Gender Equality, Trafficking in Women and the European Union

The European Union has been actively engaged since 1996 in developing a comprehensive and multidisciplinary approach towards the prevention of and fight against trafficking in human beings involving all relevant actors – NGOs and social authorities, judicial, law enforcement and migration authorities. Such an approach involves national and international co-operation. It is necessary to address the phenomenon throughout the trafficking chain (recruiters, transporters, exploiters, other intermediaries and clients). A variety of measures, including explicit legal protection to all individuals, and preventive measures, as well as measures to ensure adequate protection of, support for, and assistance to the victims, are required. Since women are in a position of vulnerability to become victims, there is also a clear need to tackle this problem from the angle of promoting gender equality. (emphasis added)

INTRODUCTION

In the last few years trafficking in human beings – especially trafficking in women and children for sexual exploitation – has been transformed from a non-issue into a legitimate and even popular concern in many parts of the world. In Europe, the existing and future anti-trafficking policies are considered in the political arena not only in the Member States but increasingly in the European Union as well. Just how ‘fashionable’ trafficking has become in the EU is evidenced by a stream of documents featuring trafficking, starting with a 1996 Communication from the Commission ranging from binding instruments to action plans and declarations, most of these targeting the criminal and migration aspects of trafficking, which have become prominent in the search for an Area of Freedom, Security and Justice (AFSJ).

Indeed, the revitalised attention to trafficking in human beings (hardly a new phenomenon) is in myriad ways connected to current European anxieties over transnational migration from non-EU countries. While the free movement of ‘EU citizens’ is considered to be a fundamental freedom, Member States and increasingly the EU itself have been engaged in placing restrictions on external (labour) migration and on seeking asylum. The (perceived) increase in irregular or illegal forms of external migration to the Union (and organised criminal involvement in it) together with the declining demographic trend in the Member States and the need for certain kinds of immigrant labour generate a volatile mix, creating a fertile background for exploitative practices such as trafficking in human beings.

As is well known, there are no reliable estimates of the scale of trafficking, not only due to its clandestine nature but also owing to the lack of modern anti-trafficking legislation, data collection and prioritisation. In most countries there are few statistics (and the existing ones obviously deal with the handful of cases that are actually identified, registered and prosecuted); European figures (often extrapolated) range from thousands to hundreds of thousands. However acute the lack of solid data, it seems undeniable that the scale of the problem is significant enough to cause grave concern and pressure for action. In Europe this extends to the European Union both because of the transnational nature of trafficking, which seems to call for coordinated European action, and because of the existing and growing EU involvement in relevant policy fields.

However, what makes trafficking in women for sexual exploitation truly challenging as a policy issue is that it touches upon numerous contemporary discussions, which concern not only the increase (real or imagined) in illegal migration and the growth of transnational organised crime but growing socio-economic inequalities both within and between countries, conflict prevention,
the commodification of the human (often female) body, the nature of work and exploitation, consumerism, human rights and globalisation as well as the so-called feminisation of migration (that is, the increase in female labour migration). In this context the recurrent criticisms against EU and Member State policies on trafficking – that frequently accuse them of adopting a far too narrow focus on the criminal and/or migration side of the phenomenon – acquire far greater urgency.

Moreover, although the approach described in the first part of the quote opening this paper (dealing with relevant actors, co-operation and measures) has become the target of some critical analysis, much less has been said about the last sentence, i.e. the links between trafficking in women and gender equality more generally. Indeed, even the quote gives the impression that broad statements of the interrelationship between trafficking and gender equality are added as an afterthought, which is never really expanded or elaborated on. Yet trafficking-related issues tie in with broad developments on gender equality in the European Union (mainstreaming, constitutionalisation and so on) in complex and intersecting ways, not least because the expanding citizenship rights of EU women in many ways have as their flipside the ‘citizenshiplessness’ of other women.

This paper will look at the various ways of understanding what it means to ‘tackle trafficking in women for sexual exploitation from the point of view of promoting gender equality’ in the European Union. It starts by examining the ways in which trafficking in women for sexual exploitation manifests gender inequality. It then moves on to consider if and how the specific goal of fighting trafficking in women is interwoven with a broader project of realising gender equality in the European Union: it first analyses trafficking in the setting of the AFSJ and then from a broader angle of European policies, interrogating the linkages between trafficking in women for sexual exploitation, European Union and gender equality.

TRAFFICKING AS A MANIFESTATION OF GENDER INEQUALITY

Despite the considerable progress that has been made regarding the situation of women and gender equality, it is plain that in everyday life women and men still do not enjoy equal rights in practice. Trafficking in women for sexual exploitation is in some ways a fairly uncontroversial manifestation of this lack of equality; yet in other ways the gender equality connotations are more subtle, as they are related to the way in which the phenomenon of trafficking is understood, which in turn links with the very malleability and disputability of the definition of the term itself.

There is an emerging consensus on the definition which understands trafficking in women for sexual exploitation as acts such as recruiting, transporting, transferring, harbouring or receiving of women through for example the threat or use of force, coercion, abduction, fraud, deception or abuse of power or of a position of vulnerability for the purpose of exploitation, such as the exploitation of prostitution. Beyond outright kidnapping (which is relatively rare), typically the vulnerability for this kind of exploitation is connected with difficult economic and social conditions in which many victims-to-be live in their countries of origin, characterised by poverty, unemployment, child-support and other financial responsibilities, gender-based violence and so on. These factors, which in part stem from global causes, combined with a lack of legal migration opportunities at a time when the porousness of borders is utilised by human smugglers, make desperate enough women take up (often seemingly legitimate if irregular) offers of migration for work abroad, only to end up debt-bonded to people who do not shun from violence in order to exploit them in prostitution. However, trafficking also feeds on the demand for cheap labour in the destination countries; as regards trafficking for the specific purpose of prostitution, a crucial
factor in upholding the trade is the contemporary Western demand for sexual services that cannot be filled through ‘domestic supply’.

The complexity of the finally agreed definition of trafficking and the still ongoing debates regarding some key terms (‘exploitation’, ‘position of vulnerability’, even ‘prostitution’) mean that in practice line-drawing between for example relatively independent (even if ‘illegal’) migrants and trafficking victims remains arduous. This grey area has consequences as regards locating the ‘gender equality problem’ and the emphasis on ‘promoting gender equality’. Obviously, when women are specifically targeted for exploitation, there is a sheer numerical argument (of the type ‘most of the human beings trafficked for sexual exploitation are women and/or most traffickers and prostitute-users are men’)$^6$ for considering this a problem of gender equality. This begs questions such as why is effective enforcement (investigation, prosecution, convictions) against this kind of abuse lacking, and why are the victims of these practices not protected but instead expelled as illegal immigrants. Moreover, the fact that most victims of trafficking for sexual exploitation are migrant women – and often quite socio-economically disadvantaged women from the poorer countries of the world at that – also points to the existing conditions of gender inequality that create and uphold the supply of women so easily recruited to be exploited in prostitution.$^7$ Accordingly, it is these circumstances, which make women vulnerable to exploiters, that should be addressed both regarding the prevention of trafficking as well as the protection (from further exploitation) of those already trafficked.

More controversially, the setting of sexual exploitation links with the issue of women targeted as women, as satisfiers of the male claim for sexual servicing. Some thus see trafficking as a problem of gender equality also because of its links with prostitution as a site of female oppression that arguably demonstrates and perpetuates gender hierarchies in which women as a class are required to satisfy ‘male sexual needs’.$^8$ There is, of course, strong disagreement on how paradigmatic prostitution as such is as an expression of gender inequality, even if most acknowledge that its current manifestations certainly make it a problematic institution from the perspective of gender equality. It has been claimed that beyond those directly involved and victimised through trafficking and sexual exploitation, the unchecked existence of prostitution harms all women in Europe (even if those actually recruited, forcefully or voluntarily, to do sex work tend to be underprivileged and more and more often non-EU nationals).$^9$ Others, disagreeing with the logic that sees prostitution as a special case of female degradation, emphasise (more than the problematics of demand) the stigma, poor status and working conditions of the (often migrant) women involved in prostitution, which arguably also worsen the situation for those trafficked for prostitution because of the shame attached to being involved in prostitution no matter if involuntarily.$^{10}$

Two things from this brief summary should be kept in mind when examining the role of the European Union in ‘promoting gender equality to fight trafficking’. First, the links between trafficking for sexual exploitation and gender equality, beyond the consensus that trafficking for sexual exploitation disproportionately affects (some) women, are multiple and complex. They are also contested in that there is debate over where the line between trafficking and ‘sex work’ goes, and over whether the main gender inequality issue at stake stems from sexualised power ideologies or from global socio-economic structures that perpetuate female lack of choice, especially for non-EU women. Understanding trafficking through the lens of gender equality problem thus precludes monolithic and simple solutions. Second, and significantly, regarding trafficking and gender equality in the European Union there is a further disparity in that most women who are trafficked are typically (even after the recent eastward enlargement) from poorer non-EU countries; and they, who lack all the rights of EU citizens, are trafficked for the entertainment of the paradigmatic EU citizen, the male worker. Yet at the same time much talk
over gender equality in the EU tends to be about the status of EU women, and often the problem of trafficking, if a gender perspective is included at all, tends to be viewed (at least implicitly) from their perspective, (over)emphasising the ‘ideological’ problem posed by prostitution. This demarcation remains problematic.

THE EU AND TACKLING TRAFFICKING THROUGH PROMOTING GENDER EQUALITY

This part will tackle the position of the European Union in taking action for gender equality in particular regarding three above-mentioned dimensions, which are relevant for the purpose of tackling trafficking in women for sexual exploitation: improving law enforcement against trafficking and protecting its victims, alleviating the conditions that make women vulnerable to trafficking, and addressing the issue of demand for sexual services that underpins the traffickers’ trade. It will argue that while the European Union in many ways provides ways for multiple understandings of the gender equality dimensions of trafficking, there is currently a mismatch of European competence. On the one hand, where there is explicit competence to take action with regard to trafficking, an understanding of the gendered aspects of the phenomenon is absent; on the other hand, where the broader gender dimensions of trafficking could be located, trafficking as an issue tends to fall in the periphery of relevant EC policies. This situation at present obstructs the development of a deeper European role in the promotion of gender equality with regard to trafficking in women for sexual exploitation.

Competence on trafficking, but as part of a limited security agenda

 Trafficking in women for sexual exploitation remains one of the most underreported, -investigated and -prosecuted crimes, not least due its hidden and cross-border nature, the lasting controversy over a common definition and the existing discrepancies in Member State policies that impede effective action. Improved law enforcement especially between countries is often seen as crucial in the efforts to curb trafficking. In this sense trafficking in women for sexual exploitation obviously fits squarely with a recent European trend, that of co-operation in Justice and Home Affairs. Indeed, in terms of EU competence trafficking now falls under the objective of maintaining and developing the EU as an Area of Freedom, Security and Justice, ‘in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime’. This area is where the only explicit mention of European competence on ‘trafficking in human beings’ lies: under the provisions mandating action on police and judicial co-operation in criminal matters (art. 29 TEU), which also allow minimum harmonisation of elements of crimes and of penalties (art. 31 TEU). However, due to its links with ‘illegal (im)migration’ trafficking is also seen as falling under the communitarised visa, asylum and in particular migration provisions (title IV of EC Treaty), most notably, article 63(3) on illegal entry and residence.

The post-Amsterdam legislative bustle around AFSJ has lead to increased activity also with regard to trafficking. Most importantly, in 2002 the old (1997) Joint Action on reviewing criminal legislation on trafficking, deemed ineffective, was replaced with a Framework Decision on criminal law harmonisation and in April 2004 the Directive on short-term residence permits for victims of trafficking was finally adopted. The Framework Decision, which to a large degree incorporates the UN Trafficking Protocol definition of the crime (which is seemingly gender-neutral but through the explicit mention of prostitution and sexual exploitation proves to be less so), focuses on improving law enforcement and judicial co-operation. It obliges Member States to update their criminal codes to provide appropriate sanctions for trafficking and to establish jurisdiction over it. While in it also remains an article on protection and assistance to victims
(proposed by the Commission), this in fact has little to say on either (it merely refers, regarding child victims, to another Framework Decision, which deals with some aspects of crime victims’ rights in general without in any way recognising the victims of trafficking as survivors of sexual violence). The Directive on short-term residence permits (based on article 63(3) EC) will require that all Member States adopt a system, already in use in some of them, that seeks to attain the cooperation of victims of trafficking through granting them a short-term right of stay in the destination Member State. This measure was deemed necessary as most Member States tend to expel (potential) trafficking victims near-automatically as illegal (im)migrants before crucial information they hold on their exploiters can be used to prosecute the traffickers.\(^{15}\)

In both cases the original Commission proposals included perhaps superficial but nonetheless relevant analysis on the role of gender in trafficking. The Proposal for the Framework Decision explicitly mentioned the angle of gender equality (even though little was made of it).\(^{16}\) The Proposal for the Directive on short-term permits, after lumping together human smuggling (assisted illegal entry) and trafficking because of its legal base mentions the vulnerability of trafficking victims, their need for shelter, assistance and protection against expulsion (which often entails the risk of re-trafficking and further exploitation), even if it then swiftly proceeds to state that the victims must be ‘useful’ to get any of this assistance even for the short term foreseen. This is still more, however, than one can see in either of the finally adopted instruments, in which gender considerations drown under the internal logic of the AFSJ. For instance, whatever limited benefits may accrue to some trafficking victims as a result of the Directive on short-term residence permits, its primary aim and effect is to enhance measures to combat illegal immigration, and the form in which the Directive was finally adopted further and radically cut proposed assistance measures to victims. While somewhat lesser marginalisation of gender is noticeable on practical measures taken specifically on trafficking, such as action under the STOP programme on trafficking and the sexual exploitation of children,\(^{17}\) in general gender did not feature markedly in the relevant pre-enlargement co-operation, or even in the 2002 Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union.

The absence of a gendered discourse is partly explainable not only through a reference to the hysteria over the presumed increase in illegal migration and/or organised crime that tend to lead to the prioritisation of short-term measures to ‘stem the flows’ rather than careful analysis. As it is, the current activity on the Area of Freedom, Security and Justice, much of which is straddled between the first and the third pillar, remains a gender-blind area of EU law also because the commitments to promoting equality between men and women and to ‘mainstreaming’ equality in Community activities (articles 2 and 3(2) EC) do not at present extend directly or effectively to the second and third pillars, despite their human rights or gender implications. Most importantly, however, in the reigning security and crime discourse the main focus tends to be on (implicitly) male illegal immigrants abusing asylum channels and cunning criminals organising illicit trade, be it in drugs, nuclear materials or human beings. Indeed, trafficking in women for sexual exploitation is, in the context of police and judicial co-operation, the exception that highlights the general rule about the unspoken maleness of the makers as well as targets of these policies.

While is not inopportune that the EU is taking action to improve police and judicial co-operation vis-à-vis trafficking (as many would argue, quite the contrary), what is regrettable, however, is that this is part of an agenda that understands the causes and effects of trafficking extremely narrowly. This means that the sexual violence and exploitation suffered by the victims and the threat of further abuse in case of hasty repatriation are scarcely taken into account. It also precludes any serious reflection on the structural conditions behind trafficking that in many cases
mandate migration at any cost as the only viable option for some women as well as create the
demand for certain kinds of migrant labour. These issues, relevant to the multiple gender equality
dimensions of trafficking, have no space in the current AFSJ agenda. To put it bluntly, the main
purpose of the AFSJ is not to make sure migrant women can migrate safely and do not end up
exploited; it is to ensure that EU citizens have ‘security’ in the form of ‘absence of crime’ and
that the aim of ‘fighting illegal immigration’ is fulfilled no matter what the cost to outsiders.

Broadly speaking: on trafficking, EC law and gender equality

The continuation of trafficking in women for sexual exploitation relies on the existence of a large
number of women that can be relatively safely targeted for exploitation, and the demand for ever-
widening range of ‘sexualised’ services that cannot be satisfied through domestic supply. Beyond
law enforcement then, tackling trafficking means there is a need to examine the structures that
produce impoverished and marginalised women (often called the ‘root causes’ of trafficking) on
one hand and the factors that sustain the expansion of sex industries on the other – and to do so
from a more long-term perspective than what characterises some of the present AFSJ activity.
Considering that it is a task of the European Community to promote equality between m en and
women (art. 2 EC Treaty) and that the aim of eliminating inequalities and promoting equality
applies to all of the Community’s activities (art. 3(2) EC Treaty), there are several community
policy areas that are relevant to this issue (even if some more indirectly than others).

To start with a more middle-of-the-road issue, regarding the phenomenon of trafficking in women
who are EU nationals, typically women from one of the ten new Member States, the whole
breadth (but also the limits) of the European commitment to promoting gender equality, starting
with the Equality Directives (equal pay, equal treatment, maternity leave, organisation of working
time and so on\textsuperscript{19}), is relevant to preventing trafficking. Promoting gender equality in an enlarged
European Union is of course too large a topic to be covered here in detail, as are the vast political,
social and economic changes that have faced the Countries of Central and Eastern Europe since
the end of the Cold War. However, regarding trafficking and the new Member States a few
concerns should be highlighted. The lack of gender mainstreaming (vis-à-vis statistics, resources
and so on) in the enlargement process (beyond the narrow field of employment and labour market
policies) has meant that gender assessment of the effects of the (pre-)enlargement period is
difficult.\textsuperscript{20} Women’s experience with the economic transformation project of the 1990s that was
required for EU membership was difficult and has in some respects remained negative as
trenched gender equalities regarding unemployment, wage disparities, gender segregation in
employment and education persist.\textsuperscript{21} It also remains to be seen what the long- and short-term
effects of the socio-economic change or the transition period for the free movement of workers
will be.

Most often, however, victims of trafficking are not women who are now EU citizens but women
from non-EU countries of Eastern Europe, Africa or Asia. This brings into play issues such as EU
and Member States’ policies towards third countries, which in multiple ways also affect the living
conditions of non-EU women, their chances of building a life in their countries of origin and their
opportunities to migrate legally for labour purposes. Relevantly for trafficking, the links between
European foreign policy and (im)migration are increasingly made in European policy circles, but
usually with a rather single-minded AFSJ-oriented determination on the part of the EU to bribe
and blackmail migrant-sending and ‘buffer’ countries to prevent migration to the Union.\textsuperscript{22} The
conditions that fuel migration, such as armed conflict or discrimination against women, feature
less prominently. Similarly, in the field of EC development policy much more could potentially
be done with regard to gender mainstreaming in general, and addressing the particular factors that
create and sustain female would-be migrants’ vulnerability to trafficking in particular, seeing that many of the root causes of trafficking relate to poverty and underdevelopment. More broadly, the areas of development and trade are intricately linked, which in turn brings into focus issues of EC trade policy such as the common charges of European trade protectionism and the lack of a development-friendly trading system.

While some of these multiple links between the gender equality dimensions of trafficking and European policies may seem far-fetched, they nonetheless exist and should be underlined precisely because of the narrow ways in which the trafficking problem is now constructed. While some connections may seem tangential, they signal that the issue is there. A good case of an EC competence that from a certain perspective is highly relevant for trafficking in women for sexual exploitation is the complementary community action to ensure a high level of health protection (art. 152 EC Treaty). This is, of course, the legal basis for the Daphne programme on violence against women, which continues to fund also trafficking-related projects. Particularly from the angle of health protection, the matter could, although it has not, also be linked to not only those who are in prostitution to sell, but to those who buy sex. However, this latter issue, due to its connection to the regulation of sexual mores, also brings into spotlight the limits of the EU competence to act in some areas which are relevant to trafficking as a gender equality issue. Most notably, the legal regulation of prostitution is an area which falls under Member State power – except when EC free movement issues are at stake – but beyond sexual mores the issue is also relevant regarding for instance social legislation to protect victims of trafficking.

Many more links between trafficking in women for sexual exploitation as a gender equality issue and European action exist than are commonly recognised, and as a result these matters are rarely elaborated on. Even in non-binding declarations the main focus is on AFSJ, and if the issue of gender equality (be it about ‘root causes’ of supply or demand for certain kinds of labour) is mentioned, it is typically with little guidance on how to go about promoting it. Considering the mixed success of putting mainstreaming into practice (it has proven to be somewhat successful in some areas touched upon above, while others, most notably trade, remain quite impervious to it) and the lack of EU competence in some relevant areas, this marginality is hardly surprising. However, insofar as one takes the statement of tackling trafficking from a gender equality perspective seriously, the lack of analyses that would make the relevant links, and address the question of what if anything should be done about them goes hand in hand with lacking coherence and balance, not only regarding the relationship between EU and Member States’ strategies but also concerning the internal consistency of European policies. At present these prevent the European Union from being at the forefront of anti-trafficking efforts beyond the sphere of AFSJ.

FINAL REMARKS

Trafficking in women for sexual exploitation raises several gender equality questions, but many of these are currently marginalised or scattered around a range of areas so that a bigger picture is obscured. This is not to say trafficking should feature prominently in all EC policy areas, but merely to point out that it is time to consider the relevance of the multiple connections between gender equality as a European issue and exploitative practices such as trafficking. There are of course no easy solutions to this, especially considering the current negative climate as regards any form of external migration to the Union, but two things should perhaps be emphasised. First, the inclusion of trafficking in European policy-making is still a relatively recent development, and one should thus not despair yet as to the possibilities of constructing a wider discourse on the relevant matters. Second, and on a related note, the new Constitution for Europe (that includes equality as a value of the Union but also the Charter of Rights with its prohibition of trafficking and its equality chapter) involves a stronger commitment to gender mainstreaming, which is
extended to all activities of the European Union (‘in all activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between women and men’) (art. III-116). Continued stress on the importance of gender equality across all areas of European law could entail at least the seeds for a better inclusion of the now marginalised gender equality issues that underpin trafficking.

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3 The few (gu)es(s)timates suggested are often quoted so often that they become ‘official truths’ despite lack of firm empirical backing, such as the ubiquitous IOM figure of 500,000 women trafficked into Western Europe per year (1995). The Europol estimate is ‘hundreds of thousands’ (2004). For an illustrating compilation of various trafficking statistics from around the world, see UNESCO Bangkok Trafficking Statistics Project, available at <http://www.unescobkk.org/culture/trafficking/trafficing.htm> (last accessed 29.11.2004).


6 This statement tends to be commonly agreed on, even though the underground nature of trafficking means that this kind of ‘fact’ is difficult if not impossible to verify. Knowing the dynamics of prostitution, there are good reasons for assuming that most of those trafficked for exploitation in prostitution are women (and girls), just as we know that most of the prostitute-users are men and that most (but certainly not all) traffickers are men as well. However, beyond this type of trafficking, there is a somewhat disturbing tendency to automatically assume that female migrants – branded as easily duped and exploited – are trafficked while men in similar situations are actively engaging in illegal migration, aware of the risks they are taking. Beyond ‘guesstimates’, it is a matter of speculation whether a disproportional number of those trafficked in general are women.


13 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004.


17 The STOP programme is now, however, submerged in the larger AGIS framework programme on police and judicial cooperation in criminal matters that runs from 2003 to 2007.

18 Competence on external relations; note, however, that the promotion and protection of women's rights is a part of EU human rights policies in third countries.

19 See Caracciolo di Torella, Masselot, Milins and Bell in this volume.


22 The Seville European Council of June 2002 maintained that every co-operation or association agreement should contain a clause on the ‘joint management of migration flows and compulsory readmission in the event of illegal immigration’. Furthermore, should a non-EU state show ‘an unjustified lack of cooperation in joint management of migration flows’, the Council (after ‘full use of existing Community mechanisms’) could take ‘measures or positions’ as part of EU foreign or other policy.

23 About the success of gender mainstreaming in the EC see for example European Commission’s Thematic evaluation of the integration of gender in EC development co-operation with third countries, vol. 1-3, March 2003.

