

EDPS comments on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - "The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016"

I. Context

On 19 June 2012, the Commission presented a Communication putting forward an EU strategy towards the eradication of trafficking in human beings for 2012-2016 ('the Strategy').¹

The objective of the strategy is to provide a coherent framework for existing and planned initiatives addressing trafficking in human beings (THB), to set priorities in this field and to identify and fill gaps. One of the central pillars of the Strategy is the recently adopted Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, which should be implemented by the Member States by 6 April 2013. The Directive, similarly to the whole Strategy, adopts a comprehensive and integrated approach, focusing on human rights and having the victims at the heart of it.

The Strategy brings together a wide range of legislative and policy measures based on 5 priorities:

- identifying, protecting and assisting victims of trafficking;
- stepping up the prevention of trafficking in human beings;
- increased prosecution of traffickers;
- enhanced coordination and cooperation among key actors and policy coherence;
- increased knowledge of and effective response to emerging concerns related to all forms of THB.

The Strategy is based on a multidisciplinary approach focused on various policy areas in which actions are taken to address this complex phenomenon. The Communication, amongst others refers to the Action Plan implementing the Stockholm Programme,² the EU Internal Security Strategy in Action³, the Global Approach to Migration and Mobility⁴ and the 2009 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings.⁵

¹ COM(2012)286 final

² OJ C 115, 4.5.2010

³ COM(2010) 673 final

⁴ COM(2011) 743 final

⁵ COM(2010) 673 final ,*op.cit.*, p.3-4

These comments build on earlier opinions and formal comments of the EDPS in various areas related to the Communication and relevant for addressing THB and protecting the victims of trafficking. The most relevant recent opinions are:

- Opinion on the Commission's Communication on the exchange of information in AFSJ (as part of EU Information Management Strategy),⁶
- Opinion on the Commission's Communication on EU Internal Security Strategy⁷,
- Opinion on the Proposal for a Regulation on European statistics on safety from crime⁸,
- Opinion on the legislative package on the victims of crime, including a proposal for a Directive establishing minimum standards on the rights, support and protection of the victims of crime and a proposal for a Regulation on mutual recognition of protection measures in civil matters (Package on the victims of crime)⁹.

II. General comments

The EDPS strongly welcomes the Strategy and its focus on the protection of fundamental rights, in particular as far as the protection of the victims of trafficking is concerned. It goes without saying that THB constitutes a serious violation of individual freedom and dignity explicitly prohibited by Article 5.3 of the Charter of Fundamental Rights, and as such needs to be addressed in a comprehensive, integrated and structured way with a strong focus on mainstreaming of fundamental rights.

Having said this, the EDPS draws attention to the fact that addressing THB is an area that requires significant processing of data, in many cases involving personal data, and consequently also creates risks of intrusions into privacy. Therefore, an effective action to address THB cannot be put in place without the support of a solid data protection scheme complementing it.

This is why the EDPS is convinced that the Strategy **in its implementation phase** would strongly benefit from inclusion of a data protection perspective and further clarification on how data protection can help this area.

As it will be explained more in detail later, the EDPS believes that data protection should be seen as **an incentive to a better implementation** of the Strategy and a prerequisite to a more effective exchange of information and cooperation in this field. More importantly, data protection should not be considered as an obstacle to an effective action addressing THB. Trust is essential for victims who need to contact

⁶ EDPS Opinion of 30 September 2010 on the Commission Communication "Overview of information management in the area of justice, freedom and security, OJ 2010/C 355/03.

⁷ EDPS Opinion of 17 December 2010 on the Commission Communication on EU Internal Security Strategy, OJ 2011/C 101/02.

⁸ EDPS Opinion of 19 September 2011 on the Proposal for a Regulation on European statistics on safety from crime, OJ 2011/C 343/01.

⁹ EDPS Opinion of 17 October 2011 on the legislative package on the victims of crime, including a proposal for a Directive establishing minimum standards on the rights, support and protection of the victims of crime and a proposal for a Regulation on mutual recognition of protection measures in civil matters (Package on the victims of crime), OJ 2012/C 35/02.

and rely on the authorities and other actors active in this field (such as border and asylum authorities, law-enforcement agencies, social authorities, NGOs) and also for the authorities and other institutional stakeholders themselves.

The objective of these comments is therefore to emphasize that data protection is a precondition to trust and can contribute to a more effective and efficient cooperation between all stakeholders involved in this field. Practical and feasible suggestions will be put forward on how data protection can help in this area.

To this end, when implementing the action points envisaged in the Communication, the Commission, the Member States, EU agencies and other stakeholders involved in the implementation should take data protection into account to the extent possible.

III. Specific comments

- *Data protection as a pre-condition to mutual trust between the victims and the authorities involved in prevention, protection and prosecution*

As mentioned above, data protection can create and enable the trust needed - both between victims and the authorities dealing with THB and between the authorities themselves - to effectively address the phenomenon of trafficking in human beings. In other words, data protection can help to promote a **trust-built relationship** between victims and the authorities by assuring victims - who will likely be afraid of retaliation by the traffickers - that their cases will be handled confidentially and that no information will leak out.

Similarly, data protection is a key factor for trust between police and law-enforcement agencies of the Member States. Cooperation and exchange of valuable information will run more smoothly if law-enforcement agencies trust their counterparts in other Member States to only use transferred data for lawful purposes supported by strong safeguards. Similarly, compliance with applicable data protection law is important for the collection of information, as data obtained unlawfully might be inadmissible in court. The same applies to cooperation between EU agencies involved in addressing THB. In this context, data protection - seen as a facilitator and pre-condition to mutual trust and enhanced cooperation - should be considered in the implementation of the joint statement of EU Justice and Home Affairs Agencies signed on the 5th EU Anti-Trafficking Day on 18 October 2011. The implementation of this joint statement is foreseen in Priority D of the Strategy.

In order to achieve these goals, data protection could be incorporated in training programmes for law enforcement units dealing with human trafficking and other tools such as the ones mentioned in actions 5 and 6 of Priority D (*Enhanced coordination and cooperation among key actors and police coherence*) of the Strategy. In addition, information on how to benefit in concrete terms from the right to the protection of personal data and the work of national data protection authorities could also be part of the national and transnational referral mechanisms mentioned under Priority A (*Identifying, protecting and assisting victims of trafficking*), action 1.

Furthermore, when developing specific guidelines for consular services and border guards on the identification of victims of trafficking in human beings, the privacy and

data protection considerations (in particular when it comes to the protection of victims and information to be given to the victims) should be taken into account.

Moreover, data protection should be an aspect to be duly considered when drawing up the procedures to be put in place to regulate the exchange of information between local and regional law enforcement units and national units (priority C *Increased prosecution of traffickers*, action 1). The same applies to Joint Investigation Teams and cross-border cooperation in general.

- *Data protection as part of the victims' rights, in particular the right to information*

The Communication in Priority A, action 4, refers to the information on the rights of victims. In this context, it mentions that in order to inform victims of their rights and help them effectively exercise them, the Commission will provide in 2012 clear, user-friendly information on the labour, social and migrant rights that victims of trafficking in human beings have under EU law. As follow-up, the Commission intends to help the Member States provide and disseminate similar information at national level in 2014.

The EDPS takes this opportunity to stress that the information to be given to the victims of trafficking should include not only the information on the existence of the right to the protection of personal data but also the procedure to be followed to exercise this right. In practical terms, this information should be included in the general information to be given to victims under Priority A, action 4 of the Strategy.

In addition, the EDPS takes the occasion of these comments to reiterate the suggestions made on the proposal for a Directive on victims' rights - which recognises the right of crime victims to receive support from the moment the crime takes place, throughout criminal proceedings and thereafter. In his Opinion on the legislative package on the victims of crime,¹⁰ the EDPS advised, amongst others, to provide that the Member States shall require all authorities in contact with victims to adopt **clear standards** by which they may only disclose to a third party information received from or relating to a victim. Disclosure should be subject to the condition that the victim has explicitly consented to such disclosure or that there is a legal requirement or authorisation to do so.

The EDPS considers it important in this specific context to link the advice on the proposal for a Directive on victims' rights with these comments on the Strategy. By adding data protection provisions the trust of victims would increase, and it may encourage them to cooperate more with different authorities including the police and (when it is necessary) with law enforcement authorities.

- *Data protection in the development of an EU-wide System for Data Collection*

The Communication, under Priority E (*Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings*), action 1, announces that the Commission, together with the Member States, will develop an

¹⁰ See footnote 9.

EU-wide system for the collection and publication of data broken down according to age and gender. In this context, the Communication refers to the Communication on measuring crime in the EU, which emphasised the need to collect reliable, comparable data for evidence-based policy on THB. The Communication includes an Action for 2011-2015 to collect data on a small number of indicators.

The EDPS draws attention to the need to respect data protection requirements when conducting data collection on THB, and refers in this context to the EDPS Opinion on the Proposal for a Regulation on European statistics on safety from crime, which examined the risks linked with the possibility of indentifying the victims during a data collection exercise. The EDPS recommends processing only anonymous data¹¹ for these purposes, wherever possible. In case it is necessary to process personal data, even if they are only indirectly¹² related to individuals, it should be ensured that the data protection and confidentiality rules are strictly respected.

- *Data protection in the tool to assist Member States in addressing fundamental rights issues specifically related to anti-trafficking policy and related actions.*

Priority D, Action 5 aims at strengthening fundamental rights in anti-trafficking policy and related action. The Communication announces that, in order to strengthen existing instruments, the Fundamental Rights Agency (FRA) will start in 2014 to develop a tool, which might take the form of a handbook or a guide, to assist the Member States in addressing fundamental rights specifically related to anti-trafficking policy and related issues. This tool will take into account relevant structures, processes and outcomes, and focus on the rights of victims, incorporating a gender perspective and the best interest of the child.

The EDPS suggests that, when developing such a tool, the FRA should involve his Office to discuss the best way to include the right to the protection of personal data, as one of the fundamental rights of the European Union.

IV. Conclusion

The EDPS welcomes the Strategy and is available to provide further input on all aspects related to data protection in this field.

Brussels, 10 July 2012

¹¹ According to Recital 26 of Directive 95/46/EC, "*the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable*", taking into account "*all the means likely reasonably to be used either by the controller or by any other person to identify the said person*".

¹² Personal data are defined in Article 2(a) of Directive 95/46/EC and Article 2(a) of Regulation (EC) No 45/2001 as "*any information relating to an identified or identifiable natural person*". This identification might be *direct* (e.g., by a name) or *indirect* (e.g., by an identification number or other factors specific to his physical, physiological, mental, economic, cultural or social identity).