

## **EC Proposal for an EU Directive on preventing and combating trafficking in human beings and protecting victims**

NSPCC Position Paper, June 2010

### **Key Recommendations**

#### **NSPCC General Approach**

- Trafficked children should be treated as children first, and consideration of their immigration status and law enforcement issues should be secondary.
- Trafficked children, and children at risk of trafficking, should be protected by States from exploitation and abuse, and should not be held in detention.
- Trafficked children should have the right to be heard in the judicial and administrative proceedings affecting them, and should have the right to legal representation.
- Child protection and safeguarding support for trafficked children needs to be improved significantly, and it is essential that the relevant agencies work together to put effective plans in place to protect children.
- There is an urgent need to improve the immediate response to children who are identified as having potentially been trafficked to stop children going missing from local authority accommodation and being exposed to greater risk.
- The long-term recovery of trafficked children who have been identified is impeded by an unsympathetic and punitive asylum process which discounts much of their evidence of trafficking when they approach the age of 18.
- In order to provide adequate protection to child victims of trafficking it is essential that EU institutions ensure that the protection, rights and needs of children are integrated within all EU activities relating to asylum and immigration in accordance with international treaties and obligations.

#### **The draft Directive**

- The Directive should make reference to the possibility of trafficking for irregular adoption.
- The range of penalties for trafficking should be extended to at least 12 or 14 years, which would better reflect the severity of these crimes against children.
- We welcome the introduction of Article 7 (the “non-punishment clause”), allowing for the non-prosecution of victims of trafficking as a direct consequence of being trafficked.

- We support the inclusion of the provision enabling delay in prosecution of trafficking offences, when the victim is a child, for a sufficient period of time after the victim has reached the age of majority.
- We welcome the clear statement that assistance and support for a victim must not be conditional on a victim's willingness to act as a witness.
- Clear and comprehensive guidance for social services, health, education, immigration and law enforcement officials is crucial in order to identify trafficked children and to act to protect them. Efforts to co-ordinate information sharing between agencies are a vital part of this.
- Assistance and protection to suspected and identified victims of trafficking should include safe and appropriate accommodation; counselling; health care; and educational opportunities. Specialised services should be provided to meet their specific needs, including their linguistic and cultural needs.
- At ports of entry, multi-agency teams should be in place to identify concerns about trafficking and undertake investigation and protection measures. Multi-agency approaches should also be applied at other points in the trafficking process.
- Children suspected of being trafficked, or who have been identified as trafficked, should not be held in any form of detention.
- Article 12.1 should be revised in line with Article 24 of the EU Charter of Fundamental Rights: 'In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests *must be a primary consideration*' (our italics).
- The European Commission should develop specific EU guidelines for the determination of children's best interests in trafficking cases
- Formal age assessment procedures should never be forced, and should be carried out by independent professionals with appropriate expertise. Assessment methods must be safe and respect human dignity. Before proceeding with checks, a guardian should be appointed.
- Appropriately trained professionals should be trained to work with children so that children's views on decisions that affect them can be elicited.
- In relation to judicial proceedings, Article 14 sets out useful safeguards for children which the NSPCC supports. These should be supplemented by drawing upon the 2006 UNICEF Guidelines on the Protection of Child Victims of Trafficking.
- The EU should pilot further anti-trafficking awareness initiatives with and for children through the Daphne III Programme.
- The NSPCC endorses the proposal for the appointment of 'National Rapporteurs' or equivalent mechanisms to act as central points for data collection, monitoring policy and practice initiatives, and reporting to the national authorities.
- A common basis for data collection could be the child trafficking indicators set out in a report for the EU Fundamental Rights Agency in 2009.
- We note that a number of important issues are not addressed in the Directive, including: provision for return; longer-term rehabilitation; family tracing; and durable solutions. It is important that the final Directive should address these policy areas, to which child protection and the principle of the best interests of the child should be central.

## **Introduction**

The NSPCC welcomes the European Commission proposal for a new EU directive on trafficking. Because of the cross-border nature of the problem, the NSPCC endorses the view that further EU action is essential for tackling child trafficking, alongside international and national action. As well as helping to prevent and combat the crime of child trafficking, the EU has a vital role to play in helping to guarantee the protection of child victims.

We note also that there is a significant advantage in putting a Directive in place to replace the 2002 Framework Decision on combating trafficking in human beings (2002/629/JHA). Although both instruments are binding upon Member States, only a Directive has 'direct effect'<sup>1</sup>. This should help to counter the poor implementation by Member States of the earlier Framework Decision.

This paper outlines the NSPCC's mandate, and sets out evidence and experience from the Child Trafficking Advice and Information Line (CTAIL) in the UK which is run by the NSPCC. It then explores the EU legislative framework from a child protection perspective, and concludes by identifying areas within the proposed Trafficking Directive that could be strengthened to ensure that the rights of children are fully realised.

## **The National Society for the Prevention of Cruelty to Children (NSPCC)**

The NSPCC is the UK's leading NGO specialising in child protection. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC's experience and knowledge of trafficking comes both from policy work and the NSPCC's services. Within the UK, the NSPCC runs the Child Trafficking Advice and Information Line. CTAIL is funded by the Home Office and Comic Relief to give advice and support to professionals - social workers, police officers, health workers, the UK Borders Agency, teachers, foster carers, and so on - working on cases where there is a concern that a migrant child has been trafficked into the UK. The work entails: giving advice about trafficking and child protection procedures; making referrals to agencies that need to be involved (e.g. children's services, solicitors, immigration) and advocating on behalf of the young person; discussing safeguarding issues and plans with professionals and young people; writing expert witness court reports; and giving training and awareness raising presentations.

At a policy level the NSPCC is a member of ECPAT UK and has worked alone and collectively with other members of ECPAT on child trafficking at both national and European level for several years.

---

<sup>1</sup> I.e. The European Commission can take legal action before the Court of Justice to enforce transposition at Member State level of a Directive.

## Background – the extent and nature of child trafficking

It is essential that local and national authorities are aware of the overlaps between different categories of children who arrive in the country. They may be asylum seekers, irregular migrants, unaccompanied or separated – some of whom will have been trafficked, but by no means all. Whatever their status, it is crucial that the relevant authorities are aware of the rights of all the children who find themselves in any of these circumstances, and the particular forms of protection they need to make available to these children<sup>2</sup>.

For a range of reasons, it is impossible to provide accurate assessments of the extent and nature of child trafficking in Europe. For example, definitions of trafficking differ widely, various methods of data collection exist, and victims are often unwilling to co-operate with the authorities<sup>3</sup>.

Although robust statistical data are not available, every year hundreds of boys and girls are identified as having been trafficked in Europe<sup>4</sup> – and the real figures are believed to be much higher. In order to be exploited, children may be moved into Europe from outside; from one European country to another; and/or within their own country.

In the UK context, CTAIL collects figures on a quarterly basis in relation to the cases it deals with. Between September 2007 and the end of April 2010, 391 cases were referred to the service, peaking at over 60 cases between February and April 2009. The data indicates that the highest number of referrals are of children from Vietnam (42 cases), China (41), Nigeria (32), Romania (20) and Afghanistan (19)<sup>5</sup>.

Trafficking occurs for a variety of purposes related to exploitation, including sexual exploitation, domestic servitude, exploitative labour, benefit fraud, and criminal activity. Trafficking has physical, psychological and behavioural effects on children<sup>6</sup> and consequences can also include children being prosecuted for crimes they are coerced to commit; often it also involves multiple forms of violence against the children involved<sup>7</sup>.

Despite the seriousness of the crimes involved against children, convictions of child traffickers are rare. Although the data are incomplete, a recent study by the Fundamental Rights Agency<sup>8</sup> revealed that in five Member States no final convictions were issued in the period 2000-2007 – and in one Member State no case of child trafficking was even identified and/or prosecuted in the named period.

---

<sup>2</sup> Dottridge M. (2006) Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, Geneva: UNICEF

<sup>3</sup> Fundamental Rights Agency (2009) Child Trafficking in the European Union: Challenges, perspectives and good practices, Luxembourg: Office for Official Publications of the European Communities

<sup>4</sup> Save the Children/the Separated Children in Europe Network (2007) Position Paper on Preventing and Responding to Trafficking of Children in Europe

<sup>5</sup> CTAIL, Ninth Quarterly Report for the Home Office, January 2010

<sup>6</sup> Dottridge M. (2006) Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, Geneva: UNICEF

<sup>7</sup> Paulo Sérgio Pinheiro (2006) United Nations study on violence against children, A/61/299

<sup>8</sup> Fundamental Rights Agency (2009) Child Trafficking in the European Union: Challenges, perspectives and good practices, Luxembourg: Office for Official Publications of the European Communities

## The NSPCC's Approach to Child Trafficking

The NSPCC position on trafficking highlights the importance of child protection issues. It derives from a child rights-based approach and draws upon the key principles set out in the 1989 UN Convention on the Rights of the Child<sup>9</sup> (and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography):

- *Best interests.* In all actions concerning children, the best interests of the child should be a primary consideration (Article 3.1)<sup>10</sup>;
- *Survival and development.* The inherent right to life, and the State's obligation to ensure the child's survival and development (Article 6);
- *Non-discrimination.* Children have a right to exercise their rights without discrimination of any kind (Article 2);
- *Participation.* The child has a right to express views freely and to have these taken into account in decision-making affecting him or her (Article 12)<sup>11</sup>; and
- *Protection.* The child has a right to be protected from physical and mental violence (Article 19), economic exploitation (Article 32), sexual exploitation (Article 34), and from trafficking and abduction (Article 35).

To be consistent with a child rights approach, trafficked children should be treated as children first, and consideration of their immigration status and law enforcement issues should be secondary. Trafficked children, and children at risk of trafficking, should also be protected by States from exploitation and abuse, and should not be held in detention. They should have the right to be heard in the judicial and administrative proceedings affecting them, and should have the right to legal representation.

In practice, based on CTAIL's experience, the NSPCC considers that in the UK context awareness that children may be trafficked is growing and professionals are getting better at identifying them. However child protection and safeguarding support still need to be improved significantly, and it is essential that the relevant agencies work together to put effective plans in place. In general we have found that without specific advocacy children who have been trafficked do not trigger an appropriate child protection response.

Another problem is the difficulties involved in agencies working together across borders. For example, the Council of Europe Convention on Action against Trafficking in Human Beings (2005) obliges State parties to establish National Referral Mechanisms (NRMs), however these have been implemented in very different ways in different countries, making co-ordination difficult. In the UK, there is also some confusion among professionals as to whether the NRM or safeguarding procedures should be prioritised when dealing with trafficked children.

---

<sup>9</sup> Other relevant articles include the right to protection of children deprived of their family (Art. 20) and the prohibition of detention (Art. 37)

<sup>10</sup> This principle is also expressed in Article 24 of the EU Charter of Fundamental Rights

<sup>11</sup> See also Article 24 of the EU Charter of Fundamental Rights

The NSPCC considers that there is an urgent need to improve the immediate response to children who are identified as having potentially been trafficked to stop children going missing from local authority accommodation. In recent years there have been reports of African children (particularly Nigerian girls) arriving in the UK as unaccompanied minors, claiming asylum and being taken into care due to their age - and then subsequently disappearing from care. Many of these children were taken from the UK to Europe to be involved in prostitution<sup>12</sup>. In April 2009, there were also reports of 77 Chinese children going missing from care since 2006<sup>13</sup> after being placed in an assessment centre near to Heathrow airport.

The NSPCC is also concerned that the long-term recovery of trafficked children who have been identified is impeded by an unsympathetic and punitive asylum process which discounts much of their evidence of trafficking when they approach 18. We have supported trafficked children who have needed to claim asylum in order to remain in the UK and who have had their claims rejected.

A specific concern in relation to the impact of EU policies on trafficked children is the failure to sufficiently integrate a children's rights-based approach in asylum and immigration legislation. Trafficked children are often brought into EU countries without proper documentation and are therefore seen as 'illegal immigrants'. They frequently seek asylum in destination countries. In order to provide adequate protection to child victims of trafficking it is essential that EU institutions ensure that the protection, rights and needs of children are integrated within all EU activities relating to asylum and immigration.

## **The EU legislative framework**

There is a range of EU legislation, plans, programmes and recommendations relevant to combating trafficking in human beings, including child trafficking. These include<sup>14 15</sup>:

- Council Framework Decision 2002/629/JHA on combating trafficking in human beings;
- Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography; and
- Council Directive 2004/81/EC 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.

---

<sup>12</sup> ECPAT UK, 'Cause for concern' 2004, 9-10

<sup>13</sup> Booth, Robert, The Guardian, 'People trafficking: a phone call, a car door opens – and another child vanishes' 5 May 2009, available at <http://www.guardian.co.uk/society/2009/may/05/china-child-trafficking-heathrow>

<sup>14</sup> Other relevant EU policies include: European Commission, Communication 'Action Plan on Unaccompanied Minors' 2010-2014, Brussels 6.5.2010, COM(2010) 213 final; European Commission, Communication 'Towards an EU Strategy on the Rights of the Child', Brussels 4.7.2006, COM(2006) 367 final; EU Presidency, Stockholm Programme, Brussels 2.12.2009

<sup>15</sup> Also relevant is the Council of Europe Convention on Action against Trafficking in Human Beings (2005), which addresses prevention, co-operation between different actors, protection of and assistance to victims, and an obligation to criminalise trafficking.

Despite these initiatives, this framework has proven insufficient to meet the significant challenges involved in combating trafficking in general, and child trafficking in particular.

In 2008, the European Commission's Group of Experts on Trafficking in Human Beings issued an Opinion on revising the 2002 Framework Decision (FD). Among other things, the Group stressed that a key guiding principle should be respect for the rights of children and affirmation of the State's duty to protect them in anti-trafficking actions. The Group argued that the definition of trafficking in the 2002 FD should be widened to include various forms of exploitation which are particularly relevant to child victims (including for example organised begging, petty crime and drug-related crime). Identification procedures, investigations, criminal proceedings, and the protection of victims' rights should also be strengthened. For instance, court procedures should be made more 'child-friendly'. This can be achieved by avoiding the need for child victims to meet face-to-face with the accused, by the use of video and audio recording, and by *in camera* hearings. The NSPCC endorses these suggested improvements to the 2002 Framework Decision which place greater emphasis on children's rights, and welcomes their inclusion in the current proposal for a Directive.

The Directive concerning the granting of temporary residence permits for victims of trafficking (covered by Council Directive 2004/81/EC) does not automatically apply to children, although Member States have discretion to bring them within its scope (in which case they have to also implement certain socio-economic rights). The Group of Experts has argued that insufficient priority is given to the needs and rights of victims to support and assistance. Making permits and assistance conditional on co-operation in crime proceedings against traffickers, and giving weak guarantees concerning a possible right to remain on the territory after relevant national proceedings have been completed, is likely to make victims reluctant to testify – especially as this may expose them to further risk. The Group recommends that unconditional assistance should be given to victims of trafficking, regardless of whether they are able or willing to give evidence as a witness.

## **Comments on the draft Trafficking Directive**

### *Article 2: Offences concerning trafficking in human beings*

As in the 2002 FD, the definition of trafficking adopted here draws heavily upon that in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Palermo Protocol). However the definition of exploitation is usefully widened in the revised proposal, particularly by the inclusion of 'begging' and of 'criminal activities' (eg. pick-pocketing, shoplifting). There is, for example, considerable evidence of children being trafficked on an organised basis (eg. from Albania to Greece and Italy) to beg, with any 'earnings' (eg. from washing windscreens, playing music in the street, selling cheap items in bars/cafes) transferred to controlling adults<sup>16</sup>.

---

<sup>16</sup> Terre des homes (2003) *The Trafficking of Albanian Children in Greece*

The preamble to the Directive also helpfully makes clear that where a child is concerned ‘...*consent should never be considered valid*’. This reflects the UN Protocol which states that it is not necessary for a child to have been subjected to abusive means of control in the course of being recruited for the case to constitute trafficking.

Recent concern in the UK has also focused on high numbers of children, largely from South East Asia (and in particular Vietnam), who are being trafficked into the country for the purpose of forced labour in cannabis cultivation. ECPAT UK describes the process as follows<sup>17</sup>: ‘*Made to work in ‘cannabis factories’ by organised criminal gangs, children are robbed of their freedom and subjected to extremely hazardous conditions. The gangs also use debt bondage and the threat of reprisals against the children and their families to prevent them from trying to escape*’.

Another category not mentioned in the definitions is irregular adoption; there is some evidence of younger children, mainly babies, trafficked for this purpose. Although the primary international instruments in this area - the 2000 ‘Optional Protocol to the CRC on the sale of children, child prostitution and child pornography’ and the 1993 ‘Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption’ (Hague Convention No. 33) - do not specifically use the term ‘trafficking’, they contain requirements to prohibit activities involving either improperly induced consent, or financial or other gain in relation to adoption. The NSPCC proposes that the new Directive should make reference to the possibility of trafficking for irregular adoption.

#### *Article 4: Penalties*

The Directive rightly aims to further approximate penalties and increase sentences across the EU. Where a vulnerable victim such as a child is involved, it proposes a maximum of at least 10 years of imprisonment. This principle mirrors the position in most Member States, where more severe penalties can be imposed for the offence of trafficking in human beings if the victim is a minor. However, options for sentence length vary widely. In Austria and Denmark it is 1-10 years; in the UK the maximum is 14 years; in Italy it is 8-30 years and in Ireland, life imprisonment<sup>18</sup>. Given that the majority of States apply a sentence band with an upper limit of 10 years already, the NSPCC recommends that the range in the Directive should be extended to at least 12 or 14 years, which would better reflect the severity of these crimes against children.

#### *Article 7: Non-prosecution or non application of penalties to the victim*

The NSPCC endorses the introduction of Article 7 (the “non-punishment clause”), allowing for the non-prosecution of victims of trafficking as a direct consequence of being trafficked<sup>19</sup>. As the EU Experts Group has argued, this provision not only complies with the obligation to protect the rights of trafficked persons, but also

---

<sup>17</sup> ECPAT UK, Safeguarding children trafficked to the UK to undertake forced labour in cannabis factories, Child Trafficking no.1, 2010

<sup>18</sup> Fundamental Rights Agency (2009) Child Trafficking in the European Union: Challenges, perspectives and good practices, Luxembourg: Office for Official Publications of the European Communities

<sup>19</sup> See also Article 26 of the Council of Europe Convention on Action against Trafficking (2005)

significantly enhances the chances of successful prosecution of the perpetrators by focusing the investigation on the traffickers.

In the UK context, however, we are aware that this approach is not always followed. For example, children trafficked for forced labour in cannabis factories are often not identified as victims, but are instead viewed as criminals and charged with drug or immigration offences<sup>20</sup>.

#### *Article 8: Investigation and prosecution*

The NSPCC supports the inclusion of the provision enabling delay in prosecution of trafficking offences, when the victim is a child, for a sufficient period of time after the victim has reached the age of majority. Our experience is that it may take a long time for trafficked children to disclose their experiences and to come to a realisation of what has happened to them. In recent years our Sexual Exploitation Service started to accept referrals of very vulnerable girls who had arrived in Britain from different parts of Africa and were susceptible to sexual exploitation because of their previous experiences and level of isolation. Sustained work with these girls and young women over a period of years has led to them sharing their histories with staff and what has emerged from all the histories are quite clear indicators of trafficking for sexual purposes and in one case for domestic work.

#### *Article 10: Assistance and support for victims of trafficking*

Article 10.1: We endorse the view of Save the Children/the Separated Children in Europe Network<sup>21</sup> that: *'child-friendly procedures should be developed and implemented to support and protect those trafficked children who co-operate with the authorities on investigation and prosecution efforts. Such measures should support the child's participation while aiming to avoid retraumatization'*.

Article 10.2: The NSPCC welcomes this positive and important provision as protection is provided from the point when there 'is an indication' that the person 'might' have been trafficked rather than having to first establish this as a fact.

Article 10.3: The NSPCC welcomes the clear statement that assistance and support for a victim must not be conditional on a victim's willingness to act as a witness.

Article 10.4: The NSPCC welcomes the emphasis of this Article on early identification, assistance and support for victims. Clear and comprehensive guidance for social services, health, education, immigration and law enforcement officials is crucial in order to identify trafficked children and to act to protect them. Efforts to co-ordinate information sharing between agencies are a vital part of this. In the UK, NSPCC research with practitioners has underlined the importance of multi-agency work<sup>22</sup> and we have proposed that a national strategy should be developed for a

---

<sup>20</sup> ECPAT UK, Safeguarding children trafficked to the UK to undertake forced labour in cannabis factories, Child Trafficking no.1, 2010

<sup>21</sup> Save the Children/the Separated Children in Europe Network (2007) Position Paper on Preventing and Responding to Trafficking of Children in Europe

<sup>22</sup> Pearce J., Hynes P., Bovarnick S. (2009) Breaking the Wall of Silence: practitioners' responses to trafficked children and young people, London: University of Bedfordshire/NSPCC

multi-agency approach from a child protection perspective. This would put in place training programmes and ensure awareness, understanding and clear guidance on child trafficking issues across sectors including immigration services, social services, Local Safeguarding Children Boards (LSCBs)<sup>23</sup>, teachers and medical professionals. At ports of entry, we would like to see multi-agency teams in place to identify concerns about trafficking and undertake investigation and protection measures. Multi-agency approaches should also be applied at other points in the trafficking process.

Another important issue is that the victims of child trafficking may be ‘accompanied’ by their trafficker, or by a family member or someone who claims to be related to them, or they may be travelling alone or with other young people. They may enter either legally (as a visitor or student, for example) or illegally (with forged documents). These complex arrangements may make it hard to identify them as being at risk of harm on entry to the territory.

Article 10.5: The NSPCC believes it is crucial to provide assistance and protection to suspected and identified victims of trafficking, as set out in Article 10.5. This should include safe and appropriate accommodation; counselling; health care; and educational opportunities. Specialised services should be provided to meet their specific needs, including their linguistic and cultural needs, and protect their rights.

We note that Article 14 sets out provision for free legal representation in criminal investigations and proceedings; whilst this is clearly essential, it is also vital that all child victims of trafficking should in addition have an independent guardian appointed. Acting in the child’s best interests, the guardian would be an advocate for the child, provide a link between the child and the various agencies involved, and support them in relation to issues of assistance and protection<sup>24</sup>. Given that the term ‘guardian’ can mean different things in different states there is also a need for clear guidance on the role of this person.

The provision of accommodation requires careful consideration, in particular in relation to the difficult balance between maintaining children’s safety and protecting their rights. The NSPCC is aware of cases where child victims of trafficking ‘disappear’ from safe houses, often being ‘pre-programmed’ to do so by traffickers, and are subsequently picked up by them. Whilst children’s security is very important – and may be threatened on an ongoing basis by those involved in their trafficking – keeping children in any form of accommodation that they may interpret as ‘imprisonment’ or ‘detention’ is likely to cause them further harm. Whereas it is sensible to impose some limits on children’s freedom of movement to protect them, these should not be arbitrary and should respond to specific evidence of threats<sup>25</sup>. The NSPCC considers that the Directive should state that children suspected of being trafficked, or who have been identified as trafficked, should not be held in any

---

<sup>23</sup> The LSCB is the key statutory mechanism in the UK for agreeing how the relevant organisations in each local area co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do.

<sup>24</sup> For further information on the role of guardians, see UNICEF (2006) Guidelines on the Protection of Child Victims of Trafficking

<sup>25</sup> Dottridge M. (2006) Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, Geneva: UNICEF

form of detention. In line with this approach, the FRA report<sup>26</sup> suggests that *'EU legislation should ensure that a child who is believed to be a victim of trafficking should not be detained'*.

*Article 12: General provision on assistance, support and protection measures for child victims of trafficking*

Article 12.1 proposes that child victims should be provided with *'assistance, support and protection, taking into account the best interests of the child'*. The NSPCC considers that this wording is too weak to protect and promote the best interests of the child effectively. We believe it should be revised in line with Article 24 of the EU Charter of Fundamental Rights<sup>27</sup>: *'In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'* (our italics). The NSPCC further proposes that the European Commission should develop specific EU guidelines for the determination of children's best interests, drawing upon UNICEF's 2006 *'Guidelines on the Protection of Child Victims of Trafficking'*<sup>28</sup>.

We welcome Article 12.2 in that it seeks to apply the principle of the 'benefit of the doubt' to the assessment of a child's age, in line with the approach set out by UNHCR Guidelines in relation to unaccompanied children seeking asylum<sup>29</sup>. In cases where the age of a trafficked person is uncertain, age assessments should be based not only on physical, but also on psychological and cultural, factors. If States undertake any formal age assessment procedures, these should never be forced, and should be carried out by independent professionals with appropriate expertise. Assessment methods must be safe and respect human dignity. Before proceeding with checks, a guardian should be appointed. These safeguards should be set out in the Directive.

*Article 13: Assistance and support to child victims of trafficking*

Article 13.1 suggests that individual assessments of the circumstances of child victims should be undertaken, *'taking due account of the child's views, needs and concerns'*. Although the principle of child participation set out here is important, the formulation should be strengthened. Drawing on Article 12 of the UNCRC, we propose an alternative wording for the final clause: *'giving due weight to the child's views and rights'*. This requires the appointment of appropriately trained professionals to work with children so that such views can be elicited.

*Article 14: Protection of child victims of trafficking in human beings in criminal investigations and proceedings*

In general, Article 14 sets out useful safeguards for children which the NSPCC supports. We suggest the following additional points should be taken into account in

---

<sup>26</sup> Fundamental Rights Agency (2009) *Child Trafficking in the European Union: Challenges, perspectives and good practices*, Luxembourg: Office for Official Publications of the European Communities

<sup>27</sup> Article 24 of the Charter reflects Article 3 of the UNCRC.

<sup>28</sup> UNICEF (2006) *Guidelines on the Protection of Child Victims of Trafficking*, New York: UNICEF

<sup>29</sup> United Nations High Commissioner for Refugees (UNHCR), "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum," February 1997

relation to Article 14.3, drawing upon the 2006 UNICEF Guidelines on the Protection of Child Victims of Trafficking:

(a) Although it is often wise to interview a child without unjustified delay, it is important not to put child victims of trafficking under unnecessary pressure. Initial questioning should therefore only seek to collect basic biographical data. Other information regarding the experience of the child while trafficked should be sought later, when the child feels more secure and sufficient trust has been established with the interviewer.

(b) Interviews with the child victim should take place, where necessary, in premises designed or adapted for this purpose, *'and where the child feels safe'*.

(d) Ideally a child victim should be questioned by officers of the same sex, except when there is cultural evidence that this would not be in the best interests of the child.

(f) We propose changing *'may'* be accompanied to *'should'* be accompanied. Moreover, law enforcement authorities should only question a child victim about their trafficking experience in the presence of an appointed guardian (see Article 10.5 above on the role of the *'guardian'*).

Rather than stating that the child may be accompanied by *'an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person'*, it may be desirable to specify that a child victim should not be questioned in the presence or physical proximity of any suspected trafficker. This latter formulation is more specific, and would mean there is less potential for law enforcement officials to exclude legitimate representatives/guardians.

#### *Article 15: Prevention*

There is little consensus about the merits of different prevention strategies in relation to child trafficking. The two main approaches that have been tried involve efforts to address *'demand'* issues by deterring traffickers through prosecuting and punishing them, and *'supply'* issues by distributing information to children and their parents about the risks of trafficking. It is not clear what the most effective strategy is in relation to prevention, and what factors make some children more *'at risk'* than others. However, there is some evidence to suggest that involving children in designing and implementing awareness raising activities can be helpful, if their dignity and safety can be ensured. This is particularly so for those who have previously been trafficked and those in situations identified as putting them *'at risk'*. The NSPCC proposes that the EU should pilot further anti-trafficking awareness initiatives with and for children through the Daphne III Programme.

#### *Article 16: National Rapporteurs or equivalent mechanisms*

It is widely acknowledged that it is very hard to obtain reliable data on the extent and nature of child trafficking, owing to the lack of standardised information collection systems based on common definitions, and the clandestine nature of the activities

involved. As a European Commission Staff Working Document<sup>30</sup> stated in 2009, monitoring is poor: *'...the vast majority of countries do not even possess figures. The national machinery still seems to be inadequate as far as monitoring mechanisms are concerned. Two countries (NL and SE) have appointed National Rapporteurs and eight indicate that comparable mechanisms have been set up (BE, BG, CY, CZ, DK, FI, PT, UK). This situation might have a negative impact on the quality of the data collected.'* A common basis for data collection could be the child trafficking indicators set out in a report for the FRA in 2009<sup>31</sup>; these cover identification, protection, prosecution and prevention indicators.

The NSPCC endorses the proposal in the draft Directive for the appointment of 'National Rapporteurs' or equivalent mechanisms to act as central points for data collection, monitoring policy and practice initiatives, and reporting to the national authorities. We concur with the position of the Experts Group on Trafficking in Human Beings that such initiatives need to provide independent scrutiny and review of progress on child trafficking. This should be made clear in the wording of Article 16.

Based on our experience, we also consider it vital to have effective co-ordination between the relevant public authorities, such as Ministries of Justice and Foreign Affairs, National Rapporteurs, police forces, immigration agencies and social services. To avoid confusion and duplication of effort, clarity is required in relation to the roles, remits and competences of all the agencies involved.

#### *Article 21: Addressees*

We are aware that the UK and Ireland are able to opt in or out of the proposed legislation. The NSPCC notes that the new UK Government's programme (May 2010)<sup>32</sup> stresses that it *'will tackle human trafficking as a priority'* and that it will approach forthcoming EU legislation in the area of criminal justice *'on a case-by-case basis'*. The NSPCC therefore considers that the case for the UK (and Ireland) participating in the adoption and application of this Directive is strong. The NSPCC will be making representation to the UK Government to this end.

#### **Other issues**

The NSPCC notes that a number of important issues are not addressed in the draft Directive, including provision for return; longer term rehabilitation; family tracing; and durable solutions. We believe that any returns should take place on a voluntary rather than a forced basis. Determination of the child's best interests is the critical factor in every decision whether to return or not and will depend on the specific circumstances of each case. In our view, there is no justification for a presumption that return is automatically in the child's best interests. Conversely, it is not always in the child's best interest for them to remain in the host country.

---

<sup>30</sup> European Commission Staff Working Document, Accompanying document to the proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, Brussels, 25.3.2009, SEC(2009) 358

<sup>31</sup> European Agency for Fundamental Rights (2009) Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, Vienna: FRA

<sup>32</sup> HM Government, The Coalition: our programme for government, London: Cabinet Office, May 2010

## **Concluding Remarks**

The NSPCC welcomes the priority being given by the Commission to the revision of this Directive. However we urge decision-makers to ensure that sufficient time is taken to allow thorough reflection and consensus-building with a view to producing a Directive which makes the greatest possible contribution to protecting children.

### **For further information contact:**

Naureen Khan, NSPCC European Adviser

naureen.khan@nspcc.org.uk

Tel: +44 (0)20 7825 2758