

The EU Legal Framework on Trafficking in Human Beings: Where to from here – the UK Perspective

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Abstract

The European Union (EU)’s current provisions on the trafficking in human beings (THB) are provided for, inter alia, in Council Framework Decision 2002/629/JHA. The Council of Europe have more recent provisions in this area, which are not yet widely in force. The EU has some major proposals for reform of its legal framework in the Stockholm Programme, to include the appointment of an EU Anti-Trafficking Coordinator. In addition, the focus of EU Justice and Home Affairs is shifting to the external relations of the EU under the Stockholm Programme. A critical examination of the EU legal framework in the area of THB from a law enforcement perspective is therefore timely. THB is a highly contentious and complicated area for regulation, with issues such as the support of the victims of trafficking, the particular needs of under-aged trafficked individuals, and the issues of due process when a witness may not be considered to be reliable during court proceedings, complicating operations and prosecutions. In addition the issue of illegal immigration adds a further layer of complication, with the UK maintaining its opt out from the EU’s illegal immigration provisions. This article will, focus on the illegal trafficking of adults against their will, and the consequences of this crime, in particular, for the UK law enforcement authorities.

Keywords

JHA; Law enforcement; Trafficking in human beings; United Kingdom

THE ACADEMIC DEBATES AROUND TRAFFICKING IN HUMAN BEINGS (THB) ARE VERY complex, and follow many different strands of debate. These cover a variety of perspectives, such as the human rights, migration, labour and gender perspectives. Equally the assessment of THB is governed by the geographical location being studied, while still acknowledging that the trade in trafficked human beings is a global phenomenon, in particular the “trafficking into Europe”.¹ Some clarity needs to be brought to this area of debate for effective progress to be made and action plans drawn up, in order to tackle the phenomenon. Where the legal and policy frameworks of individual states, the member states of the European Union (EU), and the external relations framework of the EU allow, then more rapid action can be taken, while ongoing global and inter-regional negotiations and policy frameworks are developed with other countries. Action in more effectively governed countries and regions cannot be held back by third countries and regions which are lagging behind in development in this area. The EU is one such region with a comprehensive legal and policing framework capability, and the new

¹ Wylie G. and Mc Redmond P.; Introduction: Human Trafficking in Europe, chapter 1, pages 1 – 16, in Wylie G. and Mc Redmond P.: Human Trafficking in Europe, Character, Causes and Consequences, Palgrave MacMillan, 2010, p.7.

EU directive on human trafficking² has just been passed, with the intention that it should come into force, at the latest “by 6 April 2013”.³ Whatever the merits or otherwise of the particular approach taken in the directive, the directive has set the definition of THB for the EU, and has determined the approach that will be taken by its 27 member states in this crime area for the foreseeable future. By its very nature, the EU directive concerns itself with cross border trafficking. It should also be used for internal – to a particular EU member state – trafficking, which happens far too regularly, even in the UK,⁴ and should be implemented within any particular EU member state accordingly. Given that the EU has now set the standard and the definition for THB, the question arises whether the various EU member states are in a position to effectively react to its provisions. Of particular interest to this writer is whether the UK is in a position to implement its internal and transnational law enforcement provisions in order to deal effectively with the new directive. The UK does not follow the EU line on “policies on border checks, asylum and immigration”,⁵ due to its ongoing Schengen opt out position, so these matters, to include THB as a frontier issue, will not be addressed in this article.

The new EU legal framework on THB

The new EU directive on human trafficking⁶ is a much more substantial document than its predecessor,⁷ reflecting “the growing concern among Member States regarding the development of the phenomenon of trafficking in human beings”.⁸ It takes “an integrated, holistic, and human rights approach”⁹ to the issue, building on the pre-existing legal frameworks provided by the UN,¹⁰ the International Labour Organisation (ILO),¹¹ the Council of Europe,¹² and the EU Charter of Fundamental Rights. The directive itself states that it is aiming to “amend and expand the provisions” of the earlier framework decision, but that “in the interests of clarity” it should replace the earlier framework decision “in its entirety in relation of Member States participating in the adoption of this Directive.” While the Republic of Ireland decided at the time of enactment to participate in the developments under the new directive,¹³ both the UK¹⁴ and Denmark¹⁵ remained outside. However it is now reported that the UK is seeking to opt into the directive, having obtained clearance from both UK Houses of Parliament.¹⁶ Reliance is made in the new

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 1001/1.

³ Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings – first implementation report/update of information on Member States' external action, Brussels, 4 July 2011, 12401/11, at page 2, second paragraph.

⁴ Marie A. and Skidmore P., A summary report mapping the scale of internal trafficking in the UK based on a survey of Barnardo's anti-sexual exploitation and missing services, 2007, Barnardos,, available on-line at <http://www.barnardos.org.uk>, accessed on 8 August 2011.

⁵ Chapter 2 TFEU post-Lisbon.

⁶ Directive 2011/36/EU, op. cit.

⁷ Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings OJ L 203/1.

⁸ Paragraph 12 of the preamble to Directive 2011/36/EU.

⁹ Paragraph 7 of the preamble to Directive 2011/36/EU.

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted by General Assembly resolution 55/25, (in force 25 December 2003) supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 (in force 15 November 2000) adopted by General Assembly resolution 55/25 on 12-15 December 2000 and entered into force on 29 September 2003.

¹¹ *Inter alia*, C 29 Forced Labour Convention, 1930 and C105 Abolition of Forced Labour Convention, 1957.

¹² Council of Europe Convention on Action against Trafficking in Human Beings, 2005, CETS No. 197.

¹³ Paragraph 34 of the preamble to Directive 2011/36/EU.

¹⁴ Paragraph 35 of the preamble to Directive 2011/36/EU.

¹⁵ Paragraph 36 of the preamble to Directive 2011/36/EU.

¹⁶ Op. cit. footnote no. 3 at page 111.

directive on the EU's visas, asylum, and immigration of third country national provisions,¹⁷ which do not apply to the Schengen opt out states. This raises the issue as to how the UK, and also the Republic of Ireland, will implement these particular provisions in their respective jurisdictions.

While there are differences in the drafting style between the new directive and its predecessor, the framework decision, much remains similar. The definition of exploitation used in the definition for THB is now broader, expressly including begging, and "the exploitation of criminal activities, or the removal of organs".¹⁸ Europol has pointed out that THB "for the purpose of committing street crime offences such as begging, pick pocketing, street theft and robbery" is very much on the rise.¹⁹ In addition THB for the purposes of "social security, welfare and benefits systems" fraud is also increasing, in addition to "involvement of trafficked children in the production, manufacture and supply of controlled drugs."²⁰ The forced removal of organs, while uncommon, has occurred within the EU.

A challenge for the law enforcement community will be the victim status accorded to those who have been trafficked or exploited in the course of criminal activities, and the mandatory support mechanism which will be required to be given to these victims under the new directive.²¹ The widening of the definition of exploitation in this context could lead to a considerable change, not only of national laws on THB, but also of law enforcement practice in many other crime areas, particularly as "assistance and support for a victim are not [to be] made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial".²²

The minimum penalty provisions for THB have been made clearer for the standard offence, now to be "at least five years of imprisonment",²³ whereas previously it was to be "effective, proportionate and dissuasive" and was to be extraditable.²⁴ The aggravated offence is now to be a maximum of 10 years imprisonment,²⁵ up from the previous 8 years.²⁶ As previously, the aggravated offence will occur where the victim is particularly vulnerable, or is a child, is committed within the context of an organised crime gang as defined by Council Framework Decision 2008/841/JHA,²⁷ or either "deliberately or by gross negligence endangered the life of the victim". It is also aggravated if it "was committed by use of serious violence or has caused particularly serious harm to the victim."²⁸ Added to this provision, the directive states that aggravation will also occur where the offence "was committed by public officials in the performance of their duties".²⁹ The incitement, aiding,

¹⁷ 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, p. 19, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168 p. 24, and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States OJ L 158, p. 77.

¹⁸ Article 2.3 of Directive 2011/36/EU.

¹⁹ Trafficking in Human Beings in the European Union: A Europol Perspective, June 2009, page 9, second paragraph.

²⁰ *Ibid.* at page 9, third paragraph.

²¹ Articles 11, 13, 14 and 16 of Directive 2011/36/EU.

²² Article 11.3 of Directive 2011/36/EU.

²³ Article 4.1 of Directive 2011/36/EU.

²⁴ Article 3 of Council Framework Decision 2002/629/JHA.

²⁵ Article 4.2 of Directive 2011/36/EU.

²⁶ Article 3.1 of Council Framework Decision 2002/629/JHA.

²⁷ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, p. 42.

²⁸ Article 4 of Directive 2011/36/EU.

²⁹ Article 4.3 of Directive 2011/36/EU.

abetting and attempt offences³⁰ are now to also be subject to surrender³¹ under the European Arrest Warrant.³²

Provisions on jurisdiction have been expanded, with reliance still being made on pre-existing EU provisions on conflicts of jurisdiction.³³ The new provisions,³⁴ in addition to redrafting much of the older provisions,³⁵ requires that where a member state establishes jurisdiction on a basis other than the place where the offence was committed, that the “acts are a criminal offence at the place where they were performed”³⁶ In addition the “prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed”.³⁷

It is worth noting however, that jurisdiction, as standard, is to be established where “the offender is one of their nationals”.³⁸ There is no caveat that the related offence is to occur within the EU. Forced labour, “illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings,”³⁹ and forced begging are included within the ambit of this directive, with “no possible consent should be ever considered valid” in the case of a child.⁴⁰ It should be noted that a child is defined as “any person below the age of 18 years of age”.⁴¹ The “age of sexual majority”, referred to in the framework decision,⁴² does not feature in the directive. This is a significant shift in focus, at least on this point, between the two EU provisions.

In establishing what is a particularly vulnerable person, which would lead to a more severe penalty, issues such as “gender, pregnancy, state of health and disability” need to be taken into account.⁴³ Also relevant would be the use of “serious violence such as torture, forced drug/ medication use, rape or other serious forms of psychological, physical or sexual violence” on the victim.⁴⁴ The issue of prevention is addressed by the directive, with member states required to “take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation” related to THB.⁴⁵ This should include, *inter alia*, internet campaigns, and the raising of awareness, “in cooperation with relevant civil society organisations and other stakeholders”.⁴⁶ In addition the relevant professionals need to be trained, to include “front-line police officers”,⁴⁷ which would be a much broader group than specialists in THB units.

The directive, with twice as many articles as its predecessor, the framework decision, still does not encompass the allied crime areas of child sex tourism or on-line paedophilia

³⁰ Article 3 of Directive 2011/36/EU.

³¹ Article 4.4 of Directive 2011/36/EU.

³² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, p. 1.

³³ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings, OJ L 328, p. 42.

³⁴ Article 10 of Directive 2011/36/EU.

³⁵ Article 6 of Council Framework Decision 2002/629/JHA.

³⁶ Article 10.3.a. of Directive 2011/36/EU.

³⁷ Article 10.3.b. of Directive 2011/36/EU.

³⁸ Article 10.1b. of Directive 2011/36/EU.

³⁹ Paragraph 11 of the Preamble to Directive 2011/36/EU.

⁴⁰ Paragraph 11 of the Preamble to Directive 2011/36/EU.

⁴¹ Article 2.6 of Directive 2011/36/EU.

⁴² Article 3.2.b of Council Framework Decision 2002/629/JHA.

⁴³ Paragraph 12 of Directive 2011/36/EU.

⁴⁴ Paragraph 12 of Directive 2011/36/EU.

⁴⁵ Article 18 of Directive 2011/36/EU.

⁴⁶ Article 18.2 of Directive 2011/36/EU.

⁴⁷ Article 18.3 of Directive 2011/36/EU.

activity. It does, however, have new provisions on seizure and confiscation of assets,⁴⁸ although in practice earlier provisions on money laundering⁴⁹ and the confiscation of the proceeds of crime⁵⁰ continue to be relied on. The directive also has new provisions on non-prosecution or non-application of penalties to the victim "for their involvement in criminal activities which they have been compelled to commit as a direct consequence" of the THB.⁵¹

New provisions on investigation and prosecution⁵² provide that member states should ensure that it is possible to take a prosecution "for a sufficient period of time after the victim has reached the age of majority."⁵³ Emphasis is put on the training of THB law enforcement units, to including a requirement that member states ensure that THB law enforcement units have "effective investigation tools," to include "those which are used in organised crime or other serious crime cases."⁵⁴ This presumably would include the whole range of tools legislated for by the EU for cross border law enforcement operations, to include wiretaps,⁵⁵ controlled deliveries,⁵⁶ cross border covert surveillance,⁵⁷ joint investigation teams,⁵⁸ or the use of undercover officers in a cross border investigation,⁵⁹ etc. in addition to key national agencies having access to and contributing to Europol's Phoenix Analysis Work File.

While the protection of and assistance to victims was provided for in the earlier framework decision,⁶⁰ in one subsection of one article, it is now covered by six articles in the new directive, some of which are quite lengthy. Of these new provisions four articles are devoted to the protection of children and child victims.⁶¹ When dealing with a person of indeterminate age, it is to be presumed that they are a child, until the contrary is proven.⁶² In addition the interests of the child are to "be a primary consideration" in any investigation involving children.⁶³ The traditional interest of the police in law enforcement will therefore have to be tempered, and accordingly accounted for in crime statistics and crime detection rates. Access to education is also provided for, as is the need to appoint a legal guardian or representative if "the holders of parental responsibility" are "precluded from ensuring the child's best interests and/or from representing the child" due to a conflict of interests.⁶⁴ The need for special investigation and criminal procedures in the case of a child victim is covered,⁶⁵ although it is highly probable that these provisions are already in place in most, if not all, EU jurisdictions. The issue of unaccompanied child victims is also addressed, involving the need to appoint a legal guardian in these cases, if necessary.⁶⁶

⁴⁸ Article 7 of Directive 2011/36/EU.

⁴⁹ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, OJ L 182, p. 1.

⁵⁰ Council Framework Decision 2005/212/JHA of 24 February on Confiscation of Crime-Related Proceeds, Instrumentalities and Property OJ L 68, p. 49.

⁵¹ Article 8 of Directive 2011/36/EU.

⁵² Article 9 of Directive 2011/36/EU.

⁵³ Article 9.2 of Directive 2011/36/EU.

⁵⁴ Article 9.4 of Directive 2011/36/EU.

⁵⁵ Articles 17 to 22 of the EU Convention on Mutual Assistance in Criminal Matters 2000, which is subject to a UK declaration attached to Article 20.

⁵⁶ Article 12 of the EU Convention on Mutual Assistance in Criminal Matters 2000.

⁵⁷ Article 40 Schengen Convention 1990.

⁵⁸ Article 13 of the EU Convention on Mutual Assistance in Criminal Matters 2000.

⁵⁹ Article 14 of the EU Convention on Mutual Assistance in Criminal Matters 2000.

⁶⁰ Article 7.1 of Council Framework Decision 2002/629/JHA.

⁶¹ Articles 13 to 16 of Directive 2011/36/EU.

⁶² Article 13.2 of Directive 2011/36/EU.

⁶³ Article 13.1 of Directive 2011/36/EU.

⁶⁴ Article 14.2 of Directive 2011/36/EU.

⁶⁵ Article 15 of Directive 2011/36/EU.

⁶⁶ Article 16 of Directive 2011/36/EU.

Assistance is to include “the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate”.⁶⁷ Victims with special needs also need to be provided for, for example, those who are pregnant, have health issues, “a disability, a mental or psychological disorder, [...] or a serious form of psychological, physical or sexual violence [which] they have suffered”.⁶⁸ As the UK has stated, this makes “mandatory some measures which are currently good practice.”⁶⁹ If these support services are to be provided, to the standard expected by this legislation, substantial planning and investment will be required, with the focus of, at least the uniform police operation, changing, to a certain extent, from law enforcement to victim support. The bringing in to the THB investigation of “serious and organised crime” policing is also clearly provided for.⁷⁰ The putting into practice of these provisions will have a substantial impact on both under cover and uniformed police operations, and the development of an effective interaction between the two. This will have a significant impact on police organisational structures as, it is arguable, that the working relationship between covert and uniformed policing will have to be tighter than might traditionally be the case, say, during a drug trafficking operation. These developments will also have a knock on effect on the policing of what would appear at first sight to be low level street crime, the role of most uniformed police officers on the beat.

Legal support, to include witness protection programmes, designed on the basis of “individual risk assessment,” is separately provided for.⁷¹ If there are existing schemes for the compensation of “victims of violent crimes of intent,” then THB victims should have access to these schemes.⁷² Provisions are also made for the avoidance of secondary victimisation due to the investigation or prosecution process.⁷³ In addition the earlier Police and Judicial Cooperation in Criminal Matters (PJCCM) provisions on the standing of victims in criminal proceedings⁷⁴ also continues to be relied on. To complete the mix, EU and national frameworks on bribery and corruption would have to be added to the law relevant to this crime area.

Establishing the exact extent of the crime is key to the allocation of the necessary policing and victim support resources. This has been highly problematic to date.⁷⁵ The ongoing issue of measuring, at least to some level of effectiveness, of the crime of THB within a particular jurisdiction, will be very important. At a strategic policy level, national rapporteurs, or equivalent, should be appointed, to “carry out assessments of trends” in this area and to measure the “results of anti-trafficking actions”, to include the gathering of statistics.⁷⁶ These details need to be transmitted to the EU’s newly appointed anti-trafficking coordinator (ATC), whose work is to be facilitated by the member states, with the ATC tasked with reporting every two years on progress to the Commission.⁷⁷ This final provision should provide comparable databases in order to facilitate an informed debate as to the exact extent of reported THB in any particular jurisdiction.

⁶⁷ Article 11.5 of Directive 2011/36/EU.

⁶⁸ Article 11.7 of Directive 2011/36/EU.

⁶⁹ Op. cit. footnote no. 3, at page 112.

⁷⁰ Paragraph 15 of the preamble to Directive 2011/36/EU.

⁷¹ Article 12 of Directive 2011/36/EU.

⁷² Article 17 of Directive 2011/36/EU.

⁷³ Article 12.4 of Directive 2011/36/EU.

⁷⁴ Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, OJ L 82, p. 1.

⁷⁵ See in particular Lee, M. “Introduction: Understanding human trafficking”, Chapter 1 in Lee, M. (ed.) *Human Trafficking*, Willan Publishing, 2007, page 2, where she speaks of shoddy research and wobbly statistics.

⁷⁶ Article 19 of Directive 2011/36/EU.

⁷⁷ Article 20 of Directive 2011/36/EU.

The UK's legal and operational framework for THB

Effective policing of a crime requires a clear legal framework of what the crime is, and how it is to be tackled. The new EU directive will require a coherent implementation throughout the EU. This will then need to be followed up with effective and efficient police policy and practice in order to make the system work effectively. In the UK the mandatory provisions on victim support will be new. In addition, the definition of the crime, and the policing structure that will need to evolve to meet the requirements of the directive, in all of the devolved policing jurisdictions of the UK, will have to be adjusted. Two contrasting types of policing, uniformed and covert policing, have already been highlighted as being relevant to enforcing the law under this particular directive. The UK will also be challenged by the very large number of relevant police forces and agencies which will be required to enforce and operate the new laws.

The complexity in the UK Human Trafficking law enforcement structure is reflected in the legal framework which has been set up to regulate this particular crime area. It is arguable the new THB directive provides an opportunity for not only law reform but also a streamlining of both the legal framework and its supporting law enforcement structure. The current law is scattered among different legislative provisions, which in itself does not encourage a coherent law enforcement or victim support structure to emerge.

The modern crime of the international traffic in prostitution only arrived on the UK statute books in 2002,⁷⁸ although the earlier Sexual Offences Act 1956, although "not specifically [using] the terms of 'traffic' or 'trafficking' [did] cover some aspects of the phenomenon."⁷⁹ The 2002 law has now been repealed⁸⁰ and replaced by the Sexual Offences Act 2003. The current crime of trafficking for sexual exploitation is covered by the Sexual Offences Act 2003⁸¹ for England & Wales, Northern Ireland and Scotland, with counterpart measures being enacted for Scotland in the Criminal Justice (Scotland) Act 2003.⁸² Both these provisions cover both trafficking into the UK,⁸³ and within,⁸⁴ with the Sexual Offences Act 2003 dealing with THB out of the UK.⁸⁵ It was not until the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004,⁸⁶ (a UK reserved matter, therefore applicable to the whole of the UK) that the offence of trafficking of persons for non-sexual exploitation was legislated for.

Children are additionally protected from sexual exploitation in Scotland by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005,⁸⁷ which is supplemented, generally, by the Sexual Offences (Scotland) Act 2009. The purchase and sale of human tissues are equally prohibited for England & Wales, by the Human Tissue Act 2004,⁸⁸ and in Scotland by the Human Tissue (Scotland) Act 2006.⁸⁹ In addition the

⁷⁸ Section 145 of Nationality, Immigration and Asylum Act 2002 introduced the modern crime of Traffic in prostitution into UK law.

⁷⁹ Obokata, T.; *Trafficking of Human Beings from a Human Rights Perspective; Towards a Holistic Approach*, Martinus Nijhoff Publishers, Leiden, 2006, at page 69.

⁸⁰ By way of Schedule 7, para. 1 of the Sexual Offences Act 2003.

⁸¹ The Sexual Offences Act 2003, Section 57 Trafficking into the UK for sexual exploitation, section 58 of the Sexual Offences Act 2002, for Trafficking within the UK for sexual exploitation, and section 59 Trafficking out of the UK for sexual exploitation.

⁸² Section 22 of the Criminal Justice (Scotland) Act 2003 deals with Traffic in prostitution etc.

⁸³ Section 57 of the Sexual Offences Act 2003, and Section 22.1 of the Criminal Justice (Scotland) Act 2003.

⁸⁴ Section 58 of the Sexual Offences Act 2003, and Section 22.1 of the Criminal Justice (Scotland) Act 2003.

⁸⁵ Section 59 of the Sexual Offences Act 2003.

⁸⁶ Sections 4 & 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

⁸⁷ Section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act deals with the Paying for sexual services of a child.

⁸⁸ Section 32 of the Human Tissue Act 2004 deals with the Prohibition of commercial dealings in human material for transplantation.

provisions of the Proceeds of Crime Act 2002 would cover the proceeds of THB, leading to police financial intelligence units being able to proceed against the proceeds of human trafficking offences.⁹⁰ The (UK) Crime (International Co-operation Act) 2003 provides a potential model for the enactment of the new directive in the UK. In that case, while criminal law and law enforcement provisions are devolved matters within the UK, the Scottish Executive authorised the UK government to enact one piece of legislation covering cross-border law enforcement provisions in order to ensure that “no gaps and loopholes are left” in the legal framework.

Of interest is the fact that the Sexual Offences Act 2003 speaks of a penalty of “imprisonment for a term not exceeding 6 month or a fine not exceeding the statutory minimum” for summary conviction, and “imprisonment for a term not exceeding 14 years” for “conviction on indictment”.⁹¹ The Asylum and Immigration (Treatment of Claimants) Act 2004, which deals with trafficking for non-sexual purposes for the whole of the UK, border control remaining a UK reserved matter, speaks of “imprisonment for a term not exceeding twelve months [or] a fine not exceeding the statutory maximum or to both” for a summary conviction, and “imprisonment for a term not exceeding 14 years, to a fine or to both” for “conviction on indictment”.⁹² In contrast, the new directive provides for a minimum of “at least five years of imprisonment”,⁹³ for all types of trafficking, with the aggravated offence now to be a maximum of 10 years imprisonment.⁹⁴ This substantially changes the nature of the offence under UK law. The breath of the directives definition of aggravated offence is not echoed in the current UK provisions, although there is some acknowledgement of the need to deal with child trafficking with “the full force of the law” in the attached Government explanatory notes annexed to the relevant sections of the Sexual Offences Act 2003. The reference to organised crime in the directive is, surprisingly, not reflected in the UK legal provisions. A major conceptual shift, not only on victim support, but on the nature of the criminality, and its policing response, will be required in the UK in the implementation of the provisions of the new directive into UK law.

In addition to the above, THB becomes a UK Borders Agency issue under section 31 of the UK Borders Act 2007,⁹⁵ and, as mentioned above, cross border law enforcement operations are facilitated by the (UK) Crime (International Co-operation Act) 2003.⁹⁶ This latter act provides that foreign police and customs officers in pursuit of Schengen Convention crimes, which include THB, may maintain, pursuant to Section 76A of the now revised Regulation of Investigatory Powers Act 2000, and subject to its conditions, their surveillance operations within the UK. It would be expected that such an incoming operation would be immediately notified to the Serious Organised Crime Agency (SOCA), or its successor,⁹⁷ Multilateral/ International office for co-ordination and local support.

Despite the UK being comprised of a variety of legal jurisdictions, and law enforcement accountability structures,⁹⁸ the UK, prior to the enactment of the new directive, had

⁸⁹ Section 20 of Human Tissue (Scotland) Act 2006 which deals with the Prohibition of commercial dealings in parts of a human body for transplantation.

⁹⁰ UK Action Plan on Tackling Human Trafficking, March 2007 from the Home Office and the Scottish Minister for Justice, on behalf of the Scottish Executive, at page 16.

⁹¹ Section 57.2, 58.2 and 59.2 of the Sexual Offences Act 2003.

⁹² Section 4.5 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

⁹³ Article 4.1 of Directive 2011/36/EU.

⁹⁴ Article 4.2 of Directive 2011/36/EU.

⁹⁵ Section 31 of the UK Borders Act 2007 deals with people trafficking.

⁹⁶ Section 83 of the Crime (International Co-operation) Act 2003 provides for foreign surveillance operations.

⁹⁷ Home Office; The National Crime Agency; A plan for the creation of a national crime-fighting capability, June 2011, available on-line at www.homeoffice.gov.uk, accessed on 28 July 2011.

⁹⁸ See further O'Neill M.; 'EU Cross-Border Policing Provisions, the View from One of the Schengen Opt-out States,' *European Journal of Crime, Criminal Law and Criminal Justice* 18(2010) 73–89.

adopted a unitary Action Plan on Tackling Human Trafficking, in 2007,⁹⁹ together with the 2009 Update to the UK Action Plan,¹⁰⁰ which covered the issue of human trafficking “throughout the UK”¹⁰¹ from a variety of perspectives.

The 2007 THB strategy document recognised “the need to keep the legislation under review to ensure its continued effectiveness”,¹⁰² and some of the above mentioned pieces of legislation are, at the time of writing, currently subject to UK proposals for revision. In addition there is a proposal for the conversion of SOCA into a National Crime Agency, which will incorporate a border policing function.¹⁰³ It is to be hoped that the revisions to the UK legal framework for THB, bringing it in line with the new EU directive, will avail of the opportunity to bring in some streamlining of the legal provisions, and the underlying law enforcement structure. In addition the UK Action Plan on Tackling Human Trafficking will have to be rewritten to take into account the changes required by the new EU directive.

The UK Human Trafficking Centre (UKHTC) was originally tasked with leading on tackling THB at a UK level, initially in co-operation with SOCA,¹⁰⁴ but since the 1st April 2010 it has become part of SOCA structure. Law enforcement was “intelligence led”.¹⁰⁵ Intelligence led policing has a particular meaning within the UK, reflecting a particular law enforcement practice.¹⁰⁶ While difficult to pin down, intelligence led policing has been described as being “operationally the antithesis of community policing”.¹⁰⁷ Rather than reacting to reported offences as they happen, which remains the focus of community policing, intelligence led policing “focuses enforcement activities on prolific and serious offenders”, using “crime intelligence to objectively direct police resource decisions”.¹⁰⁸ Crime intelligence can be derived from a number of sources, both open and covert, and it “places greater emphasis on information sharing and collaborative, strategic solutions to crime problems”.¹⁰⁹ While the UK had acknowledged the seriousness of the crime of THB in the establishment of the UKHTC, it could be argued that there was insufficient focus on the crime across all of the forces of the UK, and insufficient, relative to the requirements of the new directive, allocation of law enforcement resources, as well as the already indicated lack of formal and legally enacted victim support structures that are now required.

While there is a UK wide National Intelligence Model,¹¹⁰ and in Scotland one Scottish Intelligence Data Base,¹¹¹ there is no comparative unitary intelligence data base in England & Wales. Presumably the Association of Chief Police Officers (ACPO)¹¹² Regional

⁹⁹ http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/UK_Action_Plan_to_Combat_Human_Trafficking_en.pdf, accessed on 26 July 2011.

¹⁰⁰ Home Office and Scottish Executive; Update to the UK Action Plan on Tackling Human Trafficking October 2009, http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Update_to_the_UK_Action_Plan_on_Tackling_Human_Trafficking_en_2009.pdf accessed on 26 July 2011.

¹⁰¹ Op. cit. footnote no. 90, at page 12.

¹⁰² Ibid. at page 8.

¹⁰³ Op. cit. footnote no. 97.

¹⁰⁴ Op. cit. footnote no. 90, at page 21.

¹⁰⁵ Ibid. at page 9.

¹⁰⁶ Ratcliffe, J.; *Intelligence-Led Policing*, Willan, 2008.

¹⁰⁷ Ibid. at page 87.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid. at page 85.

¹¹⁰ Ibid. at page 101/102.

¹¹¹ Run by the Scottish Police Services Authority.

¹¹² An England and Wales organisation of chief police officers. The Association of Chief Police Officers in Scotland is the Scottish counterpart to ACPO.

Intelligence Units network¹¹³ manages to provide a bridge between separate data bases. Of concern, however, is the 2007 Action plan's recognition of the "need to improve our knowledge base in the area of trafficking for forced labour." The plan stated that while the UK had "more detailed information on some areas such as victim nationality, employment sectors and the nature of exploitation," that there was "a fundamental lack of information concerning the scale of the problem".¹¹⁴ The UKHTC National Referral Mechanism Statistical Data for April 2009 to March 2010 have since been published.¹¹⁵

As reported in the UK context, one of the "greatest challenges" in this area is the "initial difficulty of gathering actionable intelligence" especially "in communities that are in effect 'closed' to routine policing" due to language barriers "or mistrust of the authorities".¹¹⁶ This may arise from communities experience of the authorities in their state of origin. UK reports have been made that "most of the victims and suspected victims encountered by police fled before initial interviews could be conducted or shortly afterwards".¹¹⁷ Of course police files verifying these reports are not available for inspection by the public due to both data protection and data security regulations. An intelligence led policing approach should be able to construct evidence from surveillance etc. sufficient to bring a suspected criminal to trial, separate from victim witness testimony, which is understandably difficult to obtain in this crime area. The victim support measures in the new directive may also provide an incentive for any suspected victims to remain contactable, thereby increasing the probability of, and possibly the opportunity for, the police obtaining relevant evidence from the victim. In order to obtain a warrant intelligence needs to be "gleaned by surveillance, first-hand observation or reliable third-party sources," all of which "require intense and costly resourcing."¹¹⁸ It is this additional intense and costly resourcing that is now anticipated by the new directive.

SOCA,¹¹⁹ as the successor to both National Criminal Intelligence Service (NCIS) and the National Crime Squad (NCS), both of whom were active in the area of human trafficking,¹²⁰ and which is now itself currently subject to proposals for reform,¹²¹ covers a number of different law enforcement programmes, which are to be "complementary" to each other.¹²² These include the "organised immigration crime programmes," the "exploitation of illegal migrants in the UK" and the "trafficking of people, in particular women and children for the vice trade."¹²³ This approach would be in line with the increasing evidence of the "involvement of organised criminal groups in trafficking" in the UK, with these organised crime groups being "highly structured, large in size and [having] many members and associates all around the world."¹²⁴ The UK, while being "a typical State of destination for trafficked people,"¹²⁵ also "services as a transit state."¹²⁶ In addition, it is worth noting that a large number of "children have been trafficked" into the UK, "not only for sexual exploitation, but also for credit card fraud, drug trafficking, and domestic service."¹²⁷ Many of SOCA's capabilities are operated north of the Scottish-English border

¹¹³ Op. cit. footnote no. 100, at page 8.

¹¹⁴ Op. cit. footnote no. 90, at page 5.

¹¹⁵ Available from SOCA at <http://www.soca.gov.uk>, accessed on 29 August 2011.

¹¹⁶ Lebov, K.; Human Trafficking in Scotland, 2010 7: 77 *European Journal of Criminology*, at page 88.

¹¹⁷ Ibid.

¹¹⁸ Ibid. at page 85.

¹¹⁹ Established pursuant to s. 1 of the Serious Organised Crime and Police Act 2005, as an "Executive Non-Departmental Public Body (NDPB) of the Home Office", <http://www.soca.gov.uk/about-soca/how-we-are-run>.

¹²⁰ Op. cit. footnote no. 79, at page 72.

¹²¹ Op. cit. footnote no. 97.

¹²² Op. cit. footnote no. 90, at page 10.

¹²³ Ibid.

¹²⁴ Op. cit. footnote no. 79, at page 46.

¹²⁵ Ibid. at page 41.

¹²⁶ Ibid. at page 39.

¹²⁷ Ibid. at page 41.

by the Scottish Crime and Drug Enforcement Agency (SCDEA).¹²⁸ Completing the UK's law enforcement picture in this area are the Child Exploitation Online Protection Centre (CEOP),¹²⁹ and the Gangmasters Licensing Authority (GLA).¹³⁰

The 2007 UK Action Plan described the UKHTC as being "a multi-agency centre" which forges "close links between the immigration service and law enforcement."¹³¹ These tasks continued after the UKHTC became part of SOCA. As well as the obvious role of the UK Borders Agency,¹³² all of the vice and organised crime squads located in the 52¹³³ territorial forces throughout the UK¹³⁴ are required to be added to the mix in order to complete the picture. Even in the highly cohesive context of the Scottish territorial forces, different approaches have been taken in structuring the force in order to deal with human trafficking. The Glasgow based Strathclyde police, according to the 2009 review, have "established a Vice and Anti-Trafficking Unit," while the equally city focused Edinburgh based force, Lothian and Borders Police, has tasked its Serious Organised Crime Unit with the role of combating THB.¹³⁵ This all makes for a highly complex UK Human Trafficking law enforcement structure, even before the multi-faceted aspects of THB, such as victim support, and the role of standard community policing units, often the first responders to an incident, and who encounter low level street criminality during routine patrols, are taken into the picture.

At a territorial force level, or as described earlier, the level of first responder, "language is another barrier" to performance,¹³⁶ not just for the NGO's who provide support in this area, but also for the police. In addition "officers receive insufficient training on foreign languages, identification of false travel documents and visas, treatment of victims of trafficking, and other issues related to the phenomenon."¹³⁷ Problems have similarly arisen at the level of immigration officers, who may also be the first responders in this crime area, "who may lack adequate knowledge of refugee laws and of human rights situations in the States of origin".¹³⁸ If the immediate response is that of "arrest and deportation of illegal migrants",¹³⁹ because victims "are often seen as a threat to internal security because of their connection with criminal activities and organisations",¹⁴⁰ the consequence is that "few traffickers [are] being prosecuted and punished in reality,"¹⁴¹ allowing them to continue in business, and try again. This is not an effective way to tackle either organised crime or organised criminals.

¹²⁸ Established pursuant to s. 12 of the Public Order and Criminal Justice (Scotland) Act 2006, "established as a non-departmental public body" and being "part of the Scottish Police Services Authority (SPSA)", <http://www.sdea.police.uk/About-Us/aboutus.htm>.

¹²⁹ CEOP is affiliated to SOCA.

¹³⁰ Set up pursuant to Section 1 of the Gangmasters (Licensing) Act 2004 as a Non-Departmental Government Body of Department of the Environment, Food and Rural Affairs (DEFRA).

¹³¹ Op. cit. footnote no. 90, at page 5.

¹³² Section 48 of UK Borders Act 2007 created a Border and Immigration Inspectorate, known as the UK Borders Agency, which is an agency of the UK Home Office. <http://www.ukba.homeoffice.gov.uk/aboutus/>.

¹³³ At the time of writing there are 43 standard territorial forces in England & Wales, 8 in Scotland, and 1 in Northern Ireland. In addition there are police forces on the UK offshore islands, namely the Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary. There are also 4 special police forces; the Ministry of Defence Police, the British Transport Police Force, the Civil Nuclear Constabulary, and the Scottish Crime and Drug Enforcement Agency. In addition the Serious Organised Crime Agency, which is not classified as a police force under UK law, but is so classified for the purposes of EU law.

¹³⁴ With police chiefs answerable "to their [normally local] political masters." Op. cit. footnote no. 69, at page 102.

¹³⁵ Op. cit. footnote no. 100, page 12.

¹³⁶ Op. cit. footnote no. 79, at page 82.

¹³⁷ Ibid. at page 74, citing Lord Wiberforce, Hansard, H.L. Vol. 632, Col. 899.

¹³⁸ Ibid. at page 74.

¹³⁹ Ibid. at page 80.

¹⁴⁰ Ibid. at page 153.

¹⁴¹ Ibid. at page 80.

The new directive's focus on victim support will hamper any traditional "arrest and deportation of illegal immigrants" approach when THB is suspected. The lack of clear and useable laws and structures, both at a national and transnational and international level are likely to be a contributing factor to the low conviction level for THB. It is to be hoped that the new EU directive will be a first step in addressing some of these issues. The new directive's standardisation of the definition of THB, together with its new reporting structures should assist in bringing clarity to this crime area. However, the variety of policing techniques required, together with the complexity of the UK's own internal legal and police operational framework is adding complexity to an already complex area.

The proposed replacement of SOCA, the National Crime Agency, will be tasked with tackling not only organised crime, but also "networks of organised criminals",¹⁴² thereby neatly sidestepping the lengthy academic and practitioner arguments as to what exactly is "organised crime".¹⁴³ The police in the UK have two distinct roles, arrest and prosecution of criminals, and ensuring that "criminals and networks of organised criminals are disrupted and prevented from operating."¹⁴⁴ The apprehension of the offender is therefore not always the first priority. The Border Policing Command of the new National Crime Agency will be tasked, *inter alia*, with trafficking of people.¹⁴⁵ While this approach may have a certain logic, the THB within the UK, to include those numbers of victims who never cross national borders, must also be encompassed in the new National Crime Agency's activities.

The UK's interaction with the EU and third countries

The largest amount of THB activity involves criminal activity across borders, both within and outside the EU. At an EU level a new momentum has been added to the development of cross-border policing provisions due to the coming into force of the Lisbon Treaty in December 2009. The Lisbon Treaty has transferred the previous third pillar of the EU, PJCCM, into the new unitary EU pillar. It will therefore benefit from the more effective legal framework which has been in use by the more commercially focused pre-Lisbon EC. This brings with it the principles of supremacy and direct effect, and the legal tools of regulation, directive and decision. With the Commission now being tasked with more authority in this area, more comprehensive and effective strategies should follow than was previously been the case under the Council. The more legally focused Commission should also be more effective in delivering the freedom and justice aspects to the Area of Freedom Security and Justice. Criticism of the AFSJ in the third pillar arose due to the more extensive development of the security measures not being counter-balanced by similar advances being made on due process and fundamental rights issues.

The Stockholm Programme,¹⁴⁶ the EU's policy document for this area of co-operation for the next five to ten years, was also signed off in December 2009. It had a number of major proposals for reform of the area of THB, many of which are now in place. For example, the Stockholm Programme proposed the establishment of an EU Anti-Trafficking Coordinator (ATC),¹⁴⁷ (now appointed), in order to bring together all of the relevant strands in order to develop "a well coordinated and consolidated EU policy against trafficking".¹⁴⁸ In addition,

¹⁴² Op. cit. footnote no. 97, at page 5.

¹⁴³ E.g. Mc Redmond, P. Defining Organised Crime in the Context of Human Trafficking, Chapter 12 in Wylie G. and Mc Redmond P.; Human Trafficking in Europe (Palgrave 2010).

¹⁴⁴ Op. cit. footnote no. 97, at page 7.

¹⁴⁵ Ibid. at page 19.

¹⁴⁶ The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Brussels, 2 December 2009, 17024/09.

¹⁴⁷ Ms Myria Vassiliadou was appointed to this post on 14 December 2010.

¹⁴⁸ Op. cit. footnote no. 146, at 4.4.2. Trafficking in human beings, fourth paragraph.

the new Standing Committee on Internal Security (COSI),¹⁴⁹ set up pursuant to Article 71 TFEU, is to monitor progress in this area and is to be “regularly informed of coordination and cooperation against trafficking”.¹⁵⁰

The Stockholm Programme also has a clear focus on the development of the EU’s external relations with its neighbours in many aspects of the AFSJ, to include THB. This external focus will raise new questions and challenges for the EU’s law enforcement communities. For example, the Russian authorities have realised “that they face an acute demographic problem” with a substantial loss of women of child bearing age in some regions, and “are focusing on human trafficking as a threat to national security”.¹⁵¹ The question of whether the EU, and when appropriate, the UK policing authorities are fully geared up to deal with the Russian security services, either directly, or indirectly via the Russian police, in the context of THB, is a question only they can answer. Equally, the additionally that the EU can bring to the area of cross border law enforcement, through not only the work of the Council and Commission, but also Europol and Eurojust, will be key in the development of unified processes and procedures for the development of effective external links with third states. As pointed out by Cornell, “criminal networks have learned to exploit differences between various countries in terms of judicial systems, taxation, technological advances, and law enforcement”.¹⁵² These differences are not only within the EU, but in the context of THB, with third states which may be the state of origin and transit for THB. Transnational law enforcement mechanisms, to include those provided by the EU, are therefore key to dealing with these issues in a Western European context.

Focusing on internal law enforcement, in addition for calling for what is now the new directive on THB,¹⁵³ the European Council, in the Stockholm Programme, called for further engagement with Europol¹⁵⁴ and Eurojust.¹⁵⁵ A high level of engagement and awareness of the activities of Europol and, to a certain extent, Eurojust, has developed over the years amongst organised crime and drug enforcement officers. Given the earlier discussion as to the allocation of the anti-trafficking role in the UK, sometimes to the organised crime unit (Lothian & Borders police), and sometimes to the vice unit (Strathclyde police), it has to be understood that the responsible officers in many forces will not have had a traditional working knowledge, or even awareness, of the EU law enforcement structures. For example, one of the legal and operation tools available, cross border controlled deliveries, are “normally be undertaken and managed by specialist agencies or units and the procedural paths will have been well trodden”¹⁵⁶ by those specialist agencies. Vice units would not be “those specialist agencies.” In addition, if controlled deliveries are to “involve the transportation of people, for instance,” not only might the structure of the units leading the investigation differ, i.e. vice units rather than drugs/ organised crime units, but also “the humanitarian and human rights element of the cargo [will be] of utmost concern”.¹⁵⁷ The increased “use of joint investigation teams” in dealing with THB has also

¹⁴⁹ Council Decision 2010/131/EU of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security, OJ L 52, 3.3.2010, p. 50–50.

¹⁵⁰ Op. cit. footnote no. 146, at 4.4.2 Trafficking in human beings, third paragraph.

¹⁵¹ Shelly, L. ‘Human Security and Human Trafficking, in Jonsson’ A. (Ed.) *Human Trafficking and Human Security*, Routledge Transnational Crime and Corruption, 2009, at page 21.

¹⁵² Cornell, S.E.; ‘The interaction of drug smuggling, human trafficking, and terrorism,’ in Jonsson A. (Ed.) *Human Trafficking and Human Security*, Routledge Transnational Crime and Corruption, 2009, at page 55.

¹⁵³ Op. cit. footnote no. 146, at 4.4.2 Trafficking in human beings, fifth paragraph, first indent.

¹⁵⁴ Ibid. at 4.4.2 Trafficking in human beings, fifth paragraph, third indent.

¹⁵⁵ Ibid. at 4.4.2 Trafficking in human beings, fifth paragraph, fourth indent.

¹⁵⁶ Brown, S.B.; ‘Controlled deliveries,’ chapter 14, in Brown, S.B.(ed.); *Combating International Crime; The Longer Arm of the Law*, Routledge, 2008, at page 202.

¹⁵⁷ Ibid. at page 201.

been called for by the EU's expert group on THB.¹⁵⁸ The UK is going to have to put its own house in order, pursuant to the new THB directive, before it can effectively interact with cross EU, and extra- EU law enforcement operations in this area.

In addition, while the UK has in place the "dedicated national" unit specialising in THB anticipated by the 2010 Group of Experts opinion,¹⁵⁹ it to be remembered that it is not, the dedicated national unit, the UK Human Trafficking Centre, which will be the first responder, and the force preparing and developing the case for prosecution. Gathering the intelligence and arresting the offenders will be dealt with by the various territorial forces located across the UK. THB may well be encountered by the standard uniformed police patrol, which will be required to refer the matter to the specialist THB unit that has been set up in the relevant police force. The THB unit will then need to coordinate operations both nationally, and through the UKHTC unit, now in SOCA, but soon to be in the proposed National Crime Agency, internationally. Equally the money laundering/proceeds of crime units within the each of the territorial forciers will also need to be fully involved in these developments.¹⁶⁰ As pointed out in the Stockholm Programme, a particular concern will be the "reversing trafficking in human beings from a low risk-high profit criminal activity into a low profit-high risk activity".¹⁶¹

In the context of the UK's interaction with the EU's law enforcement framework in the context of THB, the UK authorities need to be able to fully interact with their counterparts across the EU, and beyond. While identical cross border policing provisions operate across the EU, an anomaly arises due to the non membership of Frontex¹⁶² by the UK. Given that THB is often closely allied with the crime of smuggling of illegal immigrants, the non access by UK to Frontex intelligence products may hamper THB intelligence analysis of relevance to the UK. This has resulted in what is now a developing line of case law where the UK challenges decisions by the Council which develop further the Schengen *acquis*, but which leaves the UK out of these developments on the basis that they are developments of the visas and immigration *acquis*, even though they have an effect on cross border policing.¹⁶³ This was very much the point underlying Case C-482/08 *United Kingdom v. Council*.¹⁶⁴ Worth noting, however, is that co-operation by Frontex with the UK and Ireland had always been envisaged, as set out in Article 12 of Council Regulation 2007/2004.¹⁶⁵ In addition Article 2.2 of the regulation provides that "without prejudice to the competencies of the agency, Member States [of Frontex] may continue cooperation at

¹⁵⁸ Opinion of the Experts Group on Trafficking in Human Beings of the European Commission on the revision of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, (*International Journal of Refugee Law*) I.J.R.L. 2009, 21(3), 508-514, at page 513.

¹⁵⁹ Opinion No 7/2010 of the Group of Experts on Trafficking in Human Beings of the European Commission; Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons, at page 26, Main concerns, fourth paragraph, available on line on the Europa web site. http://ec.europa.eu/home-affairs/policies/crime/crime_human_trafficking_en.htm, accessed on 29 September 2011.

¹⁶⁰ Ibid. at page 24, Law Enforcement, introduction, second paragraph.

¹⁶¹ Opinion of the Experts Group on Trafficking in Human Beings of the European Commission on the revision of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, (*International Journal of Refugee Law*) I.J.R.L. 2009, 21(3), 508-514, at page 513.

¹⁶² Which was set up pursuant to Council Regulation 2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25/11/2004 p. 1.

¹⁶³ Case C-482/08 *United Kingdom v. Council* OJ 2010 C346/6, Case- 137/05 *United Kingdom v. Council*, [2007] ECR I-11593, and Case C-77/05 *United Kingdom v. Council*, [2007] ECR I-11459.

¹⁶⁴ Case C-482/08 *United Kingdom v. Council* OJ 2010 C346/6.

¹⁶⁵ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25/11/2004 p. 1.

an operational level with other Member States and/ or third countries at external borders¹⁶⁶ where such cooperation complements the action of the Agency”.

The issue of access by the UK to Frontex’s intelligence products may well have been fully addressed, following a complicated legal document trail, by Council Decision 2008/633/JHA.¹⁶⁷ This council decision deals with the “prevention, detection and investigation of terrorist offences and of other serious criminal offences”. While it builds on the Schengen *acquis*, which the UK is not part of, on the basis of the pre Lisbon Pillar III legal provisions, which do not fully involve the UK,¹⁶⁸ “information contained in the VIS¹⁶⁹ can be provided to the UK and Ireland by the competent authorities of the Member States whose designated authorities have access to the VIS pursuant to this Decision.”¹⁷⁰ Equally UK and Irish national visa register data can be “provided to the competent law enforcement authorities of the other Member States.” A similar solution may be embedded in Council Decision 2008/633/JHA, with regard to UK and Ireland’s access to the VIS, as Article 7.3 of that decision provides that “Europol shall designate a specialist unit for the purpose of this Decision with duly empowered Europol officials to act as the central access point to access the VIS for consultation.”¹⁷¹

Conclusion

There has been lengthy, and often very complex, debate over the crime of trafficking in human beings for many years. Not only do the victims need support, but the criminals need either to be disrupted in a way that they can no longer act, or be brought to justice. The police have been tasked with this role in the UK. In order for the police to act they need clarity as to what the law is, and how serious the legislature views the particular crime. In addition, they require clear and coherent policing structures. The issue of adequate resourcing and training will necessarily follow. In order for cross border law enforcement to be effective it is necessary to have a shared definition as to what is THB, and how to tackle it, with fellow EU member states, and beyond. The new directive, whatever its flaws, brings clarity to the nature of the crime, and gives clear indications as to how it is to be tackled by the EU and partner third states. No doubt the effectiveness of this approach will be the subject of much academic analysis in the years ahead. There are some major conceptual shifts from the earlier framework decision to the new directive. In addition, the UK will have to shift its thinking and approach to meet the requirements of the new directive, which, unlike its predecessor, benefits from the principles of supremacy and direct effect. In examining the UK’s legal and policing framework in light of the provisions of the new directive, it is also necessary to widen the internal UK examination to ask whether the pre-existing provisions are sufficiently clear and coherent in themselves to be workable, or whether a full review of the UK provisions is now also merited. The complete picture will also require an analysis of the UK’s illegal immigration laws and

¹⁶⁶ It is unclear whether these “external borders” are those of “Schengen land”, i.e. the members of Frontex, or of the EU.

¹⁶⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13/08/2008 p. 12.

¹⁶⁸ Specifically Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 18.12.2006, p. 89.

¹⁶⁹ Visa Information System

¹⁷⁰ Paragraph 15 of the preamble to Council Decision 2008/633/JHA, OJ L 218, 13/08/2008 p. 12.

¹⁷¹ Article 7.3 of Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13/08/2008 p. 12.

practice, a subject matter which is outside the scope of this article. It is the argument of this article that the UK's legal and policing provisions were piecemeal, and not sufficiently joined up to adequately tackle the crime of THB, even during the time of the framework decision. The need to revise the UK's law and policy on THB in light of the new directive provides an opportunity for the UK to engage in a full critical examination of the UK's provisions, and to bring greater clarity to this area.
