

Implementation of the European Union's 2011 Directive on Preventing and Combating
Trafficking in Human Beings and Protecting its Victims: Limitations in Spain and the Czech
Republic

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Abstract

This paper set out to examine how Spain and the Czech Republic differ in their efforts to combat sex trafficking through their implementation of the European Union's 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.

Implementation of the Directive was analyzed through an analysis of legal policies, social services and anti-trafficking campaigns currently in place in both countries, and a comparison between those policies and the provisions laid out in the 2011 Directive. Analysis of Spain and the Czech Republic's compliance with the 2011 Directive policies revealed that the Directive is not comprehensive enough to address the financial problems source countries face in their fight to combat trafficking. These findings are significant because they demonstrate that the European Union needs to provide financial incentives to source countries with limited financial resources to help them implement the Directive provisions.

An estimated 21 million people around the world are victims of human trafficking each year.¹ Three fourths of the millions of trafficking victims in the European Union are victims of sexual exploitation, more commonly referred to as sex trafficking.² Trafficking is not just an issue of human rights; it is a form of modern day slavery.³ To combat this problem the European Union issued the 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.⁴ The Directive contains the most recent guidelines in the fight to combat human trafficking.⁵ Despite the European Union's best efforts, the Directive is not comprehensive enough to cover the unique problems source countries face in their fight to combat trafficking. Source countries generally lack the financial capabilities to enforce the provisions laid out in the Directive, whereas destination countries are more financially equipped to implement the provisions. This paper will analyze Spain and the Czech Republic's anti-trafficking policies within the framework of the 2011 European Union Directive to compare the extent to which source and destination countries are able to comply with European Union guidelines to combat trafficking. Spain is solely a destination country for trafficking, whereas the Czech Republic is both a source and a destination country. Both Spain and the Czech Republic are members of the European Union.⁶

Sex trafficking victims from within the European Union typically come from Eastern European source countries.⁷ A source country is a country from which people are trafficked, and a destination country is one to which people are trafficked.⁸ A country can be both a source and a destination country if its citizens are trafficked out of the country and victims from other countries are trafficked into the country. The biggest source countries for trafficking within the European Union are Romania, Bulgaria, Poland, Hungary, Moldova and the Czech Republic.⁹ These source countries typically lack the financial resources to enforce all the provisions of the

Directive. In general, the economies of Western European countries are significantly better than those of Eastern European countries, allowing Western European countries to contribute more resources to the fight against trafficking.¹⁰

Victims from outside the European Union are typically trafficked from Nigeria, Vietnam, Ukraine, Russia and China.¹¹ While the Czech Republic is a source country itself, victims are also trafficked to the Czech Republic from Russia, Slovakia, Ukraine and Romania.¹² The Czech Republic is primarily a destination for victims from Eastern Europe, but it is increasingly becoming a destination for African and Latin American victims as well.¹³ Spain is a destination for victims from Romania, Russia, Ukraine, Brazil, Colombia, the Dominican Republic, Ecuador, Paraguay, Venezuela, and Nigeria.¹⁴ Spain's coastal location on the Mediterranean makes it a prime destination for victims from Africa and South America. Spain is one of the main destination countries for South American victims.¹⁵ It is also one of the main destinations for Nigerian victims, and Nigerian traffickers control much of the trafficking in Barcelona, one of Spain's biggest port cities.¹⁶ Spain and the Czech Republic are both destination countries for trafficking, and both

One of the largest minority groups trafficked from European source countries are Roma, predominately women and children. Roma women and children are disproportionately trafficked from Bulgaria, the Czech Republic, Hungary, Romania and Slovakia.¹⁷ This means that the proportion of Roma trafficked from these countries is several times greater than the proportion of Roma in the population of these countries.¹⁸ The Roma comprise the largest minority group in Europe.¹⁹ As a minority group, the Roma are affected by multiple societal and socioeconomic factors that make them more vulnerable to become victims of trafficking. In source countries in particular they are subject to discrimination, unemployment, lack of education, homelessness and

poverty.²⁰ These living conditions lead to disability, chronic illness, health problems and psychological problems.²¹ All these factors and more make the Roma an extremely vulnerable population, which makes them an easy target for traffickers. Social vulnerability caused by poverty and unemployment are two of the biggest factors that increase a woman's risk of being trafficked.²²

In the Czech Republic, the Roma are subject to discrimination, unemployment, poverty, lack of education, domestic violence, substance abuse and homelessness.²³ Unemployment in the Czech Republic disproportionately affects the Roma population. Half of the Roma people in the Czech Republic are unemployed, compared to five percent of the general population.²⁴ Unemployment also disproportionately affects Roma women, as more Roma men have steady jobs than Roma women.²⁵ Roma men also have more job skills than Roma women: six in ten Roma men have some vocational skills while only four in ten Roma women have some vocational skills.²⁶ The Roma population in the Czech Republic is also disproportionately deprived of access to education. A disproportionate number of Roma children, twenty six percent, attend schools for children with mental disabilities.²⁷ Roma girls face even more discrimination in the education system, as they are twenty times more likely to be transferred to a school for children with mental disabilities than non-Roma girls.²⁸ The Czech Republic's Minister of Education has even openly admitted that it is highly unlikely all the Roma children in schools for children with mental disabilities actually belong there.²⁹ The Czech government recognizes that Roma children are discriminated against in the education system, yet it has not passed any legislation or implemented any programs to address this problem. Unemployment and lack of education are two factors that disproportionately affect Romani women and children in the Czech Republic and leave them highly vulnerable to being trafficked out of the country.

Due to either budgetary restraints or lack of incentives, the Czech government has not taken steps to address either of these social problems disproportionately impacting vulnerable Romani groups.

Roma women and children in the Czech Republic are disproportionately trafficked out of the country. Twenty percent of all women and children trafficked out of the Czech Republic are Romani, yet the Roma only comprise three percent of the Czech population.³⁰ The Roma are trafficked out of the Czech Republic into Western European countries.³¹ In the U.K., the Czech Republic is one of the top ten countries of origin for trafficking victims.³² In Scotland, the Czech Republic is the second biggest country of origin for trafficking victims.³³ The Czech Republic is the third biggest country of origin for victims detected in Germany.³⁴ Approximately seventy percent of the victims trafficked over the Czech/German border are Romani.³⁵

One of the main reasons the Czech Republic is a source country for trafficking is because its Roma population is discriminated against and socially stratified. Romani citizens are disproportionately trafficked out of the country because the Czech government fails to provide them with services and protections to integrate them into Czech society. Compared to the Czech Republic, Spain has a larger Roma population but Spain is not a source country and the Romani people in Spain are not vulnerable to traffickers because Spain has numerous policies to integrate its Roma population into the general population.

Spain has the second biggest Roma population in the European Union, and its Roma population is better off compared to the Roma in other European countries.³⁶ Half the Romani people in Spain are homeowners, all have access to healthcare and three fourths have steady jobs.³⁷ Romani citizens in Spain experience less discrimination than Romani citizens in other

European Union countries.³⁸ Spain's programs to assist the Roma people have been successful because the Spanish government provides Romani residents with public housing and financial assistance if they send their children to school.³⁹ Spain has been able to educate Roma children because it provides their parents with financial incentive in the form of social services for sending them to school. Spain's National Roma Integration Strategy focuses the country's efforts to integrate its Roma people in four areas: education, employment, housing and health. These four areas are critical. When Romani populations, like that of the Czech Republic, do not have access to these four services they are at a much greater risk of falling victim to trafficking.

One reason Spain has been more successful than the Czech Republic in supporting its Roma population is because Spain has a thirty six million Euro budget per year to support social programs for its Romani population.⁴⁰ Since the Czech Republic lacks these resources, it is unable to provide its Roma population with the same level of support and assistance that Spain can. This lack of financial resources is also the reason the Czech Republic has been less effective than Spain in implementing three of the five Directive policies to combat trafficking.

Before examining the five provisions of the 2011 Directive, it is necessary to examine how the Directive fits into the larger framework of European Union anti-trafficking policies. The European Union has issued several charters and directives outlining member states' obligations in the fight against human trafficking. Although many of the resolutions passed by the European Union have no enforcement power, they provide guidelines that European Union countries are expected to follow. One such set of guidelines is the Charter for the Fundamental Rights of the European Union. This Charter lays out the specific rights and protections that citizens of European Union countries are inherently entitled to.⁴¹ The Charter was issued to establish the

obligation that all European Union countries have to protect their citizens' rights, and the rights of all people within their borders.⁴²

Article 5 of the Charter outlaws human trafficking by prohibiting “trafficking in human beings” and stating that “no one shall be held in slavery or servitude.”⁴³⁴⁴ This means that all countries in the European Union should follow the example set in the Charter by outlawing human trafficking and taking steps to ensure that people are not “held in slavery” (trafficked either for labor or sexual exploitation).

European Union member states are not legally obligated to codify the Charter into their national laws. They are only obligated to comply with the provisions of the Charter when they are implementing other European Union laws.⁴⁵ The Treaty of Lisbon, passed by the European Union in 2009, made the Charter of Fundamental Rights a legally binding treaty, punishable by international law.⁴⁶ If a European Union member state violates a provision of the Charter while implementing European Union law, its national judges have the power to enforce the Charter.⁴⁷ The European Commission, the executive body of the European Union, also ensures that member states are complying with the Charter when they implement European Union law.⁴⁸ If a member state fails to do so, the Commission can either assist the member state with the implementation of European Union law in accordance with the Charter, or impose infringement procedures against the member state.⁴⁹

Outside of the implementation of European Union law, there is no mechanism or legal body to enforce the articles in the Charter for the Fundamental Rights of the European Union. Despite the absence of an enforcement mechanism, the European Court of Human Rights and the European Court of Justice have both cited the Charter when handing down rulings in recent

cases.⁵⁰ In the absence of an enforcement mechanism for the Charter, the extent to which member states incorporate provisions of the Charter in their national laws is left to their discretion. Specific enforcement of Article 5 of the European Union Charter depends on how each country has incorporated the article into its national laws.⁵¹ It depends whether European Union member states have chosen to outlaw trafficking, and what steps they have taken to prevent it from occurring.

Since Article 5 of the Charter provides a very general overview of the stance European Union member states should take on human trafficking, the European Union issued the 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.⁵² The Directive contains the European Union's most recent guidelines on human trafficking. European Union member states are expected to turn these guidelines into national law and policy by April 6th 2013.⁵³ The Directive is not a legally binding document, nor is there a legislative body with the power to enforce it. At most, the European Union can report on the extent to which each member state is complying with the guidelines in the Directive, and offer recommendations for each member state. The European Union is expected to report the extent to which each member state has implemented the priorities in the Directive by April 6, 2015.⁵⁴ Since the Directive has only been in place for a few years, the European Union can only report on laws passed and initiatives undertaken by each member state, not the results these actions have in decreasing the frequency with which human trafficking occurs in each country. In some cases, trafficking rates may appear to increase because states are prosecuting more cases and identifying more victims.

In addition to the lack of enforcement mechanisms for the Directive, the European Union also has difficulty forcing member states to implement the provisions of the Directive because it

does not provide any incentives for implementing the Directive. Member states who implement provisions of the Directive do not receive any assistance from the European Union or any sort of reward for doing so. This deters some member states from taking the Directive seriously. Since there is no punishment for failing to implement the Directive and no incentive for implementing it, member states who are not committed to the fight against trafficking have no reason to implement the Directive. The European Union also does not provide any assistance, financial or otherwise, with the implementation of the Directive. Source countries that lack the resources to implement specific Directive provisions could benefit from financial assistance from the European Union to help them comply with the standards in the Directive.

To strengthen the fight against human trafficking, the European Union laid out five main priorities in its 2011 Directive. These priorities are increasing the prosecution of traffickers, improving coordination among the key players in the fight against trafficking, increasing efforts to prevent trafficking, identifying and assisting trafficking victims, and increasing knowledge and response to emerging concerns about trafficking.^{55 56} In addition to these five priorities, the European Union also encourages its member states to ratify two important agreements on trafficking. These documents are the UN Palermo Protocol on Trafficking in Persons and the Council of Europe Convention on Actions against Trafficking in Human Beings.⁵⁷ These five priorities (and the ratification of these two documents) are the minimum steps each European Union member state is expected to take to combat trafficking.

The Directive provisions to improve coordination, prevent trafficking and increase knowledge are essential components in the fight against trafficking because they stop instances of trafficking from occurring. Coordination between member states can stop traffickers as they attempt to move victims from one state to another. Prevention and knowledge campaigns educate

the public about trafficking, which can reduce the demand for trafficking, especially for the purposes of sexual exploitation. The Directive provision to increase prosecution is an essential component of the fight against trafficking because it captures and punishes traffickers, rendering them unable to traffic victims in the future and sending a message to other traffickers that their actions have serious legal consequences. This provision is both punitive and preventative in nature. The Directive provision to increase support and assistance for victims is essential in the fight to combat trafficking because it provides victims with the care they need and supports them so they are not placed in a position where they are vulnerable to be trafficked again. Health, housing and employment services for victims are essential to ensure that they are not trafficked again in the future.

Both Spain and the Czech Republic have established administrative bodies to oversee the implementation of the 2011 Directive. Spain established the Inter-ministerial Group of Coordination of the Plan to implement the Directive.⁵⁸ The Inter-ministerial Group's goals to combat trafficking directly align with three of the goals in the 2011 Directive. The Group's goal of increasing communications between entities involved in combatting trafficking aligns with the second Directive provision asking member states to increase coordination in the fight against trafficking.⁵⁹ The group's Goals of providing services for victims, identifying and helping victims under age eighteen, and collecting data to better assist victims directly align with the fourth Directive provision asking member states to increase support and assistance for victims.⁶⁰ The Group's goal of continuing training and awareness about trafficking aligns with the fifth Directive provision asking member states to increase knowledge through awareness and trainings.⁶¹

The Czech Republic delegated the task of overseeing the implementation of the Directive to its Ministry of Justice. The Ministry laid out a table establishing the national policy areas that need to be updated in accordance with the Directive.⁶² It is also responsible for evaluating the Czech's programs for victims of trafficking to ensure that they meet the standards set forth in the first and fourth provisions of the Directive.⁶³ These administrative bodies are important because they demonstrate that both countries take the implementation of this Directive seriously, and are committed to effectively instituting its provisions.

The first priority in the Directive is increasing the prosecution of traffickers. The European Union outlines this priority through three specific provisions of the Directive: sentencing guidelines, victim protection and prosecutorial jurisdiction. The European Union asks member states to set maximum prison sentences of at least five years for traffickers, ten years when the victim is a child.⁶⁴ The European Union also asks member states to protect victims from prosecution.⁶⁵ It also asks member states to extend their jurisdiction over trafficking crimes to offenses committed by their citizens in other countries.⁶⁶

To increase the prosecution of traffickers, the European Union expects each member state to set a maximum imprisonment term of at least five years. This penalty should increase to ten years if the case involves the trafficking of a child.⁶⁷ In accordance with Article 5 of the Charter for the Fundamental Rights of the European Union, sex trafficking in Spain is outlawed by two sections of the Spanish criminal code. Article 188 of the criminal code outlaws sexual exploitation and Article 318 of the criminal code outlaws human trafficking.⁶⁸ Article 177 of the criminal code prescribes prison sentences of five to ten years for perpetrators of human trafficking.⁶⁹ The sentencing recommendations within Spain's criminal code comply with the

first Directive provision to increase the prosecution of traffickers because they set a maximum prison sentence of at least five years for traffickers.

Under Article 318 of the criminal code, traffickers must be given a sentence of at least seven and a half years if at least one of their victims is a minor.⁷⁰ With regards to the sentencing of traffickers of children, Spain fails to meet the Directive provision of a maximum sentence of at least ten years when a case involves a child victim. Although the sentencing guidelines in the criminal code fail to meet this provision, a recent court case in Spain demonstrated that harsher penalties are handed down to traffickers when the cases involve particularly egregious offenses against children. On February 14th 2012, one judge sentenced a Romanian trafficker to thirty years in prison, the highest penalty ever imposed in Spain for sex trafficking.⁷¹ Details of the case show that the Romanian had trafficked multiple adults and forced one child victim to an abortion.⁷² Although Spain does not have the maximum sentencing guidelines in place for traffickers who traffic minors as mandated by the Directive, court cases like this one demonstrate that Spain takes offenses against minors seriously and imposes harsher penalties when atrocious offenses are committed against minors.

Like in Spain, sex trafficking in the Czech Republic is also outlawed under the criminal code.⁷³ Section 168 of the Czech Republic's criminal code prescribes a punishment of up to sixteen years imprisonment for traffickers; however the maximum sentence judges must prescribe is at least two years.⁷⁴⁷⁵ In this regard the Czech Republic does not meet the Directive's first provision to increase the prosecution of traffickers because traffickers should be awarded a maximum sentence of at least five years, not two. It is worth noting however that the Czech Republic doubled its convictions for trafficking in 2012.⁷⁶ Although the Czech Republic does not

have a maximum sentence of at least five years in place, its judges can prescribe harsher penalties when the circumstances mandate it.

The Czech Republic surpasses Spain in its treatment of traffickers who victimize children. The Czech Republic implements more severe punishments against traffickers when their victims are children.⁷⁷ Traffickers who force children under age eighteen into prostitution are prescribed a maximum punishment of at least eight years in prison, and at least twelve years in prison when the child is under age fifteen.⁷⁸ Although the Directive guideline requires member states to implement a maximum sentence of at least ten years when the case involves a child victim, the Czech Republic comes closer than Spain to meeting this guideline because they require a maximum sentence of at least twelve years when the victim is under age fifteen.

Spain's overall sentencing guidelines are harsher than those of the Czech Republic, but the Czech Republic's sentencing guidelines are harsher when the trafficking victims are minors. Spain and the Czech Republic are able to implement this provision of the Directive with the same level of efficiency because neither requires financial resources to change its sentencing guidelines. The Directive provision on sentencing guidelines is one that destination and source countries can implement with the same level of ease.

To increase the prosecution of traffickers, member states are also expected to protect victims. The police force should be given the right not to prosecute and penalize victims who have been forced to commit crimes.⁷⁹ In this regard, special protection against prosecution and penalization should be given to child victims.⁸⁰ All victims should be protected from prosecution and penalization, but it is especially important to protect child victims because they are more

vulnerable. Victims who are trafficked as children are much more likely to be re-trafficked when they become adults.⁸¹

The Spanish criminal code has provisions in place to identify trafficking victims, ensuring that they are not prosecuted or penalized for any crimes they may have committed as a result of being trafficked. Article 59 of the criminal code sets up a thirty day “reflection period,” during which time they are able to apply for residency in Spain, work permits and receive other victim services.⁸² Despite the victim identification procedures Spain has in place, NGOs have reported that in the past year Spain has detained, deported, and penalized trafficking victims.⁸³ Both the 2012 and 2011 State Department publications on Trafficking in Persons report that trafficking victims in Spain continue to be punished for acts committed while they were trafficked.⁸⁴⁸⁵ Some victims were released and granted a thirty day period to apply for work and residency permits, but only after NGOs advocated for their rights and pressured the government into releasing them.⁸⁶ Spain clearly recognizes that it needs to do more to protect victims, as doing so was one of its main goals in the National Action Plan on Combating Trafficking in Human Beings for Sexual Exploitation for 2009 to 2012.⁸⁷ Despite the formal procedures Spain has in place, it is clear from NGO oversight that Spain fails to meet the second Directive guideline to increase the prosecution of traffickers, protecting victims from prosecution and penalization.

Compared to Spain, the Czech Republic appears to be more successful in protecting victims from prosecution. The U.N. helped to establish a victim referral mechanism in the Czech Republic in 2003, and it has been operating ever since to identify victims and refer them to the proper services.⁸⁸ Victims who agree to enter the Program of Support and Protection of Victims of Trafficking in Human Beings were not penalized for crimes committed as a result of being

trafficked, but victims who did not enter the Program could still be prosecuted and penalized.⁸⁹

While it is a positive sign that the Czech Republic does not penalize trafficking victims in its Victim Support Program, it should extend this protection to all victims, regardless of their status in the program, in order to fully meet the Directive guideline to protect victims from prosecution and penalization.

Although it appears that the Czech Republic is more successful in protecting victims from prosecution since the State Department did not chastise it for prosecuting victims, Spain identified more trafficking victims in 2011 than the Czech Republic did. Spain identified two hundred thirty four victims of trafficking, while the Czech Republic only identified sixty one trafficking victims.⁹⁰ It is possible that the Czech Republic is more effective than Spain at protecting victims from prosecution, but the more likely explanation is that the Czech Republic lacks the NGO oversight Spain has to identify cases where the government is prosecuting victims. The Czech Republic lacks this oversight because Spain is in a better position financially to identify trafficking victims, and its organizations have more resources to ensure that the government is not prosecuting victims.

The third Directive guideline to increase the prosecution of traffickers requires member states to take steps to prosecute trafficking offenses committed by nationals in other countries.⁹¹ In 2007 Spain passed legislation allowing its national courts to prosecute trafficking cases that occur outside its borders.⁹² This legislation allows the Spanish courts to prosecute trafficking crimes committed by Spaniards in other countries, and it also allows the court to judge trafficking crimes committed by foreigners in other countries.⁹³ Spain exceeds the Directive guideline to prosecute offenses committed by nationals abroad by not only granting its courts the ability to prosecute trafficking crimes committed by Spaniards abroad, but extending that

jurisdiction to trafficking crimes committed by foreigners abroad. Unlike Spain, the Czech Republic does not have any laws in place granting its court system the jurisdiction to prosecute citizens who commit trafficking crimes abroad, thereby failing to meet the third Directive guideline to increase the prosecution of traffickers.

Since trafficking is a crime that transcends borders, it is important for states to have the ability to deal with this aspect of trafficking. By complying with the Directive and extending its jurisdiction to trafficking crimes that occur outside its borders, Spain is now better equipped to address the trans-national nature of trafficking crimes. The Czech Republic does not have this capability because it did not pass any laws extending its legal jurisdiction to crimes that occur beyond its borders. The Czech's lack of financial resources does not explain its failure to comply with this section of the Directive since it would not cost the government money to pass a law extending the court's jurisdiction to crimes that occur beyond its borders.

Overall, neither Spain nor the Czech Republic meets the three guidelines of the first Directive priority to combat trafficking, the increased prosecution of traffickers. Spain has harsher maximum sentences for traffickers than the Czech Republic, meeting the guidelines set forth in the Directive, but the Czech Republic imposes harsher penalties when children are victims of trafficking. Both Spain and the Czech Republic have policies in place to identify trafficking victims and protect them from prosecution, but the Czech Republic's policies are not as inclusive as they should be and Spain's police force still detains and prosecutes victims despite these policies. Spain prosecutes citizens who commit trafficking crimes abroad, whereas the Czech Republic has not given its courts that jurisdiction.

The Czech Republic's failure to meet sections of this Directive provision that Spain has met cannot be attributed to discrepancies between their financial resources. The Czech Republic does not need monetary resources to increase its minimum sentencing guidelines or extend its prosecutorial jurisdiction. Since the European Union does not provide any incentive for implementing these measures however, there is no motivation for the Czech Republic to alter its laws to comply with the Directive.

The second Directive priority to combat trafficking requires member states to improve coordination in the fight against trafficking. The European Union expects its member states to cooperate with one another to investigate and prosecute traffickers.⁹⁴ Since cooperate is a vague term, member states can fulfill this priority in a number of ways: through legal agreements with other member states, projects with other member states, or through joint investigations. Cooperation is an important component of the fight against trafficking because trafficking is an international crime, and efforts to combat it must address its international nature.

Spain is a party to several international initiatives, agreements and projects to combat trafficking. Spain partners with Ireland, the U.K., Poland, Italy and the Netherlands on the G6 Human Trafficking Initiative, a multi-national trafficking awareness campaign.⁹⁵ Spain also has multiple cooperation agreements on immigration and the trafficking of persons with various non-European Union countries. Thus far, Spain has implemented individual immigration agreements with Bolivia, the Republic of Guinea-Bissau, the Islamic Republic of Mauritania, Peru, the Republic of Gambia, the Republic of Guinea, the Republic of Senegal, the Republic of Mali, the Republic of Cape Verde, the Republic of Vietnam, and the Republic of Nigeria.⁹⁶ As Spain is a destination country located on the Mediterranean Sea, these agreements are essential in the fight

against trafficking because Spain is vulnerable to trafficking by sea from source countries in Africa and Central and South America.

Spain is also a member of ARETUSA, a program funded by Daphne III. Daphne III is a program funded by the European Commission, the Executive body of the European Union, with the goal of combatting violence against women, children, and young people.⁹⁷ Daphne III has a budget of \$116.85 million Euros to fund programs, research projects and collaborative efforts between European Union states dedicated to promoting Daphne's mission statement.⁹⁸ European Union funding for the Daphne program lasts from 2007 through 2013.⁹⁹ ARETUSA is a network of eighteen NGOs with the joint goal of promoting gender equality and women's empowerment.¹⁰⁰ Spain is represented in ARETUSA by "Asociacion de Oviedo y Jorbalan."¹⁰¹ Human trafficking is one of the issues that ARETUSA collaborates to address, since trafficking victims are primarily women and children. Spain also made coordination and cooperation one of the main goals of its National Action Plan on Combating Trafficking in Human Beings for Sexual Exploitation for 2009 to 2012.¹⁰² Through its involvement in the G6 Human Trafficking Initiative, ARETUSA, and its immigration treaties with various non- European Union nations, Spain meets the second Directive priority asking member states to cooperate with one another in the fight against trafficking.

The Czech Republic is not a member of the same international projects as Spain, but it also cooperates in efforts to combat trafficking. In 2011, the Czech government collaborated with the U.K., Ukraine, Romania and Bulgaria on trans-national trafficking investigations.¹⁰³ The Czech Republic also participated in Project ZERO, an initiative to encourage cooperation between Czech and Ukraine police.¹⁰⁴ Due to its participation in international trafficking

investigations, the Czech Republic meets the Directive's second priority asking member states to cooperate with one another in the fight against trafficking.

Although Spain and the Czech Republic both meet the Directive priority for cooperation in the fight against trafficking, there is still more that each country can do to improve its efforts. They can both collaborate with more European Union states on trafficking investigations and join more international efforts to combat trafficking.

It is easier for member states to comply with this provision than it is for them to comply with other provisions because they have assistance from other countries in these transnational projects and investigations. While the Czech Republic is lacking in financial resources, it can partner with other member states on projects and investigations if those states are able to provide the resources to do so.

The third Directive priority to combat trafficking asks member states to prevent trafficking by discouraging and reducing "the demand for trafficked persons."¹⁰⁵ Since this is the most general provision in the 2011 Directive, it is difficult to evaluate the extent to which member states have implemented it. Any number of actions, including prevention campaigns, agreements and laws can be assessed as fulfilling this provision of the Directive.

To reduce the demand for trafficking in Spain, the government put forth a public education campaign in Madrid featuring posters with the slogan "Because you pay, prostitution exists...Do not contribute to the perpetuation of 21st century slavery."¹⁰⁶ Spain also made prevention one of the main goals of its National Action Plan on Combating Trafficking in Human Beings for Sexual Exploitation for 2009 to 2012.¹⁰⁷ Since the Directive priority on prevention is very vague and Spain has undertaken an awareness campaign to reduce the demand

for slavery, Spain has met the third Directive priority for the prevention of trafficking. Unlike Spain, the Czech Republic did not take any steps to reduce the demand for prostitution, and therefore did not meet the third Directive priority for the prevention of trafficking.¹⁰⁸ Even though this provision of the Directive is vaguely worded, Spain has taken more steps to reduce the demand for trafficking than the Czech Republic has.

Spain was able to implement this provision while the Czech Republic was not able to because the Czech Republic does not have the financial resources to do so. Prevention campaigns are costly and the Czech Republic does not have the financial resources to carry one out.

The Czech Republic also has not taken any steps to prevent trafficking within its Roma communities. The Czech National Strategy to Combat Trafficking in Human Beings for 2012 to 2015 lists combatting trafficking in “social excluded” areas as one of the two main goals it seeks to address, but does not specify whether socially excluded areas refers to areas with high Roma populations.¹⁰⁹ It is unlikely that the Czech government intends to combat trafficking in Roma communities as part of the National Strategy because the Decade of Roma Inclusion National Action Plan for 2005 to 2015 does not include any provisions intended to prevent trafficking among the Roma population.¹¹⁰ Since the Roma are such a vulnerable population in the Czech Republic, they should be the main focus of efforts to prevent trafficking, but the Czech Republic is not addressing their situation in either its anti-trafficking policies or its Roma inclusion policies.

The fourth Directive priority to combat trafficking requires member states to identify and assist victims of trafficking. The Directive lays out three main guidelines through which member

states are expected to do this: increasing support and assistance for victims, giving trafficking victims access to the same compensation as violent crime victims, and providing child victims with a representative.¹¹¹ Victim assistance is an important component of the fight against trafficking. Victims need support to avoid conditions that would make them vulnerable to being trafficked again.

Spain has programs in place to identify victims of trafficking and provide them with various forms of assistance. Article 59 of the Rights and Freedoms of Foreign Citizens in Spain sets up a thirty day reflection period for victims of trafficking.¹¹² During this time victims are able to apply for various services including residency and work permits.¹¹³ In 2011 the Spanish government implemented a formal procedure for identifying victims, giving police the ability to grant the thirty day reflection period to more victims.¹¹⁴ NGOs reported that the formal identification procedures increased the number of victims police were able to identify.¹¹⁵ Despite the implementation of formal identification procedure, NGO oversight has also shown that police continue to prosecute victims.¹¹⁶ Spain's failure to meet the Directive provision asking member states to protect victims from prosecution directly relates to its difficulties in complying with this provision of the Directive. Since police continue to prosecute victims, they are not referring them to the support services they need. Spain set victim assistance as one of its goals for the National Action Plan on Combating Trafficking in Human Beings for Sexual Exploitation for 2009 to 2012, which shows that its government recognizes that this is an area in which there is much room for improvement.¹¹⁷

Although Article 59 provides victims with a variety of support services, the accessibility of these services is limited based on the extent to which victims cooperate with the investigation and prosecution of their trafficker(s).¹¹⁸ For example, international victims are only granted

permanent residency in Spain if they agree to assist with the investigation and prosecution of their trafficker.¹¹⁹ Due to these limitations, Spain fails to meet the first guideline to identify and assist trafficking victims, increased support and assistance. Although Spain has several programs in place to assist victims, the scope of these programs is limited. Victims may not want to participate in the prosecution of their traffickers because they are afraid, or because doing so would re-traumatize them. They should not be cut off from the services they need just because they are unwilling to participate in an investigation. Spain is decreasing the amount of support available to victims rather than increasing it by placing these limitations on victim services. Spain also fails to increase its support for victims of trafficking because it does not have specialized programs in place for child victims.¹²⁰ Protection of minors is another area of the Directive that Spain continuously struggles with. Just as it had difficulty protecting child victims from prosecution, it also fails to have specialized programs in place for child victims.

The Czech Republic also has policies in place to provide assistance to trafficking victims. The Support and Protection of Victims of Trafficking in Human Beings Programme has been in place since 2005 to aid trafficking victims.¹²¹ Although this program exists, the Czech Republic has not increased the assistance it offers to victims because it decreased funding for victim care in 2011.¹²² The Czech Republic decreased its funding for the Protection of Victims program by twenty percent, from \$305,600 to \$250,000.¹²³ Like Spain, the Czech Republic also limits the scope of services it offers to trafficking victims based on their willingness to cooperate in investigations against their traffickers. Foreign victims were only given residence in the Czech Republic and work visas if they cooperated in investigations against their traffickers.¹²⁴ The Czech Republic fails to meet the Directive's first guideline to identify and assist victims by increasing support because it decreased funding for victim support and limits victim services

based on the victims' willingness to cooperate with the investigation and prosecution of their traffickers. As an Eastern European source country, the Czech Republic lacks the financial resources to continually increase the support it provides to trafficking victims.

The programs the Czech Republic currently has in place to assist victims are also inadequate because they are not being used to assist Romani victims of trafficking. The Czech Republic does not provide its Roma population with the victim and protection services it needs.¹²⁵ Very few Romani women and children even come into contact with the Czech Republic's anti-trafficking services.¹²⁶ In addition, just as the Romani people face discrimination in employment and education, law enforcement officials and service providers discriminate against Romani victims. Victim service providers and law enforcement officials blame Roma victims for their vulnerability and involvement in sexual exploitation, even when they are victims of trafficking.¹²⁷ Shelter workers who are supposed to provide services for victims of domestic violence and trafficking have outright blamed Roma victims for committing crimes because "it is in their nature."¹²⁸ When states like the Czech Republic fail to provide Roma victims with assistance, they are oftentimes forced back into sexual exploitation and trafficked again.¹²⁹

The second Directive guideline to identify and assist victims asks member states to provide trafficking victims with the same compensation as violent crime victims.¹³⁰ In Spain, legislative Act 35 allows trafficking victims to receive the same economic aid as victims of violent crimes and sexual offenses.¹³¹ Unfortunately, this right is only afforded to Spanish citizens and residents.¹³² This means that victims trafficked in from other countries are not awarded the same financial aid as violent crime victims, even though they need it the most. Spain does not fully comply with the Directive guideline to provide trafficking victims with the same compensation as violent crime victims because it only does so for victims who are Spanish

citizens or residents. Since the European Union has no incentives in place for implementation of the directive, there is no motivation for countries like Spain to extend their compensation policies to foreigners, even though they have the resources to do so.

Unlike Spain, the Czech Republic has no policies in place to provide trafficking victims with the same compensation as violent crime victims and thus fails to meet the second Directive guideline to identify and assist victims by providing them with the same compensation as violent crime victims. This discrepancy is once again due to the fact that Spain has more financial resources to assist its victims than the Czech Republic does.

The third Directive guideline to identify and assist victims asks member states to provide child victims with representatives.¹³³ Under section 69 of the Spanish Civil Code, the court is obligated to appoint a guardian to all minors who are in a “vulnerable situation.”¹³⁴ By its very definition, minors who have been victims of trafficking are in a vulnerable situation.¹³⁵ Spain goes above and beyond the Directive guideline with the services its courts are obligated to provide to minors. Under Organic Act Article 14, police, the courts and all public services are obligated to provide all victims who are minors with any service they need, or to make a referral if they cannot provide the service themselves.¹³⁶ Spain exceeds the third Directive guideline to provide child victims with representatives because in addition to representatives, minors who are victims are given access to any government service they need.

The Czech Republic also provides victims who are minors with a representative in court. Under the Family Act, a guardian is appointed to any minor in the court system when it is in the minor’s best interest to do so.¹³⁷ In the case of trafficking victims who are minors, it is in their best interest to have a guardian appointed because they do not have parents or another adult to

represent their interests in court.¹³⁸ The Czech Republic meets the third Directive guideline to assist victims by providing children with representatives because it provides unaccompanied minors who are victims of trafficking with a legal guardian.

Overall, neither Spain nor the Czech Republic meets all three Directive guidelines to identify and assist victims. Both countries provide representation for child victims, but only Spain provides trafficking victims with the same compensation as violent crime victims, and Spain only does so when those victims are citizens or residents of Spain. Both countries have programs in place to increase support and assistance to trafficking victims, but the Czech Republic has decreased funding for its program in recent years, and Spain consistently fails to identify trafficking victims and is therefore unable to provide them with services. Although neither country has implemented all three guidelines of this Directive provision, Spain has implemented more overall than the Czech Republic because it has more financial resources to support victim programs and provide victims with financial compensation.

The fifth and final Directive priority to combat trafficking asks member states to increase knowledge about trafficking by raising public awareness and educating officers on victim identification.¹³⁹ To raise public awareness about trafficking, Spain's Ministry of Health, Social Services and Equality ran a trafficking prevention campaign in 2011.¹⁴⁰ The campaign featured an exhibit called "Slaves of the 21st Century," displaying the consequences of human trafficking.¹⁴¹ Spain also issued a report on the Integrated Plan for Fighting the International Trafficking of Women, Girls and Boys, which included a public awareness campaign about trafficking and the vulnerabilities young women face, an information campaign about legal immigration, and a campaign promoting zero tolerance for traffickers.¹⁴² Spain also made awareness raising one of the main goals of its National Action Plan on Combating Trafficking in

Human Beings for Sexual Exploitation for 2009 to 2012.¹⁴³ Spain meets the first component of the fifth Directive policy because it has undertaken several campaigns to raise public awareness about trafficking.

Just as the Czech Republic faced monetary constraints in reducing the demand for trafficking and increasing support for victims, it also faces these same constraints in raising public awareness about trafficking. In the past the Czech Republic has run a “Say It For Her” ad campaign with the goal of reducing commercial sex trafficking among tourists, but the government no longer funds this campaign.¹⁴⁴ In fact, in 2011, the Czech government did not put forth any public awareness campaigns about trafficking.¹⁴⁵ The Czech Republic fails to meet the first component of the fifth Directive policy because it has not supported any recent campaigns to raise public awareness about trafficking. Compared to the Czech Republic, Spain is much more successful in raising awareness about trafficking because it has the funding to finance these awareness campaigns. The Czech Republic lacks the financial resources to carry out awareness campaigns.

The second component of the fifth Directive policy to combat trafficking asks member states to increase knowledge by educating officers about victim identification. Spain currently educates military officers about trafficking awareness before they are sent abroad for peacekeeping missions.¹⁴⁶ Spain also has programs in place to educate officers about victim identification, but as shown in Spain’s inability to protect victims from prosecution, these policies are not effective. In the 2012 Trafficking in Persons Report, the U.S. State Department recommended that Spain enhance its victim identification trainings for police officers.¹⁴⁷ The current trainings do not effectively educate officers about the complexities of victim identification.¹⁴⁸ Spain also made one of its own goals for 2009 to 2012 to improve training and

education about trafficking, which shows a self-recognition that this is one of the main areas Spain needs to improve its efforts in.¹⁴⁹ As it stands, Spain has not taken enough steps to comply with the second component of the Directive policy to increase knowledge about trafficking by educating officers about victim identification.

Like Spain, the Czech Republic also educates its military officers about trafficking awareness before sending them abroad for peacekeeping missions.¹⁵⁰ It also offers anti-trafficking trainings through its judicial academy, open to all police, judges, and prosecutors.¹⁵¹ The Czech Ministry of the Interior also organized an anti-trafficking training in 2011, the Czech police regularly hold trainings for their anti-trafficking investigators.¹⁵² Unfortunately none of these trainings are specifically designed to teach officers how to better identify victims. In addition, one of the Czech Republic's goals in its 2012-2015 National Strategy of the Fight against Trafficking in Human Beings is to plan more anti-trafficking trainings for its officers, judges and other officials.¹⁵³ While the Czech Republic has been more successful than Spain in training its officers to identify victims, it still has not fully complied with the second component of the Directive policy to increase knowledge about trafficking.

Neither Spain nor the Czech Republic has been able to successfully meet all five priorities laid out in the 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.¹⁵⁴ The Czech Republic's lack of financial resources has made it difficult for the government to increase victim support and run campaigns for prevention and awareness. Spain has been able to implement these provisions with ease because it has more financial resources. Spain and the Czech Republic have exerted the same amount of effort to prosecute traffickers and coordinate with other countries because these Directive provisions do not require finances in order to be implemented. Both Spain and the Czech Republic have certain

victim compensation and victim assistance programs that favor their respective citizens. Since the European Union does not provide any incentive for extending victim services to all victims, both source and destination countries tend to implement policies that favor their own citizens.

In addition to the five Directive priorities to combat trafficking, the European Union also encourages member states to ratify the UN Palermo Protocol on Trafficking in Persons and the Council of Europe Convention on Actions against Trafficking in Human Beings.¹⁵⁵ The three goals of the UN Protocol are to prevent trafficking, assist victims and promote cooperation among states in the fight against trafficking.¹⁵⁶ These three goals directly align with three of the main provisions of the European Directive. The Protocol goal to prevent trafficking aligns with the Directive provision to prevent trafficking. The Protocol goal to assist victims aligns with the Directive goal to increase assistance and support for victims. The Protocol goal to promote cooperation among states aligns with the Directive goal of increasing coordination.

Signatories of the UN Protocol pledge to make trafficking a criminal offense.¹⁵⁷ This is an essential first step to the Directive provision to prosecute traffickers, as traffickers can only be prosecuted if trafficking is criminal. Signatories to the Protocol also agree to protect the privacy of victims, and to find housing, counseling and employment opportunities for them.¹⁵⁸ These are important services that should be awarded to victims in alignment with the fourth provision of the Directive, increased assistance for victims. UN Member States who sign the Protocol also agree to run media campaigns to raise awareness about trafficking.¹⁵⁹ Media campaigns can include the prevention and awareness campaigns the Directive asks member states to implement as part of its third and fifth provisions. Signatories to the Protocol also agree to promote cooperation in the fight against traffickers by passing laws about commercial carriers and stricter

policies for transportation across borders.¹⁶⁰ These cooperative efforts fall under the second Directive provision to increase coordination between member states.

Spain is a signatory of the UN Palermo Protocol, but the Czech Republic is not. Spain signed the UN Palermo Protocol on December 13th 2000 and ratified it on March 1st 2002.¹⁶¹ It was the first country to ratify the UN Palermo Protocol on Trafficking in Persons.¹⁶² The Czech Republic signed the UN Palermo Protocol on December 10th 2002 but has yet to ratify the treaty.¹⁶³ Even though the treaty has not been ratified, Czech law and policies on trafficking already meet most of the guidelines in the Protocol, as they are very similar to the requirements in the 2011 Directive.¹⁶⁴ The Czech government has claimed it has been unable to ratify the Protocol because its national law does not define “the liability of legal entities.”¹⁶⁵ On January 1st 2012, however, the Czech government passed a law establishing criminal liability for legal entities.¹⁶⁶

The goals of the Council of Europe Convention on Actions against Trafficking in Human Beings are to protect trafficking victims and their rights, prevent trafficking, prosecute traffickers, and promote international cooperation in the fight against trafficking.¹⁶⁷ These four goals directly coincide with the goals of the European Directive. The Council’s goal of protecting trafficking victims and their rights aligns with the fourth Directive provision asking member states to increase support and assistance for victims. The Council’s goal of preventing trafficking aligns with the second Directive provision asking member states to prevent trafficking. The Council’s third goal of prosecuting traffickers aligns with the first Directive provision asking member states to increase the prosecution of traffickers. The Council’s fourth goal of promoting international cooperation in the fight against trafficking aligns with the second Directive provision asking member states to improve coordination in the fight against trafficking.

In order to prevent trafficking, the Convention requires signatory states to pass legislation aimed at raising awareness about trafficking and educating about it in schools.¹⁶⁸ This Convention guideline is much more specific than the Directive provision on prevention, which only asks member states to reduce the demand for trafficking. It is important for member states to ratify the Council of Europe Convention because it specifies how member states should reduce the demand for trafficking.

The Convention also requires signatories to run training programs for professionals to help them better understand and recognize instances of trafficking.¹⁶⁹ This is an important component of the fifth Directive provision asking member states to increase knowledge about trafficking through training. This training is also an essential component of victim identification, which is key to complying with the first and fourth Directive provisions.

To meet the goal of prosecuting traffickers, the Convention requires that signatory states criminalize trafficking and forging travel documents.¹⁷⁰ This is an essential first step to the Directive provision to prosecute traffickers, as traffickers can only be prosecuted if trafficking is criminal. Criminalizing the forgery of travel documents is important because traffickers use forged documents to traffic victims across borders. Criminalizing this act is yet another way prosecutors and law enforcement officials can capture and punish traffickers.

Signatories of the Convention also agree to promote coordination in the fight against trafficking by strengthening their border controls and working together in international cases of missing persons.¹⁷¹ This requirement falls under the second Directive provision asking member states to coordinate in the fight against trafficking, but it is much more specific than the Directive. It is important for European Union member states to ratify the Convention because it

outlines specific steps they should take in order to improve coordination in the fight against trafficking.

Signatory states are also required to provide child victims of trafficking with a representative, protect the privacy of all victims, and provide victims with counseling services, protection, and the fulfillment of their basic needs.¹⁷² These are all essential components of the fourth Directive provision, which asks member states to improve support and assistance for victims. The steps outlined in the Convention are all ways member states can increase support for victims.

Spain is a signatory of the Council of Europe Convention on Actions against Trafficking in Human Beings but the Czech Republic is not. Spain signed the Council of Europe Convention on Action against Trafficking in Human Beings on July 9th 2008 and ratified it on April 2nd 2009.¹⁷³ The Czech Republic has not signed nor ratified the Council of Europe Convention on Action against Trafficking in Human Beings.¹⁷⁴ It is one of eight European Union countries who have not ratified the document, and only one of three European Union countries who have not signed it.¹⁷⁵ For the same reasons it has not ratified the UN Protocol, the Czech government also claims it cannot ratify the Council of Europe Convention because its national laws do not define the “criminal liability of legal entities.”¹⁷⁶ In 2012 the Czech Republic issued its new National Strategy to Combat Trafficking in Human Beings for 2012 to 2015.¹⁷⁷ One of the two main goals of the Czech Republic’s National Strategy is to ratify “relevant international conventions on the fight against trafficking.”¹⁷⁸ The law instituting criminal liability for legal entities in the Czech Republic has been in place since January 2012, yet the Czech Republic has not implemented the UN Protocol or the Council of Europe Convention yet. The Czech Republic needs to ratify both the UN Palermo Protocol and the Council of Europe Convention, as these two documents will

allow the European Union to monitor the Czech Republic's progress in implementing the provisions of the Directive and taking the necessary steps to combat trafficking.

In order to enforce the Council of Europe Convention, the Council established an independent body to monitor signatory states.¹⁷⁹ This body, called GRETA (Group of Experts on Action against Trafficking in Human Beings) is a group of ten to fifteen experts charged with monitoring signatory states' compliance with the terms of the Council of Europe Convention.¹⁸⁰ Unlike the UN Protocol, the Council of Europe Convention is a more powerful document because it contains an enforcement mechanism (GRETA). GRETA evaluates the extent to which signatory countries have implemented the provisions of the Council of Europe Convention by visiting signatory countries, collecting information, distributing questionnaires, and reporting its findings.¹⁸¹ In its reports, GRETA issues recommendations about the way signatory countries should deal with the potential problems that were uncovered.¹⁸² Therefore, states' ratification of the Council of Europe Convention is more important than their ratification of the UN Protocol due to the Council's ability to enforce the provisions of the convention, thus holding states accountable for their commitment to combat trafficking.

Since the European Union does not provide its member states with any incentives to ratify the UN Palermo Protocol on Trafficking and the Council of Europe Convention, there is no motivation for member states to ratify these two documents unless they are committed to the fight against human trafficking. The European Union does not provide any monetary incentives for ratifying these two documents, nor does it implement any punitive measures against states who fail to ratify these documents. Without any monetary incentives or sanctions being held over them, source countries like the Czech Republic have no reason to ratify these documents and implement their provisions.

The European Union faces two main obstacles in the implementation of the Directive: source countries lack the financial resources to implement specific provisions, and the motivation to ratify key pieces of legislation in the fight against trafficking. To rectify this problem, the European Union should offer financial assistance to countries that ratify these documents, set appropriate sentencing guidelines for traffickers and extend their prosecutorial jurisdiction. Ratifying the UN Protocol and Council of Europe Convention, amending sentencing guidelines and extending jurisdiction are Directive provisions and European Union recommendations that source countries with limited resources can meet. Although source countries lack the motivation to meet these requirements, the offer of financial assistance will provide them with incentive to ratify both legal documents and meet as many Directive provisions as possible with the resources they have.

By offering source countries financial assistance for complying with certain Directive provisions, the European Union will be equipping them with resources to implement other Directive provisions that they currently do not have the financial capability to address, such as victim assistance programs, victim compensation and awareness and prevention campaigns. The European Union should also use financial incentives to ensure that all member states, including destination countries, are extending their victim assistance programs to all victims and not just their own citizens. Since the Directive does not specify how comprehensive victim programs need to be, destination countries with vast financial resources choose to limit certain aspects of their victim assistance programs to their own citizens. Source countries with limited resources do the same, although they are slightly more justified in doing so. Since trafficking is a transnational problem, the European Union should encourage trans-national solutions through its policies.

Financial incentives are one method the European Union can use to encourage member states to implement more inclusive policies.

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