

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA'

COM(2010) 95 final — 2010/0065 (COD)

(2011/C 51/10)

Rapporteur: **Mr SIBIAN**

On 22 July 2010 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA

COM(2010) 95 final – 2010/0065 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 September 2010.

In view of the renewal of the Committee's term of office, the Plenary Assembly decided to vote on this opinion at its October plenary session and appointed Mr SIBIAN as rapporteur-general under Rule 20 of the Rules of Procedure.

At its 466th plenary session, held on 21 October 2010, the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 The EESC supports the EU's commitment to preventing and combating trafficking in human beings and to protecting the rights of those who are trafficked and welcomes the holistic, integrated approach of the proposed directive.

1.2 Trafficking in human beings is a serious human rights violation, a crime with multiple facets that must all be taken into consideration. The definition proposed by the directive covers various forms of victims and of exploitation including begging and exploitation of criminal activities – two new fields covered by this act. The definition also covers trafficking for the purpose of the removal of organs, an extremely serious violation of physical integrity and human rights. The EESC strongly supports this broad definition of the offences concerning trafficking in human beings.

1.3 The EESC endorses the opinion that criminal sanctions for trafficking offences have to be commensurate with the extreme gravity of these crimes. Therefore it recommends the adoption of harsher penalties and sanctions combined with the seizure of assets derived from illegal activities. Financial investigations must be part of investigations into human trafficking. Harmonisation of penalties and sanctions between Member States is imperative.

1.4 Besides establishing sanctions for offenders, another aspect of paramount importance in fighting this gross

violation of human rights is ensuring that sentences are served once they are pronounced by the Court. The EESC recommends that in cases of trafficking in human beings there should be no possibility of commutation of the sanction or of release from prison before completion of the period specified in the sentence.

1.5 The EESC endorses the view that victims of trafficking are in a vulnerable situation and should be protected from secondary victimisation and further trauma during criminal proceedings. In this respect, the EESC recommends that Article 7 of the directive, which currently reads 'Member States provide for the possibility of not prosecuting or imposing penalties on victims', should be re-worded, replacing 'possibility' with a stronger term, so that not prosecuting and not imposing penalties becomes the rule rather than the exception.

1.6 In view of the special situation of the victims of trafficking, the EESC proposes that they be provided with free, quality legal assistance starting from the moment that the person is identified as a victim of human trafficking.

1.7 In the case of minors, assistance and support should consist primarily of reuniting them with their families, if the latter have not been involved in trafficking.

1.8 In order to succeed fully in reintegrating victims of trafficking and avoid re-trafficking upon return, victims of trafficking should be offered a reflection period ⁽¹⁾, which in addition to medical help should provide them with an education and/or job training.

1.9 The principle of non-refoulement must also be applied in the case of trafficking in human beings, protecting the victims from being sent back to the country of origin if their lives or freedom are at risk.

1.10 The EESC shares the view that further action and decisions regarding trafficking in human beings should include prevention. In this respect, an in-depth knowledge and analysis of the root causes of trafficking is required in order to be able to combat these factors effectively and thereby reduce the incidence of human trafficking.

1.11 Human trafficking is both a global issue and a local problem. The EESC believes that law enforcement and prosecution policies can only be effective if there is an extensive partnership involving NGOs, employers' associations, the private sector, trade unions and all levels of government. A hostile environment must be created for the traffickers of human beings.

1.12 Civil society also plays a central role in the effort to combat trafficking. The EESC welcomes the fact that the directive envisages cooperation with civil society organisations. It is crucial that these bodies be involved in each phase of this process, from the identification of victims to the provision of assistance. Civil society organisations could play a vital role in the social reintegration of potential victims and could therefore have an indirect preventive effect and contribute to the prevention of further victimisation and involvement in human trafficking.

1.13 The EESC supports the idea that there is a lack of comparable data as regards human trafficking. Therefore there is a need to collect quality data on this phenomenon in a harmonised manner in EU Member States through the establishment of National Rapporteurs.

1.14 The appointment of national reporting bodies on this subject should become the rule, and their brief clearly specified. According to the directive, Member States are entitled to appoint national reporting bodies or establish equivalent mechanisms. The EESC considers that only one type of institution should be mentioned and this national body in each Member State should coordinate policies and action at regional level and with other Member States, so as to avoid major discrepancies between EU Member States.

1.15 The EESC looks forward to seeing consistent, satisfactory and decisive action as a result of the agreement reached by Member States regarding the appointment of a

European coordinator on combating human trafficking at EU level.

2. Commission proposal

The proposed directive builds upon the Council of Europe Convention and adopts the same holistic approach, including prevention, prosecution, victim protection and monitoring. Moreover, the proposal displays the following key elements of added value:

- Steps to make penalties commensurate with the severity of the offences;
- A broader, more binding extraterritorial jurisdiction rule, obliging Member States to prosecute nationals and habitual residents who have committed trafficking crimes outside the territory of the Member State;
- Broader scope for the provision on the non-application of penalties to victims for their involvement in criminal activities, whatever illicit means have been used by traffickers according to the Palermo Protocol;
- Improved assistance for victims, especially in medical treatment, as well as protection measures;
- Ensuring protection in the country of origin if victims are returned there;
- Special protective measures for children, women and other vulnerable groups who are the victims of human trafficking; and
- Moreover, the incorporation of provisions with similar content into the EU *acquis* demonstrates the advantages of stronger constraints imposed by the EU legal order, namely immediate entry into force and implementation monitoring.

3. Specific comments

3.1 The EESC supports the EU's commitment to preventing and combating trafficking in human beings and to protecting the rights of those who are trafficked. The aim of the proposed directive is to establish minimum rules for sanctions applying to human trafficking crimes and to step up efforts to prevent this phenomenon and protect its victims.

3.2 The EESC welcomes the holistic, integrated approach of the directive. Since trafficking in human beings is a modern form of slavery and a highly profitable business for organised crime and is also on the increase in Europe (based on Europol's 2009 assessment), it is essential that the EU's approach in the field be human rights-centred and holistic, focusing on external relations, return and reintegration policies, social affairs, social inclusion, migration and asylum.

⁽¹⁾ This reflection period could be of at least six months as in Norway.

3.3 The EESC notes that the directive tackles the recent developments in the phenomenon of trafficking in human beings and therefore the definition of the trafficking in human beings is in line with internationally agreed standards such as those stated in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime and in the Council of Europe Convention on Action against Trafficking in Human Beings.

3.4 The Preamble of the directive contains clear specifications related to what encompasses the term particularly vulnerable persons. Since children are more vulnerable and at greater risk of falling victim to trafficking, special attention should be given to this category of victims. The EESC considers that a child's best interests must be a primary consideration, as stipulated in the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the EU.

3.5 Nevertheless, it is important that the definition of trafficking in human beings covers all types of victims, both women and men, recognising the possibility of being in a position of vulnerability.

3.6 All facets of this crime are considered. The definition of trafficking in human beings covers various forms of victims and of exploitation including begging and exploitation of criminal activities, which are two new fields covered by the proposed directive. The definition also covers trafficking for the purpose of the removal of organs, an extremely serious violation of physical integrity and human rights. The EESC strongly supports this broad definition of the offences concerning trafficking in human beings.

3.7 The EESC considers that the Member States should integrate a broader definition of trafficking (and furthermore, broader anti-trafficking language) into their legislation in order to provide a framework to address this complex and evolving phenomenon in its various forms. For example, possible forms of the crime using the internet and information technologies in general should also be taken into consideration.

3.8 The directive takes a major step forward by establishing clear levels of penalties and sanctions. The document aims to ensure harmonisation of the level of sanctions between Member States.

3.9 The EESC is aware of the difficulties encountered in the process of drafting the directive, in terms of establishing uniform maximum penalty levels. Nevertheless, it is important that penalties be harmonised, since there are considerable variations between Member States: from three to twenty years' imprisonment for basic offences and from ten years to life imprisonment for aggravating circumstances. Despite the differences between the various penal systems and policies, the EESC considers that a policy of severe, strict penalties with firm incrimination is the answer to the rising incidence of these crimes.

3.10 Based on data currently available, it has been estimated that several hundred thousand people are trafficked into or within the EU every year. Moreover, in 2008 the number of human trafficking cases opened by Eurojust increased by more than 10 % over 2007. Nowadays, such trafficking exists in one form or another in all 27 Member States and the incidence of this crime is increasing.

3.11 The level of penalties and sanctions for those profiting from human trafficking should reflect the gravity of the crime and act as an effective deterrent. The proposed penalties could therefore be revised upwards, since the EESC considers that five years' imprisonment does not really reflect the seriousness of this crime. Stronger sanctions would better serve the interests of this directive. Penalties associated with aggravating circumstances should be adjusted accordingly. The practice of commuting prison sentences for good behaviour or in commemoration of national festivities, etc. should not apply to crimes in this category.

3.12 Ensuring that the sentences are served is another aspect that has to be considered of primary importance by the Member States. Given the gravity of the crime, the practice of commuting prison sentences and liberation from prison before completing the entire period specified in the sentence should not be accepted.

3.13 In addition to the penalties laid down in this directive, Member States should include sanctions in the form of asset seizure, which would strike at the heart of the economic reasons underlying these activities⁽²⁾, a ban on leaving the country and restrictions on certain civil and political rights. Investigations into human trafficking should also include financial investigations.

3.14 The EESC endorses the view that victims of trafficking are in a vulnerable situation and should be protected from secondary victimisation and further trauma during criminal proceedings. They must also be in a position to exercise their rights effectively and obtain the assistance and support needed.

3.15 The EESC fully agrees that victims of human trafficking should be protected from prosecution and punishment for criminal activities relating to their circumstances when subject to trafficking (e.g. the use of false documents, prostitution, illegal immigration etc). This protection is needed to avoid further victimisation and to encourage victims to be witnesses at criminal proceedings. Art. 7 is worded as follows: 'Member States provide for the possibility of not prosecuting or imposing penalties on victims ...'. The EESC recommends that the word 'possibility' be replaced with a stronger term, so that not prosecuting and not imposing penalties becomes the rule rather than the exception.

⁽²⁾ Europol's 2009 report on trafficking in human beings in the European Union shows that this business is worth several million euros every year.

3.16 Victims of trafficking should be protected from secondary victimisation and further trauma during criminal proceedings. Therefore to give testimony behind a screen or in a separate room should be a possibility given to all victims of trafficking, so victims are not directly confronted with the traffickers/perpetrators which might lead to stress or fear.

3.17 The EESC considers that victims of trafficking should be provided with free quality legal assistance starting from the moment the person has been identified as victim of human trafficking. This assistance is also in the interest of the state, ensuring that the victim is offered the necessary protection as soon as possible and securing voluntary participation in criminal investigations and proceedings.

3.18 The EESC considers it essential to reiterate the principle of non-refoulement, ensuring that the victims are not sent back to the country of origin if their lives or freedoms could be threatened.

3.19 The EESC considers that the extraterritorial jurisdiction rule proposed by the directive could create conflicts in the exercise of jurisdiction in criminal proceedings.

3.20 Assistance and support for child victims of human trafficking should consist primarily of reuniting children with their families, if the latter have not been involved in trafficking.

3.21 To fully succeed in reintegrating victims of trafficking and to avoid re-trafficking upon return, victims of trafficking should be offered a reflection period⁽³⁾, which apart from medical help should offer education and/or job training to the victims. The reflection period should be regardless of the victims giving testimony against offenders and regardless of their voluntary return to their country of origin.

3.22 The EESC shares the view that further action and decisions regarding trafficking in human beings should include prevention, as well as protection and assistance for victims and stronger co-operation between all stakeholders.

3.23 Member States should take into consideration the root causes of trafficking, represented by poverty and global disparities in the rule of law. Unbalanced distribution of wealth, lack of education, discrimination, poor governance, high rates of unemployment, poor enforcement system, armed conflicts and corruption create a favourable field for the trafficking of human beings. Fighting these factors should lead also to reducing the incidence of trafficking in persons.

⁽³⁾ This reflection period could be of at least six months as in Norway.

3.24 Even if the directive's definition of the legal person that can be held liable for criminal offences concerning trafficking in human beings excludes States or public bodies in the exercise of State authority, it is important that States have to make all necessary efforts to identify and eradicate public-sector involvement or complicity in trafficking. Public officials involved in such unlawful or criminal activities should be prosecuted and convicted without exception.

3.25 Member States have to take into consideration that trafficking is also governed by the law of supply and demand. In this respect, steps should be taken to decrease demand and this would help cut back actual trafficking. If Member States were to take the proper measures to discourage the demand that fosters all forms of exploitation and also adopt measures to minimise the risk of people falling victim to trafficking, a major step forward would be taken towards reducing the incidence of this crime.

3.26 Human trafficking is both a global issue and a local problem. The EESC believes that law enforcement and prosecution policies can only be effective if there is an extensive partnership involving NGOs, employers' associations, the private sector, trade unions and all levels of government. A hostile environment has to be created for the traffickers of human beings.

3.27 According to the directive, the action which Member States need to take consists of information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with civil society organisations, aimed at reducing the risk of people, especially children, falling victim to human trafficking. The EESC considers that one-off campaigns are not efficient enough and proposes continuous education campaigns at European level.

3.28 The EESC welcomes the fact that the directive envisages cooperation with civil society organisations. It is crucial that these bodies be involved in each phase of this process, from the identification of victims to the provision of assistance.

3.29 Civil society organisations could play a vital role in the social reintegration of potential victims and could therefore have an indirect preventive effect and contribute to the prevention of further victimisation and involvement in human trafficking. Member States should cooperate closely with NGOs to provide assistance. In conjunction with NGOs, Member States could support the development of information 'hotlines' and other information resources for at-risk groups, trafficked persons and their families.

3.30 The EESC underlines that the European Commission ⁽⁴⁾ launched a targeted call for proposals within the specific programme entitled 'Prevention of and Fight against Crime', as part of the general programme on 'Security and Safeguarding Liberties'. This aims to step up the EU's anti-trafficking policy and should lead to an improvement in non-legislative measures to combat trafficking in human beings. In this connection, the priorities established for 2010 include: prevention, victim protection, prosecution and investigation of offenders, coordination and cooperation mechanisms, as well as the compilation of reliable data. This programme makes EUR 4 million available and envisages financing 12 projects. It is a good start, but a great deal of support is needed for NGOs combating trafficking in human beings and Member States should make a commitment to support civil society organisations in this respect.

3.31 The EESC considers that self-regulation (e.g. codes of conduct), fair trade practices and supply chain management introduced in the industry could ensure that trafficked persons are not forced to work and therefore are not involved in the production of the company's products and services. Guidelines on good practices on the recruitment of migrant workers and bilateral cooperation between sending and receiving countries in monitoring the recruitment and working conditions of migrant workers are also most welcome methods to prevent this phenomenon.

3.32 Since measures to counter trafficking cannot be limited to the adoption of legislative instruments, and additional – non-legislative – measures need to be implemented, such as the compilation and transmission of data, cooperation, partnership development and the exchange of best practice, the EESC would emphasise that a single, consistent approach at European level is required.

3.33 The EESC supports the idea that there is a lack of comparable data as regards human trafficking. Therefore there is a need to collect quality data on this phenomenon in a harmonised manner in EU Member States through the establishment of National Rapporteurs.

3.34 The appointment of national reporting bodies on this subject should become the rule, and their brief clearly specified. According to the directive, Member States are entitled to appoint national reporting bodies or establish equivalent mechanisms. The EESC considers that only one type of institution should be mentioned and this national body in each Member State should coordinate policies and action at regional level and with other Member States, so as to avoid major discrepancies between EU Member States.

3.35 Although human trafficking is included in many agreements between the European Union and third countries (for example, it is covered by the Africa-European Union Strategic Partnership and the Eastern Partnership and it is also one of the priorities of the stabilisation and association agreements concluded between the European Union and the Western Balkans), the EESC feels that combating human trafficking should become one of the priority tasks of these agreements. Establishing similar agreements between the EU and other countries should be actively taken up.

3.36 The EESC looks forward to seeing consistent, satisfactory and decisive action as a result of the agreement reached by Member States regarding the appointment of a European coordinator on combating human trafficking at EU level.

Brussels, 21 October 2010.

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