

Preventing and combating trafficking in human beings, and protecting victims

2010/0065(COD) - 29/03/2010 - Legislative proposal

PURPOSE: to establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings and to repeal [Framework Decision 2002/629/JHA](#) on the same issue.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: 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 is reasonable to estimate from the available figures that every year several hundred thousand people are trafficked into the EU or within the EU area.

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 16 EU Member States. Another 10 have signed it and are going through the ratification process.

Framework Decision 2002/629/EC on combating trafficking in human beings was adopted in 2002 as a response to a generally perceived need to address the serious criminal offence of trafficking in human beings at EU level. In order to tackle recent developments in the phenomenon of trafficking in human beings, the proposed Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation.

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. It is necessary to repeal the 2002 text.

It should be noted that this proposal builds on a Commission [proposal](#) made on 25/03/2009 aiming to repeal the 2002 Framework Decision which has lapsed following the entry into force of the Treaty on the Functioning of the EU (TFEU).

IMPACT ASSESSMENT: various policy options were examined in connection with the previous proposal for a Framework Decision of 25 March 2009 with a view to preventing and combating trafficking in human beings more effectively, and better protecting victims. This is valid for the current proposal.

- Option 1: no new EU action.
- Option 2: non legislative measures: Framework Decision 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.
- Option 3: new legislation on prosecution, victim support, prevention and monitoring. This would incorporate the provision of the existing Framework Directive, along with certain provisions of the Council of Europe's Convention and additional elements, particularly 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.
- Option 4: new legislation (as in option 3) + non legislative measures (as in option 2). A new legislative act would be adopted, incorporating the existing Framework Directive and including new provisions. The new legislative act 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 is option 4.

LEGAL BASIS: Article 82(2) and Article 83(1) of the Treaty on the Functioning of the European Union. 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 EU will better achieve the objectives of the proposal, which will approximate Member States' substantive criminal law and procedural rules more extensively than the current Framework Decision. This will have a positive impact on international law enforcement and judicial cooperation, and on the protection and assistance given to victims. The proposal therefore complies with the subsidiarity principle.

CONTENT: the proposal aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims. The new directive, in addition to provisions in the current Framework Decision, would include the following new elements:

Substantive criminal law provisions: these comprise

- definition;
- aggravating circumstances and penalties: the proposal sets out precise level of penalties adapted to the severity of the offences. An offence under this legislation is punishable by penalties of a maximum of at least five years of imprisonment, and ten years for aggravating circumstances;
- non application of penalties to the victim: Member States must provide for the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in text.

Jurisdiction and prosecution

- 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;
- investigative tools- those responsible for investigating such offences should have access to the investigative tools used in organised crime or other serious crime cases such as interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigations.

Victim assistance and 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 child victims of trafficking.

Protection of victims in criminal proceedings

- special treatment aimed at preventing secondary victimisation;
- protection on the basis of a risk assessment;
- legal counselling and representation, including for the purpose of claiming compensation.

Prevention

- action aimed at discouraging the demand for sexual services and cheap labour;
- regular training for officials likely to come into contact with victims and potential victims;
- criminalisation of users of services exacted from a person, when the user knows that the person has been trafficked.

Monitoring: establishment of National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities.

Territorial scope: the adoption of the proposal will be addressed to the Member States. The application of the resulting Directive to the United Kingdom, Ireland and Denmark will be determined in accordance with the provisions of Protocols (No 21) and (No 22) annexed to the Treaty on the functioning of the European Union.

BUDGETARY IMPLICATION: the proposal has no implication for the Community budget.