

# Social aspects of human trafficking

## Discussion Paper

Bärbel Heide Uhl

### Introduction

The social dimension of anti-trafficking policies was a central focus during a meeting of the Ministers for Social Affairs in the Nordic Countries and the Baltic Sea Countries in October 2006. As a further step, in April 2007 the Danish Ministry for Social Affairs organised a "Stop Trafficking Camp – Boosting the Social Dimension" to spur the process of including the social dimension into the anti-trafficking policies at EU level.

Since the European Commission Directorate General on Freedom, Security and Justice is the main mandated body to develop anti-trafficking measures within the EU Commission, the Danish initiative, including the Peer Review process, can function as a bridge to enable a comprehensive policy to combat trafficking in the EU. This policy could combine governance tools and political processes from all relevant EU institutions and policy areas, including Employment, Social Policy, Health and Consumer Affairs, Justice and Home Affairs, and External Relations.

Due to recent developments in the EU such as the introduction of a legally binding broad definition of trafficking that includes all forms of exploitation and the EU enlargement in 2004 and 2007, a lot of Member States are confronted with a variety of different individuals who qualify for social protection programmes provided under the anti-trafficking framework. Trafficked persons in the EU Member States can include EU citizens or even EU nationals, sexually exploited people, children being forced to beg or to steal, regular or irregular migrants exploited in agricultural work, domestic services, constructions sites etc.

The new framework for the Open Method of Coordination (OMC) as outlined in the Council's Joint Report on Social Protection and Social Inclusion may provide with an effective tool to promote the social inclusion of the aforementioned vulnerable groups of trafficked people.

It foresees following overarching challenges for policies in the social protection and inclusion fields:

- (a) Promote social cohesion and equal opportunities for all through adequate, accessible, financially sustainable, adaptable and efficient social protection systems and social inclusion policies;
- (c) Strengthen governance, transparency and the involvement of stakeholders in the design, implementation and monitoring of policy.<sup>1</sup>

Moreover, the Joint Report also proposes guidelines that allow to mainstream specialized anti-trafficking instruments into existing political institutions and processes. This would contribute to a more holistic and comprehensive approach in an overall anti-trafficking strategy:

<sup>1</sup> Council of the European Union, Joint Report on Social Protection and Social Inclusion, Brussels 13 March 2006 7294/06 p.3

“Challenges for the future include the need for Mainstreaming – i.e. to better integrate the NAPs with national policy making, including budgetary processes, and with the revised Lisbon process; better governance - i.e. better mobilization of actors and links between different levels (national, regional and local) of government and clearer responsibility for implementation, monitoring and evaluation ; and better links between the NAPs for inclusion and the Structural Funds, in particular the European Social Fund and the European Regional Development Fund.”<sup>2</sup>

A major attention should be drawn to the eradication of poverty as one of the root causes of trafficking within the EU and between the EU and third countries. The new common objectives from 2006 included in the framework for social protection and social inclusion process and adopted by the European Council in 2006 highlights the importance of poverty reduction and calls for action in the Member States:<sup>3</sup>

“A decisive impact on the eradication of poverty and social exclusion by ensuring:

- (d) access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion, and fighting all forms of discrimination leading to exclusion;
- (e) the active social inclusion of all, both by promoting participation in the labour market and by fighting poverty and exclusion;
- (f) that social inclusion policies are well-coordinated and involve all levels of government and relevant actors, including people experiencing poverty, that they are efficient and effective and mainstreamed into all relevant public policies, including economic, budgetary, education and training policies and structural fund (notably ESF) programmes.”

## Anti-trafficking policy debate at the EU

Anti-trafficking policies presents a complex set of different policies that underwent multitude discursive changes during the last century. In 1904, an international convention defined trafficking as “modern slavery for immoral purposes”.<sup>4</sup> During the following decades different policy areas touched upon trafficking, such as **forced labour** (ILO Convention 1930 and 1957), **prostitution** (UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949), **discrimination and violence against women** (UN Convention on the Elimination of all Forms of Discrimination against Women 1979), **migration** (UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), and **transnational organised crime** (UN Convention against transnational organised crime, 2000).

By signing the latest Convention (UN Convention against Transnational Organised Crime and its Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised

<sup>2</sup> see note 1 p. 11

<sup>3</sup> [http://ec.europa.eu/employment\\_social/social\\_inclusion/docs/2006/objectives\\_en.pdf](http://ec.europa.eu/employment_social/social_inclusion/docs/2006/objectives_en.pdf)

<sup>4</sup> International agreement for the suppression of the white slave trade, Paris 1904 (Wijers/Lap-Chew 1997)

Crime, 2000), the international community firstly agreed to a legally binding definition of trafficking in human beings. Any legal regulations regarding the administration of prostitution has been left to the respective authorities of each state party.

### **Despite the international legally binding definition, anti-trafficking policies in EU Member States still consists of the different historical and socio-political layers.**

For example, in the EU Member States Czech Republic and Germany, trafficking in human beings has been defined until 2004 (CZ) and 2005 (G) in national criminal law solely for the purposes of sexual exploitation.<sup>5</sup> Therefore, the political, legal and administrative areas of “trafficking” and “prostitution” were fluent: state authorities mandated the same departments and units for both phenomena, including law enforcement units for monitoring all crimes in the so called “red light districts”, municipality offices for public order registering all violations of tolerant zones, and authorities for social welfare taking care of prostitutes and trafficked persons.

Similar developments can be observed with non-governmental service providers for trafficked persons in both countries: anti-trafficking initiatives sometimes emerged from sex workers ‘rights organisations as well as from civil groups providing health education to persons working in the sex-industry.<sup>6</sup>

## **EU law**

At the EU level, the UN Palermo Definition was adopted in the Framework Decision of 19 July 2002 on combating trafficking in human beings approximating the criminal laws of the Member States. In 2004, the Directive on a temporary residence permit for victims of trafficking who cooperate with the authorities created another legally binding anti-trafficking tool within the EU framework.<sup>7</sup>

Both instruments stress the criminal legal approach to anti-trafficking policies in the EU.

An attempt to broaden this approach has been made in 2005 by submitting the Communication from the Commission to the European Parliament and the Council.<sup>8</sup> The Communication refers to

<sup>5</sup> The amendment of the Czech criminal law TZ 537/2004 Sb. included following changes: §246 (trafficking in human beings for the purpose of sexual intercourses) has been cancelled and replaced with §232a (trafficking in human beings). The German criminal law has been amended in February 2005: the new provisions (§232, §233) define trafficking in human beings for the purpose of sexual exploitation and labour exploitation. The new §§ are moved in the criminal code from the section “crimes against sexual self-determination” to the section “crimes against personal freedom”.

<sup>6</sup> Information on non-governmental activities for both anti-trafficking and prostitution can be found at [www.kok-potsdam.de](http://www.kok-potsdam.de) (Germany) and [www.strada.cz](http://www.strada.cz) (Czech Republic)

<sup>7</sup> Directive on the residence permit issued to third-country nationals victims of trafficking in human beings or to third country nationals who have been the subjects on an action to facilitate illegal immigration who cooperate with the competent authorities, Council Document 14994/03 MIGR101.

<sup>8</sup> Commission of the European Communities, Communication from the Commission to the European Parliament and the Council, Fighting trafficking in human beings – an integrated approach and proposals for an action plan.. Brussels, 18.10.2005, COM(2205) 514 final

the recommendations of the comprehensive Report of the European Experts Group on Trafficking in Human Beings that was handed over to Commissioner Frattini in December 2004.<sup>9</sup>

The holistic and integrated policy approach to combat trafficking was as well reflected in the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings that was adopted in December 2005.<sup>10</sup>

In 2007, the Experts Group on Trafficking in Human Beings advised the European Commission on the elaboration of an Assessment Manual to measure responses to trafficking in human beings in the European Union. This document translates the recommendations of the Experts Group's Report into concrete governmental activities. The thematic expert of this Peer Review suggests to the EU Member States to use this Manual also in order to assess social inclusion policies under the framework of trafficking.<sup>11</sup>

In October 2007, the European Commission Directorate General Freedom, Security and Justice published a draft paper on Recommendations on the identification and referral to services of victims of trafficking in human beings.<sup>12</sup> This recommendations were inspired by the OSCE concept of National Referral Mechanisms. The EU Action Plan (2005) to combat trafficking proposed to its Member States to review an adoption of the OSCE National Referral Mechanisms principles for the EU region.

## Other European instruments

The Council of Europe Convention on Action against Trafficking in Human Beings is the first regional instrument that includes legally binding victims' protection provisions. It was signed in Warsaw 2005 and will enter into force on 1 February 2008.<sup>13</sup>

The OSCE's Action Plan to Combat Trafficking in Human Beings (2003) recommends that OSCE participating States establish National Referral Mechanisms by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multidisciplinary teams to develop and monitor anti-trafficking poli-

<sup>9</sup> Report of Experts Group on Trafficking in Human Beings (Brussels , 22 December 2004), published on the website of the Commission, DGJLS  
[http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc/report\\_expert\\_group\\_1204\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf)

<sup>10</sup> Office Journal of the European Union, Council, EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings. 9.12.2005 C 311/1  
<http://europa.eu/scadplus/leg/en/lvb/l14168.htm>

<sup>11</sup> Mike Dottridge, Consultancy for Directorate-General Justice, Freedom and Security, European Commission, Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual, Draft Text for the Meeting on the EU Anti-trafficking Day , Brussels 18 October 2007.  
[http://ec.europa.eu/justice\\_home/news/events/anti\\_trafficking\\_day\\_07/indicators\\_manual.pdf](http://ec.europa.eu/justice_home/news/events/anti_trafficking_day_07/indicators_manual.pdf)

<sup>12</sup> European Commission Directorate General Freedom, Security and Justice: Draft Recommendations on the identification and referral to services of victims of trafficking in human beings. Conference Handout: Anti-Trafficking Day, Trafficking in Human Beings: Time for Action!. Brussels 18 October 2007.  
[http://ec.europa.eu/justice\\_home/news/events/anti\\_trafficking\\_day\\_07/mecanisms\\_manual.pdf](http://ec.europa.eu/justice_home/news/events/anti_trafficking_day_07/mecanisms_manual.pdf)

<sup>13</sup> Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report. No.197. Warsaw 16.5.2005 <http://www.coe.int/trafficking>

cies. The concept of an NRM embraces a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons.<sup>14</sup>

## Description of the main elements of the policy

Trafficked persons are socially excluded in multiple ways: due to their potential irregular residential status trafficked persons often face custody or deportation. This might prevent them to identify themselves as victims of a severe crime towards the respective authorities. As a result, trafficked persons remain invisible as victims of a crime and serious human rights violations.

In addition, the crime of trafficking takes place in informal, unprotected, unregulated and/or clandestine sectors, including, private households, sex-industry, restaurants, agricultural and construction sites. Therefore, elements of social inclusion policies have to be established prior, during and after a trafficked person has been identified by authorities or identified her/himself as a trafficking victim.

In order to promote a stronger visibility and participation of trafficked persons, it is suggested to include existing European mechanisms as an integral part of a social inclusion policy.

In this chapter, the existing European legal and political tools aiming at the protection of trafficked persons shall be reviewed and systematically comprised.

As analysed in the previous chapter, the legally binding EU instruments specialised on anti-trafficking policies were developed in the area of Justice and Home Affairs. Therefore, administrative and legal action to protect trafficked persons are mainly developed in the light of their function as victim-witness in a criminal procedure.

A different approach has been undertaken in the Council of Europe Convention on Action against Trafficking in Human Beings. It contains victims protection provision that are not conditioned to potential cooperation with law enforcement agencies.

As the Council of Europe includes all EU Member States, this legal instrument will be one of the main pillars in the forthcoming description. The Convention will be supplemented by political documents of the EU and the OSCE, such as the European Experts Group Report, the Experts Group Opinions, the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, the European Commission draft Recommendations on the identification and referral to services of victims of trafficking in human beings, and the OSCE National Referral Mechanism.

Whereas applicable, the respective policy components will be illustrated by the relevant policy tool elaborated during the "Stop Trafficking Camp – Boosting the Social Dimension" as organised by the Danish Ministry of Social Welfare in April 2007.

Following components should highlight a policy framework enabling the promotion of social inclusion of all trafficked persons. This framework should serve as a basis for discussion within

<sup>14</sup> Kröger, Theda; Malkoc, Jasna; Uhl, Bärbel Heide: National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. OSCE/ODIHR Warsaw 2004.

the Peer Review process. Consequently, it is designed for consideration of all participating EU Member States.

## 1. Identification of presumed trafficked persons

Presumed trafficked persons may be identified either by governmental actors, including law enforcement or by NGOs and local social-welfare organisations, particularly if they are trained and if a system of referral is in place. An identification process is a long and complex procedure due to the complexity and variety of relationships in the crime of trafficking as well as the use and threats of violence. Therefore, it has been proven as a good practice for authorities to refer people to relevant support and counselling centres once they face a slightest suspicion that there might be elements of trafficking involved. The referral of “presumed trafficked persons” to support structures allows the authorities to postpone a status definition to a later stage and to collect further evidences while guaranteeing the human rights protection of a vulnerable person.

In order to build confidence and trust, and to establish contacts with presumed trafficked persons, the components listed below should be developed within the support system:

- Outreach work (by governmental and non governmental social workers, labour inspectors, health care workers etc.)
- Hotlines
- Community policing

### Legal /administrative prerequisite: establishment of a reflection period

The establishment of a reflection period protects the presumed trafficked person from custody and deportation. It is an integral part of the identification process:

“A reflection period should be granted immediately to all those who there is reason to suspect are trafficked. The purpose of the reflection period includes enabling identification of whether a person is trafficked, as well as granting the possibility for the trafficked person to begin to recover and make an informed decision about his/her options, including the decision on whether to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims”<sup>15</sup>

While the EU Council Directive “2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings” set forth the establishment of a reflection period it leaves the decision of a time frame for a reflection period to the considerations of the Member States.<sup>16</sup> The Council of Europe Convention on Action against Trafficking in Human Beings, however, is the first regional legally binding instrument that contents a minimum time frame of 30 days for a reflection period:

<sup>15</sup> Experts Group on Trafficking in Human Beings: Opinion on reflection period and residence permit for victims of trafficking in human beings. 18 May 2004.

[http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc/opinion\\_experts\\_group\\_2004\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/opinion_experts_group_2004_en.pdf)

<sup>16</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

“Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the persons concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her.”<sup>17</sup>

It should be highlighted that both documents – the opinion of the EU Experts Group as well as the relevant Article of the Council of Europe Convention - stresses the importance of an unconditional access to the reflection period. Neither a willingness to cooperate with authorities nor an agreement to participate in a return programme should be the prerequisite to qualify for a reflection period. In the opposite, the instrument of a reflection period aims at putting the trafficked person into a situation where he or she can make informed decisions upon further steps.

## 2. Cooperation

“Stop Trafficking Camp – Boosting the Social Dimension” initiative:

### 4.1. Who does what - Referral System

Each EU member state appoints a specific authority to have an overall view of services offered to victims of human trafficking.

Cooperation agreements between law enforcement agencies and non-governmental service providers have proven to be an effective tool in a National Referral Mechanism. They contribute to the transformation of an exploited person from a clandestine sector with an irregular status into a valid claimant for services. Therefore, cooperation agreements are one of the technical core measures in an overall social inclusion policy.

The Council of Europe Convention defines in Art. 12, 6 the framework of cooperation agreements:

“Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to cooperate with non-governmental organisations, other relevant organisation or other elements of civil society engaged in assistance to victims.”

A more detailed guideline to set up different formats of cooperation agreements can be found in the OSCE concept of National Referral Mechanisms<sup>18</sup>:

“Cooperation agreements usually result either from a process of negotiation by means of internal directives from the relevant ministries (in most cases, this will be the Ministry of Interior or the Ministry of Justice). In either case, the role of the police department referring the presumed trafficked persons, and the NGO that is to receive the presumed trafficked person, must be defined.

<sup>17</sup> Art 13, 1 Council of Europe Convention on Action against Trafficking in Human Beings. Council of Europe Treaty Series- No.197.Warsaw 16.May.2005

<sup>18</sup> Kröger, Theda; Malkoc, Jasna; Uhl, Bärbel Heide: National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. OSCE/ODIHR Warsaw 2004. p.65

## Directive

An internal directive can be issued by the competent ministry instructing the responsible police that presumed trafficked persons – regardless of their legal status- are to be transferred to a non-governmental support and protection institution.

## Memorandum of Understanding

The most common form of co-operation agreement is a Memorandum of Understanding (MoU) between the competent institutions. The advantage of an MoU is that both parties are clear about the detailed sequence of events and their mutual rights and duties".<sup>19</sup>

The OSCE concept of National Referral Mechanisms provides further with best practice examples of MoUs and its elements.<sup>20</sup>

Within the framework of the EU, cooperation agreements were promoted recently in a draft document of Recommendations on the identification and referral to services of victims of trafficking in human beings.<sup>21</sup>

"Member States shall support the conclusion of cooperation agreements between service providers, law enforcement and other stakeholders defining their roles and responsibilities, taking into account the confidentiality of the relationship between the service provider and the persons concerned."

### 3. Assistance to trafficked persons

"Stop Trafficking Camp – Boosting the Social Dimension" initiative:

#### 4.2. One approach - one million options

Each victim should be offered an action plan that maps out individual needs and launches relief measures and development initiatives for the individual.

The Council of Europe Convention is the first regional legal instrument that contains legally binding victims' protection provisions. It obliges the State Parties to provide trafficked persons with following support and protection measures:

#### Art 12

- (1) Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

<sup>19</sup> see note 17.p.66

<sup>20</sup> see note 17, p.67

<sup>21</sup> European Commission Directorate General Freedom, Security and Justice: Draft Recommendations on the identification and referral to services of victims of trafficking in human beings. Conference Handout: Anti-Trafficking Day, Trafficking in Human Beings: Time for Action!. Brussels 18 October 2007, p.6

- A standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - B access to emergency medical treatment;
  - C translation and interpretation services
  - D counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - E assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- (3) In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
- (4) Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
- (6) Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

“Stop Trafficking Camp – Boosting the Social Dimension” initiative:

### 3.2. Specialised Unit on Counselling

The proposed initiative will establish a specialised unit (a meeting place as well as outreach activities) that provides many kinds of help to victims. The proposed initiative is considered to be suited as a model for activities in all member states.

The OSCE NRM concept divides support and protection services into three different areas based on best practices from Member States:<sup>22</sup>

#### 1. Financial support;

There are two main models for providing financial assistance to presumed trafficked persons: it can be administrated either by direct support through existing social welfare programmes or by support provided to organisations and institutions carrying out support and protection services.

#### 2. Sheltering/housing;

The provision of safe housing and shelter is not necessarily bound to a certain premise. Good practices in Italy, Germany and the Netherlands have proven that a flexible system of different types of accommodation is more likely to meet the diverse needs of presumed trafficked persons. Even though housing should be carried out in respect to high security standards, presumed trafficked persons should be always entitled to move about freely.

<sup>22</sup> see note 17. p.68-79

### 3. Specialised services.

Specialised counselling can be offered within the framework of outreach work or in the premise of a Drop-In Centre. In general, counselling should be offered in areas, including health care, psychological assistance, legal assistance, education and vocational training, employment assistance, and support in dealing with authorities.

### 4. Durable solutions: social inclusion in countries of destination and origin

“Stop Trafficking Camp – Boosting the Social Dimension” initiative:

#### 4.3. A friend for the New Life

Each victim of human trafficking is given a professional contact in both the countries of origin and destination. The contact provides information and consulting services and works to find permanent solutions that take into account the wishes of the victims.

The traditional approach in all anti-trafficking measures is to return trafficked persons to their country of origin once all criminal and administrative procedures are being pursued. It has proven, however, that returning to the same environment from which a trafficked person has been recruited lead to forms of re-trafficking. Therefore, the concept has to be re-thought of returning and reintegrating people. During the last years regional initiatives such as the EU and the Council of Europe developed further tools to guarantee the human security of trafficked persons and to spur their social inclusion such as issuing residence permits, conducting a risk assessment, safeguarding the integrity of personal data and ensuring their right to compensation and remuneration.

### Residence rights

Trafficked persons should be entitled to short and long-term residence permits in order to fully enjoy the access to human rights and justice. Granting of residence rights should not be conditional to the trafficked person's ability and willingness to function as a witness in a criminal trial.

The EU “Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities” only foresees residence rights for a very limited group of trafficked persons.<sup>23</sup>

A broader concept of granting residence rights that goes beyond the logic of a criminal legal framework is implied in Art.14 of the Council of Europe Convention<sup>24</sup>:

<sup>23</sup> see: Official Journal L 261 , 06/08/2004 P. 0019 - 0023

<sup>24</sup> Council of Europe Convention, Art.14

## Article 14 – Residence permit

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - a the competent authority considers that their stay is necessary owing to their personal-situation;
  - b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
- 2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
- 3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
- 5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

### Risk assessment:

The return of a trafficked person to his or her country of origin occurs in most cases after the expiry of the reflection period due to the lack of alternative solutions. In some cases returning to the country of origin may imply serious threats by the criminal gangs and severe human rights violations. Therefore, prior to return and reintegration measures a procedure should be established to ensure that any return of trafficked persons takes place in safety and with dignity.

The Council of Europe convention obliges the state parties to conduct return programmes with due regard for the rights, safety and dignity of the victim.<sup>25</sup>

Moreover, a conduct of a risk assessment is recommended in the European Commission's draft document "recommendations on the identification and referral to services of victims of trafficking in human beings":

"An individual risk assessment shall be carried out by the competent authorities before any decision is taken concerning the return of a presumed trafficked person".<sup>26</sup>

A risk assessment should be conducted on a case by case basis. The mere fact that usually no risk exists for trafficked persons in a certain country if returned should not substitute for the individual procedure. The principle of Non-refoulement can serve as the basis structure of a risk assessment. It is a core principle of human rights law that prohibits States from returning persons in any manner whatsoever to countries or territories in which their lives or freedom may be threat-

<sup>25</sup> Council of Europe Convention, . Article 16, 2

<sup>26</sup> DG Freedom, Security and Justice, p. 12

ened. The principle of Non-refoulement is a part of customary international law and is therefore binding on all States.

A risk assessment should be carried out by a representative of the authorities, of the service-providing NGO as well as of the trafficked person in order to ensure that all relevant information is brought forward for the assessment. Only in that case the trafficked person will be in a position to make an informed decision.

In order to conduct a fair risk assessment and to enable a person to make an informed decision it is important that solid and reliable country of origin information is available and accessible for all actors involved.

“Stop Trafficking Camp – Boosting the Social Dimension” initiative:

### 3.1. Resource Centre

The objective is to collect and update information on reliable focal points in countries of origin and provide support to victims of human trafficking.

The specific situation and needs of vulnerable groups (e.g. children, traumatised persons, persons with disabilities, elderly people) must be considered when conducting a risk assessment.

Procedures involving the assessment of risks should be monitored in the country of destination. Experience has shown that factors related to organised criminality or witness protection are not sufficient to cover all risks. Many other elements are also relevant. Therefore it is suggested that authorities also include into their assessment i.a. the following areas:<sup>27</sup>

- stigmatization/harassment by society, family and authorities
- opportunity for self-reliance (e.g. no earning or employment possibilities; left to degrading means of earning;)
- medical care to meet the medical/psychological needs
- reprisals by the criminal network against the victim or her family/relatives (e.g. debts bondage; risk of being caught again by traffickers;)
- risk of being arrested, detained and/or prosecuted in country of origin for offences related to her/his situation as a victim of trafficking
- risk of being persecuted in country of origin
- sustainability perspective (subsistence needs; satisfactory standard of living;)

A mechanism should be established that documents and evaluates the proper implementation of durable solutions. As far as return of a trafficked person is concerned the following steps shall be considered:

- Voluntariness of return;
- Quality of counselling received prior to return;

<sup>27</sup> Global Alliance against Trafficking in Women, Human Rights Standards for the Treatment of Trafficked Persons, 1999; European Commission, Report of the Experts Group on Trafficking in Human Beings, 2004; OSCE/ODIHR, Handbook on NRM ibd. 2004.

- Co-operation with governmental and non-governmental institutions in countries of origin;
- Security incidents during the return process
- Short-term aspects in social inclusion procedures upon arrival

Moreover, full social and labour inclusion should be achieved. The services provided should offer a real and viable opportunity for trafficked persons to escape trafficking, violence and exploitation. They should enable trafficked persons to fully acquire their self-reliance and to obtain a legal status.

### **Data protection:**

To safeguard the integrity of personal data is a crucial recommendation in return and social inclusion programmes. Personal data includes name, date of birth, place of birth, address, first names of parents etc. In the context of trafficking the storage of the victim's personal data is often combined with detailed information on the course of the crime and the nature of the exploitation. This combination of personal data and information of the crime may lead to the possibility that a person can be traced down e.g. as a former prostitute and a victim of sexual violence during the social inclusion process and beyond.

European data protection standards include fair treatment towards the person involved, who must be informed about the storage and further processing of the data. The purpose of collecting data must be defined. Moreover, it should be guaranteed that only the absolutely necessary data for the given purpose are being collected. Consequently, data which is no longer needed, should be immediately deleted.<sup>28</sup>

All data collection should be based on the consent of the concerned person. According to the EU Directive "consent" is only valid if it fulfils following conditions:

- Data must be given freely;
- The data subject must be duly informed about what he /she is consenting to;
- Consent must be related to a specific situation of the use of data;
- Consent can be withdrawn at any time.

During the social inclusion process, a mechanism should be established to ensure that trafficked persons have access to their personal data and the possibility to rectify it.

### **Compensation and Remuneration:**

A human rights approach to anti-trafficking measures includes among others access to justice and to private actions and reparations.

Despite clear international provisions on remuneration for forced labour (including the ILO Convention from 1931), the restitution for exploitative services and labour of trafficked persons is quite neglected in the current anti-trafficking policies.

<sup>28</sup> Convention for the Protection Of Individuals with regard to Automatic Processing of Personal Data; EU Directive on Data Protection 95/46

In most of the cases, if a human being suffers abuses and exploitation during a migratory process, he or she will not be remunerated for the exploitative work and services. While the economic dimension of the crime certified in law is recognized, the current practice does not provide for economic remuneration and other remedies to be available to victims.<sup>29</sup>

Recent European policy and legal documents took on the initiative to create a framework that will allow the establishment of remedies to compensate and remunerate trafficked persons.

“Stop Trafficking Camp – Boosting the Social Dimension” initiative:

### 3.3. Remuneration of trafficked persons

Victims should be remunerated for the work they have performed. The remuneration is financed out of the money seized from traffickers and which traffickers have paid in fines.

The European Commission's draft document “recommendations on the identification and referral to services of victims of trafficking in human beings” refers to compensation:

“Member States must ensure full implementation of the provisions related to the access to compensation of victims of violent international crime in cross-border situations. Trafficked persons should have access to any compensation schemes for victims of violent intentional crime.

Member States should take appropriate measures to identify and trace proceeds of trafficking. These proceeds have to be subjected to confiscation and other measures such as freezing and seizing.

In order to ensure effective compensation to victims, the establishment of national compensation funds is recommended.”<sup>30</sup>

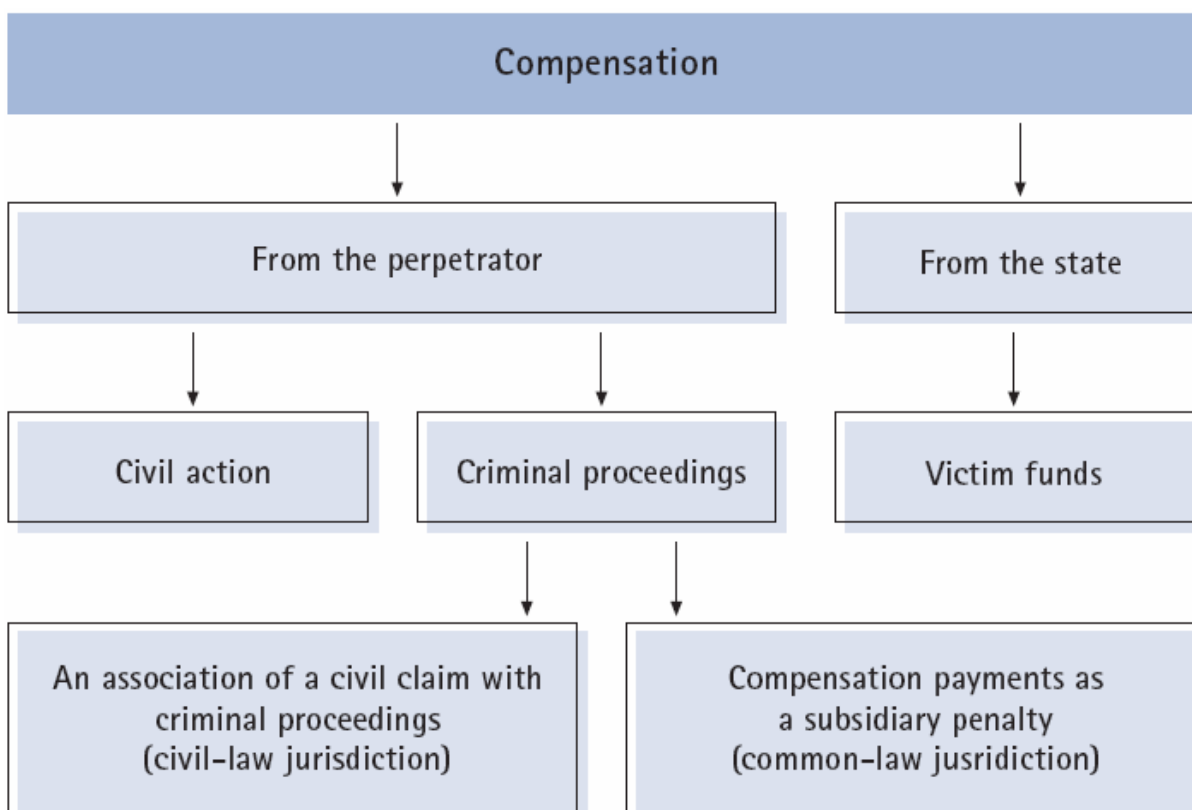
The Council of Europe Convention defines the right to be compensated in Art. 15:

- (3) Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- (4) Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Art.23.

<sup>29</sup> The first international legally binding definition of trafficking in human beings as set forth in the Palermo Protocol of December 2000 constitutes the crime by specifying certain elements of recruitment and transport *for the purpose of exploitation*. Not – as the remedies of rehabilitation would make believe – for the purpose of abuse, torture, rape or related crimes that are not motivated by economic interests. Therefore, the economic dimension of trafficking as defined by international law follows the logic of profit on the perpetrator side but does not apply the same logic on the State's obligation vis-à-vis trafficking victims. The crime of trafficking implies unjust acquisition and therefore merits reparation according to the principle of restitution for the victims.

<sup>30</sup> European Commission Directorate General Freedom, Security and Justice: Draft Recommendations on the identification and referral to services of victims of trafficking in human beings. Conference Handout: Anti-Trafficking Day, Trafficking in Human Beings: Time for Action!. Brussels 18 October 2007, p.16

In addition, the OSCE concept on National Referral Mechanism provides with a model based on best practice examples for compensation and remuneration from EU Member States.<sup>31</sup>



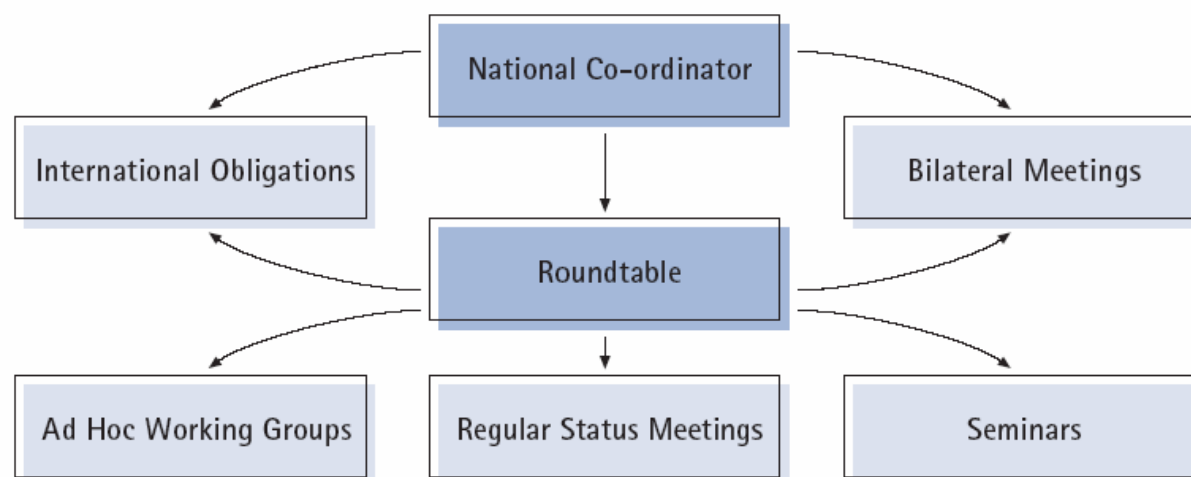
## 5. Coordination and Monitoring

All activities of social inclusion as described in the previous chapter should be monitored, negotiated and coordinated on a frequent basis. Numerous Member States and regional and international organisations have developed methodology that enables national and local stakeholders to assess, monitor and evaluate existing activities. Setting up an institutional anti-trafficking framework, including a cross-sectoral Round Table and appointing a national governmental coordinator on trafficking, ensures a participatory approach.

A potential structure of such an institutional anti-trafficking framework is suggested by the OSCE. A roundtable should be set up, bringing together all major stakeholders being active in anti-trafficking measures. This roundtable can include representatives from ministries, such as Interior, Foreign Affairs, Social Affairs, and Health and all relevant civil society actors. This cross-sectoral and multi-disciplinary convention should be chaired by an governmental appointed National Coordinator.<sup>32</sup>

<sup>31</sup> OSCE/ODIHR P.84

<sup>32</sup> OSCE/ODIHR . p.48-49



## Results so far?

Following results were withdrawn from the Danish National Plans of Action (2002 and 2007):

### 1. Identification mechanisms

A multi-faceted set of identification mechanisms has been established in Denmark since the first National Plan of Action (NPA) has been adopted in 2002. This includes outreach work, hotlines, and embassy networks. In 2007 it was decided to establish a general anti-trafficking hotline that provides information to trafficked persons, clients of prostitutes and professionals. This hotline, however, refers all information to the relevant law enforcement agency.

Moreover, two national information campaigns had been launched in order to inform a general public as well as the target groups of trafficking victims.

Identification procedures will be complemented by the establishment of "open houses" as set forth in the NPA. These sites will be low-threshold counselling centres aimed at women in the sex-industry to receive health counselling and information about the rights of trafficked persons.

In 2007, the new NPA focuses on the broad definition of trafficking in human beings by reaching out to all victims such as persons exploited in all informal and unprotected working sectors.

The Danish National Police's Domestic Investigative Centre (NEC) will set up a monitoring mechanisms comprising all available and relevant information collected by the police districts

### 2. Assistance to trafficked persons

The NPA as adopted in 2007 foresees the establishment of three operating crisis centres to support trafficked persons. The Danish Immigrant Service is the leading and responsible organisation for accommodation, healthcare and financial support of trafficked persons with an irregular status in Denmark. According to the NPA, the goal of all support and protection services is "to

ensure that all victims of human trafficking are offered a well-planned and properly managed reception in his or her country of origin".<sup>33</sup>

### **Legal /administrative prerequisite: establishment of a reflection period**

In 2007, the reflection period in Denmark has been prolonged from 30 days to 100 days. According to the NPA the reflection delay is defined as follows:

"The women will be granted a reflection period which will give them an opportunity to consider their situation, cooperate with police and have their return home prepared. This reflection period will be extended so that human trafficking victims, who cooperate on a prepared return, can be granted a travel deadline of up to 100 days. A personal action plan will be prepared for the women outlining what will occur during the extended reflection period. (...). The Danish Immigration Service will arrange, in collaboration with the VKM,".

### **3. Coordination and Monitoring**

A knowledge and coordination Centre for Human Trafficking (VKM) was established. Its mandate is highlighted in the NPA 2007:

"The efforts needs to be anchored, so that it remains sustainable in the long term. This will be done by having a national centre coordinate the effort and by formalizing and transforming collaboration relations between social organisation and government agencies into fixed routings. Furthermore, it must be ensured that continuous gathering and sharing of knowledge occur so that developments can be monitored, experiences accumulated and so that the attained knowledge can be documented and systematized"<sup>34</sup>

Furthermore, the VKM will establish local cross-sectoral groups, including outreach teams, municipalities and law enforcement agencies.

## **Policy debate – Food for thought**

The multi-faceted policies to socially include trafficked persons in countries of origin, destination and/or third countries as described in the precious chapters has been illustrated very precisely in the slogan "One approach – one million options" during the "Stop Trafficking Camp – Boosting the Social Dimension"

<sup>33</sup> Department of Gender Equality: Action Plan to Combat Trafficking in Human Beings 2007-2010. page 6

<sup>34</sup> see note 30. p. 6

This slogan (recommendation 4.2. of the Council Note) puts the trafficked person in the centre of all decision making processes by creating standards of:

- Assessment
- Plan
- Individual Action to ensure a human rights perspective for intervention in a holistic way across the EU.

A policy debate within the EU Member States could include the translation of the “million options” into concrete policies by including all relevant EU institutions and mechanisms, such as social inclusion, poverty reduction and all policies comprised under the “freedom, security and justice” framework.

The initiated Peer Review process may provide an opportunity for the host country and participating Member States to review their anti-trafficking policies against the background of the outlined policy components.