

## Proposal for a Council Framework Decision on combating trafficking in human beings

(2001/C 62 E/24)

COM(2000) 854 final/2 — 2001/0024(CNS)

(Submitted by the Commission on 22 January 2001)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice<sup>(1)</sup>, the Tampere European Council on 15-16 October 1999, the Santa Maria da Feira European Council on 19-20 June 2000, the Commission in the Scoreboard<sup>(2)</sup> and the European Parliament in its Resolution of 19 May 2000<sup>(3)</sup> indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.
- (2) The Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and the sexual exploitation of children<sup>(4)</sup> needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.
- (3) Trafficking in human beings constitute serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.
- (4) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union.

<sup>(1)</sup> OJ C 19, 23.1.1999.

<sup>(2)</sup> COM(2000) 167 final, p. 2.4, Management of migration flows and p. 4.3 Fight against certain forms of crime.

<sup>(3)</sup> A5-0127/2000.

<sup>(4)</sup> OJ L 63, 4.3.1997.

(5) It is necessary that the serious criminal offence trafficking in human beings be addressed by a comprehensive approach in which constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, form an integral part together with the widest possible judicial cooperation; in accordance with the principles of subsidiarity and proportionality this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(6) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as the 98/699/JHA Joint Action<sup>(5)</sup> on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime and the 98/733/JHA Joint Action<sup>(6)</sup> on making it a criminal offence to participate in a criminal organisation.

(7) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted by the Council such as the 96/700/JHA Joint Action<sup>(7)</sup> establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action<sup>(8)</sup> extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC<sup>(9)</sup> on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA<sup>(10)</sup> on the creation of a European Judicial Network, the Joint Action 96/277/JHA<sup>(11)</sup>, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union and the Joint Action 98/427/JHA<sup>(12)</sup> on good practice in mutual legal assistance in criminal matters,

<sup>(5)</sup> OJ L 333, 9.12.1998, p. 1.

<sup>(6)</sup> OJ L 351, 29.12.1998, p. 1.

<sup>(7)</sup> OJ L 322, 12.12.1996.

<sup>(8)</sup> OJ L 342, 31.12.1996.

<sup>(9)</sup> OJ L 34, 9.2.2000.

<sup>(10)</sup> OJ L 191, 7.7.1998, p. 4.

<sup>(11)</sup> OJ L 105, 27.4.1996.

<sup>(12)</sup> OJ L 191, 7.7.1998.

HAS ADOPTED THIS FRAMEWORK DECISION:

#### Article 1

### Offences concerning trafficking in human beings for the purpose of labour exploitation

Each Member State shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the fundamental rights of that person have been and continue to be suppressed for the purpose of exploiting him or her in the production of goods or provision of services in infringement of labour standards governing working conditions, salaries and health and safety, and:

- (a) use is made of coercion, force or threats, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is a misuse of authority, influence or pressure, or
- (d) there is another form of abuse.

#### Article 2

### Offences concerning trafficking in human beings for the purpose of sexual exploitation

Each Member State shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the purpose is to exploit him or her in prostitution or in pornographic performances or in production of pornographic material, and:

- (a) use is made of coercion, force or threats, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is a misuse of authority, influence or pressure, or
- (d) there is another form of abuse.

#### Article 3

### 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 Articles 1 and 2 is punishable.

#### Article 4

### Penalties and aggravating circumstances

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1, 2, and 3 is punishable by effective, proportionate and dissuasive penalties,

including by terms of imprisonment with a maximum penalty that is not less than six years.

2. Without prejudice to additional definitions in national legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1, 2, and 3 is punishable by terms of imprisonment with a maximum penalty that is not less than ten years when:

- it involves particular ruthlessness, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

#### Article 5

### 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 Article 1, 2 and 3, 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. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1, 2, and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1, 2, and 3.

4. For the purpose of this Framework Decision legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

#### Article 6

### Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5 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, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

#### Article 7

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

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1, 2, and 3 where:
  - (a) the offence is committed in whole or in part within its territory, or
  - (b) the offender is one of its nationals, or
  - (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.
2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.
3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1, 2, and 3 when it is committed by its own nationals outside its territory.
4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

#### Article 8

##### **Victims**

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given adequate legal protection and standing in judicial proceedings. In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage for a victim.

#### Article 9

##### **Cooperation between Member States**

1. In accordance with the applicable conventions, multi-lateral or bilateral agreements or arrangements, Member States shall afford each other mutual assistance to the widest extent possible in respect of judicial proceedings relating to the offences provided for in this Framework Decision.
2. Where several Member States have jurisdiction over the offences envisaged by this Framework Decision, those States shall consult one another with a view to coordinating their action in order to prosecute effectively. Appropriate use shall be made of existing cooperation mechanisms, such as the liaison magistrates and the European Judicial Network.
3. For the purpose of exchange of information relating to the offences referred to in Articles 1, 2, and 3, Member States shall establish operational points of contact or make use of existing cooperation mechanisms. In particular, Member States shall ensure that Europol, within the limits of its mandate, is fully involved.
4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information pertaining to trafficking in human beings. The General Secretariat shall inform all other Member States about the appointed points of contact.

#### Article 10

##### **Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision on 31 December 2002 at the latest.
2. By the same date, the 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 30 June 2004 at the latest, on the basis of a report established on the basis of 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 11

##### **Repeal of the 97/154/JHA Joint Action**

The Joint Action of 24 February adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children 1997 is repealed by this Framework Decision.

#### Article 12

##### **Entry into force**

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