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NOTE

from :	Presidency
to :	Article 36 Committee
No. Prop.:	8151/09 DROIPEN 17 MIGR 37 + ADD 1 + ADD 2
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Subject :	Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA
	- State of play / Outstanding issues

The Working Party on Substantive Criminal Law has discussed intensively the text of the proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA since the proposal was submitted by the Commission at the end of March 2009. In view of the substantial progress achieved at the last meeting on 1 – 2 October 2009 and the few outstanding issues remaining, the Presidency considers it appropriate to bring this file to the Article 36-Committee (CATS) with a view to allowing the October Justice and Home Affairs (JHA) Council to take note of the state of play and discuss certain outstanding issues on the text of the draft Framework Decision with a view to reaching general approach at its meeting on 30 November 2009. Therefore, the Presidency calls upon CATS to provide guidance on the outstanding issues set out below.

The text, as elaborated by the Presidency, is set out in the Annex to this note.

DK, DE, IE, FR, SI, NL, SE and UK have a Parliamentary scrutiny reservation, and **DELETED** and **DELETED** have entered a general scrutiny reservation. In addition, some delegations have reservations on specific Articles and/or paragraphs, and these can be found in the footnotes in the text in the Annex. The recitals of this Framework Decision have been discussed to the extent that it would help reaching agreement on the wording of the Articles.

Outstanding issues

A: Article 3 on "penalties"

Since the beginning of the negotiations in the Working Party, this Article has been one of the major points of discussion. The Commission's proposal¹ for Article 3 originally contained a different penalties' mechanism, setting specific and higher levels of penalty.

As regards the levels of penalties, most delegations have expressed strong support to follow the Council conclusions of 24/25 April 2002 on the approach to apply regarding approximation of penalties². These conclusions include a system of four levels of criminal penalties, leaving a certain flexibility to Member States, allowing them to maintain the coherence of national penal systems.

In the Working Party, several Member States voiced strong objections to the Commission's wish to increase the level of penalty in relation to paragraph 2(a) and (b) to twelve years instead of ten years. Four Member States: **DELETED** have supported the Commission and have found it important to increase the level of penalty in the most serious cases and thereby sending a strong political signal. In view of the strong concerns voiced by many delegations in respect of the penalty level suggested by the Commission and the few delegations supporting it, the Presidency suggests to leave the level of penalty in the most serious cases to ten years.

¹ COM(2009) 136 final, 8151/09 DROIPEN 17 MIGR 37.

² 9141/02 DROIPEN 33.

As to paragraph 3 of the Article regarding instigation, aiding and abetting, and attempt, many Member States wanted to see an explicit indication of a threshold and not to take a step back compared to the existing Framework Decision from 2002 (Article 3(1)). A number of delegations wanted to use level 1 of the Council conclusions of 24/25 April 2002 on the approach to apply regarding approximation of penalties. Some delegations preferred, however, the wording “*by effective, proportionate and dissuasive criminal penalties, which may entail surrender*”, arguing that using the lowest level from the Council conclusions would not send the right message regarding the gravity of these offences. In order to meet delegations' request, the Presidency suggests to include an explicit indication of a threshold in paragraph 3 by applying level 1 of the 2002 Council conclusions, as set out in the Annex.

CATS is invited to accept the approach of the Presidency.

B: Article 8 on "jurisdiction"

Taking into account the gravity of offences of trafficking in human beings and the fact that such offences often include cross-border dimensions, Article 8 contained in its last version a paragraph (5) on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, requesting Member States, in situations where parallel criminal proceedings were being conducted in respect of the same or related facts involving different persons, or in respect of the same criminal organisation, to enter into consultations with each other. At the meeting last week it became clear that a majority of Member States would be strongly against including such a provision, implying an extension of the scope of the recently agreed Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings³.

Considering this opposition, the Presidency has chosen to delete the paragraph. However, one delegation entered a reservation on its deletion.

In view of what is explained above, CATS is invited to accept the approach of the Presidency.

³ 8539/09 COPEN 71.

C: Articles 9 – 13 on assistance, support and protection to victims of trafficking in human beings

Articles 9 – 13 all deal with assistance and support to and protection of victims: Articles 9 and 10 cover all victims of trafficking, whereas Articles 11 – 13 specifically cover child victims.

During the discussions in the Working Party, some delegations have expressed concerns with regard to different aspects of these Articles. As for the provisions on assistance and support, a number of Member States wanted further specifications in different respects. Some concern has also been expressed with regard to the exact starting point of the obligation to provide assistance and support, for how long it should be provided and finally what kind of assistance and support should be covered. With regard to the obligation to offer legal counselling and legal representation, some Member States questioned to what extent this should be free of charge. Others were concerned that the regulation on protection of victims from secondary victimisation would intrude upon the discretion of the judiciary.

In light of these discussions and in order to meet Member States concerns, the Presidency has redrafted recitals (9) - (13).

Other elements of these Articles gave rise to some concerns among a few delegations: These include the possibility of not disclosing the identity of the victim (Article 10(3)) and the obligation to offer trained professionals when interviewing child victims (Article 13(3)(c)).

It is the view of the Presidency that the provisions on victims, together with relevant recitals, are to be regarded as a package.

In Article 13(3)(e), the wording which concerns limiting the number of interviews to where “*strictly necessary*” is taken from the English version of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201), art. 35(1)(e) published on the Council of Europe website. During the negotiations in the Working Party the German delegation has pointed out that the English language version of the Convention signed by some Parties does not include the word “strictly”. The matter is subject to consultations with the Council of Europe.

CATS is invited to confirm the text of Articles 9 – 13 and the draft recitals (9) - (13).

D: Article 18 on "implementation"

During the discussions on this Article some delegations have argued that the period of implementation of this Framework Decision should be prolonged, due to the fact that it contains obligations for a range of non-legislative measures which are new for this type of instruments and for which the implementation will be costly and timely (for example the obligation following from Article 13(3)(b) to have premises designed for the purposes of interviews with child victims). The Commission on the other hand has argued the importance of implementing these measures as quickly as possible and at least within two years.

In view of what is explained above, CATS is invited to confirm that the deadline for implementation should be two years.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(1)(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,⁴

Whereas:

(1) Trafficking in human beings is a serious crime, often committed in the framework of organised crime, and a gross violation of human rights.

(2) The European Union is committed to the prevention of and fight against trafficking in human beings, and to the protection of the rights of trafficked persons. For this purpose, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings,⁵ and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01)⁶ were adopted.

(3) This Framework Decision adopts an integrated and holistic approach to the fight against trafficking in human beings. More rigorous prevention, [...] prosecution and protection of victims' rights, are major objectives of this Framework Decision. Children are more vulnerable and therefore at greater risk of falling victim to trafficking in human beings. All the provisions of this Framework Decision should be applied in the light of the best interests of the child, in accordance with the 1989 United Nations Convention on the Rights of the Child.⁷

⁴ OJ C , , p. .

⁵ OJ L 203, 1.8.2002, p. 1.

⁶ OJ C 311, 9.12.2005, p. 1.

⁷ United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

(4) The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime⁸ and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings⁹ are crucial steps in the process of enhancing international cooperation against trafficking in human beings.

(5) In order to meet recent developments in the phenomenon of trafficking in human beings, this Framework Decision adopts a broader concept of what should be considered trafficking in human beings than the Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation.

Within the context of this Framework Decision, forced begging should be understood as a form of forced labour or service as defined in the ILO Convention n. 29 concerning Forced or Compulsory Labour of 29 June 1930. Therefore, exploitation of begging falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. In the light of the relevant case-law, the validity of the eventual consent to perform such a service should be evaluated case by case. However, when a child is concerned, the eventual consent should never be considered valid.

The term “exploitation of criminal activities” should be understood as exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting and other similar activities which are subject to penalties and imply financial gain.¹⁰

The definition also covers trafficking in human beings for the purpose of the removal of organs, which can be linked with organ trafficking and constitutes a serious violation of human dignity and physical integrity.

⁸ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, made in Palermo, 2000.

⁹ Council of Europe Convention on Action against Trafficking in Human Beings, made in Warsaw, 16.V.2005, Council of Europe Treaty Series N. 197.

¹⁰ **DELETED** have scrutiny reservations.

(6) ¹¹ The levels of penalties in this Framework Decision reflect the growing concern among Member States regarding the development in the phenomenon of trafficking in human beings. Considering the gravity of the crime, penalties should therefore be effective, dissuasive and proportionate. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence or been committed against a particularly vulnerable victim, such as a child, this should be reflected in more severe penalties.

(7) ¹² Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences envisaged in legislation related to prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard does not exclude prosecution or punishment for offences that a person has wilfully committed or participated in.

(8) To ensure successful investigations and prosecutions of offences of trafficking in human beings, investigative tools which are used in organised crime or other serious crime cases and that may include¹³ interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, should be made available to those responsible for the investigating and prosecution of such offences.

(9) While Directive 2004/81/EC¹⁴ provides for the issue of a resident permit to victims of trafficking in human beings who are third-country nationals, and Directive 2004/38/EC¹⁵ regulates the exercise of the right to move and reside freely in the territory of Member States by citizens of the Union and their families, including protection from expulsion, this Framework Decision establishes specific protective measures for any victim of trafficking in human beings.

¹¹ Substantial rewording by the Presidency. Several delegations entered scrutiny reservations on previous wording.

¹² Substantial rewording by the Presidency. Several delegations entered scrutiny reservations on previous wording.

¹³ **DELETED** has a scrutiny reservation to the replacement of "*for example*" by "*that may include*".

¹⁴ OJ L 261, 6.8.2004, p. 19.

¹⁵ OJ L 158, 30.4.2004, p. 77.

Consequently, this Framework Decision does not deal with the conditions of their residence in the territory of Member States or any other issue falling within the Community competence.

(10)¹⁶ Victims of trafficking in human beings need to be able to exercise their rights effectively.

Therefore assistance and support should be available to victims before, during and for an appropriate time after criminal proceedings. The assistance and support provided should include at least a minimum set of measures that are sufficient to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment, take into account the conditions and needs of the person concerned.

A person should be provided with assistance and support as soon as there is a reasonable grounds indication that he/she might have been trafficked and irrespective of his/her willingness to cooperate with the competent authorities or of his/her residence status in the country.

Assistance should be provided unconditionally until the competent authorities have taken a decision with regard to the reflection period and the residence permit, or otherwise acknowledge that the person is a victim of trafficking in human beings. If, after the completion of the identification process or the expiration of the reflection period, the person is not considered eligible for a residence permit or does not otherwise have lawful residence in the country, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Framework Decision.¹⁷

Where necessary, considering circumstances such as that the victim has filed for compensation before a court of law, that medical treatment is ongoing due to severe physical or psychological consequences of the crime, or that the safety of the victim is at risk due to his/her statements in criminal proceedings, assistance and support should continue for an appropriate period after the criminal proceedings.

¹⁶ Substantial rewording by the Presidency and the Commission.

¹⁷ **DELETED** suggested to replace the last sentence with the following sentence: "This Framework Decision should not prevent Member States from making assistance and support dependent on a lawful residence of the victim in their territory"

(11)¹⁸ The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition victims of trafficking in human beings should be given access to legal counselling and to legal representation, including for the purpose of claiming compensation. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling and legal representation should be free of charge at least when the victim does not have sufficient financial resources. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge to them. Furthermore, on the basis of an individual risk assessment, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.

(12)¹⁹ Victims of trafficking in human beings, who bear the consequences of the abuse and degrading treatment, such as sexual exploitation, rape, slavery-like practices or the removal of organs, which is commonly related to the trafficking crime, should be protected from secondary victimisation and further trauma during the criminal proceedings. To this end victims of trafficking in human beings should receive appropriate treatment, based on the individual needs of each victim, during criminal investigations and proceedings. The individual needs assessment should take into consideration circumstances such as age, pregnancy, health, disability or other personal conditions, as well as the physical and psychological consequences of the criminal activity to which the victim has been subjected. Whether and how the treatment is applied is to be decided in accordance with grounds defined by national legislation, rules of judicial discretion, practice and guidance, on a case by case basis.

¹⁸ Substantial rewording by the Presidency and the Commission. Several delegations entered scrutiny reservations on previous wording.

¹⁹ Substantial rewording by the Presidency and the Commission. Several delegations entered scrutiny reservations on previous wording.

(13)²⁰ In addition to measures available to all victims of trafficking in human beings, each Member State should ensure that specific assistance, support and protection measures are available to child victims. These measures should be provided in the best interests of the child and in accordance with the UN Convention on the Rights of the Child. Where the age of a person subject to trafficking in human beings is uncertain, and there are reasons to believe he/she is below the age of 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures to child victims should aim at their physical and psycho-social recovery and at a durable solution for the person in question. Considering that child victims of trafficking in human beings are particularly vulnerable, additional protective measures should be available to protect the child during interviews in the course of criminal investigations and proceedings.

(14) Each Member State should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage the demand that fosters all forms of exploitation by means of research, information, awareness raising, and education. In such initiatives each Member State should adopt a gender perspective and a child rights approach.

(15) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions against employers of illegally staying third-country nationals²¹ provides for penalties for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that he/she is a victim of such trafficking. In addition to that, Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that he/she has been trafficked. This further criminalisation could include employers of legally staying third-country nationals and EU nationals, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.

²⁰ Substantial rewording by the Presidency. Several delegations entered scrutiny reservations on previous wording.

²¹ OJ L 126, 30.6.2009, p. 24.

(16) National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established by the Member States, in the way they consider appropriate according to their internal organisation, and taking into account the need for a minimum staff with identified tasks, in order to carry out assessments on trafficking in human beings trends, measure the results of anti-trafficking actions, and regularly report to the relevant national authorities.²²

(17) Since the objective of this Framework Decision, namely to fight against trafficking in human beings, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to Article 2 of the Treaty on European Union and as set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary to achieve that objective.

(18) This Framework Decision respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, prohibition of slavery, forced labour and trafficking in human beings, prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Framework Decision seeks to ensure full respect for these rights and principles.

²² Rewording by the Presidency and the Commission. Several delegations entered scrutiny reservations on previous wording.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning trafficking in human beings

1. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:
The recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, 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.
2. A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging²³, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities²⁴, or the removal of organs²⁵.
4. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking in human beings offence even if none of the means set forth in paragraph 1 have been used.

²³ **DELETED** has a substantial reservation

²⁴ **DELETED** has a substantial reservation, and **DELETED** has a scrutiny reservation.

²⁵ **DELETED** has a substantial reservation.

6. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.

Article 2

Instigation, aiding and abetting, and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding and abetting or attempt to commit an offence referred to in Article 1 is punishable.

Article 3²⁶

Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by penalties of a maximum of at least between five and ten years of imprisonment.²⁷
2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by penalties of a maximum of at least ten years of imprisonment²⁸ where it has been committed in any of the following circumstances:
 - (a) the offence has deliberately or by gross negligence endangered the life of the victim;
 - (b) the offence was committed by use of serious violence or has caused particularly serious harm to the victim;

²⁶ **DELETED** have scrutiny reservations on this Article. The COM expressed a general reservation on the redrafting of this Article, and underlined the need for further approximation and higher level of penalties.

²⁷ **DELETED** has a scrutiny reservation.

²⁸ **DELETED** and the COM are in favour of prescribing twelve years of imprisonment for the offences referred to in Article 3(2) (a) and (b). **DELETED** has a scrutiny reservation for 10 years. **DELETED** could accept 12 years. **DELETED** considers the level of 10 years too high.

- (c) the offence was committed against a person who was particularly vulnerable, which, in the context of this Framework Decision, shall include at least all child victims²⁹;
- (d) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA.³⁰

3. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by penalties of a maximum of at least between one and three years of imprisonment.³¹
4. Each Member State shall take the necessary measures to ensure that the fact that the offence has been committed by a public official in the performance of his or her duties is regarded as an aggravating circumstance.³²

Article 4

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on
 - (a) a power of representation of the legal person,
 - (b) an authority to take decisions on behalf of the legal person, or
 - (c) an authority to exercise control within the legal person.

²⁹ **DELETED** has a substantial reservation on 2(c). COM expressed a substantial reservation on the restriction of the obligation to establish an aggravating circumstance to children only.
OJ L 300, 11.11.2008, p. 42.

³¹ **DELETED** and the COM prefers the wording *by effective, proportionate and dissuasive criminal penalties, which may entail surrender*, but **DELETED** are flexible on this point.
DELETED have scrutiny reservations.

³² **DELETED** have scrutiny reservations and the COM has a substantial reservation on the paragraph.

2. Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offences referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 1 and 2.
4. For the purpose of this Framework Decision 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 5

Sanctions on legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4(1) and (2) 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;
 - (b) temporary or permanent disqualification from the practice of commercial activities;
 - (c) placing under judicial supervision;
 - (d) judicial winding-up;
 - (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 6

Non-prosecution or non-application of penalties to the victim

Each Member State shall, in accordance with the basic principles of its legal system, provide for the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 1.

Article 7

Investigation and prosecution

1. Each Member State shall ensure that investigation into or prosecution of offences referred to in Articles 1 and 2 is not dependent on the report or accusation made by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Each Member State shall take the necessary measures to enable, where the gravity or the nature of the act calls for it, the prosecution of an offence referred to in Articles 1 and 2 for a sufficient period of time after the victim has reached the age of majority.³³
3. Each Member State shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting offences referred to in Articles 1 and 2 are trained accordingly.
4. Each Member State shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 1 and 2.

³³ **DELETED** has a scrutiny reservation on this paragraph. **DELETED** has a substantive reservation and proposed to replace "*where the gravity or the nature of the act calls for it*" with "*at least for the facts referred to in Article 3(2)*".

Jurisdiction [...]

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:
 - (a) the offence is committed in whole or in part within its territory; or
 - (b) the offender is one of its nationals or has his or her habitual residence in its territory³⁵; or
 - (c) the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory; or
 - (d) the offence is committed for the benefit of a legal person established in the territory of that Member State.
2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) in relation to offences where the offender has his or her habitual residence in its territory, 1(c) and 1(d) as far as the offence is committed outside its territory.
3. For the prosecution of an offence referred to in Articles 1 and 2 committed outside the territory of the Member State concerned, as regards paragraph 1(b), each Member State shall, subject to its application of paragraph 2, take the necessary measures to ensure that the establishment of its jurisdiction is not subordinated to the condition:
 - (a) that the acts are a criminal offence at the place where they were performed or³⁶
 - (b) that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.³⁷

[...]

³⁴ **DELETED** has a reservation on the entire Article due to the reference to nationals in paragraph 1(b). **DELETED** has a scrutiny reservation on the entire Article.

DELETED entered a reservation on the deletion of the provision on conflicts of jurisdiction.

³⁵ **DELETED** has a scrutiny reservation on (b).

³⁶ **DELETED** has a scrutiny reservation.

³⁷ **DELETED** has a scrutiny reservation to paragraph 3.

[...]

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2 [...], where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 9³⁸

Assistance and support to victims of trafficking in human beings

1. Each Member State shall take the necessary measures to ensure that assistance and support is provided to victims before, during and for an appropriate time after³⁹ criminal proceedings in order to enable them to exercise the rights set forth in Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, and in this Framework Decision.⁴⁰
2. Each Member State shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable grounds⁴¹ indication that he/she might have been subjected to an offence referred to in Articles 1 and 2.
3. Each Member State shall take the necessary measures to establish appropriate mechanisms aimed at early identification, assistance and support to victims, in cooperation with relevant support organisations.

³⁸ **DELETED** have scrutiny reservations on Articles 9-13.

³⁹ **DELETED** has a scrutiny reservation on Article 9.

³⁹ **DELETED** wanted to replace “*before, during and for an appropriate time after*” with “*in connection with*” or at least that this is dealt with in the recital.

⁴⁰ **DELETED** has a scrutiny reservation.

⁴¹ **DELETED** has a scrutiny reservation and COM wants to consider the *reasonable grounds indication* further.

4. Assistance and support measures referred to in paragraph 1 and paragraph 2 shall include at least standards of living capable of ensuring victims' subsistence through measures such as 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.⁴²

Article 10

Protection of victims of trafficking in human beings in criminal investigations and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set forth in Framework Decision 2001/220/JHA.
2. Each Member State shall ensure that victims of trafficking in human beings have access 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 when the victim does not have sufficient financial resources.⁴³
3. Without prejudice to the rights of the defence, each Member State shall allow, if in accordance with the basic principles of its legal system and where appropriate, that the identity of a victim of trafficking in human beings acting as a witness is not disclosed.⁴⁴
4. Each Member State shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, and have access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national legislation or procedures.⁴⁵

⁴² **DELETED** have scrutiny reservations on this paragraph.

⁴³ **DELETED** have scrutiny reservations on this paragraph. COM has a substantive reservation to legal counselling not being free.

⁴⁴ **DELETED** has a substantive reservation on this paragraph.

⁴⁵ **DELETED** has a scrutiny reservation.

- 5.⁴⁶ Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, each Member State shall ensure that victims of trafficking in human beings [...] receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national legislation as well as with rules of judicial discretion, practice or guidance:
- (a) unnecessary repetition of interviews during investigation, prosecution and trial;
 - (b) visual contact between victims and offenders 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;
 - (d) unnecessary questioning concerning private life.

Article 11

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided assistance, support and protection taking into account the best interests of the child.
2. Each Member State 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, the person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 12 and 13.

⁴⁶ **DELETED** has a reservation. **DELETED** has a scrutiny reservation with regard to individual assessment. **DELETED** questions the provision in its entirety. **DELETED** have scrutiny reservations on this paragraph in its entirety. **DELETED** has a scrutiny reservation to this paragraph.

Article 12

Assistance and support to child victims of trafficking in human beings

1. The assistance and support measures referred to in this Article shall apply in addition to the provisions in Article 9.
2. Each Member State shall take the necessary measures to ensure that the specific actions [...] to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns.
3. Each Member State shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim of trafficking in human beings when the family is in the territory of the Member State. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Council Framework Decision 2001/220/JHA to the family.

Article 13

Protection of child victims of trafficking in human beings in criminal investigations and proceedings

1. The protection measures referred to in this Article shall apply in addition to the provisions in Article 10.

[...] ⁴⁷

⁴⁷ **DELETED** objects to the deletion of the provision on free legal representation to all child victims. **DELETED** has a scrutiny reservation on the same deletion. COM has a reservation against the deletion.

2. Each Member State shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, judicial authorities appoint a special representative for the child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied.
3. Without prejudice to the rights of the defence, each Member State shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 1 and 2:
- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
 - (b) interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;
 - (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for this purpose;⁴⁸
 - (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;
 - (e) the number of interviews is as limited as possible and interviews are only carried out where [strictly]⁴⁹ necessary for the purpose of criminal proceedings;
 - (f) the child victim may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
4. Each Member State shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 1 and 2 all interviews with the child victim or, where appropriate, with a child witness, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.

⁴⁸ **DELETED** proposes to add after “purpose” *unless exceptional circumstances makes this impossible*

⁴⁹ Subject to consultations with CoE on the English language version signed by parties (CETS 201, art. 35.1e)

5. Each Member State shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 1 and 2, that the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Article 14

Prevention

1. Each Member State shall seek to discourage the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Each Member State shall take appropriate actions such as information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with civil society organisations, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.
3. Each Member State shall promote regular training for officials likely to come into contact with victims and potential victims, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.
4. Without prejudice to Community law, each Member State shall consider taking measures to establish as a criminal offence the use of services which are the object of exploitation as referred to in Article 1 with the knowledge that the person is a victim of an offence referred to in Article 1.

Article 15

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 on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting.

[Article 16]

Territorial scope

This Framework Decision shall apply to Gibraltar.^{50]}

Article 17

Repeal of Framework Decision 2002/629/JHA

Framework Decision 2002/629/JHA on combating trafficking in human beings is repealed.

Article 18

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by [two years from adoption].⁵¹

⁵⁰ Subject to confirmation by **DELETED** .

⁵¹ **DELETED** suggested three years. **DELETED** suggested three years or at least 30 months. **DELETED** preferred three years at least for articles 9-15.

2. By [two years from adoption], Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by [four years from adoption] at the latest, on the basis of a report reflecting this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 19

Entry into force

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

Done at Brussels,

For the Council

The President
