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Subject:	Targeting newly emerging forms of trafficking in human beings in the EU member states

I. Introduction

1. Justification

Trafficking in human beings (hereinafter: THB) is the modern form of slavery and a serious violation of fundamental human rights and freedoms.

In the past few years the focus has increasingly shifted, both at European and international level, towards the prevention and fight against trafficking in human beings and the protection of and provision of assistance to its victims. Several international and European documents have been adopted to combat THB, in particular¹:

¹ Further documents are available at: <http://ec.europa.eu/anti-trafficking/index.action>.

- Protocol Supplementing the Palermo Convention to prevent, suppress and punish trafficking in human beings, especially women and children;
- The Council of Europe Convention on Action against Trafficking in Human Beings (3 May, 2005);
- International Labour Organisation Forced or Compulsory Labour Convention, 1930 (No. 29);
- ILO Abolition of Forced Labour Convention, 1957 (No. 105)
- Draft Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- Council Framework Decision 2002/629/JHA (19 July 2002) on combating trafficking in human beings;
- Stockholm Programme – An open and secure Europe serving and protecting the citizen; adopted by the European Council in December 2009;
- EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (December 2005);
- The Hague Programme: evaluation of EU policies on freedom, security and justice (November 2004);
- The Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002)
- Opinion No. 2/2009 of the Group of Experts on Trafficking in Human Beings set up by the European Commission on the Commission Proposal for a Council Framework Decision on preventing trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM (2009) 136 final (29 April 2009);

- Opinion No. 7/2010 of the Group of Experts on Trafficking in Human Beings set up by the European Commission on the Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons;
- Report of the Experts Group on Trafficking in Human Beings of the European Commission (22 December 2004);
- The conclusions adopted by the European Council at its special meeting in Tampere on 15 and 16 October 1999.

Fighting “new” forms of exploitation is an important element of the draft Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (hereinafter : Directive).

The Directive includes non-sexual forms of exploitation and broadens the scope of anti-trafficking legislation in order to improve the effectiveness of policy in this area. For example, forced begging is identified as a form of exploitative forced labour or forced service. Exploitation of beggars is now considered trafficking if the conditions of forced labour or service are met. Valid consent needs to be identified on a case-by-case basis but from minors no consent is considered valid. The Directive also defines the concept of exploitation of criminal activities, which is an increasingly worrying phenomenon. The definition also includes removal of organs and trafficking in the context of illegal adoption and forced marriage.

The Stockholm Programme prioritises the fight against THB as one of the forms of serious and organised crime. It underlines – among other things – that the strengthened and enhanced prevention of, and fight against, THB should be based on a coordinated and coherent policy response which goes beyond the area of freedom, security and justice whilst taking into account new forms of exploitation.

This requirement is in line with the 2009 findings of the Group of Experts on Trafficking in Human Beings set up by the European Commission, which stressed the importance of broadening the understanding of the concept of exploitation to include new forms such as begging and unlawful activities.

The European Commission also supports many initiatives on this issue. One of the most recent is a study prepared by ICMPD on different forms of THB. The study shows that some Member States have already specified different forms of THB in their legislation. However, an important and alarming finding was that victims of THB are not only being forced to commit petty crimes but are also being forced to take part in serious and organised criminal activities.

The Commission is now preparing a new integrated strategy on fighting trafficking in human beings and on measures to protect and assist victims, as set out in the Action Plan implementing the Stockholm Programme. The aim of the present initiative is obviously not to generate overlaps with the forthcoming strategy. On the contrary, the picture which will be drawn may also serve as a useful input for a future strategy as it is of paramount importance that EU institutions and Member States work not in parallel but jointly on the fight against THB. Opinion No 7/2010 of the Group of Experts on trafficking in human beings acknowledges that trafficking for the purpose of labour exploitation occurs in various sectors of the formal and informal economy, and especially in sectors that employ seasonal, temporary and subcontracted labour, are often labour intensive and have a high turnover. These include both small businesses and major enterprises in the following sectors: agriculture, construction, hospitality, catering, food processing, packaging, textile and garment cleaning, domestic work, etc.¹ Trafficking for the purpose of labour exploitation is also reported for begging and criminal activity.

¹ Trafficking in human beings, Seventh Report of the Dutch National Rapporteur, 2009; Trafficking in human beings, Fifth Report of the Dutch National Rapporteur, 2007; Beate Andrees and Patrick Belser (ed.), Forced labour: Coercion and exploitation in the private economy, ILO, 2009; OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, A Summary of challenges on addressing human trafficking for labour exploitation in the agricultural sector in the OSCE region, 2009; OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Human trafficking for domestic servitude (forthcoming).

In recent years efforts have been made to map out the scope of the problem of trafficking. Nevertheless, the notified and uncovered cases and databases based on these figures do not cover the reality of this crime, particularly not from the perspective of the victim. The real numbers of the victims can be estimated only by means of deduction. The ILO estimates¹ the minimum number of people in forced labour as a result of trafficking at any one time to be 2.45 million. Children² make up between 40 and 50 per cent of victims and more than 80 per cent of all trafficked people are women and girls. One out of every five forced labourers in the world is a trafficked person. Moreover, ILO estimates³ the profits from trafficking to be about US\$32 billion a year. In 2009, the ILO estimated that the financial cost of forced labour to the workers affected, in terms of lost earnings, is around US\$ 21 billion each year.

Another ILO study⁴ states that some new EU Member States in South-Eastern Europe remain countries of transit and destination for human trafficking. Several countries of Central and Eastern Europe have recorded a growing number of victims of trafficking within their national borders. While the majority of identified victims are women trafficked for sexual exploitation, the number of identified cases involving men is now growing as more attention is given in this region to trafficking for forced labour.

Almost all European countries have now turned their attention to some extent to the way in which forced labour practices can, to some degree, penetrate their own labour markets. Labour trafficking was a relatively minor problem in the Nordic countries compared with other regions that appear to be at higher risk. Nevertheless, there are sectors and industries – construction, restaurants, domestic work, berry-picking in northern Finland and Sweden – where the incentives to hire irregular foreign workers can create a breeding ground for forced labour and trafficking.

¹ International Labour Office, Minimum Estimate of Forced Labour in the World, Geneva, April 2005, p. 4.

² A child is anyone under the age of 18.

³ International Trade Union Confederation, How to Combat Forced Labour and Trafficking: A Manual for Trade Unions, Brussels, February 2009, p.31.

⁴ International Labour Office, The cost of coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work International Labour Conference 98th Session, Geneva, 2009, p. 20.

While targeting THB, greater emphasis must be put on the forms such trafficking takes outside the context of sexual exploitation which appear to be more worrisome in both quantity and forms. International data show the alarming dimensions of slavery, forced labour and forced begging linked to THB.

The aim of the present initiative is to direct attention to THB for non-sexual exploitation, to make a comparison between the regulatory and institutional systems of the Member States and to share experiences gained. Based on this knowledge, the effectiveness of our efforts against human trafficking can be enhanced. To reach this goal, Council conclusions will be drawn up and adopted during the Hungarian Presidency in 2011.

2. Methodology used and expected outcome

In order to map out the existing mechanisms, gaps and challenges, a survey was carried out using a questionnaire which was disseminated among the Member States, (hereinafter : MS) at the September 2010 meeting of the Council Working Party on General Matters including Evaluation (herein after: GENVAL). This questionnaire comprised 6 sections, namely legal framework, data, prevention, victim protection and assistance, law enforcement and jurisdiction, cooperation. Of the 27 MS, 25 replied to the questionnaire and our analysis is based on their responses.

The present analysis follows the structure of the questionnaire. In each section a summary of replies can be found, which is followed by a list of identified gaps. At the end of each section recommendations are formulated which can serve as basis for the Council conclusions.

In order to jointly formulate the conclusions, the present analysis will again be disseminated among MS. One forum of the expert discussion will be the Seminar scheduled for the beginning of April 2011, the outcomes of which will be channelled towards the work of the GENVAL working group.

II. Legal framework

1. Outcome of the survey

THB constitutes a separate criminal offence in all replying MS except for three MS where this crime is not currently included in the Penal Code as a separate offence but is instead included in a number of other articles. For example, in some MS, THB is prosecuted under offences such as enslavement, deprivation of liberty, aiding prostitution, illegal organ donation, and manufacture of works involving child pornography or making child pornography available.

Concerning definitions, our analysis found that in 14 MS there is currently no separate definition of forced labour, servitude and slavery. In four MS, however, a comprehensive definition of labour exploitation exists, which includes forced labour, slavery and servitude. Among those MS in which there is no separate definition of the above form of exploitation, there are two where the ILO Convention's definitions are used in practice. In the remaining MS the practical interpretation of the law is used.

Begging by adult persons does not constitute any kind of punishable act in 7 MS. Of the responding MS, there are four in which forced begging by an adult is a criminal offence – naturally, the offender being the person who forces another to beg. In 4 responding MS, begging is a crime even if the beggar was not forced. In 6 responding MS, begging constitutes a misdemeanour (pursuant to national or local decrees), and 4 MS responded that begging by an adult is liable to an administrative sanction but does not constitute a misdemeanour.

Regarding child begging, the results of the survey indicate that in 6 responding MS, begging by a child itself does not constitute any kind of punishable act even if the child was forced to do so. In 5 MS, allowing, recruiting or forcing a child to beg constitutes a misdemeanour or other punishable act, while only in 10 MS does it constitute a crime. In the latter category there are still slight differences between the approaches. While in 2 MS begging is only punishable if it happens as part of trafficking, in another MS this condition is not required.

In the majority of the responding MS, committing a criminal offence as a direct consequence of force or threat constitutes grounds for the preclusion of punishability, while in 7 this is not the case. For clarity, it should be noted that 2 MS did not provide an answer to this question.

2. Identified gaps

- Lack of standardised definition of forms of exploitation, especially forced labour, slavery and servitude;
- Different approaches towards begging resulting in major differences in legislation concerning forced begging;
- Lack of inclusion of exploitation of begging in the definition of what constitutes a criminal offence of THB, resulting in a lack of dissuasive sanctions against forced begging;
- Lack of dissuasive legislation against exploitation of child begging.

3. Recommendation

- Use of existing definitions of forced begging, such as the one in ILO Convention No. 29 concerning Forced or Compulsory Labour of 29 June 1930, which is also referred to in the Draft Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (to be adopted in spring)

III. Data collection and trends in trafficking in human beings

1. Outcomes of the survey

Some form of data collection was found in 24 out of the 25 replying MS.

Of these, 18 collect data on registered THB crimes, and 12 MS disaggregated data by types of exploitation. While 19 MS provided data on exploitation of the prostitution of others and other forms of sexual exploitation, data on forced labour and servitude were only provided by 10 MS and by only 2 on begging and 4 on any other form of exploitation. It should be noted that in some MS data has been collected but was not provided by the replying organisation due to the lack of a national database and/or a shortcoming in cooperation with the organisation collecting the data.

12 MS provided data on convictions, and in 8 MS this data is also disaggregated by type of exploitation. 8 MS provided data on exploitation of prostitution of others and other forms of sexual exploitation. Data on forced labour and servitude was provided by 5 MS, while only 2 MS provided data on begging and 3 MS on any other form of exploitation. 18 MS provided data on offenders, which in 11 MS was disaggregated by sex.

17 MS provided data on trafficked persons. In 15 out of these MS the data was also disaggregated by sex and in 14 by age.

Despite the availability of information we faced a number of challenges when examining the data provided by the MS. The starting date of data collection differs country by country, therefore a five-year interval – which was the original aim of the questionnaire – cannot be used. The answers also show that data collection is closely linked to investigation/criminal procedure, so data collection categories refer to definitions in the national criminal legislation concerned. Since there are differences in these definitions, data collected cannot be compared. The main differences of national approaches found in the questionnaire are whether “other forms of sexual exploitation” are included in “exploitation of prostitution of others”; whether “slavery/servitude” is included under “forced labour” and whether “exploitation of begging” is included under “forced labour”. When analysing the data, therefore, four broader groupings were used. These were: sexual exploitation (including exploitation of prostitution of others and other forms of sexual exploitation); labour exploitation (including forced labour/forced services, slavery/servitude); begging; and other (removal of organs, child adoption and any other, among which only forced commission of crimes was mentioned by the respondents).

MS provided data on 2137 registered crimes and 353 convictions. The number of registered offenders is 10147 (men: 4897, women: 1501, no data on sex: 3749), while the number of convicted offenders is 2065 (men: 299, women: 153, no data on sex: 1613).

As regards identified trafficked persons MS provided data on altogether 17187 persons, 15823 of which are women/girls, and 2364 are men/boys and 1513 are children.

In spite of several shortcomings regarding available data, some relevant findings may be noted.

- The majority of registered cases are those of sexual exploitation (47%) and labour exploitation (47,5%); “other” forms constituted 3%; begging constituted 2% of all registered cases. This is even more important as almost twice as many MS could provide data on sexual exploitation than on labour exploitation;
- The proportion of men compared to women among offenders 3 times larger as regards registered crimes and twice larger as regards convictions;
- About 10% of all identified trafficked persons are children;
- While the majority (98%) of identified trafficked persons in sexual exploitation are women/girls, concerning forced labour this proportion is converse: 79% of identified trafficked persons are men/boys.

In the replying MS, both men and women are involved in THB as offenders, however the majority of traffickers are male, between the ages of 25-40. The crimes are committed by well organised, hierarchic groups, in many cases families. As regards the majority of the responding MS, the members of the groups are divided between the countries of origin and destination in accordance with their role in the trafficking process. Offenders from destination countries travel to countries of origin in order to recruit persons on a much smaller scale.

The common features of trafficked persons are marginalisation and unsettled circumstances, which does not necessarily mean extreme poverty. Disturbed or missing family background or lack of an informal protective network are also factors that make persons vulnerable regarding THB.

Nevertheless, in most cases trafficked persons live in poverty. They are often unemployed and/or homeless and the vast majority are under-educated. Several responding MS indicated that persons with visible physical disabilities or mental disorders are found in an increasing number among trafficked persons. While in cases of THB for sexual exploitation the majority of trafficked persons are female, in fields of non-sexual exploitation women and men are both represented. While typically women are exploited, according to the responses, in catering, or domestic work, men are mostly exploited on a large scale in various industries from construction to engineering. Both women and men are found among people trafficked for seasonal agricultural work and begging. A significant number of responding MS indicated that besides disabled persons, children are also found in large numbers among forced beggars. Our analysis further indicated that children are also often used to commit crimes, most typically pickpocketing.

Regarding the *modus operandi* of the organised criminal groups in recruiting, the survey results suggests that while advertisements in newspapers or on internet sites are the among the most frequent means of recruitment – mentioned by 3 responding MS – the responses clearly showed that personal relationships with the targeted persons play a much more important role in recruitment. These personal relationships differ from occasional acquaintances to family members. The luring tactics are generally offers for higher living standards. As the trafficked persons are often under educated, these are in most cases unskilled jobs.

While trafficking for selling bodily organs and for illegal adoption exist also within the EU, obtaining social benefits on behalf of the trafficked person is a relatively new phenomenon which is classified as THB in two of the replying MS. These respondents described cases where primarily unemployed and/or homeless persons were recruited from rural or disadvantaged areas with the promise of work abroad. The recruited persons were transported to the country of destination, where they were taken to the relevant authorities to apply for benefits that are supposed to facilitate integration. However, the benefits are transferred to the bank account of the criminals and not to the trafficked person.

2. Identified gaps regarding data collection

- Lack of independent national data collection mechanisms using standardised indicators resulting in lack of comparable data;
- Low extent of data collection on labour trafficking and other forms of exploitation;
- Relatively low extent of disaggregated data on convictions;
- Lack of disaggregated data on trafficked persons.

3. Recommendations

- Establishment/development of national data collection mechanisms with better use of existing indicator systems;
- Further development of data collection on labour trafficking and other forms of trafficking in MS and in the EU, starting with selecting common indicators;
- Development of sectoral data collection mechanisms by mapping out bottlenecks and shortcomings and better use of existing supportive mechanisms and funds;
- Further development of national analyses of the collected data, and producing reports on the basis of analysis.

IV. Prevention

1. Outcome of the survey

Between 2005 and 2009, responding MS made considerable efforts on raising awareness of THB. In the 25 MS, altogether 79 awareness-raising measures were implemented, based on wide scale cooperation between government agencies and non-governmental and international organisations. These measures included a wide range of activities, from offline and online information dissemination, to film festivals and lectures to children. The methods most frequently used to raise awareness of THB were posters, leaflets, TV spots and short films, while on a smaller scale thematic debates with members of specific target groups (e.g. youth) also took place.

On the other hand these measures were predominantly campaigns lasting for a limited period. Furthermore only a few MS reported having permanent information sources, such as websites or regular education for children at risk and their teachers on the issue (e.g. within school curricula). Regarding the theme and target group of these awareness-raising activities, in all of the MS information on the THB phenomenon was provided for the general public. At-risk groups such as women, children, and persons planning to work abroad were targeted to a lesser extent. The responding MS mentioned 5 demand-side activities, 3 of which were aimed at reducing demand for the services of victims of sex trafficking; 1 was a general demand-side campaign, and finally there was 1 measure within which possible users of victims of labour trafficking were targeted. Twelve specific prevention activities for non-sexual exploitation took place. The majority of these were about trafficking for forced labour in general, the specific issue of forced begging was touched on partially in one campaign, and another initiative was specifically about domestic servitude.

The evidence from the survey also showed that all responding MS organised training for professionals concerned. The target groups for training included judges, prosecutors, police staff, immigration officers, social workers and members of the consular service. In some cases these are ad hoc training programmes. However, in three of the responding MS, issues related to THB are part of the regular training of police personnel, judges and prosecutors. In one responding MS, an online handbook is available for policemen on the police intranet, while in another, information on THB is included on the curriculum of consular training. Lastly, in one MS, professionals of local-authority bodies were also given training. Thematically, the training programmes covered general information about THB and victim identification. Apart from these examples, in 5 other MS, specific training of labour trafficking also took place.

From our analysis of the information provided, it would appear that formal screening procedures to identify victims of trafficking do not exist in any of the responding MS. However, emphasis is placed on identification in connection with other types of surveillance activities.

2. Identified gaps

- Few permanently available information sources for the general public on the issue of THB;
- Few prevention measures for specific at-risk groups, such as teenagers at risk and unemployed people planning to work abroad;
- Very few demand-side campaigns on labour trafficking, especially on forced begging;
- Lack of any end-to-end comprehensive concept bringing together prevention, prosecution and protection;
- Lack of evaluation and follow-up regarding the effectiveness of prevention efforts;
- Training programmes are mostly ad hoc, not placed in a strategic framework;
- Few multidisciplinary training programmes;
- Little inclusion of THB information into educational curricula.

3. Recommendations

- Development, and regular updating, of permanently available information sources for various target groups, both on supply and demand side;
- Enhancement of prevention activities regarding forced labour and other forms of non-sexual exploitation;
- Development of end-to-end strategies that bring together prevention, prosecution and protection;
- Evaluation of the different prevention measures;

- Elaboration/enhancement of regular, multidisciplinary training programmes for professionals (including labour inspections, trade unions and workers organisations) concerned, on an obligatory basis, with regular evaluation of both the knowledge of participants and the current validity of substance;
- Inclusion of specific information on different forms of exploitation into different higher education curricula.

V. Victim protection and assistance

1. Outcome of the survey

We conclude that referral mechanisms (either formal or informal) exist in all replying MS. In most cases it covers – at least formally – victims of non-sexual exploitation. There are two among the replying MS where the national referral mechanism (herein after: NRM) only covers victims of sexual exploitation. In most responding MS, the member organisations of the NRM are the police and NGOs responsible for victim assistance. Consular services, immigration authorities and prosecutor’s offices are involved to a lesser extent. Only 4 responding MS reported that labour inspectorates or similar bodies are also involved in the referral mechanism. The vast majority of responding MS appeared to make no differentiation between female and male victims during identification and referral process.

The question “practice of victim referral” was aimed at highlighting the screening mechanisms which are to ensure that victims of non-sexual exploitation – when coming to the attention of authorities – are identified and referred. However, six of the responding MS provided no information on this. According to the responses of the remaining MS border guards, immigration authorities, labour inspectors, and police units that do not specialise in THB are provided with training on the indicators of identification of VoTs. In a few MS, these organisations work in accordance with the rules of national referral mechanisms.

The reflection and recovery period also covers, in all of the responding MS, victims of non-sexual exploitation. The length of this period ranges from 30 days to 6 months.

Separate shelter for victims of non-sexual exploitation does not appear to exist in any of the responding MS. However, four responding MS indicated that they had separate shelters for male victims, and in 9 MS specialised shelter for children was available. One of those MS with no specialised shelters indicated that child victims are referred to the unaccompanied minors' reception centre, while in another MS these children are referred to child protection facilities. The other MS provided no information on how male victims and child victims are referred, accommodated and assisted.

Assistance services for the victims referred to shelters are very similar and comprehensive, comprising safe accommodation, psycho-social and legal support, and financial aid. On the other hand, six responding MS indicated that they had long term re-integration programmes for victims of THB, which comprise vocational training and support for social inclusion. In those MS where such programmes exist, they also cover victims of non-sexual exploitation.

2. Identified gaps

- Few standardised referral mechanisms involving all organisations concerned;
- Lack of specialised shelters for victims of THB for non-sexual exploitation;
- Few shelters for child victims.

3. Recommendations

- Development of standardised referral mechanism for all victims of trafficking, with special attention to victims of different forms of exploitation and victims with special needs;
- Establishment of possibilities of providing separate shelter for victims of non-sexual exploitation and establishment of a wide scope of assistance services in response to the needs of victims of both sexual and non-sexual exploitation;
- Establishment of shelters for child victims of trafficking.

VI. Law enforcement, jurisdiction and cooperation

Note: As the vast majority of replying MS provided all the information concerned within the section “Law enforcement, jurisdiction” the outcomes are summarised with this section in the present analysis.

1. Outcome of the survey

In 16 of the 25 replying MS, specialised counter-trafficking units can be found. These units are at the central police level, in many cases their competence also includes analysis coordination and technical support for other units working on THB cases and specific training for police officers, while in another group of MS their role is exclusively to conduct analysis and evaluation, and they cannot take part in the surveillance and investigation of concrete cases.

Cooperation schemes differ in the replying MS. In several countries they only cooperate with other units and other organisations (mostly victims supporting NGOs) on a case-by-case level. However, in 3 replying MS, they are formally involved in national coordination mechanisms.

The headcount of the staff of these units also shows a very diverse picture, from 5 officers to almost 200.

Some kind of compensation for victims of THB is possible in all replying MS. Three compensation schemes were described by the replying MS:

- Compensation for victims of certain types of crimes (including THB) from a separate (state) fund;
- Compensation claim within the criminal procedure;
- Compensation in separate civil lawsuits.

In 14 replying MS, specific mechanisms on victim compensation exist, in the majority of cases within a general victim compensation mechanism for victims of violent crimes. In 3 of the 14 MS, only victims of THB for sexual exploitation can request such compensation. In 5 MS, compensation is possible within the framework of the criminal procedure, and in 4 within the framework of separate civil claim.

1. Identified gaps

- Police units countering THB have no competence to work on concrete cases individually in many MS, which hampers effective investigative work;
- Few formalised operative multidisciplinary cooperation schemes;
- Lack of prompt mitigation of damages.

2. Recommendations

- Establishment/development of counter-trafficking police units;
- Broadening multi-disciplinary cooperation mechanisms, both vertically and horizontally;

Establishment of compensation schemes from which victims can request prompt mitigation of their damages regardless of the outcome of the criminal procedure.
