

**Comments on the proposal for
a directive of the European Parliament and
of the Council on preventing and combating
trafficking in human beings,
and protecting victims**

MARIO project partners welcome the proposal of the European commission on preventing and combating trafficking in human beings, and protecting victims, as a positive step in enhancing the fight against human trafficking and improving assistance measures to which victims are entitled.

The proposal for a directive gives a new impetus to the fight against trafficking in human beings and provides for a better and harmonized approach to the protection of victims with important provisions directly targeting children.

MARIO partners particularly welcome the inclusion of provisions on prevention, assistance and protection of victims, as well as the inclusion of begging and exploitation of criminal activities in the elements qualifying trafficking. Likewise, the current wording of article 10.2 is a positive step including potential victims as beneficiaries of protection measures foreseen in article 10.

MARIO partners however regret that the proposal does not comprehensively address the whole cycle of protection of child victims.

The section on assistance and support to child victims critically misses elements of fundamental importance as outlined in the UNICEF guidelines on the protection of the rights of child victims of trafficking.

In particular, legal representative, guardians or persons in charge of ensuring that the best interests of the child are upheld and his/her views taken into account, must be present at every stage of the protection cycle, including during investigation or criminal proceedings. The current proposal however only provides that authorities "may" allow the presence of these persons. It is therefore crucial that the current proposal incorporates a provision on the immediate appointment of an adequately trained guardian in article 13 and 14 considering the paramount role they play in the process of protection of child (potential) victims of trafficking. Inclusion of guardians should also be made in the article 15 on prevention.

Moreover, no reference is made on the views of the child in the text while their taking into consideration should be an integral part of a meaningful protection process.

Also, it is regrettable that a *regular and periodic* individual assessment is not mentioned as such for child victims, the proposal merely integrates an individual approach in the first stage of assistance and support (article 13). Based on MARIO partners' experience, the *regularity and periodicity* of individual assessments are of utmost importance in the provision of adapted and adequate assistance measures to

children victims of trafficking, or at risk to be. The assistance measures provided in article 10 and 13 are neither detailed enough for child victims given their specific needs and vulnerability.

Moreover, and following the recommendations made by the EC Expert group on identification and referral to services of victims of trafficking in human beings,¹ and as referred to in the Council conclusions adopted by the JHA Council on 8-9 November 2007, the “mechanisms aimed at early identification, assistance and support for victims” are not in our view detailed enough in the current proposal (article 10 paragraph 4).

We therefore recommend the inclusion of more detailed provision on the identification and referral mechanisms that shall be set up by Member States based on the EC expert group recommendations.

We would also like to point out the risk, inherent to the current proposal, of inconsistency with other legislative acts of the Union in the field of trafficking in human beings. It is in MARIO partners’ view, and as reflected in the successive opinions of the EC Experts Group on Trafficking in Human Beings² as well as in public positions of the EU,³ to ensure a holistic and integrated approach by including provisions on residence permit for third country nationals irrespective of their collaboration during criminal proceedings. The reference made to the directive 2004/81/EC in the current proposal is clearly jeopardizing the assistance measures victims are entitled to, especially children and their families, by denying their right to a residence permit in the absence of collaboration.

Consistency should also be sought with the right to compensation as enshrined in the Council directive 2004/80/EC. The current proposal will not ensure the holistic and integrated approach it foresees in the fight against trafficking if the right to compensation of victims is not integrated into the body of the directive.

We would also like to bring to the attention of the Members of the European Parliament that the European Court of Human Rights recently ruled out in a landmark decision⁴ that State parties to the ECHR have a positive obligation to collaborate in the process of investigation, and prosecution of offenders in trafficking cases. It is therefore advised that be included in the directive provisions on collaboration with third countries and EU member states as well. The proposition of the European Parliament in its resolution of February 10th 2010 to create a European anti-trafficking coordinator is a first step to integrate coordination mechanisms to fight trafficking and protect victims. Likewise, National Rapporteurs as mentioned in article 15 should be independent bodies, status that is mentioned in the current proposal. The newly created coordination and monitoring mechanisms should ensure regular multi-

¹ EC Expert group recommendations on identification and referral to services of victims of trafficking in human beings, 22 November 2007

² Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings of the European Commission

³ European Union, Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 29 November 2002, point 13.

⁴ *Rantsev v Cyprus and Russia* [2010] ECHR 25965/04 (7 January 2010)

disciplinary collaboration with third countries authorities and civil society organizations, not only within the investigation and prosecution phases but also in measures of prevention, protection and possible reintegration schemes when it is in the best interests of the child and always taking into account their views.

It is therefore of utmost importance that the proposal provides that Member States foster cooperation and coordination mechanisms between themselves, as well as with third countries, to address the root causes of trafficking in persons in countries of origin, transit and destination, and enhance protection of victims. Specific mechanisms shall be put in place between all parties concerned to support schemes aiming at local integration, or when it is in the victim's best interests, reintegration in countries of origin or resettlement in a third country.

We are confident that the European Parliament members as well as the European Council on Justice and Home Affairs will take into consideration these comments, bearing in mind that children often represent a substantial part of the number of trafficked persons. Such steps will certainly contribute to the improvement of the fight against human trafficking, and child trafficking more specifically, while adopting an integrated, coordinated, holistic and human-rights based approach towards trafficking in human beings.

Signatories:

Theo Noten
Director
ECPAT Netherlands

Veslemoy Naerland
Programmes director
Save the Children in Albania

Gabriela Rozkowska
Programme manager
Nobody's children foundation, Poland

Lydia Zagorova
Director
Neglected Children Society
ECPAT affiliate in Bulgaria

Artur Marku
Delegate
Terre des hommes in Kosovo

Sendrine Constant
Delegate
Terre des hommes in Albania

Vincent Tournecuillert
Head of the Regional Office for Central and
South Eastern Europe
Terre des hommes Lausanne

For more information,
Contact person: Mr. Pierre Cazenave
Regional Child rights Officer for C/SEE
Terre des hommes – Child Relief
pierre.cazenave@tdh.ch