Preventing and combating trafficking in human beings, and protecting victims

2010/0065(COD) - 05/04/2011 - Final act

PURPOSE: to repeal and replace Framework Decision 2002/629/JHA on combating trafficking in human beings and the fight against this phenomenon as well as the protection of victims.

LEGISLATIVE ACT: Directive 2011/36/EC of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

CONTENT: at first reading, the European Parliament and the Council adopted a Directive on the fight against trafficking in human beings. The Council adopted EU wide minimum rules concerning the definition of criminal offences and the level of sanctions in the area of trafficking in human beings. The new rules also strengthen the prevention of the crime and the protection of victims of trafficking in human beings. The new directive replaces Framework Decision 2002/629/JHA.

The new directive also constitutes the first agreement between the Council and the European Parliament in the area of substantive criminal law after the entry into force of the

Lisbon Treaty.

Subject matter: this Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Offences concerning trafficking in human beings: according to the Directive, the following intentional acts are punishable: the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

When the conduct involves a child (person below 18 years of age) it shall be a punishable offence of trafficking in human beings even if none of the means set forth above has been used.

Incitement, aiding and abetting, and attempt: Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence is punishable.

Penalties: an offence shall be punishable by a maximum penalty of at least five years of imprisonment. However, in the following circumstances Member States shall take the necessary measures to ensure that an offence shall be punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

- was committed against a victim who was particularly vulnerable (a child);
- was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA on the fight against organised crime;
- deliberately or by gross negligence endangered the life of the victim; or
- was committed by use of serious violence or has caused particularly serious harm to the victim.

Member States shall take the necessary measures to ensure that the fact that an offence was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

Liability of legal persons: Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences 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. Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences concerned.

Seizure and confiscation: Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences.

Non-prosecution of victims: the text also includes a provision which will allow national authorities not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit.

Investigation and prosecution: investigation into or prosecution of offences referred to in this Directive is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence for a sufficient period of time after the victim has reached the age of majority.

Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences are trained accordingly and are able to use effective investigative tools, such as those which are used in organised crime or other serious crime cases.

Jurisdiction: each Member State will have to investigate and prosecute offences committed in whole or in part within its territory or committed by one of its national, even outside of its territory. Member States can chose to go beyond that basic rule by establishing further jurisdiction

over an offence committed outside of its territory e.g. where the offence is committed against one of their nationals or against a person who has his or her habitual residence in the territory of that Member State. This is also possible where the offender has his or her habitual residence in the territory of that Member State.

Assistance and support for victims of trafficking in human beings: Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in this Directive. Granting of assistance and support for a victim are not made conditional on the victim?s willingness to cooperate in the criminal investigation, prosecution or trial. The assistance and support measures shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims? subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Protection of victims of trafficking in human beings in criminal investigation and proceedings: the protection measures shall apply in addition to the rights set out in Framework Decision 2001/220/JHA. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate. Without prejudice to the rights of the defence, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, the following: (a) unnecessary repetition of interviews during investigation, prosecution or trial; (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies; (c) the giving of evidence in open court; and (d) unnecessary questioning concerning the victim?s private life.

Assistance, support, protection and compensation for child victims: child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child?s best interests shall be a primary consideration. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.

Member states shall ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise their rights on the standing of victims in criminal proceedings.

Additional provisions are set out for child victims, such as physical and psycho-social assistance and the possibility to appoint a guardian or a representative for a non-accompanied the child victim.

Protection measures include access to legal without delay to legal counselling and legal representation as well as possible access to witness protection programmes. Child victims should benefit from a number of additional measures including setting conditions for the interviews of the child during the proceedings. The child should, e.g., be interviewed in premises designed or adapted for this purpose, by or through trained professionals and, if possible, by the same persons for all interviews necessary. Member States will also have to ensure that victims of trafficking in human beings have access to existing schemes on compensation to victims of violent intentional crimes.

Compensation to victims: Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Prevention: prevention measures to be taken by Member States include:

- information and awareness raising campaigns to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings;
- intensifying research on the subject;
- promoting regular training for officials likely to come into contact with victims and potential victims of trafficking in human beings.

Member States shall cooperate with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

National rapporteurs or equivalent mechanisms: Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Coordination of the Union strategy against trafficking in human beings: in order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information provided by ational rapporteurs or equivalent mechanisms, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings.

Reporting: the Commission shall:

- by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive;
- by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use 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.

ENTRY INTO FORCE: 15.04.2011. This Directive replaces and repeals Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

TRANSPOSITION: 06.04.2013.

APPLICATION: the Directive shall apply to all the Member States except Denmark and the United Kingdom. The latter might still use an opt-in to participate in the new rules at a later stage.