

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.3.2009  
COM(2009) 136 final

2009/0050 (CNS)

Proposal for a

**COUNCIL FRAMEWORK DECISION**

**on preventing and combating trafficking in human beings, and protecting victims,**

**repealing Framework Decision 2002/629/JHA**

{SEC(2009) 358}

{SEC(2009) 359}

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Grounds for and objectives of the proposal**

Trafficking in human beings is considered one of the most serious crimes worldwide, a gross violation of human rights, a modern form of slavery, and an extremely profitable business for organised crime. It consists of the recruitment, transfer or receipt of persons, carried out with coercive, deceptive or abusive means, for the purpose of exploitation including sexual or labour exploitation, forced labour, domestic servitude or other forms of exploitation including the removal of organs.

Therefore the response to trafficking must be robust, and aimed at preventing and prosecuting the crime, and protecting its victims.

#### **1.2. General context**

Several EU Member States are major countries of destination for trafficking in human beings flows coming from third countries. In addition, there is evidence of flows of trafficking within the EU. It is reasonable to estimate from the available figures that several hundred thousand people are trafficked into the EU area or within the EU area every year.

Social vulnerability is arguably the principal root cause of trafficking in human beings. Vulnerability derives from economic and social factors such as poverty, gender discrimination, armed conflicts, domestic violence, dysfunctional families, and personal circumstances such as age or health conditions or disabilities. Such vulnerability is used by international organised crime networks to facilitate migration and subsequently severely exploit people by use of force, threat, coercion, or various forms of abuse such as debt bondage. In fact the high level of profits generated is a major underlying driver. The demand for sexual services and cheap labour is a concurrent driver.

#### **1.3. Existing provisions in the area of the proposal**

The UN Convention on the Rights of the Child, adopted in 1989 seeks to protect children from all forms of sexual exploitation and sexual abuse. This obligation extends to sexual exploitation and abuse perpetrated against children in the context of trafficking in human beings.

In 2000, the UN adopted a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. The Protocol was the first comprehensive international instrument dealing with trafficking in human beings. As of March 2009, the Protocol has been ratified by 23 EU Member States, and the remaining 4 have signed it. The European Community signed and approved the Protocol.

The Council of Europe Convention on Action against Trafficking in Human Beings provides a comprehensive and coherent framework covering prevention, cooperation between different actors, protection of and assistance to victims, and an obligation to criminalise trafficking in human beings. Implementing such measures would lead to significant improvements. The

Convention has been ratified by 12 EU Member States. Another 13 have signed it and are going through the ratification process.

The Framework Decision (FD) on combating trafficking in human beings was adopted on 19 July 2002 as a response to a generally perceived need to address the serious criminal offence of trafficking in human beings at EU level. A report on the implementation of the FD was adopted by the Commission in May 2006.

Directive 2004/81/EC provides for assistance and residence status for victims who are third-country nationals. The Commission will report on the implementation of Directive 2004/81/EC in autumn 2009 and will consider appropriate measures to further reinforce the protection offered to victims by Member States.

#### **1.4. Consistency with the other policies and objectives of the Union**

The fight against all forms of gender-based violence including trafficking in human beings forms integral part of the commitment taken by the Commission in the Roadmap on Gender equality.<sup>1</sup> The fight against child trafficking is also included in the strategy on the rights of the child.<sup>2</sup> The objective of fighting trafficking in human beings and assisting victims is consistent with the regulation contained in Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings,<sup>3</sup> and Council Directive 2004/81/EC on residence permit,<sup>4</sup> which deals with immigration issues and only applies to third country nationals. All the provisions included in this Framework Decision apply in so far as the issue is not covered by the above mentioned Directive. The objective of fighting against trafficking in human beings is also consistent with Council Directive 2004/80/EC relating to compensation for crime victims which aims at facilitating access to compensation in cross-border situations,<sup>5</sup> and with Council Framework Decision 2008/841/JHA on the fight against organised crime.<sup>6</sup> Trafficking in human beings is included in the list of crimes which give rise to surrender pursuant a European arrest warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant.<sup>7</sup> The objectives stated above are fully consistent with these instruments, as well as with the Council of Europe Convention on action against Trafficking in Human beings and with the mandates of Europol and Eurojust.

Any action of the Union in this field must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union (EU Charter) and the Convention for the Protection of Human Rights and Fundamental

---

<sup>1</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, A roadmap for equality between women and men 2006-2010, {SEC(2006)275}, COM(2006)92 final.

<sup>2</sup> Communication from the Commission Towards an EU Strategy on the Rights of the Child {SEC(2006)888}, {SEC(2006) 889}, COM(2006) 367 final.

<sup>3</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), OJ L 82, 22.3.2001, p.1.

<sup>4</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with competent authorities, OJ L 261, 6.8.2004, p. 85

<sup>5</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

<sup>6</sup> OJ L 300, 11.11.2008, p. 42.

<sup>7</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002.

Freedoms (ECHR). Member States, when implementing Union law, must do so in accordance with these rights and principles.

This proposal was made subject to an in-depth scrutiny to make sure that its provisions are in full compatibility with fundamental rights and notably human dignity, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour, the rights of the child, right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties.

Particular attention was paid to Article 5(3) of the EU Charter which explicitly prohibits trafficking in human beings. In addition, Article 24 of the EU Charter was of importance, since many of the victims of trafficking in human beings are children. Provisions on protection and assistance to victims have a positive impact on fundamental rights. The right to be protected from slavery, forced labour and servitude has been acknowledged by the European Court of Human Rights. The right of the victim to accurate, impartial, effective, and quick investigation is also involved, and would be made effective by an increased recognition of the role of the victim in the criminal procedure.

A possible negative impact deriving from the increased role of the victim in criminal proceedings could accrue, if this strengthened role would be such as to endanger the defendant's procedural rights, in particular the right to a fair trial (Article 47 EU Charter) and the right of defence (Article 48 of EU Charter) However, the European Court of Human Rights has established clear principles to reconcile the respective rights of the defendant and the victim. Therefore full compatibility with defence rights has been ensured by a careful drafting of the legislative text, which is the basis for appropriate implementation by Member States.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Consultation of interested parties**

#### *2.1.1. Consultation methods, main sectors targeted and general profile of consulted parties*

Following the request from the Council for an evaluation of the implementation of the EU Plan, a questionnaire was circulated by the Commission in December 2007 among the Member States (MS). 23 MS, plus Norway, replied. The results fed into the Commission Working Document adopted on 17 October 2008.

Three consultative meetings were held with a view to drafting the impact assessment. The Group of Experts on Trafficking in Human Beings met on 2 and 3 October 2008, and after extensive discussion issued a written opinion. A consultative meeting with experts from different backgrounds including governments, law enforcement agencies, NGOs, international organisations and universities was held on 7 October 2008. The participants were subsequently invited to transmit written comments, and several experts did so. A meeting with Member States' representatives was held on 17 October 2008.

#### *2.1.2. Summary of views and how they have been taken into account*

- The European Commission's Group of Experts on Trafficking in Human Beings, in its written opinion, underlined as guiding principles the need for an adequate legal framework

in each country, the need to make human rights a paramount issue, to take a holistic, coordinated and integrated approach to link government policies on trafficking in human beings to migration policies, to respect children's rights, to promote research about trafficking in human beings and to monitor the impact of anti-trafficking policies.

- Many stakeholders agreed on the need for specific provisions aimed at strengthening investigation and prosecution. The crucial role of assistance measures was generally emphasised.
- The issue of introducing a specific obligation to criminalise clients who knowingly use sexual services from a trafficked person was controversial among stakeholders. Several MS pointed out that in any case such a provision should not be binding.

## **2.2. Collection and use of expertise**

There was no need for external expertise.

## **2.3. Impact assessment**

Various policy options have been examined as a means to achieve the objectives of preventing and combating trafficking in human beings more effectively, and better protecting victims.

- Policy option (1): No new EU action

The EU would take no action to combat trafficking in human beings, while Member States may continue the process of signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

- Policy Option (2): Non legislative measures

FD 2004/629/JHA would not be amended. Non-legislative measures could be put in place in the areas of victim support schemes, monitoring, prevention measures in countries of destination, prevention measures in countries of origin, training, and law enforcement cooperation.

- Policy option (3): New legislation on prosecution, victim support, prevention and monitoring

A new FD would be adopted, incorporating the provision of the existing FD, along with certain provisions of the CoE Convention and additional elements. In particular, the new FD would contain provisions in the areas of substantive criminal law, jurisdiction and prosecution, victims' rights in criminal proceedings, victim assistance, special protective measures for children, prevention, and monitoring.

- Policy option (4): New legislation (as in option 3) + non legislative measures (as in option 2)

- A new FD would be adopted, incorporating the existing FD and including new provisions. The new FD would be supplemented by non-legislative measures, and in particular those identified in option 2.

- Following the analysis of economic impacts, social impacts, and impacts on fundamental rights, options 3 and 4 present the best approach to the problem and should fully achieve the identified objectives. The preferred option would be option 4.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Summary of the proposed action**

The new FD, in addition to provisions in the current FD, would include the following new elements:

##### ***A Substantive criminal law provisions***

- Definition;
- Aggravating circumstances and penalties;
- Non application of sanctions to the victim.

##### ***B Jurisdiction and prosecution***

- Broader and more binding extraterritorial jurisdiction rule;
- Coordination of prosecution; such a provision may be superseded once the Proposal for a Framework Decision on conflicts of jurisdiction in criminal proceedings is adopted.<sup>8</sup>
- Investigative tools.

##### ***C Victims' rights in criminal proceedings***

- Special treatment aimed at preventing secondary victimisation;
- Protection on the basis of a risk assessment;
- Compensation, including access to existing funds.

##### ***D Victim support***

- Establishment of mechanisms for early identification and assistance of victims;
- Standard of assistance including access to necessary medical treatment, counselling, and psychological assistance;
- Special measures for children.

##### ***E Prevention***

- Action aimed at discouraging the demand for sexual services and cheap labour;

---

<sup>8</sup> Proposal for a Council Framework Decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings, tabled on 20 January 2009 by the Czech Republic, Poland, Slovenia, Slovakia, and Sweden. Council Document No 5208/09.

- Training;
- Criminalisation of users of services exacted from a person, with the knowledge that the person has been trafficked.

### ***F Monitoring***

- Establishment of National Rapporteurs or equivalent mechanisms.

### **3.2. Added value of the proposal, compared to the 2005 CoE Convention on action against trafficking in human beings**

The proposal builds upon the CoE Convention and adopts the same holistic approach including prevention, prosecution, protection of victims, and monitoring. Moreover, the proposal shows the following main elements of added value:

- New provisions envisaging specific treatments for vulnerable victims in criminal proceedings, aimed at preventing secondary victimisation (Article 9).
- Broader scope of the provision on non application of sanctions to victims for their involvement in unlawful activities, whatever illicit means have been used by traffickers (Article 6).
- Higher standard of assistance to victims, especially concerning medical treatment (Article 10).
- Broader and more binding extraterritorial jurisdiction rule, obliging Member States to prosecute nationals and habitual residents who have committed the crime of trafficking outside the territory of the Member State (Article 8).
- Precise level of penalties adapted to the severity of the offences (Article 3).
- In addition, the integration of provisions which have similar content into the EU *acquis* shows the advantages related to the stronger bond created by the EU legal order, namely the immediate entering into force, and the monitoring of implementation.

### **3.3. Legal basis**

Articles 29, 31(1)(e), 34(2)(b) TEU.

## **4. SUBSIDIARITY PRINCIPLE**

The objectives of the proposal cannot be sufficiently achieved by the Member States alone, for the following reasons.

The fight against trafficking in human beings requires coordinated efforts by Member States, as well as cooperation at an international level in order to achieve the aims. Differences in legal treatment in the different Member States hinder coordinated efforts and hamper international law enforcement and judicial cooperation.

Action by the European Union will better achieve the objectives of the proposal for the following reason.



The proposal will approximate Member States' substantive criminal law and rules on procedure in a more extensive way than the current Framework Decision. This will have a positive impact on international law enforcement and judicial cooperation, and protection and assistance given to victims. The proposal therefore complies with the subsidiarity principle.

#### **5. PROPORTIONALITY PRINCIPLE**

The proposal complies with the proportionality principle in that it is confined to the minimum required in order to achieve the stated objectives at European level and does not go beyond what is necessary for that purpose.

#### **6. CHOICE OF INSTRUMENTS**

Proposed instrument: Framework Decision.

Other means would not be adequate. In the fight against trafficking in human beings only a Framework Decision permits approximation of national legislation, and is necessary to improve international law enforcement and judicial cooperation.

#### **7. BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **8. ADDITIONAL INFORMATION**

##### **Repeal of existing legislation**

Adoption of the proposal will lead to the repeal of existing legislation.

Proposal for a

**COUNCIL FRAMEWORK DECISION**

**on preventing and combating trafficking in human beings, and protecting victims,**

**repealing Framework Decision 2002/629/JHA**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(1)(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,<sup>9</sup>

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed in the framework of organised crime, and a gross violation of human rights.
- (2) The European Union is committed to the prevention of and fight against trafficking in human beings, and to the protection of the rights of trafficked persons. For this purpose, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings,<sup>10</sup> and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01)<sup>11</sup> were adopted.
- (3) This Framework Decision adopts an integrated and holistic approach to the fight against trafficking in human beings. More rigorous prevention and prosecution, and protection of victims' rights, are major objectives of this Framework Decision. Children are more vulnerable and therefore at greater risk of falling victim to trafficking in human beings. All the provisions of this Framework Decision should be applied in the light of the best interests of the child, in accordance with the 1989 United Nations Convention on the Rights of the Child.<sup>12</sup>
- (4) The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations

---

<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ L 203, 1.8.2002, p. 1.

<sup>11</sup> OJ C 311, 9.12.2005, p. 1.

<sup>12</sup> United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

Convention against Transnational Organised Crime<sup>13</sup> and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings<sup>14</sup> are crucial steps in the process of enhancing international cooperation against trafficking in human beings. In order to enhance the process of approximation of legislation, this Framework Decision adopts the broad definition of the crime included in the above mentioned UN and CoE instruments. The definition also covers trafficking in human beings for the purpose of the removal of organs, which can be linked with organ trafficking and constitutes a serious violation of human dignity and physical integrity.

- (5) Penalties should be effective, dissuasive, and proportionate to the gravity of the crime, also with a view to making investigation and prosecution more effective, and improving international law enforcement and judicial cooperation. Aggravating circumstances should take into account the need to protect particularly vulnerable victims including all child victims and adults who are vulnerable because of personal circumstances, or physical or psychological consequences of the crime.
- (6) Victims should be protected from prosecution and punishment, following a decision of the competent authority, for unlawful activities they have been involved in as a direct consequence of being subjected to any of the illicit means used by traffickers, such as violations of immigration laws, the use of false documents or offences envisaged by prostitution laws. An additional aim of such protection is to encourage them to act as witnesses in criminal proceedings.
- (7) While the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)<sup>15</sup> establishes a set of victims' rights in criminal proceedings including the right to protection and compensation, victims of trafficking in human beings are vulnerable and therefore specific measures are necessary with regard to them. Such victims, who bear the consequences of the criminal activities related to trafficking in human beings including the removal of organs, should be protected from intimidation and from secondary victimisation, that is to say further victimisation or trauma deriving from the way the criminal procedure is carried out. Moreover, specific means to ensure effective protection and compensation should be established.
- (8) Victims need to be able to exercise their rights effectively. Therefore appropriate assistance should be available to victims before, during and after criminal proceedings. This Framework Decision establishes an obligation upon Member States to provide any victim with assistance, which should be sufficient to enable them to recover.
- (9) While Directive 2004/81/EC provides for the issue of a resident permit to victims of trafficking in human beings who are third country nationals, and Directive 2004/38/EC regulates the exercise of the right to move and reside freely in the territory of Member States by citizens of the Union and their families, including protection from expulsion, this Framework Decision establishes specific protective measures for any victim of

---

<sup>13</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, made in Palermo, 2000.

<sup>14</sup> Council of Europe Convention on Action against Trafficking in Human Beings, made in Warsaw, 16.V.2005, Council of Europe Treaty Series N. 197.

<sup>15</sup> OJ L 82, 22.3.2001, p. 1.

trafficking in human beings, and does not deal with the conditions of their residence in the territory of Member States or any other issue falling within the Community competence.

- (10) In addition to measures available to adults, each Member State should ensure that specific protective measures are available to child victims.
- (11) Each Member State should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage the demand that fosters all forms of exploitation by means of research, information, awareness raising, and education. In such initiatives each Member State should adopt a gender perspective and a child-rights approach.
- (12) [Directive 2009/.../EC of the European Parliament and of the Council of ... providing for minimum standards on sanctions against employers of illegally staying third-country nationals] provides for penalties for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that she/he is a victim of such trafficking. In addition to that, Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that she/he has been trafficked. This further criminalisation could include employers of legally staying third-country nationals and EU nationals, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.
- (13) National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established in order to collect data and carry out assessments on trafficking in human beings trends, measure the results of anti-trafficking policy, and give advice to governments and parliaments on the development of action against trafficking in human beings. Such mechanisms and measures are essential in order to establish effective anti-trafficking policy.
- (14) Since the objective of this Framework Decision, namely to fight against trafficking in human beings, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to Article 2 of the Treaty on European Union and as set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary to achieve that objective.
- (15) This Framework Decision respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, prohibition of slavery, forced labour and trafficking in human beings, prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Framework Decision seeks to ensure full respect for these rights and principles.

HAS ADOPTED THIS FRAMEWORK DECISION:

*Article 1*

**Offences concerning trafficking in human beings**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, exploitation of activities associated with begging or of unlawful activities, or the removal of organs.
4. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking in human beings offence even if none of the means set forth in paragraph 1 have been used
6. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.

*Article 2*

**Instigation, aiding, abetting and attempt**

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

*Article 3*

**Penalties and aggravating circumstances**

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by a maximum term of imprisonment of at least six years.

2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty of not less than ten years where it has been committed in any of the following circumstances:
  - (a) the offence was committed by an official in the performance of her/his duties;
  - (b) the offence was committed against a victim who was particularly vulnerable.
  - (d) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA.<sup>16</sup>
3. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty of not less than twelve years where it has been committed in any of the following circumstances:
  - (a) the offence endangered the life of the victims;
  - (b) the offence was committed by use of serious violence or has caused particularly serious harm to the victim.

#### *Article 4*

#### **Liability of legal persons**

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on
  - (a) a power of representation of the legal person, or
  - (b) an authority to take decisions on behalf of the legal person, or
  - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offences referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 1 and 2.
4. For the purpose of this Framework Decision 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

---

<sup>16</sup> OJ L 300, 11.11.2008, p. 42.

## *Article 5*

### **Sanctions on legal persons**

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:
  - (a) exclusion from entitlement to public benefits or aid;
  - (b) temporary or permanent disqualification from the practice of commercial activities;
  - (c) placing under judicial supervision;
  - (d) judicial winding-up;
  - (e) temporary or permanent closure of establishments which have been used for committing the offence.

## *Article 6*

### **Non application of sanctions to the victim**

Each Member State shall provide for the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in unlawful activities as a direct consequence of being subjected to any of the illicit means referred to in Articles 1 and 2.

## *Article 7*

### **Investigation and prosecution**

1. Each Member State shall ensure that investigation into or prosecution of offences referred to in Articles 1 and 2 is not be dependent on the report or accusation made by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Each Member State shall take the necessary measures to enable the prosecution of an offence referred to in Articles 1 and 2 for a sufficient period of time after the victim has reached the age of majority to an extent commensurate with the gravity of the crime concerned.
3. Each Member State shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting offences referred to in Articles 1 and 2 are trained accordingly.
4. Each Member State shall take the necessary measures to ensure that investigative tools which are used in organised crime cases such as phone tapping, electronic

surveillance, and financial investigation are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 1 and 2.

#### *Article 8*

### **Jurisdiction and coordination of prosecution**

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:
  - (a) the offence is committed in whole or in part within its territory; or
  - (b) the offender is one of its nationals or has his or her habitual residence in its territory; or
  - (c) the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory; or
  - (d) the offence is committed for the benefit of a legal person established in the territory of that Member State.
2. For the prosecution of an offence referred to in Articles 1 and 2 committed outside the territory of the Member State concerned, as regards paragraph 1(b), each Member State shall take the necessary measures to ensure that the establishment of its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.
3. For the prosecution of an offence referred to in Articles 1 and 2 committed outside the territory of the Member State concerned, as regards paragraph 1(b), each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.
4. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to Eurojust or any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. In deciding which Member State will prosecute the offender, special account shall be taken of the following factors:
  - the Member State is that in the territory of which the acts were committed,
  - the Member State is that of which the perpetrator is a national or resident,
  - the Member State is the Member State of origin of the victim,
  - the Member State is that in the territory of which the perpetrator was found.



## Article 9

### **Protection of vulnerable victims of trafficking in human beings in criminal proceedings**

1. Children who are victims of an offence referred to in Articles 1 and 2 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.
2. Any adult person who is a victim of an offence referred to in Articles 1 and 2 shall be considered as a particularly vulnerable victim pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA, according to an individual assessment by the competent authorities, which shall take into account their age, maturity, health, pregnancy, disability, other personal or social conditions, and the physical or psychological consequences of the criminal activity to which they have been subjected.
3. Without prejudice to the rights of the defence, each Member State shall ensure that particularly vulnerable victims, in addition to the rights set forth in Framework Decision 2001/220, shall be entitled to specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national legislation:
  - (a) visual contact between victims and offenders including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of audio-video facilities;
  - (b) questioning concerning private life which is not absolutely necessary to prove the facts which are at the core of the indictment;
  - (c) the giving of evidence in open court;
  - (d) unnecessary repetition of interviews during investigation, prosecution and trial.
4. Each Member State shall allow, where appropriate, that the identity of a particularly vulnerable victim acting as a witness is not disclosed.
5. Each Member State shall ensure that victims of trafficking in human beings receive suitable protection on the basis of an individual risk assessment, and have access to witness protection programmes if appropriate, in accordance with the grounds defined by national legislation.
6. Each Member State shall ensure that particularly vulnerable victims have in the course of criminal proceedings access to free legal counselling, and to legal representation on the same grounds envisaged by national legislation for the defendant, including for the purpose of claiming compensation. This paragraph shall be without prejudice to the application of Article 11 when the victim is a minor.

## *Article 10*

### **Assistance to victims**

1. Each Member State shall ensure that assistance is provided to victims before, during and after criminal proceedings in order to enable them to exercise the rights set forth in Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, and in this Framework Decision.
2. A person shall be treated as a victim as soon as the competent authorities have an indication that she/he might have been subjected to an offence referred to in Articles 1 and 2.
3. Each Member State shall take the necessary measures to establish at national and local level appropriate mechanisms aimed at early identification and support to victims, in cooperation with relevant support organisations.
4. Victims shall be granted the necessary assistance and support by Member States in the framework of criminal proceedings, to enable them to recover and escape from the influence of the perpetrators, including by providing them with secure accommodation and material assistance, necessary medical treatment including psychological assistance, counselling and information, assistance to enable their rights and interests to be presented and considered in criminal proceedings, and translation and interpretation services where appropriate. Member States shall attend to the special needs of the most vulnerable.

## *Article 11*

### **Special protective measures for children**

Each Member State shall apply Articles 14 and 15 of Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.

## *Article 12*

### **Prevention**

1. Each Member State shall seek to discourage the demand that fosters all forms of exploitation.
2. Each Member State shall promote regular training for officials likely to come into contact with victims and potential victims, including front-line police officers, aimed at enabling them to identify victims and potential victims, and deal with particularly vulnerable victims referred to in Article 9(1) and 9(2) of this Framework Decision.
3. Without prejudice to Community law, each Member State shall consider taking measures to establish as a criminal offence the use of services which are the object of exploitation as referred to in Articles 1 and 2 with the knowledge that the person is a victim of an offence referred to in Articles 1 and 2.

*Article 13*

**Monitoring**

Member States shall take the necessary measures to establish National Rapporteurs or other equivalent mechanisms. The tasks of such mechanisms shall include, at a minimum, monitoring of the implementation of the measures envisaged in this Framework Decision.

*Article 14*

**Territorial scope**

This Framework Decision shall apply to Gibraltar.

*Article 15*

**Repeal of Framework Decision 2002/629/JHA**

Framework Decision 2002/629/JHA on combating trafficking in human beings is repealed.

*Article 16*

**Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision by [two years from adoption].
2. By [two years from adoption], Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by [four years from adoption] at the latest, on the basis of a report reflecting this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

*Article 17*

**Entry into force**

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*