well as guidelines on NRMs will build on existing materials and good/best practices developed by state actors and civil society in the Member States - and be developed in cooperation with these stakeholders.

2.3. Data

NGOs and service providers acknowledge the need for structured data collection in order to understand the changing trends, patterns and working methods of traffickers in all different forms of trafficking in human beings. It should be noted in this context that the data (trends) mentioned in the introductory chapter of the strategy will presently more reflect the understanding of member states of trafficking and their investigation efforts, rather than presenting a full picture of the de facto trafficking situation. In all efforts of data collection, the safety, integrity and privacy of trafficked persons are paramount concerns which need to take precedent over any other consideration

A tool/mechanism developed at EU level could ensure that their data collection procedures are in line with protection provisions as well as European data protection provisions.

2.4. Guidelines

Acknowledging that the non-identification of trafficked persons is the main bottleneck in the fight against human trafficking, the development of criteria, guidelines and mechanisms for identification is a distinct priority, which should go hand-in-hand with

clearly defined roles and responsibilities. Projects that have been or are currently running in several European countries (carried out by civil society as well as national and local governments) should be one of the cornerstones of future guidelines.

2.5. Guidelines on and strengthening of child protection systems

The guidelines on child protection systems, that the Commission plans to develop, reflect the importance attached by the EU to addressing trafficking in children who are particularly vulnerable to victimisation and re-trafficking, through a multi-sectorial approach. In this connection, several initiatives implemented by civil society organisations show that the level of re-victimisation significantly decreases if children have a voice in decision-making and developing an assistance and reintegration plan. In the light of this, we would hope that the future guidelines are not only designed in consultation with children and young people affected by trafficking, but do also emphasize the importance of ensuring the rights of these children to play a role in their own protection, recovery and reintegration. The active involvement of child survivors in the child protection systems, especially within the social behaviour system, can help them shift their self-image from that of a victim to that of a valued community member while also enabling them to give valuable recommendations on the most effective child protection and assistance measures. The guidelines should highlight that it is a duty of member states to provide adequate and appropriate support for this process.

The strengthening of child protection systems as outlined in the strategy rests with EU Member States. The objective of this is allegedly to ensure safe return and prevent re-trafficking. It must be noted that safe return is only one of the many durable solutions that can be found for individual children affected by trafficking. Return and prevention of re-trafficking can go hand in hand when a return decision has been grounded in a wider best interests determination procedure. Efforts aiming at reinforcing child protection systems should therefore also focus on the quality of information exchange between child protection systems and ensure that decision making is grounded in best interests determination procedure, if the prevention of re trafficking also constitutes one of these objectives. It is therefore advised that the Commission takes a coordinating role and supports efforts of member states in the reinforcement of child protection systems at national level fostering information exchange for the purpose of assuring sound best interests determination procedures at EU level.

2.6. Links with other EU policies

We welcome the Commission's intention to seek cohesion of its anti-trafficking policy with other policy areas namely migration policy. The Global Approach to Migration and Mobility in this context is a helpful reference, particularly as it aims to be migrant-centred. In reality however, the Global Approach only marginally determines the EU's overall policy on migration, whereas legally binding policies such as the one on return or irregular migration have a far larger impact. We would therefore welcome an engagement of the Commission's work against trafficking with those sectors of migration policy which often tend to focus on repressive aspects, thus often undermining the rights of those most vulnerable in migration policies.

Such policies and their focus on fighting irregular migration and rhetoric around them can also feed discriminative, intolerant and fearful attitudes towards migrants, which can have a negative effect on the identification and situation of trafficked persons. As for the important area of external funding, we welcome the intention to fund projects in third countries and regions, and covering prevention, protection and prosecution. As a significant portion of cooperation projects have proven to have an anti-migration focus, it is recommended that the commission carefully assesses the impact of projects on the rights of migrants and presumed victims of trafficking.

Given that the strategy aims among other things to reduce demand, we would very much welcome if policy coherence efforts of the strategy would aim at influencing the EU's wider economic policy – such as policies on competitiveness (including public procurement), external trade and agriculture, as policy decisions in these and other areas will have significant impact on the protection of workers and potential vulnerability. The impact of the currently dominating general principle of flexibility and competitiveness - at almost any price - is for obvious reasons likely to create an environment in which exploitation will flourish and be accepted.

A boost for the “decent work” agenda and a stronger role of labour, health and safety inspections in their protection task could on the contrary be a meaningful addition of EU anti-trafficking policies.

2.7. Studying the demand and the use of services of victims of trafficking in human beings

We note with appreciation the effort toward studying and understanding demand. Given the vast scope of understanding demand it would be important to focus on a number of key areas in which the EU can add value. As outlined above, it would be interesting to study if the EU as an actor in foreign policy, international cooperation, economic development or trade is contributing to demand being created (e.g. how does agricultural policy support a price regime for exports which is built around exploitation; how does competition policy undermine efforts in public procurement policy to favour those offers which guarantee fair working conditions).

Experience shows that analysis of demand for the services of trafficked persons is best undertaken in the context of a wider analysis of certain types of labour or services in which trafficked persons could be exploited.

2.8. Private Sector Platform and civil society platform

The Strategy attributes a central role to the creation of two platforms, namely the business and civil society platform. While both platforms could have a European added value, their establishment should be needs- and issue-driven as well as actor-centred if they are not to remain useless “white elephants”. In the case of the business platform, several initiatives launched by businesses have been set up and guidelines have been developed, so it would be helpful to build on them in order to avoid overlap and duplication and capitalise on lessons learned from existing experiences and models.

The logic of a civil society platform of service providers working on victim protection and assistance in member states and selected third countries is rooted in the need for (better) cooperation between such actors. Given the existing issue-driven cooperation between such actors on the one hand and the huge diversity of actors on the other hand, it is recommended not to aim at one umbrella structure, but to give support to the activities of NGOs and the networking between different civil society actors and between different sectors (including unions and migrant rights organizations). The platform(s) should be fully independent.

A realistic feasibility study and cost-benefit analysis should be undertaken before launching any of the two platform initiatives.

2.9. Ensuring Proactive Financial Investigation

In order to turn trafficking in human beings from a low-risk high-profit crime, into a low-profit and high-risk crime, the attention for financial investigations is welcomed. It is recommended that a link is made to the Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union. The proposed Directive creates the opportunity to use confiscated criminal profits to finance social services and assistance. Also a link should be made with the compensation of material and immaterial damages suffered by trafficked persons.

3. OPEN QUESTIONS:

A number of ideas are raised in the strategy, but have not been developed in more detail. We would therefore just briefly like to raise a number of issues on which would need clarification:

If an EU wide awareness raising activities targeting risk groups is planned, it would be recommendable to consider how this will add value to the many national and regional awareness-raising campaigns. As the strategy notes, many of these have already been undertaken, often with little valuation, but probably in fact extremely moderate success. Which specific strength could the EU contribute in this domain and how could lessons from less successful campaigns best be learned? Could new methodology avoid target groups being talked about and rather involve them in messaging?

An equally promising initiative which would however need some further elaboration is the pilot project to strengthen regional cooperation on trafficking in human beings along the routes from the East to the EU. Given that this activity is to be financed under the stability instrument, which often follows a "post-crisis response" logic, how can this exercise best be centred on human rights of (potentially) trafficked persons and look at sustainability?

A last point, which we have noted with appreciation, but which would require more strategic thinking is support to research to increase understanding of high risk groups. While more knowledge on those groups which are particularly vulnerable is always welcome, we would be interested to know how the Commission would envisage a potential follow up to such research: what exactly would be the aim and potential impact of such research – would it for example inform policy or implementation of legislation?

In summing up, we would once again like to congratulate the Commission for its laudable strategy. As outlined above, a number of initiatives will need to be carefully calibrated in order to generate positive impact.

We affirm the willingness and readiness of civil society to assist with and advise on the implementation of the strategy and the directive at its heart, so that our common vision will become true: that trafficking will be eradicated!

Signatories:

- Anti-Slavery International
- Churches' Commission for Migrants in Europe (CCME)
- ECPAT International
- KOK – German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration
- LA STRADA International
- LEFÖ/Intervention Centre for Trafficked Women, Austria
- Terres des Hommes International Federation

Brussels, 18th October 2012