

# European Union Policies on Human Trafficking

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On May 9th, 1950, the French foreign minister of the time, Robert Schuman, presented a plan he called the Europe Plan, which he had developed with the French businessman Jean Monet alongside the German Chancellor Konrad Adenauer. What started as a plan, the Europe Plan, to prevent the human destruction and utter devastation that the world witnessed in World War II has been modified and shaped into the world's foremost example of unmatched international cooperativity. That infamous Mayday set the stage for the Treaties of Paris, Rome, and Maastricht - in that order - to found the EU. Progress in developing the European Union continued with the Single European Act (SEA), the Treaty of Amsterdam, and the Treaty of Nice which played major roles in modifying the founding treaties into the European Union that is so recognizable today.

A key aspect of the European Union is its unique decision making process structure for creating and implementing protocols throughout the Member States. First, the European Commission drafts new proposals which are ratified through a voting process in both the European Parliament and the Council of the European Union. The European Commission works to implement and execute EU decisions jointly with the Member States and their respective local authorities. Like any decision-making body, oversight is necessary to compensate for human errors as well as malintent. On that note, the European Court of Justice operates to provide legal oversight while the European Court of Auditors is responsible for financial oversight. This elaborate decision-making process can result in binding rules as well as non-binding rules. Binding rules come in three forms which include: regulations, directives, and decisions. Regulations are directly applicable in all Member States. Directives must be transposed into national law in some Member States. Lastly, decisions address a group of Member States, people, or individuals to specify a result that is to be achieved. Regarding non-binding rules, the EU can present recommendations and opinions to either just one Member State or to a group of Member States.

The Member States of the European Union share responsibilities with the Union as they fill different, and sometimes overlapping, roles in policy creation. For example, the European Union alone has the ability to create legislation regarding customs unions, competition rules, monetary policy, trade, and marine plants and animals for implementation in the Member States. Separately, the European Union, as well as the national governments of Member States, are legally able to pass laws on the following subjects: the single market, employment and social affairs, economic and social and territorial cohesion, agriculture, fisheries, the environment, consumer protection, transport, trans-European networks, energy,

security and justice, public health, research and space, and development and cooperation and humanitarian aid. In this way, the national governments of the EU's Member States work alongside the main governing bodies of the European Union to comprehensively deliver policies and protocols to all European citizens.

One such area of policy in the European Union focusses on human trafficking in the greater context of organized crime. While it may come as a surprise to see such grotesque human natures in the sparkingly modern European Union, Member States of the EU reported 15,846 victims of human trafficking solely between 2013 and 2014. Of these documented cases, the vast majority, seventy-six percent, were female. Out of those 15,856 trafficked individuals, sixty-seven percent were sexually exploited, twenty-one percent were forced into other types of labor, and an additional twelve percent were trafficked for other reasons including non-consensual organ harvesting. It is important to note one key piece of missing information that cannot be used to generate statistics which is the vast number of unreported, undetected victims of human trafficking.

Before one can delve into the various international and European policies that are targeted towards the problem of human tracking in Europe, it is necessary to be competent with the phrase itself. The term 'human trafficking' carries various connotations depending on the context; its true definition is a broad, all-encompassing scenario in which humans are being moved and used against their will. Specifically, the United Nations formally defines human trafficking as "the recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labor or sexual exploitation. Proving the complexity of the term 'human trafficking', the United States of America's government includes using individuals as debt bondage in their definition, as well. For use in official documents, the European Union uses the United Nations' definition of human trafficking. Simply put, at its root, human trafficking is constituted by three key elements: an act, the means for the act, and a situation of exploitation or the intention to exploit.

When it comes to the problem of human trafficking in Europe, there is no shortage of organizations lending standards and suggested protocols to limit the extent of the trafficking and to provide aid to its' victims. Chronologically speaking, the International Labor Organization (ILO), the Council of Europe, the Office for Democratic Institutions and Human Rights (ODIHR) at the Organization for Security and Cooperation in Europe (OSCE), the European Court of Human Rights (ECHR), and the European Union have all moved to act on the tragedy of the trafficking of human beings in Europe. These international and supranational organizations have the power to lead independent countries in their approach to identifying, prosecuting, and preventing human trafficking. However, the

power that the documents put for by these aforementioned organizations have to actually prosecute the perpetrators and provide for the victims is far more limited.

The International Labour Organization (ILO) was founded following WWI in 1919. It became the first specialized agency for the newly founded United Nations in 1946. Its main objective is aimed at “promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace” (ILO). In 1930, the ILO hosted the Convention Concerning Forced or Compulsory Labour, aimed at suppressing the use of forced labor in any form. The blanket term ‘forced labor’, essentially means any labor or service performed unwillingly and/or under the threat of penalties. The only exception to this convention's mission is compulsory military service which was deemed acceptable. This convention was ratified by all Western European countries by 1965 - it has never been ratified by the United States, China, and a few other countries to this day. Another extremely important convention that came from the ILO is the 1999 Worst Forms of Child Labour Convention. The worst forms are defined as child pornography, child sex trafficking and/or prostitution, forced child labor, the use of children in armed conflict, and the use of children to commit crimes, especially those involving illicit substances (ILO). This convention was ratified by 186 out of the 187 members of the ILO, making it the most successful and accepted convention in the organization’s history. The convention is extremely important because it clearly outlines what is illegal in terms of forced child labor, as well as mandating that any member state who ratifies the document is obligated to enforce the rules outlined. The two conventions we have discussed give member states who agree to the ILO’s protocols some room for each state to create its own definitions and action plans. Many states have been able to successfully work with the ILO to promote civil and social peace and progress, but the penalties for states that don’t comply aren’t as severe as they could be. The process by which the ILO follows to reprimand member states for not complying with conventions is a complaint system. If an ILO delegate deems it necessary to file a complaint against another member state, an investigation is opened and legal recommendations are given to the state in question. If a case is severe enough, it can be taken to the International Court of Justice where a final decision can be made. As a part of the United Nations, the ILO does not have any power to take legal action against a state, but it can recommend it to the Court.

The Council of Europe was founded in 1949 and “advocates freedom of expression and of the media, freedom of assembly, equality, and the protection of minorities” (COE). The CoE is technically not a part of the European Union’s governing structure, but every member of the EU has been a member of the CoE before it was officially accepted into the EU. The Council of Europe cannot make laws but it can enforce certain policies that the EU has agreed upon on the international level. The CoE comprises

two bodies, the Committee of Ministers, made up of ministers from each member state, and the Parliamentary Assembly, in which members of each state parliament sit. One of the main goals of the CoE is to provide support in combatting terrorism, corruption, and other social justice issues. One of the most important things to come from the CoE is the European Convention on Human Rights (1950). This convention was vital for human rights protections across Europe in that it mandated that all member states are required to allow any citizen to go to court if they feel like their rights have been violated in any way by the state. At its inception, all member states at the time were required to ratify the convention, and all members who joined the CoE afterward were encouraged to ratify the document as soon as possible. Of the many articles and standards that the Convention on Human rights puts forth, Article Four specifically prohibits any form of slavery or forced labor. In the court case *Rantsev v. Cyprus and Russia* (2010), a man brought a case to the Council of Europe against the Republic of Cyprus and Russia regarding the death of his daughter in a human trafficking scheme. The court ruled in favor of the father and declared that states have legal obligations to investigate human trafficking claims and implement policies aimed at stopping the practice. This case and one other have been the only two to bring up the issue of human trafficking to the CoE. Human trafficking is not specifically addressed in the Convention on Human Rights, but the court's mandates have made it clear that it is to be regarded as a part of Article Four's section on forced labor and slavery (ECHR). In 2005, the Council of Europe held the Convention on Action Against Human Trafficking in Human Beings. This convention laid out the plans for "the protection of victims of trafficking and the safeguarding of their rights. It also aims to prevent trafficking and to prosecute traffickers" (COE). It built upon previous conventions and provides a comprehensive framework for the identification, protection, and promotion of victims' rights. It also outlines the legal action to take to prosecute those who are involved with human trafficking in any way. At the time of this convention, statistics pointed to over 2.45 million individuals who were victims of trafficking. The convention was held to create a better and more structured treaty in regards to human trafficking and the requirements that member states were to follow. It is the most comprehensive human trafficking document in the EU's history and was implemented in 2008. Currently, the Convention has been ratified by all CoE member states besides Russia.

The Office for Democratic Institutions and Human Rights was founded in 1990 as a part of the larger Organization for Security and Cooperation in Europe (OSCE). The OSCE as a whole is a supranational organization that has no legal power, but the 57 member states share decisions that are politically binding. In an effort to promote prosperity and civil rights, "the OSCE addresses many issues relevant to human trafficking: human rights and rule of law; corruption and crime control; discrimination

and inequality; economic, labour, and migration policies” (OSCE). To better aid states in dealing with human trafficking, the OSCE and its Office for Democratic Institutions and Human Rights created the Office of Special Representative and Coordinator for Combating Trafficking in Human Beings in 2003. This office assists countries in creating policies to protect citizens from human trafficking and to prevent future trafficking from occurring. At its core, the office takes on a more humanitarian approach to helping victims of human trafficking and gives them the tools to get legal help and protection. The OSCE has a plan of action in regards to fighting human trafficking. It consists of “Four Ps”; prevention, in the form of raising awareness of the issue and the causes; prosecution of those responsible, investigation, and legal action; protection of victims; and partnerships, meaning the need for all members to cooperate with each other to better stop trafficking (OSCE). Something that the OSCE advocates for more so than other organizations is the cooperation of the public and private sectors in order to have better law enforcement practices and better prevention techniques for each member state. The OSCE also does well in keeping the public informed about human trafficking. They hold seminars and workshops to educate people about the signs of trafficking. They work with those in specialized fields of law enforcement, social workers, lawyers, and even the media to spread awareness. In addition to this, the Office for Democratic Institutions and Human Rights works with several governments sustaining democratic institutions as a means of combating human trafficking at home and abroad. Of all the European organizations that deal with the topic of human trafficking, the OSCE, and the ODIHR are at the forefront for using modern methods and humanitarian approaches to the issue.

The European Court of Human Rights was founded in 1959 to promote and enforce the European Convention on Human Rights (1950) which was created by the Council of Europe. The ECHR’s primary mission is to defend those who feel like their rights have been violated and are unable to find a solution in their home European state. The ECHR has supranational power over almost every European country and focuses on cases where states have broken human rights concerns, whether they be social, civil, or political issues. A legislative and administrative framework has been in place for the ECHR’s proceedings on prosecution and legal analysis. Judges for the ECHR are elected to serve by each member state. They serve for nine-year nonrenewable terms and are required to hear each case without bias regarding their home country in favor of being fair for every trial, as the ECHR is a supranational organization whose decisions transcend state borders. This helps with keeping the ECHR as an independent organization and further enforces its impartiality on cases (ECHR). The ECHR has dealt with numerous human trafficking cases. In almost all of these, individuals are identified and protected from trafficking based on the rights they are guaranteed in the Convention on Action Against Human Trafficking in Human Beings (2005).

Any and all human trafficking cases are investigated and those found involved are prosecuted by the ECHR. Interestingly, many human trafficking cases that have been heard by the ECHR have been found to not fit with Article Four of the European Convention on Human Rights. It seems like there needs to be a clearer definition of human trafficking and the factors that cause it. This would be beneficial for those who are seeking legal assistance from the ECHR, as a clear and definite definition would plainly state that human trafficking is against the law. Until that happens, many cases will be lost due to the interpretation and lack of specificity in Article Four.

The last of the major European institutions to produce official writings against the trafficking of human beings and in support of the victims of human beings was the European Union. On April 5<sup>th</sup>, 2011, the European Union produced the Council Directive 2011/36/EU; this directive is also known as the “Trafficking Directive”. This “Trafficking Directive” expands the definition of human trafficking that was put forth by the UN’s Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which is often simply called the “Trafficking Protocol” or the “Palermo Protocol”. Most importantly, Article 2 of the Council Directive 2011/26/EU posits that trafficking in human beings always involves the exploitation of a vulnerable individual. This directive also declared that the term human trafficking could be used for reasons of legality and prosecution prior to a victim’s actual exploitation if there is evidence that the victim was subjected to at least one of the previously associated actions and by one of the previously outlined means. This new definition also adds to the list of activities that constitute the ‘forced criminality’ aspect of human trafficking. These additions of forced criminality include pickpocketing, shoplifting, drug trafficking, and other similar activities that are subject to penalties and imply financial gain. In addition, the Council Directive 2011/26/EU serves to supplement the UN Convention against Transnational Organized Crime which itself is supplemented by the UN’s Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children.

Coming from the aforementioned organizations’ protocols, treaties, and directives are a series of internationally enforceable legal rights for the victims of human trafficking. These internationally enforceable legal rights can be witnessed in the commonality of the texts in the specific documents mentioned above that together serve to define, prosecute, and prevent the tracking of human beings. According to these rights, victims of human trafficking are entitled to access to information on available remedies in a language that they can understand; access to support and assistance to facilitate rehabilitation; access to legal assistance and free legal aid for the duration of any criminal, civil, or other action against the traffickers; guarantees of non-repetition such that individual states must take all measures necessary to protect a victim including effective prosecutions and sanctions and international

protection or residence permits for foreign victims; access to restitution including the restoration of their liberty; and, lastly, access to compensation.

To continue, Spain can be used as a case study for regulations on the trafficking of human beings within the country. In Spain, human trafficking remains prevalent in a variety of economic sectors including, but not limited to: agriculture, construction, the hotel and food services, domestic work, cleaning and eldercare, and manufacturing and textile work. In fact, Spain identified 169 trafficking victims in 2015 - that's more than a victim saved from the trafficking in human beings every other day. Interestingly, many of these victims came from within Europe. Specifically, Romania, Lithuania, Bulgaria, Ukraine, and Russia were the origins of many of the victims. Outside of those with European nationalities, other victims arrived from Portugal, Nicaragua, Ecuador, China, Morocco, and Pakistan. A common lure was their arrival on the false premise of receiving legal employment. It is also important to note that while many victims of human trafficking involve their movement into Spain, the trafficking of human beings occurs domestically within Spain as well.

Spain's Criminal Code distinguishes two levels of human trafficking in its prosecutions. Depending on the severity of each specific case, the perpetrator or perpetrators may be punished with five to eight years of imprisonment or the harsher eight to twelve years sentence. The perpetrator or perpetrators become eligible for the harsher sentence if there was a specific risk to the life or to the physical or mental integrity of the victim, the crime was committed through the abuse of a position of authority, or if the offender was part of an organization dedicated to a particular business or profession. In the year 2010, forward progress was made when Spain's Criminal Code was amended to include the criminal liability of corporate bodies for a number of offenses including human trafficking. This also made human trafficking a criminal offense in Spain for the first time in its history. In a form of collective action, "authorities adopted a collective approach whereby security forces, prosecutors, judges and NGOs would liaise to nail the trafficking rings together, a strategy reflected in a report by the Interior Ministry's Counter-Terrorism and Organized Crime Intelligence Center" (Gálvez, Dominguez). As a result of this enhanced collaboration, thousands of victims were rescued from sweatshops and brothels across the country. From 2012 to 2016, there were 4,430 victims of human trafficking and sexual exploitation identified [...] This figure rises to 5,675 if we include those who have been forced into unpaid labor" (Gálvez, Dominguez). Spain is increasingly improving its tactics on investigating and prosecuting trafficking rings, but unfortunately, the problem persists.

Despite these efforts, challenges remain, in Spain and Europe, as well as globally, to stop the trafficking of human beings and to properly accommodate its victims. For example, in order for an

individual to receive the protections to which they are entitled under international law, they must be recognized in the state that they are in as a victim. This becomes problematic when each state only legally enforces its own definition of human trafficking which may and often does, differ from that of its neighbors. Not only must the event be considered human trafficking by the local legal code, but some sort of provider must be able to identify the victim and the event. In many cases, those who are most likely to interact with trafficked human beings may fail to notice these victims when they have not been moved across borders or when the victim is being exploited by a private individual rather than an organized group. Another challenge to identifying, prosecuting, and preventing human trafficking is the systems in which the various international and local legislation are enacted. When human trafficking is considered a primarily legal problem law enforcement services lead the pursuit of human traffickers; their priority is to prosecute the offender rather than to provide for the victim. This may limit the access that victims of human trafficking have to their internationally recognized rights and protections. Conversely, when human trafficking is recognized as a humanitarian problem, the care and rights of the victim may be prioritized over the incarceration of the individual engaging in trafficking and thus the offender may not be justly served.

In conclusion, human trafficking is still a huge issue in Europe and the world. The European Union has taken several measures to combat trafficking and any form of human slavery since its inception in the 1950s. Organizations and conventions like we mentioned such as the International Labor Organization, the Council of Europe, the Office for Democratic Institutions and Human Rights as a part of the Organization for Security and Cooperation in Europe, the European Court of Human Rights, and the European Union all have policies and conventions that are aimed at stopping and preventing human trafficking. Most importantly, the EU Trafficking Directive of 2011 has set forth clear definitions of ‘forced criminality’ and human trafficking for all member states. Over the years, the EU working jointly with the UN and other international organizations has been able to create policies and laws that allow states to prosecute human traffickers to the highest extent of the law. Another contingency is the European Court of Human Rights, which can prosecute a state for not complying with trafficking measures. In our case study of Spain, we found that the country has taken big strides in creating policies to combat human trafficking, creating networks between the police, lawmakers, and social service workers. Overall, the steps that have been taken by the EU and individual states have shown significant growth in terms of taking the steps necessary to eliminate human trafficking. There is still room for improvement, as the EU could pass legislation mandating that member states take initiative to stop trafficking and uphold justice and security within Europe’s borders. Another thing that the EU could do is



educate the public on the seriousness of human trafficking. A more informed population can lead to better prevention and precaution methods. Human trafficking in Europe is still one of the largest crime industries. It is our hope that someday in the near future, trafficking and the atrocities that are associated with it will be erased in Europe and the world.

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