

OPINION OF THE EXPERTS GROUP ON TRAFFICKING IN HUMAN BEINGS OF THE EUROPEAN COMMISSION

IN CONNECTION WITH THE CONFERENCE “TACKLING HUMAN TRAFFICKING: POLICY AND BEST PRACTICES IN EUROPE” AND ITS RELATED DOCUMENTS

On 25 March 2003, the Commission adopted the Decision setting up a consultative group, to be known as the Experts Group on Trafficking in Human Beings¹. In August 2005 the Commission appointed the members of the Group and established its terms of reference as follows: “the Commission may consult the Group on any matter relating to trafficking in human beings. The Group shall issue opinions or reports to the Commission at the latter’s request or on its own initiative, taking into due consideration the recommendations set out in the Brussels Declaration. In particular, a report of the Group... should be submitted to assist the Commission with a view to launching further concrete proposals at EU level. The Commission, in turn intends to issue a Communication on trafficking in human beings in the first half of 2005”.

The Group began its work in September 2003 and, after consultations with governmental institutions, NGOs, IGOs and IOs, submitted its final Report to the Commission on 22 December 2004². The Report and its comprehensive set of 132 recommendations on common priorities, guiding principles, prevention, assistance, protection and social inclusion, and law enforcement strategies aim to indicate ways to strengthen EU action against trafficking in human beings and, where appropriate, launch new initiatives, programmes and activities.

The Group would like to congratulate the Governments of the United Kingdom and Sweden and the European Commission for the organisation of a high-level conference where the Commission’s Communication on trafficking in human beings will be made public and the further development of suitable policies and practices to combat trafficking in human beings in the framework of the Hague Programme will be discussed. The Group welcomes this initiative and would like to take the opportunity to contribute to the development of the envisaged EU Plan of Action by calling attention to some of the major recommendations of the Experts Groups report.³

OPINION

The Experts Group would like to strongly recommend that the Plan of Action reflects and takes into account existing international obligations as well as what has already been advanced on different aspects to combat trafficking in human beings, in particular, the Report of the Experts Group on Trafficking in Human Beings of the European Commission submitted in December 2004; the OSCE Action Plan on Combating Trafficking in Human Beings, 2003; the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002; the ILO Guidance for Legislation and Law Enforcement on Human Trafficking and Forced Labour, 2005; and the new Council of Europe Convention on Action against Trafficking in Human Beings, 2005.

¹ OJ L 79, 26.3.2003, p.25.

² http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm#

³ This opinion is based on the recommendations of the report of the Experts Group, which was agreed by all members of the group as independent experts. However, one member of the group did not take part in the drafting of this Opinion, due to incompatibility of their functions with regard to the negotiations on the Plan of Action

More specifically the Experts Group would like to make the following recommendations, based on the above mentioned documents and in particular on its report:

I Guiding Principles

A human rights approach should be integrated in any plan of action as a normative framework in the further development of policies and measures against trafficking in human beings. Mechanisms should be established to ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected, in particular trafficked persons but also (female) migrants, asylum seekers or prostitutes.

II Victim protection and assistance

The report of the Experts Group identified the need to develop adequate structures and provisions for victim protection, assistance and compensation as a priority area for action at a European level. Assistance and protection should be provided regardless of the trafficked person's willingness or capacity to testify against their traffickers and aim at long term social inclusion. Specific attention should be paid to minors. To this end European standards, guidelines and procedures on the following aspects should be developed:

- Mechanisms for victim identification and referral to specialist agencies. These mechanisms should be multidisciplinary and include actors from labour market institutions as well as law enforcement, NGOs and others.
- Specific attention should be paid to information and training of labour related agencies and to the development of outreach work, drop-in centres and hotlines;
- Access to a reflection delay of no less than three months with access to appropriate support mechanisms including at a minimum safe, secure and appropriate housing, legal, medical and psychological assistance;
- Access to temporary and/or permanent residence permits, with access to social assistance, work and training opportunities aimed at her or his social inclusion either in the country of destination or origin;
- Mechanisms to carry out risk assessments prior to any return of a victim, procedures to ensure the dignity, safety and privacy of the trafficked person prior, during and upon return, the provision of information to the trafficked person, and procedures to access appropriate social assistance programmes in home countries;
- A legally binding EU instrument on the standing of trafficked persons in criminal proceedings⁴ to ensure the proper treatment, assistance, protection and compensation of victims.
- Priority attention should be given to the specific needs of children with the development of protection measures based on the principles of the best interests of the child, non discrimination and the right to participate. The Convention on the Rights of the Child (ratified by all Member States), should be integrated as a normative framework in the further development of policies and measures against trafficking in human beings at a national and European level. Member States and the Commission should devote strenuous efforts and resources to empower infrastructures and competences in order to fulfil their obligations and duties towards all children (under 18) in their territory or at their borders.

⁴ Building on the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

III An integrated holistic approach

To effectively address trafficking in human beings a holistic and integrated approach is needed based on respect for and promotion of human rights. In order to realize such an approach multidisciplinary co-operation and co-ordination between all involved actors and stakeholders, including civil society and labour market organisations, are crucial. Particular attention should be paid at national and European level to strengthening the role of civil society, based on the recognition of their role in providing assistance to trafficked persons and developing good practices but also because of their crucial role in maintaining and strengthening democratic processes and in monitoring and advocating implementation of human rights commitments by States.

The aim should be to develop an integrated policy covering the different fields and levels on which action is required. To this end governments should establish efficient co-ordination and co-operation structures at political and operational levels. These should include the following:

At national government level

- National Referral Mechanisms to ensure the proper identification and referral of trafficked persons, including trafficked children, and to ensure that they receive adequate assistance while protecting their human rights;
- Governmental co-ordination structures to develop, co-ordinate, monitor and evaluate national action plans and policies. These structures should also ensure adequate and sustainable funding for NGOs providing assistance to trafficked persons;
- A central place where information from different sources and actors is systematically gathered and analysed. This could be a National Rapporteur or a comparable mechanism which would directly report to the government and the parliament and make recommendations on the development of national policies and action plans.

At EU level

- A mechanism to bring together the information collected at national level;
- Data protection regimes: data collection mechanisms should be based upon previously concluded protocols ensuring that data sharing is accompanied by strict data protection measures and regimes. In particular with regard to personalized data, strict data protection regimes should be put in place to protect the privacy and safety of (possible) victims.

IV Root causes and prevention

The link between trafficking in human beings, current migration policies, and the informalisation of the workplace should be recognized. As stated at the Tampere European Council in 1993 and reiterated in the Hague Programme, Member States should promote regular and managed migration policies based on demand and need, including the demand for unskilled labour, which are gender sensitive and imply the establishment of clear and comprehensive policies, laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, societies and governments.

Member States should provide a standards based approach to trafficking and migration, including the protection of migrants' rights, ratification of the UN Convention on the Protection of Migrant Workers and their Families, implementation of existing international conventions, in particular the ILO Conventions No. 29 and 105 on Forced Labour, and standards regarding non-discrimination, freedom

of association, labour conditions and others. These standards need to be applied to both formal and informal sectors, included the unrecognized informal sector of services.

European efforts against trafficking in human beings should not only concentrate on trafficking for sexual exploitation, but cover trafficking for all purposes, including domestic work, construction, agriculture, forced begging and any other form of forced labour within the Union.

Research on trafficking should detect and study changes in the trends and patterns of trafficking. Regular reviews and assessments of the trafficking situation and anti-trafficking responses should be an integral part of research programmes with a view to adapting anti-trafficking measures to the changing circumstances. Research should be oriented towards the production of practical recommendations to curb trafficking and to assist its victims. Specific attention should be paid to research on trafficking for other purposes than sexual exploitation, the role of the demand for cheap and exploitable labour in the EU countries and the risk of re-trafficking, as these areas are largely neglected until now.

Prevention of trafficking as well as anti-trafficking law enforcement, prosecution, anti-corruption measures and the proper judicial treatment of trafficked persons should be integrated in all relevant EU and Member States' co-operation programmes with countries of origin. Priority goals should be to combat the root causes in both countries of origin and countries of destination. Impact assessments should be a crucial element of all programmes in order to avoid adverse effects.

Member States and European institutions should increase their efforts to prevent trafficking in countries of origin through addressing the main root causes of trafficking, in particular through development cooperation programmes benefiting potential victims as well as through strengthening the building of democratic and anti-discriminatory institutions and practices.

The role of NGOs and labour related agencies in the prevention of trafficking and the identification of victims should be strengthened and supported as well as the important role of NGOs in implementing information campaigns which are tailored to the situation of each individual country.

V Investigation and Prosecution

Protection of the rights of the trafficked person should be at the heart of all investigation and prosecution activities.

Training for law enforcement (including judicial entities and authorities) should focus on the identification of trafficked persons, the provision of suitable support, (including referral to NGOs), and measures for the protection of the victim as central to the investigation and trial processes.

At a European level a common definition of the crime of obstruction of justice, including the use of force, threats to intimidate witnesses should be developed.

Under provisions for confiscation of assets of traffickers⁵ priority should be given to providing compensation to trafficked persons and support for NGOs assisting trafficked person from confiscated assets. Further instruments should be developed to enable the compensation of trafficked persons (including the possibility through criminal or civil proceedings, or through State compensation schemes).

Member States should promptly implement all instruments already approved at European level to fight against organised crime, and further develop anti corruption strategies, financial investigations, including money laundering, and an "intelligence led" approach.

⁵ Now possible under Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property.

Cooperation and coordination between all relevant actors, including non traditional actors such as labour inspectors, and civil society organizations in respect of investigation and prosecution should be facilitated at both national and European level.