

INPUT OF THE SPANISH NATIONAL NETWORK TO COMBAT HUMAN TRAFFICKING REGARDING THE WRITTEN CONSULTATION ON THE EU STRATEGY

INTRODUCTION

The Spanish National Network to combat Human Trafficking (hereafter, the Network)¹ greatly appreciates the effort of the European Commission in the launching of the written consultation on the post 2016 Strategy to gather information and input regarding the objectives of the new Strategy and, thereby, the work against trafficking in human beings in the EU.

The Network believes the Strategy is a strong mechanism to promote the fight against trafficking at the European level and to encourage Member States to incorporate the adequate measures to improve the identification and protection of victims.

GENERAL CONCERNS

Exhaustive Evaluation of the EU Strategy 2012-2016

The Network considers it essential to carry-out an exhaustive evaluation of the ***EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*** in order to develop the post 2016 Strategy, which includes a deep analysis of the impact of the implemented actions.

The Network values many of the measures included in the 2012-2016 Strategy, however we still identify alarming difficulties in the effective implementation of these measures by Member States.

Recommendations:

- Guarantee the creation and monitoring of a transnational mechanism to evaluate the results and impact of the Strategy in order to adequate it to the new Strategy.
- Promote and guarantee support to Member States for the correct implementation of the measures included in the Strategy as well as the effective application of Directive 36/2011.

¹ ***Full member organisations of the Spanish Network Against Human Trafficking:*** APRAMP, Askabide, Asociación Mujeres Juristas Themis, Asociación Trabe, Asociación Villa Teresita, Casa Daniela – Oblatas, CEAR, Diaconía, FAPMI/ECPAT, Federación de Mujeres Progresistas, Fundación Amaranta, Fundación APIP/ACAM, Fundación CEPAIM, Fundación Cruz Blanca, Médicos del Mundo, Mujeres en Zona de Conflicto, Proyecto Esperanza-Adoratrices, Women's Link Worldwide y Antena Sur contra la Trata.

Partner organisations: ACCEM, ACNUR, Amnistía Internacional, Cáritas Española, Cruz Roja Española, OIM, Red Cántabra contra el Tráfico de Personas y la Explotación Sexual, Save the Children.

Human Rights-Based Approach

The Network considers it essential that the Strategy effectively enhance the human rights and victim-centred approach in order to guarantee the protection of victims, regardless of the victim's willingness to participate in the prosecution, or of his or her administrative status in Member States.

Unfortunately, we still identify many obstacles for victims' access to those rights recognized in the Directive and in other national and European legal instruments.

Recommendations:

- Establish a monitoring mechanism that guarantees the coherency between the anti-trafficking framework and human rights.

Comprehensive Framework to Combat any Form of Exploitation of Human Trafficking

Most of the cases of human trafficking identified in European countries are for the purpose of sexual exploitation. The Network considers it essential to approach the complexity of the phenomena from a comprehensive perspective, which includes any form of exploitation and any type of trafficking related - or not - to organized crime.

The lack of effective national measures to combat other forms of exploitation, and the adoption of austerity policies at the European and national levels increases the risk of trafficking of persons in vulnerable situations and makes their identification more difficult.

The Network appreciates the efforts of the Strategy to tackle other forms of exploitation according to the complexity of the phenomena; however, we believe the efforts should be strengthened to increase the identification and protection of victims of other forms of exploitation.

Recommendations:

- Establish a comprehensive law to combat all forms of human trafficking; using a victim-centred approach (instead of illegal immigration) and addressing persons trafficked for all forms of exploitation, as well as establishing national minimum standards and guidelines.

Role of Specialised Organisations

The Network is concerned about the lack of recognition of the role of specialised organisations within the EU Strategy. We believe the Strategy does not recognize the great value that specialised NGOs could provide through their expertise and deep knowledge regarding the identification, protection and support of victims.

Recommendations:

- Recognize and guarantee the participation and specific role of specialised NGOs in the identification, protection and assistance of victims of trafficking.

Current Situation of Human Mobility in Europe and the Response of European Institutions

The Network is extremely worried about the increasing vulnerability to trafficking of migrants, refugees and asylum seekers who are trying to enter European countries.

In this sense, we are especially worried about the current trends to externalize European borders, which provoke an increasing vulnerability of these persons.

Moreover, we consider it essential to recall the situation of persons who are not on the move and who are especially vulnerable to trafficking, such as women and children.

EU Strategy Actions

No new priorities have been addressed. Among the existing priorities we have identified some new actions and others that should be further elaborated:

Priority A: Identifying, Protecting and Assisting Victims of Trafficking

New Actions:

Training Needs

The Network has identified the lack of specialized training of many of the actors involved in the identification and referral of victims of trafficking. One of our main concerns is the lack of common definitions about what should be considered trafficking under the European framework.

Recommendations:

- Elaboration of a new protocol for universal training on indicators for the detection, identification and support of victims, addressed to any public officer working on the borders or in positions related to transnational migration.

Compensation

The right to an effective remedy for a person whose rights have been violated is well established within the Directive and the international human rights legal framework. Under international human rights standards, this includes the right to obtain reparation which may include the following forms: restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition.

In practice, legislative harmonisation is needed in order to guarantee the equal access of victims to compensation.

Recommendations:

- The Network proposes the creation of standard procedures at the EU level in order to guarantee the victim's right to compensation regardless of his or her administrative status, or the conviction of the traffickers at different judicial levels.

Witness Protection

The trafficking Directive recognises the responsibility of the Member States to provide effective witness protection to victims of trafficking involved in criminal proceedings.

The Network proposes an integrated and holistic approach to witness protection at the EU level, starting with the early identification of vulnerable and intimidated witnesses, to the management of witnesses by specially-trained law enforcement officials.

Recommendations:

- Improvement of national witness protection systems, adjusted according to the current difficulties identified by the specialised NGOs that support victims during judicial proceedings.

Non-Punishment Clause

The Network is concerned about the implementation of the non-punishment clause included in the Directive addressed to ensure the non-prosecution of and non-application of sanctions or penalties to victims.

Recommendations:

- Legislative harmonization and better implementation and monitoring of Article 8 of the Directive.
- Specific actions should be adopted in relation to the identification of victims being subjected to arrest and/or in risk of deportation.

Actions to be elaborated further:

Creation of an EU Transnational Referral Mechanism

We consider it fundamental to continue the development of the EU Transnational Referral Mechanism as an essential measure for the effective identification, referral, protection and assistance of victims.

This mechanism is especially needed due to the higher vulnerability of asylum seekers or people on the move.

Recommendations:

- Take measures to enhance coherency within European migration policies through a mechanism that guarantees a human rights and gender-sensitive dimension.
- Strengthen the role of specialized NGOs within the referral mechanism, as they are an important source of knowledge in this area due to their expertise, and can provide effective information and protection to victims.

Protection of Child Victims of Trafficking

The Network proposes the development of specific actions addressed to provide effective and real protection to minor victims.

One of the obstacles identified by the Network is the identification of victims as minors and the irregularities in the age-determination procedure in different countries.

In this sense, we miss the mention in the Strategy of the principle of superior interest of the child, in conformity with the EU Fundamental Rights Charter and the UN Convention of 1989 on the Rights of the Child.

In the opinion of the Network, these measures should be included in the EU and National Referral Mechanisms.

Recommendations:

- Create specific measures in order to provide assistance, support and protection, with special regard to non-accompanied minors who suffer trafficking, due to their increased vulnerability.
- Incorporate the principle of the best interest of the child in the anti-trafficking framework.
- Include specific measures for the protection of child victims in the referral mechanism.

Priority B: Stepping Up the Prevention of Trafficking in Human Beings

Actions to be elaborated further:

Promote the Establishment of a Private Sector Platform

The Network appreciates the implementation of this Platform as an essential mechanism to guarantee the reduction of demand and we would like to assure its continuity and follow-up.

Recommendations:

- Adopt, implement and monitor the ethical codes of companies dedicated to industries and sectors where trafficking is more likely to occur.
- Tackle the indicators companies should use to analyse the risk of trafficking and forced labour in supply chains.
- Introduce and incorporate the principles of the business and human rights framework.

EU-wide Awareness-Raising Activities and Prevention Programmes

The Network stresses the need to follow-up on the impact and results of the implemented campaigns to prevent trafficking.

Recommendations:

- Develop an Action Plan using the results and conclusions obtained through the research demand reduction.
- Assess and analyse the effects (at a transnational level) of the actions and political measures adopted in the different Member States towards the reduction of demand and the criminalisation consumers of those services.

Priority C: Increased Prosecution of Traffickers

Actions to be further elaborated:

Ensuring Proactive Financial Investigation

The Network considers it very positive to continue the development of this action and would like to see it further elaborated, linking the results of proactive financial investigations to the compensation and redress of victims - regardless of their status as claimants -.

Recommendations:

- Link the measures to be taken within this action to those European initiatives on eliminating tax havens and offshore financial transactions.
- Adopt measures addressing the use of the money kept through these investigations to feed the funds for the compensation of victims.

Priority D: Enhanced Coordination and Cooperation among Key Actors and Policy Coherence

New actions:

Coordination with Consulates and Embassies

The Network has identified alarming difficulties and obstacles with Consulates and Embassies of countries of origin during the documentation process of victims of trafficking. We consider it essential to bear in mind that in many cases the Embassy or Consulate is the only institution able to provide the victim with an identity document. These documents enable the documentation process as a person in an irregular situation in the country of destination, and where the victim protection should be provided.

The lack of documentation is one of the main obstacles in the recovery process of trafficking victims, given that access to many of their rights is conditioned on the possession of an identity document or on having a regular status in the country of destination.

Recommendations:

- Strengthen the coordination between the EU and third country Embassies and Consulates in order to guarantee the accelerated documentation of victims of trafficking.

Actions to be elaborated further:

Coordinating EU External Policy Activities

As mentioned above, the Network is very concerned about the current situation of refugees and asylum seekers and the lack of mechanisms to effectively identify them as victims of trafficking at the borders. The fact that around 10,000 refugee children have disappeared in Europe in the last year - according to Europol - should be highlighted in the post 2016 strategy in order to adopt specific measures at the borders.

Recommendations:

- Improve the coordination and coherency between European policies regarding international protection, migration and trafficking to guarantee the identification and protection of victims with a human rights and victims-centred approach.
- Adopt specific actions and measures for international cooperation and the development of programs in order to tackle the root causes of trafficking in countries of origin.
- Enable safe pathways to Europe.

Promoting the Establishment of a Civil Society Platform

From the Network we appreciate the creation of this Platform and we value its function as a mechanism to strengthen the role of specialised NGOs.

However, we believe some measures should be taken to guarantee the continuity of the Platform.

Recommendations:

- Establish an Action Plan for the Platform, clarifying objectives and priority strategic-actions in the post 2016 strategy.
- Guarantee a better coordination with origin countries in the context of the Platform.

Coordinating Training Needs in a Multi-disciplinary Context

In the current Strategy, specific training actions for judges and cross-border law enforcement officials are foreseen. These training actions should be maintained in the post 2016 strategy as compulsory, including all actors involved in the identification of victims or potential victims.

Priority E: Increased Knowledge of and Effective Response to Changing Trends in Trafficking of Human Beings

New actions:

Monitoring of the Results and Conclusions of the Research about Trafficking

We consider that the conclusions reached through the different research studies performed at the EU level have not had enough impact on the policies and measures adopted to combat trafficking.

Actions to be elaborated further:

Developing an EU-wide System for Data Collection

We recommend that the data collection system be based on common definitions and appropriate terms regarding what is considered trafficking. Furthermore, more efforts should be done to include common definitions regarding all other forms of exploitation.

Developing Knowledge Related to the Gender Dimension of Trafficking and Vulnerable Groups

We consider it necessary to continue developing research with a gender and age dimension.

Targeting Trafficking for Labour Exploitation

We consider it necessary to use a broader definition which embodies a wider range of the phenomena such as slavery, forced labour, severe labour exploitation or servitude, which are not currently being properly addressed by the EU anti-trafficking measures.

In this sense, we recommend the strengthening of legal labour migration channels in order to contribute to decreasing precarious conditions, vulnerability and exploitation which feed the risk of trafficking.

Finally, measures should be taken to enhance better coherency within the European policy framework to encourage decent labour standards.