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# The Trafficking of Persons into the European Union for Sexual Exploitation: Why It Persists and Suggestions to Compel Implementation and Enforcement of Legal Remedies in Non-Complying Member States

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# THE TRAFFICKING OF PERSONS INTO THE EUROPEAN UNION FOR SEXUAL EXPLOITATION: WHY IT PERSISTS AND SUGGESTIONS TO COMPEL IMPLEMENTATION AND ENFORCEMENT OF LEGAL REMEDIES IN NON-COMPLYING MEMBER STATES

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**Abstract:** Trafficking in persons for the purpose of sexual exploitation is a global scourge that affects all corners of the planet, including the European Union (E.U.). Since 1997, the E.U. has made great strides toward conquering trafficking within its borders, and yet this modern day slave trade continues to flourish. This Note follows the progression of Community legislation targeting trafficking from 1997 through today, and analyzes Member States' compliance with those laws as well as patterns of concern. Because current legislation focuses primarily on penalization and victim's protections, this note argues that the E.U. must pass legislation requiring Member States to take preventative action as well. It also argues that the E.U. must use its judicial powers to more effectively fight trafficking for sexual exploitation by punishing those Member States who still fail to comply with existing Community legislation.

## INTRODUCTION

In addition to the traditional form of chattel slavery, modern slavery increasingly involves the trafficking of human beings, mostly women and children, for sexual exploitation.<sup>1</sup> Today, anywhere from 700,000 to 4 million women and children are trafficked across international borders by criminal trafficking organizations and subse-

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<sup>1</sup> DEP'T OF STATE, JUNE 2004 TRAFFICKING IN PERSONS REPORT 6, 15 (2004) [hereinafter DEP'T OF STATE, 2004 REPORT]; Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 317 (1999).

quently forced into some form of sexual slavery.<sup>2</sup> In fact, the United Nations has estimated that, after trafficking in narcotics and arms, the profits from human trafficking provide the third greatest revenue source for organized crime, generating an average of 9.5 billion U.S. dollars annually.<sup>3</sup>

Within the European Union (E.U.), there are between 200,000 and half a million illegal sex workers, most migrating from Eastern and Central Europe as a result of the opening up of former Cold War borders about a decade ago.<sup>4</sup> The problem is exacerbated by the traditional treatment of trafficking victims as criminals, who are subsequently either deported or convicted of prostitution and imprisoned while their traffickers go free.<sup>5</sup> Since 1996, both the E.U. and a good number of its Member States have taken more proactive measures to combat trafficking in persons for sexual exploitation.<sup>6</sup> Despite their efforts, however, the slave trade continues to flourish.<sup>7</sup>

This Note argues that, despite European Community legislative requirements for Member States to adopt basic anti-trafficking measures, lack of implementation and enforcement of those laws, coupled with insufficient prevention programs in Member States, has hindered the Community's attempts to combat the trafficking of persons for sexual exploitation into the E.U. In order to successfully fight this form of trafficking, the E.U. must utilize its enforcement power under the Treaty Establishing the European Community (E.C. Treaty) to compel Member States to implement and enforce more effective

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<sup>2</sup>See THE EUROPEAN COMM'N, Information Sheets, *Trafficking in Women, The Misery Behind the Fantasy: From Poverty to Sex Slavery, A Comprehensive European Strategy*, [http://europa.eu.int/comm/justice\\_home/news/8mars\\_en.htm#a1](http://europa.eu.int/comm/justice_home/news/8mars_en.htm#a1) (last visited Sept. 7, 2005) [hereinafter *Trafficking in Women*]; see also DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 6; OFFICE OF THE PRESS SECRETARY, TRAFFICKING IN PERSONS NATIONAL SECURITY PRESIDENTIAL DIRECTIVE (2003), <http://www.fas.org/irp/offdocs/nspd/trafpers.html>. There is no consensus on the number of persons trafficked annually because the clandestine nature of the crime makes documentation difficult. U.N. POPULATION FUND, *Trafficking in Human Misery*, <http://www.unfpa.org/gender/trafficking.htm> (last visited Oct. 16, 2005).

<sup>3</sup> DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 14; see also *Trafficking in Women*, *supra* note 2.

<sup>4</sup> U.N. DEP'T OF PUB. INFO., *New Global Treaty to Combat "Sex Slavery" of Women and Girls*, U.N. Doc. DPI/2098 (Feb. 2000), available at <http://www.un.org/events/10thcongress/2098.htm>.

<sup>5</sup> See *id.*

<sup>6</sup> See *Trafficking in Women*, *supra* note 2. See generally *infra* notes 30, 35, 38, 43, 46 and accompanying texts.

<sup>7</sup> See Eric Jansson, *Balkan Traffic in Women and Girls 'On Rise'*, FIN. TIMES, Dec. 18, 2003, 2003 WL 69469132.

criminal statutes, while simultaneously passing legislation that requires Member States to adopt prevention programs.

Part I of this Note will discuss the conditions that facilitate trafficking for sexual exploitation as well as provide an overview of trafficking into and within the E.U. Part II will describe Community legislation and programs designed to combat trafficking in persons for sexual exploitation and explore patterns of implementation and enforcement within Member States. Part III will argue that the E.U. can use its power to penalize non-complying Member States under the E.C. Treaty to compel them to correct defaults. Further, it will argue that the E.U. should pass legislation that requires Member States to adopt adequate prevention programs to compliment current Community legislation dealing with penalization and victim's protections.

### I. BACKGROUND

Around the globe, women forced into sexual slavery originate predominantly in Russia and the other former Soviet republics, large parts of Asia, and Central and South America.<sup>8</sup> Not surprisingly, these states tend to possess certain socioeconomic and cultural characteristics that facilitate trafficking for sexual exploitation: widespread poverty, weak social and economic structures, lack of employment opportunities, organized crime, violence against women and children, discrimination against and devaluation of women, government corruption, and political instability.<sup>9</sup>

Facing conditions such as these in her home country, the victim often agrees to leave with her trafficker in the belief that she is going to be married, find a better life, or find employment or educational

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<sup>8</sup> See *World Faces Deluge of Human Trafficking*, REUTERS, Aug. 31, 2000, <http://archives.cnn.com/2000/WORLD/europe/08/31/slavery.world.reut/>.

<sup>9</sup> See DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 19; Katrin Corrigan, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 *FORDHAM INT'L L.J.* 151, 155 (2001); *Trafficking in Women*, *supra* note 2; Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on Trafficking in Women, 1998 O.J. (C 14) 39 [hereinafter Parliament Resolution on Trafficking in Women 1998]. The fact that women comprise about 80% of trafficking victims greatly affects the scope of the problem as well as the focus of prevention and victim's protection programs. See DEP'T OF STATE, JUNE 2005 TRAFFICKING IN PERSONS REPORT 6 (2005) [hereinafter DEP'T OF STATE, 2005 REPORT]. Also, women make up the majority of the world's poor. U.N. DEP'T OF PUB. INFO., *Empowering Women: The Key to Achieving the Millennium Development Goals*, <http://www.un.org/events/women/iwd/2003/background.html> (last visited Oct. 16, 2005).

opportunities.<sup>10</sup> Sometimes, she is simply sold by her family.<sup>11</sup> The victim is then usually taken by the trafficker to another state where she cannot speak or understand the language and is immediately forced into prostitution.<sup>12</sup> The substantial profits from trafficking frequently allow the trafficker to become entrenched in a community and continuously exploit it as a ready source of victims.<sup>13</sup>

#### A. *Trafficking Persons into the E.U. for Sexual Exploitation*

Not surprisingly, the European Commission has conceded that the E.U. is also host to the cycle of trafficking and victimization, to the extent that all Member States are affected by trafficking in women in some form.<sup>14</sup>

In addition to Central and Eastern European states (including former Soviet republics), victims originate in both non-member and applicant states in the Balkans.<sup>15</sup> To a lesser extent, victims are trafficked from Africa and South America.<sup>16</sup> Victims also originate within certain recently admitted E.U. Member States.<sup>17</sup>

The victim is trafficked from her state of origin into and through the E.U. via transit states.<sup>18</sup> Once the trafficker and the victim have entered the E.U. through the transit state, the trafficker re-traffics the victim either to another transit state or to the final destination state.<sup>19</sup> Of the three types of states in this traffic pattern, all E.U. Member States are at least one.<sup>20</sup>

The victim's final journey from state of transit to state of destination is facilitated by the ease of movement between Member States that

<sup>10</sup> See DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 18, 216; *Trafficking in Women*, *supra* note 2.

<sup>11</sup> U.N. DEP'T OF PUB. INFO., *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, U.N. Doc. DPI/2098 (Feb. 2000), available at <http://www.un.org/events/10thcongress/2098.htm>.

<sup>12</sup> See DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 10.

<sup>13</sup> See *id.* at 12.

<sup>14</sup> *Trafficking in Women*, *supra* note 2.

<sup>15</sup> See *Trafficking in Women*, *supra* note 2; COUNCIL OF EUROPE, *Violence Against Women in Europe*, (Mar. 15, 2000) <http://assembly.coe.int/Documents/WorkingDocs/doc00/edoc8667.htm#IID> (last visited Sept. 7, 2005); Miron Varouhakis, *Trafficked Women Are Victims*, Ctr. for Research on Globalisation, <http://www.globalresearch.ca/articles/VAR207A.html> (July 26, 2002).

<sup>16</sup> COUNCIL OF EUROPE, *supra* note 15.

<sup>17</sup> See Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93–94, 102–03, 121–22, 141–42, 144–45, 179–80, 195–96, 196–97.

<sup>18</sup> See Table 1; see, e.g., DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59.

<sup>19</sup> See *Trafficking in Women*, *supra* note 2.

<sup>20</sup> See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222.

resulted from the Schengen Agreement of 1985.<sup>21</sup> The Schengen Agreement created the Schengen Area, which permits travelers and citizens legally present in the European countries party to the Agreement to move about freely without having to show passports when crossing internal frontiers.<sup>22</sup> In 1997, the Treaty of Amsterdam amended the E.C. Treaty to officially incorporate the Schengen Area, which now includes all of the E.U. Member States.<sup>23</sup> Although it is only intended to permit free movement of individuals legally within the Schengen Area, the practical effect is that if individuals enter the area illegally, they too can move about unchecked.<sup>24</sup>

## II. DISCUSSION

As early as 1993, the issue of trafficking of women for forced prostitution has been recognized as a serious problem.<sup>25</sup> The European Commission initially felt, however, that the problem could and should be handled under existing treaty provisions, and thus no action was taken to address it.<sup>26</sup> Three years later, Parliament called for the prohibition of trafficking in persons to be immediately amended to the E.C. Treaty in order to bring it within the sphere of Community jurisdiction, leading the way for a series of progressive legislative acts attacking the problem from all sides.<sup>27</sup>

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<sup>21</sup> See Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and The Convention Applying the Agreement, June 14, 1985, 30 I.L.M. 68 [hereinafter Schengen Agreement]; COUNCIL OF EUROPE, *supra* note 15; see also *infra* notes 23, 24 and accompanying text.

<sup>22</sup> See Schengen Agreement, *supra* note 21, art. 2; *Free movement of people within the Schengen zone*, [http://www.oasis.gov.ie/moving\\_country/moving\\_abroad/schengen\\_agreement.html](http://www.oasis.gov.ie/moving_country/moving_abroad/schengen_agreement.html), (last visited Oct. 16, 2005).

<sup>23</sup> *The Schengen Acquis and Its Integration into the Union*, <http://europa.eu.int/scadplus/leg/en/lvb/l33020.htm>, (last visited Oct. 26, 2005).

<sup>24</sup> See COMMITTEE ON ECONOMIC AFFAIRS AND DEVELOPMENT, *Europe's Fight Against Economic and Transnational Organised Crime: Progress or Retreat?, The Many Faces of Economic Crime*, Doc. 9018 (Apr. 6, 2001), available at: <http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC9018.htm>. As a result, victims who have been trafficked into the Schengen Area are easily transported to their final destination. See *id.*

<sup>25</sup> See European Union Parliamentary Questions, 1993 O.J. (C 137) 2.

<sup>26</sup> See *id.*

<sup>27</sup> European Preparatory Act, Parliament Resolution on Trafficking in Human Beings, 1996 O.J. (C 32) 88.

*A Brief History of E.U. Measures Combating Trafficking  
for Sexual Exploitation*

The first major piece of E.U. legislation was the Incentive and Exchange Programme for Persons Responsible for Combating Trade in Human Beings and the Sexual Exploitation of Children (STOP) of 1996, which supported coordinated initiatives by public officials and non-governmental organizations (NGOs) for the fight against and prevention of trafficking in people.<sup>28</sup> Because the E.U. did not have jurisdiction over trafficking yet, it used the STOP program to offer incentives to reinforce and coordinate systematic efforts already in place in Member States.<sup>29</sup>

In February, 1997, the Council adopted the Joint Action on the Trafficking of Human Beings for Sexual Exploitation, which recognized that the extent of trafficking in persons for sexual exploitation within the E.U. was becoming increasingly worrisome, and attempted to address this problem by utilizing other areas of the treaty under which the E.U. had jurisdiction, such as illegal immigration and judicial cooperation on criminal matters.<sup>30</sup> This was the first Community measure to actually require Member States to take legislative measures independently, as well as in cooperation with other Member States, to fight trafficking.<sup>31</sup>

With the ratification of the Treaty of Amsterdam in 1998, the E.U. received jurisdiction over trafficking for sexual exploitation.<sup>32</sup> This allowed the E.U. to achieve its goal of broadening the scope of the issue by confronting it as a violation of women's fundamental human rights rather than approaching it in terms of judicial cooperation and the fight against organized crime and illegal immigration.<sup>33</sup> The E.U.'s primary focus, however, was simply on developing penal

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<sup>28</sup> *Trafficking in Women*, *supra* note 2.

<sup>29</sup> *See generally* Council Joint Action 96/700/JHA, 1996 O.J. (L 322) 7; Council Decision 2001/514/JHA, 2001 O.J. (L 186) 7. STOP's success led to its renewal in 2001, although it was replaced in 2003 by a similar program, AGIS. Council Decision 2001/514/JHA, 2001 O.J. (L 186) 7; Programme for Police and Judicial Cooperation in Criminal Matters (Programme AGIS), 2003 O.J. (C 308) 42.

<sup>30</sup> Council Joint Action 97/154/JHA, 1997 O.J. (L 63) 2.

<sup>31</sup> *See id.*

<sup>32</sup> Treaty of Amsterdam Amending The Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1, 14 [hereinafter EC Treaty].

<sup>33</sup> Parliament Resolution on Trafficking in Women 1998, *supra* note 9.

legislation, law enforcement and judicial co-operation, rather than on the prevention of trafficking and the protection of victims.<sup>34</sup>

In 2000, the E.U. released the Charter of Fundamental Rights of the European Union, which specifically prohibits slavery, servitude, and trafficking in human beings.<sup>35</sup> It also articulates the right to respect for physical and mental integrity.<sup>36</sup> Although the Charter is not judicially enforceable unless and until the E.U. Constitution is ratified, it has nonetheless been used as a foundation for other E.U. legislative actions.<sup>37</sup> Also, in December of 2000, the E.U. implemented the Daphne Programme.<sup>38</sup> Daphne was broader in scope than STOP because it covered the general issue of violence against women, including trafficking; it was also given a 20 million Euro budget.<sup>39</sup> Instead of working exclusively through Member State governments, the Daphne Programme encouraged NGOs to set up or reinforce European networks and helped them implement innovative projects, the results of which could be disseminated to other Member States and regions.<sup>40</sup> The idea behind the program was that these NGOs could provide services which the public authorities did not have the power or the ability to provide.<sup>41</sup> A Commission report concerning the first two years of the Daphne Programme found that it demonstrated a marked improvement of both policy development and practical solutions to violence-related issues and their operational applications across Europe.<sup>42</sup>

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<sup>34</sup> *Trafficking in Women*, *supra* note 2.

<sup>35</sup> Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 [hereinafter Charter].

<sup>36</sup> *Id.*

<sup>37</sup> The European Convention, Draft Treaty Establishing a Constitution for Europe, July 18, 2003, Conv 850/03, 8; *see, e.g.*, Council Resolution of 20 Oct. 2003 on Initiatives to Combat Trafficking in Human Beings, in Particular Women, 2003 O.J. (C 260) 4. Judicial enforceability of the Charter may take years. *See* EurActiv.com, *Referenda on E.U. Constitution - State of Play in the Member States* (Oct. 14, 2005), <http://www.euractiv.com/Article?tcaturi=tcm:29-130616-16&type=Overview>. The Constitution can take effect only if all twenty-five member states ratify it either in a parliamentary vote or by referendum, and currently it has failed ratification in two states, France and The Netherlands. *Id.*

<sup>38</sup> *See generally* Decision 293/2000/EC of the European Parliament and of the Council, 2000 O.J. (L 34) 1.

<sup>39</sup> *Id.*

<sup>40</sup> European Commission, *Daphne II—EU Programme to Combat Violence Against Children, Young People and Women*, [http://europa.eu.int/comm/justice\\_home/funding/daphne/funding\\_daphne\\_en.htm](http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm), (last visited Oct. 16, 2005).

<sup>41</sup> *See id.*

<sup>42</sup> *Report From the Commission to the European Parliament and the Council on the Daphne Programme (2000–2003)*, COM (2002) 169.



In 2002, the European Council passed a decision (2002 Decision) which recognized the need for a more comprehensive approach in which the definition of constituent elements of criminal law, and sanctions, were consistent throughout all Member States.<sup>43</sup> This decision nullified the vague 1997 Joint Action, obligated Member States to specifically criminalize general trafficking as well as trafficking in persons related activities, and to adopt minimum prison sentences for individuals convicted of certain trafficking offenses.<sup>44</sup>

In 2004, the E.U. placed more emphasis on helping victims of trafficking for sexual exploitation.<sup>45</sup> First, the E.U. implemented the Daphne II program, and extended the budget to 50 million Euros.<sup>46</sup> This Daphne renewal decision recognized that violence against women was widespread throughout the Community and recognized that the sexual exploitation and violence endured by these victims constituted a “health scourge and an obstacle to the enjoyment of safe, free and just citizenship in the E.U.”<sup>47</sup> That same year, the European Council passed a directive (2004 Directive) that introduced a residence permit intended for victims of trafficking in order to provide an incentive for these victims to cooperate with authorities while including certain conditions to safeguard against abuse.<sup>48</sup> Unlike prior programs like STOP and Daphne, which attempted to aid victims through incentives, this directive actually requires Member States to offer certain protections to victims.<sup>49</sup> In fact, this directive requires that Member States provide victims with medical treatment, translation services, and a reflection period (during which they cannot be deported) to decide whether to help authorities.<sup>50</sup>

#### B. *The Status of Member State Legislation and Problematic Areas*

Although the E.U. has not produced a comprehensive document on member state anti-trafficking legislation since 2000, the United States Department of State has produced such a document annually

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<sup>43</sup> See Council Framework Decision 2002/629/JHA, 2002 O.J. (L 203) 1.

<sup>44</sup> See *id.*

<sup>45</sup> See Parliament and Council Decision 803/2004/EC, 2004 O.J. (L 143) 3 [hereinafter P & C Decision]; Council Directive 2004/81/EC, 2004 O.J. (L 261) 19.

<sup>46</sup> See P & C Decision 803/2004/EC, *supra* note 45.

<sup>47</sup> *Id.* at 1.

<sup>48</sup> Council Directive 2004/81/EC, *supra* note 45, arts. 3(1), 6(1).

<sup>49</sup> *Id.* arts. 6(1)–(2), (7).

<sup>50</sup> *Id.* The directive also provides Member States with the option of providing victims free legal aid. *Id.* art. 7(4).

since 2001.<sup>51</sup> By compiling the data from the 2005 Report into a table, Member States' efforts, or lack thereof, to combat trafficking, may be more easily explored.<sup>52</sup>

In compliance with the aforementioned 2002 Decision, all Member States but one, Estonia, have passed legislation that specifically criminalizes trafficking for sexual exploitation, and some have even recently updated their statutes to increase their effectiveness.<sup>53</sup> Member States, however, reported greatly varied conviction rates ranging from no convictions to 170.<sup>54</sup> While some of the disparity can be attributed to a difference in the severity of trafficking between Member States, government corruption was reported in at least six states and was almost certainly a factor in some of the low numbers.<sup>55</sup>

Penalization, however, appeared to be a larger problem.<sup>56</sup> Eight states reported average sentences that were extremely light, such as suspended sentences, fines, and prison terms of less than four years.<sup>57</sup> Only two states reported average sentences that exceeded six years: the U.K. (up to eighteen years) and Portugal, (on average eleven to fifteen years).<sup>58</sup>

Although neither the 2002 Decision nor the 2004 Directive requires Member States to provide prevention programs, many states

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<sup>51</sup> DEP'T OF STATE, 2005 REPORT, *supra* note 9, at intro. The European Commission is slated to issue a communication on preventing and combating trafficking in human beings in 2005, though as of this writing it has not yet been released. *EU Action Against Trafficking in Human Beings and the Sexual Exploitation of Children*, [http://europa.eu.int/comm/justice\\_home/fsj/crime/trafficking/fsj\\_crime\\_human\\_trafficking\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm) (last visited Oct. 17, 2005).

<sup>52</sup> See generally Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222. This report does not include Ireland or Malta. See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 235.

<sup>53</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9 at 102, 111, 141, 199, 205. Finland passed its anti-trafficking legislation within the last year. *Id.* at 105; DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 137.

<sup>54</sup> See Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 65, 105. Not all Member States reported conviction rates for 2004; consequently, a few rates are from 2003, where obtainable. See Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 55–222.

<sup>55</sup> DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 94, 114, 130, 145, 179, 196. Poland was the anomaly with both government corruption and 152 convictions reported in 2003. *Id.* at 179.

<sup>56</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93, 95, 103, 111, 141, 144, 179, 205. See generally Table 1.

<sup>57</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93, 95, 103, 111, 141, 144, 179, 205. Four states, Luxembourg, Cyprus, Finland and Slovenia, could not report average sentences because they lacked convictions. DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 92, 105, 146, 197.

<sup>58</sup> DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 181, 221

have developed these programs independently.<sup>59</sup> Sixteen states have developed adequate to exemplary prevention programs, which include measures such as informational campaigns, law enforcement assistance and training, participation in and funding for intra-state anti-trafficking organizations, increased border protection, and harder-to-forge visas.<sup>60</sup> Seven states, however, have inadequate prevention programs that fail to effectively educate their populations.<sup>61</sup>

With respect to victim's protections, most Member States are in compliance with the 2004 Directive by legally granting victims assistance such as reflection periods, shelter, legal services, and medical care.<sup>62</sup> Ten states, however, reportedly still fail to fully comply with the 2004 Directive, and in some of these states the victim is still treated as a criminal or an illegal alien and deported.<sup>63</sup>

By grouping Member States of origin together, other patterns emerge.<sup>64</sup> First, with the exception of Poland, Member States of origin all exhibited low rates of trafficking convictions.<sup>65</sup> They also tended to hand down light average sentences for convicted traffickers.<sup>66</sup> In addition, five of these eight states also fail to fully comply with the 2004 Directive by maintaining inadequate victim's protection programs.<sup>67</sup> Four of the six states that reported official corruption are also states

<sup>59</sup> See generally *id.*; Council Directive 2004/81/EC, *supra* note 45, Council Framework Decision 2002/629/JHA.

<sup>60</sup> See Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59, 65, 92, 95, 105, 106, 111, 130, 163, 179, 181, 197, 199, 205, 221. Adequacy is determined by the extent and variety of programs reported, and whether the report indicates that the country's efforts are inadequate to meet the needs of the population. See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59, 65, 92, 95, 105, 106, 111, 130, 163, 179, 181, 197, 199, 205, 221.

<sup>61</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 103, 114, 122, 141, 145, 146, 195. In Luxembourg's defense, the problem of trafficking is new to the country, and thus its efforts to combat it have been recent. *Id.* at 146.

<sup>62</sup> Council Directive 2004/81/EC, *supra* note 45, arts. 6(1)–(2), (7); see Table 1. See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222. In Table 1, the adequacy of victim's protections is determined by whether the state exceeded, complied, or failed to comply with the 2004 Directive. For example, some exceed requirements by offering and the option to repatriate or gain permanent residency. See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222.

<sup>63</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 103, 105, 106, 114, 122, 141–42, 146, 180, 195–96, 222.

<sup>64</sup> See Table 1.

<sup>65</sup> DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93–94, 102–03, 121–22, 141–42, 144–45, 179–80, 195–96, 196–97; Table 1.

<sup>66</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93–94, 102–03, 121–22, 141–42, 144–45, 179–80, 195–96, 196–97.

<sup>67</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 102, 121, 141, 179, 195; Table 1.

of origin.<sup>68</sup> It is important to note, however, that all eight states of origin are also states that are new to the E.U. as of May 1, 2004, so some of their failures may be attributed to sheer lack of time to fully implement all new Community legislation.<sup>69</sup>

### III. ANALYSIS

The findings of the 2005 Report indicate that while most states have taken some steps to combat trafficking for the purposes of sexual exploitation, the problem remains predominantly because the positive efforts of Member States are patchwork at best, and overall there exists egregious and widespread failures in the areas of enforcement, penalization, prevention, and protection of victims.<sup>70</sup>

#### *A. Recommendations to Strengthen Member State Legislation, Enforcement, and Secondary Programs*

Under Article 226 of the E.C. Treaty, once the Commission has identified a Member State that is not complying with E.U. legislation, it has authority to bring action against it.<sup>71</sup> Using Article 226, the Commission can compel a Member State to enact more effective legislation by first sending it informal notice of the default.<sup>72</sup> Then, if the state fails to resolve the problem or does not believe that there is a problem, the Commission can deliver a reasoned opinion, in which it explains exactly how it finds the Member State in default.<sup>73</sup> If the Member State still fails to resolve the problem, the Commission can bring a case against it in the European Court of Justice (E.C.J.).<sup>74</sup> If the E.C.J. rules in favor of the Commission, under Article 228 the state is required to immediately comply with the judgment.<sup>75</sup> If the Member State still fails to comply, the Commission can repeat the process, and if the case again reaches the E.C.J., the Commission can request an appropriate

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<sup>68</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93, 144, 179, 195.

<sup>69</sup> Table 1; DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93, 102, 121, 141, 144, 179, 195, 196; EU Presidency 2004, New Member States, [http://www.eu2004.ie/templates/map\\_acceding\\_states.asp?sNavlocator=6,29](http://www.eu2004.ie/templates/map_acceding_states.asp?sNavlocator=6,29).

<sup>70</sup> Table 1. See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222.

<sup>71</sup> EC Treaty, *supra* note 33, at 269.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> EC Treaty art. 228; Case 169/87, Commission v. France, 1988 E.C.R. 4093; Case 69/86, Commission v. Italy, 1987 E.C.R. 773.

penalty to be paid by the Member State.<sup>76</sup> This process has generally been quite successful in compelling compliance; the Commission prevails on almost 90% of Article 226 cases that go before the E.C.J., and Member States almost never defy E.C.J. rulings.<sup>77</sup>

Because the 2002 Decision and the 2004 Directive are relatively new, it is not surprising that the Commission has not yet utilized this avenue of enforcement.<sup>78</sup> Nevertheless, in light of the seriousness of the human rights violations that are permitted to continue in lieu of Member State compliance, the Commission should begin utilizing this procedure immediately, starting with Estonia, which is the only state in the E.U. that has of yet failed to pass legislation specifically criminalizing trafficking for the purpose of sexual exploitation.<sup>79</sup> The Commission should then focus on those states that have lagged in implementing the 2004 Directive.<sup>80</sup> In addition to helping victims directly, this will likely also strengthen prosecution and conviction rates, because if victims are provided with adequate services such as reflection periods and medical treatment, they will be more likely to help prosecutors by testifying against their traffickers.<sup>81</sup> This would be a more effective route to boosting conviction rates because it would most likely be difficult to impossible for the Commission to find a state in default for failing to convict sufficient numbers of traffickers, as there are neither prosecution nor conviction requirements in the 2002 Decision.<sup>82</sup>

Also, the E.U. must take immediate action to pass comprehensive legislation requiring Member States to adopt preventative measures.<sup>83</sup> This legislation should target Member States of origin and transit by requiring measures such as improved educational opportunities and school systems, state-sponsored economic opportunities for women, the promotion of equality of rights, and targeted community education regarding the dangers of trafficking and citizens' legal rights.<sup>84</sup> This legislation must also target states of destination by requiring Member

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<sup>76</sup> EC Treaty art. 228.

<sup>77</sup> George A. Bermann, et. al., *CASES AND MATERIALS ON EUROPEAN UNION LAW* 426 (2002).

<sup>78</sup> Case law, [http://europa.eu.int/eur-lex/en/search/search\\_case.html](http://europa.eu.int/eur-lex/en/search/search_case.html) (last visited on: Nov. 26, 2005) (Listing no cases regarding trafficking for sexual exploitation on the E.U. case law search engine, Eur-Lex).

<sup>79</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 102.

<sup>80</sup> See Table 1; *supra* note 62.

<sup>81</sup> See DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 66.

<sup>82</sup> Council Framework Decision 2002/629/JHA.

<sup>83</sup> See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222.

<sup>84</sup> See *id.* at 20.

States to conduct awareness-raising campaigns so that trafficking is no longer a concealed and ignored crime.<sup>85</sup> Moreover, this legislation must acknowledge that trafficking is an interstate crime, and consequently it must require Member States to coordinate their law enforcement efforts to more effectively identify and intercept trafficking routes.<sup>86</sup> Finally, this legislation must augment the 2002 Decision by requiring Member States to pass legislation that specifically targets customers of this crime, whether through informational campaigns or through criminal sanctions.<sup>87</sup>

In order to boost trafficking sentences, the E.U. should also pass legislation that requires minimum sentences for certain types of trafficking offenses.<sup>88</sup>

With respect to ending corruption, some anti-corruption practices have been successfully implemented by Central and Eastern European states to bolster the fight against human trafficking.<sup>89</sup> The E.U. could use these programs as a model on which to develop its own legislative requirements to ensure that law enforcement agents are better qualified to understand and handle trafficking cases.<sup>90</sup>

Finally, in order to better fight trafficking within its borders, the E.U. must begin researching and producing a report similar to the U.S. Trafficking in Persons Report so that it can make informed decisions about how to develop and adjust its strategy in the future.<sup>91</sup>

#### CONCLUSION

The trafficking of persons into the E.U. for sexual exploitation remains a pervasive problem.<sup>92</sup> While the E.U. has done an admirable

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<sup>85</sup> *See id.*

<sup>86</sup> *See id.*

<sup>87</sup> *See id.* at 70, 92. Granted, requiring Member States to legally punish customers would be difficult to implement in states where prostitution is legal like the Netherlands. *Id.* at 164.

<sup>88</sup> *See* DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 93, 95, 103, 111, 141, 144, 179, 205, *supra* note 57.

<sup>89</sup> *See* DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 8. These measures include: mandatory ethics briefings; standard I.D. badges; random integrity tests; anonymous anti-corruption hotlines; increased wages; performance incentive awards; helping personnel understand the importance of their work; and routine administrative checks. *Id.* Some Member States have already begun to fight corruption, like Latvia, which established an anti-corruption bureau. DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 141.

<sup>90</sup> *See* DEP'T OF STATE, 2004 REPORT, *supra* note 1, at 8.

<sup>91</sup> *See generally* DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 55-222; Carmen Galiana, Trafficking in Women, Working Paper, Mar. 2000, Civil Liberties Series, LIBE 109 EN.

<sup>92</sup> *Trafficking in Women*, *supra* note 2.

job enacting legislation focused on combating this problem, many Member States have yet to fully implement or enforce the 2002 Decision or the 2004 Directive.<sup>93</sup> To combat this problem, the E.U. should produce an annual report that tracks Member State anti-trafficking legislation and enforcement and should also exercise its power under Article 226 of the E.C. Treaty to compel Member States to correct defaults.<sup>94</sup> Additionally, the E.U. must generate legislation focused on prevention programs and mandatory minimum sentences for convicted traffickers. The E.U. still has much to do to end trafficking for sexual exploitation, and to attain that end it must aggressively assert its legislative and judicial powers to compel Member States to quash this modern age slavery.

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<sup>93</sup> See generally DEP'T OF STATE, 2005 REPORT, *supra* note 9, at 59–222.

<sup>94</sup> See EC Treaty, *supra* note 33, art. 226.





Appendix 1: Dep't of State 2005 Trafficking in Persons Statistical Summary Table

	New	Origin	Trust	Criminalizes T.S.E.	Prosecuted	Convctns	Protcm of vctms	Prevntatve Measures	Stat. Penal.	Sentenc.	Gov Corrup. An issue
Austria			X	X	106 (yr2004)	11 (yr2003)	Exemplary	Exemplary	Unknown	6 mo-3yrs	No
Belgium			X	X	Unknown	170(yr2003)	Exemplary	Exemplary	Unknown - but draft bill to increase penalties	Unknown	Unknown
C.R.	Yes	X	X	X	19	12	Adequate	Adequate	Unknown	3-5yrs, conditional/suspended sentences	Yes
Cyprus	Yes			X but gender specific	114	0	Adequate	Adequate	Unknown	N/A	Unknown
Denmark			X	X	3	8	Exemplary	Adequate	8-12yrs max, depend on stat. uscd.	1-3.5yrs	No
Estonia	Yes	X	X	Enforced under other laws.	Unknown	9	Inadequate	Inadequate	N/A	2-4yrs. (under other related laws)	Unknown
Finland			X	X	0	0	Inadequate	Adequate	10 yrs max.	N/A	Unknown
France				X	Unknown, 940 arrests	Unknown	Inadequate	Adequate	Unknown	Unknown	No
Germany			X	X	Unknown	145	Exemplary	Exemplary	Unknown	Mostly suspended sentence	Unknown
Greece				X	94	"few"	Inadequate	Inadequate	Unknown	"Significant"	Yes

Hungary	Yes	X	X	X	21	38	Inadequate	Inadequate	Inadequate	Sufficiently Severe	Unknown	Unknown
Italy		X	X	X	Unknown	at least 41	Exemplary	Adequate	Unknown	Unknown	Unknown	Yes
Latvia	Yes	X	X	X	Unknown	21	Inadequate	Inadequate	Sufficiently Severe	1 sentence of 2 yrs, rest conditional.	Unknown	Unknown
Lithuania	Yes	X	X	X	16	low-14	Adequate	Inadequate	10 yrs max.	low - fines to 3 yrs.	Unknown	Yes
Lux.				X	N/A	N/A (problem new to Lux)	Inadequate	Inadequate	6 mo- 3 yrs, fines, 10 max if aggravated	N/A	No	No
Poland	Yes	X	X	X	18	152 (yr2003)	Inadequate	Adequate	Sufficiently Severe	low- mostly suspended sentences	Yes	Yes
Portugal			X	X	248	Unknown	Adequate	Adequate	Unknown	18 mo-15 yrs, many 11-15 yrs	Unknown	Unknown
Slovakia	Yes	X	X	X	19	6	Inadequate	Inadequate	Unknown	Unknown	Unknown	Yes
Slovenia	Yes	X	X	X	1	0 (problem modest)	Adequate	Adequate	Sufficiently Severe	N/A	Unknown	Unknown
Spain			X	X	Unknown, 731 arrests	Unknown	Exemplary	Exemplary	Sufficiently Severe	5.7 yrs, average	Unknown	Unknown
Sweden			X	X	22	22	Exemplary	Exemplary	Unknown	1 yr - 4/5 yrs.	Unknown	Unknown
T.Nthlds			X	X	127 (2003)	Unknown	Exemplary	Exemplary	"Sufficiently Severe" 6-8yrs, 12 if aggravated	Unknown	No	No
UK				X	Unknown - 572 arrests (yr 2004), 340 pros. (yr 2003)	66 (yr 2004)	Inadequate	Adequate	Unknown	heavy - as high as 18 yrs.	Unknown	Unknown