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REPORT

on the proposal for a Council framework decision on combating trafficking in human beings
(COM(2000) 854 – C5-0042/2001 – 2001/0024(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Eva Klamt

Draftsman(*):

Marianne Eriksson, Committee on Women's Rights and Equal Opportunities

(*) Enhanced Hughes procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Enhanced Hughes procedure

PROCEDURAL PAGE

By letter of 7 February 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the proposal for a Council framework decision on combating trafficking in human beings (COM(2000) 854 - 2001/0024 (CNS)).

At the sitting of 12 February 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0042/2001).

At the sitting of 15 March 2001 the President of Parliament announced that the Committee on Women's Rights and Equal Opportunities, which had been asked for its opinion, would be involved in drawing up the report under the enhanced Hughes procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Eva Klamt rapporteur at its meeting of 27 February 2001.

The committee considered the Commission proposal and draft report at its meetings of 20 March, 24 April and 29 May 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Eva Klamt, rapporteur; Mary Elizabeth Banotti, Alima Boumediene-Thiery, Marco Cappato, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Michael Cashman), Ozan Ceyhun, Carlos Coelho, Giuseppe Di Lello Finuoli, Marianne Eriksson (for Fodé Sylla pursuant to Rule 162(2)), Pernille Frahm, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Gianni Vattimo and Jan-Kees Wiebenga.

The opinion of the Committee on Women's Rights and Equal Opportunities is attached; the Committee on Employment and Social Affairs decided on 15 February 2001 not to deliver an opinion.

The report was tabled on 30 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council framework decision on combating trafficking in human beings (COM(2000) 854 – C5-0042/2001 – 2001/0024(CNS))

The proposal is amended as follows:

Text proposed by the Commission ¹	Amendments by Parliament
Proposal for a Council Framework Decision on combating trafficking in human beings	<p>Amendment 1</p> <p>Title</p> <p>Proposal for a Council Framework Decision on combating trafficking in human beings <i>for the purpose of sexual exploitation and labour exploitation</i></p>

Justification

It is important to clarify that the aim of the present Framework Decision is trafficking in human beings for specific purposes, and that it does not aim to deal with issues concerning refugees in a broader context.

Amendment 2 Recital –1 (new)

(-1) Article 5(3) of the Charter of Fundamental Rights of the Union, adopted on 7 December 2001¹, expressly prohibits trafficking in human beings.

¹ *OJ C 364, 18.12.2000, p. 1.*

Justification

The Charter of Fundamental Rights of the European Union consolidates in a single text for the first time all the civil, political, economic and social rights of everyone living within the territory of the Union. The express prohibition of trafficking in human beings is therefore

¹ OJ C 62E, 27.12.2001, p. 324.

particularly welcome, especially in view of the possible incorporation of the Charter in the Treaty.

Amendment 3
Recital 3

(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;

(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, ***where poverty, lack of education and of professional opportunities are important causes of vulnerability***, as well as the use of violence, threats, debt bondage and coercion ***and all other forms of abuse, irrespective of the individual's consent***;

Justification

It should be stressed that poverty, lack of education and of professional opportunities are among the main causes for falling into the terrible trap of trafficking for sexual and labour exploitation. It is not easy to determine where free choice ends and coercion begins. Victims are victims and they should not be required to prove or disprove that they gave their consent in situations where they are under the domination of others. Even if a person wishes to emigrate in order to find work or is in a vulnerable situation which restricts his or her freedom of choice, that does not mean that he or she consents to violence or abuse of any kind.

Amendment 4
Recital 3a (new)

(3a) The European Parliament condemns trafficking in human beings in its resolutions of 14 April 1989 on the exploitation of prostitutes and the traffic in human beings¹, 16 September 1993 on trade in women², 18 January 1996 on trafficking in human beings³ and in its resolution of 19 May 2000⁴ on the Commission's communication 'Further

actions in the fight against trafficking in women' (COM(1998) 726).

¹ *OJ C 120, 16.5.1989, p. 352.*

² *OJ C 268, 4.10.1993, p. 141.*

³ *OJ C 32, 5.2.1996, p. 88.*

⁴ *A5-127/2000.*

Justification

The European Parliament's contribution to combating trafficking in human beings has created greater public awareness of the problem and should be acknowledged.

Amendment 5
Recital 3b (new)

(3b) The UN optional protocol on trafficking in human beings represents a decisive step towards international cooperation in this field.

Justification

As various parts of the UN Protocol have been incorporated in the text, it should at least be acknowledged.

Amendment 6
Recital 3c (new)

Due distinction must be made between trafficking in human beings, which by its very definition contains an element of coercion, exploitation and movements against the individual's will, and non-profit facilitation of unauthorised entry.

Whilst non-profit facilitation of unauthorised entry must remain outside the scope of this Framework Decision, the problems involved must be addressed and account taken of the forthcoming initiative from the Council concerning the

strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence.

Justification

The distinction between trafficking in human beings and facilitation of unauthorised entry, commonly termed 'smuggling', is artificial. 'Smuggling' is widely understood to be voluntary migration on the part of an individual. Nevertheless, this does not necessarily preclude exploitation and suffering. This must be acknowledged. However, in the interests of clarity, it must be addressed in a separate legislative instrument.

Amendment 7
Recital 3d (new)

(3d) Women and children are more vulnerable and are therefore at greater risk of falling victim to trafficking.

Justification

The vulnerability of women and children must be mentioned in relation to these issues.

Amendment 8
Recital 7

(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 establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA on the creation of a European Judicial Network, the Joint Action 96/277/JHA, concerning a framework for the exchange of liaison

(7) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings **and is the necessary legal complement to** the instruments adopted by the Council such as the 96/700/JHA Joint Action establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA on the creation of a European Judicial Network, the Joint Action 96/277/JHA, concerning a framework for the

magistrates to improve judicial co-operation between the Member States of the European Union and the Joint Action 98/427/JHA on good practice in mutual legal assistance in criminal matters;

exchange of liaison magistrates to improve judicial co-operation between the Member States of the European Union and the Joint Action 98/427/JHA on good practice in mutual legal assistance in criminal matters;

Justification

Harmonisation of a number of criminal provisions is clearly in a different category from the other instruments.

Amendment 9

Article 1, introductory paragraph

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:

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 ***legally classed as a criminal offence***, where the fundamental rights of that person have been and/or 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:

Justification

It is important for trafficking for the purpose of labour exploitation to be regarded as a crime and not just as an administrative misdemeanour and, consequently, for it to be punished as such. Some of the most common forms of abuse and pressure which occur in the trafficking of human beings should also be spelt out.

Amendment 10
Article 1, introduction, sentence 2 (new)

Exploitation includes as a minimum forced labour or forced servitude, slavery or practices akin to slavery, or bondage. In addition, one of the following conditions must be met:

Justification

Exploitation occurs whenever fundamental rights are suppressed; there is no need for such suppression to be continuous. The term 'exploitation' is clarified with the aid of definitions taken from the additional UN Protocol on trafficking in human beings.

Amendment 11
Article 1 (b)

(b) use of made of deceit or fraud or

(b) use is made of ***inducement***, deceit or fraud, or

Justification

The act of inducing a person to submit to exploitation must be punished.

Amendment 12
Article 1 (c)

(c) there is a misuse of authority, influence or pressure, or

(c) there is a misuse of authority, ***abuse of a situation of vulnerability*** influence or

Justification

Abuse of a victim's situation of vulnerability is part and parcel of trafficking in human beings.

This concept is taken from the definition of trafficking in human beings which is contained in the UN Convention on organised transnational crime and the additional Protocol thereto which concerns action to combat trafficking in human beings (particularly women and children) and which was adopted in Palermo in December 2000. A victim's 'situation of vulnerability' should be understood to mean any kind of vulnerability - psychological, emotional, social or economic.

Amendment 13
Article 1 (d)

(d) there is another form of abuse.

(d) there is another form of abuse, ***in particular the exploitation of extreme helplessness and the provision or acceptance of payments or benefits in order to secure the consent of a person who has power over another person.***

Justification

The words 'another form of abuse' should be defined more closely through the inclusion of the examples contained in the UN additional Protocol on trafficking in human beings.

Amendment 14
Article 1(1a) (new)

Assistance given on humanitarian grounds to persons not in possession of the proper papers who are seeking entry and residence shall be explicitly excluded from the provisions of this Framework Decision.

Justification

It would be particularly regrettable if the provisions of this Framework Decision were to be misused for the purposes of taking repressive measures against persons not in possession of the proper papers. If we are to avoid that very real threat, explicit reference thereto should be made in the actual text of the Framework Decision.

Definitions

(a) ‘Trafficking in human beings’ shall mean 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. Exploitation shall include, at 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 or the removal of organs.

(b) The consent of a victim of trafficking in human beings to the intended exploitation set out in subparagraph (a) of this Article shall be irrelevant where any of the means set out in subparagraph (a) have been used.

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in human beings’, even if this does not involve any of the means set out in subparagraph (a) of this Article.

(d) ‘Child’ shall mean any person under eighteen years of age.

Justification

Clear definitions are required if we are to have a better understanding of trafficking in human beings. We need to tie in with the UN Palermo Protocol which has been signed by all the Member States of the European Union. The definition given under (a) is as broad as possible so that the term may also cover modern forms of exploitation resulting from trafficking in human beings, such as forced marriages and debt bondage.

The consent of a victim of exploitation of trafficking in human beings is irrelevant in relation to the objective of this Framework Decision, which is the protection of the victims and the criminalisation of trafficking in human beings.

Given that children constitute a substantial percentage of the victims of trafficking in human beings, it is important for separate reference to be made to their vulnerability.

Amendment 16
Article 2, Introduction

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:

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 *that person and the furthering or encouragement of any of those stages of trafficking in human beings to which that person falls victim are pursued as a criminal act and are punished by means of a prison sentence*, where the purpose is to exploit him or her *for sexual purposes such as* prostitution, pornographic performances *the* production of pornographic material *or marriages under false pretences* and:

Justification

Trafficking in human beings is a category of criminal offence which should not be underestimated. The threat of a prison sentence is essential. Most terms introduced are employed in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime which was signed by all European Union Member States. In addition there are other forms of trafficking for the purposes of sexual exploitation, such as marriages under false pretences. A victim's 'situation of vulnerability' should be understood to mean any kind of vulnerability - psychological, emotional, social or economic.

Amendment 17
Article 2(b)

(b) use is made of deceit or fraud, or

(b) use is made of *inducement*, deceit or fraud, or

Justification

The act of inducing a person to submit to sexual exploitation must be punished.

Amendment 18

Article 2 (c)

(c) there is a misuse of authority, influence or pressure, or

(c) there is a misuse **or abuse** of authority, **abuse of a situation of vulnerability**, influence or **the use of** pressure, **such as, for example, debt bondage** or

Justification

Abuse of a victim's situation of vulnerability is part and parcel of trafficking in human beings. This concept is taken from the definition of trafficking in human beings which is contained in the UN Convention on organised transnational crime and the additional Protocol thereto which concerns action to combat trafficking in human beings (particularly women and children) and which was adopted in Palermo in December 2000. A victim's 'situation of vulnerability' should be understood to mean any kind of vulnerability - psychological, emotional, social or economic. Basically, the term includes all situations of distress which may lead a human being to accept sexual exploitation.

Amendment 19

Article 2 (d)

(d) there is another form of abuse.

(d) there is another form of abuse **of the vulnerability of persons, such as physical and mental disability or illegal residence.**

Justification

Trafficking in human beings for the purposes of sexual exploitation must be regarded as an offence rather than just an administrative misdemeanour and must therefore be punished as such. In addition there are other forms of trafficking for the purposes of sexual exploitation, such as forced marriages. The proposed amendment includes these and establishes an open-ended list of possible forms of sexual exploitation. It also specifies some of the most frequent forms of abuse and pressure which occur in connection with trafficking in human beings

Amendment 20
Article 3, sentence 2 (new)

The term aiding and abetting shall be defined so that it is not necessary for there to be a causal link between the act and the committing of the offence by the main offender.

Justification

In view of the seriousness of the offence, intent on the part of an accomplice should be punishable in itself.

Amendment 21
Article 3, sentence 3 (new)

Complicity in such offences by civil servants, police officers and customs officials shall be regarded as making the offence all the more serious and shall be punished accordingly on the basis of Article 4(2).

Justification

Trafficking in human beings would probably be less successful if civil servants, police officers and customs officials did not cooperate in such practices. Accordingly, it is necessary to impose more severe punishment wherever complicity is proven against persons holding such positions.

Amendment 22
Article 4 paragraph 1

Does not affect the English version

Amendement 23
Article 4, paragraph 2, introduction

Does not affect the English version

Amendment 24
Article 4, paragraph 2a (new)

In addition to the imprisonment referred to in paragraphs 1 and 2 of this Article, each Member State shall take the necessary measures to punish the offences referred to in Articles 1, 2 and 3 through the seizure and confiscation of the proceeds derived from trafficking in order to compensate the victims as a matter of priority for the financial, physical and psychological damage which they have suffered.

Justification

The seizure of the almost always handsome profits derived from activities relating to trafficking in human beings should be an additional punishment for such crimes and should be for the benefit of the victims, failing which the money should be handed over to organisations which assist such victims.

Amendment 25
Article 4, paragraph 2 1st indent

- it involves particular ***ruthlessness***, or

- it involves particular ***physical or psychological violence***, or

Justification

Consideration must also be given to the underage persons who are seen increasingly in brothel windows, for example, and to a means which traffickers frequently resort to in order to force their victims into prostitution, namely rape.

Amendment 26
Article 4(2), second indent

- it generates substantial proceeds, or Deleted.

Justification

The offence is not more unjust through generating substantial proceeds. The opposite view could in fact be taken, i.e. that the offence is truly reprehensible if committed for little gain.

Amendment 27
Article 4(2), 4th indent (new)

- transportation and conveyancing take place in inhumane conditions

Justification

Consideration must also be given to the underage persons who are seen increasingly in brothel windows, for example, and to a means which traffickers frequently resort to in order to force their victims into prostitution, namely rape.

Amendment 28
Article 5, paragraph 1, introductory section

Does not affect the English version.

Amendment 29
Article 5, paragraph 2

Does not affect the English version.

Amendment 30
Article 6 (f) new

(f) new the seizure and confiscation of the proceeds derived from trafficking in order to compensate the victims as a matter of priority for the financial, physical and psychological damage which they have suffered.

Justification

The seizure of the almost always handsome profits derived from activities relating to trafficking in human beings should be an additional punishment for such crimes and should be for the benefit of the victims, failing which the money should be handed over to organisations which assist such victims.

Amendment 31
Article 7a (new), title

Article 7a

Conduct of judicial proceedings

Justification

A new article is created for the sake of clarity.

Amendment 32
Article 7a (1) (new)

1. Each Member State shall take the necessary measures to ensure that a victim of an offence provided for in this Framework Decision is given adequate legal protection and standing in judicial proceedings. For this purpose, the public

shall be excluded, if necessary, from the court proceedings.

Justification

As trafficking in human beings is often conducted as part of organised criminal activities, measures to protect the victims are essential.

Amendment 33
Article 7a (new) (2)

2. Adequate legal protection shall also be provided for individuals who testify as witnesses in criminal proceedings.

Justification

As trafficking in human beings is often conducted as part of organised criminal activities, measures to protect witnesses are essential.

Amendment 34
Article 7a (new), (3)

The Member State concerned shall award the victim all the appropriate measures in order to guarantee his cooperation with public authorities during the investigation and the judicial proceedings.

Justification

Compromise amendment

Amendment 35
Article 8a (new)

Saving clause

Nothing in this Framework Decision shall adversely affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of set out therein that refugees may not be expelled or returned (refouler).

Justification

The inclusion of this saving clause will prevent victims of trafficking in human beings who wish to apply for asylum from being expelled or returned before they have had an opportunity to apply for asylum or before any assessment has been made of the substance of their asylum application.

Amendment 36
Article 8b (new)

In cooperation with local and regional authorities and NGOs, the Member States shall provide the following free of charge to victims of trafficking who have inadequate resources of their own:

- suitable accommodation which provides an appropriate degree of security,***
- medical and psychological assistance and access to all social and health services,***
- financial assistance, assistance with finding a job and vocational training,***
- safe voluntary return to their country of origin or settlement in the country of residence or in their country of final destination.***

Justification

The victims of trafficking are usually helpless and extremely vulnerable and they therefore require a minimum amount of social assistance from the authorities to help them to rise above their circumstances and find a job.

Amendment 37
Article 9(1)

1. In accordance with the applicable conventions, multilateral 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.

1. In accordance with the applicable conventions, multilateral or bilateral agreements or arrangements, Member States shall afford each other mutual assistance **and seek cooperation with third countries involved** to the widest extent possible in respect of judicial proceedings relating to the offences provided for in this Framework Decision.

Justification

Member States should seek to cooperate closely with third countries in judicial proceedings. This is particularly important in relation to countries of destination, transit and origin.

Amendment 38
Article 9(3)

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 co-operation mechanisms. In particular, Member States shall ensure that Europol, within the limits of **its mandate**, is fully involved.

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 co-operation mechanisms. In particular, Member States shall ensure that Europol **and Interpol**, within the limits of **their mandates**, **cooperate closely and are** fully involved **in a complementary procedure**.

Justification

The mere existence of contact points is not enough; they need to be manned by well-trained staff. Close cooperation between Europol and Interpol is urgently required.

Amendment 39
Article 9(3a) (new)

(3a) The Member States shall inform each other of the names and descriptions of missing persons and compile a databank accessible to all Member States. The non-governmental organisations shall be actively involved in the collection and input of data.

Justification

Non-governmental organisations often possess more specific information than government agencies and should therefore be involved as valuable sources of information in developing such a databank.

Amendment 40
Article 9, paragraph 3b (new)

The Member States shall establish a compensation fund for the benefit of the victims of trafficking in human beings, to be financed using the confiscated proceeds referred to in Article 4 (3).

Justification

Such a fund would help to compensate victims and to finance programmes designed to facilitate social integration.

Amendment 41
Article 9(4a) (new)

4a. The Member States shall jointly devise strategies for cooperation on preventive measures to combat trafficking in human beings.

Justification

The fight against any form of criminal activity should always embrace the possibilities of prevention.

Amendment 42
Article 9, paragraph 4b (new)

Each year the Council shall submit a report to the European Parliament concerning the combating of trafficking in human beings in the European Union and in the applicant countries, inter alia on the basis of the implementation of this Directive.

Justification

It is very important for Parliament to be able to perform its monitoring role.

Amendment 43
Article 9, paragraph 4c (new)

4c. The Member States shall devise common strategies for the improved training of officials responsible for criminal prosecution, immigration and the prevention of trafficking in human beings.

Justification

If effective action is to be taken against well-organised gangs of touts, officials need to be

better trained. In particular they must be aware of the methods employed by the gangs with regard to the falsification of documents, the recruitment of victims, transportation, etc., so that they can combat them successfully.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council framework decision on combating trafficking in human beings (COM(2000) 854 – C5-0042/2001 – 2001/0024(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2000) 854¹),
 - having been consulted by the Council pursuant to Articles 29, 31 and 34(2)(b) of the EU Treaty(C5-0042/2001),
 - having regard to Rules 106 and 167 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Committee on Women's Rights and Equal Opportunities (A5-0183/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 62 E, 27.2.2001, p. 324.

EXPLANATORY STATEMENT

According to international estimates, traffickers in human beings abduct up to 700 000 women and children every year; approximately 9 million human beings worldwide are living in conditions akin to slavery. The Commission estimates that 120 000 women and children a year are lured from the countries of Central and Eastern Europe alone to the European Union.

These figures highlight the urgent need for concerted action to combat trafficking in human beings. Because of the multiple facets of this crime and the links to organised criminals, a multidisciplinary approach is imperative. The fight against trafficking in human beings is impeded, however, by the wide divergences between national criminal law. Definitions and penalties vary profoundly; there is in fact no reference to trafficking in human beings in the criminal law of some Member States.

The European Union has endeavoured over a number of years to develop a comprehensive approach to the fight against trafficking in human beings. The European Parliament adopted a resolution as long ago as 1989 on the exploitation of prostitutes and the traffic in human beings (OJ C 120, 16.5.1989, p. 352) and has vigorously condemned trafficking in human beings repeatedly in other resolutions.

Although the Member States committed themselves to reviewing their own national laws in the Joint Action of 24 February 1997 adopted by the Council concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L 63, 4.3.1997), only a few definitions were laid down as guidelines.

The 'Protocol to Prevent, Suppress and Punish Trafficking in Persons', an optional protocol to the UN Convention on Trans-border Organised Crime, signed in December 2000 in Palermo, represented the first agreement on specific common definitions. On the basis of some aspects of the UN optional protocol, the Commission proposal now aims to lay down, by means of a framework decision, minimum rules concerning the constituent elements of criminal acts, and minimum penalties.

The Commission draws a clear distinction here between the crimes of smuggling migrants and of trafficking in human beings. The first is deemed to constitute a crime against the state, which frequently involves mutual interest between the smuggler and the smuggled. Trafficking in human beings constitutes a crime against a person and involves an exploitative purpose.

Pursuant to the Commission proposal, in addition to the imposition of a minimum jail sentence of six years, or ten years where the circumstances made the crime more serious, the Member States would also be obliged to punish instigation of, aiding, abetting or attempt to commit a crime. Those punishments would be sufficient to bring trafficking in human beings within the scope of other instruments already adopted for the purposes of enhancing police and judicial cooperation in the European Union against organised crime (for example, Joint Action 98/699/JHA (OJ L 333, 9.12.1998, p. 1) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime.

Your rapporteur takes the view that the Commission proposal is to be welcomed, bearing in mind the constraints of national criminal law and the legal instrument of a framework decision (Article 34(2b) TEU). She also welcomes the fact that the proposal covers not only the criminal act of trafficking in human beings for the purposes of sexual exploitation but also trafficking for the purposes of labour exploitation and that the UN optional protocol has been observed to that extent.

However, your rapporteur would hope for a somewhat more ambitious approach on a number of points. She therefore proposes to extend the scope of Article 1 – trafficking in human beings for the purpose of labour exploitation – by deleting two of the Commission’s proposed qualifications:

- the *continued* suppression of fundamental rights
- infringement of labour standards.

In view of the fundamental legal rights which are infringed by the crime of trafficking in human beings, it is not apparent why one single infringement of fundamental rights should not be regarded as constituting the act of trafficking in human beings, provided all other conditions are fulfilled. Where there is an infringement of a fundamental right, as a rule there will also be an infringement of labour standards, since the latter are considerably more specific and provide less extensive protection; an infringement of national labour standards is therefore not only unnecessary, but there is the additional risk that, in countries with a low level of protection or less rigorous provisions, this requirement implies that trafficking in human beings has not occurred.

Your rapporteur would also like to establish a minimum definition of legal concepts (such as the concept of ‘aiding and abetting’), which are defined differently among the Member States. She also considers it important to ensure that victims of trafficking and individuals called upon to testify are protected during judicial proceedings. As a large number of individuals are abducted and hidden away in connection with trafficking in human beings, or must live under a false identity, a database containing information on missing persons should be set up and maintained, particularly by involving the non-governmental organisations.

28 May 2001

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council framework decision on combating trafficking in human beings
(COM(2000) 854 – C5-0042/2001 – 2001/0024(CNS))

Draftsman: Marianne Eriksson

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Marianne Eriksson draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 19 March 2001, 23 April 2001 and 28 May 2001.

At the last meeting it adopted the following amendments unanimously with one abstention.

The following were present for the vote: Maj Britt Theorin, chairman; Marianne Eriksson, vice-chairman and draftsman; Jillian Evans, vice-chairman; María Antonia Avilés Perea, Carlo Fatuzzo (for Amalia Sartori pursuant to Rule 153(2)), Geneviève Fraisse, Fiorella Ghilardotti, Koldo Gorostiaga Atxalandabaso, Lissy Gröner, Mary Honeyball, Anna Karamanou, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Thomas Mann, Maria Martens, Christa Prets, Olle Schmidt (for Marieke Sanders-ten Holte), Miet Smet and Patsy Sørensen.

SHORT JUSTIFICATION

In the United Nations' report 'State of the Population 2000', it is estimated that two million girls between 5 and 15 years of age are introduced into the global sex industry every year. In 1996, the European Union established that about 500 000 women were smuggled to its Member States each year for sexual exploitation.

In view of this, it is gratifying that the United Nations has put forward a convention with an additional protocol defining the concept 'trade in human beings for sexual exploitation' and that all the Member States of the European Union have signed the protocol.

The Committee on Women's Rights and Equal Opportunities thus welcomes the Commission's Communication on this matter. The committee's draftsman hopes that the headings of the Communication will clearly indicate what the different sections of the Communication address, so as to clarify that it is trade in human beings for a specific purpose that is the aim of the legal acts to be adopted and that they do not aim to deal with issues concerning refugees in a broader context.

It is also important that the European Union defines all phases involved in trading in human beings for sexual exploitation. This includes recruiters, transporters, exploiters and clients/buyers. They are found both within the Member States and in countries outside the Union. It is therefore crucial that intensified cooperation is devoted not only to Europol, but also to Interpol.

It is also of the greatest importance that trade in human beings is not only covered by actions from the police, but that the civil society is actively involved, which has also been borne in mind by the Commission, recognising the STOP and Daphne programmes as important parts. This should be even more emphasised. The Member States should be urged to make sure that financial resources are provided for the activities of non-governmental organisations and also for organisations that actively work in favour of victims of sexual exploitation with a view to giving them the chance of a new life in dignity.

One important aspect that is not pointed out in the Commission's text is the possibility of granting permanent residence permits for victims who come forward and testify on their exploitation. Today, they are usually sent back, or they are given temporary permits while the judicial procedure is pending. The committee finds that this is not satisfactory. The European Union cannot guarantee protection in third countries. It should be the duty of the Member States to guarantee protection for the witnesses.

It is also important that the profits made by the exploiters and other persons involved are confiscated and collected in a fund for victims of crimes to be used for further support for the victims.

In several of the Member States of the European Union, discussions are currently being held on the legalisation of, for example, brothels, often with the justification that this would make it easier for the authorities to control the activities. This is very unfortunate. Experience proves that, where sexual exploitation has been legalised, other illegal activities have arisen in close connection.

A few years ago, Sweden has made it illegal to buy sexual services. This law, in conjunction with other laws has, although not completely, obstructed the establishment of prostitution. It is thus desirable that other countries should also strive to find solutions other than solely legalisation.

In the Committee on Women's Rights, we are united in the belief that poverty is one of the main causes for prostitution. We also know that many of the prostitutes have themselves been subjected to different kinds of abuse as children or as adults.

Poverty, protection against abuse and exploitation and men's self-instated right to buy bodies (human beings) for their own amusement is what we need to fight. The Commission proposal for a framework decision on combating trafficking in human beings is only one step on the way to removing the cynical treatment of human beings. Nevertheless an important step.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1	
Title	
Proposal for a Council Framework Decision on combating trafficking in human beings	Proposal for a Council Framework Decision on combating trafficking in human beings <i>for the purpose of sexual exploitation and labour exploitation</i>

Justification

It is important to clarify that the aim of the present Framework Decision is trafficking in human beings for specific purposes, and that it does not aim to deal with issues concerning refugees in a broader context.

¹ OJ C 62E, 27.02.01, P.324.

Amendment 2

Recital 3

(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;

(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, ***where poverty, lack of education and of professional opportunities are important causes of vulnerability***, as well as the use of violence, threats, debt bondage and coercion ***and all other forms of abuse, irrespective of the individual's consent***;

Justification

It should be stressed that poverty, lack of education and of professional opportunities are among the main causes for falling into the terrible trap of trafficking for sexual and labour exploitation. It is not easy to determine where free choice ends and coercion begins. Victims are victims and they should not be required to prove or disprove that they gave their consent in situations where they are under the domination of others. Even if a person wishes to emigrate in order to find work or is in a vulnerable situation which restricts his or her freedom of choice, that does not mean that he or she consents to violence or abuse of any kind.

Amendment 3

Recital 3a (new)

(3a) Women and children are more vulnerable and are therefore at greater risk of falling victim to trafficking.

Justification

The vulnerability of women and children must be mentioned in relation to these issues.

Amendment 4
Recital 4

(4) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union;

(4) The important work performed by international organisations, in particular the UN **and its Protocol on trafficking in human beings, which complements the Convention on organised transnational crime**, must be complemented by that of the European Union;

Justification

This makes the recital more specific.

Amendment 5
Recital 5

(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 co-operation; 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**;

(5) It is necessary that the 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 co-operation; in accordance with the principles of subsidiarity and proportionality this Framework Decision confines itself **initially** to the minimum **which is currently** required in order to achieve those objectives at European level; **on the basis of the conclusions contained in the report to be submitted by 30 June 2004, the Commission may submit a proposal for an amendment**;

Justification

Amendments to the directive may have to be made on the basis of, on the one hand, the results

achieved and, on the other, developments in the field of trafficking in human beings and the combating thereof.

Amendment 6
Recital 7

(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 establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA on the creation of a European Judicial Network, the Joint Action 96/277/JHA, concerning a framework for the exchange of liaison magistrates to improve judicial co-operation between the Member States of the European Union and the Joint Action 98/427/JHA on good practice in mutual legal assistance in criminal matters;

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

Justification

Harmonisation of a number of criminal provisions is clearly in a different category from the other instruments.

Amendment 7
Article 1, introductory paragraph

Each Member State shall take the necessary measures to ensure that the recruitment, transportation **or** transfer of a person, including harbouring and subsequent

Each Member State shall take the necessary measures to ensure that the recruitment, **the organisation of the** transportation, **the transfer or the legal or illegal migration** of a

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**:

person, including harbouring and subsequent reception and the exchange of control over him or her is **legally classed as a criminal offence**, where the fundamental rights of that person **are** 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 **or** health and safety. **Exploitation includes as a minimum forced labour or forced servitude, slavery or practices akin to slavery, or bondage. In addition, one of the following conditions must be met:**

Justification

The organisation of transportation or of migration may be legal or illegal: in certain cases, persons are taken into a country illegally or without a valid residence permit but in other cases they enter a country legally, as a tourist, a waiter or an au pair girl. Trafficking and exploitation may occur even if the statutory entry or residence conditions are met. It is important for trafficking for the purpose of labour exploitation to be regarded as a crime and not just as an administrative misdemeanour and, consequently, for it to be punished as such. Some of the most common forms of abuse and pressure which occur in the trafficking of human beings should also be spelt out.

Exploitation occurs whenever fundamental rights are suppressed; there is no need for such suppression to be continuous.

The term 'exploitation' is clarified with the aid of definitions taken from the additional UN Protocol on trafficking in human beings.

Amendment 8 Article 1 (b)

(b) use is made of deceit or fraud or

(b) use is made of **inducement**, deceit or fraud, or

Justification

The act of inducing a person to submit to exploitation must be punished.

Amendment 9

Article 1 (c)

(c) there is a misuse of authority, influence or pressure, or

(c) there is a misuse of authority, ***abuse of a situation of vulnerability*** influence or pressure ***such as, for example, debt bondage***, or

Justification

Abuse of a victim's situation of vulnerability is part and parcel of trafficking in human beings. This concept is taken from the definition of trafficking in human beings which is contained in the UN Convention on organised transnational crime and the additional Protocol thereto which concerns action to combat trafficking in human beings (particularly women and children) and which was adopted in Palermo in December 2000. A victim's 'situation of vulnerability' should be understood to mean any kind of vulnerability - psychological, emotional, social or economic. Basically, the term includes all situations of distress which may lead a human being to accept exploitation.

Amendment 10

Article 1 (d)

(d) there is another form of abuse.

(d) there is another form of abuse ***of the vulnerability of persons, such as physical and mental disability or illegal residence, and the exploitation of extreme helplessness and the provision or acceptance of payments or benefits in order to secure the consent of a person who has power over another person.***

Justification

The words 'another form of abuse' should be defined more closely through the inclusion of the examples contained in the UN additional Protocol on trafficking in human beings.

Amendment 11
Article 2

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.

Each Member State shall take the necessary measures to ensure that the recruitment, ***the organisation of the*** transportation, ***the transfer or the legal or illegal migration*** of a person, including harbouring and subsequent reception and the exchange of control over ***that person and the furthering or encouragement of any of those stages of trafficking in human beings to which that person falls victim are pursued as a criminal act and are punished by means of a prison sentence***, where the purpose is to exploit him or her ***for sexual purposes such as*** prostitution, pornographic performances ***the*** production of pornographic material ***or marriages under false pretences*** and: (a) use is made of coercion, force or threats, including abduction, or

- (b) use is made of ***inducement***, deceit or fraud, or
- (c) there is a misuse ***or abuse*** of authority, ***abuse of a situation of vulnerability***, influence or ***the use of*** pressure, ***such as, for example, debt bondage*** or
- (d) there is another form of abuse ***of the vulnerability of persons, such as physical and mental disability or illegal residence***.

Justification

See justification to Amendment 7. Trafficking in human beings is a category of criminal offence which should not be under-estimated. The threat of a prison sentence is essential. Most terms introduced are employed in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime which was signed by all European Union Member States. In addition there are other forms of trafficking for the purposes of sexual exploitation, such as marriages under false pretences. A victim's 'situation of vulnerability' should be understood to mean any kind of vulnerability - psychological, emotional, social or economic.

Amendment 12
Article 3

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***.

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 ***legally classed as a criminal act***.

Justification

Instigation, aiding and abetting in respect of trafficking in human beings, or an attempt to commit such an offence, must be regarded as a crime and not just as an administrative misdemeanour.

Amendment 13
Article 4(1)

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.

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. ***The proceeds deriving directly or indirectly from the illegal activities shall be seized and confiscated by Member States, which shall redirect these amounts to the victims.***

Justification

It is unacceptable that criminals who have grown wealthy on the proceeds of trafficking in human beings should be able, once they have served their prison sentence, to 'live off' the cost of the human suffering which they have caused.

Amendment 14

Does not affect the English version

Amendment 15

Article 4, paragraph 2, indent –1 (new)

- it involves persons under the age of 18,

Justification

The victims of trafficking in human beings and of sexual exploitation are often adolescents who are placed in such a position as to be regarded as adults.

Amendment 16

Article 4, paragraph 2, 1st indent

- it involves particular **ruthlessness**, or

- it involves particular **physical or psychological violence**, or

Justification

Consideration must also be given to the underage persons who are seen increasingly in brothel windows, for example, and to a means which traffickers frequently resort to in order to force their victims into prostitution, namely rape.

Amendment 17

Article 4, paragraph 2, 2nd indent

- it generates **substantial proceeds**, or

- it generates **enrichment**, or

Justification

Greater clarity.

Amendment 18
Article 4, paragraph 2, 3rd indent b (new)

- ***in the event of sexual abuse by the perpetrator,***

Justification

See justification to Amendment 16.

Amendment 19
Article 4, paragraph 2, 3rd indent c (new)

- ***where transportation and conveyancing take place in inhumane conditions.***

Justification

See justification to Amendment 16.

Amendment 20
Article 4, paragraph 2a (new)

- 2a. In addition to the imprisonment referred to in paragraphs 1 and 2 of this Article, each Member State shall take the necessary measures to punish the offences***

referred to in Articles 1, 2 and 3 through the seizure and confiscation of the proceeds derived from trafficking in order to compensate the victims as a matter of priority for the financial, physical and psychological damage which they have suffered.

Justification

The seizure of the almost always handsome profits derived from activities relating to trafficking in human beings should be an additional punishment for such crimes and should be for the benefit of the victims, failing which the money should be handed over to organisations which assist such victims.

Amendment 21

Does not affect the English version

Amendment 22

Does not affect the English version

Amendment 23

Article 6

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

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.

establishments which have been used for committing the offence,
(e)a *the seizure and confiscation of the proceeds derived from trafficking in order to compensate the victims as a matter of priority for the financial, physical and psychological damage which they have suffered.*

Justification

The seizure of the almost always handsome profits derived from activities relating to trafficking in human beings should be an additional punishment for such crimes and should be for the benefit of the victims, failing which the money should be handed over to organisations which assist such victims.

Amendment 24 Article 8

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.

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.

Accordingly, the Member States shall adopt measures to protect victims, witnesses and their families in the country of destination and also in the country of origin and shall protect their privacy and their identity. In addition the Member States shall refrain from interning persons who are victims of trafficking in any kind of detention centre and from penalising or punishing them for using false visas or papers on account of the trauma or the coercion to which they have been subjected.

The Member States shall provide the

victims of trafficking with the following guarantees:

- legal advice and the assistance of a competent translator during administrative or judicial proceedings;*
- the possibility whereby NGOs may initiate judicial proceedings on their behalf;*
- the general public shall, if necessary, be excluded from the trial; - the right of access to their case file;*
- the fact that an individual is a victim of trafficking will not be grounds for inclusion in public or private records or documents and may not in any way be used against that person or against his or her family or other associates, particularly as regards the unrestricted exercise of the right to move freely, to reside and to seek paid employment;*
- the absolute confidentiality of medical and psychological tests, which may be carried out only at the request of the individual concerned and which must be accompanied by appropriate counselling before and after the tests are performed;*
- the granting of a temporary residence permit to victims who participate in the judicial proceedings (whether or not they testify) for the duration thereof or for as long as their safety is endangered;*
- the granting of a special permanent residence permit on humanitarian grounds, provided that this is called for on account of their vulnerability or the danger to which they are exposed.*

The consent of a victim of trafficking in human beings for the purposes of exploitation as defined in Articles 1 and 2 of this framework decision shall be immaterial where any of the means listed in Articles 1 and 2 has been used.

Justification

There is a need to specify the protection measures for, and the rights of, the victims of trafficking and their family members who participate or are involved in judicial proceedings, either in the country of destination or in the country of origin, and action must be taken to prevent them from being punished for conduct which, although illegal, is engaged in under extreme circumstances, under coercion or deceit and in general where the victims have no choice in the matter. This legal definition of the last sub-paragraph which enables a victim to retain his or her status as a victim is laid down in the UN Convention on organised transnational crime and the additional Protocol thereto which was signed in Palermo in December 2000 and which concerns action to combat trafficking in human beings, particularly women and children.

Amendment 25

Article 8, subparagraph 1a (new)

The Member States shall establish a compensation fund for the benefit of the victims of trafficking in human beings, to be financed using the confiscated proceeds referred to in Article 4(1) and (2).

Justification

Such a fund would help to compensate victims and to finance programmes designed to facilitate social integration.

Amendment 26

Article 8a (new)

Article 8a

Assistance to victims

In cooperation with local and regional authorities and NGOs, the Member States shall provide the following free of charge to

victims of trafficking who have inadequate resources of their own:

- *suitable accommodation which provides an appropriate degree of security,*
- *medical and psychological assistance and access to all social and health services,*
- *financial assistance, assistance with finding a job and vocational training,*
- *safe voluntary return to their country of origin or settlement in the country of residence or in their country of final destination.*

Justification

The victims of trafficking are usually helpless and extremely vulnerable and they therefore require a minimum amount of social assistance from the authorities to help them to rise above their circumstances and find a job.

Amendment 27
Article 8b (new)

Article 8b

Burden of proof

In accordance with their legal systems the Member States shall take the necessary steps to ensure that, once a person is presumed to be a victim of trafficking and exploitation as defined in Articles 1 and 2 of this framework decision, it shall be for the defendant to prove that no offence has been committed.

Justification

The burden of proof has gradually shifted (particularly in the social and economic fields) and

the burden of proving exploitation no longer lies with the victim him or herself.

Amendment 28
Article 9(1)

1. In accordance with the applicable conventions, multilateral 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.

1. In accordance with the applicable conventions, multilateral or bilateral agreements or arrangements, Member States shall afford each other mutual assistance **and seek cooperation with third countries involved** to the widest extent possible in respect of judicial proceedings relating to the offences provided for in this Framework Decision.

Justification

Member States should seek to cooperate closely with third countries in judicial proceedings. This is particularly important in relation to countries of destination, transit and origin.

Amendment 29
Article 9(3)

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 co-operation mechanisms. In particular, Member States shall ensure that Europol, within the limits of **its mandate, is** fully involved.

3. For the purpose of exchange of information relating to the offences referred to in Articles 1, 2, and 3, Member States shall establish **adequately equipped** operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol **and Interpol**, within the limits of **their mandates, cooperate closely and are fully involved in a complementary procedure.**

Justification

The mere existence of contact points is not enough; they need to be manned by well-trained

staff.

It is very important for Parliament to be able to perform its monitoring role.

Close cooperation between Europol and Interpol is urgently required.

Amendment 30
Article 9, paragraph 4

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.

4. Each Member State shall **annually** inform the General Secretariat of the Council and the Commission **regarding** its appointed point of contact **and the functioning thereof** 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.

Justification

See justification to Amendment 65.

Amendment 31
Article 9, paragraph 4a (new)

4a. Each year the Council shall submit a report to the European Parliament concerning the combating of trafficking in human beings in the European Union and in the applicant countries, inter alia on the basis of the implementation of this Directive.

Justification

See justification to Amendment 29.

Amendment 32
Article 9, paragraph 4b (new)

4b. The Member States shall devise common strategies for the preventive combating of trafficking in human beings.

Justification

The fight against trafficking in human beings should in particular include ways of preventing such trafficking.

Amendment 33
Article 9, paragraph 4c (new)

4c. The Member States shall devise common strategies for the improved training of officials responsible for criminal prosecution, immigration and the prevention of trafficking in human beings.

Justification

If effective action is to be taken against well-organised gangs of touts, officials need to be better trained. In particular they must be aware of the methods employed by the gangs with regard to the falsification of documents, the recruitment of victims, transportation, etc., so that they can combat them successfully.