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The potential of a National Action Plan as a policy instrument in fighting human trafficking for labour exploitation in Germany

MSc Social Policy and Social Interventions

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Abstract

Intro: In recent years the trafficking of individuals for labour exploitation reasons has increasingly become the subject of public awareness. Whilst several European countries have since implemented a national action plan to effectively combat the issue, the federal state of Germany has refrained from doing so. Nevertheless, examinations of the country's trafficking situation, which includes a weak legal framework, unclear mandates and a lack of funding for structures, make this decision questionable. **Aim**: The presented research seeks to examine whether Germany's lack of action plan limits the success of national anti-trafficking efforts in the field. The issue is addressed within the concepts of both the network theory and blame avoidance strategies. **Method**: Semi-structured interviews with relevant experts as well as a document analysis were conducted to assess the views regarding the German situation and the potential of an internal action plan. **Results**: The characteristics of a national plan such as clearly assigned tasks and ensured funding showed to solve some of the major problems currently encountered by anti-trafficking actors. A set strategy could furthermore serve to overcome the particular challenge that lies in the federal system, which gives wide-reaching power to the federal states rather than the national government. Nevertheless, the existing unwillingness of the federal states to participate in working groups makes a national action plan particularly difficult to achieve. **Conclusion**: The lack of an existing national action plan in relation to human trafficking does not per se hold back efforts in Germany but rather the lack of fulfilment of its functions. Whether a national action plan is a suitable policy tool for the German context hence remains arguable, due to the difficulty of implementation related to the federal government.

1. Introduction

Lakech Demise, an Ethiopian chef, worked in a restaurant and household in Berlin. The restaurant owner who offered a contract promising a monthly $200 wage, free meals and accommodation recruited the woman back in her home country. The contract did not specify working hours and despite being illiterate Lakech signed the contract. Upon arrival in Germany, the employer and his wife took away Ms. Demise passport, demanded repayment for her flight and threatened her. Over the next 1.5 years, she worked more than 100hrs each week at the establishment as well as the couple's household, whilst only receiving a total of €400-500 over 18 months. The language barrier and legal situation in Germany caused her to believe what she was told: The German government would deport, beat, torture or even kill her if she dared to officially complain (Global Alliance Against Traffic in Women, 2010; Berliner Bündnis gegen Menschenhandel [BBGM], 2012).

Ms Demise became the victim of what the German Criminal Code outlines in article 233 (StGB, 2005): "Whoever exploits another person's predicament or helplessness arising from being in a foreign country to subject them to slavery, servitude or bonded labour, or makes him work for a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be liable to imprisonment from six months to ten years." Hence, the crime is trafficking human beings for the purpose of labour exploitation (THBL) - and even the mere attempt is punishable. Likewise, assisting in human trafficking by recruiting, transporting, referring or sheltering another person is punished with similar vigour by the law (German Criminal Code, no date).

Over the last years, human trafficking has increasingly become a subject of public awareness. However, anti-trafficking campaigns and legal instruments are overwhelmingly focused on human trafficking for sexual exploitation. Whilst, of course, an important part of the debate, the foregoing does not nearly reflect the issue's spectrum. Increasingly recognised as an important issue, human trafficking with the aim of labour exploitation has recently emerged as a topic of research and policy making (Grant, 2012; Shamir, 2012).

The above example highlighted some of the major problems holding back victims from speaking out today: Little to no knowledge of the language and laws, no social networks, a possible illegal immigration status and intimidation by their traffickers (BBGM, 2012). With an initial idea of identification difficulties encountered it comes as no surprise that the gap between presumed victims and number of victims officially identified is wide (Berket, 2013)

and the task of identification largely falls on the shoulders of external actors. In Germany, people able to aid can roughly be categorized into two groups: Individuals such as the policy, military or border control that are active in the security sector, and labour inspectorates and comparable agencies, including NGOs and other members of the civil society. While the role of governmental law enforcers in the situation is clear, other important actors such as labour inspectorates and similar organizations are not specifically concerned with disrupting and exposing exploitative labour trafficking victims. A German example of this is the "Finanzkontrolle Schwarzarbeit" (FKS), a part of German Customs responsible for ensuring national social contributions (Molitor, 2015). They actively visit working sites, e.g in the construction industry, where victims of labour related THB are commonly found. Though this would be a prime opportunity to recognise victims, in reality, this does not happen.

How to best tackle this has been intensely discussed internationally, on EU and national level, and since has been formalized in extensive legal frameworks and guidelines that countries can refer to when developing their own policy response. One of those guides has been commissioned by the German Federal Ministry for Economic Cooperation and Development and has been developed by the International Centre for Migration Policy Development in Vienna. It stresses the importance of a national action plan that aims for an "operationalization of specific objectives as identified in the national anti-trafficking strategy", further defining it as "assigned responsibilities and time plans, [it should] contain resource plans and budget and include monitoring and evaluation criteria" (ICMPD, 2006). The United Nations Office on Drugs and Crime (UNODC) equally advises the establishment of a national action plan (UNODC, 2008), which, developed by governmental and non-governmental actors, would include plans of action for the identification and interaction with victims. Further, a national action plan would involve monitoring of all involved actors to identify potential problems and how to improve spending and processes in the future.

The EU Directive 2011/36/EU on "Preventing and combating trafficking in human beings and protecting its victims" orders European Union member states to implement coordination mechanisms, protect victims and establish victim referral processes. As the exact policy implementation is free to the member states, Germany has chosen ann individual strategy: Rather than developing a national action plan, like for example Poland (Council of the Baltic Sea States [CBSS], 2013), the German government has chosen to include anti-trafficking measures by streamlining them into other policy tools (European Commission, 2016).

As policy instruments tackling human trafficking for labour exploitation remain under-researched, the presented study could provide policy-makers with a theoretical background to

their decision-making, avoiding wasting of resources on policy that is not backed up by evidence. By examining the streamlined approach taken by Germany in light of what a national action plan could offer, it can be judged whether there are any advantages to the latter, as it could be suspected due to the large number of countries that have adopted one. Therefore, this research can offer insights for future policy-making in Germany by showing whether the current approach can be improved on by introducing a national action plan. Furthermore, by understanding the successes and failures of anti-trafficking policies, the study gains importance in the light of the by literature predicted gap between identified and undiscovered victims.

2. Theoretical exploration

2.1 National action plan vs. streamlined approach

A national action plan, as it exists in other EU countries such as Denmark or Lithuania (CBSS, 2013) is a common tool in anti-trafficking strategies. As defined by the International Center for Migration Policy Development, it is an operationalization of specific objectives to the anti-trafficking strategy and therefore defines activities, assigns responsibilities, gives clear timelines, budgets, resource plans, and determines monitoring and evaluation criteria. Ideally, a national action plan for human trafficking covers areas of the supporting framework, prevention of human trafficking, support and protection of victims and victims-witnesses, and the investigation and prosecution of Trafficking (ICMPD, 2011).

Germany has not chosen to create a national action plan for THBL but instead has opted for a streamlined approach (European Commission, 2016). This means that rather than explicitly formulating an action plan for THBL, existing structures and policy is considered sufficient to identify and support also those victims. Explicitly, this means that rather than setting up cooperation agreements and explicit policy on how to tackle the phenomenon, the frame set by policy made for other issues, such as the action plan on combatting violence against women, are considered suitable to also cover THBL.

2.2 The German Context

In Germany, network-based policy-making has gained popularity, which means the government is no longer the only relevant actor in tackling societal problems. The country's federal system adds another layer of actors that are involved in decision-making processes.

The Federal Republic of Germany is made up of sixteen democratically legitimized federal states with extensive rights, called (Bundes-)Länder (Singular: Land). Legislation in this context is either on national or on Land level, with national law taking precedence over Land law. However, the federal states have much power through the prevalence of concurrent legislation for many policy areas such as public health or social services – the national government lays out general framework legislation and the federal states then implement this. In fields where the national government does not provide regulations, the Länder do so. Research relevant examples are laws relating to the residence and establishment of foreign nationals or criminal law. Inner security is also one of the responsibilities of the Länder, including own police forces (Sturm, 2013; German Bundestag, no date). It could, therefore, be argued that the specific federal system makes Germany less suitable for a national action plan, as the implementation of a framework would not be centrally governed but instead directed by each federal state.

2.3 Theoretical Framework

There are several theoretical approaches that can clarify the success, or lack thereof, of policy measures regarding THB, particularly within the German (federal) context. First, governance theory offers context by describing the shift from government to governance, a move from a hierarchical approach to a more network-based idea of policy making. A national action plan is a useful tool in such networks, as it formally coordinates actions and operationalizes policy (ICMPD, 2008). The research described in this thesis takes an open perspective, which includes the option of successful anti-trafficking efforts without any formalized national action plan or national rapporteur through streamlining of policies into existing networks, such as in Germany. If a national action plan on human trafficking (for labour exploitation) would not add any value, then the question of how and why a different approach works is further explored.

2.3.1 Governance theory

Since the mid-1990s, research about the state as the governing unit has experienced a significant shift from "government" to "governance" (Sundström & Jacobsson, 2007). While the term 'governance' has widely been used, its meanings can be sorted into two categories: The reduction of government on the one hand versus the idea that public guidance needs to

take into account interdependencies of actors other than the government itself on the other (Klijn & Koppenjan, 2000). The latter for example is visible in the work of Rhodes (2007) who characterizes governance as a system with interdependent actors that interact with each other to exchange resources and negotiate shared purposes. As the boundaries between sectors become blurry there is a degree of autonomy from the state because networks in which actors interact are self-organizing and not accountable to the state. Hence, Rhodes (2007) defined governance as a way of governing with and through networks in which the state might still play an (indirect) steering role, through for example "game management". This describes managing the relations in a network, such as bringing together relevant actors to create an environment in which decisions can be taken together (Chhotry & Stoker, 2009).

When thinking of government-governance as a continuum with governance at the extreme end consisting entirely of self-organizing networks that resist state steering (Jordan et al, 2005), the occurring shift from the hierarchical form of decision-making to the network-based process that Rhodes (2007) describes becomes clear to observe. This has occurred in many Western countries including Germany and has led to policy-making as a process of coordination. Government and other actors such as NGOs or trade unions in Germany interact through what Jordan et al (2005) labels as coexistence. They complement each other in these coordination processes in policy networks that can include actors from public, private and voluntary sectors (Sundström & Jacobsson, 2007). These interdependent actors are based around a certain policy problem, and as rules develop regulating the behaviour in the network, a context is created in which actors are confronted with each other's strategic actions ("games"). A policy making process, therefore, is a set of games between actors, in which different perceptions of the problem and possible solutions shape the strategies and actions of those involved (Klijn & Koppenjan, 2000). The result of these interactions is then policy (Rhodes, 2006). However, policy fails to be created when involved actors do not feel responsible and shift blame onto each other, as discussed below.

This theory is illustrated through the German Länder. Because of their powerful position, they establish independent networks or connect with each other, while simultaneously also networking with the national government and act in networks as members of the national government. These networks are exemplary for governance as described by Rhodes (2007), in which (federal) government might still play a role but not necessarily as the main or steering actor. A concrete example for this is the cooperation of a federal ministry with social actors in order to establish a support network across several federal states in the Alliance Against Human Trafficking for Labour Exploitation (Thielmann et al, 2015). This network is indeed

both self-organizing and not accountable to the state, as the federal government is merely one actor among others, working in coexistence as described by Jordan et al (2005).

The networking activities in Germany can further be illustrated by the anti-trafficking efforts, such as the Federal Working Group on Trafficking in Human Beings that consists of both state and non-state stakeholders with the aim of allowing exchange and problem analysis on both national and federal level (GRETA, 2015). One of the actors in this working group, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), is the lead agency in the Federal Government related to trafficking human beings with its main task being the co-ordination of policies and legislative initiatives. At the same time, the ministry also finances KOK, a non-governmental organization, as a coordinating structure (Council of Europe, 2015). Therefore, as there are two different actors supposed to coordinate the overlap that could potentially cause conflict or blame avoidance can be a source of difficulty.

2.3.2 Blame avoidance theory

The operationalization of co-operation is very important, as according to network theory, policy processes fail when cooperation is not realized and no regulating mechanisms prevent opportunistic behaviour or limit the risks of certain interactions (Klijn & Koppenjan, 2000). An example can be found in the blame avoidance strategy that actors choose, and which has been suggested in some reports. In blame avoidance, actors consider certain actions by weighing the risks and the credit that could be gained (Hood, 2010). An actor might fear damage from taking action, such as losing jobs if no progress is made, and compares this to the credit that could be gained from taking successful action. In this case, they likely choose not to take action and rather claim not to be accountable, thereby blaming other partners (Moynihan, 2012). This scenario is likely due to the asymmetrical way humans think about risk: The "negativity bias" whereby the potential losses commonly carry more weight than potential gains (Hood, 2010; Wenzelburger, 2014). Studies have found this is not necessarily an irrational fear. Political successes, such as better controls to human trafficking, tend to attract a lot less positive attention than political failures (Hood, 2010).

In the labour exploitation case of human trafficking, the potential blame for failed efforts is weighed against the credit for successfully taking anti-trafficking action. A national policy plan as defined above can be a mechanism to overcome these blame avoidance strategies if actors choose to engage in them. When it is clearly laid out and operationalized who has to take action, actors can no longer choose to "opt out" of taking (more drastic) measures against

human labour trafficking. Nevertheless, the German context and the unique problems to fighting THB in the country could make a national action plan unsuitable as a policy instrument.

Based on the literature, it has become clear that the shift to governance in Germany has introduced more actors to the field of combating human trafficking, who are creating policy together. This bears the danger of problems in cooperation, such as through blame avoidance strategies. In the following, it remains to be seen whether these problems actually occur under the current streamlined approach, and if so, whether a national action plan would be the better approach to avoid these pitfalls.

2. 4 Research question

Based on the above-described governance and blame avoidance theory, this research aims to establish whether the lack of a national action plan in Germany hinders efforts against human trafficking for labour exploitation purposes. The analysis will capture both successful strategies and problems in the fight against human trafficking for labour exploitation. The results of the analysis will be placed within the framework of the previously described theories, thereby examining whether a national action plan could be a step forward in Germany's anti-trafficking policy. From the theories it becomes evident that several elements are of key importance: Policy, also for fighting human trafficking, is increasingly made in networks that include other actors than only the government. This allows better cooperation and new ways of tackling human trafficking, but also bears the risk of blame avoidance, as tasks and responsibilities are now shared among more actors than just the government alone.

In order to answer this broad question, five sub-questions have been developed. As, for example, blame avoidance is less likely to occur when responsibilities are clearly defined, one element that arose was to ask whether actors felt that this was the case in Germany. Similarly, actors were questioned whether they felt that there are certain cooperation structures that work particularly well, or whether they see disinterest of specific important actors to cooperate. The latter could point towards notions of blame avoidance strategies, and therefore network failure as described in network theory. In a similar manner, five sub-questions have been developed in order to answer the research question: *"Could a national action plan be a better policy approach to efforts against human trafficking for labour exploitation in Germany than the current streamlined approach?"*

1. Do actors in the field of human trafficking for labour exploitation perceive the cooperation as successful?

2. Do actors in the field of human trafficking for labour exploitation have a clear perception of their responsibilities?

3. Do actors in the field of human trafficking for labour exploitation have a clear understanding of their roles and tasks?

4. Are funding and budget clearly outlined according to actors in the field of human trafficking for labour exploitation?

5. What contextual factors (of federalism) hinder or benefit policy implementation in the field of human trafficking for labour exploitation?

3. Research Design

3.1 Justification of choice of research strategy

To explore the issue, a document analysis of relevant reports about the fight against human trafficking in Germany as well as semi-structured interviews with field experts were used. This combination of different forms of data collection allowed an initial picture to emerge that then was further explored through experts' personal insights to generate a more comprehensive overview. Additionally, the use of multiple complementary methodological approaches allowed for compensation of the relatively small known scale of the issue and the underrepresentation of available actors.

3.2 Development of the topic list

The interview's topic list, in addition to the existing topics covered by the larger research program (DemandAT) in which this study is situated, was developed based on the theoretical information acquired. This was done by operationalizing the concepts examined in the subquestions; for example the topic of "budgets". Hence, interview questions explored the financing of interviewees' projects amongst other topics. A full list of the operationalised topics can be found in the appendix (Table 1).

3.3 Data Sources & Participants

Due to the only recent spike in interest, the number of actors working in the research-relevant field is small. As a result, a quick overview can be acquired, yet the amount of relevant interview partners available is limited. The presented study is part of DemandAT, a research project exploring different approaches to combat the demand for human trafficking through anti-trafficking efforts and policies (DemandAT, no date). Interview partners, based on reports such as the Council of the Baltic Sea's, that provide an overview of the most important THB experts, were hence pre-identified by the project. Additional respondents were identified via the snowball method. Seven interviews were held with trade unions and counselling centres, governmental actors on city and ministerial level, education centres close to the trade unions, an NGO, and an expert from the former Alliance Against Human Trafficking for Labour Exploitation. Whilst five interviews were conducted for the presented study, the interview with the city government employee and trade-union related counsellor, utilised in this research, had already taken place previously.

Further data was retrieved from empirical reports and documents published by research organizations and actors in the network themselves, as well as from legal documents. An example is an aforementioned report about anti-trafficking efforts of member states by the Council of the Baltic Sea States, and documents about their tasks by the organizations itself such as the overview of the national human trafficking situation (Bundeslagebild Menschenhandel) by the police. These documents then added a legal frame and filled the gaps left by the lack of interview partners on the law enforcement and federal state level. Therefore, a balanced network overview of strengths and weaknesses was achieved. A table of all documents and interviewees can be found in the appendix (Table 2).

3.4 Analysis & tools

To turn the presented overview into a systematic analysis, document analysis was applied to both the interview transcripts and the retrieved documents. Due to the similarity to the presented and DemandAT project, the code previously established by DemandAT's research was adopted and extended following Hsieh & Shannon's (2005) approach of directed content analysis: Combining deductive and inductive code determination. Directed content analysis enables a researcher to produce supporting or non-supporting evidence for a theory; in this case showing communication failures or avoidance strategies. On the other hand, directed content analysis can also show support for the hypothesis that the streamlined approach in Germany is sufficient. A full list of codes can be found in the appendix (Table 3). After the coding of the material, summary grids were created to make the material more manageable by cutting down to what is important, but also to ensure an analysis close to the original material. Following this, the material was analysed in depth to answer the sub-questions.

4. Results

To answer the research question, the factors as described in the operationalization will be examined based on the interviews and document analysis. Following this, it will be discussed whether a national action is a better tool to solve problems that come to light than the current streamlined approach.

4.1 Which successful cooperation can be found in the field of human trafficking?

Cooperation regarding human trafficking for labour exploitation in Germany exists on several levels: on national level through a working group, an alliance working across several federal states, cooperation agreements in single federal states, and smaller initiatives on city-level, as it came forward from the interviews and documents. With rising awareness of human trafficking for labour exploitation, the number of cooperations on this field has risen. Mentioned by several interviewees (interviewee 4; interviewee 6), the cooperation with the biggest potential impact is the working group coordinated and chaired by the Federal Ministry for Labour and Social Affairs (Bundesministerium für Arbeit und Soziales [BAMS]), including a range of governmental and non-governmental actors. Through bringing both the federal states and national structures together, interviewed actors voiced hopes that this could

lead to an integrated approach. However, they remained cautious about the potential of this (interviewee 6; interviewee 3).

> *"… we will probably write a recommendation at the end, a recommendation report, and then we will see, whether that simply ends up in the bin or whether anyone gets to see it."* – interviewee 6, federal-state funded counselling centre

The setup of the group came not without political difficulties, as another working group chaired by the Ministry of Family Affairs, Senior Citizens, Women and Youth (BMSFSJ) is officially responsible for all kinds of human trafficking – an example of Germany's streamlined policy. In practice, this working group focuses on sexual exploitation, and there were some "irritations", as interviewee 5 put it, in regards to who has responsibility when specified action to tackle THBL was taken (interviewee 3.) Further, not all federal states are actually involved in this working group (interviewee 6; interviewee 3), making it less likely to achieve an integrated approach is all across the country. Nevertheless, this cooperation stands out as the most high-ranking in political terms, bringing together a wide range of actors aiming to make the fight against trafficking for labour exploitation in Germany more successful.

On the other side, the policy field has recently lost an important cooperation, the "Alliance against Human Trafficking for Labour Exploitation", which successfully worked across several federal states supported by governmental actors, social actors, trade unions, and in the later stages also law enforcement actors like the police (interviewee 3; interviewee 4). The Alliance provided practical support to (potential) victims, research, workshops to spread awareness among relevant actors and clearly defined responsibilities across the actors involved. While the cooperation was successful during its run, setting up the alliance came with its own difficulties. Interviewee 3 describes that the establishment of structures for THBL was met with a negative reaction from established social actors on the field of sexual exploitation, as they saw this as competition in who has a say on policies regarding trafficking (interviewee 3). The FRA report (2015) also suggests potential difficulties due to different actors feeling responsible for similar tasks. Here, clear mandates could avoid such confrontations by outlining who is responsible for what. Unexpectedly, the alliance lost its funding and has therefore been unable to further carry out its work since last winter. Currently, no cooperation carrying out such wide-reaching tasks has replaced this structure anywhere in Germany, hinting towards the fact that again here the streamlined policy is

considered sufficient, as there were no efforts made to ensure funding for specialized structures for THBL.

On the level of the federal states, there are some cooperation agreements about human trafficking between stakeholders such as counselling centres, the police or social administration and foreigner's registration officers. Most of these cooperation agreements focus on sexual exploitation, and therefore not always apply to victims of THBL (CBSS, 2013). However, some federal states are currently working on expanding this onto labour exploitation (interviewee 6), taking a streamlined approach by adding new policy into existing structures rather than creating explicit new policy.

Other successful cooperation can be found on a smaller scale, such as in the city of interviewee 1, where social actors and city government work closely together. The cooperation has created innovative concepts practiced nowhere else, such as directly addressing potential victims in their native language when they are getting registered at the city offices (interviewee 1).

In general, however, the FRA report (2015) notes that their interview partners consider exchange and cooperation between monitoring, investigating and prosecuting actors as not well institutionalised.

4.2 Are responsibilities clearly defined?

There is a general problem of unclear mandates, and therefore insecurity about who carries out which tasks, and what exactly these tasks include. This is also recognized in the FRA report:

> *"(...) if legislation tasks labour inspectorates with monitoring only a workplace's safety and health conditions and not also with assessing other working conditions – including the rights of workers (...) – this can lead to a situation where no public authority has a clear legal mandate to monitor exploitative working conditions (...). Such a legal situation necessarily leads to a systemic lack of effective monitoring."* –
> European Union Agency for Fundamental Rights (FRA)

Responsibilities are generally clearly defined where there are cooperation structures, such as the ones mentioned above. Problematic is that key actors that would have to be part of effectively allocated responsibilities, such as the police, are not always enthusiastic about taking part in such cooperation, as described below.

4.3 Are roles and tasks clearly coordinated?

Coordination is needed for each actor involved in fighting THBL to clearly know what their tasks are and which actor takes over others. This can be achieved through some sort of coordination agreement, as for example the federal state of Berlin has, but also through one coordinating actor. As mentioned above, the coordinating role for issues of trafficking lies with the old working group at the BMSFSJ. However, this seems to be shifting with the newly established working group under the chairmanship of BAMS, hoping to counter the perceived focus on sexual exploitation by the old working group and aiming to create a strategic concept on how to tackle the issue in Germany. When discussing this working group, interviewee 5 questioned whether a coordinating actor is necessary at all, as from their point of view all important actors are already engaged and cooperate well. The establishment of an official coordinating actor or a rapporteur could rather, as the interviewee warns, discourage the actors already engaged and would be counterproductive in attracting those who are currently not prepared to take part, and would further be difficult to install due to the federal structure. While this discouraging effect is possible, it is striking that cooperation projects that have been considered successful (interviewee 6; GRETA, 2015) had a coordinating institution (or several, for example when covering several federal states). This indicates that the discouraging effect plays a minor role and that a coordinating actor is considered a good way of organizing networks by experts in these cooperation networks.

4.4 How can the legal, institutional and economic context be described beyond this?

The context of the fight against human trafficking for labour exploitation is not as favourable as it could be, mainly due to a weak legal framework.

4.4.1 Legal framework & FKS

The problems stemming from the legal framework can mainly be tracked down to the vagueness with which the laws concerning human trafficking for labour exploitation are

formulated. There are two critical legal documents that show this: Article 233 in the criminal code, criminalizing human trafficking, and the Act to Combat Clandestine Employment (Schwarzarbeitsbekämpfungsgesetz).

According to both reports and interviews, the weakness of the legal framework among the main reasons for a high number of victims never identified as such. Due to the vague wording of the law, it is difficult to prove a case of trafficking, and doing so requires a lot of resources (interviewee 2; interviewee 6). It, therefore, makes little sense to try to push for a case of THBL in court as it is so unlikely that the charge will go through. This is why easier to prove charges are often applied instead (interviewee 3; interviewee 4, Thielmann et al, 2013). The vague wording of the law also leads to a difference in perception of the extent or actual existence of human trafficking. An extreme example was given by interviewee 6. Because the law mentions slavery and debt bonding as examples for human trafficking for labour exploitation, the state prosecution had taken the stance that human trafficking for labour exploitation does not exist in Germany, as slavery has been abolished. But even where state prosecution is open to the issue of THBL, the lack of resources and staff requires them to prioritize, again leading to suspicions of trafficking being dropped in favour of more easily applicable charges (interviewee 6). Consequently, a vicious circle arises – because the law is rarely applied, it is hard to get a grasp of the extent of the problem. This makes it tempting to pretend the problem does not actually exist, therefore there are no victims, and nothing has to be changed. This leads to even fewer victims being identified, and the law being applied even less (interviewee 5).

The abovementioned FKS is another actor whose role is heavily influenced by the insecure legal situation. Part of customs and therefore a federal structure belonging to the Ministry of Finance (GRETA, 2015), their mandate covers unreported and illegal employment and ensuring that social security contributions are paid (interviewee 2; FRA, 2015). What makes them an interesting actor for the fight against human trafficking is that they carry out inspections at workplaces and that human trafficking is in fact part of the Act to Combat Clandestine Employment, which specifically outlines the role of the FKS including the identification of employers that employ trafficked or exploited foreigners. However, this law specifies victims that have no right to work or to reside, excluding German victims and workers from other EU states (StGB, 2005). Nevertheless, most of the interviewed actors agree that FKS is, in fact, among the most important actors on the field, but is hesitant to get involved with the topic (interviewee 1; interviewee 5). The FKS itself officially claims no to

have no responsibility for the topic but are active cooperation partners in some regions, for example by taking part in workshops offered by the former Alliance Against Human Trafficking for Labour Exploitation (interviewee 5) and remain the most successful actor in identifying victims of trafficking for labour exploitation after witnesses and victims themselves (Thielmann et al, 2015). Further, interviewees mention observed an interest in the topic "on ground level", among those actually carrying out inspections, but that this is discouraged by higher levels (interviewee 6), a division also visible in the interviews and the documents. While most interviewess agreed that this was indeed within their responsibility, one interviewee mentions that the influential GRETA (2015) report disagrees:

> *"Yes, yes, it is also quite interesting... here, so for Germany, there has also been a GRETA report [...] and it actually says, that the FKS is not responsible. So I – find [that] astonishing. So they have obviously been hoodwinked by the FKS people. Because that is not true - but this way some people, of course, try to maintain the status quo in this case. And nobody even protested."* – Interviewee 2, trade union-related counselling centre.

Here, the blame avoidance strategy is implied to be used by the FKS. The reason for their hesitancy to become involved in this topic remains unclear. However, as suggested in interviews and the FRA report, the critical lack of funding and increasingly more tasks being assigned to the FKS, play a role (interviewee 1; interviewee 4; FRA, 2015).

4.4.2 Lack of interest in the topic

Another issue that actors brought up is the lack of interest in THBL. The reality of interest in and awareness of the topic can be seen in the lack of specialized facilities like counselling centres. Currently, there are few counselling centres available for victims of human trafficking for labour exploitation (usually in the form of counselling centres for migrants with labour law issues), and no accommodation structures for men and victims of labour exploitation. This is in stark contrast to the strong support structures for victims of THB for sexual exploitation (GRETA, 2015).

The fight against (human trafficking for) sexual exploitation in Germany is well-organized and coordinated by the BMSFSJ. Within the Second Action Plan of the Federal Government to Combat Violence Against Women, clear cooperation and coordination mechanisms were

set out, involving governmental actors, civil society, and law enforcement. While this national action plan only references victims of trafficking as a side note, they are well-covered by these established structures. Following the streamlined approach, this plan was used as a justification by the government why no specific action plan was necessary for human trafficking (for labour exploitation), as the structures are already established. This complete disregard of necessary structures for victims of other trafficking than for sexual exploitation, can be interpreted as a lack of importance being assigned to the issue of THB for labour exploitation.

The lack of interest in the topic can even be seen from actors who should have a personal interest in fighting THBL, such as employers represented by associations. Apart from a few exceptions, such as the employer's association for the catering industry or the construction sector in Berlin, llittle action has been taken by this group of actors (interviewee 6; interviewee 7; interviewee 3).

Why this is the case is unclear to the actors interviewed, as employers should be interested in undermining this behaviour because it gives exploiting employers an unfair advantage, and makes industries as a whole look bad (interviewee 5; interviewee 6). Other actors that have not always been cooperative include the police, mostly due to a lack of resources (interviewee 1, interviewee 4). This lack of interest by key actors makes it difficult to ensure that network mechanisms, that rely on collaboration, such as the referral of victims to support actors, work effectively. Consequently, actors considered the cooperation to be not as effective as it could be.

In other cases, it is more obvious why an actor does not show the desirable interest in taking action. The case of the FKS illustrated several of these: a critical lack of resources, too many tasks assigned to a single actor, and an unclear mandate. These can also be found with other actors, such as the overwhelming number of assignments that departments of the federal states are burdened with:

> *"[…] and there are also departments in the single states where they have a responsibility for one, two, three, four, five, ten, twenty topics, and he or she then says: 'Well, human trafficking does not interest me that much'. I don't want to rule that out."* – Interviewee 5

The Council of the Baltic Sea States (2013) sees lack of clearly assigned mandates as the main reason for a lack of interest; however, this quote also shows that the assignment alone is

not enough, but an actor assigned a mandate in THBL, must also be able to actually carry out these tasks, both financially and in regards to their workload. A comprehensive national action plan could ensure this.

4.5 Federal system

A final contextual issue that hinders effective efforts against THBL across the whole country is the federal system that makes it difficult to establish a unified approach (interviewee 5). Because many of the responsibilities that are important for this topic lie with the federal states, it depends on their initiative on how the topic is being approached. While some federal states are very active, such as Berlin, others show little involvement in this field (interviewee 4).

The federal-national division of power also complicates bringing actors together when the decision has been made to become more active, as there sixteen actors rather than one central government. While police forces, for example, are the responsibility of the federal states, the FKS is part of the Ministry of Finances, which is centrally organized on a national level. A successful coordination, therefore, requires actors on different levels to come together, which assumes an interest from two sides. As implied above, this is difficult due to the lack of staff and the amount of issue areas assigned to single actors on the level of the federal states. The latter makes it unlikely for interest to be high unless the person responsible has a special interest in THBL (interviewee 5). The recently established working group is currently working on overcoming these issues, as mentioned above.

4.6 Are there potential budget constraints or problems with funding?

A lack of resources has already been mentioned several times. The limited staff and resources of the FKS, as mentioned above, was often mentioned as one of the reasons for their lack of interest in or their ability to becoming more involved (interviewee 1; interviewee 6; interviewee 4). A lack of staff which has to juggle many tasks already, was also mentioned as a potential reason for the lack of interest by the federal states (interviewee 5).

Even already established structures active on the field struggle to secure further attention from ministries to continue their work due to the large numbers of refugees that have come to Germany (interviewee 3; interviewee 4). In some cases, expenses for these projects come from similar sources as the funding for asylum seekers (interviewee 4). In light of this, it

comes as no surprise that at this time, widespread cuts also hit actors on the field of THBL. This has worsened the already dire situation of structures fighting THBL in Germany. While the issue of THBL has become more well-known recently, this has barely been followed up with the establishment of structures such as counselling centres or safe houses, as they exist for cases of trafficking for sexual exploitation (GRETA, 2015). A loss of even one project such as the Alliance Against Human Trafficking for Labour Exploitation mentioned above, therefore, has a large impact.

4.7 Are there any other challenges or problems occurring in the daily practice of actors, and which are they?

Beyond the points mentioned above, the fight against human trafficking for labour exploitation bears other challenges that actors face in their daily practice. One of these problems concerns the identification of the victims.

One of the main difficulties described particularly by counsellors was the self-image of those exploited, as they do not see themselves as victims. This is, as presumed by the interviewees (interviewee 6), related to the type of people that tend to become victims of THBL. A male construction worker from Bulgaria, might not feel comfortable being labelled a victim due to fears of losing face if admitting that they "let themselves be exploited" and because they often still consider their working conditions acceptable in comparison to their home countries. The large wealth gap between Western Europe and Eastern Europe (Federal Police Office, 2014), where most victims come from, means that even victims who are paid severely under the minimum wage might still earn more than in their home countries (FRA, 2015). Therefore, they are unlikely to alarm the authorities, especially when they do not have enough resources to go back home. In some cases, victims also fear that they themselves could be punished by the authorities, or otherwise mistreated, which discourages them from alarming anyone (FRA, 2015)

Another problem in identifying victims is particularly experienced by the FKS (and occupation health and safety). While they regularly control work sites, and victims who do eventually go to a counselling centre often report that they have experienced these, victims also tell their employer threatened them in order to stick to a prepared story (interviewee 2). Further, in most cases, employers ensure that the paperwork is flawless, as they know that this is what the FKS mainly checks (interviewee 7; interviewee 3).

Another problem voiced by the police is the fact that most victims are coming from countries that are part of the EU, and therefore enjoy free movement and the right to legally work in Germany (Federal Criminal Police Office, 2014). According to the police, this further exacerbates the identification (presumably because they do not require a visa tied to a legal job).

Related to the proceedings after identification is the unwillingness of victims to make a statement to the police or in court (interviewee 1). The reason for this is generally two-fold – intimidation from the exploiters, and the unwillingness of victims to stay in Germany until the end of court proceedings, as in most cases they want to go back to their home countries quickly (interviewee 6).

5. Conclusions

5.1 Discussion

This research approached the question of whether the lack of a national action plan in Germany on human trafficking for labour exploitation has an impact on the success of anti-trafficking efforts in Germany.

The constructed theoretical framework paints Germany as a country using the concept of governance in policy-making. This means that policy-making in Germany takes a network-based approach in which policy is created through a process of coordination including different, also non-governmental actors (Rhodes, 2007). Different perceptions of a policy problem and of possible solutions create an exchange between actors and steer their actions. The result of these interactions is policy.

In the course of this research, it became clear Germany indeed uses the elements of governance in policy-making, such as a certain degree of autonomy from the government (Jordan et al, 2005). This is reflected in networks that are to a certain degree autonomous from the state, such as the Alliance Against Human Trafficking for Labour exploitation, or the new working group for the fight against human trafficking. In the working group, the government takes the role of a "game manager", as described by Chotry & Stoker (2009). The aim of the working group is proposing steps that need to be taken, and potentially the coordination of activities on the field fighting against THBL in Germany. In networks such as the now no longer existing Alliance Against Human Trafficking for Labour Exploitation, the government is only one actor in coexistence (Jordan, 2005) with others such as NGOs. Policy on the field of fighting THBL in Germany is, therefore, as described by Rhodes (2007), no

longer made through a hierarchical decision-making process, but through exchange in a network-based process between actors complementing each other (Sundström & Jacobsson, 2007). Yet, this study's results also show that the unwillingness of certain actors to cooperate hinders comprehensive solutions, which ultimately leads to a number of victims not being identified or supported.

Following Klijn & Koppenjan (2000) policy-making fails when cooperation is not realized or opportunistic behaviour is not prevented. Several actors across the policy landscape in Germany show this behaviour, with the most striking example being the FKS, who has engaged in what the theory describes as blame avoidance (Hood, 2010; Moynihan, 2012). In the interviews, it has been suggested that burdening themselves with the task of identifying victims of THBL has little advantages for the FKS. Weighing the costs of becoming a more active actor in the light of budget constraints against the potential gains, the FKS concluded that the best strategy is denying the mandate of victim identification, even though other actors do not share this opinion.

The blame avoidance strategy is not unique to the FKS, but has also been shown by the federal states or actors such as police or state prosecution, who claimed that because slavery no longer exists, there is no such thing as THBL in Germany, and therefore no need for them to take responsibility in restricting the phenomenon.

An interesting theory was brought forward by interviewee 6, who saw little sense in blaming the FKS for being inactive. In her opinion, formed by speaking with employees of the FKS, there is an interest in the topic, but the FKS is simply not the right actor for this. Instead, she reckons that the responsibility has been assigned to the FKS by the government just to have done something at all. This streamlined approach of adding to the tasks of an already established organization rather than creating new structures more suitable for the topic can therefore be interpreted as a blame avoidance strategy (Wenzelburger, 2012; Hood, 2010; Moynihan, 2012), as the government can simply point towards having assigned the task rather than engaging with the topic any further.

The general lack of interest to get involved is perceived across all interviews. It is too simple to put this lack of interest down to a negativity bias following which actors perceive political losses to weigh more heavily than potential gains (Wenzelburger, 2014; Hood, 2010). Rather, the interviews make it evident that often simple restraints keep actors from being more active, such as a limited budget. There is a slow awakening that the problem of THBL needs to be tackled, but little follow-up as actors do not see the advantages of engaging more (Hood,

2007) – and then, as in the case of the FKS, being blamed when their efforts are not perceived to be enough.

The blame avoidance strategy of actors (Hood 2007; Wenzelburger 2014; Moynihan, 2012; Hood, 2010) that could potentially play a big role in the fight against THBL is exemplatory of what Klijn & Koppenjan (2000) describe as a disturbance to successful policy-making, as it is the root of cooperation failure.

This research has, through examining the questions based on the operationalization of the theory, identified six main factors that hinder the fight against THBL in Germany and that are related to the theory as described above. The federal system and a weak (or conflicting) legal framework are issues that are tied to the governance approach of this matter in Germany. A lack of clearly defined mandates and responsibilities, a perceived lack of awareness and interest in the topic among important actors, budget constraints and difficulties identifying victims are issues that can be linked to blame avoidance strategies (Wenzelburger, 2012; Hood, 2010), mostly by providing actors with a reason to justify why the disadvantages of engaging in human trafficking outweigh the potential gains.

The weak legal framework discourages actors from engaging, as the prosecution of traffickers is difficult and resource-intensive. Unclear mandates allow actors to deny that responsibilities have been assigned to them. The budget constraints create an incentive for actors to avoid taking responsibility as their budget is needed elsewhere, and there is no money for further staff or training regarding THBL.

As explained above, the federal system in Germany grants the federal states extensive rights, which makes it necessary for the federal states to be involved in order to establish a unified approach. However, it seems that most federal states are neither aware of nor interested in the topic, and therefore have not even come to the point of avoiding responsibility. However, the federal states that have become involved seem to do so on a fairly low level, again linked to a lack of resources to effectively work on all issues they are assigned. In the case of the federal states, however, it does not seem there is a real "need" for blame avoidance (Wenzelburger, 2012; Hood, 2010), as there is simply no actor with the power to hold them accountable for their lack of engagement.

A final and very different problem is the difficulty in identifying victims. However, the reasons that make it so difficult to identify victims also provide actors with a reason to avoid becoming active. As one of the interviewees describes, the difficulty in identifying victims artificially distorts the number of actual victims – because so few people are ever convicted of human trafficking for labour exploitation, actors can pretend that the problem is not large, and

thereby justify not increasing their efforts. This enables the use of blame avoidance strategies, as the problem is considered smaller than it actually is, and therefore not worth investing resources into in comparison to the potential gains.

In order to improve the fight against human trafficking for labour exploitation in Germany, there is a need for policy that overcomes these aforementioned issues. The research question asks: "*Could a national action plan be a better policy approach to efforts against human trafficking for labour exploitation in Germany than the current streamlined approach?*"

Based on this research, the answer to this question is that there are indeed certain functions of a national action plan that are not currently being fulfilled by Germany's streamlined approach, such as clearly outlined mandates, funding and clear coordination. Therefore, a national action plan could indeed be a better approach to fighting THBL in Germany.

A national action plan, however, is not a universal remedy, as is apparent when looking at the impact a national action plan would have on the identified problems.

One of the biggest challenges is the lack of clearly defined mandates and responsibilities. A national action plan that finally makes it clear who has to take which actions is desperately necessary, not only to stop actors such as the FKS from avoiding their responsibilities but also to make it possible to establish strong structures supporting victims. For this, clearly laid-out budgets and secured funding for established structures in the future are also essential. This would overcome the problem of a lack of budget that nearly all actors reported in the interviews and has been recognized in the reports. Clearly assigned responsibilities will force even uninterested actors into action, providing a solution to a lack of interest or awareness. The current streamlined approach has failed to clearly assign responsibilities, as it has simply assumed that these would be taken over by existing actors dealing with other forms of actors, who have not risen to this task.

The weak legal framework is something that a national action plan, in this form, cannot overcome. However, in the course of this research, proposals for substantial changes to the legal framework have been discussed and will be introduced in the near future, including the introduction of labour exploitation as an offence. These changes will make it easier to convict those who exploit workers, even when the offence of trafficking is hard to prove or not met.

On top of that, the federal system is a major difficulty in implementing any kind of national action plan that works nationwide, as it requires all federal states to be engaged. While it is theoretically possible to implement a national action plan only in parts of the country, this undermines the efforts of prosecuting human traffickers across federal state borders. Finally, while a national action plan might increase the numbers of victims being identified by making

the work of actors more efficient, the problems in identifying them mentioned above will remain, and be difficult to overcome.

To summarize, a national action plan could indeed solve some of the problems that the current streamlined approach has failed to. The clear shift towards governance, the system of policy-making through network is visible in initiatives such as newly established working groups that include actors from different governmental levels and non-governmental actors, whose contribution and partnership has been recognized as increasingly important to effective action. The operationalization of the specific objectives of an anti-trafficking strategy in these networks is essential in order to ensure coordination and effectivity in the future, and the streamlined approach cannot deliver this. A national action plan can achieve this in Germany, however, it has to be taken into account that the federal structure of the country could make the implementation of such a plan difficult, as it is unclear whether the federal states that are currently not showing interest in taking action would be willing to do so in the future.

5.2 Limitations of the research

There were several limitations to this research, the sample size being one of them. This is due to the low number of actors on the field in general, as the issue of THB for labour exploitation has not yet attracted much attention. With growing interest in the topic, a rise in actors working on the field can be expected in the future, and therefore a potential rise in interview partners. The new working group, which engages more actors on the federal level, is the first hint that this is indeed going to happen.

The impression that has been gained from the data might be biased due to the unwillingness of relevant actors to be interviewed, such as the FKS, NGOs or the police who declined. This leaves certain aspects underrepresented, which has been attempted to counteract by analysing reports that have been able to secure interviews with them. In the particular case of Germany, it would also have been important to talk to governmental actors both on the national and federal level. However, it was not possible to secure an interview on the latter level, which also leads to an underrepresentation of the federal states. Comparative studies with other countries that have a federal system, such as Austria, could also give certain hints towards their role. As the broader research project DemandAT, within which this research was carried out, is such a comparative study, this could be a starting point. A general difficulty with doing interviews such as these is also the danger that actors would give socially acceptable answers and would hesitate in badmouthing others. However, this can be considered a minor problem in this research, as actors seemed to value the recognition of problems over harmony.

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Appendix

Table 1 - Operationalization of interviews

Factors	Operationalization	
Clearly defined/unclear responsibilities	Clearly defined: - All roles in fighting anti-trafficking are fulfilled	Unclear responsibilities: - Certain tasks are not carried out - Arguments about interpretational jurisdiction
Facilitating/hindering legal/institutional context	Facilitating context: - Legal framework that clearly defines THB and enables swift prosecution of traffickers/exploiters - Institutional efforts/governmental actors across different levels engaging with the topic	Hindering context: - Weak legal framework that discourages successful prosecution of traffickers/exploiters - Lack of interest by key actors

Successful/failed cooperation	Successful cooperation: - Systematic rather than ad-hoc cooperation - Actors describe cooperation as useful and positive - Positive reference to achievements of cooperation in reports	Failed cooperation: - Actors describe failure/disinterest of others to cooperate
Clear/unclear coordination	Clear coordination: - Free & regular exchange of information between actors - Coordination plan assigning responsibilities & ensuring actors work together - a "leading actor" that takes facilitates coordination and information flow	Unclear coordination: - Lack of information exchange – "one hand does not know what the other does"
Challenges or problems in daily practice	- Actors/reports mentioning other issues not covered by other categories	
Budget constraints/unstable funding	- Actors losing funding - Actors/reports telling of financial restraints	

Table 2 – Data Sources & Participants

Law	Source
§ 233 "Human Trafficking for the purpose of work exploitation"	Strafgesetzbuch (German Criminal Code, StGB, 2005)
"Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung Schwarzarbeitsbekämpfungsgesetz SchwarzArbG" (Act to Combat Clandestine Employment)	Bundesgesetzblatt (Federal Law Gazette, BGBl, 2004)
Report	**Organization/Author**
"Actors against Trafficking for Labour Exploitation - Report on Cooperation between Stakeholders at the National Level in the countries of the Baltic Sea region to Address Trafficking for Labour Exploitation"	Council of the Baltic Sea States – Task Force Against Trafficking in Human Beings
"Bundeslagebild 2014" (Overview of the national situation)	Bundeskriminalamt (Federal Criminal Police Office)
"Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany"	Group of Experts on Action against Trafficking in Human Beings (GRETA)
"Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights"	European Union Agency for Fundamental Rights (FRA)
"Menschenhandel zum Zweck der Arbeitsausbeutung - Eine Auswertung staatsanwaltschaftlicher Ermittlungsakten und gerichtlicher Entscheidungen" (Human Trafficking for the purpose of labour exploitation – An analysis of state prosecution files and court decisions)	Bündnis gegen Menschenhandel zur Arbeitsausbeutung (Alliance Against Human Trafficking for Labour Exploitation)/Thielmann et al.
Interviewees	**Type of Organization**
Interviewee 1	City government
Interviewee 2	Trade union-related counselling center

Interviewee 3	Church-based NGO (working in Alliance Against Human Trafficking for Labour Exploitation)
Interviewee 4	Organization for political and social education linked to trade unions & adult education (working in Alliance Against Human Trafficking for Labour Exploitation)
Interviewee 5	Federal Ministry
Interviewee 6	Federal state-funded counselling centre
Interviewee 7	Trade union-related education organization

Table 3: Coding tree

Code	Subcode	Definition
THB		THB cases, sectors, forms
Cooperation		Cooperation between actors
Law enforcement	Police, LI (labour inspectorate), other	Policies, approaches, day to day activities of law enforcement
Jur	Prosecutors, court	Policies, approaches, day to day activities of courts/prosecutors
TU		Policies, approaches, day to day activities of trade unions
National Action Plan		References to national action plan or functions covered; national rapporteur
GE_TU_2, GE_GOV_5…		Actor talking about own work
Gov	Bund, Land, other	Policies, approaches, day to day activities of government on national/federal/other level
Legal, institutional, economical, other context		Relevant context to THB
Evaluation	Blame, challenge, other	Opinion/assessment of something
App labour		Labour law approach
App crim		Criminal law, THB law, victim protection, administrative approach (administrative authorities contribute to criminal law enforcement)
App to clarify		Not clearly distinguishable: criminal law or labour law
Awareness raising		Traditional awareness raising, addressing different areas: "demand" side: employers,

		producers, retailers/end consumers; "supply" side (victims, workers ...); general public, others
App preventative		Approaches that aim to prevent THB and exploitation (excluding awareness raising)
App smart	App design, app peer pressure, app market	"smart approaches", approaches like nudging, using market mechanisms or peer pressure to achieve desired behaviour
App demand oriented		Aims to influence employer, consumer, retailer
Logic		Ideas, values, logics behind approaches, measures, organization, institution
Catchphrase		A phrase that is often used or is stressed
NGO		Approaches, policies, day to day activities of that actor
Employer		employer / producer / retailer associations / representatives describes policies, approaches, measures, day to day practices of this actor
Employee		employee, worker associations/ representatives describes policies, approaches, measures, day to day practices of this actor

Consumer		describes policies, approaches, measures, day to day practices of this actor
Intermediaries		describes policies, approaches, measures, day to day practices intermediaries such as agencies
Other actors		describes policies, approaches, measures, day to day practices of this actor
Coordination		Activities of coordinating actor, actor identified as having coordinating factor