



**CONSEJO DE
LA UNIÓN EUROPEA**

**Bruselas, 30 de noviembre de 2010 (01.12)
(OR. en)**

17201/10

**Expediente interinstitucional:
2010/0065 (COD)**

**DROIPEN 143
MIGR 131
CODEC 1411**

NOTA

De: Presidencia

A: Consejo

n.º doc. prec.: 16945/10 DROIPEN 138 MIGR 129 CODEC 1382

n.º prop. Ción.: 8157/10 DROIPEN 30 MIGR 36

Asunto: Propuesta de Directiva del Parlamento Europeo y del Consejo relativa a la prevención y la lucha contra la trata de seres humanos y la protección de las víctimas, por la que se deroga la Decisión marco 2002/629/JAI

I. INTRODUCCIÓN

El 29 de marzo de 2010, la Comisión presentó la propuesta de Directiva del Parlamento Europeo y del Consejo relativa a la prevención y la lucha contra la trata de seres humanos y la protección de las víctimas, por la que se deroga la Decisión marco 2002/629/JAI.

En su reunión del 24 de noviembre de 2010, el COREPER llegó a un acuerdo sobre el texto que se recoge en el Anexo.

Cuando se adopte la presente Directiva, al texto acompañará la siguiente declaración del Consejo:

"La solución que propone la Directiva del Parlamento Europeo y del Consejo relativa a la prevención y la lucha contra la trata de seres humanos y la protección de las víctimas, que consiste en especificar que la Directiva modifica la Decisión marco 2002/629/JAI sustituyéndola se entenderá sin perjuicio del resultado del debate en curso sobre situaciones futuras comparables".

El Presidente del COREPER remitió el 25 de noviembre de 2010 una carta a los Presidentes de las Comisiones LIBE/FEMM del Parlamento Europeo en la que decía que, si el Parlamento Europeo aprueba exactamente el texto de la propuesta de la Comisión tal y como se recoge en el Anexo, el Consejo adoptará la propuesta así modificada.

En la reunión conjunta de las Comisiones LIBE/FEMM del 29 de noviembre de 2010, ambas votaron a favor del texto transaccional propuesto. Tras su adopción por las Comisiones, el texto se someterá a votación en el Pleno del Parlamento Europeo de diciembre de 2010.

Se ruega al Consejo que:

- **tome nota del acuerdo alcanzado sobre la propuesta y del estado de la cuestión.**

2010/0065 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on preventing and combating trafficking in human beings, and protecting victims, replacing
Framework Decision 2002/629/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Trafficking in human beings is a serious crime, often committed in the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the EU and the Member States.
- (1a) This Directive is part of a global action against trafficking in human beings which includes action involving third countries as stated in the “Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings”. In this context action should be pursued in non-EU countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting countries to develop appropriate anti-trafficking legislation.
- (1b) This Directive recognises the gender specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender specific where appropriate. The "push" and "pull" factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.
- (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 beings¹, and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01)² were adopted. (...) Moreover, the Stockholm Programme, adopted by the European Council, gives a clear priority to the fight against trafficking in human beings. Other measures should be envisaged, such as the support to the development of general EU common indicators for the identification of victims of trafficking, through the exchange of best practices between all the relevant actors, particularly public and private social services.

¹ OJ L 203, 1.8.2002, p. 1.

² OJ C 311, 9.12.2005, p. 1.

- (2a) Law enforcement authorities of the Member States should continue to cooperate in order to improve the fight against trafficking in human beings. In this regard, close cross-border cooperation, including sharing of information and sharing of best practices, as well as continued open dialogue between Members States' police, judicial and financial authorities is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting up of joint investigation teams as well as by the implementation of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings¹.
- (2b) Member States should encourage and work closely with civil society organisations, including recognized and active non-governmental organizations in this field working with trafficked persons, in particular in policymaking initiatives, information and awareness raising campaigns, research and education programmes, training as well as in monitoring and evaluating the impact of anti-trafficking measures.
- (3) This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing, the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals should be taken into consideration. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled with the most efficient measures.

¹ OJ L 328, 15.12.2009, p. 42.

- (3a) Children are more vulnerable and therefore at greater risk of falling victim to trafficking in human beings. In the application of the provisions of this Directive the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and United Nations Convention on the Rights of the Child¹.
- (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 Organized Crime² and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings³ are crucial steps in the process of enhancing international cooperation against trafficking in human beings. It should be noted that the Council of Europe Convention contains an evaluation mechanism, composed of the Group of experts on action against trafficking in human beings (GRETA) and the Committee of the Parties. Co-ordination between international organizations with competence with regard to action against trafficking in human beings should be supported in order to avoid duplication of efforts.
- (4a) This Directive is without prejudice to the principle of non-refoulement in accordance with the Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention) and in line with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.

¹ 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.

² United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo, 2000.

³ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.5.2005, Council of Europe Treaty Series N. 197.

- (5) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or service as defined in the ILO Convention No. 29 concerning Forced or Compulsory Labour of 29 June 1930. Therefore, exploitation of begging, including the use of a trafficked dependent person for 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, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity as well as other behaviours such as for example instances of illegal adoption or forced marriages insofar as they fulfil the constitutive elements of trafficking in human beings.

- (6) The levels of penalties in this Directive reflect the growing concern among Member States regarding the development in the phenomenon of trafficking in human beings. For this reason this Directive uses as basis the Council conclusions of 24 - 25 April 2002 on the approach to apply regarding approximation of penalties, levels 3 and 4. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children. Other factors that may be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, health conditions and disability. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence, or otherwise has caused particularly serious harm to the victim, this should be reflected in a particularly severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹. The gravity of the offence committed may be taken into account in the framework of the execution of the sentence.
- (6a) Full use should be made in combating trafficking in human beings of existing instruments on seizure and confiscation of the proceeds of crime, such as the UN Convention against Transnational Organized Crime and its Protocols, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision (2001/500/JHA) of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Council Framework Decision (2005/212/JHA) of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. The use of seized and confiscated instrumentalities and proceeds from the offences referred to in this Directive to support victim's assistance and protection, including compensation of victims and EU trans-border law enforcement counter trafficking activities, should be encouraged.

¹ OJ L 190, 18.7.2002, p. 1.

- (7) 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 under legislation on 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 that investigations and prosecutions of human trafficking offences are successful, their initiation should not depend, in principle, on reporting or accusation by the victim. Where the (...) nature of the act calls for it, prosecution should be allowed for a sufficient period of time after the victim has reached the age of majority. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law. Law enforcement officials and prosecutors should be adequately trained, also with a view to enhancing international law enforcement and judicial cooperation. Those responsible for investigating and prosecuting such offences should also have access to the investigative tools used in organised crime or other serious crime cases; this may include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigations.
- (9) In order to ensure effective prosecution of international criminal groups whose centre of their activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State. Similarly, jurisdiction may also be established where the offender is a habitual resident, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.

(10) While Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities¹ provides for the issue of a resident permit to victims of trafficking in human beings who are third-country nationals, and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States² 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 Directive establishes specific protective measures for any victim of trafficking in human beings. Consequently, this Directive does not deal with the conditions of their residence in the territory of Member States.

¹ OJ L 261, 6.8.2004, p. 19.

² OJ L 158, 30.4.2004, p. 77.

(11) 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. Member States should provide for resources to support victim assistance and protection. The assistance and support provided should include at least a minimum set of measures that are necessary 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 carried out in accordance with national procedures, take into account the conditions, cultural context 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 or she might have been trafficked and irrespective of his/her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State, assistance and support should be provided unconditionally at least during the reflection period. If, after the completion of the identification process or expiry of the reflection period, the person is not considered eligible for a residence permit or does not otherwise have lawful residence in the country, or if the victims has left the territory of the Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings, for example if medical treatment is ongoing due to severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to his/her statements in criminal proceedings.

- (12) The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹ 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 without delay to legal counselling and, in accordance with the role of victims in the relevant justice systems to legal representation, including for the purpose of claiming compensation. Such legal help could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge at least when the victim does not have sufficient financial resources in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge for them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.
- (13) Victims of trafficking who have already suffered the abuse and degrading treatment trafficking commonly entails, such as sexual exploitation, sexual abuse, rape, slavery-like practices and the removal of organs, should be protected from secondary victimisation and further trauma during the criminal proceedings. Unnecessary repetition of interviews during investigation, prosecution and trial should be avoided, for instance, where appropriate, through the production, as soon as possible in the proceedings, of video recording of those interviews. To this end victims of trafficking should during criminal investigations and proceedings receive treatment that is appropriate to their individual needs. The individual needs assessment should take into consideration circumstances such as age, pregnancy, health, disability and 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.

¹ OJ L 82, 22.3.2001, p. 1.

(13a) Assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of these measures and these measures should not be imposed on the victims. Refusal of a victim to assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

(14) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective 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 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 for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

(14a) Special attention should be paid to unaccompanied child victims of trafficking in human beings as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures regarding the needs of the child and should ensure that relevant procedural guarantees apply. Necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed to the minor in order to safeguard his or her best interests. A decision on the future of each unaccompanied child victim of trafficking in human beings should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interest of the child, which should be a primary consideration. A durable solution could be return and reintegration in the country of origin or the country of return, integration in the host society, granting of international status or granting of other status according to national law of the Member States.

(14b) When, in accordance with this Directive, a guardian and/or a representative should be appointed for a child, these roles may be carried out by the same person or by a legal person, an institution or an authority.

(15) Member States should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of people falling victims to trafficking in human beings, by means of research, including research into new forms of trafficking in human beings, information, awareness raising, and education. In such initiatives Member States should adopt a gender perspective and a child rights approach. Any officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. This training obligation (...) should be promoted for members of the different following categories when they are likely to come into contact with victims : police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could depending on local circumstances also involve other groups of public officials that are likely to encounter trafficking victims in their work.

(16) Directive 2009/52/EC of 18 June 2009 providing for minimum standards of sanctions and measures against employers of illegally staying third-country nationals¹ 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.

¹ OJ L 126, 30.6.2009, p. 24.

(17) National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established by Member States, in the way they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report. These National Rapporteurs or equivalent mechanisms are already constituted in an informal EU Network established by Council Conclusions on 4 June 2009. An Anti-Trafficking Coordinator would take part in the works of this Network, which provides the Union and its member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at the EU level. The European Parliament should be entitled to participate in the joint activities of the National Rapporteurs or equivalent mechanisms.

(17a) In order to evaluate the results of anti-trafficking actions, the EU should continue to develop its work on methodologies and data collection methods to produce comparable statistics.

(17b) In the light of the Stockholm Programme and with a view to developing a consolidated EU approach against trafficking aiming at further strengthening the commitment of, and efforts made, by the EU and the Member States to prevent and combat trafficking, Member States should facilitate the tasks of an Anti-trafficking Coordinator which may include for example the improvement of coordination and coherence, avoiding duplication of efforts, between EU institutions and EU agencies as well as with Member States and international actors, the contribution to the elaboration of existing or new EU policies and strategies relevant to the fight against trafficking in human beings or the reporting to the European institutions.

(17c) The present Directive aims to amend and expand upon the provisions of Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings¹. Since the amendments to be made are of substantial number and nature, in the interests of clarity, the Framework Decision should be replaced in its entirety.

¹ OJ L 203 of 1.8.2002, p. 1.

- (18) The Council, in accordance with paragraph 34 of the Interinstitutional agreement on better law-making, should encourage Member States to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.
- (19) Since the objective of this Directive, 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 European Union level, the EU may adopt measures in accordance with the principle of subsidiarity as referred to in Article 3 and Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary to achieve that objective.
- (20) This Directive 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 Directive seeks to ensure full respect for these rights and principles and has to be implemented accordingly.
- (21) In accordance with Article 3 of the Protocol on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.

In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Directive and will not be bound by or be subject to its application.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also aims to introduce common provisions, taking into account the gender perspective, to strengthen the prevention of the crime and the protection of its victim.

Article 2

Offences concerning trafficking in human beings

1. Member States 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 begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
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 has 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 has been used.
6. For the purpose of this Directive, "child" shall mean any person below 18 years of age.

Article 3

Instigation, aiding, abetting and attempt

Member States shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

1. Member States 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 five years of imprisonment.
2. Member States 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 ten years of imprisonment where it has been committed in any of the following circumstances:
 - (a) the offence was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;
 - (b) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA¹.
 - (c) the offence has deliberately or by gross negligence endangered the life of the victim;
 - (d) the offence was committed by use of serious violence or has caused particularly serious harm to the victim.
3. Member States shall take the necessary measures to ensure that the fact that the offence was committed by a public official in the performance of her or his duties is regarded as an aggravating circumstance.
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

¹ OJ L 300, 11.11.2008, p. 42.

Article 5

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 2 and 3 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, or
 - (b) an authority to take decisions on behalf of the legal person, or
 - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person can 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 2 and 3 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 2 and 3.
4. For the purpose of this Directive '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 6

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(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 6a

Seizure and Confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in this Directive.

Article 7

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

Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 8

Investigation and prosecution

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where (...) the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting offences referred to in Articles 2 and 3 are trained accordingly.
4. Member States 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 2 and 3.

Article 9
Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over an offence referred to in Articles 2 and 3 where:
 - (a) the offence is committed in whole or in part within its territory; or
 - (b) the offender is one of its nationals
2. Member States shall inform the Commission where they decide to establish further jurisdiction over an offence referred to in Articles 2 and 3 committed outside of its territory e.g. where:
 - a) the offence is committed against one of their nationals or a person who has his or her habitual residence in the territory of that Member State; or
 - b) the offence is committed for the benefit of a legal person established in the territory of that Member State; or
 - c) the offender has his or her habitual residence in the territory of that Member State.
3. For the prosecution of an offence referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in cases mentioned in paragraph 1b), and may, in cases mentioned in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subordinated to the condition:
 - (a) that the acts are a criminal offence at the place where they were performed or
 - (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.

Article 10

Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise 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 Directive.
2. Member States 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 grounds indication that the person might have been subjected to an offence referred to in Articles 2 and 3.
3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to (...) cooperate in the criminal investigation, prosecution and trial, without prejudice to Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration, who cooperate with the competent authorities, or similar national rules.
4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at early identification, assistance and support for victims, in cooperation with relevant support organisations.
5. Assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as appropriate and safe accommodation and material assistance as well as necessary medical treatment including psychological assistance, counselling and information, translation and interpretation services where appropriate.

6. Information referred to in paragraph 5 shall cover, where relevant information on a reflection and recovery period pursuant to Directive 2004/81/EC¹, and information on the possibility to grant international protection pursuant to Council Directive 2004/83/EC² and Council Directive 2005/85/EC³ or pursuant to international instruments or other similar national rules.
7. Member States shall attend to victims with special needs, deriving in particular from pregnancy, health conditions, disability, mental or psychological disorders, or serious forms of psychological, physical or sexual violence.

Article 11

Protection of victims of trafficking in human beings in criminal investigation 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. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.

¹ Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration, who cooperate with the competent authorities

² Council Directive 2004/83/EC² of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

³ Council Directive 2005/85/EC³ of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia by having access to witness protection programmes (...) or other similar measures, if appropriate and in accordance with the grounds defined by national legislation or procedures.
4. 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, Member States 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 12

General provision 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 with assistance, support and protection (...). In the application of the provisions of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, the person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 13 and 14.

Article 13

Assistance and support to child victims (...)

1. Member States 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 with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education to child victims and children of victims, that are given assistance and support in accordance with Article 10 of this Directive, in accordance with its national law.
- 1a. Members States shall appoint a guardian or a representative for the child victim of trafficking in human beings from the moment he/she is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.
2. Member States 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, Member States shall, where appropriate and possible, apply Article 4 of Council Framework Decision 2001/220/JHA to the family.
3. This Article shall apply in addition to Article 10.

Article 14

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

1. Member States 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, competent authorities appoint a 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.
 - 1a. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.
2. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal proceedings of any of the offences referred to in Articles 2 and 3:
 - (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;
 - (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 necessary for the purpose of criminal proceedings;
 - (f) the child victim may be accompanied by his or her 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.

3. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 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.
4. Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, that it may be ordered that
 - (a) the hearing shall take place without the presence of the public;
 - (b) the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.
5. This Article shall apply in addition to Article 11.

Article 14a

Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 13 (1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interest of the child.
3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.

4. Member States 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 competent authorities appoint a representative where the child is unaccompanied or separated from his or her family.
5. This Article shall apply in addition to Article 13 and 14.

Article 14b

Compensation to victims

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

Article 15

Prevention

1. Member States shall take appropriate measures such as education and training to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take appropriate actions including through internet such as information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.
3. Member States shall promote regular training for officials likely to come into contact with victims and potential victims of trafficking in human beings, including front-line police officers aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging the demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2 with the knowledge that the person is a victim of an offence referred to in Article 2.

Article 16

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, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Article 16a

Coordination of the EU strategy on trafficking in human beings

In order to contribute to a coordinated and consolidated strategy of the European Union against trafficking in human beings, Member States shall facilitate the tasks of an Anti-Trafficking Coordinator (ATC). In particular Member States shall transmit to that ATC information referred to in Article 16, on the basis of which that ATC shall contribute to a reporting by the Commission every two years on the progress made in the fight against trafficking in human beings.

Article 17

Replacement of Framework Decision 2002/629/JHA

Framework Decision 2002/629/JHA on combating trafficking in human beings is hereby **replaced** in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision shall be construed as references to this Directive.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by two years FROM ADOPTION at the latest.
2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.
3. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 19

Reporting

1. The Commission shall, by two years from the deadline set in Article 18, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of actions taken under Article 15(4), accompanied, if necessary, by legislative proposals.
2. The Commission shall, by three years from the deadline set in Article 18, submit a report to the European Parliament and the Council, assessing the impact of existing national law criminalising the users of services which are the objects of exploitation of trafficking in human beings on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.

Article 20

Entry into force

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

Article 21

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
