Preventing and combating trafficking in human beings, and protecting victims

2010/0065(COD) - 14/12/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 643 votes to 10, with 14 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.

It adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Replacement of Framework Decision 2002/629/JHA: this Directive aims to amend and expand the provisions of Framework Decision 2002/629/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety.

Gender perspective: the text stresses the gender perspective in its common provisions. It states that the Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender specific where appropriate. The "push" and "pull" factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.

Penalties: Member States shall take the necessary measures to ensure that an offence is punishable by penalties of a maximum of at least ten years of imprisonment where it has been committed in any of the following circumstances: (i) the offence was committed against a victim who was particularly vulnerable (including child victims); (ii) the offence deliberately or by gross negligence endangered the life of the victim; (iii) the offence was committed by use of serious violence or has caused particularly serious harm to the victim.

Seizure and Confiscation: a new clause states that competent authorities must be entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in the Directive.

Non-prosecution or non-application of penalties to the victim: competent national authorities must also be entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts within the scope of the text.

Assistance and support for victims of trafficking in human beings: this must not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution and trial, without prejudice to Directive 2004/81/EC or similar national rules.

The compromise text states that assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victims' refusal to assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

Assistance and support to child victims: in the application of the Directive the child?s best interests shall be a primary consideration. There must be specific actions to assist and support child victims of trafficking in human beings, with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and children of victims, who are given assistance and support. They must appoint a guardian or a representative for the child victim from the moment he/she is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interests between them and the child victim, precluded from ensuring the child?s best interest and/or from representing the child.

The resolution makes special provision for unaccompanied child victims of trafficking in human beings as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration in the country of origin or the country of return, integration in the host society, granting of international protection status or granting of other status according to national law of the Member States.

Compensation to victims: victims of trafficking in human beings must have access to existing schemes of compensation to victims of violent crimes of intent.

National Rapporteurs or equivalent mechanisms: the tasks of such persons must include the gathering of statistics. National Rapporteurs or equivalent mechanisms are already constituted in an informal Union Network established by the Council Conclusions of 4 June 2009. An Anti-Trafficking Coordinator would take part in the works of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the National Rapporteurs or equivalent mechanisms.

Coordination of the Union strategy on trafficking in human beings: in order to contribute to a coordinated and consolidated strategy of the European Union against trafficking in human beings, Member States shall facilitate the tasks of an Anti-Trafficking Coordinator (ATC), and in particular, transmit to the ATC the information required by the Directive, on the basis of which the ATC shall contribute to a report by the Commission every two years on the progress made in the fight against trafficking in human beings.

Coordination of investigations: law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including sharing of information and sharing of best practice, as well as continued open dialogue between police, judicial and financial authorities of the Member States is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting up of joint investigation teams as well as by the implementation of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings.

Reporting: the Commission shall submit a report:

- two years from the deadline for transposition, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive;
- three years from the deadline for transposition, assessing the impact of existing national law criminalising the users of services which are the objects of exploitation of trafficking in human beings on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.