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DRAFT Statement on Progress to be made with the EU Directive and Good Practice in Combatting Child Trafficking

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Trafficking in human beings is a serious human rights violation that requires a victim-centred, human rights based response. The *Council of Europe Convention on Action against Trafficking in Human Beings* and the recently adopted *EU Trafficking Directive* include important measures that will improve our efforts to prevent and to combat trafficking as well as to assist and to protect at-risk individuals and victims.

As I am aware that other experts are sharing their experience in response to the questions posed, I shall focus my intervention specifically on the situation of at-risk children and child victims as well as on relevant provisions of the EU Directive and good practices.

Prevention, protection and prosecution are complementary objectives. In order to strengthen efforts to combat trafficking and prosecute perpetrators, it is necessary to invest in prevention and protection as well as to clarify and to intensify inter-agency co-operation.

✓ **Prevention**

PQ: What preventive measures would be appropriate to protect refugees and migrants from becoming victims of human trafficking?

In order to prevent migrants and refugees from becoming victims of trafficking, it is necessary to put in place robust measures for identification, referral, legal counselling, assistance and protection.

The *ODIHR National Referral Mechanism Handbook* is a useful tool, which provides guidance for assessing and developing such comprehensive mechanisms.

UNHCR's 10 Point Plan of Action on Refugee Protection and Mixed Migration is another useful tool in this regard. Furthermore, UNHCR has compiled a good practice handbook including such areas as protection-sensitive entry systems and mechanisms for profiling and referral.

A crucial element that I would like to emphasise under prevention is the importance of outreach work and low-threshold services.

Good Practice - Outreach Services in Norway

In Norway, social outreach work targets youth, who spend most of their time on the streets and in public places. Many youth in contact with social outreach services face multiple difficulties, including alcohol and drug abuse and involvement in crime as well as exposure to violence and exploitation.

Outreach workers try to establish contact and offer help to youth as early as possible after contact in order to reduce the risks to which their clients are exposed. Services are unconditional and do not impose any obligations on the youth. The experiences of outreach workers not only enable them to assist children in need but also to identify gaps in the public system that leave children unprotected.

EU DIRECTIVE

**gemeinsam
für kinder**



PQs: What progress in the fight against human trafficking can be expected from the EU Directive? Are there examples of best practice in combating trafficking, especially child trafficking, within the EU?

The transposition of the EU Directive presents an opportunity for us to make great progress in the fight against trafficking. I would like to draw your attention to measures that should lead to **better identification, protection and prosecution** – while also highlighting existing good practice in these fields.

These measures are compliant with the *Convention on the Rights of the Child* and reflect the authoritative guidance outlined by the Committee on the Rights of the Child in its *General Comment No 6 on treatment of unaccompanied and separated children living outside their country of origin*.

✓ **Respect for the Best Interests of the Child**

EU Directive Recitals 8, 22 & 23; Art 13.1, Art 16.2

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration.

✓ **Identification – Including Age Assessment**

EU Directive Art 13.2

Assessing the age of a victim of trafficking may be necessary due to lack of documents or the use of fraudulent documents. A child may be instructed by their traffickers to lie about their age in order to avoid being taken into care or to be allowed to migrate or to work with less scrutiny. In case of uncertainty about the age of a trafficked person, he or she should be given the benefit of the doubt and presumed to be a child in order to receive immediate assistance, support and protection.

✓ **Appointment of a Guardian**

EU Directive Art 14.2 / Art 15.1 / Art 16.3

A guardian should be appointed for an unaccompanied child as well as for any child whose parents may have a conflict of interest (for example, if they are suspected of involvement in trafficking or exploiting the child).

Good Practice - Professional Guardianship in the Netherlands

The Dutch Civil Code states that all children in the Netherlands must be under the legal custody of an adult, who exercises parental authority. Therefore, all separated children are appointed a professional guardian, provided by the NIDOS foundation to exercise overall legal capacity and to act on behalf of the child regarding all legal matters. Guardians are appointed promptly. NIDOS is even present at Schiphol airport to assist children upon arrival.

Guardians working for NIDOS are professionals who are skilled in working with migrant children. A bachelor degree in social work is required to become a guardian. Guardians are supported by ongoing workshops and in-house training courses. The guardian promotes the best interests of the child, secures the child's education and care, and works to prevent abuses and disappearances.

✓ **Non-Punishment**

EU Directive Recital 14

Victims of trafficking in human beings should be protected from prosecution or punishment for criminal activities that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators.

Some children are exploited in criminal activities or administrative offences, including drug trade, theft and forced begging. These children are particularly vulnerable to being misidentified as children in conflict with the law, and to being sanctioned, prosecuted and returned without access to assistance and justice.

The involvement of a child victim in criminal activities or administrative offences as a consequence of their being trafficked should not undermine their status as both a child and a victim and their related rights to special protection. States need to take the best interests of the child into account and to ensure that they can exercise their rights fully, irrespective of their immigration or any other status.

Good Practice – Guidelines for Prosecutors in the UK

The UK Crown Prosecutorial Service has issued guidance for prosecutors on child victims of trafficking as well as on the prosecution of defendants who might be trafficked victims. The guidance is to assist prosecutors to identify possible cases of trafficking and to act accordingly. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds. In order to be most effective, such guidance should be complemented by training targetting both prosecutors and judges.

✓ **Provision of Special Protection & Assistance**

EU Directive Art 13 – 14 – 15- 16

Unaccompanied and separated children should be provided with equitable treatment and care on par with national children in care. Such protection measures are crucial to prevent disappearances and re-trafficking.

✓ **Residence Status – In Line with Best Interests Assessment**

PQ: What is your assessment of the demand that victims who inform on their exploiters should be granted guaranteed resident status?

As the CoE Convention emphasizes - the residence permit for child victims, when legally necessary, should be issued in accordance with the best interests of the child and renewed under the same conditions.

✓ **Identification and Implementation of a Durable Solution based on a Best Interests Determination**

EU Directive Article 16(2) requires states to take all necessary measures to find a durable solution, based on an individual assessment of the best interests of the child.

A durable solution is one that seeks to provide a long-term and sustainable solution for the child. As this is a decision that clearly has a significant impact on the child's life, it should be based on a formal "Best Interests Determination" designed to determine the child's best interests while taking account of the views of the child and involving the child's parents or guardian. The process should be initiated and implemented without undue delay and should include a security and risk assessment. In seeking a durable solution, several outcomes are possible including: local integration such as the granting of international protection status; voluntary repatriation and re-integration to the country of origin; or a solution in a third country. If it is apparent that it will not be possible to protect a child from threat either in the country of origin or destination, the authorities responsible for finding a durable solution for the child should consider a solution in a third country.

A Best Interest Determination should be carried out for particularly important decisions affecting the child and as such, should be a formal process accompanied by procedural safeguards that include a written record of the assessment and the possibility to appeal. The process should involve decision-makers with relevant areas of expertise (such as child protection authorities or child psychologists) and the child's guardian, balancing relevant factors in order to assess the best option for the child. The right of the child to express their views and to have them taken into account is especially important in this process.

UNHCR and UNICEF are currently developing guidance on Best Interests Determination for unaccompanied and separated migrant children in a European context, which should be launched in Spring 2012.

Good Practice - Standardising Psycho-Social Interviewing Procedures in Finland

In Finland, the general principle of the best interests of the child is reflected in numerous laws and policies. However, there was a lack of clarity on how this principle was to be understood and implemented in

practice, specifically in relation to unaccompanied migrant children. Therefore, a standardised psycho-social interviewing model was developed. The model gives particular attention to assessing the child's experience of violence, exploitation and abuse, including in the context of trafficking.

The model has two main parts. An initial assessment is done immediately on the child's arrival at the reception centre and focuses on the child's experiences up to that point and their immediate needs. An in-depth interview follows and is used to plan the services needed, as well as to assess the best interests of the child, which lead to a recommendation in relation to the asylum procedure. The model also includes a checklist of human trafficking indicators and advice on how to proceed if human trafficking is suspected.

✓ **Child-friendly Interviewing and Criminal Investigation Procedures**

PQ: What measures are indispensable when trying to enlist victims as prosecution witnesses?

EU Directive Article 15 lists a set of protections for child victims in criminal investigations and proceedings relating to legal representation and counselling, the conduct of interviews, the use of video recorded interviews as evidence and court hearings.

✓ **Information and Safety – Respect for Best Interests and the Right to Participate and be Heard**

Children have the right to play a role in proceedings against their exploiters, the right to be heard, to information, and to be kept informed. However, before deciding the course of action for trafficked children, the best interests of the child need to be carefully considered. The benefits of involvement in criminal proceedings should be carefully weighed against any potential negative consequences taking into consideration the views of the child while also considering the child's age and maturity.

✓ **Provision of Free Legal Aid by Specially Trained Lawyers**

EU Directive Article 12(2) requires States to ensure that victims have access without delay to legal counselling and legal representation, including for claiming compensation.

EU Directive Article 15(2) requires Member States to ensure that children have access to legal counselling and representation without delay. Unless the child has sufficient financial means, this counsel must be free.

Trafficked persons have an important role to play – and a legitimate interest – in legal proceedings against their exploiters. However, they may also have special needs and vulnerabilities. Therefore, all efforts should be made to ensure that victims are able to participate in legal proceedings safely and on the basis of full information. Free quality legal assistance, provided as soon as there are reasonable grounds for believing that the person might be a victim of trafficking, can help ensure that protection needs are identified early and accurately, and may help secure voluntary participation in criminal investigation and proceedings.

Access to free legal aid should not be restricted to criminal proceedings but should cover all legal proceedings related to the person's victim status, including criminal, civil or labour procedures, for the purpose of compensation, as well as proceedings in relation to immigration status or asylum.

Lawyers working with children should be specifically trained in children's rights and child trafficking. Legal assistance should be given in a language that the child understands, in cooperation with the child's guardian or social worker, and be culturally appropriate.

✓ **Child-friendly Interview Procedures**

Interviews with child victims should take place without unjustified delay, in child friendly premises, by trained professionals, as much as possible by the same person, not more than strictly necessary, and in the company of a representative of the child or an adult of the child's choice. Interviewing children takes special care and expertise.

Alternative methods of giving testimony should always be considered. Children who participate in criminal proceedings as victim-witnesses require protection before, during and after a trial. Interviews with child

victims or witnesses may be video recorded and these recordings may be used as evidence in criminal court proceedings.

The protection of the safety and privacy of child victims and witnesses is paramount. Hearings of children should always be closed, without the presence of the public and the media, and the identity of the child should be protected. Measures should be taken to avoid direct contact between the child and the suspected trafficker during the process of investigation and prosecution as well as during trial hearings.

Good Practice – Children’s Houses in the Nordic Countries and Elsewhere

A Children’s House is a specialised institution offering a comprehensive set of services in response to cases of actual or suspected child sexual abuse or exploitation. As well as child welfare services, this includes a child-friendly process for interviewing children for criminal justice purposes. In the Children’s House, only one specially trained interviewer is speaking with the child. The judge, the prosecutor, the child’s lawyer and the defence lawyer can watch through video and can communicate with the interviewer to pose questions to the child. The child does not have to appear in court. By offering the services from multiple disciplines under one roof, this integrated approach helps to prevent repeated interviews and to ensure that a child victim is referred to all relevant services that he or she needs. The model further creates a forum for collaboration of court judges, prosecution services, police and child protection services.

The measures that I have highlighted from the EU Directive should improve identification, assistance and protection, thus encouraging and supporting more victims to co-operate in criminal investigations and proceedings against their traffickers.

Six UN agencies will shortly be publishing a joint UN commentary on the EU Directive and I would encourage interested practitioners and parliamentarians to use this guidance in your future efforts to combat trafficking.

Select UNICEF Anti-Trafficking Publications:

UNICEF Guidelines on the Protection of Child Victims of Trafficking
http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking
http://www.unicef.at/fileadmin/medien/pdf/UNICEF_Child_Trafficking_low.pdf

ILO-UNICEF - Training manual to fight trafficking in children for labour, sexual and other forms of exploitation
http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/WCMS_111537/index.htm

UNICEF Let's talk, Developing effective communication with children victims of violence and trafficking
http://www.childtrafficking.org/pdf/user/handbook_lets_talk_a5_eng.pdf

IPU-UNICEF – Handbook for Parliamentarians: Combatting Child Trafficking
http://www.unicef.org/publications/index_33882.html

More also on the Innocenti Research Centre web site:
<http://www.childtrafficking.org/eng/publication.html>