

Lost Kids, lost futures.

The European Union's response to Child Trafficking

by

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and
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Terre des Hommes was created in 1960 to provide direct help to underprivileged children who were not being helped by existing relief agencies. Today it consists of a family network of nine organisations based in eight different countries. The International Federation *Terre des Hommes* (IFTDH) has consultative status with the United Nations Economic and Social Council (ECOSOC), UNICEF, ILO and the Council of Europe. The IFTDH is a founder member of CONCORD (European NGO Confederation for Relief and Development). In 2004, member organisations of the IFTDH have supported 840 development and humanitarian aid projects in 71 countries.

The countries in which members of the IFTDH have their headquarters are: Canada, Denmark, France, Germany, Italy, Luxembourg, Switzerland (where there are two organisations: *Terre des Hommes* Switzerland and *Terre des Hommes* Foundation in Lausanne) and Syria. The IFTDH works in partnership with *Terre des Hommes* organisations in Spain and in the Netherlands. Co-ordination and external representation are ensured through the IFTDH International Secretariat based in Geneva and its European office in Brussels (www.terredeshommes.org).

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For more information on *Terre des Hommes'* International Campaign Against Child Trafficking, consult the campaign's website: www.stopchildtrafficking.org

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Acronyms used in the text

ACP	African, Caribbean and Pacific countries
AENEAS	EU programme for financial and technical assistance to third countries in migration and asylum
AGIS	EU programme for police co-operation and judicial co-operation in criminal matters
ARGO	EU action programme for administrative co-operation in external borders, visas, asylum and immigration
CAHTEH	Ad hoc Committee on Action against Trafficking in Human Beings (Council of Europe)
CARDS	Community Assistance for Reconstruction, Development and Stabilisation (EU programme for the west Balkans)
CIP	Community Initiative Programmes (part of EQUAL initiative)
CRC	United Nations Convention on the Rights of the Child
CSP	Country Strategy Paper
DAPHNE	EU programme to combat violence against children, young people and women
DG	Directorate General
ECHO	European Community Humanitarian Aid Office
EIDHR	European Initiative for Democracy and Human Rights
EQUAL	European Initiative concerning transnational co-operation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market
EU	European Union
Europol	European Police Office
GAERC	General Affairs and External Relations Council (Council of the EU)
ICaCT	International Campaign against Child Trafficking
IFTDH	International Federation Terre des Hommes
IGC	Inter-Governmental Conference
ILO	International Labour Organisation
IO	International Organisation
IOM	International Organisation for Migration

IPEC	International Programme on the Elimination of Child Labour (part of ILO and referred to as ILO-IPEC)
JHA	Justice and Home Affairs
MEDA	Programme for the implementation of the Euro-Mediterranean Partnership
NMS	New Member States
NGO	Non-Governmental Organisation
OCT	Overseas Countries and Territories
PHARE	Pologne et Hongrie: Actions pour la Reconversion Economique (EU programme for accession countries)
RSP	Regional Strategy Paper
STOP	EU incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children
TACIS	Technical Assistance for the Commonwealth of Independent States
TDH	Terre des Hommes
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
VAR	Voluntary Assisted Return

Executive Summary

Over one million children every year across the world leave their homes and fall, or are given or sold, into the hands of traffickers who exert control over children and move them from one place to another in order to exploit them. Child trafficking is not new, but there are indications that in recent years it has been growing and a variety of international responses have been devised to put an end to it. This paper looks at how the European Union (EU) has chosen to respond to this challenge and assesses critically the legal, policy and implementation framework put in place to fight child trafficking.

The EU approaches child trafficking primarily from the perspective of the fight against organised crime, as part of its efforts to provide security for its citizens. Trafficking in human beings was first introduced as a competence of the EU in the Treaty of Amsterdam in 1999, when it was firmly placed in EU primary law within a policy on Justice and Home Affairs. Since then child trafficking has remained a third pillar competence, an area where the member states prefer to retain a high degree of independence.

The choice of internal security as the perspective from which to approach the fight against trafficking in human beings has had clear political and policy implications. For the most part it has led to an overwhelming legislative and policy orientation on law enforcement and judicial co-operation. Where a policy on prevention exists it tends to be related to a policy to suppress and prevent migration flows into the EU. There has been little recognition by the EU of the need to provide specific preventative measures against trafficking in human beings, or of the need to design special measures to safeguard the rights of child victims of trafficking. A children's rights approach has generally been missing, due both to the choice of internal security as the starting point of a policy on child trafficking and the choice of the EU to mainstream children's rights in its external Human Rights and Development policy. Additional difficulties lie in the institutional divisions in the organisational structure of the EU whereby human rights is traditionally an external policy area.

This lack of internal-external co-ordination in EU policy creates particular complications in the implementation of a coherent policy against child trafficking. While child trafficking for the most part involves movements across borders and, in the context of the EU, particularly across its external borders, the external policy of the EU remains a competence of the member states. Where legislation on trafficking in human beings and children does exist, it applies only to member states' internal policies. In the external dimension a regional approach is applied, with greater attention given to countries which the EU has identified as a priority due to their geographical proximity

and their status as countries of origin for human beings trafficked to the EU. This creates particular problems for implementation of programmes across the trafficking chain, with no mechanism to ensure consistency and complementarity among the different initiatives.

By far the greatest impediment to an effective EU policy to fight child trafficking is the lack of a clear definition. This has led to constant confusion and overlap in the use of terminology and in policy between both the sexual exploitation of children and trafficking in women. Historically the EU's efforts to combat trafficking in human beings have tended to concentrate on the sexual exploitation of women and children. This is not surprising since until recently "trafficking" in international discourse was taken to mean precisely this. Past initiatives by both the European Parliament and the European Commission were influenced by cases of sexual exploitation in the EU, which caught the eye of the European public and subsequently received a political response. It is a legacy that seems hard to shake off.

The fight against "trafficking in human beings and the sexual exploitation of children" has since been enshrined in countless EU documents and programmes including recently into the legal framework of the EU. It was probably felt that by addressing the sexual exploitation of children, which statistics show is the most frequent form of exploitation that trafficked children are subjected to, it would be possible to "kill two birds with one stone", that is, to contribute both to the fight against the sexual exploitation of children in the EU and to combat child trafficking which happens for this purpose. Yet without a distinct approach to child trafficking even children trafficked for the purpose of sexual exploitation are unlikely to be reached, since these two phenomena, though related, can involve both different activities and different actors.

Noting the ways in which the EU has responded to child trafficking through the analysis of its legislative and policy framework, this study draws up a series of conclusions and recommendations addressed primarily to the EU institutions and European government agencies which will have to shape appropriate responses to the specific issue of child trafficking.

Firstly, a definition must be provided that would apply to child trafficking for a number of exploitative purposes, including commercial sexual exploitation, marriage, adoption, slavery or bonded labour, hazardous child labour, domestic servitude, begging and involvement in illicit activities, and trafficking in organs, in order to ensure that all children are protected.

Secondly, it is imperative that child trafficking is recognised by the EU as a specific policy area in its own right. Such a policy must be rooted firmly in children's rights and will

need to recognise that children are particularly vulnerable to trafficking and require special measures to reflect this. In addition to the internal security approach which focuses on judicial co-operation and prosecution of traffickers, high standards for prevention, protection and rehabilitation of victims have to be promoted by this EU policy.

Thirdly, the EU development and humanitarian aid policy should play a central prevention role by making a strong commitment to focus on children's rights through an overall rights-based approach to development and humanitarian aid. Ensuring birth registration and the right to basic education are among the particularly important strategies to prevent child trafficking in third countries. Children in emergency situations become increasingly vulnerable to exploitation and trafficking. Therefore, specific measures that protect children against trafficking in emergency and post-emergency contexts have to be undertaken within EU humanitarian actions. Moreover, special measures directly aimed at the prevention of child trafficking have to be identified and adapted to the specific situations of trafficking.

In order to implement a specific policy on child trafficking, the EU and member states must ratify and fully implement international conventions and treaties designed to combat trafficking and protect fundamental children's rights, in full compliance with the best interests of the child as stated in the UN Convention on the Rights of the Child (CRC). Policy dialogue with third countries should also be used to combat child trafficking. Moreover, the EU should establish a specific programme to address child trafficking which would provide financial support for concrete actions to prevent, protect and rehabilitate child victims of trafficking. Such a programme must be of an unlimited geographical scope in order to provide an opportunity for the EU to implement a consistent international policy to combat child trafficking in a coherent external-internal human rights policy.

Fourthly, in addition to the relevant international treaties and conventions related to trafficking and children's rights, non-binding instruments issued by UN agencies – such as the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by the UN High Commissioner for Human Rights in 2002 and the *Guidelines for Protection of the Rights of Children Victims of Trafficking* issued by UNICEF in 2003 – provide important measures that the EU should include in its policies. It is recommended that the EU creates a new legally binding instrument on the protection and rehabilitation of child victims of trafficking which would recognise the special needs of children once they have been trafficked to the EU, regardless of whether they are party to criminal proceedings or not.

Child trafficking is a complex phenomenon that requires innovative responses which may not all fit in with the

current institutional framework. New posts and structures may need to be created to generate links across existing policy areas. Among these, the Commission should appoint a High-level Representative for Children who would make sure that measures to implement the CRC are integrated into all relevant policy areas of the EU institutions. Under the auspices of the High-level Representative for Children, a Task Force on Trafficking in Children should also be established within the European Commission in order to provide the comprehensive multi-disciplinary strategy and programming suggestions that are required as a specific response to child trafficking. The European Parliament should use the newly established Subcommittee on Human Rights in order to consider the rights of the child as a priority intervention area of EU human rights policy. This subcommittee also provides an opportunity to improve the interface between internal and external policy dimensions of human rights, which is essential to design a proper response to child trafficking. The Council of the European Union plays a central role in defining EU external policy on human rights and immigration. It is therefore of great importance that the Council set up a Task Force on Trafficking in Human Beings, which would co-ordinate and monitor all developments on trafficking-related issues in the policies designed by the Council. The task force should have the responsibility of ensuring that special measures for children who are victims of trafficking are included in the EU policy on human rights and/or immigration.

NGOs and civil society with experience in child protection, and combating child trafficking in particular, can act as an important resource in the development of a policy in this area. Providing a coherent response is of vital importance. Any gaps in the definition and policies on child trafficking can be exploited by the traffickers, and it is the children who will pay the price.

Foreword

CHILD trafficking is a crime against humanity and it is increasing in Europe. This phenomenon has been underestimated for years in our continent, with dramatic consequences for our understanding, and our response. With this report, *Terre des Hommes* intends to fill an important knowledge gap about what is going on in Europe in this area and to provide pointers as to how European decision makers should adapt their ideas and legislation to the new challenges that child trafficking represents.

Europe is a rich continent: most of the children that are trafficked to it come from poor countries, nearby or far away from our borders. In both cases the facts remain the same, the children are treated as commodities, sold and exploited to bridge somehow, in this dramatic way, the gap that exists between the rich and poor parts of our planet. In a world in which almost everything can be considered a commodity, it is no surprise that our continent “demands” this kind of “product” too.

Terre des Hommes practises the “first walk, then talk” method. Our experience in fighting child trafficking is sound because it is based on field experience, all over the world, including Europe. And this is exactly the reason why we are issuing this report, because the responsibilities of this continent in managing this phenomenon are increasing, as is its role in the world economy and, we hope, politics. We are aware of the fact that each percentage increase in development budgets spent on direct actions involving beneficiaries themselves represents the chance for thousands of children and their families to live a normal life, to meet their needs and fundamental rights, to escape the nightmare of trafficking. We are mindful that raising public awareness on child trafficking in Europe represents a concrete opportunity to produce better laws that punish the traffickers and help the victims. This can be reached only by working at grassroots level, by being able to present concrete facts and figures, by drawing lessons from our field experience and making concrete recommendations for legislative and policy improvements. This is what *Terre des Hommes* has been trying to do for a few years in the framework of its *International Campaign against Child Trafficking* (www.stopchildtrafficking.org).

This campaign adopted an integrated methodology where grassroots operations through field programmes, public awareness and advocacy actions are run in an inter-dependent and dynamic framework. Early in 2003, regional co-ordinators and representatives of the International Campaign against Child Trafficking met in the Philippines to take stock of the first two years of activities and to plan actions for the forthcoming years.

At that time, *Terre des Hommes* stated that although child trafficking was a reality at European level, EU policy and attitudes towards it were not well understood and lacked consistency. This is why *Terre des Hommes*, through its European office in Brussels, took the initiative to raise the issue more clearly and tried to understand – and make understood – a bit more whether and how the EU institutions and EU member states were trying to elaborate an adequate response to obvious violations of children’s rights. A recent study published by the International Federation *Terre des Hommes* – Mike Dottridge, *Kids as commodities? Child Trafficking and what to do about it*, Geneva, 2004 – constitutes an important step in the understanding of the phenomenon of child trafficking worldwide and a coherent tool to combat it. The report you have in your hands, which focuses on the EU legislative and policy framework related to child trafficking, can be considered a further step in this process.

If this report is considered as an instrument for shaping and implementing better policies, if it will be able to raise public awareness on this subject, and if, in the end, concrete measures are taken in Europe to prevent, protect and rehabilitate victims of child trafficking, *Terre des Hommes* will consider that it has added another brick to that famous “world fit for children”.

Raffaele K. Salinari

President

International Federation *Terre des Hommes*

Introduction

CHILD trafficking is a crime which robs children of their liberty and childhood, and constrains them in general to a life of exploitation. Despite various efforts to curb this phenomenon, trafficking in human beings has been growing, both in Europe and outside, and is fast becoming almost as lucrative as trafficking in arms and drugs. Children in particular are especially vulnerable, being easy targets for traffickers who make huge profits out of the suffering of these minors.

In 2001 *Terre des Hommes* initiated the International Campaign against Child Trafficking (ICaCT- www.stopchildtrafficking.org) to appeal to the public and decision makers to help put an end to this exploitative practice. The campaign operates on three interrelated levels: raising awareness among the general public, policy makers and legislators; implementing specific projects to prevent child trafficking and assist those who have been trafficked; and amending national laws to reflect international commitments.

The ICaCT is active in over 30 countries around the globe and is supported by over 900 partner organisations. To date it has carried out over 25 research projects in different parts of the world, operated widespread public awareness campaigns and contributed to legislative reforms on child trafficking in a number of countries (Chile, Colombia and Mozambique) as well as an improvement of protection measures for child victims (most notably in Albania).

Terre des Hommes defines child trafficking in line with the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, as all acts connected to the transfer to one place or another of a person under 18 years of age, with or without his or her consent, for the purpose of exploitation through a variety of means. According to *Terre des Hommes*, forms of exploitation of children through trafficking can be for commercial sexual exploitation, marriage, adoption and sale of babies, slavery or bonded labour, hazardous child labour, domestic servitude, begging and involvement in illicit activities, and organ extraction and trafficking. Put in its simplest form, 'taking control of other people's children and making money out of them is what trafficking is about'. *Terre des Hommes* believes that child trafficking constitutes a crime against humanity, and that children are being targeted precisely because of their vulnerability.

Although child trafficking also occurs within national borders, it is primarily an international phenomenon and any attempt to fight it on a national level is bound to have limited consequences. The EU therefore has a vital role to play in this fight. Member states are important destination

countries in the trafficking chain, namely the places where the trafficked children are brought to and where they are ultimately exploited. Some of the new member states (NMS) are also places of origin or increasingly places of transit for trafficked children. As a supranational institution the EU has great potential to provide overall co-ordination and coherence to policies against child trafficking of the member states, as well as to serve as a standard setter through legislation at the EU level. The EU also disposes of large amounts of funds and is, together with the member states, the greatest donor in development assistance, giving it additional leverage to contribute to the fight against child trafficking outside its borders through the implementation of programmes as part of its external policy. Increased efficiency in the fight against child trafficking by the EU is therefore likely to have a huge impact on child trafficking world wide.

This paper looks at the role and contribution of the EU in the fight against child trafficking. It seeks to contribute to the ICaCT by providing a critical analysis from a children's rights perspective of the legal, policy and implementation framework of the EU on this issue, with a view to making recommendations for future action. The paper does not go into detail about the phenomenon of child trafficking or what it entails, nor does it provide a long list of guidelines for the best ways of addressing it, since it was felt that these issues are adequately covered elsewhere.

The paper is organised into six chapters. The first of these gives a general overview of child trafficking in Europe by presenting the facts and figures relating to the phenomenon. Chapter II offers a general introduction to EU policy on child trafficking, on the one hand by presenting and explaining where it fits within the overall structure of the EU, and on the other by outlining the international context within which any EU policy on child trafficking must be situated. Chapters III, IV and V provide a critical assessment of the EU legislative, policy and implementation framework in relation to child trafficking. Conclusions and recommendations are presented in chapter VI.

The research focuses exclusively on the policy of the EU as a body and does not go into detail of the policies of all the individual member states, which is outside the scope of this paper. Child trafficking is a complex and multifaceted phenomenon which relates to and is affected by a range of other issues and policies such as poverty, education, and, most notably, migration and smuggling. While these links are recognised and acknowledged throughout the research the paper does not present an in-depth analysis of these separate policy areas. Instead they are included where policies or instruments hold particular relevance to

child victims of trafficking. The particular link between migration and child trafficking is further explored in the report *Kids as Commodities? Child Trafficking and What to do about it* published by Terre des Hommes.

This paper builds on the extensive field experience of Terre des Hommes in the promotion and safeguarding of children's rights through projects relating to

development and humanitarian relief, as well as to child trafficking more specifically. It has been compiled through extensive document analysis as well as numerous interviews with institutional stakeholders at EU level involved in the fight against child trafficking.



Child Trafficking is becoming an increasing concern in public opinion, Photo by Christel Kovermann

Chapter I - Child trafficking in Europe: The State of Play

Why and how children are trafficked in Europe

TRAFFICKING in human beings is one of the most profitable and fastest growing criminal activities in the world today. It affects many of the world's countries including EU member states, as countries of origin, transit and destination.

Child trafficking is a particularly exploitative form of human trafficking since victims are robbed of care, childhood, family life, education and health at a vulnerable time in their lives, which in turn impacts upon their adulthood.

The rate of child trafficking has been increasing since the late 1980s, and a number of suggestions have been put forward as to the causes of this change. Although there are examples in history of young workers being exploited by their masters, urbanisation and industrialisation increased the need for cheap labour. More recent changes have exacerbated this trend. For example, the world's improved transport infrastructure has meant that children can be transported by their traffickers by air to more distant destinations. There has been an increase in demand for children for sexual exploitation because of the prevalence of HIV/AIDS and other sexually transmitted infections. Computer technology and the Internet have increased access to information including child pornography. The global demand for cheaper products has driven down wages and this has facilitated the exploitation of children who are not only cheaper labourers but also easier to manipulate than adults.

The most widely acknowledged sector in which trafficked children are exploited is commercial sexual exploitation, through both prostitution and pornography. Although this continues to be a major reason for the trafficking of children into and within Europe, children are also trafficked for a range of purposes including labour exploitation, domestic work and illegal adoption. Children are made to beg for money or engage in illicit activities such as theft, pick-pocketing, selling goods in the street and drug dealing. There are also rumours of child trafficking for the purpose of organ donation and other practices such as satanic rituals, but there is no reliable evidence of these practices so far².

Children can become victims of trafficking through direct or indirect methods. They can be abducted by traffickers or their associates, or parents can be persuaded to hand their children over to traffickers in the belief that they will be given education or 'appropriate' employment, or simply

because of their poverty and desperation. Some specialists in anti-trafficking make a distinction between these 'hard' and 'soft' techniques as it determines to some extent how the different situations should be addressed.

There is no special legal regime in place across the EU for what should happen to trafficked children when they are discovered. Younger children in countries of destination such as Italy and Greece are generally placed in orphanages while they await organised return. Older children in numerous countries can be treated as illegal migrants or criminals, facing prosecution, imprisonment and deportation.

How many children are trafficked in Europe: the problem of data collection

A widely acknowledged problem with trafficking in general and child trafficking in particular is that data are either unavailable or unreliable. In 1998 the International Organisation for Migration (IOM) claimed that no European country could provide reliable statistics concerning the scale of trafficked women and children within or into its territory. More recently, the United Nations Children's Fund (UNICEF)³ pointed out that no substantial study based on empirical research into the trafficking of children in Europe has yet emerged. The recording of data and statistics on trafficked victims has not greatly improved in recent years.

The lack of standardised methods of data collection for trafficked victims makes it very difficult to draw comparisons between states and to be clear about the extent to which child trafficking affects particular regions. Failures by authorities, firstly, to see trafficked children as victims rather than criminals and secondly, to distinguish between those under and those over 18 means that information about trafficked children is not available. As well as the differentiation between those under and over the age of 18, there are differences between the various ways in which adolescents and younger children are exploited and so methods of data collection should also take these distinctions into account.

Associated problems include the difficulty of differentiating between data on irregular migration, data on migrant sex workers, data on border crossings and data on human trafficking. Trafficking can be a result of a complex series of events over an extended period of time and in different places which makes a single case of trafficking difficult to identify. This report will discuss the extent to which the lack of a common and consistent definition endorsed by each EU member state prevents the EU from responding

appropriately to child trafficking. Different EU member states currently classify different sorts of activities as trafficking. Only by adopting common definitions and common measuring criteria will the EU be in a position to deliver valuable data.

There are variations across regions as to the extent to which, and the sectors in which, trafficked children are exploited. For example, according to recent reports, the extent of child trafficking in Germany and Denmark appears to be relatively high whereas authorities in Finland are unaware of any child trafficking cases and just one case was reported in Portugal in 2003.

Any statistics which are released by the authorities must be considered in their proper context. As mentioned above, certain national authorities seem to be unaware of the existence of child trafficking within their borders. This may simply be due to the existence of few cases, or it may be due to the authorities' limited awareness and lack of structure needed to identify and respond adequately to cases. If figures for child trafficking started increasing, it

might be that this was not due to an increase in the actual phenomenon, but rather an improvement in detection.

It is also important to note that statistics vary according to their sources. Governments, non-governmental organisations (NGOs) and international agencies can all give different figures for the same phenomenon in the same region. One such example comes from Greece where the Ministry for Public Order estimated in 2002 that there were between 3,000 and 5,000 trafficked women and children in the country. The Research Centre for Women's Affairs in the country however reported the very different figure of 60,000⁴.

Some figures are often quoted as authoritative and give a general idea of the actual scale of the phenomenon of trafficking. The US State Department's most recent figure for global human trafficking is between 800,000 and 900,000 people every year⁵. According to data analysed by the International Labour Organisation (ILO-IPEC) in 2000, among children in "unconditional worst forms of child labour", 1.2 million had been trafficked.⁶

Child trafficking is a world-wide phenomenon



Diagram 1: Terre des Hommes findings

The IOM⁷ has given the figure of 120,000 women and children being trafficked into the EU every year, mostly from the Balkans, whereas the European Commission reported at a similar time that this was the number of women alone who are being trafficked into the EU.

Trafficking: a world-wide phenomenon

There is little documentation concerning specific trafficking routes, which evolve continuously in response to changes in supply, demand and the regulatory environment, but some basic facts and regional patterns are available.

Diagram 1 shows some simplified routes identified by *Terre des Hommes* according to available information.

Although this report will focus on the EU, it is useful to have an idea of child trafficking on the global level before focusing on the particular details of the European region.

Traffickers in **Central and South America** are very involved in trafficking for adoption, with babies being taken to Western Europe and the United States of America. Trafficking for economic exploitation also occurs within the region.

In **South Asia** children are trafficked from rural areas of India and Pakistan to cities in which they are forced into manual labour and sexual exploitation. Girls from Nepal and Bangladesh are trafficked to Indian brothels and boys are recruited in India to be trained as camel jockeys in the Gulf.

The trafficking of girls into prostitution in **South-East Asia** is notorious. Girls from Vietnam, the Philippines and Indonesia are trafficked within or across borders and are then economically and sexually exploited.

In **West Africa** two dominant trafficking routes have been identified. The first involves adolescent boys being trafficked from Burkina Faso and Mali to farms in the Ivory Coast. The second route involves younger girls from Benin and Togo working as domestic helpers in Nigeria and Gabon. There is also trafficking of children from the West African region to Western Europe.

Trafficking occurs in **Southern Africa** where children are trafficked into and within South Africa to work mainly as prostitutes.

In **Europe** children are trafficked to many EU countries, particularly from West African countries, as mentioned above, and Eastern European countries. States such as Albania, Bulgaria, Moldova, Romania and the Ukraine are identified time and time again in the Eastern European area as countries of origin. Trafficking has been increasing in Central and Eastern Europe since the 1980s as a result of the humanitarian crises and wars. Countries in

economic transition such as Kyrgyzstan and Mongolia are targeted as transition countries by trafficking gangs who bring children to Western Europe.

The ILO leaflet on child trafficking (2002), identifies the push and pull factors which result in the trafficking of children from Eastern Europe. Dysfunctional societies, severe and increasing poverty and unemployment, conflict and expectations of greater opportunities push children and young people into the hands of traffickers.

An example of the trafficking routes of children within Europe can be seen from Diagram 2, which is based on *Terre des Hommes* research.

Another clear pattern of trafficking occurs between the Baltic States and the countries of Scandinavia, following traditional trading routes between the two regions.

There is also a clear trafficking route between Albania, a country of origin, and Greece, a country of destination. The common border between Albania, one of the poorest countries in South Eastern Europe and Greece, an EU country in full economic growth, means that traffickers do not need to go far from the area of supply to that of demand. Italy is also involved in the trafficking routes of the area.

In **South Eastern Europe** the trafficking of children tends to fall into two categories. Teenage girls are mainly used for commercial sexual exploitation and young girls and boys are used for begging. More detailed statistics are sometimes available on the children being trafficked from one particular country of origin. In 2001, a report estimated that 80 per cent of people trafficked from Albania are teenage girls under 18⁸. There is little documentation concerning teenage boys.

The flow of trafficking has tended, rather predictably, to be from poorer countries to richer regions, especially those with developed sex industries. Patterns have now become more complex however and one result of increased trafficking has been the emergence of sex industries in countries of origin and transit.

Regional Initiatives in Europe

EU initiatives to address the issue of child trafficking will be discussed in detail in the report that follows but there are many actors working to promote anti-trafficking initiatives and there are several worthy of note.

Organisation for Security and Co-operation in Europe (OSCE)

Trafficking has traditionally been viewed as an issue of migration, border control and the fight against organised crime rather than a violation of human rights.

A number of International Organisation (IO) initiatives have attempted to address this issue by putting forward a more rights-based, global approach. One example of this is the Task Force on Trafficking in Human Beings created under the Stability Pact for South Eastern Europe, and chaired by the OSCE Office for Democratic Institutions and Human Rights. The OSCE is a pan-European governmental organisation whose action against trafficking in human beings has a high profile in its political agenda. It has 55 member states, mainly European, including countries of origin, transit and destination for trafficking. This is why the OSCE has a major role to play in the European context. The task force aims to encourage and strengthen co-operation among the countries of the region in order to streamline and accelerate existing efforts to combat human trafficking. It “is dedicated to promoting collaboration and integration of anti-trafficking activities in South Eastern Europe to improve their long-term effectiveness and sustainability in the fight against human trafficking⁹”. The Task Force works in close collaboration with other international organisations such as UNICEF, the IOM, and NGOs. Most recently, the Chair of the Stability Pact Task Force, Minister Helga Konrad, has been appointed as the new OSCE Special Representative on Trafficking in Human Beings. This is an encouraging step towards better co-ordination of policies and actions between the OSCE, the Council of Europe and the EU in the fight against trafficking in Europe.

Council of Europe*

The Council of Europe is another institution separate from the EU which draws up human rights standards Europe-wide. It should not be confused with the European Council or the Council of the EU. The Council of Europe has 45 members including a number of states from Central and Eastern Europe. All member states of the EU are members and the EU often chooses to use the expertise of the Council of Europe as an impetus for its own policy on a given subject.

Trafficking in human beings is a key issue on the Council of Europe's agenda to safeguard human rights. For many years the Council of Europe has been acting in this field in research, drawing up legal standards and strategies including activities in co-operation with other international organisations. In 2003 an ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH) was set up to prepare a European Convention. The intention is to provide a legally binding instrument that places a special focus on the human rights of the victims. It is relevant to recognise that developing a binding instrument which deals adequately with both minors and adults who are victims of trafficking represents a real challenge. As this report intends to show, most legal and policy measures taken by European institutions over the past years in respect of human trafficking have focused on adults. Child trafficking has generally not been addressed in

an adequate way, except when it comes to trafficking for the purpose of commercial sexual exploitation. It will be vital therefore that the Convention provides an all-encompassing definition of child trafficking that both reflects the vulnerability of child victims and covers all the types of exploitation that trafficked children are exposed to. In addition CAHTEH should recognise that special measures are necessary to safeguard children against this crime and assist those who have been victim to it and include such measures in the Convention. An explicit children's rights approach must be reflected in order to allow European states to move towards the full implementation of the CRC and ensure the best interests of the child when combating child trafficking.

The recommendations included in this report, as well as the standards contained in the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by the United Nations High Commissioner for Human Rights in 2002 and the *Guidelines for Protection of the Rights of Children Victims of Trafficking in South Eastern Europe* issued by UNICEF in 2003, are appropriate measures that should be fully reflected in the Convention, in order to be endorsed and implemented by the European states members of the Council of Europe. In the framework of CAHTEH and in the process of drafting a new convention, the EU member states have a clear opportunity to take steps towards developing an adequate response to trafficking by putting the protection of human rights at the centre of the measures. *Terre des Hommes* calls on all EU member states to adopt a responsible attitude and refrain from searching for a “low” common EU position which would lead to another international instrument containing inadequate or insufficient standards to combat the reality of trafficking.

NGO initiatives

Besides the above-mentioned *Terre des Hommes International Campaign against Child Trafficking* (see introduction), groups of NGOs have formed networks in order to work more effectively against child trafficking, and in particular to raise the importance of the question of victim protection. One such example is the Albanian coalition BKTF - *së Bashku Kundër Trafikimit të Fëmijëve* (All Together Against Child Trafficking). This coalition of nine NGOs, including *Terre des Hommes* in Albania, has worked closely and successfully with the Albanian government to define a strategy and action plans for dealing with trafficked Albanian children.

* not EU

Another example of an NGO network is the European Network Against Child Trafficking (ENACT), initiated by Save the Children and financed by the European Commission under the STOP II Programme. The project aims to create a network of national platforms of NGOs and IOs in Europe able to systematise the collection of data, share common understanding and expertise, and build capacity to address child trafficking on the basis of common criteria in Europe¹⁰.

Although these are encouraging initiatives, *Terre des Hommes* has observed that the co-ordination between all of the different actors needs strengthening if the fight against child trafficking is to be successful in Europe and worldwide.

In the chapters that follow, this report will assess how the EU, both as an institutional entity and an international actor, has chosen to approach the phenomenon of child trafficking and to what extent the measures put in place are effective in providing an appropriate response to this crime.

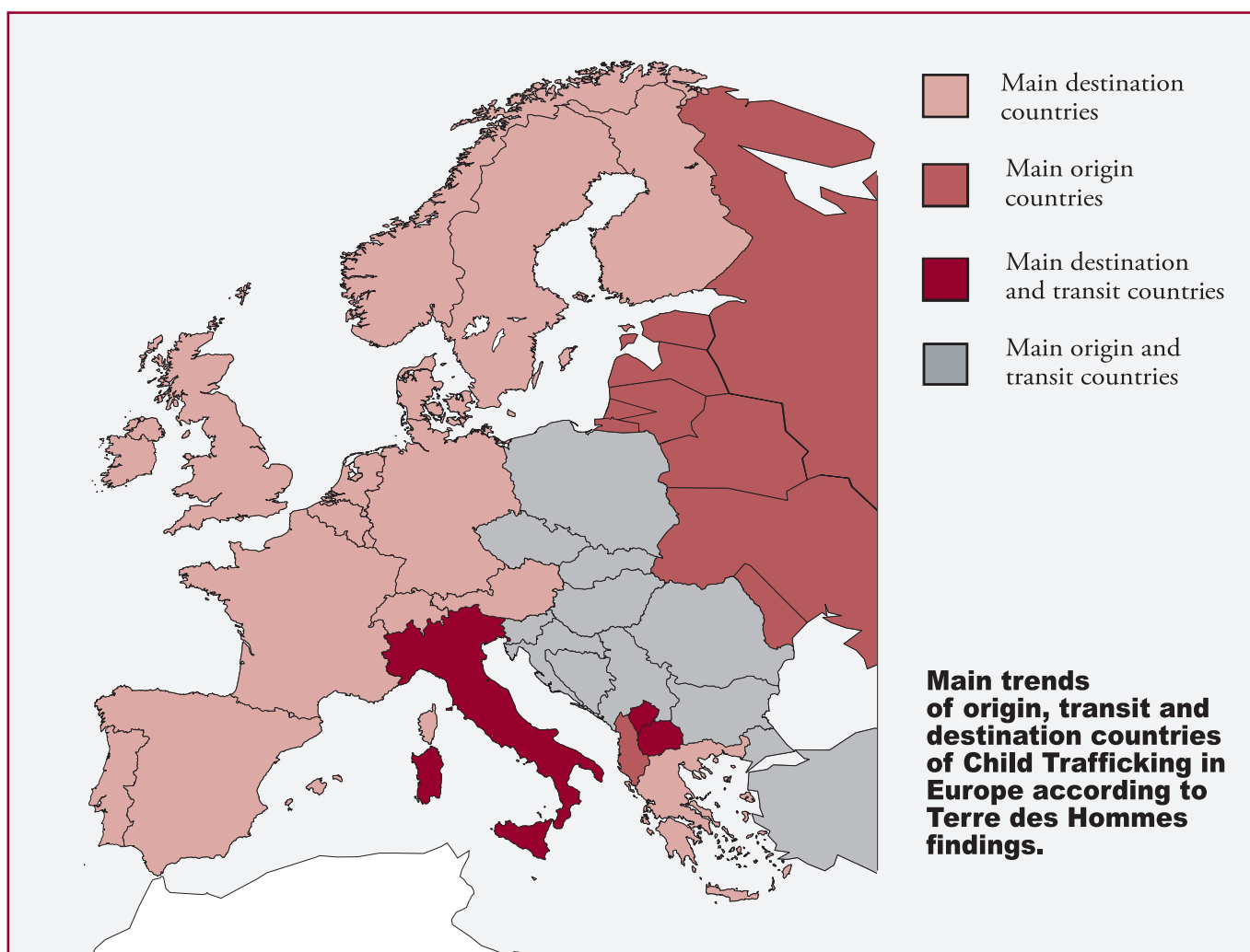


Diagram 2

Chapter II - Overall EU Framework

THIS chapter gives a general introduction to the internal structure and organisation of the EU, in order to provide the reader with the necessary tools to grasp the overall framework within which the approach to child trafficking is based. It also presents the various EU instruments available to legislate on child trafficking and the provisions made in EU primary law. In addition this chapter gives some introduction to the EU's responsibilities under international law.

Introduction

The EU consists of 25 member states, including 10 new members who joined on 1 May 2004. All are affected by child trafficking. It is a unique international structure through which the member states delegate some of their sovereignty to a number of common institutions on specific matters. Originally much of EU competence was related to trade and the common market. Today EU activity covers a range of subjects which fall under three broad pillars:

- i. European Community
- ii. Common Foreign and Security Policy
- iii. Co-operation in Justice and Home Affairs

Trafficking in human beings is generally treated under the third pillar, linked to the broader objective of securing an area of freedom, security and justice for the citizens of the EU which includes the fight against organised crime. Human rights of third-country citizens (and children's rights therefore) belong to the second pillar through which the EU seeks to safeguard human rights in the world through its external policy. EU institutions have regulatory power primarily in the first pillar, European Community, although in recent years more competence has been given to the EU in some areas of Justice and Home Affairs (JHA). While common policies can be developed under the second pillar, the decisions relating to the Common Foreign and Security Policy ultimately remain a competence of the member states.

One issue in particular arises from this thematic division between the three pillars which has a crucial bearing on all aspects of EU policy on child trafficking discussed in this paper. The separation of EU policy between internal and external provides a clear distinction in both geographical scope and legislative competency, and creates obstacles to the establishment of a coherent policy that relates to all countries in the trafficking chain. Placing human rights enforcement under the second (external) pillar further complicates the issue. This institutional

set-up will be a recurring impediment in the analysis of legislation, policy and implementation which follows in the subsequent chapters.

It is crucial to bear in mind that member states retain a high degree of independence both in areas outside EU competence and in the enforcement of given EU legislation and policies. Although EU competence in the third pillar has increased over the years, member states in general tend to be very reluctant to cede influence over their internal security policies to the common institutions of the EU. The degree of sovereignty which member states still have over policies relating to child trafficking and trafficking in human beings remains an impediment to the power of the EU to intervene in this area.

Child Trafficking in EU Primary law

The Treaties of the EU are considered to be primary law and form its legal base. They are agreed by the governments of the member states and ratified by national parliaments. The Treaties provide the foundations of the EU thus all other legal instruments are based on provisions in one of the Treaties. The two founding Treaties are the Treaty of the European Community (Treaty of Rome 1958) and the Treaty on European Union (Treaty of Maastricht 1992). Subsequent Treaties, such as the Treaty of Amsterdam (1999) and the Treaty of Nice (2000), consolidate the above.

Trafficking in human beings was first addressed by EU primary legislation with the introduction of the Treaty of Amsterdam which consolidated the Treaty on European Union. Until then there was no specific legal base for EU activities to combat child trafficking. The fight against trafficking in human beings is covered under Title VI on "Provisions on police and judicial co-operation in criminal matters". Article 29 of the Treaty states that the provision of a high level of safety within an area of freedom, security and justice is one of the objectives of the EU, which is to be achieved through common action among member states in police and judicial co-operation. In particular, Article 29 states

"this objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud".

This is currently the only reference to child trafficking in the primary legal framework of the EU. Its place, firmly in the context of the security of citizens of the EU, ensures that any approach of the EU to child trafficking begins,

not from a perspective of prevention, or of the protection of human rights of the victims but from that of criminal law enforcement.

The Constitution

In order to increase the legitimacy of EU decision making and to bring it closer to its citizens an attempt has been made to simplify the above legal framework. *A Draft Treaty Establishing a Constitution for Europe* has been developed by the Convention on the Future of Europe which would replace the existing Treaty of the European Community and the Treaty on European Union. The draft was approved by the European Council on 18 June 2004. It now awaits ratification by all the member states before it can come into force. This is likely to be a highly controversial issue for the EU and ratification could take a number of years.

The draft constitution includes revised articles relating to child trafficking which are drawn from the primary law of the EU as enshrined in the Treaties (see Annex 1). In addition, the draft constitution includes the Charter of Fundamental Rights of the EU which was originally established in 2000 to complement the European Convention on Human Rights of the Council of Europe but which was not legally binding.

In the Charter, under Title I on Dignity, Article II-5.3 states that “trafficking in human beings is prohibited”. Additionally, in Title III on Equality, Article II-24 covers the Rights of the Child and states explicitly that “children shall have the right to such protection and care that is necessary for their well-being”. And furthermore, “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration”. In addition, the draft constitution includes a vital provision for the protection of children’s rights as a specific priority of the EU external policy in Article 3 under Title I on the Definition and Objectives of the EU¹¹. It therefore provides a broad base for children’s rights in both internal and external policy though these two dimensions remain separate. At present the Charter of Fundamental Rights of the EU has no legal effect. If the Draft Treaty Establishing a Constitution of Europe is adopted however, the Charter would become part of EU primary law.

The European Union

This section gives a brief presentation of the EU institutions and their role with particular reference to child trafficking. It is important to note that the distinctions enshrined in the three pillars and the primary law of the EU, in particular between internal and external policies, are reflected in the internal structures of all the institutions of the EU. The position of child trafficking within EU policy on Justice and Home Affairs (JHA) therefore has a

direct influence on the treatment of the policy area of child trafficking by the various institutions of the EU which generally continue to approach child trafficking from the perspective of internal security.

European Council

The European Council is the highest body of the EU. It consists of the Heads of State or Government and the President of the European Commission. This body meets only three or four times a year and focuses on decisions that require political resolution at a high level. Since the European Council generally deals with vital matters of state, the EU approach to child trafficking is more likely to be managed by the Council of the EU.

Council of the European Union

The Council of the European Union (hereafter referred to as the Council) is the main decision-making body of the EU representing the member states. Councils are convened on a range of matters and are attended by the relevant ministers of each member state who are authorised to commit the government of their state to any decisions to be made therein. Any issue pertaining to the trafficking of human beings is generally dealt with by the Justice and Home Affairs Council, although human rights and the rights of children could also be a topic for the General Affairs and External Relations Council (GAERC). There is also an Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) but it tends not to be concerned with trafficking in human beings in general or children specifically.

European Parliament

The European Parliament (hereafter referred to as the Parliament) has three primary functions. Through the legislative function the Parliament can legislate using the co-decision procedure where power is shared between the Parliament and the Council. In other procedures such as consultation the Parliament is required to give an opinion which the Council must take note of before making a decision. The second function of the Parliament is the exercise of democratic supervision over the institutions of the EU. This includes the approval of the new Commission and posing questions to the Council and Commission which these institutions are required to respond to. The Parliament also decides jointly on the annual budget of the EU together with the Council. The Parliament is directly elected every five years. It was most recently elected in June 2004.

The Parliament is organised into committees, broadly corresponding to the internal structure of the Commission and the three pillars. Matters relating to trafficking in human beings are usually discussed by the Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs

Committee, whilst children's rights more generally are under the jurisdiction of the Committee on Foreign Affairs, Human Rights and Common Security and Defence Policy. Trafficking in women has in the past been a topic for the Committee on Women's Rights and Equal Opportunities and the Development and Co-operation Committee is also known to take a keen interest in children's rights.

European Commission

The European Commission (hereafter referred to as the Commission) is a politically independent institution that represents the interests of the EU as a whole. It has four main roles. The first of these is the proposal of future legislation for which the Commission has the sole "right of initiative". Secondly, the Commission is responsible for the management and implementation of all EU policies as well as the supervision of the spending of the budget. The third role of the Commission is as "guardian of the Treaties" by which it is responsible for ensuring that EU law is applied appropriately by the member states, a role which it shares with the Court of Justice. Finally the Commission is responsible for the negotiation of international agreements on behalf of the EU for areas of EU competence.

The Commission consists of a College of Commissioners. The College is supported by departments, known as Directorates General (DGs), and services. The DGs are divided according to particular policy areas and headed by a Director General who is responsible to one of the Commissioners. EU policy pertaining to child trafficking is the responsibility of DG Justice and Home Affairs which covers the fight against trafficking in human beings as part of a policy to provide security in the EU. Children's rights as a broad area are the responsibility of DG External Affairs. In addition there are a number of other DGs which relate to a policy on child trafficking and its implementation which will be discussed in more detail in chapters IV and V. The individual DGs are responsible, among other duties, for the drafting of the Commission's legislative proposals which have to be approved by the College of Commissioners.

The Commission is appointed every five years, within six months of the election of the European Parliament. The present Commission's term expires in October 2004 at which point new Commissioners and a new President are appointed. Following enlargement of the EU, the Commission which takes office on 1 November 2004 has 25 Commissioners, one from each country. The various departments of the Commission will also be restructured based on any recommendations from the outgoing Commission. There was at the time of writing little concrete information on what the new structure of the Commission will be but the restructuring could provide an important opportunity for improved organisation of EU policy on child trafficking.

Court of Justice of the European Communities

The Court of Justice of the European Communities has the responsibility of ensuring that the legislation of the EU, also known as Community Law, is interpreted and applied in the same way in each of the member states. The Court of Justice therefore settles disputes over interpretation of EU treaties and legislation between member states, EU institutions, enterprises and individuals. In theory therefore member states could be brought before the Court if it was felt that any of the legislation on child trafficking was not being interpreted correctly. The work of the Court of Justice refers exclusively to the areas restricted to EU competence.

Europol

Established as a result of the Maastricht Treaty on European Union in 1992, the European Police Office, Europol, is a law enforcement organisation handling criminal intelligence. It became fully operational in 1999 and supports law enforcement agencies in EU member states in their investigations into serious forms of international crime. Europol is accountable to the Justice and Home Affairs Council, and its Management Board comprises one representative from each EU country. Fighting against trafficking in human beings, including child pornography and illegal immigration networks are fully part of the priority mandates of Europol.

More specifically, Europol's unit on "serious crime" has developed targeted activities and run several programmes to support member states in the fight against child trafficking and child abuse. In its approach to trafficking in human beings, Europol states that "smuggling" and "trafficking" in persons must not be confused and recognises that trafficking involves several forms of exploitation such as sexual exploitation, child pornography, illicit trade in abandoned children, illicit labour, and illicit trade in human organs and tissue. As regards child trafficking more specifically, Europol acknowledges that there is a "trend towards a demand for underage victims" and recognises that "the younger the victim, the more likely that threats and acts of violence will be used against them"¹².

Europol recognises therefore that child abuse is a broad term that includes several forms of criminal offence which affects the physical and/or psychological integrity of a child. Despite recognising different forms of exploitation related to trafficking, Europol makes a clear priority in the fight against the sexual exploitation of children and child pornography in its action to address child trafficking. This approach is in line with the general EU attitude to tend to confuse child trafficking and sexual exploitation of children. This issue relates to the need for a clear definition, as will be discussed in the following chapters (on Europol, see also chapter III).

As is mentioned later in the report, the process of enlargement is of particular importance in the EU action on child trafficking, and affects the mandate of Europol in its action on child trafficking in Europe. The recent accession of 10 NMS does not lead to automatic membership of Europol. Joining the EU is only the first step in becoming a member of Europol. Each new member state must formally adopt the Europol Convention and send notification to the EU of its intention to join the organisation. At the time of writing this report, all the new member states have undertaken or fulfilled their application and are expecting to formally join Europol in the course of the second semester of 2004.

European Union Instruments

This section gives a brief introduction to the characteristics of the various EU instruments that will be discussed in this paper. Legal instruments of the EU can be divided into three groups: primary law, which is the EU treaties (see above); secondary law, which is all the other binding legal documents of the EU; and soft law which is not binding but comes in the form of opinions and recommendations from the various EU institutions. EU law is subject to a number of different decision-making procedures which vary depending on the competence of the EU in the area which is the subject of the legislation. Where the EU has power to legislate supranational legal procedures apply, while intergovernmental decision-making procedures govern all other decisions.

Binding Legal Instruments

Binding instruments of the EU can be regulations, Council directives, Council decisions and Council framework decisions.

A regulation is directly applicable in all member states and thus applied automatically in full as domestic law without any need for the introduction of additional legal instruments. EU regulations have to be complied with in the same way as a national law. There is no regulation at present on child trafficking.

A Council directive is a slightly milder form of Community law which binds member states to specific objectives to be achieved within a given time limit. The form and means used to achieve these objectives are decided by the member states. The Council directive is used primarily for areas covered by the first pillar, European Community, but has recently also become relevant for the fight against trafficking in human beings. The most evident example is the recent *Council Directive on the residence permit* (see chapter III).

Council decisions are narrower Community instruments, which can be addressed specifically to any or all of the member states, as well as to enterprises or individuals.

Like regulations, Council decisions are directly applicable and do not require national implementation. A Council framework decision is a recent instrument introduced in the Treaty of Amsterdam with the specific aim of approximating laws and regulations of member states in areas covered by the third pillar. Framework decisions are also binding as to the results to be achieved in a given time period but the methods can be decided by the member states. The EU has chosen Council framework decisions as the most relevant instrument in the fight against child trafficking, demonstrated most clearly by the recent adoption of two such decisions relating to child trafficking.

Soft Law

Resolutions of the Council and the Parliament are not binding but they represent the opinions of these institutions on given matters and thus serve to give political direction to the Council and Parliament's future work. Parliament resolutions often make recommendations to the Council or Commission and may also serve to pave the way for future legislation. The Parliament has issued a number of resolutions on child trafficking (see chapter IV).

Communications from the Commission are not binding upon member states but can be used to either outline policy or make proposals for binding EU legislation. This was the case with the *Council Directive on the residence permit* and the *Council Framework Decisions on trafficking in human beings and the sexual exploitation of children* discussed in chapter III.

European Union and the International Legal Framework

For the most part international legal instruments are signed and ratified by individual states. The EU can also sign/ratify an international instrument but only in so far as it concerns an area of EU competence. Any EU action concerning the trafficking of children takes place within the context and overarching framework of international law. In this section some of the most important instruments that relate to child trafficking are presented, including an examination of the state of ratification by the EU and its member states. It is important to note that each of these instruments addresses child trafficking from a particular perspective and that it is necessary to ratify all to ensure complementarity among them.

UN Convention on the Rights of the Child

The most important international legal instrument concerning the rights of children is the 1989 *United Nations Convention on the Rights of the Child* (CRC), which is the most widely ratified international legal instrument, ratified by all the members of the UN save two, the US and Somalia. This convention constitutes

the guiding framework of the work and activities of *Terre des Hommes*. The CRC defines a child as a person under 18 years of age. Specifically on trafficking, Article 35 of the Convention on the Rights of the Child requires all ratifying states to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”. In addition Article 39 specifies that governments must take all appropriate measures to help the recovery and social integration of child victims of abuse. All the member states of the EU have both signed and ratified the CRC.

Trafficking in Persons, especially Women and Children

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (also known as the Trafficking Protocol or the Palermo Protocol after the place where it was signed) supplements the *United Nations Convention against Transnational Organised Crime* which also includes a *Protocol against Smuggling of Migrants by Land, Sea and Air*.

Through these Optional Protocols the UN Convention against Transnational Organised Crime introduces for the first time clear distinctions between trafficking in human beings and smuggling. As such the Protocol provides a vital tool to determine which persons being moved across borders should be viewed and treated as victims of trafficking rather than as illegal immigrants. This instrument however applies only to trafficking which occurs across international borders and which is conducted by organised networks.

Adopted in 2000, the Palermo Protocol was the first international legal instrument to provide a clear definition of trafficking in human beings. Trafficking is defined as follows:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

Exploitation according to the Protocol includes “at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. The consent of a victim shall be deemed irrelevant if any of the above means are used.

In the case of child trafficking, defined in this protocol as all persons under 18, the crime shall be considered

trafficking even if none of these means is used. In this way the Palermo Protocol recognises the particularly vulnerable status of children. Similarly the section on the protection of victims obliges each state party to:

“take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care”.

The Palermo Protocol officially came into force in December 2003 following the fortieth ratification. It has been signed by all the 25 Member States of the EU including the new members but it has been ratified only by seven. The Protocol has also been signed by the EU. However, it has not yet ratified the agreement.

Sale of Children

The *Optional Protocol on the sale of children, child prostitution and child pornography* supplements the CRC. In an attempt to limit the trafficking of children the Protocol addresses what it sees as the purposes of this activity, namely the sale of children, child prostitution and child pornography. It thus addresses a variety of activities concerning the trafficking of children and applies to the sale of children both within and across national borders no matter who it is done by. The term “trafficking”, however, is not explicitly mentioned, apart from in the preamble to the document.

In the Optional Protocol the sale of children is defined as “any act or transaction whereby a child is transferred by any person or group of persons for remuneration or any other consideration”. By ratifying the Protocol state parties agree to ensure that the following acts are covered by its criminal or penal law:

“Offering, delivering or accepting, by whatever means, a child for the purpose of: a) sexual exploitation of the child, b) transfer of organs of the child for profit; c) engagement of the child for forced labour” as well as “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international instruments for adoption”.

The Optional Protocol covers these offences whether they are committed domestically or transnationally and by an individual or on an organised basis. In addition Article 8 of the Optional Protocol on the sale of children, child prostitution and child pornography includes a series of special provisions for the protection of child victims of trafficking that account for their special needs.

The supplementary Optional Protocol on the sale of children, child prostitution and child pornography has been signed by most of the member states, two member states have not signed and only five have ratified it.

Worst Forms of Child Labour

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 binds states to punish some of the practices through which trafficked children are exploited once in their countries of destination, including trafficking itself. The convention identifies four worst forms of child labour including:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, and forced labour, including forced or compulsory recruitment of children for use in armed conflict;
- the commercial sexual exploitation of children;
- the use, procurement or offering of children for illicit activities, in particular for the production and trafficking of drugs;
- work which is likely to harm the health, safety or morals of children.

The convention requires states to undertake immediate measures to prohibit and eliminate these practices. Although there is a certain overlap between this convention and the two Protocols described above, Convention 182 does not deal with the movement of children for the above and other purposes, the criminalisation of such activity or the prosecution of those who provide children and force them into the above activities. All the member states of the EU have ratified this convention apart from Latvia.

Adoption

The *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption* (The Hague Convention No.33) of 1993 contains a number of provisions to regulate the international adoption of children. Of particular relevance to child trafficking is Article 32.1 which forbids the attainment of any improper financial or other gain from any activity related to international adoption. Eighteen members of the EU have ratified this convention and two have acceded to it. Three more have signed but not yet ratified.

International Guidelines and Recommended Principles

Most of the international conventions and protocols mentioned so far pay little attention to protection standards for unaccompanied minors, be these victims of trafficking or not, once they are in a destination country. In contrast, a great deal of attention has been paid by some UN agencies to the techniques and procedures necessary to ensure that the rights of children who find themselves

alone in a foreign country are respected, both trafficked children and unaccompanied minors more generally. Three instruments are worthy of mention¹³. In 2002, The UN High Commissioner for Human Rights issued *Recommended Principles and Guidelines on Human Rights and Human Trafficking* and UNICEF issued *Guidelines for Protection of the Rights of Children Victims of Trafficking in South Eastern Europe* in 2003 which were designed especially for South Eastern European countries but contain standards which could be applied to all European countries. These are addressed chiefly to government agencies which are responsible for assisting and protecting trafficked children and for deciding what should happen to them subsequently. Both sets of guidelines emphasise the need for government agencies and other institutions involved in making decisions about trafficked children to make the best interests of the child concerned a primary consideration in any decisions they take.

In addition, the UN High Commissioner for Refugees (UNHCR) issued *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* in 1997. As stated by the latest *Terre des Hommes* report,

“while these focus especially on under-18-year-olds seeking asylum, they set out a set of basic procedures to be followed in the cases of all unaccompanied children who come into the custody of law enforcement or other government agencies in a country other than their own and set a minimum standard by which children believed to have been trafficked should be treated”¹⁴.

Although these are not international binding instruments, it is deplorable that EU legal framework, legislation and measures reflect only to a very limited extent the effective protection standards contained in these soft law instruments.

Conclusions

Where the EU's efforts to fight trafficking in human beings are placed within the overall organisation of the institutional framework has a direct bearing on all aspects of the legislative, policy and implementation framework of the EU on child trafficking. Although primary legislation would be difficult to amend at this point the upcoming institutional overhaul of both the Parliament and the Commission represents a valuable opportunity to improve the institutional organisation of the EU in relation to child trafficking. These conclusions therefore hold particular relevance in this context, which will be developed further in the recommendations in chapter VI.

Internal versus external dimension

All aspects of EU policy are divided between internal and external. Child trafficking, however, is primarily a phenomenon which cannot be separated into these

categories. It occurs both within the borders of the EU and across them, with most countries of origin being outside the EU. It also occurs outside the EU among third countries, without ever reaching the EU's borders.

The EU's policy against trafficking in human beings has been placed predominantly inside the internal policy perspective as part of initiatives to fight organised crime within the EU borders. In order to mount an effective offensive against this crime against children, it is crucial that policies which address countries of origin, transit and destination are linked and applied in a consistent manner.

The EU could make an additional contribution to the fight against child trafficking around the world through its external policy. This policy however must be both compatible with the EU's internal efforts and consistent across all third countries. Failure to address child trafficking in a uniform manner across the world allows this practice to continue in given areas from which it can easily spread. It also contributes to an international atmosphere where some child trafficking is tolerated. Linking external and internal policy however, is complicated by the present institutional arrangement in the EU, whereby external policy has remained the overall dominion of the member states because of the political priority placed on national sovereignty in foreign affairs.

Institutional restructuring in 2004 in both the Commission and the Parliament provides a crucial opportunity for the EU to recognise that stronger links are necessary between the internal and external dimension in the fight against trafficking in human beings. A greater interface between these two dimensions must be included as part of the new institutional arrangements in order to provide for the development of an EU policy on child trafficking that is holistic and coherent and that links all the countries in the trafficking chain.

Intervention Entry Point

The fight against trafficking in human beings in the EU has a firm base in efforts to ensure an area of freedom, security and justice for EU citizens as enshrined in the Treaty on European Union. The fight against trafficking in human beings and children is therefore primarily regarded as a fight against organised criminal activity and approached from the perspective of law enforcement and judicial co-operation. This is reflected in all areas of legislation, policy and implementation.

The situation of human rights within an EU external policy dimension provides additional difficulties in the interface between the two distinct institutional areas of human rights and child trafficking. The current institutional approach, whereby child trafficking is a policy area under Justice and Home Affairs, provides an overwhelming focus on the law

enforcement within the EU at the cost of policy areas such as prevention and victim protection. The phenomenon of child trafficking is linked to a range of other issues such as both immigration and development policy, but these find little reflection in the present EU approach.

It is therefore going to be of crucial importance that the EU, in all future activities concerned with child trafficking, adopts an approach based on children's rights, firmly rooted in the principles enshrined in the CRC whereby the best interests of the child must be the primary consideration. It should also explore possibilities to expand the present focus on criminal law enforcement. This issue will be further discussed in the conclusions of chapter IV.



Boy selling flowers in a cafe. Construction to the right hand side and in the background for the Olympic Games 2004. Monastiraki Athens. Photo By Andrea Motta.

Chapter III - EU Legal and Political Framework

THE purpose of this chapter is to give a brief introduction to the legal instruments of the EU that concern child trafficking and trafficking in human beings more generally. The chapter will focus on legislation which is binding on member states while relevant non-binding instruments will be discussed in the policy section of the following chapter. The legal documents assessed below have been chosen for their direct relevance to child trafficking. This chapter will also provide a brief overview of the political context behind these legal instruments, mainly in the form of conclusions from the European Council. These reflect the political will of the member states on this issue, the most relevant of which are the conclusions of the Council of Tampere. Finally a critical assessment of these instruments will be given.

Council Directive

The Council directive that is most relevant to child trafficking is the *Council Directive 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 co-operate with the competent authorities*¹⁵ (hereafter referred to as the directive). The directive was formally adopted by the Council on 29 April 2004 and is designed to increase the fight against trafficking in human beings by encouraging victims to co-operate in the prosecution of those suspected of committing the crimes in question. The directive applies in the first instance to third-country nationals who are victims of trafficking regardless of whether they entered the country legally or illegally. In addition member states may decide to extend the directive to those who have been victims of actions to facilitate illegal immigration.

The directive applies only to victims who decide to co-operate and participate in criminal proceedings against their traffickers. For this reason the directive is relevant only to adult victims, since it was felt by the Commission that the risks which co-operation entails for victims and their families are too high to be borne by children. Member states can apply the directive to minors if they so wish and if this is relevant to the conditions laid down in their national law. The exclusion of child victims of trafficking from the directive raises important questions about the treatment of these children in the member states. Children must be considered as particularly vulnerable victims whose needs have to be reflected in carefully tailored responses which are based on the best interests of the child. Thus children who are victims of trafficking need to be guaranteed a safe stay in the countries of reception and granted residence permits on the basis of humanitarian grounds regardless of whether or not they choose to co-operate with the authorities.

The directive does include a welfare clause for the children who comply with authorities and to whom member states decide to apply the permit. Article 10 of the directive states that where the residence permit is granted to minors member states must “take due account of the best interests of the child”, including an extension of the reflection period provided by national law. Member states must also ensure that the entire procedure is appropriate to the age and maturity of the child. In addition children are to be afforded the same access to the education system as nationals. A special clause is included for unaccompanied minors whereby states are responsible for ensuring the identity of the child and for making every effort towards family reunification and the provision of legal representation. It is not specified, however, which special measures may be required to ensure the welfare of the child victim. *Terre des Hommes*, for example, has found the transport and accommodation of unaccompanied minors by state authorities to be an immense problem with thousands of children going missing each year and little being done to establish their whereabouts.

One positive development is that the directive applies the definition of trafficking in human beings which was enshrined in the Council framework decision of 2002 (see below). This indicates a clear recognition by the EU of the need for a standardised definition to combat trafficking in human beings. This definition is, however, limited to trafficking which occurs for the purposes of sexual and labour exploitation and thus the directive does not apply to victims of trafficking for other purposes. The definition¹⁶ of “unaccompanied minors” used in the directive is also the same definition found in an earlier Council resolution on this issue (see chapter IV).

In addition, giving residence permits only to victims who co-operate with authorities could discriminate against victims who may not be able to co-operate through no fault of their own. Under the directive the residence permit can also be withdrawn in cases where the competent authorities decide to discontinue proceedings for whatever reason. Although states are encouraged in the preamble to consider authorising stay on other grounds to victims who are no longer covered by the directive, they are under no obligation to do so and such treatment exposes victims and children in particular to deportation, which may lead to their redelivery into the hands of traffickers.

Council Framework Decisions

A Council Framework Decision is the primary document used in the area of justice and home affairs to harmonise laws and regulations in member states and the primary legal instrument used to legislate in the area of child trafficking.

Council Framework Decision on combating trafficking in human beings

In December 2000 the European Commission presented two proposals for Council framework decisions in its *Communication on Combating trafficking in human beings and the sexual exploitation of children*¹⁷. The two Council framework decisions that were subsequently adopted form the basis of the EU legislative approach to child trafficking.

The first of these is the *Council Framework Decision on combating trafficking in human beings*¹⁸, adopted in July 2002 (hereafter in this section referred to as the framework decision). The framework decision aims for a more comprehensive EU approach to trafficking in human beings by addressing the problem of divergent legal approaches in the member states through the provision of common definitions as well as common standards of sanctions, liability and jurisdiction. The framework decision on trafficking in human beings is therefore primarily concerned with the criminal law of the member states. It does not include any section on prevention and includes only minimal provisions for assistance and protection of victims.

The framework decision obliges each member state to take measures to ensure that trafficking in human beings is punishable under national law by effective and dissuasive penalties. Trafficking in human beings is defined as: “the recruitment, transportation, harbouring, and subsequent reception of a person, including exchange or transfer of control over that person”, where means such as coercion, force or threat, abduction, deceit or fraud, and/or abuse of authority or of a position of vulnerability are used. The framework decision provides that where child trafficking is concerned (children are defined as any person below 18 years of age) it “shall be a punishable trafficking offence” even if none of the above means have been used. In this way the framework decision reflects the special vulnerability of children in the face of trafficking networks along the lines of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

Member states are also obliged to punish anybody found to be aiding or abetting the above activities. Longer sentences, a minimum of eight years, are required for certain types of crime including offences committed against a victim who is considered particularly vulnerable. Children, however, are not explicitly specified under this clause leaving it to the discretion of the member states and their legal systems to decide whether a longer sentence will be applied.

All of the above offences are only punishable in so far as they occur for two types of exploitation: for the purpose of exploitation of a person’s labour or services, including practices akin to slavery; or for the purpose of prostitution of a person or other forms of sexual exploitation. It should

be noted that the term “sexual exploitation” is not clearly defined in the framework decision but would include at least prostitution and pornography. *Terre des Hommes* gives particular attention to terminology and prefers to use the term “commercial sexual exploitation” when it refers to prostitution. In the same way, trafficking for purposes of marriage, begging or illicit activities are not explicitly mentioned by the framework decision but could be interpreted to be covered respectively by “other forms of sexual exploitation” and “labour exploitation”. Other types of exploitation, however, are not covered by this instrument. This means that member states are not obliged by the framework decision to provide penalties for offences against children trafficked for purposes such as adoption or organ extraction and trafficking; leaving these children more vulnerable and providing an incentive for a shift by the traffickers to trafficking for purposes which are not punishable.

The framework decision recognises that “children are more vulnerable and are therefore at a greater risk of falling victim to trafficking”. Specific provisions for child victims in the framework decision can be found in the section on protection and assistance. The most comprehensive of these states that “children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims” in relation to a number of articles of the *Council Framework Decision on standing of victims in criminal proceedings* of March 2001 (see below).

Children are to be considered as vulnerable victims firstly in the application of Article 2(2) of the *Council Framework Decision on standing of victims in criminal proceedings* according to which “each member state shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances”. Child victims of trafficking are therefore under the *Council Framework Decision on trafficking in human beings* to be given specific treatment suited to children. There is no further indication in either the *Council Framework Decision on trafficking in human beings* or in the *Council Framework Decision on standing of victims in criminal proceedings* of what this treatment would entail in the case of minors. Article 8(4) of the *Council Framework Decision on standing of victims in criminal proceedings*, which states that vulnerable victims need to be protected from the effects of giving evidence in open court by entitling them to testify in a manner where such protection will be achieved, also applies to child victims of trafficking. Finally, Article 14 whereby member states shall encourage the suitable training of personnel involved in proceedings or otherwise in contact with the victim, and applying in particular to police and legal practitioners, refers specifically to training relevant to the fight against child trafficking.

These provisions, however, are limited in application only to children who are part of criminal proceedings and not to all child victims of trafficking. In addition there are no

legal provisions in either of the two Council framework decisions for the extensive range of measures that need to be adopted in order to protect all children who have been victims of trafficking. Examples of these measures include the provision of a guardian or of safe and appropriate accommodation and suitable care during the child's stay in the member states.

Member states are to take the necessary measures to comply with the Council Framework Decision on trafficking in human beings before 1 August 2004. They are obliged to supply the Council and the Commission with the text of the provisions in their national law which comply with this Decision on the basis of which the EU will assess the extent of their compliance by August 2005 at the latest.

The *Council Framework Decision on combating trafficking in human beings* replaces the Joint Action of February 1997 to combat trafficking in human beings and sexual exploitation of children¹⁹ (hereafter referred to as the joint action). The framework decision clearly reflects both the development of the international approach to trafficking in human beings and that of the EU. In the joint action, for example, trafficking was weakly defined as "any behaviour which facilitates entry into, transit through, residence in or exit from the territory of a member state for the purposes set out in point B (b) and (d)". Only trafficking for the purpose of sexual exploitation is recognised both in the case of adults and children. The definition given under the framework decision is much more comprehensive, reflecting the definition given in the Palermo Protocol. In some areas, however, the framework decision fails to build on the provisions of the joint action. The joint action, for example, explicitly recognises a need to

"ensure that services which are likely to have relevant experience in the context of the fight against trafficking in human beings and sexual exploitation of children, in particular immigration, social security and tax authorities, give special attention to the problems"

of trafficking in human beings. These important interlinkages were not included in the framework decision.

Council Framework Decision on combating the sexual exploitation of children and child pornography

The second legal instrument to result from the Commission Communication of 2001 is the *Council Framework Decision on combating the sexual exploitation of children and child pornography*²⁰ approved in December 2003 (hereafter referred to in this section as the framework decision). As with the *Council Framework Decision on combating trafficking in human beings* this instrument seeks to harmonise state laws combating the sexual exploitation of children and child pornography. The preamble to the

framework decision highlights that the sexual exploitation of children and child pornography are serious violations both of human rights and "of the fundamental right of a child to a harmonious upbringing and development". The framework decision therefore obliges member states to take measures to ensure that two types of offences against children are punishable: offences concerning sexual exploitation of children and offences concerning child pornography. The sexual exploitation of children is taken to include: the coercion or recruitment of a child into prostitution; profiting from the exploitation of a child for such purposes; and engaging in sexual activities with a child where it is forced, where some form of remuneration is given or where some form of abuse is made of a position of trust or authority. All these offences must be punishable by penalties of at least one to three years of imprisonment. The framework decision must be implemented in the member states by 20 January 2006.

This framework decision applies to the criminal law of the member states that relates to only one of the activities for which children are trafficked, and not to the act of child trafficking itself. In reality the sexual exploitation of a child may or may not be related to trafficking. The act of exploitation itself may be separate from the act of trafficking, and is quite often conducted by different individuals. Legal provisions in member states pertaining to the sexual exploitation of children, as required by this framework decision, thus contribute to the fight against child trafficking only to a very limited extent.

Council Framework Decision on standing of victims in criminal proceedings

The *Council Framework Decision on standing of victims in criminal proceedings*²¹ (hereafter referred to in this section as the framework decision) was adopted in March 2001 and aims to ensure that victims who participate in criminal proceedings are afforded the same level of protection and care, regardless of which member state they find themselves in. According to the framework decision, victims' needs have to be considered in a comprehensive manner in order to avoid partial solutions that can lead to secondary victimisation. Therefore the framework decision aims also to cover assistance to victims both before and/or after the criminal proceedings. The provisions covered by this framework decision can be used to protect only those children who take part in criminal proceedings against their traffickers. In addition to the provisions outlined above, the framework decision also binds member states to make every effort to ensure that victims have access to information on all their entitlements as victims in that state, in languages commonly understood, from their very first contact with law enforcement agencies. Member states are also obliged to prevent secondary victimisation and to avoid placing victims under unnecessary pressure.

This framework decision is a broad instrument which provides the minimum safeguards for victims of all kinds of criminal activity, both minor and grave. Trafficking in human beings is a particularly serious form of criminal activity, and child victims require a chain of special protection measures both as victims of trafficking and as children.

Council Framework Decision on joint investigation teams

In order to reinforce an active approach to combat trafficking in human beings the EU in June 2002 adopted a *Council Framework Decision on joint investigation teams*²² (hereafter referred to as the framework decision). Such an instrument was called for originally by the European Council of Tampere as the first step in the fight against drug trafficking, terrorism and trafficking in human beings. This framework decision allows that “authorities of two or more member states may set up a joint investigation team” to carry out criminal investigations in one or more of these states. These teams are to be set up for a specific purpose and limited period, which will be decided by the member states concerned. Joint investigation teams are not compulsory, or permanent. They can be used by member states at their discretion. Since these teams can be set up for a variety of purposes including drug trafficking and terrorism, it is implied that the likelihood of teams being established to fight trafficking in human beings will heavily depend on how this issue scores against the other two in the priorities of the member states. In the past it has tended to be the lowest of the three.

Council Decisions

Council Decision on supplementing the definition of the form of crime ‘traffic in human beings’

The *Council Decision on supplementing the definition of the form of crime ‘traffic in human beings’* of December 1998 (hereafter referred to in this section as the decision) is addressed specifically to the European Police Office (Europol) and came into force on 1 January 1999. This decision supplements the definition of “traffic in human beings” as follows:

“the subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material”.

While it is commendable that the decision places a special emphasis on children as particularly vulnerable victims, there is an additional confusion in terminology brought

about by the use of new terms such as ‘assault of minors’ and ‘trade in abandoned children’, which are different from the terminology used in the other legal documents of the EU. The definition of trafficking provided here differs greatly from the general definition provided by the recent *Council Framework Decision on combating trafficking in human beings*, which is also the consequence of developments over time following the introduction of the Palermo Protocol in 2000. It is therefore clear that the Europol definition is in vital need of an update. However, as described in chapter II, Europol recognises that different forms of exploitation are related to child trafficking even if its actions are focused on the fights against sexual abuse of children and child pornography.

Council Decision to combat child pornography on the Internet

In the preamble to the *Council Decision to combat child pornography on the internet* of May 2000²⁴, it is stated that “respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union’s concerns”. While it recognises that trafficking in human beings and the sexual exploitation of children are serious violations of human rights, this instrument deals exclusively with the narrow area of child pornography on the internet and there are no provisions specifically concerning child trafficking which occurs for this purpose.

Tampere Council Conclusions

The Tampere European Council was held in October 1999. A special meeting of the Council was dedicated to the establishment of an area of freedom, security and justice where political guidelines were drawn up for future action. A number of conclusions²⁵ relate specifically to trafficking in human beings, each firmly rooted within the context of providing EU citizens with a high level of freedom, security and justice. Most of the conclusions concerning trafficking in human beings can be seen as part of the concern by the EU heads of state to “tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants”.

As part of this approach the European Council asked for close co-operation with countries of origin and transit in developing information campaigns on legal immigration “and for the prevention of all forms of trafficking in human beings” while also calling for assistance to the authorities of these countries “to strengthen their ability to combat effectively trafficking in human beings”. In addition, the Council urged the adoption of legislation that prescribed severe sanctions against this serious crime. Importantly the Council also recognised that the “the rights of the victims of such activities shall be

secured with special emphasis on the problems of women and children”.

There is some confusion however, in the relationship between illegal immigration and trafficking in human beings. In a number of these conclusions the Council uses “trafficking in human beings” as almost synonymous with the smuggling of human beings. This can be explained by the fact that trafficking in human beings has only recently been defined and set apart from smuggling in international law, certainly after these conclusions were adopted²⁶.

Finally, Conclusion 46 highlights the importance of shared definitions and states that

“with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors, such as... trafficking in human beings, particularly exploitation of women, sexual exploitation of children”.

This is one of the first references of the Council in its conclusions to “trafficking in human beings and the sexual exploitation of children” which appears to have subsequently become a catchphrase in the EU legal and policy framework. The consequences of such a use of terminology will be further explored in the rest of this paper and in particular in the conclusions of chapter VI.

Conclusions

The legal framework of the EU does not include either a specific instrument on children’s rights or on child trafficking. The EU was in fact only given competence to legislate in the area of trafficking in human beings with the Treaty of Amsterdam in 1999 making this a relatively recent legislative area. It is therefore an achievement that in such a short time three new legal instruments have been introduced by the EU relating to the fight against trafficking in human beings and child trafficking. Nonetheless, a number of critical observations have emerged from the above analysis of the EU legal framework, which have clear and significant implications for the development of an effective policy on child trafficking.

Definition

The EU legal framework lacks a clear definition of child trafficking. The clearest is the definition of trafficking in human beings provided by the *Council Framework Decision on combating trafficking in human beings* of 2002 with its special qualification for child victims. This definition, however, covers only child trafficking which occurs for the purpose of labour or sexual exploitation.

In a resolution on trafficking in women of May 2000 the European Parliament states that “the lack of a common agreed definition ... is a major obstacle to coherent action

and policies to fight this crime”²⁷. The same is true of child trafficking. Children are particularly vulnerable victims of trafficking and thus a definition is required which not only recognises and reflects this vulnerability but also includes trafficking for all types of exploitation to which trafficked children are exposed. Only such a definition can guarantee a coherent and effective policy by the EU on child trafficking providing special protection for all children regardless of the purpose for which they are trafficked. There must be no discrimination amongst the different forms of child trafficking. All child trafficking is a brutal violation of children’s rights and must be treated and punished as such.

In addition, the Europol definition of trafficking in human beings needs to be updated to reflect the internationally agreed definition as found in the UN Optional Protocol, including a special reference to the vulnerability of children.

Sexual Exploitation Focus

The lack of a clear comprehensive definition of child trafficking has led to confusion of terminology within the EU legislative framework between child trafficking and the sexual exploitation of children. “Trafficking in human beings and the sexual exploitation of children” has become a catchphrase of the EU’s approach to trafficking and has subsequently been incorporated throughout the legal, policy and implementation framework of the EU on child trafficking. There are a number of explanations for this development. Firstly there is evidence that child trafficking in the EU occurs most frequently for the purpose of sexual exploitation. In addition in the mid 1990s the EU was particularly affected by a number of cases of sexual exploitation of children, namely in Belgium and France, which had a huge impact on the public of the EU and accordingly on its administration. Finally in international developments 1996 also saw the First World Congress against Commercial Sexual Exploitation of Children.

Child trafficking and the sexual exploitation of children are interrelated but distinct, and separate approaches need to be developed to tackle each. Child trafficking occurs for a number of purposes other than the sexual exploitation of children such as marriage, adoption, slavery or bonded labour, hazardous child labour, domestic servitude, begging and involvement in illicit activities, and organ extraction and trafficking. In addition, the process, activities and persons involved in child trafficking and in the sexual exploitation of children may overlap but are for the most part different. Ultimately the sexual exploitation of children may or may not involve trafficking and child trafficking may occur for the purpose of sexual exploitation or children may be trafficked and exploited in a number of other ways. It is essential that the EU recognise that child trafficking and the sexual exploitation of children are two

related but separate policy areas and that legislation in one area is not sufficient to cover both. To this end it may be necessary to explore how an instrument could be introduced to combat child trafficking based on the CRC that would include a broad definition of the phenomenon and account for the special vulnerability of child victims of trafficking.

Criminal Law Perspective

As the fight against child trafficking is part of the EU policy on justice and home affairs under the third pillar, legislation concerned with trafficking is generally considered as a matter for intergovernmental co-operation and a competence of the member states. Because of this, the most common instrument used in the fight against trafficking in human beings and child trafficking is the Council framework decision which is intended for the harmonisation of laws of member states on particular issues. The legislative framework of the EU on child trafficking therefore has an overwhelming focus on the criminal law of member states.

Such an approach leaves great gaps in the prevention of child trafficking and protection and assistance to child

victims, with serious negative implications for EU policy on these issues. The lack of a binding legal framework for these policy areas raises an important question as to whether prevention and protection will be adequately included in EU policy and if the special rights of children will be safeguarded.

In addition, the current approach focuses extensively on prosecution of traffickers and so where provisions exist for victim protection they tend to be relevant only to those victims who choose to testify against their traffickers. These tend to be adults. Any instrument that is to contribute to the fight against child trafficking must include a series of measures for the protection of any child that is identified as a victim of trafficking regardless of whether or not he or she chooses to be involved in criminal proceedings.



Boys being forced to steal by criminal gangs, Hamburg, Photo by Renate Giesler

Chapter IV - EU Policies

THE purpose of this chapter is to assess in detail the policies of the EU relating to child trafficking. The European Commission is the primary institution responsible for both the management and implementation of EU policy (discussed in chapter V); however the policy itself is taken from a number of non-binding instruments which reflect the political will of the member states and the EU institutions. This chapter will provide a brief overview of the most relevant opinions according to each institution. In addition, it will provide background information on the present internal structure of the Commission in order to provide some understanding of where child trafficking and related areas fit in EU policy.

It is relevant to keep in mind the time delay and the “lag” effect of policy processes. The European Parliament can take years to discuss and issue a resolution, which then affects actions taken by the Council and the Commission. This time delay, although hard to avoid, can lead EU institutions to adopt measures and instruments that are overtaken by new realities. Nevertheless, some measures and instruments, even if issued some years ago, are still valid and relevant and thus deserve a proper assessment.

Council of the European Union

Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union (2002)

The clearest expression of political will of the member states relating to trafficking in human beings can be found in the *Comprehensive Plan to combat illegal immigration and trafficking of human beings in the EU*²⁸ (hereafter referred to as the comprehensive plan). This document was presented to the Council in February 2002 and adopted by the 2411th Council of Justice and Home Affairs on 2 May 2002.

The comprehensive plan is divided into seven areas: visa policy; information exchange and analysis; pre-frontier measures; measures relating to border management; readmission and return policy; Europol; and penalties. Although many of these areas have a direct bearing on child trafficking and trafficking of human beings generally, references to special provisions for the fight against trafficking are scarce. In fact, although the fight against trafficking in human beings is included in the title, this document focuses on illegal immigration. This also reflects the political priorities of the member states. Some of the measures envisaged by the comprehensive

plan, which do not explicitly refer to combating trafficking in human beings, would nonetheless contribute to the fight against child trafficking if applied correctly. For example, under the section on information exchange and analysis, the plan refers to the *Council Resolution of May 1999 on the introduction of an early warning system for the transmission of information on illegal immigration and facilitator networks*. Although the plan does not say this, such a system could also be used to identify potential trafficking networks, as well as to prevent minors from falling into the hands of traffickers. The plan explains that the implementation of this system has hit a number of obstacles and calls therefore for improved guidelines and stricter implementation measures in the future.

Most of the conclusions relate to the management of migration flows without appreciating the complicated relationship between this area and the fight against trafficking in human beings. It is highly significant that in a number of suggested measures which have the potential to contribute to the fight against child trafficking, neither child trafficking nor trafficking in human beings generally are referred to by the Council. This is a serious omission which may reflect the greater political priority placed by the member states on combating illegal immigration than on protecting human rights by reducing trafficking in human beings. On the other hand, it may also highlight the lack of recognition by the member states that some of the policies can be applied to fighting against trafficking in human beings and children. One clear example relates to the training of border staff who can be used to identify traffickers, and both child and adult victims of trafficking. Trafficking in human beings is, however, not covered by the curriculum for border staff suggested by the Council.

The most valuable contribution which the comprehensive plan makes to the fight against child trafficking is the clear recognition of the distinction between smuggling and trafficking in human beings. Taking into account the definitions provided by the UN in the two Protocols of the UN Convention against Transnational Organised Crime, the Council states that:

“The expressions ‘smuggling’ and ‘trafficking’ are often used synonymously, although a clear distinction should be drawn as they are substantially different... smuggling means helping with an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element. This is not necessarily the case with trafficking where the key element is the exploitative purpose. Trafficking involves the intent to exploit a person irrespective of how the victim comes to the location where the exploitation takes place”.

The Council also clarifies the difference between illegal immigration and trafficking. Illegal immigration, while it can include aspects of trafficking, is defined as having wider scope and relating to illegal entry and residence. The Council therefore recognises that not all illegal immigrants are necessarily victims of trafficking. It is regrettable however, that this is not reflected in the recommendations made in the comprehensive plan and that the Council has failed to use this opportunity to highlight that victims of trafficking, especially child victims, require special treatment and must never be prosecuted as illegal immigrants.

There is no section on victim protection in the comprehensive plan. The Council does recognise that in the case of any measures that “are put in practice to fight illegal immigration, the specific needs of potentially vulnerable groups like minors and women need to be respected”. The plan is not specific as to what this would entail. With a view to the implementation of the comprehensive plan in the EU, the Council states that “if the comprehensive plan is to have full effect a mechanism must be set up to monitor and appraise the initiatives proposed, progress made and the achievements attained”. To this end the plan includes concrete suggestions, such as active monitoring by the Commission. In addition, the Commission is invited to take account of the content of this plan, including the list of priorities, when drafting any future related initiatives. The vital role of civil society and its contribution to the fight against trafficking in human beings and children is not included anywhere in the document.

Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003)

The most recent resolution by the Council is the *Resolution on initiatives to combat trafficking in human beings, in particular women*²⁹ (hereafter referred to in this section as the resolution) of October 2003. In this resolution the Council states that trafficking in human beings is defined by EU law as “a crime aiming at the sexual or labour exploitation of persons, in particular at the sexual exploitation and domestic slavery of women and children”.

Here the Council is using a term which is not used in other EU legislation and documents related to child trafficking – that of ‘domestic slavery’ illustrating the confusion created by the lack of a consistent definition of child trafficking. Some positive developments include the recognition that the eradication of the root causes of trafficking “should be at the forefront of long-term efforts to fight trafficking in women”; the call on all member states to ratify and fully implement all international instruments against trafficking in human beings, in particular the Palermo Protocol; and the encouragement of the Commission and member states to set up a monitoring system on trafficking in human beings

that would provide accurate data on this phenomenon. None of these however relate specifically to children. For the most part the resolution focuses on trafficking in women and thus recommends a number of measures for women specifically. This focus on women is particularly confusing in reference to children since it includes older girl children but not boys or younger girls who are victims of trafficking. All children need to be recognised by the Council as a separate vulnerable group in need of special measures³⁰.

Council Resolution on the contribution of civil society in finding missing or sexually exploited children (2001)

The Council Resolution of October 2001, which deals with the contribution of civil society in finding missing or sexually exploited children³¹ (hereafter referred to in this section as the resolution) covers a number of situations among which are “trafficking in children, prostitution and pornography”. The use of these three terms together implies that child trafficking is considered to be predominantly trafficking for the purpose of sexual exploitation. In this resolution the Council invites the member states to encourage co-operation between competent authorities and civil society to find missing or sexually exploited children. In addition the Council emphasises the importance of civil society organisations working on these issues and the relevant authorities exchanging information. The Commission is also invited to compile a study on missing children, and to report the results of this study to the Council within one year of the adoption of the resolution, on the basis of which the Council would determine measures desirable at the European level. The wording of the resolution is in fact particularly weak, being advisory and suggestive, and in most cases member states and other EU institutions are invited rather than called upon to enact the given measures.

Council Resolution on unaccompanied minors who are nationals of third countries (1997)

The *Council Resolution on unaccompanied minors who are nationals of third countries*³² (hereafter referred to in this section as the resolution) is of particular importance to EU policy on child trafficking, since unaccompanied minors who are nationals of third countries are particularly susceptible to falling victim to child trafficking. The vulnerability of unaccompanied minors in the face of traffickers is in fact directly related to the treatment these children receive in the member state upon arrival. This resolution is the only EU document which concerns itself explicitly with unaccompanied minors.

The purpose of the resolution is to set down some guidelines for the treatment of unaccompanied minors (persons below 18 years of age) for their reception, stay, return and

application for asylum. Article 3 of the resolution includes a number of provisions which, if applied, could contribute to the fight against child trafficking. Member states are encouraged to establish the identity of an unaccompanied minor as soon as possible upon arrival, through interviews conducted in a manner in keeping with the child's age. The implementation of such a system could also help identify victims of child trafficking. There are no provisions in the resolution for ways to identify child victims of trafficking.

In addition, the resolution states that unaccompanied minors should be entitled to all the necessary protection and basic care in member states, regardless of their legal status. Part of this care would include providing the minor with legal guardianship or representation by a national organisation responsible for child care as soon as possible. Other provisions include the right to education equal to that accorded to nationals if it is assumed the unaccompanied minor will be staying for some time, and appropriate medical treatment including special assistance to children who have suffered any form of neglect, exploitation or abuse. The identification of a child as unaccompanied nevertheless remains a crucial factor in determining whether these children would receive any of these benefits.

Special provisions for victims of child trafficking are not included in the resolution. The annex contains a reference to measures to combat trafficking in minors and states simply that "member states, mindful of the particular vulnerability of minors, should take all measures to prevent and combat trafficking and exploitation of minors, and co-operate in this regard" without going into detail of how this is to be done.

Article 2 of the resolution maintains that member states of the EU may "refuse admission at the frontier to unaccompanied minors in particular if they are without the required documentation and authorisation". Child victims of trafficking often arrive at EU borders without documentation but there are no provisions for the special case of these children. The failure to identify trafficked children who arrive at the borders of member states, and their subsequent refusal of entry as advocated by the resolution, could place the lives of these child victims in danger, by sending them back into the hands of the traffickers. The resolution does make some provisions for child protection in Article 5 in relation to return to the country of origin. An unaccompanied minor should only be sent back if adequate care and reception facilities are available in the country of return, otherwise the child should be allowed to remain in the member state. The Council, however, gives no indication as to how and by whom this would be ascertained.

It is important to remember that Council resolutions are not binding documents although they do reflect the will of the government ministers of the member states. The application of the Council resolution was reviewed in June

1999. It was found that five of the member states (15 in total at the time) had introduced measures in the areas covered by the instrument since its adoption. Member states are, however, under no obligation to do so and can choose which aspects they wish to include in their policies.

The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (1997)

The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, (hereafter referred to as the Hague Declaration) was adopted on 26 April 1997 by the EU member states in the framework of a ministerial conference held in The Hague on the initiative of the Dutch Presidency of the EU. Although not an official document of the Council of the EU, the Hague Declaration expresses the position of the relevant ministers of the EU member states on trafficking.

The Hague Declaration recommends measures to be taken at European level and at national level both in the field of equal opportunities between women and men and in the field of justice and home affairs. Though the declaration mentions clearly that the scope of the coordinated actions discussed and agreed in The Hague covers all human beings, it focuses on actions and measures to combat trafficking of women for sexual exploitation without making any reference to age considerations. We can therefore say that this instrument covers young and teenage girls, keeping boys outside the primary scope of the instrument.

The Hague Declaration demonstrates that as long ago as 1997 the EU and its member states were adopting a set of significant protection measures that are relevant to today's situation. As well as measures aiming at European level co-ordination in the field of judicial co-operation, exchange of information, investigation and prosecution, the Hague Declaration insists clearly on the need for increased alignment with UN instruments on the protection of human rights, especially women's rights. At national level, the Hague Declaration contains specific measures to prevent the trafficking of women and protect and assist trafficked women. It also demands that each state put in place implementation instruments such as national special rapporteurs on trafficking and programmes developed in co-operation with NGOs in both countries of origin and destination.

Although the Hague Declaration focuses on trafficking in women, without specifically addressing child trafficking issues, it shows that at ministerial level, European states discussed and agreed to adopt significant measures to protect and support women victims of trafficking. However, after analysing the series of instruments and

legislation presented in this study, the measures covered by the Hague Declaration seem to have been for the most part ignored by the EU. In fact, references to the Hague Declaration are generally absent from the instruments and legal texts discussed and adopted by the EU since 1997 in the field of trafficking in human beings. In addition, very few member states have developed and implemented policies in accordance with the Hague Declaration. One of its few positive results is the appointment of a special rapporteur on trafficking in human beings by the Netherlands in April 2000, which is generally considered an important and concrete instrument in the country's policy against trafficking.

European Parliament

The European Parliament has given its opinion of child trafficking and the trafficking of human beings more generally in a number of Resolutions.

Resolution of the European Parliament on child trafficking and child soldiers (2003)

The Parliament *Resolution on child trafficking and child soldiers*³³ of July 2003 (hereafter referred to in this section as the resolution) is the most recent and most relevant expression of the Parliament on child trafficking and includes a number of constructive recommendations to the Commission and Council for an effective and coherent policy to fight child trafficking. The first of these is a recommendation for the EU to put pressure on all third countries which have not done so to ratify all relevant international instruments relating to the fight against child trafficking. In addition the Parliament calls on children's rights to be a crucial part of all partnership agreements between the EU and third countries. The Parliament also urges the establishment of free population registers with the aim of protecting children and facilitating their access to social services, including education which is seen as one of the most effective means to combat trafficking.

Most importantly the Parliament urges the Commission and Council to draw up a common EU policy on child trafficking that would focus on the judicial and legal aspects as well as on prevention and victim protection. The Parliament also recommends the appointment of a high-level representative for children's rights to both the Council and the Commission who would ensure overall co-ordination of all EU policies related to children. In recognition of the limits of its own efficiency in the area, the Parliament also calls for increased co-operation amongst its own committees on the fight against child trafficking to assess all the different aspects of this complicated phenomenon and put forward further practical recommendations on how to combat it effectively. The Parliament also stresses that combating both child trafficking and child soldiers must be a priority of the EU and that this must be reflected in budgetary decisions.

To this end the Parliament suggests the creation of a separate heading to be created in the budget to raise the profile of the EU in this area.

This resolution was drawn up in full consultation with civil society organisations that have extensive experience in combating child trafficking, including *Terre des Hommes*, and can be considered an encouraging example of the recognition of the need to involve civil society actors in general, and NGOs in particular, in such processes.

Resolution of the European Parliament for further actions in the fight against trafficking in women (2000)

The Parliament *Resolution for further actions in the fight against trafficking in women*³⁴ (hereafter referred to in this section as the resolution) was adopted in May 2000 in response to a Commission communication on the same subject. In this document the Parliament firstly recognises that in relation to trafficking in human beings, both "women and children are particularly vulnerable to this contemporary form of slavery" and secondly, condemns "trafficking in women and children as an intolerable violation of fundamental human rights and consequently as a criminal act". There are a number of suggestions relating both to women and child victims of trafficking. The Parliament suggests that a global warning system be developed to monitor refugee and migrant movement so that primary action could be taken to "prevent trafficking in women and children". It also calls on the Council to assign a liaison officer to one embassy of the member states in countries of origin who would be responsible for monitoring trafficking in women and children. Finally, the Parliament recognises new trends in trafficking relating to conflict and post-conflict situations in which international peace-keeping troops play a role. The Parliament calls on international organisations to raise awareness among staff deployed in these areas. It also calls on the Council to appoint an EU Rapporteur on trafficking.

There are also a number of provisions which the Parliament relates specifically to trafficking of women, which could, if applied to any future policy on trafficking in human beings more generally or child trafficking more specifically, have a positive impact on the fight against this crime. The Parliament recognises the need for a multi-disciplinary approach involving all actors and advocates international co-operation between origin, transit and destination countries, which is currently lacking in EU policy. In addition, the Parliament points to the links between trafficking in human beings, migration and asylum policies and calls on the Commission to analyse the extent to which immigration laws and practices in the EU could contribute to trafficking. It is regrettable therefore that the Parliament recommendation for

a “specific approach to trafficking in women beyond irregular migration issues” is not extended to child victims or victims of trafficking more generally.

Resolution of the European Parliament on trafficking in human beings (1996)

In the Parliament *Resolution on trafficking in human beings*³⁵ (hereafter referred to in this section as the resolution) the Parliament states that “trafficking in human beings (men, women, children and young adults) is incompatible with human dignity and worth and constitutes a serious violation of human rights”. It also recognises that trafficking is to a large extent the result of international economic imbalances and that it therefore concerns both EU development and external policy. The Parliament suggests that EU development policy should include provisions for victims of trafficking and urges the EU to take into account the specific position of women and children in this policy area.

Specifically related to children, the Parliament highlights its concern that a growing number of children are victims of trafficking but states that this occurs mainly for the purposes of sexual exploitation. In addition, in an extensive list of recommendations for the protection of victims of trafficking included in this resolution the Parliament makes no mention of the special needs of child victims. A very weak definition of trafficking in human beings is provided as “illegal action of someone who, directly or indirectly, encourages a citizen from a third country to either enter or stay in another country in order to exploit that person” through deceit or coercion. A far cry from the definition in the Palermo Protocol and subsequent Council framework decision, this definition of the Parliament with its vague use of terms such as “encourages” and lack of inclusion of trafficking within EU or national borders demonstrates the lack of clarity in international discourse on trafficking in human beings before the international consensus on the issue at Palermo in 2000.

Resolution of the European Parliament on the Commission Communication on combating sex tourism and the “aide memoire” of the European Union’s contribution to reinforcing the prevention of sexual abuse and exploitation of children (1997)

The Parliament *Resolution on the Commission Communication on combating sex tourism*³⁶ (hereafter referred to in this section as the resolution) is part of a strong response to a number of cases in the EU, namely in Belgium and France, involving the sexual abuse of children. As such it does not deal generally with trafficking but with the sexual exploitation of children in the EU. Some of the measures advocated by the Parliament in this resolution could contribute to the fight against child trafficking especially if applied to all child victims of trafficking.

These measures include: setting up a twenty-four-hour telephone help-line in the member states; modifying member states’ criminal procedure rules to make it easier for children to give evidence; providing an information system that would include an exchange of computerised data on missing children; and setting up a European centre for missing children to co-ordinate activities of existing centres. In addition, the Parliament calls on the member states of the EU to ensure that “protecting children and young people against sexual exploitation, trafficking in human beings and paedophile activities becomes a central concern of the state”.

The European Parliament issued two further resolutions in 1996. The first of these, adopted in September 1996, is concerned with minors who are victims of violence and relates almost exclusively to children who are victims of sexual exploitation. In relation to trafficking of children the Parliament called on the member states through this resolution to ensure that co-operation and co-ordination in combating trade in and the exploitation of children are included within a structured dialogue with all applicant countries. The second of these resolutions on measures to protect minors in the EU includes a number of opinions and recommendations not all of which relate to child victims of trafficking. Similarly to the resolution of November 1997 discussed above, this resolution calls for a European missing children’s centre and SOS help-lines in all member states. It also calls on the Commission to make children’s rights a principle for action in all branches of policy and to “set up a unit responsible for children’s rights”.

European Commission

The European Commission has the official mandate to manage EU policies. It is divided into departments known as Directorates General (DGs) which focus on different subjects and areas. These departments are divided up into those concerned with policy, which relate primarily to policies inside the EU, international policy, relating to the EU’s external policies, and General Services and Internal Services, which relate to the internal functioning of the EU institutions. Policies relating to child trafficking, and trafficking in human beings more generally, are primarily the responsibility of DG Justice and Home Affairs as part of an EU policy to ensure a common area of freedom, security and justice. In addition, there are a number of different policy areas that relate to the fight against child trafficking which fall under the jurisdiction of other Commission DGs. The related activity in these DGs with regard to an EU policy on child trafficking will be briefly examined in the second part of this section.

It is important to note, with regard to the policy of the Commission towards child trafficking, that the Commission is on the point of being restructured internally as this report goes to press. As explained in chapter II, a

new Commission is appointed to take office in November 2004. There are as yet no indications as to what the new structure will be and it is difficult to predict what effect there may be on the EU policy towards child trafficking.

DG Justice and Home Affairs

Each DG is organised into a number of smaller units known as Directorates. Within DG Justice and Home Affairs the fight against child trafficking is currently dealt with by Directorate D, Internal Security and Criminal Justice, Unit 1, which deals with the 'Fight against terrorism, trafficking and exploitation of human beings, and law enforcement co-operation'.

The Brussels Declaration

DG Justice and Home Affairs takes The Brussels Declaration of September 2002 (hereafter referred to as the declaration) as its primary policy document on trafficking in human beings. This declaration is the outcome of a European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century which brought together representatives from EU member states; candidate and applicant countries; the United States of America and Canada; international organisations, NGOs and EU institutions. The conference was an initiative of the Commission as part of the STOP II Programme (see chapter V) and was organised by the IOM together with the European Parliament and Commission. The declaration has subsequently been presented by the Commission to the Council of the European Union which adopted conclusions on the declaration in May 2003. These conclusions both take note of the declaration and welcome "the general approach that is given in the document".

The declaration gives a set of recommendations, standards and best practice relating to the fight against trafficking in human beings. The document is based predominantly on a judicial approach to trafficking. It reflects the belief that an effective policy by the EU must address the entire trafficking chain and considers that addressing the root causes of trafficking must be at the forefront of any long-term effort to fight human trafficking. The declaration is divided into four general sections: mechanisms for co-operation and co-ordination; prevention of trafficking in human beings; victim protection and assistance; and police and judicial co-operation.

Within the prevention section, point 12 includes specific recommendations to prevent child trafficking. Importantly, the document recognises the "special vulnerability and needs of child trafficked victims" as enshrined in international law which, according to the declaration, must be reflected in practice. The recommendations themselves, however, are limited. They primarily involve proposals concerning children's travel documents including suggestions for specific

action relating to passport and visa regulation such as extra submission time in order to allow for background enquiries in countries of origin. This does not solve the problem of hundreds of trafficked children who enter the EU clandestinely. In addition in the section on victim protection and assistance, the declaration states that "in providing such support measures, the specific and special needs of trafficked children must be addressed".

Experts Group on Trafficking in Human Beings

One of the most important contributions that the declaration has made to EU policy on child trafficking has been the establishment of an experts group on trafficking in human beings in March 2003 on the basis of recommendation 2 of the declaration. This is a group of twenty independent experts from member states, NMS and candidate countries. Representatives of non-governmental organisations make up around 20 per cent of the group. There is also one civil society expert who is a specialist on child trafficking. The Experts Group on Trafficking in Human Beings has a term of office of one year, which can be extended.

The mandate of this group was established by a Commission decision which outlines their mission as issuing opinions and reports, either at the request of the Commission or on their own initiative. In particular, the group has been instructed by the Council to give a report on the recommendations set out in the Brussels Declaration, which is to be submitted to the Commission within nine months of the decision. The aim of this report is "to assist the Commission with a view to launching further concrete proposals at European level". The experts group is currently working on the report, the first draft of which should be ready by autumn 2004.

With specific regards to child trafficking the experts group has been examining article 12 of the declaration with the aim of building upon its recommendations. In looking at how best to integrate the special needs of children into its report the group has considered both an expanded section on the protection of child victims and the need to integrate child-specific measures throughout the report. Among the recommendations that the group will consider including in the prevention section on child trafficking are specific measures to combat child trafficking in development policy that are linked to addressing the root causes; and on identifying child victims of trafficking and their treatment by state authorities of the member states.

EU Forum on the Prevention of Organised Crime

In 2001 the Commission established the EU Forum for the Prevention of Organised Crime (hereafter referred to as the EU forum) in response to a Commission communication on crime prevention. The EU forum brings together a wide range of stakeholders including national authorities, academics, business and professional

groups as well as civil society and NGOs. The first forum, held in May 2001, included a workshop on the prevention of trafficking in human beings. A second EU forum was held on "Prevention of trafficking in human beings" in June 2003. On 26 May 2004 an EU forum was held specifically on child trafficking for the first time. It included members of various Commission DGs as well as representatives from Europol, ministries of selected member states, international organisations and civil society. *Terre des Hommes* was amongst those asked to make a presentation at the forum, as part of its International Campaign against Child Trafficking, on the various forms of exploitation that occur through trafficking³⁷. The EU forum serves primarily as a consultative body for Justice and Home Affairs on the chosen issues and it is unclear to what extent it has an impact on policy. The choice by the Commission to hold a forum specifically on child trafficking can nonetheless be seen as an indication that the Commission recognises the need to treat child trafficking as a separate policy area.

Commission Communications

Commission communications are usually the clearest expression of Commission policy on a given issue. DG Justice and Home Affairs has contributed to Commission communications in two very narrow areas relating to child trafficking. The 1996 *Communication on trafficking in women for the purpose of sexual exploitation*³⁸ which was drafted together with DG Employment and Social Affairs (see below) is a response to the first European Conference on trafficking in women held in 1996 and includes some of the proposals and practical solutions put forward during this event. The communication covers such areas as: interdisciplinary proposals, immigration, judicial co-operation, police co-operation, social and employment co-operation and co-operation with third countries. Importantly the communication recognises the vital link between immigration and trafficking in human beings and also the necessity to combat the root causes in countries of origin. There are, however, few suggestions for a coherent strategy, the recommendations focus instead on factors such as training of immigration officials or development policy in selected countries of origin. In addition the document deals exclusively with trafficking in women for the purpose of sexual exploitation. The link to child trafficking is recognised as requiring a specific response.

The 1996 communication was followed in 1998 by a *Commission Communication proposing further action in the fight against trafficking in women*. In this communication too, trafficking was defined only in terms of sexual exploitation.

In 1996 a separate Commission communication was issued on child trafficking that focuses exclusively on combating child sex tourism. This communication proposes measures in three areas: deterring and punishing

sex abusers, stemming the flow of sex tourists from the member states, and helping to combat sex tourism in third countries. It is clear however that child sex tourism and child trafficking are different crimes which require distinct responses. The recommendations presented in this Commission communication could, if applied, provide some positive contribution to reducing child trafficking. However it would only apply to children being trafficked for sex tourism.

DG Employment and Social Affairs

DG Employment and Social Affairs is responsible, among other matters, for gender equality inside the EU. The Commission *Communication towards a Community Framework Strategy on Gender Equality*³⁹ of June 2000 sets out the policy on this issue. One of the operational objectives of EU gender policy is: "Fight gender-related violence and trafficking of human beings for the purpose of sexual exploitation" (see also chapter V). Trafficking in women therefore, falls under the theme 'Violence and Sexual Exploitation' of the gender policy managed by Directorate G/1 on Equality for Men and Women. Girl children are in theory covered by this policy, although it specifically refers only to girls trafficked for the purpose of sexual exploitation. Within the DG children as a vulnerable group have not been made a priority in the past and have only been specifically considered from the perspective of a policy on family and work-related childcare.

This, however, is changing due to a growing recognition that children's rights must be made part of the EU social agenda. As part of the internal restructuring of the European Commission, DG Employment and Social Affairs is expected, as of September 2004, to include a separate post on poor children as part of the EU strategy on social inclusion. This provides an opportunity for the Commission to explore how the root causes of trafficking can be explored through specific strategies with a focus on underprivileged children, especially in the context of NMS where a proportion of trafficked children originate. This can also serve as a first step towards reconciling the present criminal law approach to child trafficking with an approach based on stronger children's rights under an EU social policy. Another indication of this trend is the inclusion of trafficking in women and children as a priority under the DG Employment and Social Affairs programme EQUAL (see chapter V).

DG Enlargement

On 1 May 2004 the EU underwent a historic enlargement, welcoming ten NMS into what is now a union of 25 member states. The external relations of the EU towards candidate countries are managed by a separate DG inside the Commission. From the moment that their application is accepted by the Council, until the actual moment of accession, EU policy towards these countries is managed by DG Enlargement. The

ten NMS are: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia. Until 1 May 2004 DG Enlargement was responsible for all EU activity concerning these states and three other candidate countries, Bulgaria, Romania and Turkey. Within the DG, separate units and officials dealt with the co-ordination of negotiations and pre-accession strategy for each of these countries. Since 1 May 2004 however, these ten countries have become EU member states and as such are no longer part of a separate EU external policy. DG Enlargement is therefore now responsible for the EU enlargement policy only towards Romania, Bulgaria, Turkey, and since June 2004, Croatia.

In order to become a member state of the EU each candidate country must fulfil set criteria. This includes acceptance of the “acquis communautaire” which includes all the common rules, standards and policies that make up the body of EU law. Thus NMS are required to accept both the binding legislation and the soft law of the EU. The candidates receive more than twenty thousand documents for approval.

Negotiations with candidate countries are divided up according to sectors known as chapters, each of which relates to an area of EU competence. Trafficking in human beings falls under Justice and Home Affairs which is chapter 24. As part of the negotiations, states are required to demonstrate to DG Enlargement any provisions in their national legislation which are required by EU law. The negotiations on chapter 24 have been successfully concluded with all the NMS and have been provisionally closed with Bulgaria, but are still open with Romania. In addition the Accession Treaty contains a safeguard clause on judicial co-operation in civil and criminal matters. This states that in the case of inadequate implementation of any relevant parts of the ‘acquis’ during the first three years of accession the application of provisions relating to JHA may be temporarily suspended in respect of the NMS until the state is ready to implement. This is monitored by DG Justice and Home Affairs.

As an example of the positive impact of the enlargement process on the protection of children’s rights, it is relevant to mention Romania where new legislation has recently been adopted and should enter into force in 2005. This legislation aims to put an end to deep violations of children rights in the field of international adoptions of Romanian orphans. The role of the EU in this change has to be understood in the process of the dialogue with Romania for its membership to the EU. The special role of the Member of the European Parliament and Rapporteur on Romania, Baroness Emma Nicholson, has to be underlined in this encouraging evolution.

The accession of ten NMS means that the EU will now contain not only destination countries but also countries of origin and transit. There is no specific policy on child trafficking or trafficking in human beings as part of the

enlargement process. The candidate countries are simply required to bring their legislation into line with all existing EU policies and legislation on this issue. Since 1 May 2004 any policy and legislation of the EU on child trafficking in the NMS has become part of the overall EU policy on this topic, dealt with primarily by DG Justice and Home Affairs (see above). This raises the question of how the overall EU policy on child trafficking needs to be adapted to accommodate the changes brought about by the enlargement process. Accession of these ten states to the EU will not automatically lead to a lifting of all border controls between the old and new member states as with previous enlargements. The decision to lift border controls is subject to a separate judgment by the Council, which must be unanimous, based on an assessment of the legal and practical preparedness of the new members. This preparedness is demonstrated by each country through a Schengen Implementation Plan, which each candidate country has submitted.

Enlargement has led the EU to develop a European Neighbourhood Policy (hereafter referred to as the neighbourhood policy) which for the moment is managed jointly by DG Enlargement and DG External Relations. This policy is intended to cover the countries which lie on the new borders of the enlarged EU: Algeria, Belarus, Egypt, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Russian Federation, Syria, Tunisia, Ukraine, and the Palestinian Authority. The candidate countries Bulgaria, Croatia, Romania, and Turkey are excluded, as are the so-called ‘prospective candidate countries’: Albania, Bosnia, Serbia and Montenegro, and the Former Yugoslav Republic of Macedonia. These countries form part of the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme (see chapter V).

The neighbourhood policy is managed by the Task Force on Wider Europe. This body was established in July 2003 in order to ensure momentum was not lost. The task force is responsible for further developing the neighbourhood policy, drawing up the Neighbourhood Instrument (see below) and action plans for each of the countries covered, and producing recommendations on how the neighbourhood policy should be covered by the next Commission. The Wider Europe Task Force is made up of staff from both DG Enlargement and DG External Relations.

The neighbourhood policy was first outlined in a Commission Communication on Wider Europe⁴⁰ in March 2003, in order to strengthen stability and security among the new neighbours and to prevent the emergence of new dividing lines. One of its objectives included in this Communication is “Intensified co-operation to combat common security threats”. This includes the fight against organised crime including trafficking in human beings. In addition the EU is to work with its neighbours on

the management of migration flows and the fight against transnational crime including trafficking in human beings. The neighbourhood policy therefore takes an overwhelmingly security-orientated approach to child trafficking. There is no specific section on the fight against trafficking in human beings nor is there any recognition of the special needs of child victims. The neighbourhood policy has been updated by a recent communication (May 2004) within which Justice and Home Affairs, and in particular trafficking in human beings, is identified as a sector for regional co-operation. The Commission has also put forward a proposal for a Neighbourhood Instrument which has a number of objectives. One of these objectives is “working together to address common challenges, in fields such as environment, public health, and the prevention of and fight against organised crime”. Trafficking in human beings would in theory come under this heading but it is not mentioned explicitly anywhere in the document as a priority.

DG External Relations

The external policy of the EU is divided administratively amongst a number of units within the Commission. The most important division in terms of an effective and coherent policy to fight child trafficking is that between the jurisdiction of DG External Relations and DG Development. This distinction is two-fold. In terms of geographical scope, DG Development is responsible for EU relations with all countries which fall under the African Caribbean and Pacific group of countries (ACP). DG External Relations is, on the other hand, responsible for EU relations with all other countries save those covered by the enlargement process (see above). There is also a clear thematic distinction. While DG Development holds the official mandate for EU development policy, DG External Relations is responsible for the participation of the Commission in the Common Foreign and Security Policy.

Human rights, as an overarching issue, falls under the jurisdiction of DG External Relations and is the responsibility of Directorate B/1 on Human Rights and Democratisation. Inside this unit officials cover either thematic or geographic areas. One official is responsible among other matters for the rights of children.

The most important policy document in terms of human rights is the 2001 Commission *Communication on the European Union's role in promoting Human Rights and Democratisation in third countries*⁴¹ (hereafter referred to as the communication). In this communication human rights is recognised as a cross-cutting issue which, in order to be effectively addressed, needs to be mainstreamed into all external policies of the EU. The same approach is to be applied to children's rights. This in theory means that the EU should ensure that respect for children's rights is integrated into all EU external policies, which

would eliminate the need for any specific measures. In practice the implementation of mainstreaming has been problematic, not least due to the lack of a clear definition of the process. It has also led to a clear change in programming priorities since the Human Rights and Democratisation unit at DG External Relations is also responsible, amongst other things, for setting the priorities of the European Initiative for Democracy and Human Rights (EIDHR), an implementation programme managed by EuropeAid (see chapter V). Recently there has been recognition by both the Parliament and the Commission that mainstreaming alone may not prove to be the most effective policy to ensure effective respect for the rights of children. The Parliament *Resolution on Child trafficking and child soldiers* of July 2003 (see above) recommends “adopting a twin-track approach involving both mainstreaming and measures that specifically target children's rights”. This has also been reflected in developments concerning the EIDHR (see chapter V).

In terms of child trafficking there is no overall policy that covers all third countries outside the EU. Instead the Commission takes a regional or country-level approach. Policies can be found in the Regional and Country Strategy Papers (RSPs and CSPs) which outline the main objectives of the partner countries. As explained above, DG External Relations is responsible for the management of EU policy towards all third countries except the ACP. Whether child trafficking will be a priority is therefore decided for EU policy and programming on the basis of country-specific priorities. These priorities are in practice largely identified by the Commission delegations based in each country. Part of the mandate of DG External Relations, in its capacity as guardian of human rights, is to ensure that children's rights are also included in the CSPs both when they are drawn up and through the mid-term reviews. It is difficult to ascertain however to what degree this has been achieved because of the lack of a mechanism to assess the impact on children of EU policies.

In addition, there is nothing in external policy that establishes a priority for combating child trafficking. This lack of consistent policy on child trafficking towards all third countries potentially has a negative impact. Effective policies to combat child trafficking must address the entire trafficking chain, both where the EU is the destination and where the destination is elsewhere. The lack of an overall policy towards all third countries implies that incorporation of child trafficking in CSPs or RSPs may ultimately be subordinated to other priorities. The lack of a consistent international approach leaves space for traffickers to move from countries where an anti-child trafficking policy exists to those where there is none leading only to a transfer of the phenomenon rather than its reduction.

A recent development in DG External Relations may provide a valuable contribution to the EU's efforts to combat child trafficking in the future. The human rights unit in DG External Relations is currently in the process of negotiating a co-operation agreement with UNICEF, which has been proposed primarily in the context of the EIDHR. Current discussions have included a specific reference to child trafficking⁴² as well as proposals for the training of Commission officials in children's rights as part of an effective mainstreaming strategy.

DG Development

DG Development is responsible for drawing up and promoting the EU development policy worldwide which is outlined by the *European Community's Development Policy Statement by the Council and Commission of 2000*⁴³. The reduction and eventual eradication of poverty is the primary objective of all EU development activities. There is no specific section on the promotion of the rights of children. Instead, in line with the EU approach to human rights, children's rights are to be mainstreamed into all development activities as part of a list of cross-cutting concerns. Since, through mainstreaming, all issues concerning children are in theory to be addressed automatically, DG Development does not have an explicit policy on child trafficking.

DG Development is also responsible for the relations of the EU with countries belonging to the African Caribbean and Pacific area (ACP) as well as the Overseas Countries and Territories (OCT). The ACP covers all the ex-EU colonies in the Caribbean and Pacific as well as all African countries save the northern states. These belong to the Euro-Mediterranean partnership as part of DG External Relations and are also covered by the new Neighbourhood Policy (see above). Funding for ACP countries comes from both the European Development Fund (EDF) and from the budget. Since there is no overall policy on child trafficking or even children's rights, priorities are identified on a country or regional basis primarily by the Commission delegations in the countries concerned together with the local governments.

These local initiatives can in themselves have a significant impact on an entire trafficking region. One such example was the work of the Commission that led to the Libreville Declaration for the harmonisation of national legislation relating to the fight against child trafficking in francophone West and Central Africa of February 2003. This declaration has been produced by the experts from ministries of Benin, Burkina Faso, Cameroon, Ivory Coast, Gabon, Mali and Togo, with the participation of international organisations and NGOs and the Commission. The recommendations made to the governments of these countries in the document mark an important step towards concerted action by these countries, among the most affected, to counter child trafficking. The Libreville Declaration is not

a policy document of the EU but a local initiative with a primarily local impact.

Following a number of requests from the Council, namely in the conclusions of the Tampere and Seville Councils, the Commission has been examining more closely the link between development and migration. DG Development, with the help of DG External Relations, put together a Commission *communication on Integrating migration issues in the European Union's Relations with third countries*⁴⁴ which was adopted by the Commission in December 2002. This is an important step by the EU and one which can also serve to contribute towards an effective policy to prevent child trafficking since there are clear links between migration, development policy and the elimination of the root causes of child trafficking. Its most important contribution is the inclusion of the migration-development nexus into policy dialogue with third countries. This dialogue is not limited to the fight against illegal immigration but is to include other issues, including trafficking in human beings where appropriate. The communication does not make any reference to the special case of child migrants.

Within the communication, the Commission also calls upon the EU to provide additional funding for the implementation of this policy which has been granted through the new AENEAS programme (see chapter V).

ECHO

The European Community Humanitarian AID Office (ECHO) was established in 1992 to provide emergency relief and assistance to victims of both natural and man-made disasters outside the EU. The approach of ECHO towards child trafficking is of particular importance since children in emergency situations are more at risk of falling prey to trafficking networks. Children in these situations are also more likely to be moving across borders in the hope of escaping desperate circumstances. Moreover there has been evidence, particularly in the Balkans, of increased trafficking activity linked to the entry of international peace-keeping forces, above all for the purpose of sexual exploitation.

Children's rights have been a priority in ECHO interventions for the last three years. These priorities can be found in the *ECHO strategy*⁴⁵ which is decided on an annual basis. In the 2004 strategy children are included as one of the three priorities in the ECHO needs-based approach according to which children are seen as "those with the lowest defence mechanism when thrown into a humanitarian crisis". There is therefore to be a special focus on children in all ECHO operations in line with the EU policy of mainstreaming children's rights. ECHO has however realised that the effects of mainstreaming also need to be measured for their impact and not simply according to the level of outputs. For this reason

the 2004 strategy includes the objective of developing a sound evaluation methodology by the end of the year.

Combating child trafficking is not an explicit priority according to the ECHO mandate and there are currently no specific projects in this area. Precise priorities are identified locally, and with a focus on children's rights in every activity it is hoped that interventions on child trafficking would be identified if needed. According to the unit responsible for children's rights, although there is no specific focus on child trafficking, all the protection measures put in place for children in a humanitarian crisis contribute to the fight against it. Child trafficking however, requires responses specifically tailored both to the special needs of the child but also to the particular nature of trafficking, such as, to name a few, efficient registration systems for children, appointment of guardians in cases where children are left unaccompanied, and special campaigns to raise awareness of the potential risks of migration. These measures are not likely to be automatically provided without a specific focus on child trafficking.

Conclusions

The EU policy on child trafficking clearly reflects both the political will of the member states and the institutional design for this area that was outlined in the previous chapters. The EU institutions, however, are given flexibility to build on these foundations and to use policy development as an instrument to supplement where the legal framework may be incomplete. While considerable progress is being made in this area, the above analysis highlights a number of fundamental issues which future activity should focus on.

Definition of a Policy Area

The EU does not have a policy area clearly dedicated to child trafficking. Within the overall area of trafficking in human beings child trafficking has not been clearly defined and is often restricted to and confused with the 'sexual exploitation of children'. The EU in fact appears to have substituted sexual exploitation of children for child trafficking, in the hope that by tackling sexual exploitation, which is perhaps the main purpose for which children are trafficked into the EU, a considerable contribution can also be made towards the elimination of child trafficking. As already outlined in chapter III these two activities cannot be addressed in the same way. Not only does the focus on the act of sexual exploitation of children not ensure that child trafficking for sexual exploitation will be addressed, it also creates a hierarchy of victims of child trafficking. It sends the message that the EU prioritises the needs of children who are trafficked for sexual exploitation above those of other child victims of trafficking.

The focus placed by the EU on sexual exploitation can also be seen in the number of initiatives and documents

concerning trafficking in women, who are also considered as particularly vulnerable. The lack of a dedicated policy area for child trafficking means that the concentration on trafficking in women leads to a confusing overlap in terminology, whereby older girl children are targeted but not the thousands of boys or young girls who also fall victim to this crime. It is vital, therefore, that all children are recognised as a particularly vulnerable group through a distinct policy area which covers all types of exploitation that trafficked children are subjected to. The report that is being drafted by the experts group on trafficking in human beings provides a valuable opportunity to clarify just such a policy.

Human Rights Approach

It is vital that any policy area for child trafficking reflects a strong children's rights approach based on the CRC. The current split between trafficking in human beings under an internal security approach and children's rights as part of an external policy complicates the possible interface between these two areas that is vital for any effective policy against child trafficking. It is imperative that the EU policy on child trafficking be expanded from Justice and Home Affairs to other departments in an attempt to provide a more holistic approach to fighting this crime. The restructuring of the Commission provides an opportunity to create greater coherence and an approach based more on children's rights.

The concept of mainstreaming further complicates the development of a coherent policy on child trafficking based on the rights of the child. Mainstreaming requires that children be considered in the planning and implementation of all policies and programmes. Such a process is, in theory, supposed to guarantee that any issue relating to children, such as child trafficking, would be easily identified as an area for intervention where necessary. In practice, however, the concept of mainstreaming has been poorly defined and is proving to be problematic to apply. The lack of any child impact assessment makes it additionally difficult to verify the effect of EU policies on children. The EU must recognise that mainstreaming alone is not a sufficient tool to guarantee the rights of trafficked children, which need to be protected through specific policies and programmes aimed at preventing this activity and protecting the victims.

Prevention

Within the existing policy on trafficking in human beings, there is a clear lack of a policy on the prevention of child trafficking. The *Brussels Declaration* is the first policy document used by the Commission which includes a strong prevention section. This, however, is not yet reflected in actual policy: a clear distinction still exists between the policy on trafficking inside and outside the EU, and a coherent external policy by the EU is lacking

in third countries where most child victims of trafficking originate. In addition, the lack of a focus on the prevention of child trafficking has led the EU to neglect the link between child trafficking and other policy areas such as migration and development.

Migration

A clear and important link exists between the migration of third-country nationals and child trafficking. The EU has mostly tended to focus on the link between trafficking in human beings and illegal immigration; trafficking has been considered as a particularly odious part of the increase in illegal immigration. Even this link, however, has been explored only to a limited extent with the fight against trafficking in human beings often put in second place behind the fight against illegal immigration. Illegal immigration is a clear priority of the member states, as is evident in the *Comprehensive Plan of the Council to combat illegal immigration and trafficking of human beings*. It is necessary to recognise that separate approaches are needed to fight illegal immigration and to fight trafficking in human beings and children. Such a distinction is particularly vital to ensure that trafficked children are not re-victimised as illegal immigrants upon their arrival in the EU. The link between the EU immigration policy and the prevention of trafficking in human beings, with a focus on child trafficking, needs further exploration so that specific measures that reflect this complicated relationship and take into account the special needs of children may be developed.

European Enlargement

The enlargement of the EU from 15 to 25 members and the subsequent accession planned for Bulgaria and Romania will undoubtedly present new challenges for the fight against child trafficking. Enlargement will already have contributed towards a change in the dynamics of child trafficking in Europe, through the accession of countries of origin, transit and destination. The enlargement process moves the EU borders further east, and therefore, traffickers are also likely to move further east in search of new victims who lack legal rights within the EU.

These changes have, however, not been reflected in the EU policy on trafficking in human beings. The EU will need to ensure that traffickers are not given the opportunity to exploit changes in its borders either within the EU or in the countries which now make up the new neighbourhood, and should monitor the impact of its own policies on child trafficking. DG Justice and Home Affairs will have a vital role to play in monitoring the implementation of the relevant parts of the "acquis" that relate to child trafficking in the NMS with a view to their full implementation. Moreover, the Neighbourhood Policy and the development of the Neighbourhood Instrument provide an opportunity for the enlarged EU to

integrate the fight against trafficking in human beings with a special focus on children in its relations with its neighbours.

Development Policy

Development Policy could be used by the EU as a vital tool to combat the root causes of child trafficking. At present children's rights in general are mainstreamed into EU development policy and there is no specific focus on child issues or on the prevention of child trafficking. The recent initiative to integrate migration issues, including the root causes of migration, into development policy is a positive development. It lacks however the children's rights orientation that is required for this initiative to provide a real contribution to the EU policy against child trafficking.

Poverty is one of the major root causes of child trafficking. Many parents, because of their dire situation, sell their children or simply send their children abroad to provide for the family or in search of a better future. It is not only poverty in itself, however, that determines child trafficking. Not all trafficked children come from the poorest families and not all poor parents send their children abroad. *Terre des Hommes* has found in Albania that a number of other social and cultural factors play a role: low levels of education, dysfunctional family contexts and social norms where children are seen as potential income generators and where some exploitation may be seen as acceptable. In addition, factors such as discrimination, natural or man-made crises and ambition and hope have also been identified as contributing to the phenomenon of child trafficking. These causes with their particular effects on children do not necessarily coincide with the causes of adult migration. It is therefore clear that specific measures targeting potential victims of child trafficking need to be included in any efforts to incorporate migration issues into development policy in third countries.

External Policy

The EU does not have one coherent policy on child trafficking for all third countries. The Commission in its proposal for the Council Directive on the short-term residence permit of February 2002 states that "it would, however, be wrong if disparities between measures in different states were to lead to a shift of activities of international networks". The Commission made this statement in relation to disparities in measures in the member states but the same principle applies elsewhere. The identification of priorities at a country level as and when they arise and the lack of a consistent policy on child trafficking in the external policy of the EU create a space for trafficking networks to move from one country to another and thus failure to protect children.

EU external policy has in the past placed emphasis on the fight against trafficking in human beings in countries and regions which have been identified as countries of origin of victims who arrive in the EU. Trafficking networks, however, are flexible. Trafficking in human beings and children in third countries who may not currently reach the EU can shift, as patterns in trafficking change while traffickers search for new routes and sources of profit. Such a policy risks creating a hierarchy whereby the rights of children from some regions are more important than the rights of children from others. A consistent policy is needed to send out a coherent message that the sale and exploitation of children inherent in child trafficking is not acceptable wherever it may occur.

Emergency situations

The EU approach to humanitarian interventions recognises that special care must be taken to protect children in emergency situations who are especially vulnerable, and thus all programmes are to have a special focus on children's welfare. Whilst such measures can contribute to the protection of children from trafficking there is also a need for specific measures, both during the emergency itself or in the rehabilitation period, which are not currently present in EU policy.



Life conditions of Albanian families, Athens. Photo by Andrea Motta

Chapter V - Implementation

EU POLICIES are primarily implemented through various programmes which are designed to reflect the objectives and priorities of its common policies. Funding of EU programmes is derived from three sources: the EU budget, the European Development Fund, which is reserved for the ACP countries (see chapter IV) and the operating budget of the European Coal and Steel Community.

As with policy, the EU makes a clear distinction between internal and external programmes, which are managed separately. EU programmes which apply only to member states are managed by the various specialised departments under whose jurisdiction they fall. The majority of programmes related to child trafficking are managed by DG Justice and Home Affairs. The implementation of EU instruments related to external policy is managed by one single agency, the EuropeAid Co-operation Office (hereafter EuropeAid), which was established in 2001 as part of the reform of the management of external aid.

This chapter will outline the various EU programmes which relate specifically to the fight against child trafficking. Each will be presented and assessed for its relevance and effective contribution. In cases where one programme has replaced another, the two will be compared and contrasted. EU polices are also implemented through budget support: financial resources that are inserted directly into the partner country's budget, based on bilateral agreements and EU polices towards a given country or region. These are country-specific and will not be discussed here.

Justice and Home Affairs

DG Justice and Home Affairs manages the implementation of programmes related to securing an area of freedom, security and justice. As such it is responsible for programmes related to asylum and immigration, police co-operation, organised crime, and judicial co-operation in both civil and criminal matters. Past and present Justice and Home Affairs programmes related to child trafficking are discussed below.

AGIS

AGIS is the *programme for police co-operation and judicial co-operation in criminal matters*, which was introduced by the EU in July 2002. This programme which will cover the period 2003 – 2007 replaces a number of programmes relating to training of law enforcement and judicial officials in the fight against crime, including the STOP *incentive and exchange programme for persons responsible for*

combating trade in human beings and the sexual exploitation of children. The purpose of AGIS is to contribute to providing EU citizens with a high level of protection in an area of freedom, security and justice through a number of measures. These include the development and evaluation of EU policies in this field; promotion of co-operation and dissemination of best practice among member states in law enforcement; and judicial co-operation and protection of victims in criminal proceedings. Projects under this programme must involve at least three states to be eligible. These can be member states or applicant countries; third countries may also be involved but only in special circumstances, when this is deemed to serve the aims of the projects.

The STOP programme was also orientated towards the exchange of best practice and the training of law enforcement personnel in the member states, but with a particular focus on those involved in the fight against trafficking in human beings. The AGIS programme has a budget ten times that of STOP. It is however intended to cover a much broader range of actions and replaces four previous programmes of which STOP was just one. The Council decision which establishes the AGIS programme does not outline any specific areas to be covered. Instead a work programme is drawn up annually by the Commission to establish the specific objectives and thematic priorities for the year ahead. The previous STOP programme ensured, by its very existence, that a certain amount of funding would be available annually for the fight against child trafficking. Under the AGIS programme, how much, if any, of the €65 million will be allocated to a fight against trafficking in human beings, and children more specifically, will depend on the priorities of the EU in a given year. This could have both positive or negative outcomes for the fight against child trafficking, depending on the changing priorities of the EU.

In 2004 actions in the fight against trafficking in human beings and the sexual exploitation of children are envisaged as part of a broader thematic priority for which co-operation projects are eligible to prevent and fight organised crime. The terminology used in the programming reflects that in most of the relevant EU policy documents by referring to trafficking in human beings “and the sexual exploitation of children”, rather than a broad category of child trafficking as a special priority. Such terminology was also part of the STOP programme. This highlights clearly the practical implications of the lack of a clear and broad definition of child trafficking that would apply to trafficking for a variety of exploitative purposes. The current use of terminology in programming child trafficking projects funded under this initiative are in fact likely instead to be projects on the

sexual exploitation of children, which may, or may not, relate to the crime of child trafficking itself. In addition, trafficking in human beings also falls under one of the objectives set for projects eligible under complementary measures in the action plan.

A number of other activities under various thematic headings could also be applied to projects concerning child trafficking and could thus potentially contribute to the fight against this phenomenon, although there is no way to guarantee they will. How many projects relating to this specific area are actually covered will depend both on the priorities of the Commission and on the applicants. One of the headings in the 2004 action plan relates to trafficking in human organs and tissues, primarily data collection, which is an area that was not explicitly covered by any of the previous programmes of the Commission.

DAPHNE

DAPHNE is the EU *programme to combat violence against children, young people and women*. It was launched first as a DAPHNE initiative in 1997 but the first actual programme ran from 2000 to 2003. The second phase has since been proposed and was adopted on 30 April 2004 to run for five years from the start of 2004 to the end of 2008. The DAPHNE programme seeks to combat violence against children through prevention, by focusing on information collection and dissemination. DAPHNE II expands upon previous efforts by the Commission in this field. The budget under this programme has been raised from €20 million to €50 million for the whole period. The implementation period has also been expanded from four to five years. The programme now covers all 25 member states as well as the candidate countries Bulgaria, Croatia, Romania and Turkey, providing the transnational approach needed for any effective programme to combat child trafficking.

Under specific objectives and actions in a section on “Awareness raising actions targeting specific audiences” the DAPHNE II programme encourages

“the introduction of measures and specific services to increase reporting to the authorities of violence and different forms of trade in children, young people and women for sexual and non-sexual purposes”.

This provides a vital programming opportunity for concerted action covering all forms of trafficking for a variety of exploitative purposes. It is a clear improvement, since the preceding DAPHNE programme only included references to child trafficking for the purpose of sexual exploitation. It is, however, regrettable that the terminology used in the DAPHNE II programme refers to “different forms of trade in children” rather than “child trafficking”, since there is no indication in either policy or programming documents of the EU what “trade in children” entails which in turn

does not make clear what activities the programme should cover. This highlights again the practical consequences of the lack of a clear definition of child trafficking on the implementation of EU policy.

AENEAS

AENEAS is a new programme which was established by the EU in March 2004 “for financial and technical assistance to third countries in the areas of migration and asylum”. It is partially a response to the conclusions of the Council of Seville of June 2002 which recognised that co-operation with third countries in migration management can contribute to preventing illegal immigration and trafficking in human beings. It replaces the budget line B7-667 on “Co-operation with third countries in the area of migration”.

Five general objectives are covered by the AENEAS programme of which objective four is “the establishment in the third countries of an effective preventive policy in the fight against illegal immigration, including the fight against trafficking in human beings and smuggling of migrants, and the development of relevant legislation”. The inclusion of trafficking of human beings within the Council regulation that establishes the AENEAS programme ensures that some funding will be allocated every year to activities in this area. This can be regarded as a highly positive contribution to the EU’s endeavours to combat child trafficking. The regulation also highlights the setting up of information campaigns and legal advice relating to the consequences of illegal immigration and trafficking in human beings, as well as the diffusion of information on the possibilities of working legally in the EU, as actions which deserve particular support under the programme. This is an important recognition by the EU of the importance of the link between migration and trafficking in human beings including children, and the necessity to address this aspect in a coherent policy to combat these phenomena.

The AENEAS programme will operate from 2004 to 2008 and is to have an overall budget of €250 million. DG Justice and Home Affairs is responsible for the setting of political priorities in the general long-term programming EuropeAid (see below) will be in charge of drawing up an annual work programme which will outline specific objectives for the year ahead. The annual programmes must be consistent with the priorities outlined by the Country and Regional Strategy Papers as part of the EU development policy. Trafficking in human beings (children are not specifically referred to by the regulation) is highlighted as one of the priority areas for intervention which means that some of the AENEAS funds should be consistently allocated to it. It remains, however, only a small part of a very large financial programme which can be seen as a part of the EU attempt to reduce illegal immigration.

ARGO

ARGO is an *action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration*. It replaces part of the Odysseus programme and covers the period 2002 - 2006. The programme aims to support training, co-operation and exchange of best practice in these fields, as well as co-operation with third countries. ARGO does not explicitly support activities in the fight against child trafficking or trafficking in human beings generally. Nevertheless, some of the actions undertaken in the four areas covered by the programme could contribute to the fight against child trafficking, especially if projects aimed at children are approved. There is no guarantee, however, that this will happen.

EuropeAid

EuropeAid is the Commission DG which is responsible for managing the implementation of all external programmes of the EU, except those relating to enlargement, humanitarian assistance and the Common Foreign and Security Policy. External programming of the EU can take place along geographic or thematic lines.

Regional Programmes

As outlined in chapter IV the EU does not have an overall policy on child trafficking covering both the EU and all third countries, nor is there an overall policy on child trafficking within the EU external policy. Instead it applies a regional and country level approach in which child trafficking is identified as a priority area of intervention where this is deemed necessary by both the national authorities and the EU. Policy for regions and countries is outlined in RSPs and CSPs under the jurisdiction of DG External Relations, and increasingly compiled through the Commission delegations at national level. These policies are reflected in the National or Regional Indicative Programmes which outline priorities for implementation, the drafting of which is also under the jurisdiction of DG External Relations.

Within EuropeAid the management of regional programming is divided into six geographic areas: South Eastern Europe (CARDS); Eastern Europe and Central Asia (TACIS); Southern Mediterranean, Near and Middle East (MEDA); Africa, Caribbean and Pacific (ACP); Asia; and Latin America, which are managed by five Directorates⁴⁶. It is outside the scope of this paper to examine all the policy and programming documents for all the countries and regions. Some regions, however, have been a constant priority for the EU, namely the immediate neighbourhood to the east. A specific thematic area can therefore be found within Directorate A on Regional Approaches in the area of Justice and Home Affairs, which also covers projects relating to the fight against trafficking in human beings. The most recent RSP for the CARDS region, for example,

includes a number of specific references to trafficking in human beings. For the TACIS region there is also a specific policy on cross-border co-operation which is identified in the *TACIS Cross-Border Co-operation: Strategy Paper and Indicative Programme 2004 - 2006*, adopted in November 2003. Trafficking in human beings is identified as one of the many areas the cross-border co-operation programme seeks to address. Under these programmes EuropeAid has been in charge of implementing a number of projects relating to the fight against trafficking in human beings. The EU has, however, tended to focus on trafficking in women from this geographical region and there has never been an initiative (call for project proposals) specifically on child trafficking. The RSP for the MEDA region also includes a reference to actions to combat trafficking in human beings. The measures suggested, however, focus only on the elimination of illegal migration without any special focus on preventing trafficking in human beings. None of the regional programmes includes a focus on the special case of child trafficking.

EIDHR

The *European Initiative for Democracy and Human Rights* is one of the seven thematic programmes managed by EuropeAid and the one which is most relevant to the fight against child trafficking. This programme aims to promote democracy and human rights in third countries and was created in 1994 when a number of budget headings specifically relating to the promotion of human rights were brought together under an initiative of the European Parliament.

Before 2001 the EIDHR included the promotion of children's rights as one of the twelve specific areas of intervention. However, according to the Commission Communication on promoting human rights and democratisation in third countries (see chapter IV) children's rights are to be 'mainstreamed' in all EU policies and programmes and were thus left off the priority list in the programming document of 2002-2004⁴⁷. In general the EU had decided in 2002 that the EIDHR would not target groups but specific themes and address root causes rather than symptoms. None of the four thematic priorities for 2002-2004 relates directly to the fight against child trafficking although it can be indirectly covered under the first priority: democratisation, good governance and the rule of law. This means that projects relating to the fight against child trafficking and human beings could be identified but there is no mechanism to ensure that they will be. The EIDHR programming document for 2004, in a positive development, did identify trafficking in human beings as a regional priority under the Initiative for South East Asia and West Africa. Without the inclusion of children's rights or child trafficking as one of the priority areas in the general programming however, the danger is that specific initiatives to combat child trafficking might be overlooked.

The EIDHR programming for 2005-2006 is currently being discussed by the Commission and developed by DG External Relations. The discussions have centred on the identification of a number of campaigns around a given theme. Child trafficking or even trafficking in human beings generally is unlikely to be one of these priority issues although the promotion of children's rights is being discussed as one of the possible objectives under a proposed campaign on human rights.

In addition, the current discussions within DG External Relations on a co-operation agreement with UNICEF are being conducted primarily in the context of the EIDHR. The co-operation agreement is an attempt to make the best use of the opportunities provided under the EIDHR by identifying particular priorities for co-operation that would fit under existing or new priorities of the EIDHR. At present the discussion has focused on three priorities, one of which is combating child trafficking. If agreed, this would include activities relating to the implementation of international legal instruments in third countries, introduction of relevant legislation, training of officials and support to networks and centres which provide rehabilitation to child victims. The proposed co-operation between DG External Relations and UNICEF would provide an invaluable opportunity for EU funds under the EIDHR to be allocated to and used in the fight against child trafficking.

Enlargement

As part of the enlargement process the Commission has developed a specific programme, PHARE, which is designed to provide assistance to candidate countries in their preparation to join the EU and in particular in the acceptance of the "acquis communautaire". This programme is managed by DG Enlargement. It has previously applied to all the NMS before their accession, and is currently applicable to Bulgaria, Croatia, Romania and Turkey⁴⁸.

PHARE

The primary objective of the PHARE programme is to help candidate countries prepare for their accession to the EU. The programme seeks to cover all areas of the accession process but focuses specifically on areas identified as priorities in the individual accession partnerships. The two overall priorities of the PHARE programme are institution building and investment in economic and social cohesion. Justice and Home Affairs is only one aspect of the entire PHARE programme which has an annual budget of €1.56 billion for the period 2000 to 2006. The horizontal programme on Justice and Home Affairs for 1999 allocated only €10 million to this area out of the total PHARE budget. Combating trafficking in human beings is not outlined as one of the specific areas of intervention. It is important

to note that some of the funding for the fight against trafficking in human beings that is provided under a number of Justice and Home Affairs programmes is also available for projects in applicant countries (see AGIS for example).

Employment and Social Affairs

Programmes relating to social cohesion, gender equality and employment policy within the EU are managed by DG Employment and Social Affairs. Recently trafficking in human beings has been included as a priority under the programme EQUAL.

EQUAL

The Community Initiative EQUAL is a programme which was established by the EU in 2000 to provide funding under the European Social Fund to promote new means of combating all discrimination in the labour market. The activities supported by the EQUAL programme have to be based on guidelines identified by the Commission. In the guidelines for the second round of EQUAL issued in December 2003, the Commission has attempted to respond to new challenges. Support to victims of trafficking in human beings is seen as one. The European Council called on the member states to use the Structural Funds to provide financial support to victims of trafficking in the EU. For this reason such support has been included as one of the priorities in the guidelines of the second round of the programme from 2004 to 2006, which applies also to all the NMS.

Member states of the EU are authorised to use EQUAL funds for activities related to the provision of assistance to victims, the social and economic integration of victims in the EU, and the support necessary for the victims' safe return to their countries of origin. In particular the EQUAL programme seeks to provide the means to combat discrimination through increased co-operation amongst member states and build upon the experiences of others, which can make a particular contribution in the case of trafficking in human beings. There is, however, no inclusion in the new guidelines of the need for particular action concerning child victims and there is thus no guarantee that any of these funds will be used to provide assistance to child victims.

Conclusions

The financial programmes of the EU serve to transform EU policy into practice and thus closely reflect the chosen strategy on a given issue. For this reason many of the weaknesses in policy highlighted in the conclusions in chapter IV are reflected in the issues arising from the above analysis.

Programme on child trafficking

Within the EU there is no specific programme on child trafficking or even on trafficking in human beings. Instead projects concerned with trafficking in human beings may fit into one of the other programmes which are primarily concerned with different issues. The lack of a specific programme on child trafficking raises a number of questions. Above all it presents great difficulties for the implementation of holistic and coherent programmes to fight child trafficking. Under the present arrangement the EU can support projects that address one or other aspect of this fight, for example information campaigns under DAPHNE or police co-operation under AGIS. Similarly without one overall programme it is only possible to implement projects which focus on one geographical area.

While many of the programmes analysed above do include trafficking in human beings as one of the implementation priorities, there is a clear lack of focus on children. An effective and resolute fight against child trafficking can only be waged if programmes are available that can be applied to all aspects of trafficking simultaneously, including interrelating dynamics such as development and migration policy, and across all countries in the trafficking chain, with a specific focus on the special needs of the child.

Children's rights approach

Due to the policy of mainstreaming which has been applied to children's rights in EU policy there is a clear absence of implementation programmes that focus on children. This can be seen as a particular impediment to the implementation of an effective fight against child trafficking based on children's rights. In the current policy, the most important implementation instruments available for trafficking in human beings relate to the training of officials, technical co-operation and information campaigns. Where assistance to victims can be funded there is no specific focus on the special need to protect child victims, nor is there specific attention to the rights of the child in the AENEAS programme which can be used for the prevention of trafficking in human beings. The EIDHR, which is the main human rights instrument of the EU, has systematically excluded children's rights from the priority list in the past and current discussions indicate that they will only form a small part of the new programme priorities, though an agreement between DG External Relations and UNICEF might improve matters.

The lack of child-specific instruments not only implies that children's rights may not be getting adequate coverage in the implementation of EU policies, but also creates particular difficulties for the implementation of a fight against child trafficking which requires specific measures to meet the special needs of child victims.

Geographical scope

As outlined above the lack of an overall programme on child trafficking also has an influence on the geographical scope of implementation. As with policy, EU programming tends to be clearly split along the internal - external nexus which creates particular difficulties in the implementation of the fight against child trafficking. Trafficking can often involve the movement of children across borders; in the context of the EU most often from third countries. Consequently any programme addressing this problem effectively will need to be implemented in countries of origin, transit and destination. The introduction of the AENEAS programme managed jointly by DG JHA and EuropeAid is a positive development in this direction, and presents the opportunity for countries of origin and destination to co-operate in the fight against trafficking in human beings. Efforts must be made, however, to include a special focus on children in all operations relating to trafficking in human beings in the upcoming programme priorities.

Due to the lack of any coherent external policy on child trafficking, the fight against this is implemented according to regions and countries. This means that even in third countries the fight against child trafficking is given more priority in some than in others. The transnational and clandestine nature of child trafficking, however, means that it can easily shift from one area to another and that the effective reduction of this practice can only be achieved if a uniform policy is applied throughout the world.



Kid playing in the surrounding of his house, Albania. Photo by Andrea Motta

Chapter VI - Conclusions and recommendations

WHILST the phenomenon itself is not new, the concept of child trafficking has been introduced relatively recently into international discourse. In the last five years a number of international legal instruments have been drawn up which together provide a strong international framework for the fight against child trafficking. Most of these have not yet been ratified by many of the member states or the EU, and this delay in their application is also reflected in EU policy.

The greatest impediment to an EU policy on child trafficking is the absence of a clear and broad definition. This leads not only to an inconsistent use of terminology, but also to the lack of a clear policy area to fight child trafficking, based on the best interests of the child. The most disconcerting development has been the introduction into EU discourse of the phrase “trafficking in human beings and the sexual exploitation of children”. There is an additional lack of clarity in the use of the term ‘trafficking in women’ which applies to older girl children but not to boys or young girls. Historically the EU has tended to focus on human trafficking for the purpose of sexual exploitation, which is subsequently reflected in the legislative, policy and implementation framework on child trafficking.

Whereas the concept of trafficking in human beings has recently been defined, the EU definition still refers only to trafficking that occurs for the purpose of labour and sexual exploitation, which may be more applicable to adult victims. Some forms of exploitation for which children are increasingly trafficked, for example adoption, organ transplant, marriage or involvement in illegal activities, such as begging and drug smuggling, are either excluded from the definition given by the EU or subject to interpretation.

As a result of the definitional and policy shortcomings, most of the EU’s efforts in this area have taken place in the context of a policy to ensure freedom and security inside the EU. Whilst such an approach is presently enshrined in the primary law of the EU, the future European Constitution (if ratified) will provide a legal base for a policy on child trafficking based on the rights of the child, and EU policy may be adapted accordingly. The present approach by the EU results in particular from insufficient attention to the prevention of child trafficking, with a consequent lack of recognition of links between the elimination of child trafficking and areas such as migration and development.

The choice of internal security as the starting point of the EU approach against child trafficking reinforces the internal - external division already inherent in EU policy. Without an overall policy area dedicated to

child trafficking, the various aspects of the fight against this phenomenon are spread among existing policy areas which tend to have either internal or external orientation, providing a segregated response. This is evident in and reinforced by the lack of institutional co-ordination amongst the various departments which relate to the fight against child trafficking.

There has been a general tendency by the EU to focus its efforts on fighting the trafficking in human beings which has a direct effect on the member states. For that reason the policy against child trafficking is applied through criminal law enforcement inside the EU, and through a regional approach that targets the countries where the trafficking originates, in external policy. This approach does not seem to take into account the shifting nature of trafficking patterns which adapt to movements in demand and supply and in response to changes in the regulatory environment. Thus the lack of a consistent international response to child trafficking creates space for traffickers to move to where the regulatory environment is weaker and to continue exploiting children in geographical areas neglected by the EU.

All of the factors mentioned above have a clear influence on the potential of the EU to impact on the international fight against child trafficking. The lack of a defined policy area is reflected in the absence of a specific implementation programme on child trafficking. Where trafficking in human beings is included there has tended to be a clear lack of focus on children, and where children are included it is the sexual exploitation of children which is prioritised rather than child trafficking. This problem is compounded by a general geographical division in programming that reflects the divisions in policy. Existing programmes are, for the most part, applicable either to member states or specific regions, which impedes the execution of interventions that aim to address both the demand and supply aspects of child trafficking.

This report does not include the response each of the EU member states is developing to address child trafficking. However, on the basis of the present assessment of the EU’s response to child trafficking, it is already relevant to make a number of recommendations addressed primarily to the EU institutions and its member states, as well as to any other European and non-governmental actors directly concerned by the issue.

Defining child trafficking

Recommendation 1

The European Commission should adopt a Council decision to provide a clear **legal definition of child**

trafficking, based on internationally agreed standards enshrined in the Palermo Protocol and the CRC, that would apply to the legislative and policy framework of the EU and all the member states. This definition should reflect the special vulnerability and special needs of child victims, and cover all forms of exploitation to which trafficked children are subjected, both inside and outside the EU. The definition of child trafficking should apply to all future EU legal and other non-binding documents, and where necessary amendments to outdated texts should be made, in order to ensure a consistent use in terminology.

Developing a policy of child trafficking based on the rights of the child

Recommendation 2

The EU should develop a **specific policy area** for child trafficking based on the commitments undertaken by the member states under the CRC. The European Parliament has already called on the Commission to develop a common EU policy in this area. This policy should provide a comprehensive response to child trafficking with equal emphasis on the prevention, protection, rehabilitation and prosecution aspects and a geographical scope that encompasses all countries in the trafficking chain. Within this framework, the EU institutions and the European government agencies that are responsible for protecting trafficked children should observe the guidelines and principles presented in the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by the United Nations High Commissioner for Human Rights in 2002 and the *Guidelines for Protection of the Rights of Children Victims of Trafficking in South Eastern Europe* issued by UNICEF in 2003.

The policy should also embrace all related areas such as migration, development, enlargement and external policy. The EU Experts Group on Trafficking in Human Beings should recommend the creation of such a policy where children's rights are paramount.

From this perspective, the planned Commission *Communication on trafficking in human beings* scheduled for 2005 should recognise that child trafficking is a separate phenomenon which requires carefully designed responses based on the child's best interests, and which cannot be fully guaranteed under a criminal justice approach alone. In light of the need to develop complex responses to trafficking it is recommended that this communication be drafted with contributions from all the relevant DGs of the Commission, including in particular units related to children's rights, and the NGOs experienced in this area.

Preventing child trafficking

Recommendation 3

The EU should identify and explore specific measures aimed directly at the **prevention of child trafficking** both in the long and short term. Policies aimed at eradicating poverty or curbing illegal immigration will not themselves be sufficient to prevent children from being trafficked. It is vital that the prevention of child trafficking be applied both internally and externally in a consistent manner. The lack of a uniform prevention strategy gives traffickers the opportunity to exploit national differences and this contributes to shifts in trafficking patterns rather than their eradication.

Recommendation 4

Development policy in third countries can be used to contribute to the prevention of child trafficking through targeted measures. When the Development Policy Statement is revised it is vital that a strong commitment is made to focus on children's rights through an overall rights-based approach to development, which pays special attention to economic, social and cultural rights. Ensuring birth registration and the right to basic education should be considered as particularly important strategies of the EU development policy to prevent and combat child trafficking. The EU should furthermore explore how, in the future, school registration certificates can be used as a tool for authorities to identify trafficked children once in the EU.

Recommendation 5

Enlargement of the EU represents an opportunity to improve prevention of child trafficking and protect victims from the NMS. Meanwhile, enlargement raises new challenges as traffickers are likely to move further through neighbouring countries in search of new victims. The EU must be able to assess and monitor the impact of its own enlargement on child trafficking, and ensure that measures to fight child trafficking are included as one of the priorities of the future enlargement process and of the Neighbourhood Policy which is still being developed. This must also be reflected in the Neighbourhood Instrument. In addition, the Balkans is an important area both of origin and transit of trafficked children and any future EU policy towards this region must include special measures to prevent child trafficking and protect and rehabilitate child victims.

Recommendation 6

The complicated but crucial link between **child trafficking and immigration** must be addressed in all EU policies that deal with either of these issues. As a first priority a clear distinction must be maintained between trafficking

in human beings and smuggling, so that these terms are never used interchangeably. Furthermore it must be clear that the present emphasis by the EU on measures to curb illegal immigration in particular, must not act as a spur to trafficking activity concerning minors.

Recommendation 7

A specific focus on prevention of child trafficking must be included in the EU policy on **humanitarian aid**. There is a need to introduce specific measures that will protect children against trafficking networks both in emergency and post-emergency situations. The EU will in particular need to support activities orientated towards increasing the sensitivity of peace-keeping troops deployed by the member states, in order to ensure that they do not create an increase in the demand for child trafficking.

Protecting and rehabilitating child victims of trafficking

Recommendation 8

The EU should integrate **protection standards** in its future policy on child trafficking. Although they are not internationally binding instruments, the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by the UN High Commissioner for Human Rights in 2002 and the *Guidelines for Protection of the Rights of Children Victims of Trafficking* issued by UNICEF in 2003 provide concrete measures that should be clearly reflected in any future EU policy.

Keeping these guidelines and principles as a basis, a Council Framework Decision on the protection of children victims of trafficking should be adopted. Special measures need to be designed that will provide for the particular vulnerability and special needs of trafficked children, which must apply to all regardless of whether they are party to criminal proceedings or not. These should include:

- A set of guidelines for the identification of child victims of trafficking, including the presumption of age, to be used by all state authorities. Identification of victims is vital to ensure that they are given access to protection measures to safeguard their rehabilitation and prevent them from falling back into trafficking networks. It is particularly important that victims of child trafficking are not simply mistaken for illegal immigrants and subsequently criminalised. Free 24-hour help-lines should be established in all EU member states to help identify victims of child trafficking.
- Particular attention paid to all unaccompanied or trafficked minors arriving in the EU. Deportation should never be considered an automatic response and proper care and time should be taken to identify the context in

which these children find themselves. All victims of child trafficking should be given a residence permit for the entire duration of their stay as soon as they are identified.

- A legal guardian appointed who will be responsible for ensuring that all decisions taken are in the child's best interest and that the child is given the proper care required. Children must be given access to information in their own language concerning their rights and the opportunities available to them and explained in a way that they understand.
- Support and rehabilitation measures including access to psycho-social, health and education services. It is of particular importance that accommodation be provided which is both conducive to their recovery and safe from trafficking networks.
- A system to monitor children so that they do not go missing from institutions in the EU which have been designed to protect them, as happens at present. Adequate training - including both gender and child sensitive techniques - should be provided to staff who are in charge of protecting unaccompanied minors to ensure that victims of trafficking are given appropriate care. Furthermore, information on missing children in the EU should be computerised and co-ordinated by a European centre on missing children to help find and protect these minors.
- The interviews and criminal proceedings, when children decide to co-operate, adapted not only to the age and maturity of the child but also to the context of testifying in a trafficking case. Here the danger is high both for the victim and for his/her family, and adequate protection should be provided to all concerned.
- Adequate protection assured in the country of origin of the trafficked child before he/she is returned home by authorities in the member states. Countless cases have been highlighted where return has simply led to the reinsertion of these children into trafficking networks. These instances must be avoided and it is the responsibility of the state where the child has been resident to ensure the child is not sent back into a potentially dangerous situation. *Terre des Hommes* insists on the need for implementation of the VAR model—Voluntary Assisted Return, which *must be safe, legal, quick and prepared* together with the child and his or her family. The victim's personal views have to be taken fully into account during the whole process.
- Increase in protection measures for victims of child trafficking balanced by equally strong prevention and deterrent measures, in order to ensure that an increase in protection does not serve as encouragement and augment the supply side of the trafficking equation.

Creating an institutional framework for the fight against child trafficking in the EU which is based on the rights of the child

Recommendation 9

The **Commission** should appoint a *High-level Representative for Children* in order to guarantee that a children's rights approach based on the CRC is integrated into all policy areas of the EU institutions, including the Council of the EU. In addition, for this multifaceted and transnational issue, the representative should be called on to ensure overall co-ordination of all policies that affect children both inside and outside the EU. The representative should take every opportunity to work in close collaboration with civil society and NGOs active in the fight against child trafficking.

A specific *Task Force for Trafficking in Children* should be established in the Commission to take account of the particular vulnerability of children. Under the auspices of the representative for children, this task force should cut across the various Commission DGs that relate to child trafficking to provide the comprehensive multi-disciplinary strategy that is required. The task force would have the responsibility of investigating child trafficking and provide policy and programming suggestions, as well as ensuring that the special needs of trafficked children are included in all other related policies.

Recommendation 10

The newly established *Subcommittee on Human Rights* of the **European Parliament** should include in its mandate the promotion of children's rights as a priority area for intervention. This subcommittee should also be used to improve the interface between the internal and external dimensions of human rights policy. In order to achieve this, it is recommended that a presidium of the subcommittee comprise selected representatives dealing with human rights from every other Parliament committee. In a similar way, the European Parliament Committee on Development should debate a rights-based approach to development. This would promote the issue of children's rights as one of the priorities of the European Development Policy.

In addition to the subcommittee, an informal working group on children's rights should be set up among Members of the European Parliament. This would have the objective of ensuring that children's rights are adequately included in all policy areas of the EU by providing an interface between internal and external dimensions. It would also ensure that, within the EU approach to child trafficking, appropriate weight is given to related policy areas such as development and migration. The group should ensure that child trafficking is recognised as a particularly brutal form of child exploitation and a priority area for intervention.

Recommendation 11

The **Council of the European Union** should establish a Task Force on trafficking in human beings with a special focus on child trafficking. The task force would be responsible for co-ordinating and monitoring all EU policy developments on trafficking in human beings including child trafficking, in order to ensure that all actions are in the best interest of the child. Such a position is of particular importance in the Council in order to ensure that special measures on child trafficking which guarantee the rights of the child are included in the EU's policy on immigration.

Implementing a policy on child trafficking

Recommendation 12

The EU and the member states must take immediate measures to ratify and fully implement the *UN Convention on the Rights of the Child*, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, the *Optional Protocol to the CRC on the sale of children, child prostitution and child pornography*, the *ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* and the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*.

Recommendation 13

Policy dialogue with third countries should be used to combat child trafficking. Since 2002 policy dialogue has to include policies for the prevention of trafficking in human beings in the context of incorporation of migration issues into EU relations with third countries. This political dialogue must be extended to incorporate a special focus on child trafficking including the ratification of all the international instruments outlined above.

Recommendation 14

A specific programme (and budget line) should be introduced for measures relating to the fight against child trafficking. This would include financial support to prevent child trafficking, protect and rehabilitate victims and contribute to the prosecution of traffickers. Such a programme must have unlimited geographical scope to enable the EU to implement a consistent international policy to combat child trafficking in a coherent internal-external human rights policy perspective. Besides this specific programme, where other implementation programmes include the fight against trafficking in human beings, they should also include the protection of children, considered as a specific priority target group.

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http://www.europa.eu.int/comm/employment_social/equal/index_en.html

Enlargement

<http://www.europa.eu.int/comm/enlargement/pas/phare/index.htm>

EuropeAid

http://www.europa.eu.int/comm/europeaid/projects/index_en.htm

Europol

http://www.europol.eu.int/index.asp?page=publ_childabuse

Justice and Home Affairs programmes

http://www.europa.eu.int/comm/justice_home/funding/intro/funding_intro_en.htm

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- 30 Terre des Hommes have a clear position on the importance of distinguishing between women and child victims of trafficking which can be found on p19 of Dottridge.
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- 37 *Terre des Hommes'* written statement and recommendations are available upon request: "How trafficked children are exploited in Europe".
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- 42 See chapter V under EIDHR.
- 43 See: http://europa.eu.int/comm/development/body/legislation/docs/council_statement.pdf
- 44 Communication from the Commission to the Council and the European Parliament integrating migration issues in the European Union's relations with Third Countries, COM/2002/0703 final.
- 45 See: http://www.europa.eu.int/comm/echo/pdf_files/strategy/2004/strategy2004_en.pdf
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- 47 The four thematic priorities for 2002 -2004 are: democratisation, good governance and the rule of law; abolition of death penalty; the fight against torture and impunity and for international tribunals and criminal courts; and racism and xenophobia and discrimination against minorities and indigenous people.
- 48 Until 2000 the PHARE programme also applied to West Balkans but these countries now receive financial assistance from the CARDS programme (see above under Regional Programmes).

Annex 1 - Draft Treaty Establishing a Constitution for Europe

PART III THE POLICIES AND FUNCTIONING OF THE UNION

CHAPTER IV AREA OF FREEDOM, SECURITY AND JUSTICE

SECTION 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article III-168 (points 3 and 4 of ex Article 63 TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. To this end, European laws or framework laws shall establish measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children.

SECTION 4 JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

Article III-172 (new)

1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.