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The future of the EU Anti Trafficking policy after the Lisbon Treaty

Working paper presented at the EU Conference "EU action against trafficking after Lisbon" in Madrid 4-5 March 2010 by **Jelena von Helldorff**, Vice President of IFIAS

Introduction

The end of 2009 marked a turning point for the EU as a whole and for the future development of the EU Area of Freedom, Security and Justice in particular. On 1 December 2009, the long awaited Lisbon Treaty entered into force, raising hopes for a more streamlined, coherent and focused internal EU policy. It also ushered in hopes for a more prominent external representation of the EU on the international stage. Profound legal and institutional changes coupled with new EU prerogatives in many areas hitherto within the realm of the Member States now have the potential of making a significant impact on the EU's global action, including the area of fighting human trafficking. However, political will, strategic planning and the use of financial resources will eventually decide the pace and extent of the implementation of the opportunities presented in the Lisbon Treaty.

The end of 2009 also marked the expiry of the Hague Programme and the adoption of the new Stockholm Programme, aimed at setting the EU priorities in the area of Freedom, Security and Justice. Building on The Hague and the Tampere Programme achievements, the new five-year programme centres on the implementation of existing instruments while providing for greater coherence between external and internal elements of Freedom, Security and Justice work.

Both the Lisbon Treaty and the Stockholm Programme are likely to have a strong impact on future EU policy against trafficking of human beings. That this will remain an EU priority is also confirmed by the Council of the EU's approval of the Action Oriented Paper (AOP) on strengthening the EU external dimension on action against trafficking in human beings,¹ and the renewed political commitment expressed at the

¹ Council of the EU, Doc 11450/09, 19 November 2009

Ministerial Conference on human trafficking, held in Brussels on 19-20 October 2009.

The current Spanish Presidency of the European Union, together with the Belgian and Hungarian future Presidencies, will have a crucial task of implementing the objectives set within this given framework, starting with the timely implementation of the Action Plan,² aimed at translating the Stockholm Programme objectives into concrete action.

In the light of the above, this paper will discuss the repercussions of the Lisbon Treaty and the Stockholm Programme on future EU anti-trafficking policy as well as the concrete actions that should be undertaken to implement proposals put forward by the AOP. Particular attention will be given to those instruments that have the potential to strengthen the external dimension of EU anti-trafficking policy, amid the complex institutional and policy context of EU relations with third countries.

1. 2009 – The year of a new impetus for the EU anti- trafficking response

The last twelve months have seen policy on fighting trafficking in human beings gain new momentum on the EU internal agenda. The 30 November - 1 December 2009 Council of the EU meeting contained three points on the agenda related to THB, each of which addresses different aspects of the EU policy in combating trafficking. First, the revised Framework Decision repealing the 2002 Framework Decision³ aimed at strengthening the EU criminal justice response is strongly inspired by the Council of Europe Convention on Trafficking⁴. Second, the Action Oriented Paper on strengthening the EU external dimension on action against THB places strong emphasis on the nexus between the EU external relations with third countries and the fight against trafficking. Third, the Declaration adopted following the October 2009 Ministerial Conference in Brussels “Towards Global EU Action against THB” provided an opportunity to address challenges for the EU to increase its anti-trafficking capacity through reinforced partnership with third countries, regions and international organisations. The Ministerial Conference was also aimed at providing input to Council of the EU working structures on the further elaboration of recommendations presented in the Action Oriented Paper.

At the strategic level, the Stockholm Programme provides a framework within which future actions can be undertaken, both horizontally and thematically. Furthermore, work is underway on the evaluation of Schengen cooperation, specifically with regards to human trafficking. Finally, THB is firmly anchored in the Council of the EU conclusions on priorities for the fight against organised crime, namely the Organised Crime Threat Assessment (OCTA) and the Russian Organised Crime Threat Assessment (ROCTA).⁵

² JHA Trio Presidency Programme (January 2010-June 2011) Council Doc. N° 5008/10, of 4 January 2010

³ Council of the European Union, Doc.N° 5011/09, of 27 October 2009

⁴ <http://conventions.coe.int/Treaty/EN/Treaties/HTML/197.htm>

⁵ Council document N° 8301/03/09 CRIMORG 54

2. The Lisbon Treaty - main implications on EU policy against human trafficking

The entry into force of the Lisbon Treaty is a milestone in the process of European integration. A result of the aborted Constitutional Treaty, the Lisbon Treaty offers an array of possibilities which have the potential to transform the EU into the global actor at the international stage. This being said, legal options alone are no guarantee for success. Further EU evolution ultimately depends on the political willingness of EU Member States to make a full use of new legal and institutional avenues. It is also a question of how quickly the potential for change will start making a real impact and whether the internal EU squabbling will not impede the progress of implementation. As to EU policy on fighting human trafficking, the Treaty opens a variety of new options concerning internal legislation and policymaking as well as the development of external aspects of human trafficking. It furthermore offers greater potential for victim rights protection and the better use of existing international legal instruments, such as the Council of Europe Convention on Human Rights.⁶

Although the Treaty introduces a number of changes to the provisions dealing with the Area of Freedom, Security and Justice, this paper will concentrate only on the ones which are likely to have a direct or indirect impact on the EU policy on fighting human trafficking, particularly in view of implementing the Action Oriented Paper.

2.1. Institutional reshuffling – better or more cumbersome policymaking?

In January 2009, the long overdue institutional changes began at the European Commission and the European Union's Council level. The reshuffling of the European Commission portfolios and the hearing of potential candidates before the European Parliament were the first signs of the EU after Lisbon. According to Treaty provisions, the EU is now endowed with the President of the European Council, appointed by EU Member States for 2½ years and the High Representative of Foreign Common and Security Policy (who is at the same time the European Commission Vice-President). Although the Treaty does not provide details on their respective functions, both new posts are aimed at increasing EU visibility in world affairs and strengthening the consistency of the Union's external action. The establishment of the European External Action Service (EEAS), the embryo of what should become a European Diplomatic service aims to assist the High Representative in fulfilling her mandate and coordinating and effectively projecting European interests and values abroad.

In practice, however, it seems that carrying out the EU's external responsibilities will be shared between the President of the European Council, the President of the European Commission and the respective Commissioners endowed with the external dimension of internal EU policies such as climate, energy, migration, trade and enlargement. For the beginning at least, this portends a more complicated instead of a simplified way of decision making and action.

⁶ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No:005
<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

In relation to human trafficking, these substantial institutional changes are likely to influence the pace and the width of the Action Oriented Paper implementation.

The first and most relevant change resulting from the ratification of the Treaty is the splitting of the Directorate General (DG) Justice, Freedom and Security into the DG for EU Internal Affairs and the DG for Justice and Fundamental Rights. The aim is to encourage a better balance between “justice”, “security” and “freedom”. Similarly, the development portfolio has been flanked with the new DG for International Cooperation, Humanitarian Aid and Crises Response.

Being a cross-cutting issue at the crossroad of security, human rights, social, development and external policy dimension, human trafficking is likely to be dealt with by a number of Commission departments, including: DG Employment and Social Affairs, DG Enlargement and EU Neighbourhood Policy, DG International Cooperation, Humanitarian Aid and Crises Response, and DG Development and the European External Action Service. Already during the European Parliament hearings of Commissioners-designate, the issue of human trafficking and the countering measures cropped up a number of times. It was addressed in respect to the EU internal security, as well as in the context of humanitarian aid delivery, development and gender equality. All respective Commissioners were asked to position themselves with regard to their options to tackle trafficking in human beings. However, although acknowledged as an essential need, the coordination among them is far from clear.

Another important change is the reinforced role of the European Parliament. It will not only have a co-decision role in most policy making fields, but also increased power in approving the overall EU budget (including the approval of the multiannual financial framework and the expenditure planned for the external action and relations with third countries). Moreover, the Parliament will henceforth be asked to give its full consent on international agreements negotiated by the Commission with third countries.

Given the attention paid by the EP to the question of human trafficking, in particular regarding protection and prevention aspects, it will be necessary to more actively involve the members of EP in the process of implementation of the AOP. Traditionally more sensitive about keeping the right balance between criminal justice concerns and human rights protection, the European Parliament will be instrumental in taking forward the external dimension of anti-trafficking policies.

The Treaty also envisages a specific role for national parliaments in the area of Freedom, Security and Justice. Article 69 provides that national parliaments ensure that proposals falling within the scope of policing and criminal law comply with the principles of subsidiarity and proportionality.

Regarding the Council of Ministers, which remains the EU's most powerful institution, the new Treaty changes relatively little. The rotating Presidency system will remain largely unchanged, although the cooperation between three successive presidencies has become formalised (hence the importance of the 18 month Programme of the Spanish, Belgian and Hungarian Presidency).⁷ With the exception of the Foreign Affairs Council, which is chaired by the newly appointed High Representative, the

⁷ Council Doc. 16771/09

various Council configurations will continue to be held by representatives of the Member States ensuring the rotating six month Presidency.

The creation of a new Council Standing Committee on Internal Security (COSI) is also important for EU action against trafficking. In order to strengthen operational cooperation on internal security and facilitate, promote and strengthen operational actions between EU Member States, article 71 of the Lisbon Treaty enables the establishment of this new body. The role of the Committee is to coordinate, among other things, police and customs cooperation, external border protection and judicial cooperation in criminal matters. With the aim to ensure consistency of action among Europol, Eurojust and Frontex, it will be also responsible for evaluating the general direction and efficiency of internal security operational cooperation in the EU and identify possible shortcomings.⁸

However reform-driven the institutional changes of the Treaty of Lisbon may appear, there is no sign for the time being that the mainstreaming of anti-trafficking measures and the improved EU strategic and programming coherence will progress any faster. On the contrary, the still unclear division of tasks and cooperation modalities among different Commissioners, the EC President, the President of the European Council and EU Member States representatives makes the implementation of measures proposed by the AOP and the 2009 October Declaration rather complicated. The EU institutional complicated division of tasks reinforces the AOP's argument for the appointment of a EU Anti-Trafficking Coordinator, whose role will be to ensure that all aspects of trafficking are dealt with in the most efficient and coordinated manner. The multidisciplinary approach advocated by the Action Oriented Paper calls for a better coordination and more effective use of EU resources in combating organised crime and protecting victims. The experience so far has been characterised by a rather fragmented approach and duplication of efforts within the EU and between the EU and its Member States. The possibilities offered by the new Treaty do not provide for an automatic translation of the Action Oriented Paper actions into practice. It will therefore be necessary to map out an implementation strategy that is not only limited to the Council working groups and the rotating Presidency but takes equally into account all relevant EC Commissioners and the respective EP Committees, as well as individual Members of the European Parliament.

2.2. Legal repercussions: the abolishment of the pillar structure, reinforced internal security and fundamental rights

At the EU legislative level the most far-reaching changes of the Lisbon Treaty reform are the abolishment of the pillar structure and the new dimension of the protection of fundamental rights. This development opens up the way to tackling trafficking on both levels: as a serious crime act and as a violation of fundamental rights.

According to these new rules, EU legislation in the area of judicial cooperation in criminal matters has been moved from the so called "third pillar" (synonymous for the intergovernmental cooperation and the unanimity in the Council decisions making) to the ordinary legislative procedure, formerly known as a co-decision procedure

⁸ Two permanent Council Committees – Art. 36 Committee- CATS and the Strategic Committee on Immigration, Frontier and Asylum (SCIFA) will come under review of COSI

between the Council of Ministers and the EU Parliament. This will diminish the democratic deficit and increase visibility in process of policy making.

As a consequence, the qualified majority voting and the full co-legislative powers of the European Parliament are now a rule, not an exception, even though a unanimous vote of the Council will still be required for some sensitive decisions⁹. The goal is to further harmonise national legislations and to improve cross-border law enforcement and more specifically judicial cooperation.¹⁰ The argument is that if the Schengen Area enables free movement of criminals, including traffickers of human beings, it is necessary to counter it by strengthening the free movement of justice. Following this logic, Eurojust will henceforth be given power to initiate criminal investigations and will in due term develop into the institution of the European Public Prosecutor.¹¹

In the area of judicial cooperation in criminal matters - police and administrative cooperation - the Lisbon Treaty introduces the possibility of legislative initiatives coming from a quarter of EU Member States. This new Member State legislative initiative power conferred by the Treaty was already tested in January 2010 when 12 EU Member States presented (under the Spanish EU Presidency) a proposal for a new Directive within the framework of judicial cooperation in criminal matters on the establishment of a European Protection Order¹². The initiative aims at ensuring that the protection of women who are victims of violence (including trafficked victims) in one Member State is maintained and continued in another Member State to which the person moves. To get the approval, the initiative, which is strongly supported by the current Spanish EU Presidency, will need to pass by qualified majority in the Council of Ministers and by simple majority in the European Parliament.¹³

3. Building the EU Human Rights order: Charter of Fundamental Rights and the accession of the EU to the European Convention on Human Rights

The second major legislative innovation of the Lisbon Treaty relevant to trafficking is a legally binding Charter of Fundamental Rights. Not only does the Charter now have the same legal status as the EU Treaties, but the EU Court of Justice will be able to ensure that it is correctly applied. Flanked by the recently established European Union Agency for Fundamental Rights, the Charter reaffirms one of the EU basic existing principles: the aim of creating a society based on democracy and the respect for human rights.

⁹ The Council of the European Union will act unanimously and the European Parliament will be asked to consent on several procedures such as mutual recognition of judicial decisions and approximation of laws where any aspect of criminal procedure can be added (Art. 69)

¹⁰ 2979th JHA Council meeting of 1. December 2009, Doc N° 16883/1/09

¹¹ Although the Public Prosecutor will have a task to deal with crimes affecting the EU financial interests the Council may, acting unanimously extend its competence to other serious types of crime having a cross border dimension. Also, given the political sensitiveness that continues to surround the prospect of the development of EU competences in the area of criminal law filed, it is hard to imagine any rapid political seizure of initiative to capitalise upon the Treaty capacity.

¹² Initiative for a Directive on the European Protection Order, Council of the EU, Doc.N° 17513/09, of 5 January 2010

¹³ For the current state of play, see EU Council doc N° 6538/2010

Article 5 of the Charter prohibits slavery and forced labour, while making specific reference to the prohibition of trafficking. It is one of the novelties that makes the Charter more advanced compared to the European Convention on Human Rights¹⁴. It provides citizens with an effective means of enforcing their rights either in national courts or before the European Union Court of Justice in Luxembourg. Singling out the prohibition of trafficking, as a specific right, points to the Charter's modern approach.

Besides bringing forth fundamental rights to the citizens of the EU, the Charter also signals to the third countries that the protection of human rights is one of the central objectives of the Union's internal security policy as well as its Common Foreign and Security Policy and development policy. In this respect, it reinforces EU legitimacy towards third countries, in particular those aspiring to attain EU membership. This approach is crucial for the protection of THB victims' rights. It expands the protection and respect of victims beyond the EU to include countries of origin after victims have been repatriated.

Another important development resulting from the ratification of the Lisbon Treaty confirming the EU's commitment to human rights is the provision allowing the EU to accede to the European Convention on Human Rights. This implies the possibility for citizens of EU Member States to bring complaints about the EU to Strasbourg, after exhausting the EU's own existing system of justice. The EU accession to the ECHR will further strengthen the protection of human rights in Europe by submitting the Union's legal system to independent external control.

This development is particularly interesting from the perspective of widening the scope of protection for the victims of human trafficking. The following example gives an illustration of possible practical repercussions of this development:

In January 2010 the European Court of Human Rights delivered a landmark judgment condemning Cyprus and Russia over a Russian girl who died in Cyprus after having been trafficked and subsequently trying to escape from her perpetrator.¹⁵ The Court stated that both Cyprus and Russia had violated the European Convention on Human Rights, namely the articles guaranteeing the right to life and the right to protection under the law. It is noteworthy that even though the Court evoked provisions of the CoE Convention against Trafficking (ratified by Cyprus) it has based its arguments on the prohibition of slavery and forced labour enshrined in the ECHR. The Court noted that the Cyprus's government had failed to afford practical and effective protection to the victims against trafficking and exploitation, thus violating article 4 of the ECHR. Russia was condemned for not having sufficiently investigated the possibility that individual agents or networks operating in Russia were involved in trafficking. The Court noted that the Cypriot government's failure to comply with the Convention also included the failure to train law enforcement officials and initiate an investigation in cases where sufficient indicators of possible trafficking exist.

¹⁴ See reference on the page 3.

¹⁵ Source:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860538&portal=hbkm&source=externaexternalbydo&table=F69A27FD8FB86142BF01C1166DEA398649>

With the legally binding Charter on Fundamental Rights and the EU's accession to the ECHR, the European Union should be able to narrow a wide discrepancy in standards and differing compliance of law against trafficking of its Member States. Although a solid legal framework is not in itself a panacea for trafficking, it sends a strong message about the EU's determination to step up victim rights protection. As stated in the Stockholm Programme, "this will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights are actively promoted. The case law of the Court of Justice of the European Union and the European Court of Human Rights will be able to continue to develop in step, reinforcing the creation of a uniform European fundamental and human rights system, based on the European Convention and those set out in the Charter of Fundamental Rights".¹⁶

The previously mentioned initiative for a Directive on a European Protection Order also points in this direction. If adopted, it will further consolidate the EU existing victim protection regime by eliminating existing borders and guaranteeing the same level of protection beyond the territory of the Member State from which the victim originally comes.¹⁷

The reinforcement of a victim centred human rights approach is not only important from the point of view of the victim's recovery and wellbeing, but serves as one of the key elements in the prosecution of traffickers.

3.1. Promoting Human Rights and the fight against trafficking on the global stage

In the past, unlike the European Community, the European Union did not have legal personality. Only the European Community could act alone (i.e. in the framework of WTO or the UN Food and Agricultural Organisation) or in conjunction with the Member States. The newly acquired legal personality of the EU through the Lisbon Treaty will henceforth provide more legal certainty and will allow the EU to assert its positions within international organisations.

By acting beyond competences conferred on it by Member States the EU should reinforce its image as a human rights advocate within all international fora. This implies a proactive stance not only within the United Nations and its Human Rights Council but also within the OSCE, G 20 and NATO. While promoting its own human rights standards and legislation, which rest on the principles of observance of international law and Conventions, the EU has a unique possibility to position itself as a global actor against human trafficking. It could thus exert pressure on countries which are minimising the importance of human rights or do not pay due respect to the proper application of international Conventions. This includes but is not limited to the UN Convention against Transnational Organised Crime and its Protocol against Trafficking in Persons¹⁸. The EU global strategy should also encompass the promotion of the rights of the child, prevention of forced child labour, promotion of gender equality and overall respect for social and labour standards and protection.

¹⁶ The Stockholm Programme- an open and secure Europe serving and protecting the citizens, Doc N° 17024/09, page 11

¹⁷ See Council Doc. 5677/10 of 22 January 2010

¹⁸ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

If the EU is not particularly forthcoming in defining and implementing its Common Foreign and Security Policy common foreign policy in general, it should be able to choose a few non-disputable subjects that could become a label for its external engagement. Empowered by the Charter of Fundamental Rights, the EU should be able to drive home the message to reinforce measures against trafficking and protect victims in all international fora, by making it an emblematic issue of EU foreign policy.

The reinforced legal and institutional human rights framework presents an opportunity for the EU to take the lead at the global level. Financial crises coupled with the rising inequality, poverty, social exclusion and discrimination certainly contribute to heightening the risk of trafficking for labour exploitation, amid serious violation of human rights. These are convincing factors that should support the EU to renew its calls for respecting international commitments enshrined in the UN Millennium Development Goals, the Beijing Declaration and European documents, such as the Brussels Declaration. By taking a lead role as a vocal leader against trafficking in human beings through prevention, protection, prosecution and partnership among countries and international organisations, the EU can boost its overall foreign policy image, without risking internal divisions, as it is often the case when trying to speak with one voice.

Complementary to the strengthening of the human rights aspect is the fact that the new Treaty formally enshrines reduction and eradication of poverty as the primary objective of development cooperation. Moreover, it gives a legal basis to policy coherence for development, placing the obligation on the European Union to take account of development objectives in other policies which affect developing countries. On the top of this, Member States and the European Union are now obliged to coordinate policies to promote consistency and efficiency. The Council Conclusions of Policy Coherence for Development adopted in November 2009 identify five priorities where the EU will take account of development objectives in third countries in a more pro-active way. One of these areas is migration and the security and development nexus.¹⁹ This supports the Action Oriented Paper's call to tackle poverty, marginalisation, economic exclusion, and social and gender inequality as fundamental causes of trafficking.²⁰

4. THB Prevention at the forefront of EU relations with third countries: Assessing the risk factor through the development of an Anti-Trafficking Index

When discussing the development of partnerships against THB between the EU and third countries, regions and organisations, the AOP states that "consideration should be given to developing an appropriate methodology to establish a concise information collection system in the form of a simplified and organised list with a

¹⁹ Council Conclusions on Policy Coherence for Development (PCD) Council Doc. N° 15146/09, of 19 November 2009

²⁰ AOP, Doc° 11450/09, page 8

limited set of key indicators, an EU THB index, also involving third countries, regions and international level.”²¹

To better define priorities, the EU should be able to set out the list of third countries which present a heightened risk of generating illegal migration and thus an increased risk of human trafficking.

Existing national and regional cooperation frameworks (Union for the Mediterranean, the EU Eastern Partnership as part of the ENP, EU-Africa Strategic partnership, EU-Russia partnership, EU-Latin America cooperation, EU ASEAN countries regional cooperation, Trans-Atlantic partnership and EU-China dialogue) could be used for this purpose.

However, in order to better assess the trafficking threat, existing EU mechanisms should be complemented by an index looking at key indices which are likely to increase the risk of trafficking. Countries scoring poorly on several index criteria should be ranked as potential countries of origin for trafficking in human beings. This would in turn facilitate the development and adoption of a set of measures targeting the root causes, thus diminishing the risk of trafficking. It would be beneficial for the countries of origin, transit and ultimately for the internal security in the European Union. The purpose of the Index is to provide the EU policy makers with a diagnostic tool regarding the risk of trafficking. As a preventive, analytical tool, the Index is supposed to complement the Europol Organised Crime Treat Assessment instrument (OCTA) that provides an assessment of current and expected trends in organised crime and is focused on organised crime groups and their dynamics inside and outside the EU.²² Unlike existing Frontex risk analyses and studies or Cospol projects, the objective of the Index is to reinforce the prevention side of the phenomena.

The following list of indices consists of a few fundamental risk factors and is by no means exclusive. It rests on the presumption that poverty, inequality, social exclusion, conflict and post-conflict instability constitute the root causes of trafficking. Although additional research of the root causes of trafficking should be recommended, the list below summarizes the conditions that may lead to the increased human insecurity and thus play into the hands of organised crime groups...:

1. Employment and social protection mechanisms (socio-economic safety nets for families and communities, children and youth protection)
2. Migration policy and labour migration agreements with third countries (trade unions employers organisations, labour inspectorates)
3. Human rights laws, anti-discrimination measures, in particular child protection, gender equality and anti-violence legislation and practice,
4. Access to health services and education (synergies between the education and labour market)

²¹ *Ibid*, page 17

²² See the 2009 OCTA Report <http://www.drugsandalcohol.ie/12532/1/OCTA2009.pdf>

5. Development of the Civil Society Sector (existence and activities of the non-governmental sector, number of NGOs providing shelter, assistance and advice to victims of trafficking)
6. Internal country tensions and risks of a civil/military conflict (children in armed conflict and child soldiers)
7. Conflict/post-conflict security situation, (displaced persons, refugee camps, presence of peace-keeping and military forces)
8. The existence of the anti-trafficking legislation and accompanying institutional framework – the implementation of international obligations, institutional capacities (respect of international law, including international humanitarian law, international human rights law, international labour standards and international refugee protection obligations, enshrined in the Geneva Conventions²³)
9. Law enforcement and judicial system practices (the extent and nature of international cooperation, mutual legal assistance practices, extradition agreements and practices, joint cross- country investigations)
10. Collection of anti-trafficking data, EU Anti Trafficking Coordinator or equivalent, collection, analyses and presentation of data,
11. Committed budgetary allocation for anti-trafficking policies
12. Trafficking in Human Beings awareness-raising programmes, training of law enforcement/judiciary officials (number of trafficking prosecutions)

While most of the above indicators are already taken into account when developing country profiles for countries with which the EU maintain close relations, the concurrence of some or most of variables can be regarded as crucial for assessing the risk and modalities of THB dynamics. To get a more coherent picture and achieve better degree of assessment, the Index should be complemented by statistics collected by other organisations such as the Anti-Corruption Index (developed and updated by Transparency International) or the UN Human Poverty Index, which looks at the indications of standards of living.

The Index would need to be applied according to the principle of the measurement chain: increasing knowledge, selecting the right purpose, assessing potential threat, selecting available tools to providing adequate response, insuring conditions for timely implementation and communicating results and analysing the impact of the tool.

Beside its prime purpose is giving an early warning signal, the index would provide a better insight into the criminal networks routes and how they adapt to the local circumstances. It may be a valuable tool not only for the policy makers but for the

²³ Notably the 1951 Geneva Refugee Convention
<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

local police and judicial practitioners. The analyses of Index indices could also provide a hint at the changing pattern of traffickers' modus operandi.

Although the EU is already tackling most of the abovementioned indicators through the development and cooperation programmes, there should be more synergy between activities and better mix of modalities for delivering aid especially targeting the root causes of trafficking. Positive steps were undertaken in 2008 when the Commission increased efforts to integrate issues like gender and the rights of children and indigenous people fully into the development process. The same year, the EC proposed a package of measures focusing on children in external actions. It sets a number of priorities at the regional and global level in relation to child labour, child trafficking, children affected by armed conflict and violence against children.²⁴

Using the index analyses, EU thematic programmes should be developed for countries and regions that rank high on the trafficking index list. Instead of being aggregated in various developments, human rights and cooperation programmes, the fight against trafficking could become a highly visible tool of European diplomacy. In the same vein, trafficking should be raised in the course of strategy development, assessment and programme planning.

Besides tackling trafficking at the programming level, the Index system could be also incorporated into the already existing European external institutional structures, dealing with the conflict prevention and post conflict rehabilitation part of the European crises management missions.

The EU delegations are playing an increasingly important role in conducting EU policy towards third countries by providing first hand information and analyses to the institutions and to the High Representative. Their role can be very important in translating EU policy guidelines into practical actions. The Action Oriented Paper stipulates that "in order to improve donor coordination and facilitate the development of programming activities, EU delegations should improve the exchange of information. The delegations should take a leading role in improving donor coordination in third countries and regions at international level"²⁵ Following this recommendation, all EU delegations should be provided with the Anti-Trafficking Index, based on which an information/training curricula should be organised for local staff on different aspects of human trafficking. In addition, liaison officers will have to be deployed in delegations in trafficking prone countries.

At the strategic headquarters level, the Early Warning Unit within the Council Secretariat offers the opportunity to include trafficking warning indicators in the collection of information. While basing its work on the analyses and interpretation of information about potentially explosive situations, the Unit is tasked with anticipating conflict in third countries or regions and suggesting the best policy options to prevent the outbreak. Incorporating the trafficking factor would facilitate the knowledge about the potential push factors for trafficking in countries facing instability, economic hardship and volatile security situation. The same Index should be used by the European Commission Conflict Response and Peace-building Unit in order to provide timely framing of the corresponding Commission interventions designed to fit in with the activities of Instrument for Stability programme and the European Development Fund.

For this reason, mainstreaming trafficking into each police, civilian or rule of law mission in current and future operations should become a rule. Similar to the human

²⁴ See EC Annual report 2009 on the European Community's Development and External Assistance and their implementation in 2008, COM (2009)296 final

²⁵ AOP, page 9

rights and gender experts which are already appointed in some of the new European Security and Defence Policy(ESDP) missions, special trafficking experts should be also sent to countries with flaring organised crime and weak police and criminal justice system.²⁶

EU Security and defence missions should also be empowered to redirect their activities to populations or geographic areas that are particularly vulnerable to trafficking and should ask the Brussels headquarters to modify development or humanitarian action activities in order to directly address trafficking. Based on their reports from the ground, the modules on trafficking should then be introduced for local police and law enforcement staff, judges and prosecutors, community workers and local NGOs in the country or region.

To conclude, in order to raise its profile as an anti-trafficking promoter, the EU should deploy and combine all the strategies discussed above.

To become a truly global actor, all available tools of internal and external EU policy should be brought in and used in the most effective way. This also implies, when necessary, using trade and commercial preferences as an incentive to promote the respect human rights standards, including the rights of the victims.

Nevertheless, the appointment of an EU Anti Trafficking Coordinator, together with a more vocal presence in international fora where the human rights are discussed would bring about much more visibility to the good efforts that sometimes remain underrepresented.

4.1. Transatlantic Partnership: Combining the anti-trafficking index with the TIP Report

When addressing the subject of cooperation with third countries, the partnership with the United States of America occupies a special place. Having a shared perception of the necessity to balance human rights approach with the repressive side of combating organised crime the US and the EU are bound to cooperate closely in the fight against trafficking. Whereas the partnership with China, India and Latin America on closer cooperation in tackling organised crime is picking up the pace, the US-EU cooperation is and will remain an important pillar of the global anti-trafficking architecture for a foreseeable future. Particularly now, when the EU is undergoing profound institutional changes that will hopefully bring more coherence into the EU external action, it is important to stress the need to preserve continuity and harmonise action with the US, notably within the international organisations such as the OSCE, the UN, and the G 20. From this perspective the Anti-Trafficking Index will by no means undermine the primacy of the US TIP Report, nor will it duplicate its efforts to assess the country's performance in eliminating trafficking.

On the contrary, whereas the TIP Report looks at foreign governments' efforts to eliminate severe forms of trafficking and assesses each country's cumulative score, the index is an analytical, risk mapping tool and an early warning system which would allow deeper understanding of the trafficking threat. By focusing on the root causes which concurrently increase the risk of trafficking (because they give a

²⁶ The EU ESDP mission in Chad has appointed gender adviser to the Operational Headquarters and the Force Headquarters., conducting gender training and providing a comprehensive structure for monitoring and reporting. EULEX Kosovo has a Human Rights and a Gender Unit, which ensures compliance of the mission's activities with the relevant standards and serves as an entry point for all external complaints on alleged breaches of the Code of Conduct

leeway to traffickers to exploit them to the detriment of the victims) the Index should be considered as preventive tool.

Having said that, it should be a transatlantic goal to consolidate partnership and join forces in the global advocacy against trafficking and the protection of victims. The importance of the EU-US harmonised approach is even more important in view of new rising powers such as China and Russia, which appear to be less concerned about the respect for human rights, standards.

5. Translating the AOP and the 2009 October Declaration into practice - some proposals for immediate action

Developing cooperation with third countries against trafficking through the EU external action is at the heart of the Action Oriented Paper. The document calls for an integrated, holistic and multidisciplinary approach, having at its basis the respect for human rights and the rule of law, including gender and child rights perspective. Feeding it into the EU external relations the aim is to combine the EU Common Foreign and Security Policy instruments with EU programmes designed for cooperation with and development of third countries. While focusing on a series of key actions to be pursued in order to enhance partnership and cooperation, the AOP calls for the development of protective actions, especially with regard to victim support and protection. Before waiting for the fundamental restructuring of EU foreign policy with the fully functioning External Action Service, a few concrete proposals could be put forward. Their advantage is that they can fit into the existing mechanisms and may be implemented rather quickly.

This includes, but is not limited to:

- Setting up and consolidating regional networks in the field of justice, police and migration (the priority should be given to the setting up of a Euro-Mediterranean network and the Eastern Partnership network using the framework of the European Neighbourhood Policy)
- Awareness raising, instructions and training of EU delegations and consular offices²⁷
- Support of and cooperation with national police training institutes of non EU countries
- In the framework of the EU Security and Defence Policy, developing Anti-Trafficking Manual and Guidelines on key trafficking indicators and victim identification for the European experts of the Security Sector Reform missions (deployable in response to the civilian crises in third countries affected by conflict)²⁸

²⁷ What is important to stress in all training programmes, be it for the EU or local police forces is that the victims are not to blame for bringing troubles on themselves, but have been coaxed, lured into these situations by traffickers, on false promises or deception.

²⁸ Currently ESDP training is coordinated by the Commission-funded EU Training Group (EGT). EGT is an open, informal EU-wide training network of all relevant European non-governmental and governmental

- Allocating funds for research projects to clarify the root causes of trafficking, the degree of correlation between poverty and the risk of trafficking as well as the interdependence between supply and demand.

training providers as well as several ministries engaged in the recruitment and training of civilian crisis management personnel.