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TRANSNATIONAL TRAINING: “Judicial cooperation in criminal matters in cases involving refugees’ and other third-country national’s victims of human trafficking subjected to exploitation in EU member states”.

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CURRENT EU LEGAL FRAMEWORK THAT ALLOWS MEMBER STATES TO COOPERATE ACROSS INTERNATIONAL BORDERS AND FACILITATE JUDICIAL PROCEDURES IN CASES RELATED TO HUMAN TRAFFICKING

- Trafficking in human beings is a serious crime.
- It is also a grave violation of human rights, which affects thousands of victims every year.
- Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade.

The World Health Organization defines:

Sexual exploitation: Actual or attempted abuse of a position of vulnerability, power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

Sexual abuse: Actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

SEA also includes sexual relations with a child, in any context, defined as a human being below the age of 18 years.

SEA involves behaviour of WHO staff and collaborators towards third parties, referred to as beneficiary populations.

Explanatory Report to the CoE Convention para. 88

As regards " the exploitation of the prostitution of others or other forms of sexual exploitation", it's should be noted that the CoE Convention deals with theses only in the context of trafficking in human beings.

The terms "exploitation of the prostitution of others" and " other forms of sexual exploitation" are not defined in the Convention, which is therefore without prejudice to how States Parties deal with prostitution in domestic law.

To be effective, a strategy for combating trafficking in human beings must adopt a multidisciplinary approach incorporating prevention, protection of human rights of victims and prosecution of traffickers, while at the same time seeking to harmonise relevant national laws and ensure that these laws are applied uniformly and effectively.

It is important to appreciate however that many countries do not require under their own domestic criminal laws that any of the means must be proven to establish human trafficking.

Whether a country incorporates into its criminal laws the requirement to prove one or more of the means or not, the same protection to a victim regarding the irrelevance of their consent should apply.

Due to the characteristics of trafficking in human beings, it seems clear that the effective fight against them requires recourse to the various instruments of **international legal cooperation** available. The fact that crimes related to trafficking in human beings are generally committed through criminal organizations and are markedly transnational in most cases means that the authorities, both police and judicial, have to trust their counterparts.

International legal cooperation may be sought from the States in which the victims are recruited, from the States of transit, from the States of destination (where the exploitation of the victims takes place) or, even from the States to those who make come the economic benefits derived from this lucrative illegal activity. In any case, it should not be forgotten that international legal cooperation, in addition to being necessary to guarantee the effectiveness in the judicial prosecution of those responsible for trafficking, contributes significantly to increasing the complexity and the foreseeable duration of the judicial procedures that have by object this criminal typology.

International legal framework:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. 2000

European regulations:

- **Council of Europe Convention on Action against Trafficking in Human Beings.2005**
- Charter of fundamental Rights of the European Union, 2000
- **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework in human beings and protecting its victims, and replacing Council Framework Decision**
- **Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking**

Domestic Law

International Legal Framework.

United Nations

The various criminal typologies related to trafficking in human beings and the sexual exploitation of women and children are the object of outstanding persecution at the international level, precisely because of the cross-border dimension that is normally associated with them. In this context, the UN Office on Drugs and Crime (UNODC) has stressed that "international cooperation is a fundamental condition for the success of any response to human trafficking."

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. 2000

The relationship of the **Palermo Protocol** with respect to the **United Nations Convention against transnational organized crime** is specified in Article 1 of the Protocol itself, which expressly provides that it complements the Convention and will be interpreted together with it (point 1) ; and that the provisions of the Convention shall apply mutatis mutandis to the Protocol, unless it provides otherwise (point 2).

These two norms contained in the general provisions of the Protocol are especially relevant with regard to the matter of international judicial cooperation in the framework of the investigation and prosecution of crimes related to trafficking in human beings, since by, not containing any specific norm on this matter in the Protocol, the precepts of the Convention that expressly regulate international cooperation for the purpose of confiscation (article 13), extradition (article 16), and legal assistance will be applicable reciprocal (article 18).

Trafficking in Persons Protocol and the Migrants Protocol and Organized Crime Convention, 2000

The Protocol indicates that it is useful to complement the Convention to prevent and combat trafficking in persons, and it is highlighted that both the Protocol and the Convention supplemented by.

In the preamble

The States Parties to this Protocol,

*Declaring that effective action to prevent and combat trafficking in persons, especially women and children, **requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims** of such trafficking, including by protecting their internationally recognized human rights,*

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected.

Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives

Article 3

Use of terms

For the purposes of this Protocol:

(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 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.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, **States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.**

2. **Each State Party shall adopt legislative or other appropriate measures to prevent,** to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that **all passengers are in possession of the travel documents required for entry into the receiving State.**

4. Each State Party shall take the necessary measures, **in accordance with its domestic law,** to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with **its domestic law,** the **denial of entry or revocation** of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and **maintaining direct channels of communication.**

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

It should also be noted that article 13.3 of the Convention provides that the provisions of article 18 of the Convention itself (that is, those that regulate mutual legal assistance) will be applicable mutatis mutandis to cooperation international judicial system in relation to the seizure and forfeiture of the proceeds of the crimes included in the Convention or of property whose value corresponds to that of said proceeds; as well as the goods, equipment or other instruments used or intended to be used in the commission of the aforementioned crimes.

Art. 16

Extradition

The regulations regarding extradition, it is important to highlight that the rules on extradition contained in the Convention operate with classic principles in matters of extradition, such as the principle of double criminality (art. 16.1) and the aut dedere aut iudicare principle (art. 16.10). In addition, the possibility of conditional surrender of nationals of the requested State Party is expressly established, so that the person sought can be returned to said State Party to serve the sentence that would have been imposed as a result of the trial or process by which they were requested extradition or surrender (article 16.11), and even, in cases of extradition of a national of the requested State party for the purpose of serving a sentence, the option that the sentence be served in the requested State party itself, at the request of the requesting State party, provided that its domestic law allows it and in accordance with the requirements of said law (Article 16.12).

It is important to note that the regulations on extradition will be subject to the domestic law of the requested State Party (or applicable multilateral or bilateral extradition treaties), including, among others, those relating to the requirement of a minimum penalty for extradition and to the reasons for which the requested State Party may deny the request (Article 16.7).

Art. 18

Mutual legal assistance

The regulations regarding the legal regime of mutual legal assistance established in art. 18 of the Convention.

Article 18.1 of the Convention includes the "pro-assistance" principle by providing that the States Parties "shall provide each other with the widest possible mutual legal assistance with respect to investigations, processes and judicial actions related to the crimes included in this Convention", including the case in which the requesting State Party has reasonable grounds to suspect that the corresponding crime "is of a transnational nature, as well as that the victims, witnesses, proceeds, instruments or evidence of those crimes are in the requested State Party and that the crime involves the participation of an organized criminal group".

Mutual legal assistance can be requested for any of the following purposes:

- a) Receive testimonies or take statements from people;
- b) Present judicial documents;
- c) Carry out inspections and seizures and liens;
- d) Examine objects and places;
- e) Provide information, evidence and expert evaluations;
- f) Deliver originals or certified copies of relevant documents and files, including public, banking and financial documentation, as well as social or commercial documentation of commercial companies;
- g) Identify or locate the proceeds of crime, goods, instruments or other elements for evidentiary purposes;
- h) Facilitate the voluntary appearance of persons in the requesting State Party;
- i) Any other type of assistance authorized by the domestic law of the requested State Party (Article 18.3).

The precept also contemplates the spontaneous transmission of information outside the mutual legal assistance procedures (articles 18.4 and 5).

For their part, paras. 10 to 12 of art. 18 regulate the temporary transfer of persons detained in the requested State Party, and whose presence is requested in the requesting State Party "for identification purposes, to give testimony or to help in any other way to obtain the necessary evidence for investigations, proceedings or judicial proceedings »with respect to the crimes included in the scope of the Convention or the Palermo Protocol.

The requested State party cannot deny legal assistance by invoking bank secrecy (Article 18.8), and although it would be possible to invoke the absence of double criminality for the denial of assistance, the provision itself provides that, if deemed necessary, the requested State party can provide assistance, to the extent that it decides to do so at its own discretion, regardless of whether there is double criminality (article 18.9).criminality for the denial of assistance, the provision itself provides that, if deemed necessary, the requested State party can provide assistance, to the extent that it decides to do so at its own discretion, regardless of whether there is double criminality (article 18.9).

The mutual legal assistance system established in the Convention operates with central authorities, so direct communication between judicial authorities is not possible, although recourse to Interpol as a means of transmitting requests in an emergency would be possible (art. 18.13). In accordance with article 18.14, requests shall be

submitted in writing or, when possible, by any means capable of recording a written text, in a language acceptable to the requested State Party, under conditions that allow said State Party to determine the authenticity of the request. Article 18.15 establishes the content of the request for mutual assistance, including, in addition to the identity of the authority making the request, the purpose and nature of the investigations, a summary of the relevant facts, the description of the assistance requested, and details of any particular procedure that the requesting State party wishes to have applied. It is also expected that the requested State Party may request additional information when it is necessary to comply with the request in accordance with its domestic law or to facilitate such compliance (Article 18.16).

Article 18.17 establishes the locus regit actum rule, according to which requests for assistance will be completed in accordance with the domestic law of the requested State party. However, the procedures specified in the request for assistance may be applied, to the extent that this does not contravene the domestic law of the requested State Party and is feasible. As a concretion of this general rule, recourse to international judicial assistance is allowed by means of a videoconference hearing -although limited to the testimony of witnesses or experts- whenever this is possible and compatible with the fundamental principles of the domestic law of the requested State and if it is not possible or desirable for the person in question to appear in person on the territory of the requesting State party. In this case, the States Parties involved may agree that the hearing be conducted by a judicial authority of the requesting State Party and that it be attended by a judicial authority of the requested State Party (Article 18.19).

The cases of denial of interested judicial assistance are provided for in article 18.21, which includes, for example, requests that have not been made in accordance with the provisions of article 18 of the Convention; requests whose fulfilment could undermine the sovereignty, security, public order or other fundamental interests of the requested State party or that are contrary to the legal system of the requested State party with regard to mutual legal assistance; requests in respect of which the domestic law of the requested State party prohibits its authorities from acting in the manner requested in relation to an analogous crime, if it had been the subject of investigations, proceedings or judicial actions in the exercise of their own competence. In any case, any denial of mutual legal assistance must be duly justified and the denial may not be based on the consideration of the requested State in the sense that the crime to which the assistance refers also involves fiscal matters (articles 18.22 and 23). Before denying an application under para. 21 of article 18 -or to defer its compliance pursuant to para. 25 of the same, the requested State Party shall consult the requesting State Party to consider whether it is possible to provide the requested assistance, subjecting it to the conditions it deems necessary. In accordance with article 18.24, the requested State Party shall comply with the request for mutual legal assistance as soon as possible and shall take fully into account, to the extent of its possibilities, the deadlines suggested by the requesting State Party and that are preferably duly based on the request. , although the execution of the request may be deferred by the requested State Party if it disrupts ongoing investigations, processes or judicial actions (Article 18.25).

Regarding access to documentation by the requesting State Party, Article 18.29 provides that the requested State Party shall provide it with a copy of the official documents and

other documents or data in its possession and which, according to its domestic law, it has access by the general public. In the case of documents or data that, according to the domestic law of the requested State, are not available to the general public, said State may, at its discretion and subject to the conditions it deems appropriate, provide the requesting State Party with a full copy or partial thereof.

Regarding expenses derived from the execution of requests for assistance, Article 18.28 establishes that ordinary expenses will be borne by the requested State Party, unless the interested States Parties have agreed otherwise. If large or extraordinary expenses are required, the States Parties shall consult each other to determine the conditions under which the request will be fulfilled, as well as the manner in which the expenses will be covered.

Also highlighting article 13.3 of the Convention provides that the provisions of article 18 of the Convention itself (that is, those that regulate mutual legal assistance) will be applicable mutatis mutandis to international judicial cooperation in relation to seizure and forfeiture of the proceeds of the crimes included in the Convention or of goods whose value corresponds to that of said proceeds; as well as the goods, equipment or other instruments used or intended to be used in the commission of the aforementioned crimes.

Finally, art. 19 of the Convention establishes the constitution of Joint Investigation Teams (JITs) regarding "the issues that are the subject of investigations, processes or judicial actions in one or more States" as a means to guarantee the success of said processes or investigations.

EUROPEAN REGULATIONS

Trafficking in human beings is a major problem in Europe today. Annually, thousands of people, largely women and children, fall victims to trafficking for sexual exploitation whether in their own countries or abroad.

All indicators point to an increase in victim number.

COUNCIL OF EUROPE

Convention for the Protection of Human Rights and Fundamental Freedom, 1950

Council of Europe Convention on Action against Trafficking in Human Beings, 2005

Within the scope of the Council of Europe, the **Convention on Action against Trafficking in Human Beings**, made in Warsaw on May 16, 2005 is a treaty mainly focused on the protection of victims of trafficking and the safeguarding of their rights.

The Convention aims to prevent trafficking in human beings and promote criminal prosecution of traffickers, and applies to all forms of trafficking, national or transnational, related or not to organized crime, regardless of the victim (women, men or children) and the form of exploitation (sexual exploitation, forced labour or services, etc.).

The main added value of the Convention is its human rights perspective and focus on victim protection.

Another important aspect of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars:

The Group of Experts on Action against Trafficking in Human Being (GRETA) and the Committee of the Parties.

GRETA is an independent monitoring mechanism to guarantee compliance with its provisions by the States Parties.

The CoE Convention provides for the setting up of a monitoring mechanism capable of assessing and improving the implementation of the obligations contained in it. This monitoring mechanism consists of two distinct, but interacting, bodies:

- An independent expert body, the Group of Experts on Action against Trafficking in Human Being (GRETA), which is composed of 15 members who sit in their individual capacity and are selected on the basis of their expertise in the areas covered by the Convention.
- A political body, the Committee of the Parties, which is composed of representatives of the Parties to the Convention.

The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided in rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of Procedure for Evaluating Implementation of the Convention.

As a first step, GRETA sends a questionnaire to the authorities of the Party undergoing evaluation

The questionnaire is also sent to non-governmental organisations active in the field of action against trafficking in human beings. After receiving the authorities reply to its questionnaire, GRETA organises a visit to the country concerned in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and evaluate the practical implementation of adopted measures.

Human trafficking is also defined in art. 4, Council of Europe Convention on Action against Trafficking in Human Beings.

Article 4 – Definitions

For the purposes of this Convention:

- a. "Trafficking in human beings" 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 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 human beings” 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 human beings" 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;

e. "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

Art. 23 paragraph 3 CoE Convention:

Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

Art 15.4 CoE Convention:

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

The CoE Convention states in Art. 16 CoE that:

Article 16 – Repatriation and return of victims

1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.

2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

4 In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Art. 29 CoE Convention:

Specialised authorities and coordinating bodies.

Each Party shall adopt measures necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims.

- Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of their government departments and other public agencies against trafficking, through setting up coordination bodies.

- Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking.

Art. 31, CoE Convention

Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence in accordance with this Convention where offence is committed:

- in its territory, or
- on board a ship flying the flag of the Party, or
- on board an aircraft registered under the laws of the Party, or
- by one of its nationals or by a stateless person who has their habitual residence in its territory, if the offence is committed outside the territorial jurisdiction of any State, or
- against one of its nationals.

Measures must be adopted to establish jurisdiction over the offences in cases where an alluded offender is present in a State Party's jurisdiction and it does not extradite him/her to another Party solely on the basis of his/her nationality, after a request for extradition.

When more than one part claims jurisdiction over an alleged offence, the Parties shall, where appropriate, consult with a view to coordinating their actions and determining the most appropriate jurisdiction for prosecution.

The European Convention on Human Rights established rights and fundamental freedoms which impose an obligation on each State to investigate suspected breaches and to provide a remedy. The types of crime associated with human trafficking, such as serious violent and sexual crime as well as crimes of economic exploration and slaver, Will almost always constitute a breach of human right as well as a breach of criminal law.

States have an obligation to protect people from human rights violations and effectively investigate human rights abuses. This obligation particularly applies to the most vulnerable where there are credible claims that an individual has been:

Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

Each Party shall ensure that victims of an offence in the territory of a Party other than the one in which they reside, may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made shall transmit it without delay to the competent authority in the territory in which the offence was committed, to be dealt with in accordance with their internal law.

Article 32 of the Convention provides that the States Parties "shall cooperate with each other, in accordance with the provisions of this Convention and in application of the applicable international and regional instruments, of the agreements concluded on the basis of uniform or reciprocal legislation and of their domestic law, to the fullest extent possible, in order to: prevent and combat trafficking in human beings; protect and assist victims; and carry out investigations or actions related to criminal offenses established in accordance with this Agreement. "

Article 32 of the Convention provides that the States Parties "shall cooperate with each other, in accordance with the provisions of this Convention and in application of the

applicable international and regional instruments, of the agreements concluded on the basis of uniform or reciprocal legislation and of their domestic law, to the fullest extent possible, in order to: prevent and combat trafficking in human beings; protect and assist victims; and carry out investigations or actions related to criminal offenses established in accordance with this Agreement. "

Trafficked persons have the right to seek and enjoy asylum and have access to fair and efficient asylum procedure (Art. 40, CoE Convention and Explanatory Report to the CoE Convention).

Under certain circumstances, some victims of trafficking may qualify as refugees in line with Art. 1^a (2) 1951 Convention and may therefore be entitled to international refugee protection.

The CoE Convention states in Art. 40.4 that:

Article 40 – Relationship with other international instruments

4 Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

The Convention is not restricted to Council of European member States. It is currently in force in 46 of the 47 Council of Europe members State, as well as Belarus.

The Convention on the Action against Trafficking in Human Beings is complemented by the international conventions promoted by the Council of Europe in matters of international judicial assistance and extradition (European Convention on Criminal Judicial Assistance, made in Strasbourg on April 20, 1959 as well as the two Additional Protocols thereto; and the European Extradition Convention, made in Paris on December 13, 1957, as well as the Additional Protocols thereto).

EUROPEAN UNION

Charter of fundamental Rights of the European Union, 2000

European Directive

Directive 2011/36/EU includes the obligation for Member States to provide for legal possibilities in their respective systems to confiscate the proceeds of crimes.

This obligation is also laid down in **Directive 2014/42/EU** on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union which stipulates in Art. 3 that the directive also applies to the Directive in human trafficking.

Exploitation must be understood as a minimum:

a) sexual exploitation or prostitution;

b) forced labour or services (including begging, slavery, exploitation for criminal activities or the removal of organs).

The Directive establishes custodial sentences of a maximum duration of at least five years and of at least ten years in cases with aggravating circumstances, for example, if the offense was committed against particularly vulnerable victims (such as minors) or if it was committed within the framework of a criminal organization

As regards jurisdiction, the Directive establishes that EU countries can prosecute their nationals for offenses committed in other EU countries. It also imposes obligations on the member states with regard to the victims, who must receive assistance before, during and after the criminal process, so that they can exercise the rights conferred on them by the status of the victim in the criminal process. This assistance may consist of hosting in shelters or the provision of health and psychological assistance and information and interpretation services. Children and adolescents (under the age of eighteen) will have complementary measures, such as physical and psychosocial support, access to education and, if applicable, the possibility of appointing a guardian or legal representative. In addition, they should be questioned without delay in appropriate facilities by qualified professionals. Victims also have the right to police protection and legal assistance in order to claim compensation.

In addition to criminal repression, the Directive imposes preventive actions, adopting measures to discourage the demand that encourages trafficking, and raising awareness and training for officials so that they can identify the victims and possible victims of human trafficking and dealing with them. To help national authorities control abuses of the right to free movement, the Commission has published a manual on marriages of convenience between EU citizens and third-country nationals (some forced marriages may include elements of trafficking in human beings).

The definition of trafficking is provided in the European Union **Directive 2011/36/EU** on preventing and combating trafficking in human beings, protecting its victims.

Article 2 of the Directive 2011/36/EU defines the offences concerning trafficking in human beings:

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: **The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.**
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging,

slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purposes of this Directive, 'child' shall mean any person below 18 years of age. The forms of exploitation listed in the Directive are not exclusive and Member States can include in their national legislations forms in addition to those enumerated.

2011 EU on Trafficking Directive. Recital 10. This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention) and is in accordance with Art. 4 and Art. 19.2 of the Charter of Fundamental Rights of the European Union.

Art. 9, 2011 EU Trafficking Directive

Members States shall ensure that investigation into or prosecution of offences is not dependent on reporting or accusation by victim.

Good practice should be to use all relevant investigative tools and Powers to obtain evidence to prosecute a case without the testimony of the victim.

Even when the victim is willing to testify, such evidence Will corroborate the evidence of the victim and reduce the burden on them.

Art. 10.6: The information referred to paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to **Directive 2004/81/EC**, and information on the possibility of granting international protection pursuant to **Council Directive 2004/84/EC** of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and **Council Directive 2005/85/EC** of 1 December 2005 on minimum standards on procedures in Members States for granting and withdrawing refugee status or pursuant to other international instruments or other similar national rules.

Criminal judicial cooperation based on the instruments of mutual recognition in criminal matters within the framework of the European Union will be articulated mainly through the **European Investigation Order (EIO) regulated in Directive 2014/41 / EU** of the European Parliament and of the Council , of April 3, relative to the European investigation order in criminal matters, on the mutual recognition of criminal decisions in the European Union by Law 3/2018, of June 11. Under the aforementioned **Directive 2014/41 / EU**, it will be possible to recognize the criminal resolution that agrees on any investigation procedure or that adopts precautionary measures on assets.

Measures recommended by the Organization for Security and Cooperation in Europe

Consider taking measures that permit, in accordance with domestic law, the denial of entry, the revocation of visas or possibly the temporary detention of persons implicated in committing offences as defined by the legislation in force.

Consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Without prejudice to international commitments in relation to the free movement of people, strengthen, to the extent possible, border controls as may be necessary to prevent and detect trafficking in human beings.

Adopt legislative or other appropriate measures to prevent, as far as possible, means of transport operated by commercial carriers from being used in committing offences, as defined by the provisions against trafficking.

Where appropriate, and without prejudice to applicable international conventions, oblige commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of valid travel documents and, in accordance with domestic law, take the necessary measures to provide for sanctions in the case of violation.

An important additional recommendation of OSCE is that States should not prosecute trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization.

Another important element for the realisation of a genuine area of EU internal security is operational cooperation between law enforcement authorities of Member States.

The Commission and EU agencies contribute to the enhancement of law enforcement cooperation, notably through

the EU Policy Cycle for serious and organised crime, assisting Member States in the implementation of existing legislation on cross-border cooperation such as joint investigations against cross-border crime, and the support to Member States provided by EU agencies such as Europol and CEPOL. Furthermore, the legal framework introduced by the Lisbon Treaty provides further legal and practical arrangements to make operational cooperation between authorities of different Member States effective. Eurojust, Eurojust has played an important role in the fight against Trafficking in Human Beings, which remains high on the EU agenda as one of the priorities in the fight against serious and organised crime.

Conclusion

Human trafficking is not only a criminal activity, but also constitutes a grave violation of human rights. The only way to maintain the focus on the victims is to guarantee that actions taken to combat human trafficking are not reduced merely to a problem of migration, public order, or the fight against organized crime.

According to data from the United Nations, two thirds of the trafficking victims detected globally are women. Seventy-nine percent of the victims are trafficked for the purpose of sexual exploitation. In fact, gender-based violations of human rights are one of the fundamental causes for the existence of human trafficking. Gender violence and other forms of discrimination against women and girls can foster and exacerbate their vulnerability, leading them to become victims of human trafficking.

Globally, the majority of human trafficking crimes occurs on a national or regional level and are committed by individuals who have the same nationality as their victims. This is not the case in Europe, which is considered the destination for victims coming from very diverse points of origin.

It is common for authorities to incorrectly identify trafficked persons as immigrants illegally attempting to cross the border. Clearly, there is a lack of reliable victim identification procedures. While many trafficking victims consent to be illegally smuggled from one country to another when they embark on their journey, in the course of their journey, they may be tricked or forced to endure situations of exploitation and thus become victims of human trafficking.

Judicial proceedings that charge traffickers continue to rely almost exclusively on victims' statements. However, effective financial research is an important tool for obtaining evidence and for risk assessment. This research also allows for a better understanding of the modus operandi of traffickers and helps to perfect methods of detection.

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