

EUI WORKING PAPERS

RSCAS No. 2006/16



National Co-ordination of the Fight against
Trafficking in Human Beings: Recommendations for
Poland as a 'New' EU Member State

Filip Jasiński



EUROPEAN UNIVERSITY INSTITUTE
Robert Schuman Centre for Advanced Studies

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

*National Co-ordination of the Fight against Trafficking in Human Beings:
Recommendations for Poland as a 'New' EU Member State*

FILIP JASIŃSKI

EUI Working Paper **RSCAS** No. 2006/16
BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)

© 2006 Filip Jasiński

This text may be downloaded only for personal research purposes. Any additional reproduction for such purposes, whether in hard copies or electronically, require the consent of the author(s), editor(s).

Requests should be addressed directly to the author(s).

See contact details at end of text.

If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

Any reproductions for other purposes require the consent of the
Robert Schuman Centre for Advanced Studies.

The author(s)/editor(s) should inform the Robert Schuman Centre for Advanced Studies at the EUI if the paper will be published elsewhere and also take responsibility for any consequential obligation(s).

ISSN 1028-3625

Printed in Italy in April 2006
European University Institute
Badia Fiesolana
I – 50016 San Domenico di Fiesole (FI)
Italy
<http://www.iue.it/RSCAS/Publications/>
<http://cadmus.iue.it/dspace/index.jsp>

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies carries out disciplinary and interdisciplinary research in the areas of European integration and public policy in Europe. It hosts the annual European Forum. Details of this and the other research of the centre can be found on:

<http://www.iue.it/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, Distinguished Lectures and books. Most of these are also available on the RSCAS website:

<http://www.iue.it/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

Abstract

As a world-wide problem, trafficking in human beings now attracts some well-deserved attention after years of political reservation and operational hesitation in European Union Member States. This working paper examines a particular aspect of the EU policy against this phenomenon: its change vis-à-vis the 2004 enlargement to the East. As the topics, actors and activities on the anti-trafficking scene multiply, national co-ordination of the fight against trafficking in human beings is in need of several improvements. The following ideas derive from research performed in Florence, as well as from consultations with anti-trafficking experts and the study of official documents of international organisations and governments. 'Pooling of resources', together with the creation of a national coordinator, are the key concepts of the envisaged enhanced model of Poland's policy.

Keywords

Trafficking in human beings, Poland, migration and asylum policy, organised crime, European enlargement

Introduction*

The recent 5 years of development of the EU-wide framework policy against trafficking in human beings¹ (THB) have hindered Poland's activities within this very area of public policy. Since the adoption in 2002 of the Brussels Declaration, together with changes in the EU *acquis* relating to trafficking issues, Poland commenced its own organisational and legal approximation to the EU requirements, having particularly in mind the pending accession to the European Union. It is worth noting here that these changes derived mostly from the enlargement process and were not linked solely to the Palermo Protocol obligations, especially with the ratification process of the Palermo Convention and the Protocol of 2000 still in progress at that time. Previous anti-THB actions lacked an encompassing multi-dimensional approach (see Meese, Van Impe *et al.* 1998: 168, Siron, Van Baeveghem *et al.* 1999: 326, Okólski 2000: 57) and had rather incidental character. Notwithstanding the importance of the Council of Europe (CoE), Organisation for Security and Co-operation in Europe (OSCE) and/or United Nations (UN) activities undertaken at the same time, it was necessary to align the national law with the EU *acquis* that pushed forward the pro-active and advanced steps within the Polish governmental structure. These steps eventually led to the creation of the framework for the national anti-trafficking co-ordination scheme (Buchowska, Jasiński 2004: 92).

Taking a close look at the evolving EU anti-trafficking policy and also at the actions performed by the Polish authorities, I present some key recommendations for Poland which, if fully taken into account, should enhance the present national anti-THB model of co-operation both from internal and external perspective. My intention is not to suggest a minimum-level standard for the Polish Government but rather to highlight the real obstacles it presently faces to an efficient co-ordination. Therefore, I focus on international (mostly EU) obligations and avoid comparative analyses of different anti-trafficking national co-ordination models. The historical perspective of the evolution of the European Union's policy is of particular importance to my research, as it allows simultaneous presentation of the national anti-THB concept at the same time, or its lack in the 1990s in fact.

With multiplying topics and actors on the anti-THB scene, the national co-ordination of the fight against trafficking in human beings requires several improvements. Pooling of resources together with the creation of a national coordinator for national anti-trafficking policy are the leading concepts of an enhanced policy model. The essential part of this model relates to several binding policy documents adopted under the auspices of several international governmental organisations (IGOs) active in the

* This Working Paper would not have been prepared without the generous help of my colleagues and counterparts in various anti-trafficking entities Europe-wide, including Polish Ministry of Interior and Administration, Ministry of Justice, Office of the Committee for European Integration, Warsaw University, European Commission, UNICEF's Innocenti Research Centre in Florence, European University Institute in Florence and, last but not least, non-governmental organisations (NGOs), namely the Polish 'La Strada' Foundation, the 'Nobody's Children' Foundation, and Caritas-Poland. Particular gratitude must be paid herewith to Professor Helen Wallace and Professor Bruno de Witte from the Robert Schuman Centre for Advanced Studies in the European University Institute (RSCAS EUI) for their priceless comments and suggestions, as well as to the other Professors, Fellows and researchers I had the opportunity to discuss my topic with during the term of my Jean Monnet Fellowship in the Institute: Dr. Heli Askola, Dr. Tomoya Obokata and Dr. Ryszard Piotrowicz from the United Kingdom, and my Polish counterparts: Dr. Zbigniew Lasocik, Stana Buchowska and Piotr Mierecki. I am also grateful to the reviewers of the first draft of this paper for their valuable assistance.

The usual disclaimer applies: I remain solely responsible for all opinions given in this paper and these do not necessarily represent the official positions of the Polish Government nor of any other entities. Furthermore I need to stress that I researched in Florence during my sabbatical from Polish Civil Service Corps, as the Civil Servant from the Office of the Committee for European Integration.

1 I use herewith the term of 'trafficking in human beings', but it is to be acknowledged that other terms are also often used, such as 'trafficking in persons', 'human trafficking', 'human commodity trafficking', 'human trade', 'human traffic', or 'trade in persons' (see Murray 1998: 52, Salt 2000: 33, Rijken 2003: 53, Jasiński, Zielińska 2005: 539).

field of anti-trafficking. Present features of the Polish system include, on the one hand, an awareness of the THB phenomenon in the different ministries and central governmental offices involved, but on the other hand, deficiencies in the judicial performance in recognizing individual trafficking crimes as well as the still limited (and also scattered) financial resources for the protection and assistance to the victims. This shall be duly and carefully revised.

A special part of this Working Paper is an outcome of the query I have prepared with the assistance of the representatives of a number of European and non-European actors on the anti-trafficking scene. The experts, to whom I express my gratitude for their valuable help, come from the governments, international governmental and non-governmental organisations, and academic bodies. The responses to my questionnaire hopefully shed some light on the issue of the general understanding of the international co-ordination of the anti-trafficking policies across Europe, especially after the EU enlargement, thus can be seen as a tool for other ‘new’ Member States of the European Union,² as well as for some third countries which are implementing or preparing their THB action plans or national strategies. An efficient international co-operation is not only an important instrument of the well-drafted anti-THB policy but, in fact, an essential condition for providing positive results of the policy (Jasiński 2004: 61). Competition between those who aim at assisting states in curbing trafficking must be avoided in order to deliver good results. Furthermore, my ambition is to treat this Working Paper as a reference guide for the Polish authorities, an obligations mapping exercise allowing for the summary of what is binding Poland in political and legal terms, particularly in the light of the changing EU policy and the new developments in the fight against trafficking.

Scope of the trafficking threat

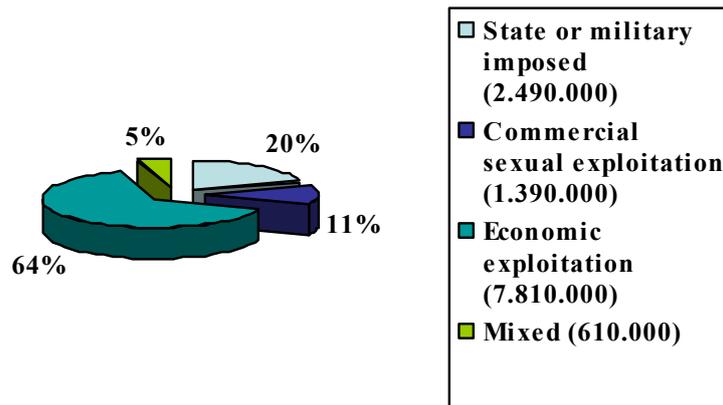
Trafficking in human beings is often widely misunderstood a phenomenon by the societies and often by the governments and decision-makers. This modern incarnation of the older term of slavery, as some tend to call it, happens to be an unseen, covered type of ‘enemy’, thus very difficult to tackle. Its legal specificity and a ‘veil of mystery’ covering large part of traffickers’ and their victims’ lives make the fight against the THB an ever difficult task, particularly as the statistics relating to this crime are vague or simply do not exist at all. The division of powers between institutions active in anti-trafficking persists to be unclear, and resources available for prevention and re-integration of victims are almost always scarce or scattered between wide range of end-users. Such a picture of European anti-trafficking scene has met the 2004 enlargement of the European Union adding a new dimension to the situation at stake, namely new EU Member States with their particular problems and—last but not least—the phenomenon of the intra-EU trafficking. What is worth mentioning here is a wording from the 1992 United Nations report of the Commission on Crime Prevention and Criminal Justice, that states: ‘transnational crime, which until very recently has been virtually unknown, was becoming a problem for the countries of Eastern Europe’ (Carter 1997: 134). Presently we know much more about this phenomenon but we still lack a comprehensive research from within traffickers’ nets and strong theoretical background (Salt 2000: 37) that would assist us in creating a more coherent anti-THB strategy for Europe. Geary correctly points out that with an increasing involvement of organised crime THB may become, and eventually it will, ‘a self-perpetuating phenomenon’ (1999: 104).

An ‘iceberg’ comparison will be helpful herewith to picture a possible scope of the THB problem. On top of this ‘iceberg’—the part of it that is visible above the surface—we have traffickers convicted by court; traffickers not convicted by court, number of investigations carried out by police and or prosecutor not finalized with a prosecution act. Below, forming a second part of an ‘iceberg’, we can place persons who fled and never revealed their trafficking past; and persons who accepted the

2 By this term I mean the ten new EU Members States which acceded on 1 May 2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Nevertheless one shall observe that even though the trafficking differs in its intensity and character in all of these countries, some co-ordination problems happen to be alike.

'reality' and agreed to prostitute themselves or work on the 'black market', finally on the bottom level, mostly unknown and probably the largest, there are deported persons who never had a chance to testify, persons who lost their lives/organs; corruptibly adopted children; organised beggars; and so-called 'happy victims' who are a caste of people who agree to be trafficked, even molested, and put up with such living conditions for a certain period of time only in order to earn money and safely come back home. With such a model in place it shall not be a surprise that different entities present different estimated numbers of the THB victims. Council of Europe speaks of 120,000-500,000 victims being brought into Europe annually; International Organisation for Migrations (IOM) estimates some 700.000-2.000.000 globally; United Nations point towards 200.000-300.000 in Europe and 4.000.000 globally; UNICEF suggests that 1.200.000 children are being trafficked worldwide yearly; and the European Commission estimates a number of 120.000 women and children brought into the EU only. Some NGOs suggest that there are from 20 to 200 millions people held in various forms of slavery worldwide, with India's bond labour population reaching 40.000.000 (see Ghosh 1998: 29, Salt 2000: 39, Laczko, Gramegna 2003: 179). Even worse vision has been presented by the International Labour Organisation (ILO) in 2005: ILO claims that there are 12.300.000 victims of forced labour in the world (see Figure 1 below) and *Newsweek* weekly values cross-border THB for an amount of some \$10 billion a year (24 October 2005, p. 58).

Figure 1



The above-mentioned anti-slavery context shall not be set aside when discussing the trafficking we deal with at present.³ With some states worldwide still bound only by the early and mid-twentieth century international conventions relating to slavery and suppression of the traffic in persons⁴ it is

3 See Klein on historical evolution of the anti-slavery activities, who claims though that 'strictly speaking, slavery exists nowhere today, but the impact of slavery remains wherever it was important' (2002: 24), and Ghosh on evolution of the trafficking phenomenon since classical slavery era (1998: 23), together with Ruggiero (1997: 231).

4 These agreements include International Convention for the Suppression of the White Slave Traffic, 18 May 1904, 35 Stat. 426, 1 LNTS 83, as amended by the Lake Success Protocol, 4 May 1949; International Convention for the Suppression of the White Slave Traffic, 4 May 1910, III LNTS 278, as amended by the Lake Success Protocol, 4 May 1949; International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921, 9 LNTS 416, as amended by the Lake Success Protocol, 12 November 1947; Slavery Convention, 26 September 1926, 60 LNTS 253; ILO Convention no. 29 Concerning Forced or Compulsory Labour, 28 June 1930, 39 UNTS 55; International Convention for the Suppression of the Traffic in Women in Full Age, 11 October 1933, 150 LNTS 431, as amended by the Lake Success Protocol, 12 November 1947; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949, 96 UNTS 271; Supplementary Convention on the Abolition

crucial to bear in mind that these agreements are an underlying factor for furthering the discussion about future steps to be taken with respect to curbing the crime of trafficking. For the purposes of this Working Paper I take on a holistic approach (a term very popular these days) and perceive THB jointly as a sophisticated type of organised crime,⁵ a horrifying human rights' violation, and a specific form of migration.⁶ This three-dimensional approach allows for a horizontal encompassing of the trafficking and, despite certain organisational challenges, appears to be the best way to be taken by the Polish authorities. On the other hand, Ghosh rightly observes that 'as organised human trafficking becomes more closely intertwined with drugs and arms trafficking and other lucrative criminal activities through the networks of international syndicates, its financial attractions will be increasingly powerful' (1998: 33). It means that not only a horizontal approach, but also a vertical one should be taken into consideration when discussing THB presence on international and national scene,⁷ thus taking a specialised perspective within each of the three key directions of the anti-trafficking policy.

Poland finds itself nowadays in a specific situation, being a newcomer to the EU, tightly 'surrounded' by its *acquis* and general policy directions, but also bound by a multi-level network of other legally binding and non-binding provisions deriving from a number of international organisations active on the THB plane, as well as key NGOs supplementing this network with their own recommendations and suggestions targeting Polish authorities. Therefore, apart from the strictly legal perspective of the anti-trafficking policy it is crucial to bear in mind what other actors apart from EU intend its states and partners to deliver. This also leads to the problem of competition between the anti-trafficking actors, specialized projects omitting general policy framework, incompatible definitions, lack of information exchange both on operational plane and between organisations, and a need for recognition of the key area of interest: prioritising work on the national level. A 'fine-tuning' of the national anti-trafficking policy is based therefore on the 'golden measure' between various provisions, both legal and political, coming from different sources. Apart from an international dimension, an obvious threat to the efficiency of this policy is the lack of trustworthy data, efficient research studies or fully qualified staff, even though training schemes tend to be rather successful.

(Contd.) _____

of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, 226 UNTS 3; and ILO Convention no. 105 on Abolition of Forced Labour, 25 June 1957, 320 UNTS 291. An important influence to the anti-trafficking policies derives also from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979, 1249 UNTS 13; Convention on the Rights of the Child (CRC), 20 November 1989, 1577 UNTS 3, as supplemented by Optional Protocol on the sale of children, child prostitution and child pornography, 25 May 2000, UN Doc. A/54/49 (2000); the International Convention on the Protection of the Rights of All Migrant Workers and their Families, 18 December 1990, GA res. 45/158, annex, 45 UN GAOR Supp. (No. 49A) at 262, UN Doc. A/45/49 (1990); the Rome Statute of the International Criminal Court (ICC), 17 July 1998, 2187 UNTS 90; ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 17 June 1999, 38 I.L.M. 1207 (1999). On the detailed list of these agreements see also von Struensee 2000b: 384 and Pearson 2002: 14.

- 5 Carter observes that 'if the crime amalgamation seems to work—that is, generate profits—then the enterprise takes on more structured characteristics' (Carter, 1997: 138). It is noteworthy that not the whole phenomenon suffices the term 'organised' as some authors (İçduygu, Toktas 2002: 35) prove that the trafficking in human beings is often facilitated by the small and/or non-organised crime groupings and not by large and well-organised, structured gangs. For example in Turkey traffickers prefer 'loosely cast network, consisting of hundreds of independent smaller units which cooperate along the way' (İçduygu, Toktas 2002: 46). Smartt adds that 'the precise role of organized crime in trafficking humans remains poorly understood by law enforcement agencies' (2003: 173).
- 6 Anderson and O'Connell Davidson interestingly comment that 'demand for both commercial sexual services and the labour of domestic workers, like demand in all markets, is very much a socially, culturally and historically determined matter. It is also intimately related to questions concerning supply or availability; indeed, we could almost say that supply generates demand rather than the other way round' (2003: 41).
- 7 Fijnaut points out that 'it is therefore important to recognize that the term 'transnational crime' is misleading and does no justice to the multiplicity if this type of crime or to its local and/or national dimension' (2000: 119).

Multiplicity of international activities

The anti-trafficking matrix of different international obligations which are to be taken into account by Poland, is long and, to some extent, consists of some superfluous, overlapping and/or contradictory parts. De Boer even says that policymakers seem to suffer from a form of 'initiativitis' (2002: 103). The key policy documents played an important role throughout last decade in forging the basis of the European anti-trafficking framework. Practically the first one has been the Council of Europe's 1996 *Plan of Action Against Trafficking in Women and Forced Prostitution* whose authors' attention focused only on the women's problems and it also had a non-binding character for the CoE Member States.⁸ Two years later a separate *Action Plan to Combat International Trafficking in women and children* has been approved by the UN's Economic and Social Committee (ECOSOC), unfortunately it remained rather unnoticed on the EU level,⁹ similarly to the United Nations Office for Drug Control and Crime Prevention (UNODCCP) *Global Programme against Trafficking in Human Beings*¹⁰ (GPAT) of 1999. Co-ordinating actions have been conducted further in 2001 on the regional South-European level by the IOM under the *Counter Trafficking Strategy for the Balkans and Neighbouring Countries*,¹¹ by the OSCE under the *Reference Guide for Anti-Trafficking Legislative Review and Reform*, by the United Nations Children's Fund (UNICEF) with its *Guidelines on the Protection of the rights of Children Victims of Trafficking in South Eastern Europe* of 2003, by the International Centre for Migration Policy Development (ICMPD) with the *Comprehensive Programme on Training and Capacity Building to Address Trafficking in Human Beings in South Eastern Europe—CPT* of 2004. Certain activities have been launched also in the North-European area, namely by the Nordic Council of Ministers¹² and within the so-called Task Force on Organised Crime in the Baltic Sea Region.¹³ A specialised example of such regional co-operation is the existence of the *Unaccompanied and Trafficked Children in the Baltic Sea Region Programme*¹⁴ established by the Working Group for Co-operation on Children at Risk within the Council of the Baltic States (CBSS), the Southeast European Co-operative Initiative (SECI) or the South-East European Cooperation Process¹⁵ (SEECP).

8 The Plan was originally drafted by Michèle Hirsch (EG(96) 2, Strasbourg 1996). Furthermore, since 1991 the Council of Europe's Committee of Ministers and the Parliamentary Assembly have adopted 17 recommendations and resolutions dealing with general and specific issues relating to the fight against trafficking in human beings. See also http://www.coe.int/T/E/human_rights/Trafficking (accessed 31 October 2005).

9 Similarly, the actions undertaken during 2004 *International Year to Commemorate the Struggle Against Slavery and its Abolition* remained largely unnoticed, even though a partnership has been envisaged by UNESCO with EU with this respect (see General Conference 32nd session, 32 C/14 of 2 September 2003, p. 9). On the other hand the European Commission has co-sponsored the development of World Tourism Organization's (WTO) 1998 *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*

10 This Programme, developed by the Centre for International Crime Prevention (CICP) and the United Nations Interregional Crime and Justice Research Institute (UNICRI), aims to bring to the forefront the involvement of organised crime groups in human smuggling and trafficking, and promote the development of effective criminal justice responses to the problems.

11 In 2003 IOM adopted a comprehensive *Trafficking in Persons: Strategy and Activities* and in 2004 highly-important *Recommendations for Improving Cooperation in the Triangle: Governments-NGOs-International Organizations*.

12 See inter alia the Recommendations concerning Trafficking in Women in the Nordic and Baltic Countries adopted at the Informal Nordic Baltic Ministers' Meeting in Stockholm on 9 April 2003.

13 Following the meeting of the Operative Committee OPC of the Task Force on Organised Crime in the Baltic Sea Region in November 2003 the Expert Group on Illegal Migration and the Expert Group on Trafficking in Women were merged in order to form the Expert Group on Trafficking in Persons, as created in 2002.

14 See <http://www.childcentre.info> (accessed 31 October 2005). Part of the co-ordination model used by this Working Group is availing itself to the Northern Dimension Partnership on Health and Social Wellbeing, as well as to the OSCE, IOM and some selected NGOs.

15 Meeting of the Ministers of Justice and Interior participating in the South-East European Cooperation Process in Loutraki on 8 February 2006 focused on strengthening cooperation against trafficking in human beings and terrorism. See http://www.mpa.gr/article.html?doc_id=566365 (accessed 21 February 2006).

These international organisations orienting their activities on the fight against THB have been joined by the Interpol in 2001, which adopted the *Declaration of Budapest in Trafficking in Human Beings*,¹⁶ the United Nations High Commissioner for Human Rights (UNHCHR) in 2002 with the *Recommended Principles and Guidelines on HR and Human Trafficking*,¹⁷ UNICRI in 2004 with the *Anti-Trafficking in Human Beings to and within Peace Support Operation Areas* scheme,¹⁸ NATO in 2004 with the *Policy on Combating Trafficking in Human Beings*,¹⁹ and the International Labour Organisation (ILO) in 2004 with the *Human Trafficking and Labour Exploitation: Guidelines for Legislators and Law Enforcement*.²⁰ Later on in 2005 the United Nations have presented two additional policy documents, namely the *Code of Conduct on Sexual Exploitation and Sexual Abuse*²¹ and *Proposed Global Action Plan*; and the Financial Action Task Force (FATF) jointly with MONEYVAL have issued in 2005 a specific report shedding a light at another important THB question: the *Proceeds from Trafficking in Human Beings and Illegal Migration/Human Smuggling*.²² Most recently a new expert forum has been foreseen under the Article 36 of the new Council of Europe Convention on action against trafficking in human beings²³ of 3 May 2005, namely GRETA: the *Group of experts on action against trafficking in human beings*. Presently the questions relating to the trafficking are discussed *inter alia* in the Steering Committee for equality between women and men (CDEG) and the European Committee on Crime Problems (CDPC).

Particular attention shall be paid to the activities performed by the OSCE in the field of fighting the trafficking phenomenon, as they form a comprehensive framework applicable to the situation of all of the OSCE Member States, including Poland.²⁴ Since the early 1990s OSCE has been active in the anti-THB policy when its States commitment themselves to combat the THB in the *Moscow Document* (1991). In 1996, the OSCE Parliamentary Assembly expressed grave concern about the trafficking, and recognized the link with economic transition and organised crime in the *Stockholm Declaration*

16 Interpol started its work on the trafficking issue already in the 1960s (see Report AGN/34/RAP No. 9 of 1965) and continued it in due course. The *Budapest Declaration* (No AG-20010RES-06) has been followed by the Resolution adopted by the Interpol General Assembly in Berlin on 19-22 September 2005 (No AG-2005-RES-11) where the Members of Interpol have been strongly encouraged to 'identify a specific point of contact within their NCB to support the chain of evidence with timely information and implement legislation and procedures to help international investigations into crime groups that traffic human beings' and the National Central Bureaus of Members of Interpol have been urged 'to increase the exchange of information on international criminal networks and offenders involved in all forms of trafficking in human beings, through the use of the Human Smuggling and Trafficking formatted message instituted on the I-24/7'.

17 Doc. E/2002/68/Add.1 presented in the form of UNHCHR Report to the ECOSOC.

18 See <http://www.unicri.it/www/trafficking/peacekeeping/index.php> (accessed 1 February 2006).

19 EAPC(C)D(2004)0029 of 8 June 2004 adopted during Istanbul Summit meeting. The first official Human Trafficking Workshop has been organised in the NATO School in Oberammergau, Germany, on 28 October 2004. Also the EU has referred in its own policy document on the European Security and Defence Policy (ESDP) that 'the personnel of ESDP missions must not in any way contribute to trafficking in human beings including for the purpose of sexual exploitation' (doc. 8373/05 COSDP 234 PESC 321 CIVCOM 98 of 22 April 2005). Works on the anti-trafficking are also carried out within Partnership for Peace (PfP) scheme.

20 See also *A Global Alliance against Forced Labour-Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* prepared in 2005 by ILO. More in: Andrees, van der Linden 2005: 55.

21 In June 2004, UN Secretary General Kofi Annan approved the United Nations Department of Peacekeeping Operations (UNDPKO) *Position Paper on Human Trafficking and United Nations Peacekeeping*. This policy document, coupled with the UN's Code of Conduct, promotes a 'zero-tolerance' approach to sex abuse and human trafficking by UN peacekeepers.

22 This initiative brought together two important bodies responsible for combating organised crime in Europe within the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe (MONEYVAL stands for the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures).

23 CM(2005)32 Addendum 1 final, 3 May 2005.

24 Ghosh writes that 'to be effective a strategy to combat human trafficking needs to be comprehensive enough to address both pull and push factors in a coherent manner' (1998: 147).

(1996). Furthermore, NGOs and several participating States identified trafficking as a key issue affecting women at the 1997 OSCE Human Dimension Seminar and the 1998 Human Dimension Implementation Meeting. Trafficking in human beings is being discussed regularly now by the Office for Democratic Institutions and Human Rights (ODIHR) during Human Dimension Meetings. In 1998, the OSCE Ministerial Council identified THB as one of the new risks and challenges to security in the region and in July 1999, the Parliamentary Assembly adopted a resolution condemning the practice of trafficking, particularly sexual trafficking of women and girls. In April 1999, with the funding from the United States, the ODIHR appointed an Advisor on Trafficking Issues to help define ways for the OSCE to assist in combating trafficking, and to assist the OSCE in developing the *Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings*. The first overarching step has been taken by OSCE in Porto on 7 December 2002, when the *Ministerial Declaration* has been adopted by the Ministerial Council, followed later on by the *Action Plan to Combat Trafficking in Human Beings* endorsed at the Maastricht Ministerial Council. In the Action Plan it has been recommended that the OSCE Member States establish the so-called National Referral Mechanisms (NRMs) by building partnerships between the civil society and law enforcement, creating guidelines to properly identify trafficked persons and establishing cross-sector and multidisciplinary teams to develop and monitor policies. A fully-fledged policy regarding NRMs has been worked out in the 2004, namely the *Practical Handbook on National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*. This important development has been preceded though by the creation of the *OSCE Special Representative on Trafficking in Human Beings*²⁵ whose post is being presently held by Dr. Helga Konrad.²⁶ Her Office in Vienna took on the leading role and paved the way for a momentum in the anti-trafficking discussion Europe-wide. In 2004 Dr. Konrad hailed the creation of the so-called *Alliance Against Trafficking in Persons* which is supposed to become a joint forum for discussion between particular IGOs and NGOs on the anti-trafficking co-ordination and co-operation problems.

The second crucially important international organisation in Europe in the fight against trafficking in human beings are the United Nations (see von Struensee 2000a: points 56, 57), active in the anti-trafficking discussion since *Awad Report*²⁷ of 1966. Apart from the above given examples of the UN activities in drafting of policy documents, one shall relate to the 2001 creation of the *UN International Organisations Group on Trafficking and Smuggling*²⁸ consisting of the representatives of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Population Fund (UNFPA), UNHCHR,²⁹ UNICEF, IOM, ILO and the UN Special Rapporteurs on Migration and Violence against Women, joined by some large-scale international NGOs, such as the Franciscans *International*³⁰ (FI), the International Catholic Migration Commission (ICMC), the Terre des Hommes (TdH) and the International Movement Against All Forms of Discrimination and Racism (IMADR). This is an excellent example of a forum which is modest in terms of bureaucracy and informal with respect to its procedural background, acting in charge of organisational co-ordination between the key operational

25 The Special Representative is assisted by an Anti-Trafficking Assistance Unit in the OSCE Secretariat in Vienna. Also other OSCE structures, such as the ODIHR, Strategic Police Matters Unit, OSCE Adviser on Gender Issues; and Office of the Coordinator of Economic and Environmental Affairs (OCEEA) will assist the Special Representative in her mission.

26 She had previously chaired the Stability Pact Task Force (SPTF) on Trafficking in Human Beings for South Eastern Europe which in 2000-2004 ran a successful co-operation between organisations active in the anti-THB projects thereof.

27 UN doc. E.67.XIV.2 (1966).

28 Not to be confused with that established in 1974 by ECOSOC, the United Nations Working Group on Contemporary Forms of Slavery (WG CFS), a UN body entrusted to study slavery in all its forms, composed of five independent experts nominated inside the Sub-Commission on the Promotion and Protection of Human Rights, one per regional group.

29 There also exists a separate post of the Advisor on Trafficking to this Commissioner. The Office of the UNHCHR has developed 11 *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68, Add. 1).

30 See <http://www.franciscansinternational.org> (accessed 30 May 2005). On 21 February 2006 FI has been approved as a member of the UN Security Council NGO Working Group. Previously it gained also General Consultative Status with the UN Economic and Social Council.

actors in the sphere of fighting THB. This Group meets usually every 2 months for the joint briefings and convenes sessions also with the UN Commission on Human Rights (CHR). Herewith it should be added that the post of the *UN Special Rapporteur on Trafficking in Persons, especially women and children*,³¹ held by Ms. Sigma Huda, has been created on 23 April 2004 by the UN Commission on Human Rights but its interest is linked mostly with non-EU states, as expressed in the report³² presented to the UN ECOSOC on 22 December 2004. Trafficking issues are being dealt also in the agendas of various UN bodies,³³ including *inter alia* the United Nations Development Fund (UNDP), the United Nations Development Fund for Women (UNIFEM), the United Nations Fund for Population Activities (UNFPA), the above mentioned CHR,³⁴ the Commission on the Status of Women³⁵ (CSW), the Committee on the Elimination of Discrimination Against Women (CEDAW), and the General Assembly Third Committee (on the international monitoring mechanisms relating to slavery see Weissbrodt, Dottridge 2002: 47). Of course the UN General Assembly³⁶ (UNGA) also adopts relevant Resolutions with respect to the trafficking in human beings if necessary.

This general overview of the most active international governmental organisations (Long speaks even about plethora of international instruments, 2004: 22) in the sphere of the fight against trafficking in human beings had two main goals to reach. The first one was, saying generally, to show that recent co-ordinating and legislative undertakings often derive from the 2000 United Nations Convention against Transnational Crime³⁷ (UNTOC—Palermo Convention) adopted together with its anti-trafficking,³⁸ anti-smuggling³⁹ (Obokata 2005: 394), and trafficking in arms⁴⁰ Protocols. Secondly, there is already an overwhelming number of actors taking a stance against the THB on the international plane, surrounded additionally by a large number of NGOs, including the international ones. It means that in practice each large IGO in Europe with an interest in managing migration, fighting against organised crime and/or protecting human rights related to the trafficking phenomena, acts usually by forging its own framework policy, defining separate (individual) priorities and, if possible, also instruments. The specialisation as such offers good practical results, but it shall be underlined that specialised (topical, regional) approach to the anti-THB can be accepted only if followed by a comprehensive information flow and exchange of data, which can be summed up under the terms of ‘pooling of resources’ and ‘mapping of activities’. Provided that any commodity for which a profit can be earned is open to organized crime (Carter 1997: 137), we shall see a large number of actors present on the anti-THB scene. But on the other hand it clearly shows that if there is no co-ordinating mechanism in place those actors are eager to follow its own paths and in the end of

31 E/CN.4/2004/L/62. Other UN Special Rapporteurs were: on the Sale of Children, Child Prostitution and Child Pornography, and on the Human Rights of Migrants, who referred to the THB problems accordingly. Earlier on, in the 1980s, there existed the UN Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others.

32 ‘Integration of the Human Rights of Women and the Gender Perspective’ (E/CN.4/2005/71). In this report it is underlined that ‘regional consultative processes of an informal nature have become a key component of migration management and they now exist in virtually all areas of the world’ (p. 208).

33 See the OECD World Economic and Social Survey 2004, p. 204.

34 In 1992 the Commission has adopted the *Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography* (resolution 1992/74, UN doc. E/CN.4/Sub.2/1991/41).

35 See for example the recent CSW Resolution of 11 March 2005 on Eliminating Demand for Trafficked Women and Girls for All Forms of Exploitation. An important part of this Committee’s interest in the anti-trafficking policy refers to the 1995 Beijing Declaration and the Platform for Action of the 4th UN World Conference on women (A/CONF. 177/20 (1995) and A/CONF. 177/20/Add. 1 (1995)).

36 See *inter alia* doc. A/55/322 of 24 August 2000 and doc. A/57/170 of 2 July 2002.

37 G.A. res. 55/25, annex I, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

38 G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

39 G.A. res. 55/25, annex III, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

40 G.A. res. 55/25, annex IV, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

the day it might have a negative impact on the situation of the end-users of the anti-trafficking activities—the victims. Thus specialisation must be linked to a coherent co-ordination mechanism, such as—even though formally non-binding—UN *International Organisations Group* or OSCE *Alliance Against Trafficking in Persons*, based on good relations with governments and NGOs. Fijnaut justly claims that ‘states and unions like the United States and the European Union realized many years ago that proper containment of transnational crime is just as much a domestic as an international matter (2000: 125).

Therefore, I present below detailed information about the evolution of anti-trafficking concept within the European Union, especially through the lenses of its institutions and the Treaties. My aim is to show in the following part of the Working Paper that there has not been any visible coherence in the steps taken by the Polish authorities with respect to the evolving position of the EU, and only the Brussels Conference and forthcoming finalisation of the accession negotiations paved the way for specialised national activities, meaning that in the beginning the national policy had been reactive. Interestingly enough the situation differed only in a couple of other ‘new’ Member States, what proves that the EU influence *de facto* has been positive. Nevertheless, it does not mean that the steps taken by the then-Member States vis-à-vis acceding countries derived from any strategic framework, as only the political discussion and partial opening of the financial programmes took place. The representatives of the acceding countries touched upon this issue during the 2002 Brussels Conference, but without any effect: the division between European states persisted, even though trafficking phenomenon remains present in the whole Europe.

EU and anti-trafficking—the evolution of concept

The fight against trafficking in human beings has been present in the heart of the European integration process practically since the creation of the European Union in the early 1990s. Previously, this issue could not have been raised directly by the European Communities due to their limited competences in the areas of migration and criminal matters.⁴¹ Therefore, the very first binding EC-oriented example of the referral to the wide-ranging THB problem, though, legally speaking, being beyond the scope of the EC, were the Articles 40(7) tiret 9 and 41(4)a tiret 9 of the Schengen Implementing Convention⁴² (CIS) which has included trafficking of human beings amidst transborder types of crime (see Heberton, Thomas, 1999: 150). In the Article 26 of the CIS there is also a reference to the crime of smuggling of human beings.

The establishment of the EU has paved the way forward to relate to the remaining issues of organised crime. In a short period of time the Justice and Home Affairs (JHA) Council adopted in 1993 the Recommendations on Trade in Human Beings for the Purposes of Prostitution.⁴³ This document has seen the THB mostly through the lenses of prostitution and lacked a comprehensive, strategic approach towards it (see Flynn 1996: 31, Berman 2003: 37). Later, the European Commission organised a conference in Vienna on trafficking in women during which a number of specific recommendations have been drafted. It is to be underlined that these 1996 recommendations even though not legally-binding had been a valuable point of referral for further works. Next, upon the conclusions from the Vienna conference, the Commission has issued, the first specialised

41 Only the European Parliament (EP) has generally raised this issue in several of its early resolutions: of 11 June 1986 (OJ C 176, 17.6.1986, p. 73); 14 April 1989 (OJ C 120, 16.5.1989, p. 352); 16 September 1993 (OJ C 268, 4.10.1993, p. 141); 18 January 1996 (OJ C 32, 5.2.1996, p. 88); and of 19 September 1996 (OJ C 320, 28.10.1997, p. 190). Another exception was the ACP-EC Joint Assembly’s resolution of 27 September 1991 on trafficking in women, adopted in Amsterdam.

42 The Schengen *acquis* has been published in OJ L 239, 22.9.2000. Note also that the migration problems have been touched upon within the TREVI Group since mid 1970s.

43 Council Press Release 10550/93 of 29-30 November 1993, see Annex 2.

Communication on trafficking in women for the purpose of sexual exploitation⁴⁴ of 20 November 1996 in which a wide variety of issues has been touched upon—from estimates on the number of victims and causes of trafficking (see De Ruyver 2002: 364, Long 2004:16), to a ‘development of an integrated multidisciplinary approach’, including information campaigns, rehabilitation of victims and co-operation with third countries. It defined trafficking ‘as the transport of women from third countries into the European Union (including perhaps subsequent movements between the Member States) for the purpose of sexual exploitation’. Furthermore it was said that ‘trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence through the trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery’. But even though this Communication proposed the so-called *Complete List of Action Points* it remained focused on trafficking in women, on the Central and Eastern countries, and lacked political approval of the governments of the EU Member States. Together with the Vienna Conference conclusions, the European Commission’s 1996 recommendations were ambitious in their contents but remained only on paper.

The 1996 Communication has been followed shortly by the Joint Action 96/700/JHA of 29 November 1996 adopted by the Council under Article K.3 of the Treaty on European Union (TEU) establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children⁴⁵ (i.e. STOP Programme). Its rather limited practical results forced the Member States to go beyond trainings-only approach. In a short time two important EU legal acts have been adopted.

The first was introducing a separate definition of trafficking into the Europol Convention⁴⁶ under the Council Joint Action 96/747/JHA⁴⁷ of 16 December 1996 (Rijken 2003: 113). In an Annex to the Convention, ‘traffic in human beings’ was defined as ‘subjection of a person to the legal and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children’. The second was the Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children.⁴⁸ With respect to this

44 COM (96) 567 final. See also previous Commission’s Communication on Incorporating equal opportunities for women and men into all Community policies and activities of 21 February 1996 (COM (96) 67 final) and the following ones on combating child sex tourism of 27 November 1996 (COM (96) 547 final) and of 26 May 1999 (COM (1999) 262 final). More: Kelly, Regan: 2000 and IOM: 2002. An interesting commentary on the European Commission’s Communication COM (96) 567 final can be found in the EP Resolution of 16 December 1997 (OJ C 14, 19.1.1998, p. 39), based on the Waddington Report of 27 November 1997.

45 OJ L 322, 12.12.1996, p. 7. The STOP Programme has been replaced by STOP II adopted under the Council Decision 2001/514/JHA of 28 June 2001 (OJ L 186, 7.7.2001, p. 7), and later on by AGIS adopted under the Council Decision 2002/630/JHA of 22.7.2002 (OJ L 203, 1.8.2002, p. 5). Other early EU programmes and financial initiatives that were eligible for THB topic were: DAPHNE I and II, OISIN, ODYSSEUS, GROTIUS, FALCONE and HIPPOKRATES. Some projects could be realised under PHARE, TACIS-LIEN, EQUAL, LEONARDO DA VINCI, CARDS and the joint EU-CoE anti-corruption programme Octopus II. Also the European Social Fund could be used for the anti-trafficking purposes.

46 OJ C 316, 27.11.1995, p. 2. The Europol’s activity in the anti-THB field has been operational though Member States of this international organisation (as the Europol is not a typical EU institution per se) retained its national law enforcement competences (Johnson 1999: 9). Europol produces also the so-called EU Organised Crime Report but their contents tend to lack coherence from the point of view of the anti-THB policy, often due to scarcity of information provided by the Member States (see for instance doc. 13702 CRIMORG 113 of 19 October 2004). There exists a separate anti-trafficking team of experts in its Office and a special Analytical Work File is managed by the Europol specifically with respect to the anti-trafficking data available from the EU Member States.

47 OJ L 342, 31.12.1996, p. 4. Under the Council Decision of 3 December 1998 (OJ C 26, 30.1.1999, p. 21) the definition was supplemented with the following phrase: ‘these forms of sexual exploitation also include the production, sale or distribution of child-pornography material’. This extension of the mandate came into force on 1 January 1999.

48 OJ L 63, 4.3.1997, p. 2. More on this in: Bosly, Van Ravenstein 2003: 32.

legal act, the situation was different: it contained some penal co-operation instruments but lacked a clear human rights orientation, as with respect to trafficking in adults, a profit motive constituted an essential part of the definition. Joint Action, an EU legal act without direct effect in the national legislations, perceived THB particularly as a crime (with due regard to the competences laid out in the TEU for this type of co-operation), thus could not refer to victims' rights in details. It also set out a new definition of trafficking: 'any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State' for gainful purposes with a view to sexual exploitation of persons other than children where use is made of coercion, in particular violence or threats; or where deceit is used; or there is abuse of authority or other pressure, which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved. It also covered trafficking in children 'with a view to their sexual exploitation' or abuse. What is disappointing is the status of implementation of the Joint Action 97/154/JHA. Until now a large number of EU Member States have not introduced into their laws and policies all of the obligations deriving from this legal act as there has never been a Community-like mechanism of enforcement on behalf of the Commission or the Secretariat General of the Council. *Pacta sunt servanda* was simply not enough to persuade the 15 participating countries to fully align themselves with the EU *acquis*.

The discussion continued on the political level. Thanks to the interest of the Dutch Presidency in 1997, the *Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*⁴⁹ has been adopted by the EU Ministers. Probably due to its specific focus on women and destination countries only and rather unsatisfactory human rights dimension it remained only politically binding and has not sparked any far-reaching developments. What is particularly interesting from the perspective of this Paper, is Guideline no. III.1.4 on the establishment of National Rapporteurs. It said that Member States shall 'provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women', 'develop criteria for reporting on the scale, nature and mechanisms of trafficking in women and the effectiveness of policies and measures concerning this phenomena', and 'encourage the cooperation of national rapporteurs on a regular basis'. Even though this guideline has been initially implemented only in the Netherlands and a few other states (Rijken 2003: 97), it is important to underline that such a co-ordination mechanism has been foreseen already in 1997 by the Member States as a useful national anti-THB tool.

The Commission's Communication of 9 December 1998 for further actions in the fight against trafficking in women⁵⁰ was supposed to be an answer to the above-mentioned EP Waddington Report. Its objectives included assuring that THB would remain high on the political agenda in the EU and its Member States; reinforcing international and European co-operation; strengthening a multi-disciplinary approach; and addressing clear message to the candidate countries, in the context of the accession process, of the necessity to take the national measures and to co-operate with the EU 'already now' on this issue.⁵¹ This Communication indeed goes strong into a re-hailed multi-

49 Doc. DCE/97-429 of 26 April 1997. See also a previous statement resulting from the NGO conference in the trafficking in women held in Noordwijkerhout on 5-7 April 1997.

50 COM (1998) 726 final.

51 See the so-called 12 *Commitments in the fight with trafficking in human beings* approved in Brussels on 28 September 2001 between JHA Ministers of the EU Member States and their counterparts from the candidate states (doc. SN 4026/1/01 REV 1 of 27 September 2001 + COR 1 of 2 October 2001). What is important in the Commitment no. 3, the creation of the specialist, multi-disciplinary units has been envisaged on the national level. Furthermore, as I had personally pointed out during the European Forum on prevention of organised crime workshop held on 30 October 2001 in Brussels, the 12 Commitments should be treated as a perspective for different anti-THB organisations (see Minutes and summary conclusions of the chairman, at: http://www.europa.eu.int/comm/justice_home/news/forum_crimen/index_en.htm, accessed 7 November 2005, p. 3). Compare also the Commitments with the Pre-Accession Pact on Organised Crime between the Member States of the

disciplinary direction: it says about deepening co-ordination among international organisations. It refers to the already commenced anti-trafficking projects by IOM, OSCE, CoE and Interpol, points towards the need to establish coherent methods for collecting data on trafficking, performing research and training, and for the very first time, relates to the trafficking as a migration phenomenon.⁵² Some space has been devoted thereof to the issues of penal co-operation (including work on the UN Convention against Organised Transnational Crime) and social assistance provided for the victims.⁵³ In an Annex to the Communication a new *Complete List of Action Points* has been also introduced.

Probably the main deficiency of the EU approach to the fight against trafficking in human beings might be observed with the 1998 Commission's Communication. One shall underline that the situation with this respect still has not changed. With respect to its limited competences in the field of practical law enforcement policy the Communities and the Union are limited to general steps such as trainings, organisation of seminars and conferences, and politically binding documents aiming at curbing the trafficking.⁵⁴ The EU's efficiency depends on the efficiency of its Member States and the link is gone. With limited legal possibilities to force the coherence of the national policies the Union remains in the starting point. Member States claim they would deliver real results but in the end of the day it still does not take place.

Another deficiency is the fragmentation of the anti-THB stance. Without amended decision-making procedures and a changed organisational structure, one cannot expect that trafficking would be efficiently combated on the different layers of the EU. In other words even though co-operation is taking place in the migration, law enforcement and human rights protection respectively, the Union may only say that this policy is being run simultaneously but not jointly in terms of fully-fledged co-ordination and monitoring mechanisms in place. An excellent example of this thesis is the Commission's document issued in marking the International Women's Day on 8 March 2001 titled *Trafficking in Woman: The misery behind the fantasy: from poverty to sex slavery. A comprehensive European strategy*. Indeed, as the authors of this document stated in its opening page, it was a compilation of 'information sheets' and 'funding sheets' only and it did not form a comprehensive strategy whatsoever.

With the 1997 Amsterdam Treaty entering into force on 1 May 1999 (see Monar 1998: 320, Tezcan 1998: 661, Peers 2000: 185, den Boer and Wallace 2000: 518, Nilsson 2002: 3), the situation changed for good as the European Union has become legally equipped with the new powers (an inclusion of the direct reference to the THB in the new Article 29 of the TEU) and instruments (the criticised Joint Actions have been replaced with the new legal acts: the Framework Decisions—FD). The 'Amsterdam reform' of the Treaties paved the way for a better regulation of the anti-trafficking policy and more in-

(Contd.) _____

European Union and the Applicant Countries of Central and Eastern Europe and Cyprus of 28 May 1998 (OJ C 220, 15.7.1998, p. 1).

52 This approach has been developed later on in a number of different European Commission's Communications, including COM (2001) 672 final of 15 November 2001, COM (2003) 323 final of 3 June 2003, COM (2005) 352 final of 28 July 2005; and the European Council conclusions from Santa Maria da Feira (2000), Seville (2002) and Thessaloniki (2003). See also the speech by António Vitorino, former Commissioner responsible for JHA matters, at the Conference on the Fight against the Channels of Illegal Immigration in Paris on 20 July 2000 (doc. SPEECH/00/820). On the other hand it is noteworthy that the Annual Migration and Integration Reports prepared by the European Commission still do not refer to the THB problem in a comprehensive and satisfactory way (see SEC (2004) 1349 of 25 October 2004).

53 See the Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (OJ C 260, 29.10.2003, p. 4).

54 Despite this operational limit of competences the fight against organised crime, including the THB, has been put forward in the variety of documents, such as the Vienna Action Plan (OJ C 19, 23.1.1999, p. 1); The Prevention and Control of Organised Crime: a European Union Strategy for the Beginning of the New Millennium (OJ C 124, 3.5.2003, p. 172); the Commission's Communication COM (2000) 786 final of 29 November 2000 on the prevention of organised crime; and the Joint report from Commission services and Europol of 13 March 2001 entitled 'Towards a European strategy to prevent organised crime' (SEC (2001) 433 final).

depth discussion on its contents. During the 1999 Tampere European Council Summit,⁵⁵ future steps aiming at a creation of an 'area of justice security and freedom' within the EU have been set out in order to fulfil the goals of the Amsterdam Treaty. In the conclusions of the Summit a comprehensive agenda has been sketched out. Its text referred to a 'need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings'. The European Council expressed its determination 'to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants'. It urged 'the adoption of legislation foreseeing severe sanctions against this serious crime' and underlined the need to work on an 'assistance to countries of origin and transit (...) in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States'. Furthermore in the Tampere conclusions it has been said that 'with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as (...) trafficking in human beings, particularly exploitation of women, sexual exploitation of children'. The Tampere Agenda has been sketched out later on in a special, regularly updated scoreboard. Concrete legislative steps have been taken shortly after the 1999 Summit.

Firstly, in the Communication of 7 June 2000 towards a Community framework strategy on gender equality (2001-2005)⁵⁶ the European Commission has referred to the trafficking as a 'gender-related' violence and urged the Member States to refer to this issue in its national policies. Later on the milestone legislative proposals have been set out in the Communication of 21 December 2000: a draft Council Framework Decision on combating trafficking in human beings and a draft Council Framework Decision on combating the sexual exploitation of children and child pornography.⁵⁷ Before the final adoption of these legal acts by the EU Council, some other developments are worth mentioning below.

Secondly, during a conference held on 12-15 December 2000 in Palermo the UNTOC Convention with its Protocols has been finally adopted. One of the parties to these documents are the European Community, however the ratification process of the anti-trafficking protocol is still in progress.⁵⁸ Due to the limited topical scope of this Working Paper, I shall refrain from a detailed analysis of the UNTOC (on this see *inter alia* Fijnaut 2000: 119) but one issue has an important impact on the situation in the EU. The Convention introduced a long-awaited universal definition of the trafficking in persons (Gallagher 2001: 975, Abramson 2003: 473), *de facto* different from the ones used in the EU Joint Actions of 1996 and 1997:

- (a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation

55 Doc. SN 200/99.

56 COM (2000) 335 final.

57 COM (2000) 854 final. It has been replaced by the following amended version of the Communication of 22 January 2001 (COM (2000) 854 final /2). See doc. IP/00/1530 of 21 December 2000.

58 COM (2005) 503 final of 17 October 2005. Rijken and Kronenberger also point out that 'due to the mixed character of the UN Convention, as well as the Protocols, clarification on the division of competence only occurred progressively' (2001: 517). See ratification table: http://www.unodc.org/unodc/crime_cicp_signatures_convention.html (accessed 8 May 2005), as it shows *inter alia* that UK has finally ratified the Convention on 9 February 2006. See recent doc. 5535/06 CRIMORG 12 MIGR 5 + REV 2 of 3 February 2006.

of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) 'Child' shall mean any person under eighteen years of age.

Jean-Paul Laborde, the Head of the Terrorism Prevention Service at the UNDOC, reacted to the achievements of the Palermo negotiations saying, that despite some controversies 'we succeeded in getting a definition of trafficking in persons for the first time' (2004: 98). But what is important here is that the European Community has formally bound itself with the UN definition, the Member States have done the same on the bilateral basis by signing and ratifying the Convention, yet the previous definitions still remained legally binding and the terminological conflict became visible.

Meanwhile, apart from the criminal law⁵⁹ and policing perspective of the fight against trafficking in human beings, another important development took place, namely the adoption of the Charter of Fundamental Rights (CFR) of the European Union⁶⁰ at the Nice European Council Summit on 7 December 2000. This specific document, despite its formally quasi-binding character (Jasiński 2003: 291) was supposed to reaffirm the rights applicable throughout the EC/EU *acquis* in order to make these rights more visible for the European citizens. In the Article 5(1), (2) and (3) it has been said respectively that 'no one shall be held in slavery or servitude',⁶¹ 'no one shall be required to perform forced or compulsory labour' and 'trafficking in human beings is prohibited'. Furthermore in the Article 3(2) tiret 3, dealing with the 'right to the integrity of the person', it has been clearly pointed out that it is prohibited to make 'the human body and its parts as such a source of financial gain'. The last statement is particularly important as it confirms the need for the EU dealing with the fight against trafficking in human organs and tissues, an issue questionably postponed by the Member States despite the Greek 2003 legislative initiative.⁶²

On 19 July 2002 the Council has adopted the Framework Decision 2002/629/JHA on combating trafficking in human beings.⁶³ One cannot underestimate the importance of this legal act which in a legally binding form (though without a direct effect) entrusts the Member States with well-developed criminal law provisions dealing with the THB offence. As Rijken says, it 'was set up in reply to the failure to implement the Joint Action of February 1997' (2003: 123). Obokata adds also that 'the common definition, approximation of the levels of punishment, and assistance to victims are the vital elements in the Framework Decision which have opened the door for promoting a common EU approach to phenomenon' (2003: 935). Indeed this legal act was the first concrete answer of the EU as a whole to the growing problem of the trafficking threat. The following definition has been introduced in the Article 1 of the Framework Decision as the punishable offences concerning the THB for the

59 As Ambramson says 'the Trafficking Protocol is not a general declaration of human rights. Rather it is a narrow document designed to fight an activity that results in numerous human rights abuses' (2003: 496).

60 OJ C 364, 18.12.2000, p. 1.

61 The United Nations 1948 Universal Declaration of Human Rights states in Article 4 that 'no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'. Similar provisions are present in the two 1966 UN Covenants.

62 OJ C 100, 26.4.2003, p. 27. This proposal has been also backed up by the European Parliament and previously highlighted in an Annex to the Europol Convention. The European Commission intends to come back to this issue in 2006 (see also Scheper-Hughes 2004: 29).

63 OJ L 203, 1.8.2002, p. 1.

purposes of labour exploitation or sexual exploitation (originally the European Commission envisaged two separate definitions):

The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- a) use is made of coercion, force or threat, including abduction, or
- b) use is made of deceit or fraud, or
- c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
- d) payments or benefits are given or received to achieve the consent of a person having control over another person

for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or

for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

It was also decided that the trafficking victim's consent to the exploitation, intended or actual, shall be irrelevant in case any of the means set forth in the definition have been used. Furthermore when the conduct referred to in the definition involves a child (and the child shall mean a person below 18 years of age), it shall be a punishable trafficking offence even if none of the means set forth in the definition have been used.

Again we can observe that the different definitions collide (see Obokata 2001: 3). In the context of the above shown definition it must be stressed that it derives from the Commission's proposal of 2000 but lacks organs' part from UNTOC Protocol, as it was decided that a separate legal act would cover this issue. An additional reference to 'pornography' links this definition to the Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet⁶⁴ and the consecutive Council Framework Decision 2004/68/JHA of 22 December 2003 on combating sexual exploitation of children and child pornography.⁶⁵ Obokata also mentions the question of subsequent exploitation (2003: 923) and Rijken refers to the question of the scope of the UN and EU definitions, where the second one implicitly covers also non-transnational trafficking, meaning THB that takes place within the borders of one country (2003: 69). Furthermore, the UNTOC Protocol clearly relates to the broader types of trafficking crimes, not only, as is in the Council Framework Decision, to the labour and sexual exploitation.

To make things even more complex, the European Community is intending to sign the Council of Europe's anti-trafficking 2005 Warsaw Convention (CETS No. 197) which incorporates the UN definition, but is accompanied by the so-called disconnection clause under which 'Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties'. With such an approach taken by the EU Member States during the works on the Council of Europe's Convention, i.e. the inclusion of the disconnection clause, it is hard to believe that anyone would be able to curtail the competing definitions sooner rather than later. Nevertheless, the need to clarify these legal questions remains pertinent on the anti-trafficking agenda.

64 OJ L 138, 9.6.2000, p. 1.

65 OJ L 13, 20.1.2004, p. 44. Together with the Framework Decision of 2002 these two legal acts repeal the Joint Action of 1997. See also the Council Resolution in the contribution of civil society in finding missing or sexually exploited children (OJ C 283, 9.10.2001, p. 1.

The second key part of the European Union *acquis* dealing with trafficking issues is the 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.⁶⁶ A long debate on this legal act and its controversial contents result from the conflicting points of view on the scope and character of the assistance granted to the victims of the trafficking in human beings. At the end of the day the Member States have been granted a large amount of legal exception clauses (Jasiński, Prus 2004: 187, Savona 1996: 25) allowing them to stick to the lowest common denominator only and limit an assistance to an almost unacceptable level. Transnational character of the THB has been specifically restated in the Directive as there is no automatic obligation for the Member State to make use of the Directive's instruments with respect to the intra-EU trafficking. Thus it is important especially to the third country nationals at the external borders of the European Union.

Anti-trafficking provisions may be also directly and indirectly found in the legal basis for the existence of the European Judicial Network,⁶⁷ the European Police College⁶⁸ (CEPOL), the Eurojust,⁶⁹ the joint investigation teams⁷⁰ (JITs), the liaison officers,⁷¹ and the European Agency for the Operation Cooperation on the External Borders of the EU⁷² (FRONTEX). Furthermore, national anti-trafficking procedures and instruments may be enhanced under the EU provisions dealing with the mutual legal assistance,⁷³ the fight against facilitation of unauthorised entry, transit and residence,⁷⁴ combating money laundering,⁷⁵ the European Arrest Warrant (EAW),⁷⁶ the orders freezing property or evidence⁷⁷, the compensation to the crime victims,⁷⁸ the confiscation of the crime related proceeds, instrumentalities and property,⁷⁹ and the mutual recognition of the financial penalties.⁸⁰ Other proposed provisions, dealing *inter alia* with the European Evidence Warrant (EEW),⁸¹ the EU Border Code,⁸² the Schengen Information System II,⁸³ the fight against organised crime,⁸⁴ the EU Agency for Fundamental Rights,⁸⁵ the exchange of information extracted from the criminal record,⁸⁶ the European

66 OJ L 261, 6.8.2004, p. 19.

67 OJ L 191, 7.7.1998, p. 4.

68 OJ L 256, 1.10.2005, p. 63.

69 OJ L 63, 6.3.2002, p. 1, with an amendment published in: OJ L 245, 29.9.2003, p. 44.

70 OJ L 162, 20.6.2002, p. 1.

71 OJ L 67, 12.3.2003., p. 27.

72 OJ L 349, 25.11.2004, p. 1.

73 OJ C 197, 12.7.2000., p. 3 and OJ C 326, 21.11.2001., p. 2.

74 OJ L 328, 5.12.2002., p. 17.

75 OJ L 328, 5.12.2002., p. 1.

76 OJ L 190, 18.7.2002., p. 1.

77 OJ L 196, 2.8.2003., p. 45.

78 OJ L 261, 6.8.2004., p. 15.

79 OJ L 68, 15.3.2005., p. 49.

80 OJ L 76, 22.3.2005., p. 16.

81 COM (2003) 688 final of 14 November 2003.

82 COM (2004) 391 final of 26 May 2004. The JHA Council approved the draft Community Code on 21 February 2006.

83 COM (2005) 230 final of 31 May 2005 and COM (2005) 236 final of 31 May 2005.

84 COM (2005) 6 final of 19 January 2005.

85 COM (2004) 693 final of 25 October 2004. It should be noted that the works on the new Agency are related also to the new Daphne Programme (COM (2005) 122-2 final of 6 April 2005), under which emphasis will be added to the anti-trafficking activities.

Enforcement Order (EEO),⁸⁷ taking account of convictions in the EU Member States in the course of new criminal proceedings,⁸⁸ shall also influence an effectiveness of the anti-THB national policies. Furthermore, the THB issue has been raised in the framework of the II pillar of the European Union-intergovernmental Common Foreign and Security Policy (CFSP), spreading later on to the European Neighbourhood Policy (ENP). Trafficking has been raised several times during political discussions with the third countries and got more concrete as the Asia-Europe Meeting-ASEM example shows: the *Action Plan to Combat Trafficking in Persons, Especially Women and Children* has been adopted on 25 May 2001. Still we can observe some incoherence in the inter-pillar attention being paid to the THB, like in the European Security Strategy of 12 December 2003 entitled *A secure Europe in a better world*. In this key political CFSP document it has been said that 'Europe is a prime target for organised crime. This internal threat to our security has an important external dimension: cross-border trafficking in drugs, women, illegal migrants and weapons accounts for a large part of the activities of criminal gangs. It can have links with terrorism'. Later on the Strategy continues: '90% of the heroin in Europe comes from poppies grown in Afghanistan—where the drugs trade pays for private armies. Most of it is distributed through Balkan criminal networks which are also responsible for some 200,000 of the 700,000 women victims of the sex trade world wide'. As we can see the data used seems to lack a factual foundation, a limitation to women-only approach is disappointing and drugs link is at least controversial and unclear.

European Union and trafficking—new developments

Shortly after the adoption of the above mentioned Council Framework Decision the new dawn for the THB debate has come: 'the time for conferences'. On 18-20 September 2002 the *European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century*, organised jointly by the EU and IOM in Brussels,⁸⁹ brought together more than 1,000 participants representing the EU institutions and Member States, accession and candidate countries, third countries as well as numerous international organisations, including NGOs. The Brussels Declaration on Preventing and Combating Trafficking in Human Beings was the final outcome of the event and it soon proved to be an important milestone in the fight against the THB in Europe. On 8 May 2003 the Council adopted the conclusions⁹⁰ concerning the Brussels Declaration which has been also hailed the key anti-trafficking reference document by the European Commission (Jasiński, Karsznicki 2003: 92).

What makes the Brussels Declaration so important for the fight against trafficking, especially as this document has no legally binding power for the Member States? Firstly, it contains a large number of well-drafted and ambitious recommendations, standards and best practices for the anti-THB actors on an international and national scene, and secondly it relates to the multidisciplinary character of the fight against trafficking in a different way: from the point of view of the 'entire trafficking chain' thus putting an emphasis on the victims positions. The 19 main points of the Declaration have been divided into four different sections: 'mechanisms for cooperation and coordination', 'prevention of trafficking in human beings', 'victim protection and assistance' and 'police and judicial cooperation'.

(Contd.) _____

86 COM (2004) 664 final of 13 October 2004. The trafficking phenomenon may be also discussed by the EU Police Chiefs Task Force (PCTF).

87 Doc. 5597/05 COPEN 13 of 24 January 2005.

88 COM (2005) 91 final of 17 March 2005.

89 It is interesting to note that in 1889-1890 another Brussels Conference took place to deal with the continued trade in slaves in Africa and the Middle East. The Century Brussels Act adopted at the time prohibited the maritime slave trade, though it did not provide the right of search. It also provided for a central institution to gather information, but no mechanism was set for enforcement of the provisions of the Act.

90 OJ C 137, 12.6.2003, p. 1. The text of the Brussels Declaration has been annexed to the Council conclusions.

From the point of view of my main research interest, it is important to point out that in Recommendation no. 1 it has been said that ‘all international bodies, governments and other actors internationally active to fight and prevent trafficking in human beings, should intensify their cooperation and exchange of information with a view to achieving a better coordinated response, to avoid overlaps and duplications of work, and to maximise the impact of actions taken at international level’. Relations with the OECD and the Council of Europe have been highlighted from the perspective of co-operation between international organisations (it is a pity that other organisations, such as the OSCE or UNICEF have been omitted). In the Recommendation no. 2 it has been decided that ‘the validity and performance of standards and best practices of the counter-trafficking policy at the national and international levels should be subjected to review, consolidation and development. At European level, the Experts Group, comprising representatives from governments, IGOs, NGOs, international bodies, researchers, the private sector such as the transport sector, and other stakeholders should be set up by the European Commission’. Also ‘at national level, a systematic mechanism, such as the appointment of national rapporteurs and/or regular multidisciplinary group meetings, would support a regular evaluation, monitoring and further improvement in the implementation of national policies. Links between such mechanisms should be established at European level, in close cooperation with the EU institutions, Europol, the European Judicial Network, Eurojust, and CEPOL’.

An idea of forging these already detailed recommendations into something even more concrete was ambitious in itself. Indeed, upon the Commission Decision 2003/209/EC of 25 March 2003 setting up a consultative group, to be known as the ‘Experts Group on Trafficking in Human Beings’,⁹¹ the new discussion body has been approved. The Group, consisting of highly qualified experts (including the Polish prosecutor Krzysztof Karsznicki), has worked out probably the most comprehensive document concerning the fight against THB in the European Union: the *Report on the Trafficking in Human Beings* of 22 December 2004. This complex document covers practically all fields of trafficking phenomenon with due respect to the human rights dimension, migration policy and law enforcement. It says that ‘given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi levelled and integrated approach is needed’. One should recall also that the Report has been greeted by a large number of non-governmental organisations.

Such an approach has been enhanced with 132 detailed recommendations, including *inter alia* on ‘National Referral Mechanisms and institutional anti-trafficking framework’ (see Kroeger, Malkoc, Uhl 2004: 15). It has been said that NRMs should be established to ensure the proper identification and reference to the trafficked persons, including the trafficked children and to ensure that they receive adequate assistance while protecting their human rights. A National Referral Mechanism should incorporate guidelines on the identification and treatment of trafficked persons, including specific guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights; a system to refer trafficked persons to specialised agencies offering protection and support; and the establishment of binding mechanisms to harmonize the assistance of trafficked persons with investigative and crime prosecution efforts.⁹² ‘Coupled with the National Referral Mechanism Member States should establish a governmental co-ordination structure consisting of a National Governmental Coordinator and a cross-sector and multidisciplinary Round Table to develop, coordinate, monitor and evaluate national action plans and policies. One of the tasks of the Round Table should be to develop a quick and “light weight” mechanism to address individual complaints with regard to the proper identification and assistance of trafficked persons.’ These national schemes would be enhanced later on with an establishment of a European Anti-Trafficking Network ‘in order to facilitate co-operation, contacts and exchange of information as well as the development, monitoring and evaluation of anti-trafficking policies on the European level’. The

91 OJ L 79, 26.3.2003, p. 25. An amended composition of the Group has been published in: OJ C 205, 30.8.2003, p. 3.

92 See the Council Recommendation on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings of 27-28 November 2003 (doc. 15028/03 CRIMORG 82 MIGR 102 ENFOPOL 104 of 19 November 2003). See also doc. 14995/03 (Presse 334).

Report says further that 'the Network should build on the national cooperative structures, in particular the NRMs, and consist of contacts points designated by each Member State as well as a contact point designated by the Commission.'⁹³ It should include both governmental and non-governmental agencies and cover the areas of prevention and victim assistance as well as law enforcement and police and judicial co-operation'. As it can be seen, the Report has been drafted solely on behalf of its members who have successfully managed to create a single and coherent document, but it visibly lacked Europe-wide approach and focused, understandingly to some extent, on the EU Member States in particular. This lack of more horizontal vision might be observed with an example of the European Anti-Trafficking Network that has not been screened, double checked with the concept of the OSCE *Alliance*, which on 23 July, that is half a year before introduction of the Report, has been brought to life in Vienna.

The 2004 *Report on the Trafficking in Human Beings* has been prepared simultaneously with the *Hague Programme: Strengthening Freedom, Security and Justice in the European Union*⁹⁴ that replaced the Tampere Agenda of 1999.⁹⁵ The new strategic JHA programme has been adopted by the European Council on 5 November 2004 and, partially relying on an envisaged successful completion of the ratification process of the EU Constitutional Treaty,⁹⁶ pointed towards establishing a closer link between the anti-trafficking and the migration policy. It has been said that 'the citizens of Europe rightly expect the EU, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof'. The strengthened co-operation is to be based on close relations with Europol, Eurojust and FRONTEX. The European Council decided also that 'with a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings, the European Council invites the Council and the Commission to develop a plan in 2005'. These priorities have been confirmed later in the *Council and Commission Action Plan implementing the Hague Programme*.⁹⁷

Indeed, later in 2005 the new Communication on the THB problem has been prepared by the European Commission, as envisaged in the Hague Programme, entitled *Fighting trafficking in human beings—an integrated approach and proposals for an action plan*.⁹⁸ Apart from a specific, academic-like construction similar to a research paper, the Communication does embark on some important topics. Firstly, it clearly commits the EU institutions and Member States to follow 'a human rights centred approach' for their anti-THB policies and regards this approach as a good basis for running the international co-operation against the THB. Then, it says that the 'Member States should provide for necessary organisational structures, specialised personnel and adequate financial resources to their law enforcement authorities to effectively combat human trafficking' and 'appropriate coordination and cooperation structures are necessary, but can differ from one country to another as long as they ensure that major aims of an anti-trafficking policy are effectively achieved, in particular proper identification and referral of trafficked persons to protection and support mechanisms. They should bring together and balance different interests of the institutions or organisations involved.' But the European

93 The Report says that also within the European Commission the coordination and cooperation should be ensured with regard to various Directorates General (DGs) concerned with trafficking in human beings, for example by using the inter-service group meetings and consultations as often as possible.

94 OJ C 53, 3.3.2005, p. 1.

95 In the so-called Tampere Bilans (COM (2004) 401 final of 2 June 2004) the European Commission has said that 'with regard to trafficking in human beings, particularly women and children, preventive and enforcement action must continue to be combined'.

96 OJ C 310, 16.12.2004, p. 1.

97 OJ C 198, 12.8.2005, p. 1. For 2006 the 'review and, where appropriate, further development of the legal framework preventing and combating trafficking in human organs, tissues and cells'.

98 COM (2005) 514 final of 18 October 2005. See doc. MEMO/05/381 of 19 October 2005.

Commission suggests above all, with respect to the national anti-THB co-operation, that the ‘Member States should consider establishing National Referral Mechanisms ensuring identification and referral of trafficked persons’, based on the previous OSCE recommendations. Furthermore, a governmental coordination structure shall be drawn up in order to coordinate and evaluate the national policies and contribute to the mechanisms addressing individual complaints. National cooperation and coordination mechanisms should form the basis for a corresponding mechanism at the EU level providing for expert advice and a broad public-private dialogue. It has been decided that the Commission will examine appropriate coordination and cooperation mechanism at the European Union level ensuring the development of minimum standards and benchmarks, evaluation rounds of the EU Member States’ anti-THB policy and indication of priority topics, especially relating to victim support and protection. Last but not least, it has been said that the Commission will continue to cooperate with the Council of Europe and with the OSCE, especially within the *Alliance against Trafficking in Persons*.

The new Communication has some new insights into the anti-THB sphere of interest. It strongly reaffirms a multidisciplinary approach as included in the 2004 Experts Group Report, but not all of its recommendations have been approved by the Commission. Such a way of interpreting the Experts will seem rather short-sighted though what is visible, is a limited attention paid to the human rights orientation in more practical terms. The Communication is yet silent on a coordination scheme with respect to the anti-trafficking policy in the European Union due to a lack of a single position on this issue within the Member States.

As the above-described Communication has been the Commission’s answer to the Hague Programme, the Council, working under United Kingdom’s (UK) Presidency, reacted respectively with a draft *Action Plan on Trafficking in Human Beings*⁹⁹ which has been tabled before the Council Multidisciplinary Group on Organised Crime (MDG) on 19 September 2005. With a view to the development of common standards, the best practices and mechanisms to prevent and combat trafficking in human beings, the table of actions has been prepared and will be reviewed, revised and updated regularly by the adoption of the document. The Presidency has suggested the so-called *Broad Principles* to guide the implementation of the Plan: (1) ‘EU action should be focused on improving our collective understanding of the issues and joining up our efforts to maximise our effectiveness’, (2) ‘the EU recognises the importance of taking forward a Human Rights and Victims-Centred approach’, (3) ‘the EU should strengthen its operational response to trafficking in human beings’, (4) and the ‘Member States should find more and more intensive ways of taking forward co-operation’.

The main problem with the draft Action Plan is its limited ‘breakthrough’ character. It is firmly attached to an idea of ‘seminar-oriented approach’, a general exchange of opinions and the mid- and long-term implementation deadlines: namely an ‘old-school’ policy that, from my perspective, shall be avoided in the European Union in the twenty-first century (Jasiński 2006). During the proceedings held in the various Council groups the draft document has been deeply revised and its final text, as adopted by the JHA Council on December 2005, lacked the momentum especially in the terms of the poor organisational arrangements and lack of a far-reaching vision.¹⁰⁰

Selected actions envisaged in the Action Plan include: the Member States to share lists of priority origin and transit countries and most frequently encountered routes, the EU funding to be prioritised against bids which match areas highlighted by the Action Plan, the prevention and combating of the trafficking to be a thematic priority for the future EU financial arrangements/programmes for JHA, ‘a

99 Doc. 12402/1/05 REV 1 CRIMORG 93 MIGR 45 ENFOPOL 113 of 26 October 2005. See also the Proposal for a Comprehensive Plan to Combat Illegal Immigration and THB in the European Union, adopted during the Seville European Council in 2002 (OJ C 142, 14.6.2002, p. 23), in which despite its title only 2 of 102 conclusions generally related to the THB problem as a such.

100 OJ C 311, 9.12.2006, p. 1. It is interesting to notice that the final version of the Action Plan, as published in the Official Journal of the European Union, kept the provisional highlights of the several phrases in the text, as in the previous draft versions of the document.

political debate on the EU anti-trafficking policy should be held, and compliance of the latter policy with human rights standards and the need for further action be assessed', to develop the common guidelines for the collection of data (including comparable indicators), to review the current EU wide work on estimating the scale of the problem with the aim to target all forms of trafficking, 'to develop a common research template for Member States to use to increase research available on specific areas, starting with child trafficking', 'to develop EU campaign materials in cooperation with the NGO community', 'to create a network of media contacts on trafficking to publicise successes within and outside the EU', 'Member States to agree to share information via I/24/7 and the trafficking and smuggling messaging service system to Interpol, to share pertinent information and intelligence with Europol, and Europol to strengthen links with Interpol', 'Europol and FRONTEX to develop complementary cooperation', 'to conduct an inventory of legislation which complements that in place to criminalise trafficking', and 'to develop a model protocol between Member States and NGOs to include minimum levels of support, liaison points in key services and standards of working practices'.

Particularly controversial actions are plans 'to develop the proposals for coordination and cooperation mechanisms needed at the EU level', to 'implement the use of biometric identifiers in issuing and verifying EU residence permits and visas', the 'EU to strengthen formal links to International Organisations to tap into data on routes, sources and methods', the 'PCTF to monitor operational cooperation between Member States on trafficking and where appropriate make recommendations for its improvement', and The 'Member States to make maximum use of Eurojust and its coordinating role and the European Judicial Network'.¹⁰¹ The EU is also going 'to consider further developing the OSCE manual (...) and to propose recommendations and amendments to the Presidency and Commission with a view to presenting a coherent set of amendments from the perspective of the EU at a future revision of that manual or as necessary a standalone EU document'.

It is visible, in terms of far reaching deadlines and mixed list of bodies responsible for implementation, that the Action Plan is a complex 'wish-list' created rapidly in a 'brainstorming' manner, set beyond the approach taken during the 2002 Brussels Conference and by the Group of Experts. It does not also give any precise answer who is going to be finally responsible for implementation of the document.

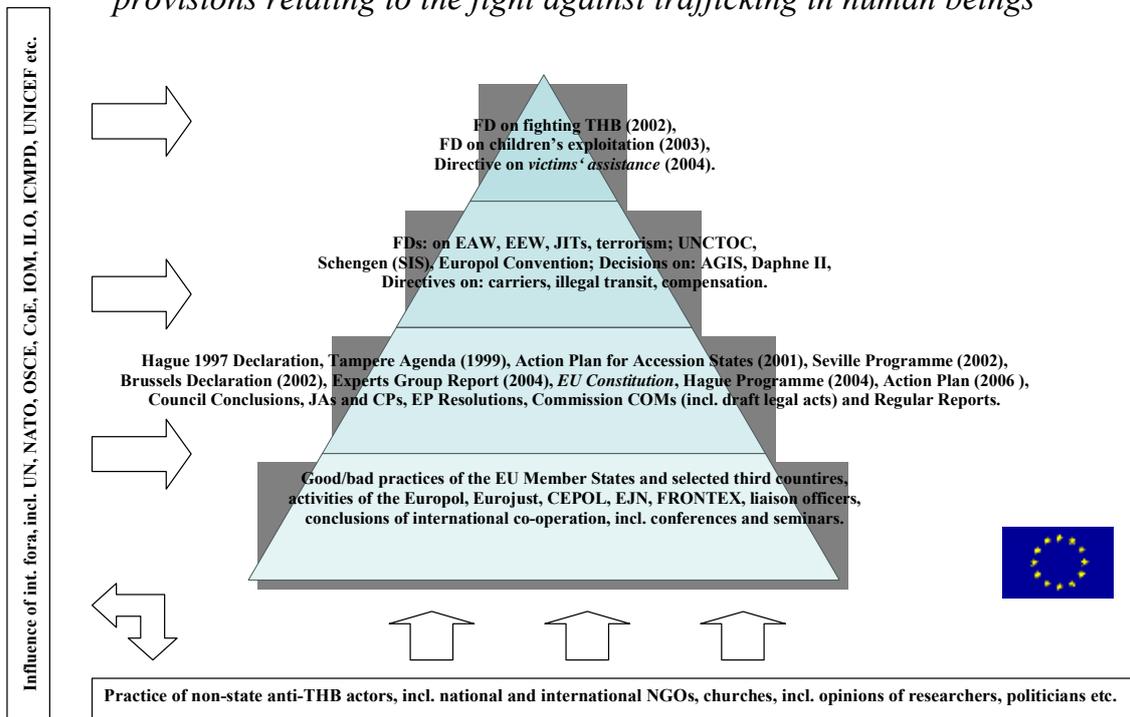
The complexity and a multi-topical character of the EU anti-trafficking co-operation has been presented in detail above, with an intention to confront Poland with an amassed number of provisions to be taken into due consideration. An important conclusion here is that the EU policy often lacks certain level of coherence within, in terms of the real holistic approach, and it should be conceived by the Member States. And, as del Marmol refers to the international organisations active in the anti-THB policy, also the national authorities shall ensure 'that the right hand know what the left hand is doing' (EPC 2004: 6). But this does not always happen automatically. Figure 2, below, illustrates EU and other international provisions concerning the fight against trafficking in human beings.¹⁰²

101 In doc. 6534/06 CRIMORG 33 ENFOPOL 30 of 20 February 2006 the Austrian Presidency highlighted the issues in the Action Plan that concern the Police Chiefs Task Force, though 'not as a group, but where the Police Chiefs have a role to play to ensure that their respective Member States comply with the action plan'. Such a shift towards the policing-oriented approach, instead of a quasi-holistic one included in the final version of the Action Plan, cannot be treated as a good way forward, as it lacks a necessary comprehensiveness.

102 This figure is a revised and updated version of the presentation given at the conference 'Trafficking in Persons: Towards a Common Legal Framework in the EU?', organised in Trier on 21-22 October 2004 by the Academy of European Law (ERA).

Figure 2

A multi-layer scheme of the selected European Union's and international provisions relating to the fight against trafficking in human beings



Questionnaire on international co-ordination of anti-trafficking policies

On 12 June 2005 I had sent a short questionnaire aimed at collecting a rough information about their opinions on the present state-of-affairs of international co-ordination of the fight against the THB, with particular attention paid to the European scene of the international organisations, to about 140 representatives of different international and national, governmental and non-governmental institutions and organisations, researchers and academics active on the anti-THB plane both in Europe and globally. With the over-lapping standards and competing sources of assistance to the victims combating the THB is evidently more difficult a task then initially envisaged. Therefore taking further measures against the lacking co-ordination deems to be a necessary step, especially when seen from the European angle. As the whole exercise was solely academic and fully anonymous therefore an outcome of the questionnaire does not reveal any particular details of the respondents. My key intention was to show how the experts perceive the anti-THB status quo and I wanted to gather personal opinions, not an official position of the respondents. An interesting picture of the situation may be delivered from the total of 27 replies I received until the end of July 2005 from different stakeholders. Indeed, rather low response rate is to some extent disappointing nevertheless, it sheds some light on the issue at stake, though the data is not fully reliable. The majority of the persons replying to the questionnaire said also that the idea of this query is very important and shall be further worked out, possibly in a separate study.

The perceived coordination of the anti-THB activities between different national and international, governmental and NGO actors is seen as disappointing. The respondents considered it necessary that this coordination should be amended. Then, most of the answers received expressed that there truly exists a competition between various international and national anti-trafficking actors. On the other hand, there seems to be a visible lack of information about different actions taken on the anti-THB

field by other national and international partners. Most of the recipients felt under-informed about their counterparts' work, what means that networking of institutions requires more attention. Therefore the OSCE *Alliance* cannot prove its particular efficiency at least yet.

Another set of questions related to the assessment of the usefulness of the European Union's anti-THB policy. Here answers were almost straightforward as most of the respondents have noticed a limited value of this policy, but at the same time majority positively responded to the question concerning the international organisation, that shall play the leading role in co-ordinating the anti-THB policy in Europe: they claimed that the EU together with the CoE and OSCE shall co-ordinate European anti-trafficking related activities, especially in the round-table model. They have also determined that the international policy towards the distribution of funds for anti-trafficking NGOs and assistance to the victims is too restrictive. Unfortunately, the New Financial Perspective for the European Union (2007-2013) does not answer this criticism and the envisaged proposals for the new financial programmes may add even more ambiguity to the already mixed picture of the EU anti-trafficking policy.

More diversified replies were received with respect to the priority of the anti-THB activity. Half of the respondents preferred holistic approach while the rest leaned towards the human rights orientation only. Also most of the experts asked were hesitant to take up the role of the international co-ordinator or a leader of the anti-THB policy on the European level. They all thought that the partnership with Central and Eastern Europe deems to be the most important for the anti-trafficking policy, but some of them added that such a co-operation shall encompass also areas of South-Eastern Asia and Africa. It means that geographical orientation of the anti-THB actors remains the important factor while assessing the general European Union's policy with this respect.

To what extent do the above shown results influence Poland and other EU Member States? Indeed, from an outcome of my query we can draw a confirmation of the perceived status quo with lacking inter-institutional co-ordination, poor distribution of assistance and weak information flow between the stakeholders. This situation must be subject to a change and only a joint initiative with the regard of the EU, OSCE and CoE may grant Europe, as a whole, the legitimate co-ordination framework.

Such a framework, as the experts replying to the questionnaire suggest, shall be based on a typical round-table format, meaning that competences and prerogatives of the institutions involved in such a form of discussion would remain unchanged. It all comes down to the two main features of an envisaged EU anti-trafficking scheme, as suggested in an introduction to this working paper: 'pooling of resources' and 'mapping of activities'. If these features were successfully accompanied by an efficient discussion forum, just like the OSCE *Alliance*, and more friendly, oriented on the needs of end-users, the financial background was in place, the chances of delivering good results in terms of preventing and fighting the THB scourge would be bigger. As soon as we overcome selfishness in the relations between various international actors, we will be able to establish a systemically sane modus operandi and, at the end of the day, help the victims and potential victims of the trafficking phenomenon as well as punish their offenders.

Indeed, results of the questionnaire give only a simplistic view on the situation, nevertheless the majority of respondents confirmed that there are visible deficiencies in the European policy against trafficking in human beings. It would be naïve to think that the EU is the best institutional answer to the problems recognized, nevertheless, its financial resources and political backing remain a 'tempting' and still open option for the European anti-THB actors, if possible to act jointly with OSCE. Less bureaucracy and more effect-oriented activities are definitely what the stakeholders are now in need of. The political understanding of the trafficking phenomenon is already in place and further general discussions on its background and contents are not necessary anymore, especially in the Member States of the European Union. The respondents to my query clearly indicated that it is the high time for real anti-trafficking action now.

Co-ordination of anti-trafficking policy in Poland

Before the 2002 Brussels Conference there had been no concise, institutionalised framework of the anti-trafficking policy in Poland, despite having operational (the Police, Border Guard, the judiciary, NGOs) and legal (Criminal Code, Code of Criminal Procedure) capacity.¹⁰³ One of the reasons for this situation was that there has been a minor political interest in the THB issues and even a lack of awareness between ministerial experts. The ones who took part in the ‘crawling’ discourse were coming from non-governmental organisations and academia. The issue of the trafficking used to appear and shortly after vanish from the governmental documents as a practical influence of the UN, OSCE and CoE policies was fairly limited. The positive results, if any, usually stemmed from the interest in furthering the criminal proceedings by the policemen or prosecutors. Recent statistics on the finalised criminal proceedings in Poland show that there’s been practically no change in the number of cases brought before the courts, prosecuted traffickers and recognised victims.¹⁰⁴ This means that with the legal basis of the anti-THB policy unchanged, the practice of the fight against this scourge, despite political developments, eventually remained the same. Also until now one cannot precisely define the Polish policy in terms of its clear-cut preventive/repressive character, as the prostitution is not illegal in Poland for the time being and, on the other hand, the first-contact assistance to the victims of the trafficking is often limited and the large-scale prevention campaigns still remain a challenge.

On 16 October 2003, practically a year after the Brussels Conference, the Polish Council of Ministers adopted the first *National Programme of Fighting and Prevention of Trafficking in People*.¹⁰⁵ The task of the Programme was to implement recommendations arising from the international obligations of Poland ‘in order to create conditions necessary for efficient counteracting and fighting the trafficking in people’. Its implementation was run by a number of ministries and central offices which were directly responsible for financing planned actions within the budgets at their disposal. This meant that the whole Programme primarily had no separate budget line and relied on the availability of the ministerial sources or external funds, like the bilateral grants (for instance from UK or US¹⁰⁶ Embassies in Warsaw) and the EU financial programmes (i.e. AGIS, EQUAL, DAPHNE).

One of the most visible outcomes of the Programme was the establishment of the permanent *Team on prevention and fight against trafficking in human beings* with representatives of the Ministry of Interior and Administration, the Police Headquarters, the Border Guard Headquarters, the Office for Repatriation and Aliens, the Ministry of Justice, the Ministry of Education and Science, the Ministry of Economy, the Ministry of Labour and Social Policy, the Ministry for Foreign Affairs, the Ministry of Health, and the Office of the Committee for European Integration. But the most important part of the newly established body upon the Ordinance of the Prime Minister no. 23/2004 of 5 March 2004 was that within the Team there was a place reserved for the representatives of the non-governmental sector, namely the Foundation ‘La Strada’ and the Polish Caritas,¹⁰⁷ later on joined by the Foundation ‘Nobody’s Children’. Especially the first of these NGOs plays a crucial role in advancing the proceedings with regard to the prevention and assistance to the victims. Its more than 10-years long experience in this field and an renowned international co-operation with foreign partners made ‘La Strada’ an essential counterpart for the Polish Government to an extent that, thanks to this partnership, the a number of goals envisaged in the National Programme have been duly met.

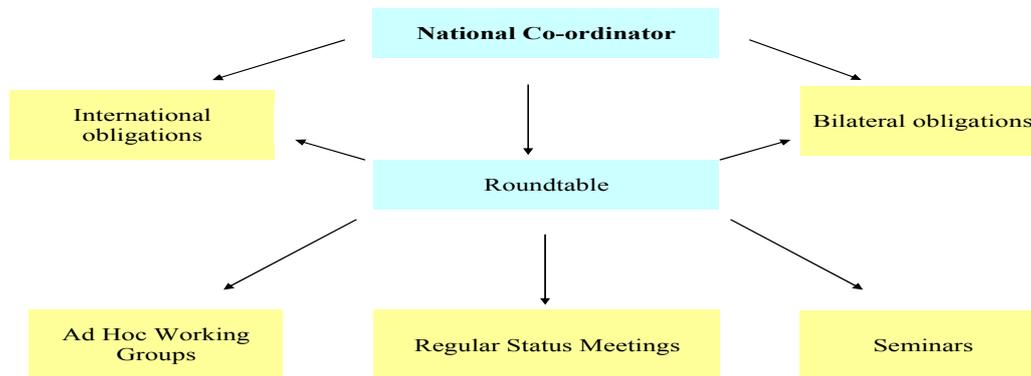
103 See inter alia Pearson 2002: 211. One should bear in mind that before the 1990s the trafficking phenomenon was merely present and not thoroughly researched in Poland, and now is often seen as a counter-effect of the democratic transformation process.

104 In 1995-2005 a total of 360 cases had been finalised, 693 persons prosecuted and 1708 victims recognised.

105 See <http://www.mswia.gov.pl/index.php?dzial=166&id=2174> (accessed 8 November 2005). This is also an official website of the Polish Ministry of Interior and Administration devoted to the anti-trafficking activities.

106 See <http://www.humantrafficking.org> (accessed 7 May 2004).

107 On Caritas see interesting *Code of Conduct to protect children and young people form abuse and sexual exploitation*, as a part of the *Child Protection Policy Framework*.

Figure 3

The Team's objectives include the monitoring of the implementation of the Program, collecting information and statistics on the THB problem and analysis thereof, proposing actions for entities represented in the Team and other bodies of governmental administration, their subordinates or bodies supervised by them, and co-operating with foreign partners. The leading role is played by the Ministry of Interior and Administration, nevertheless, practical competences are often disbanded between other stakeholders. The Team has also established a Working Group in order to facilitate the works and allow for organisation of a larger number of meetings on the expert level. It should be stressed that one of the important factors behind Team's efficiency is the personal attachment and devoted work of Mr. Piotr Mierecki, the Secretary of the Team, who often elaborates ministerial consensus and manages the links between different governmental bodies and offices, including the Police and the Border Guard.

As it has been observed, such a division of powers, lacking indeed a strong and formal inter-agency type of co-ordinator, resulted in a limited co-operation of the Team with the Ministry for Foreign Affairs and the then-Government Plenipotentiary for Equal Status of Men and Women during negotiations in the Council of Europe's CAHTEH *Committee on European Convention on Action against trafficking in human beings*. Also to some extent the information on different activities undertaken on the anti-THB plane was arriving late and the Team had minor chances to discuss them thoroughly enough (see Kelly 2005: 254). On the other hand, one shall underline a number of excellent developments as efficient trainings of policemen, border guards, prosecutors, judges and social workers have taken place, despite a certain degree of institutional competition with this regard,¹⁰⁸ a number of media anti-trafficking campaigns have been run, special algorithms for the Police and the Border Guard officers have been prepared and the Act on Aliens has been amended with respect to introducing a short term stay for trafficked victims, in line with the 2004 EU Directive. What has not been achieved yet under the first National Programme was an amendment of the definition of the trafficking in human beings in the Criminal Code in order to meet the requirements resulting from the Palermo Protocol, EU 2002 Framework Decision and CoE Convention, also some developments are still needed in the field of co-operation with the selected source, transit and destination countries, particularly dealing with information exchange.

These deficiencies should be dealt with under the second National Programme for 2005-2006 adopted by the Council of Ministers on 26 April 2005. Perhaps the most important change with respect to the previous Programme was the introduction of the budget line devoted to an implementation of the new actions. The reporting activities and assistance to the victims have also been further enhanced,

108 Particularly during Autumn 2004 when several large-scale trainings and conference took place in a short time-span making the end-users of these events a bit confused.

and Working Group of the Inter-Ministerial Team started to meet more regularly and discuss more specific issues,¹⁰⁹ including deepening of the regional cooperation, exchanging national practices with counter-parts from the source and destination countries, referring to the financial aspects of the THB (i.e. how to curb the flow of illegal financial profits to the source countries), organising the specialised training sessions and, last but not least, fighting against labour exploitation.

General features of the Polish model include, therefore, a strong European orientation (thanks to the 2002 Brussels Conference, EU accession negotiations and, to some extent, US diplomacy pressure¹¹⁰), an excellent co-operation with NGOs, a largely informal person-to-person approach, an often unpractical division of the ministerial competences, also due to a substantial number of self-multiplying international actors on the scene, rather weak decision-making power of the Inter-Ministerial Team, somewhat superfluous existence of the Team's Working Group, the limited financial resources, a gradual only acceleration of works¹¹¹ and, above all, the lack of the post of a national co-ordinator or rapporteur¹¹² (see Figure 3 above).

As the OSCE underlines, setting up the institutional anti-trafficking framework, including a cross-sectoral Round Table and appointing a national governmental co-ordinator on the THB, ensures a participatory approach through which monitoring and evaluation exercises lead to the reform of legislation, policy and practice. In the very matter of fact, the Polish co-ordination system does not yet fit the NRM model due to not having the National Rapporteur in place, though the rest of this Mechanism is, or shortly will be, in place. Taking up this decision would enhance efficiency and coherence of the national activities, align Poland with the good practice of the OSCE and confirm on the European level its attachment to the trafficking problem. On the other hand one cannot show an efficient alternative to the post of the National Rapporteur as it is the best answer to a multifaceted reality of the fight against the THB. And last but not least, it is highly recommended to continue the good practice of trainings and seminars organised for the end-users responsible for practical aspects of the anti-THB policy, as the well-functioning of the institutions must be strengthened with the professional and experienced experts in the field.¹¹³

But would we be blamed for not creating the post of the National Rapporteur and simply keeping the present model unchanged? Would there be any formal non-deliverance, against such political obligations? Legally speaking, there would be no grounds for such a contestation but from the political perspective this would still mean certain non-deliverance in the view of the international organisations. For the sake of fine-tuned co-operation of the Polish authorities with these organisations, the right step to be taken is the creation of the post of the anti-trafficking National Rapporteur.

109 During the JHA Council meeting on 21 February 2006 in Brussels, the Swedish delegation drew attention to the risk of increased trafficking or smuggling of human beings (in the context of the prostitution) with respect to the forthcoming Football World Cup in Germany in 2006 (doc. 6077/06 (Presse 38) of 21 February 2006, p. 15). This topic has also been raised during the meeting of the Working Group.

110 Poland pays particular attention to the annual Trafficking in Persons (TIP) Reports.

111 I.e. 2003: 1st National Programme; 2004: Inter-Ministerial Team; 2005: going on-line and 2nd National Programme.

112 The concept of a National Rapporteur was recently envisaged in the EU Hague Declaration, the Brussels Declaration; the Experts Group Report and also the OSCE policy documents, as a good practice for the EU Member States. Accordingly, apart from enhancing the inter-ministerial co-ordination, the National Rapporteur would be able to subscribe to the National Referral Mechanism as drafted by the OSCE.

113 An excellent example of this is an outcome of the IOM project prepared within the framework of the AGIS programme on the 'Identification and Protection Schemes for Victims of Trafficking in persons in Europe. Tools and Best Practices'. See <http://www.belgium.iom.int/AGIS2004/> (accessed on 15 January 2006).

Conclusions

As Van Impe points out, the 'action to combat trafficking cannot be limited to the enlargement of a one-sided repressive legislative arsenal. The most appropriate approach involves dealing with the problem on an interdisciplinary basis, whereby repression through criminal legislation must be reserved as a last resort for combating excesses. Prevention and repression are thereby inextricably linked and must be developed within this integrated approach' (2000: 120-121). Therefore, going beyond the organised crime-oriented understanding of the trafficking phenomenon, Poland should also attach its attention to the other, at the first sight thematically different, areas of interest and recognise the multiple ways in which the European Union is part of the THB problem, in order to conceive the ways of making it a part of the solution as well (Askola 2005: 194). The EU must be understood as an instrument and not anymore as a goal in itself. With accession negotiations already finished, the Polish authorities need to face daily reality of the modern fight against the traffickers and their networks.

Indeed, some of the co-ordination problems we face these days in Poland are 'copied' from the EU background. There are difficulties in achieving consistency between institutions, delivering ambitious final versions of the legal acts, providing for a thorough discussion with international stakeholders, and covering many aspects of the anti-trafficking activities at the same time (often losing the link between different dimensions). The European Union's powers are often limited to a general scrutiny of implementation of the adopted *acquis*, the Member States still treat the Europol and Eurojust with a political reserve, formally binding EU trafficking definitions persist incoherent with UN/CoE standards; and the financial programmes that are not flexible enough, often remain a 'dead' instrument from the operational perspective of an end-user of this policy. To sum this up there is undoubtedly the need to take stock of the emerging anti-trafficking system (Kelly 2002: 53) and observe both good and bad practices. On the other hand I need to disagree with Helga Konrad's opinion presented regularly since the creation of the OSCE *Alliance*, as from my perspective there is no need for any new anti-trafficking legal instruments, instead we should make a better use of the ones we already have at hand and deepen the political will and consciousness in order to avoid making use of the 'escape clauses' resulting from the binding European Union *acquis*. Similar approach flows from the 2004 *Report on the Trafficking in Human Beings* prepared by the European Commission's Group of Experts.

To this end, Poland has recently taken a positive step by presenting to the Council MDG Group on 3 November 2005 a detailed position with respect to the draft Action Plan on Trafficking in Human Beings. Poland claimed that as the anti-trafficking policy shall be proactive and include not only the policing dimension but also other aspects of the THB linked to the human rights protection and migration policy. There is a threat of limiting the present version of the MDG document to the organised crime issues only which would be contradictory to the approach confirmed already during the 2002 Brussels Conference. Poland proposed therefore, that the new specialised Council Working Group on the trafficking in human beings should be established in order to monitor the realization of the Action Plan and *de facto* implement parts of it as well. In the Polish working paper it has been said, that 'the new Group would enhance the present level of anti-THB co-operation with much needed directness, permanence and binding character. It would limit the EU spending on conferences and seminars organised on the ad hoc basis and deepen the co-ordination between the Council, the Commission, and the international governmental and non-governmental organisations. The Working Group would focus on direct assisting to the proceedings on the draft documents discussed in the Council and eventually ascertain a better efficiency of these activities. MDG Group is only partially suitable discussion forum for the THB issues as it deals also with a number of other outstanding issues and experts responsible for the anti-trafficking national policies may not at all times take part in the MDG events. Furthermore the creation of a separate THB Working Group would deliver a fine-tuned multi-disciplinary approach to the internal organisation of the Council and respond to the needs of all Member States'. With the Polish proposal being adopted, a chance of going beyond the seminar-oriented approach and heading towards a more operational realm could be larger for the sake of the victims and the ones who fight the trafficking scourge. Unfortunately, the latter discussions led by the

UK Presidency in the Council focused on the swift adoption of the draft Action Plan and rejected any pleas dealing with inconsistency of the document, including the Polish proposal. One of the arguments against it was that there is no need to create a new discussion body within the Council, even though one shall bear in mind that specialised JHA-oriented working parties do exist and deal, for example, with the problems of the car theft, the protection of VIPs, and the network of contact points in respect of persons responsible for genocide.

Piotrowicz is fully right that ‘human trafficking is not a product of the collapse of communism. It exists in all regions of the world, and may take various forms’ (2002: 263). It means that restricting the anti-trafficking national policy to policing and prosecuting simply will not do enough; we might even create the new problems for ourselves, especially as particular national policies are very different and achieving coherence among them is difficult indeed. What may be recommended with respect to the Polish anti-trafficking scheme, is firstly to re-organise the Team and its Working Group around the formally established National Rapporteur within a recreated NRM model,¹¹⁴ and then form a ‘pooling of resources’ mechanism in order to establish a permanent funding base, run a stronger co-operation with consular offices, revisit the anti-THB website and present more vividly on-line what activities are taking place, better the exchange and co-ordination of information flow about the recent and forthcoming events and reporting activities, and, last but not least, avoid competition at all costs.

At first, the trafficking in human beings has been linked to a moral dispute against enslaving practices, then it turned towards a real threat to the public security, and now we can observe that national policies, usually driven-by-expenses, tend to underline that it is also a true danger to the public finances, thus could be measured in budgetary terms. Even though the data on the real scope of the problem are insufficient and estimations often simplistic, we cannot underestimate the THB threat also from the financial point of view. Therefore, we shall start treating the trafficking phenomenon as a modern global threat and not only as a local or regional problem of prostitution or cheap labour. The nets of the offenders may not be tight, but are evidently efficient and well-organised.

Should Poland *choose* the international partners to co-operate with on an anti-trafficking plane and take a non-EU only approach? Indeed, this would pave the way for a more pro-active co-operation, mapping of activities, and pooling of resources. This would also mean, to some extent, ‘downgrading’ the EU role to a financial contributor, until the specialised Council Working Group would be established, in order to focus on a close co-operation with the OSCE, CoE, UN and bilateral partners, including particularly the US,¹¹⁵ as close partners for source and destination countries. As soon as the European Union goes beyond its present seminar-oriented approach to the fight against THB, all its Member States will be able to make the very best use of the EU instruments and treat the Union as a useful discussion forum. But this depends on the political will of the very same Member States.

114 Bearing in mind the co-operation with the OSCE *Alliance*, future Council of Europe’s GRETA and, possibly, the Council Working Group on the trafficking. Perhaps a recreation of specialised Working Groups within the Team would be a way forward to enhance specialised discussions held by the Polish experts.

115 To this end, it is important to monitor the implementation of the EU Strategy on External Aspects of Justice and Home Affairs adopted by the JHA Council on 1 December 2005 (doc. 14366/3/05 REV 3 JAI 417 RELEX 628 of 30 November 2005, see also COM (2005) 491 final of 12 October 2005) where the trafficking in human beings is perceived mostly as a type of organised crime.

References

- Abramson, K., 2003, 'Beyond Consent, Toward Safeguarding Human Rights: Implementing United Nations Trafficking Protocol', *Harvard International Law Journal*, 44 (2), pp. 473-502.
- Anderson, B., O'Connell Davidson, J., 'Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study', *IOM Migration Research Series*, 15.
- Andrees, A., Van Der Linden, M.N.J., 2005, 'Designing Trafficking Research from a Labour Market Perspective: The ILO Experience', *International Migration*, 43 (1-2), pp. 55-73.
- Askola, H., 2005, 'Legal responses to trafficking in women for sexual exploitation in the European Union: towards a comprehensive approach?', Thesis, (Ph.D.). European University Institute.
- Berman, J., 2003, '(Un)Popular Strangers and Crises (Un)Bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State', *European Journal of International Relations*, 9 (1), pp. 37-86.
- Den Boer, M., Wallace, W., 2000, 'Justice and Home Affairs. Integration through Incrementalism?', in: H. Wallace, W. Wallace (eds.), *Policy Making in the European Union*, Oxford: Oxford University Press, pp. 494-519.
- Den Boer, M., 2002, 'Law-Enforcement Cooperation and Transnational Organized Crime in Europe', in: M. Berdal, M. Serrano (eds.), *Transnational Organized Crime & International Security: Business as Usual?*, London: Boulder.
- Bosly, S., Van Ravenstein, M., 'L'Harmonisation des incriminations', in: D. Flore, S. Bosly *et al.*, *Actualités de droit penal européen*, Bruxelles, Brugges: la charte, pp. 19-44.
- Buchowska, S., Jasiński, F., 2004. 'Problematyka walki z handlem ludźmi w świetle rozwiązań instytucjonalno-prawnych Unii Europejskiej', in: S. Wojciechowski (ed.), *Europejskie dylematy i wyzwania*, Poznań: Wydawnictwo Naukowe INPiD UAM, pp. 77-94.
- Carter, D. L., 1997. 'International Organized Crime. Emerging Trends in Entrepreneurial Crime', in: P. J. Ryan, G. E. Rush, *Understanding Organized Crime in Global Perspective. A Reader* London: SAGE Publications, pp.131-148.
- EPC, 2004, 'The EU and Southeast Europe Confronting Trafficking in Human Beings. *EPC-KBF Migrations Dialogues*', Communication to Members S15/04, 17 February 2004, The European Policy Centre.
- Fijnaut, C., 2000, 'Transnational Crime and the Role of the United Nations in Its Containment through International Cooperation: A Challenge for the 21st Century', *European Journal of Crime, Criminal Law and Criminal Justice*, 8 (2), pp. 119-127.
- Flynn, L., 'The Body Politic(s) of E.C. Law', in: T. K. Hervey, D. O'Keefe (eds.) *Sex Equality Law in the European Union*, Centre for the Law of the European Union, University College London; Trier Academy of European Law, Chichester; New York; Wiley.
- Gallagher, A., 2001, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis', *Human Rights Quarterly*, 23 (4).
- Geary, D., 1999, *An EU Instrument to Counter the Trafficking in Women for Sexual Exploitation into the European Union*. Thesis, (LL.M.). European University Institute.
- Ghosh, B., 1998, *Huddled Masses and Uncertain Shores. Insights into Irregular Migration*, The Hague: Kluwer.

- Içduygu, A., Toktas, S., 2002, 'How do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East. Evidence from Fieldwork in Turkey', *International Migration*, 40 (6), pp. 26-54.
- Hebenton, B., Thomas, T., 1999, 'Capacity Building Against Transnational Crime: European Measures to Combat Sexual Offenders', *European Journal of Crime, Criminal Law and Criminal Justice*, 7 (2), pp. 150-163.
- Van Impe, K., 2000, 'People for Sale: The Need for a Multidisciplinary Approach towards Human Trafficking', *International Migration*, Special Issue 1, pp. 113-131.
- IOM, 2002, *Unbearable to the human heart. Child trafficking and action to eliminate it*, IOM: Geneva.
- Jasiński, F., 2003, *Karta Praw Podstawowych Unii Europejskiej*, Warsaw: Dom Wydawniczy ABC.
- Jasiński, F., Karsznicki, K., 2003, 'Walka z handlem ludźmi z perspektywy Unii Europejskiej', *Państwo i Prawo*, LVIII (8), pp. 84-96.
- Jasiński, F., 2004. 'Effectiveness in the post-enlargement context: how to make a good use of the EU anti-trafficking instruments available?' in: IOM, US Department of State, *Building Regional Partnerships to Fight Trafficking in Persons in the Context of EU Enlargement. Conference Report*, 5-6 October 2004, Warsaw, Poland.
- Jasiński, F., 2006, 'Unia Europejska wobec handlu ludźmi', in: A. Górski, A. Sakowicz, (eds.), *Przeciwdziałanie i zwalczanie przestępczości w Unii Europejskiej*, Warszawa: LexisNexis (in print).
- Jasiński, F., Prus, M., 2004, 'Dyrektywa Rady nr 2004/81/WE z 29 kwietnia 2004 r. w sprawie krótkoterminowego zezwolenia na pobyt wydawanego obywatelom krajów trzecich, będących ofiarami handlu ludźmi lub przestępstw polegających na ułatwianiu nielegalnej imigracji, które współpracują z właściwymi organami – komentarz', *Kwartalnik Prawa Publicznego*, IV (3), pp. 165-200.
- Jasiński, F., Rakowski, P., 2005, 'Walka z przestępczością zorganizowaną i terroryzmem', in: F. Jasiński, K. Smoter (eds.), *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan i perspektywy rozwoju*, Warszawa: Urząd Komitetu Integracji Europejskiej, s. 229-281.
- Jasiński, F., Zielińska, E., 2005, 'Decyzja ramowa Rady z dnia 19 lipca 2002 r. w sprawie zwalczania handlu ludźmi (2002/629/WSiSW) – komentarz', in: E. Zielińska (ed.) *Prawo Wspólnot Europejskich a prawo polskie. Dokumenty karne. Część II. Tom 6*, Warszawa: Oficyna Naukowa.
- Johnson, D., 1999, 'Trafficking of Women into the European Union', *New England International and Comparative Law Annual*, (5), pp. 1-19.
- Jordan, A., 2005, *Resources and Contacts on Human Trafficking*, Washington: Global Rights.
- Kelly, L., 2002, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, in: IOM Migration Research Series No. 11.
- Kelly, L., 2005, "'You Can Find Anything You Want": A Critical Reflection on Research on Trafficking in Persons within and into Europe', *International Migration*, 43 (1-2), pp.235-265.
- Kelly, L., Regan, L., 2000: *Rhetoric and realities: sexual exploitation of children in Europe*, London: University of North London.
- Klein, M. A., 2002. 'Historical Dictionary of Slavery and Abolition', *Historical Dictionaries of Religions, Philosophies, and Movements, Vol. 40*, Lanham, London, pp. XI-XXIII.
- Kroeger, T., Malkoc, J., Uhl, B.H., 2004, *National Referral Mechanism. Joining the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR: Warsaw, pp. 93-96.
- Laborde, J.-P., 2004, 'UN Conventions Will Help to Fight Organized Crime, Drugs and Terrorism', *European Affairs*, 5 (1), pp. 96-99.

- Laczko, F., Gramegna, M.A., 2003, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, X (1), pp. 179-194.
- Long, L.D., 2004, 'Anthropological Perspectives on the Trafficking of Women for Sexual Exploitation', *International Migration*, 42 (1), pp. 5-31.
- Monar, J., 1998, 'Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation', *European Law Review*, 23 (4), pp. 320-335.
- Meese, J., Van Impe, K. *et al.*, 1998, *Trafficking in Human Beings. A Pilot Study with Poland and Hungary*, Ghent: Research Group Drug Policy, Criminal Policy, International Crime, Ghent University.
- Murray, A., 1998. 'Debt-Bondage and Trafficking', in: K. Kemmgadoo, J. Doezma, *Global Sex Workers. Rights, Resistance, and Redefinition* New York, London, pp. 51-64.
- Nilsson, H.G., 2002, 'Decision-Making in EU Justice and Home Affairs: Current Shortcomings and Reform Possibilities',
- Obokata, T., 2001, "'Trafficking' and 'Smuggling' of Human Beings in Europe: Protection of Individual Rights or States' Interests?", *Web Journal of Current Legal Issues* [online], 5. Available from <http://www.webjcli.ncl.ac.uk/2001/issue5/obok5.html> (accessed 30 October 2003).
- Obokata, T., 2003, 'EU Council Framework Decision on combating trafficking in human beings: a critical appraisal', *Common Market Law Review*, 40 (4), pp. 917-936.
- Obokata, T., 2005, 'Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law', *International Journal of Refugee Law*, (17), pp. 394-415.
- Okólski, M., 2000, 'Illegality of International Population Movements in Poland', *International Migration*, Special Issue 1, pp. 57-89.
- Pearson, E., 2002, 'Human traffic, human rights: redefining victim protection', London: Anti-Slavery International.
- Peers, S., 2000, 'Justice and home affairs: decision-making after Amsterdam', *European Law Review*, 25 (2).
- Piotrowicz, R., 2002, 'European Initiatives in the Protection of Victims of Trafficking who Give Evidence Against Their Traffickers', *International Journal of Refugee Law*, 14 (2-3), pp. 263-278.
- Richards, K., 2004, 'The Trafficking of Migrant Workers: What are the Links Between Labour Trafficking and Corruption?', *International Migration*, 42 (5), pp. 147-168.
- Rijken, C., Kronenberger, V., 2001, 'The United Nations Convention Against Transnational Organised Crime and the European Union', in: V. Kronenberger, *The EU and the International Legal Order: Discord or Harmony?*, The Hague: T.M.C. Asser Press, pp. 481-517.
- Rijken, C., 2003. *Trafficking in Persons. Prosecution from a European Perspective*, The Hague: T.M.C. Asser Press.
- Ruggiero, V., 1997, 'Trafficking in human beings: slaves in contemporary Europe', *International Journal of the Sociology of Law*, (25), pp. 231-244.
- De Ruyver, B., 2002, 'Trafficking in migrants from a EU-perspective', in: B. De Ruyver, G. Vermeulen *et al.* (eds.), *Strategies of the EU and the US in Combating Transnational Organized Crime*, Antwerp-Apeldoorn: Maklu, pp. 361-381.
- Salt, J., 2000, 'Trafficking and Human Smuggling: A European Perspective', *International Migration*, Special Issue 1, pp. 31-56.

- Salt, J., Stein, J., 1997, 'Migration as a business: the case of trafficking', *International Migration*, 35 (4), pp. 467-494.
- Savona, E., *Dynamics of migration and crime in Europe: New Patterns of an old nexus*, TransCrime Working Paper No. 1996/8.
- Scheper-Hughes, N., 2004, 'Parts Unknown: Undercover ethnography of the organs-trafficking underworld', *Ethnography*, 5 (1), pp. 29-73.
- Siron, N., Van Baeveghem *et al.*, 1999, *Trafficking in Migrants through Poland*, Antwerp-Apeldoorn: Maklu.
- Smartt, U., 'Human Trafficking: Simply a European Problem?', *European Journal of Crime, Criminal Law and Criminal Justice*, 11 (2), pp. 164-177.
- Tezcan, E., 1998, 'La coopération dans les domaines de la justice et des affaires intérieures dans le cadre de l'Union européenne et le traité d'Amsterdam', *Cahiers de Droit Européen*, 5-6.
- Von Struensee, V., 2000a, 'Globalized, Wired, Sex Trafficking in Women and Children', *Murdoch University Electronic Journal of Law* [online], 7 (2). Available from http://www.murdoch.edu.au/elaw/issues/v7n2/struensee72_text.html (accessed 1 June 2005).
- Von Struensee, V., 2000b, 'Sex Trafficking: A Plea for Action', *European Law Journal*, 6 (4), pp. 379-407.
- Weissbrodt, D., Dottridge, M., 2002, *Abolishing Slavery and its Contemporary Forms*, Office of the United Nations High Commissioner for Human Rights, United Nations: New York, Geneva.
- Editorial Comments, 1999, 'The Tampere summit: The ties that bind *or* The Policemen's Ball', *Common Market Law Review*, 36 (6), pp. 1119-1126.

Dr Filip Jasiński
filipjasinski@yahoo.co.uk

Annex: Information letter and attached questionnaire

Questionnaire on international co-ordination of anti-trafficking policies

This short questionnaire aims at collecting a rough information about the opinions of experts in the field of combating trafficking in human beings (THB), representing various national and international, governmental and non-governmental (including academic, think tank) institutions and organisations, with respect to the present state-of-affairs of international co-ordination of the fight with THB, with a particular attention paid to the European scene.

My intention is to relate to an outcome of this exercise in a Working Paper drafted in the Robert Schuman Centre for Advanced Studies, European University Institute (Florence), bearing a working title "National Co-ordination of the Fight with Trafficking in Human Beings: Recommendations for Poland as a 'new' EU Member State".

Main argument of the forthcoming study is that already by now – said in general terms – national institutions are being presented with an almost full-spectrum of different political and legal instruments of anti-THB character (directly or indirectly relating to this type of organised crime and human rights' violation) and their number is still on the rise with – simultaneously – rather limited success from the point of view of their practical implementation and realisation. With over-lapping standards and competing sources of assistance to the victims combating THB is evidently more difficult task than envisaged. Therefore taking further steps against lacking co-ordination deems to be a necessary step, especially when seen from the European angle.

The whole exercise is solely academic and fully anonymous in the sense that I will not distinguish in my comments on an outcome of the questionnaire any specific information about the source of the particular replies nor divide them into detailed sections revealing opinions of the responders (data protection provisions also apply with due concern). The key intention is to show how do the experts perceive the *status quo* and only then – if necessary – a further survey could be exercised in the future in order to have a more in-depth view of the matter at stake.

Answering the following 10 questions will take approximately 5-8 minutes. To give an answer please tick the correct – one only – box and afterwards save the file. Of course do not forget to send it back to me please... If possible I would greet seeing your answers in my e-mail (filipjasinski@yahoo.co.uk) by an end of June 2005. Further comments are more than welcome.

To underline once more: this is not about official position of the institutions represented but more towards learning your personal opinions about present situation of anti-THB co-ordination in Europe. I will be happy to present you later on with a final version of my Working Paper.

I appreciate your kind co-operation in advance and thank you warmly for your attention,

With my best regards,

Yours sincerely,

Filip Jasiński, Ph.D.

1. How do you perceive coordination of anti-THB activities between different national and international, governmental and NGO actors?

Very weak	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very strong
	1	2	3	4	5	6	7	

2. How do you assess existence of competition between various international and national actors on the anti-THB scene?

Exaggerated	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Under-estimated
	1	2	3	4	5	6	7	

3. How are you informed about different actions taken on anti-THB field by other national and international partners?

Not informed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Well-informed
	1	2	3	4	5	6	7	

4. How useful are – in general terms – the European Union’s anti-THB activities from your perspective?

Not useful	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very useful
	1	2	3	4	5	6	7	

5. Which international organisation should play leading role in co-ordinating anti-THB policy in Europe?
You can tick more than one answer if necessary.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
UN	IOM	CoE	OSCE	EU	NATO	ILO	other	single NGO	none

6. What model for international anti-THB co-ordination should be applied on the European level?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Round-table	Single leading organisation	Other model

7. Is international policy towards distribution of funds for anti-THB NGOs and assistance to the victims too restrictive or to liberal from your perspective?

It's too restrictive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	It's too liberal
	1	2	3	4	5	6	7	

8. From the following options what is the prime anti-THB concern to you: combating organised crime, protecting human rights, managing migration, or holistic approach?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Combating organised crime	Protecting human rights	Managing migration	Holistic approach

9. Would your organisation accept the role of the international co-ordinator or leader of anti-THB policy on the European level?

Not at all	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Certainly
	1	2	3	4	5	6	7	

10. With which region anti-THB partnership deems most important to you: Central and Eastern Europe, USA, Latin America, Africa, Middle and Eastern Asia, South-Eastern Asia, or Oceania?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CEE	USA	LA	A	MEA	SEA	O

YOUR HELP WAS VERY VALUABLE – THANK YOU !