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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on 21/09/2023.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 May 2004

9126/04

RESTREINT UE

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COVER NOTE

from : the Secretary-General of the European Commission
signed by Mrs Patricia BUGNOT, Director

date of receipt : 3 May 2004

to : Mr Javier SOLANA, Secretary-General/High Representative

Subject : Proposal for a Recommendation for a Council Decision authorising the Commission to negotiate the draft European Convention on combating trafficking in human beings and a Common Position of the Council on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the Draft European Convention on Action against Trafficking in Human Beings held in the Council of Europe

Delegations will find attached Commission document SEC(2004) 519 final .

Encl.: SEC(2004) 519 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.04.2004
SEC(2004)519 final

RESTREINT UE

RECOMMENDATION FOR A COUNCIL DECISION

**authorising the Commission to negotiate the draft
European Convention on combating trafficking in human beings**

Proposal for a

COMMON POSITION

**from the Council on the basis of Article 34 of the Treaty on European Union, on
negotiations relating to the Draft European Convention on Action against Trafficking in
Human Beings held in the Council of Europe**

(presented by the Commission)

A. EXPLANATORY MEMORANDUM

I. GENERAL INTRODUCTION

The Commission's aim in submitting this text to the Council is to recommend the adoption of a decision authorising it to negotiate the draft European Convention on combating trafficking in human beings, since this Convention will have an impact on many of the areas for which the Community is responsible.

1. The draft Convention

In a decision of 30 April 2003, the Committee of Ministers of the Council of Europe set out the terms of reference of the Ad Hoc Committee on action against trafficking in human beings (CAHTEH), which was to prepare a European Convention on this topic. The terms of reference require it to put a special focus on the human rights of the victims of trafficking, in particular to design a comprehensive framework for the protection and assistance of victims and witnesses; it must ensure the effective prevention, investigation and prosecution of such crimes and promote international cooperation. A monitoring mechanism will be set up to ensure compliance with the terms of the Convention. Finally, the Committee must take into account the standards of the Council of Europe and the existing legal instruments dealing with trafficking in human beings, in particular the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime.

CAHTEH includes representatives of the Member States of the Council of Europe, observer States (USA, Mexico, Japan), the European Commission and the Council of the European Union.²

2. A tight schedule for negotiations with a view to adoption at the beginning of 2005

The first meeting was held on 15-17 September 2003, the second on 8-10 December and the last meeting on 3-5 February 2004.

The text is still at the first reading stage, which is expected to continue at the meeting on 11-14 May. The CAHTEH Secretariat is hoping to move on to the second reading at the meetings of 29 June to 2 July, continuing on 27-29 September and 7-9 December 2004. The stated aim is to have a text ready by the end of 2004 for signing at the Third Summit of Council of Europe Heads of State and Government in Spring 2005.

Without prejudging the coordination meetings to prepare for the negotiating sessions, the Commission is therefore asking the Council to take a decision authorising it to negotiate this draft Convention. In the interests of clarity and consistency, it is vital for this decision to be adopted before the start of the second reading, planned for the end of June 2004.

II. THE EXTENT OF THE COMMUNITY'S POWERS

1. Material provisions

The main Community powers covered by the draft Convention are to be found in Title IV of

² For more information go to: http://www.coe.int/T/E/human_rights/trafficking/.

Part Three of the EC Treaty, entitled "Visas, asylum, immigration and other policies related to free movement of persons". This gives the Community powers in the field of immigration, covering not only measures to combat illegal immigration, which has grown with the development of networks exploiting migrants in connection with trafficking in human beings, and the return of third-country nationals who are in the Community illegally, but also establishing the rights of third-country nationals. It is also responsible for security and the inspection of documents in connection with border controls. All these fields are now covered by Community legal instruments. As regards Chapters II and III of the draft Convention ("Prevention, cooperation and other measures" and "Measures to protect the rights of victims, including questions relating to equality between women and men") the most important instruments include the proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities³ and the Schengen "acquis". The draft Convention also relates to powers exercised by the Community in the field of asylum policy.

In addition to the competences based on Title IV of the EC Treaty, which make up the bulk of the powers concerned by this draft Convention, other provisions relate to areas in which the Community has established jurisdiction, such as measures to combat discrimination⁴ or data protection.⁵

2. Horizontal provisions

These are provisions which, by their "horizontal" nature, apply to the entire draft Convention and are therefore inextricably linked to the provisions which are subject to Community law. They relate in particular to the following points: definitions, scope, relationship with other instruments, amendments to the Convention, signature (open to the European Community), territorial application, reservations, termination and notification. The draft Convention must provide for the accession of the Community, and Community participation in the entire decision-making process regarding the Convention (from adoption to implementation and possible amendment) on equal terms with the other parties to it, particularly as regards voting rights. The Community must have a number of votes equal to the number of its Member States which are Parties to the Convention and have transferred their powers to the Community in this matter. This means, in the specific case of the provisions based on Title IV of the EC Treaty, that the Protocol on the position of the United Kingdom and Ireland and the Protocol on the position of Denmark are taken into account. This rule must continue to apply to the subsequent implementation of the Convention (vote in the Committee of Ministers in application of Article 44, combined if necessary with another provision of the draft Convention, amendments, acceptance of a new Party to the Convention, etc.).

Another important question is the monitoring mechanism established via the creation of an Experts Group on Trafficking in Human Beings (GRETA). The Community system already confers on the Commission the task of ensuring that Community law is transposed and

³ Referred to hereafter as the "proposal for a directive". COM(2002)71, version MIGR 101, following agreement in the Council of Justice and Home Affairs Ministers on 6 November 2003.

⁴ See the two Directives adopted on the basis of Article 13 of the EC Treaty: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L180, 19.7.2000, p. 22, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16).

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

respected as regards the implementation of provisions of Community law by the Member States. To avoid duplication or contradiction, it should be possible to adapt the draft Convention to the institutional peculiarities of the Community. As part of its powers, the Commission could be given the task of ensuring that the Member States comply with the provisions of the Convention and could report to GRETA.

Finally, the draft Convention should include a provision authorising the Community to adopt more favourable terms than those contained in the draft Convention or, once it has been adopted, the Convention itself.

III. THE LEGAL BASIS FOR COMMUNITY POWERS

This recommendation is being put to the Council with the request that it authorise the Commission to negotiate, on behalf of the Community, the articles of the draft Convention which are covered by Community law. The Commission takes the view that the draft Convention should be considered to be a mixed draft agreement, since it contains some elements for which the Community has powers and others which fall within the jurisdiction of the Member States. Although one of the instruments concerned, the proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities, has not yet been formally adopted, it is on the point of being adopted following agreement at the Council of Justice and Home Affairs Ministers of 6 November 2003 and the new European Parliament opinion of 9 March 2004. Account should therefore be taken of the instrument in its present state.

The negotiation and conclusion of international agreements which affect internal Community rules are the subject of well-established Court of Justice case law. The Court recalled the principles of its "AETR ruling" in its opinion of 19 March 1993, stating that "where Community rules have been promulgated for the attainment of the objectives of the Treaty, the Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope".⁶

The Commission considers that the Community should exercise its powers to conclude international agreements in areas covered by the first pillar during the negotiation and conclusion of the draft Convention. In this connection the Commission feels that the procedure provided for in Article 300 of the EC Treaty should be followed as regards the part of the Convention whose content is covered by the provisions of primary and secondary Community law.

The Commission agrees with the view of the Court of Justice as stated in the abovementioned opinion, that the Community and the Member States should maintain a close relationship throughout the negotiations.

B. RECOMMENDATION

For all the reasons set out above, the Commission requests the Council:

- to authorise it to negotiate the draft Convention on combating trafficking in human beings;

⁶ Opinion 2/91 of 19 March 1993, [1993] ECR I-1061.

- because the Commission will be conducting the negotiations on behalf of the Community, as provided by the EC Treaty, to appoint a committee to assist the Commission in its task;
- to adopt the negotiating brief of which the draft is attached.

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ANNEX

Draft negotiating brief for the draft European Convention on combating trafficking in human beings

The Commission is hereby authorised to negotiate the terms of the draft European Convention on combating trafficking in human beings to the extent that these terms are subject to Community competence.

1. The draft Convention should be compatible with the Community provisions based on the EC Treaty, in particular Title IV of Part Three of the Treaty (which deals with immigration, asylum and external frontiers).
2. Provided that it is compatible in this way, the draft Convention should aim to add value to the United Nations Convention against transnational organised crime and the supplementary protocol to prevent, suppress and punish trafficking in persons, especially women and children, as part of a regional international organisation such as the Council of Europe.
3. The Convention should contain provisions regulating the status of the victims in such a way as to encourage them to cooperate with the competent authorities, on the one hand, and to prepare for their return in conditions which will ensure that they do not again become involved in human trafficking.
4. The provisions of the Protocol must be without prejudice to Member States' obligations under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other international humanitarian obligations. In particular, the provisions of the Protocol shall in no way affect or undermine the obligation of *non-refoulement*.
5. The draft Convention should include a clause allowing the Community to accede to the Convention.
6. The draft Convention should include a clause providing for the Community to take part in all the decisions adopted in the lifetime of the Convention, and the principle that the Community should have the same number of votes as the number of its Member States that are parties to the Convention and have transferred their competence in this matter to the Community.
7. The draft Convention should allow for the monitoring mechanism (GRETA) to be adapted to the institutional peculiarities of the Community.
8. The draft Convention should specify that it will not prevent the European Community from adopting more favourable rules than those set out in the Convention.

Proposal for a

COMMON POSITION

from the Council on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the Draft European Convention on Action against Trafficking in Human Beings held in the Council of Europe

EXPLANATORY MEMORANDUM

1. EUROPEAN CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

On 30 April 2003 the Council of Europe (Committee of Ministers) decided to set up an Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH) and adopted terms of reference expiring on 31 December 2004. The committee is instructed to prepare, under the authority of the Committee of Ministers, a European Convention on action against trafficking in human beings (hereinafter referred to as "Convention").

Meetings of CAHTEH already took place in September and December 2003 and in February 2004. Further meetings are foreseen for May, June, September and December 2004. Afterwards, the draft Convention shall be presented to the Committee of Ministers of the Council of Europe, which shall adopt the Convention in March 2005.

The present draft of the Convention includes, inter alia, chapters concerning substantive criminal law and investigation, prosecution and procedural law.

2. LEGISLATION UNDER TITLE VI OF THE TREATY ON EUROPEAN UNION AND OTHER ACTS CONCERNING TRAFFICKING IN HUMAN BEINGS

Without prejudice to the increasing competencies of the European Community in this field, the EU developed a comprehensive policy to prevent and combat trafficking in human beings. This policy is based on a multi-disciplinary approach including elements of prevention, protection of and assistance for victims and witnesses in criminal proceedings, substantive criminal law, and police and judicial cooperation. The Commission issued a number of communications on trafficking in human beings in 1996, 1998 and 2000⁷. The last Communication was accompanied by two proposals for Council framework decisions on combating trafficking in human beings⁸ and – addressing a different but closely connected subject - on combating the sexual exploitation of children and child pornography⁹.

On 19 July 2002, the Council adopted the Framework Decision on combating trafficking in human beings, so far the most important EU legal instrument addressing trafficking in human beings¹⁰. On 22 December 2003, the Council also adopted the Framework Decision on combating the sexual exploitation of children and child pornography¹¹.

The Council Framework Decision on combating trafficking in human beings provides for a common definition of offences concerning trafficking in human beings for the purposes of labour and sexual exploitation. It obliges EU Member States to take the necessary measures to ensure that acts covered by this definition are punishable by effective, proportionate and dissuasive penalties, which may entail extradition. Offences committed in aggravating circumstances shall be punishable by terms of imprisonment with a maximum penalty that is not less than eight years. Furthermore, the Framework Decision contains provisions concerning the liability of and sanctions on legal persons for offences related to trafficking in human beings, concerning jurisdiction, prosecution, and protection and assistance to victims.

⁷ COM(1996)567 final, 20.11.1996; COM(1998)726 final, 9.12.1998, COM(2000) 854 final, 21.12.2000.

⁸ OJ C 62, 27.2.2001, p. 324.

⁹ OJ C 62, 27.2.2001, p. 327.

¹⁰ OJ L 203, 1.8.2003, p. 1.

¹¹ OJ L 13, 20.1.2004, p. 44.

According to the Framework Decision on combating the sexual exploitation of children and child pornography Member States shall take the necessary measures to ensure that, inter alia, coercing or recruiting a child into prostitution or engaging into sexual activities with a child, where, for example, use is made of coercion or threat, is punishable. These and other acts covered by this framework decision are closely connected with trafficking in children.

On 15 March 2001 the Council had already adopted the Council Framework Decision on the standing of victims in criminal proceedings¹². The act includes provisions on the rights to receive information, to protection and to compensation. The Framework Decision concerns issues such as victims resident in another Member State and cooperation between Member States. Member States shall ensure that particularly vulnerable victims can benefit from specific treatment best suited to their circumstances. They shall also ensure that, where there is a need to protect such victims from the effects of giving evidence in open court, they may be entitled to testify in a manner which will enable this objective to be achieved. Furthermore, Member States shall encourage initiatives enabling competent personnel to receive suitable training with particular reference to the needs of the most vulnerable victims. As far as children are concerned the Framework Decision on trafficking in human beings stresses that they shall be considered as particularly vulnerable victims in the context of the Framework Decision on the standing of victims in criminal proceedings.

Other third-pillar-acts focusing on various topics may have some relevance with regard to the Convention, as the latter is intended to cover a wide range of aspects related to human trafficking:

- Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organised crime¹³;
- Council Resolution of 20 December 1996 on individuals, who cooperate with the judicial process in the fight against international organized crime¹⁴;
- Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime¹⁵;
- Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹⁶;
- Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹⁷; and
- Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence¹⁸.

¹² OJ L 82, 22.3.2001, p. 1.

¹³ OJ C 327, 7.12.1995, p. 5.

¹⁴ OJ C 10, 11.1.1997, p. 1.

¹⁵ OJ L 182, 5.7.2001, p. 1.

¹⁶ OJ C 326, 21.11.2001, p. 1.

¹⁷ OJ L 190, 18.7.2002, p. 1.

¹⁸ OJ L 196, 2.8.2003, p. 45.

Furthermore, the following Council acts could be relevant for the line to be taken by Member States in negotiations of the Council of Europe:

- Conclusions of 8 May 2003 concerning the Brussels Declaration on preventing and combating trafficking in human beings¹⁹;
- Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women²⁰;
- Council Recommendation of 27 November 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings²¹.

3. THE RELEVANCE OF A EUROPEAN CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS FOR THE COOPERATION IN JUSTICE AND HOME AFFAIRS MATTERS UNDER TITLE VI OF THE TREATY ON EUROPEAN UNION

A number of articles contained in the Draft Convention concern issues such as criminal proceedings and substantive criminal law, which are covered by legislation under Title VI of the Treaty on European Union. EU Member States should follow a coherent and consistent strategy in the negotiations. Frictions, inconsistencies and contradictions between the intended Convention and different political and legal instruments at EU level should be prevented. As far as an *acquis* has already been established under Title VI of the Treaty on European Union in the area of trafficking of human beings, it should be considered as guiding principle for negotiations at international level, in particular in a wider European context.

4. LEGAL BASIS

This proposal for a Common Position concerns the prevention of and combat against trafficking in persons, to which explicit reference is made in Article 29 of the Treaty on European Union. In these areas the Council may, without prejudice to the competencies of the European Community and acting unanimously on the initiative of any Member State or of the Commission, adopt common positions defining the approach of the Union to a particular matter as set out in Article 34(2)(a) of the Treaty on European Union. The legal basis indicated in the preamble of the proposal is therefore Article 34(2)(a) of the Treaty on European Union. The proposal will not entail financial implications for the budget of the European Communities.

¹⁹ OJ C 137, 12.6.2003, p. 1.

²⁰ OJ C 260, 29.10.2003, p. 4.

²¹ Not published. Council Document 15028/03 CRIMORG 82 MIGR 102 ENFOPOL 104

5. THE COMMON POSITION: ARTICLES

Article 1

Article 1 (1) stipulates that Member States shall support the drawing up of the Council of Europe's draft European Convention on Action against Trafficking in Human Beings. This Convention should prevent and combat trafficking in human beings as comprehensively as possible and facilitate to the maximum extent possible the effective prosecution and punishment of criminal offences related to this form of crime.

Article 1 (2) corresponds to the necessity that the Convention should be consistent with legislation under Title VI of the Treaty on European Union, in particular with regard to substantive criminal law and to criminal investigations and proceedings. The relevant legislation comprises Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings²², Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings²³ and Council Framework Decision 2004/68/JAI of 22 December 2003 on combating the sexual exploitation of children and child pornography²⁴.

Other acts such as Council Resolutions, Recommendations and Conclusions - although not legally binding - should also be taken into consideration in order to promote positions consistent with the spirit of these acts and the broader development in the European Union with regard to trafficking in human beings. Consequently, Member States should, when forming their position, take into account Council Conclusions (2003/C 137/01) of 8 May 2003 concerning the Brussels Declaration on Preventing and Combating Trafficking in Human Beings²⁵, Council Resolution (2003/C 260/03) of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women²⁶ and Council Recommendation of 27 November 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings²⁷. Attention should also be paid to Council Resolutions of 23 November 1995 on the protection of witnesses in the fight against international organised crime²⁸ and of 20 December 1996 on individuals, who cooperate with the judicial process in the fight against international organized crime.²⁹

Article 1 (3) sets out that due consideration should be given to Article 5(3) of the Charter of Fundamental Rights of the European Union, which stipulates that trafficking in human beings is prohibited, in order to stress that human trafficking is considered as a human rights violation.

Article 1 (4) is based on the fact that a definition of trafficking in human beings has already been agreed at UN and EU level in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention

²² OJ L 203, 1.8.2003, p. 1.

²³ OJ L 82, 22.3.2001, p. 1.

²⁴ OJ L 13, 20.1.2004, p. 44.

²⁵ OJ C 137, 12.6.2003, p. 1.

²⁶ OJ C 260, 29.10.2003, p. 4.

²⁷ Not published.

²⁸ OJ C 327, 7.12.1995, p. 5.

²⁹ OJ C 10, 11.1.1997, p. 1.

against Transnational Organized Crime and in the Council Framework Decision on combating trafficking in human beings.

Article 1 (5) corresponds with the fact that the protection of the rights of the victims should be a core element in criminal proceedings. Member States shall also, where appropriate, support the cooperation between state authorities and independent specialised organisations (IOs, NGOs) in criminal proceedings.

With regard to substantive criminal law the Convention should be as close as possible to the Council Framework Decision on combating trafficking in human beings. Therefore, Article 1 (6) recalls the core elements of this Framework Decision.

Article 2

Article 2 clarifies that Member States can adopt or apply future instruments according to Title VI of the Treaty on European Union in the matters dealt with in this Convention.

Article 3

According to Article 3 Member States shall defend the common positions adopted under the Title VI of the Treaty on European Union within international organisations and at international conferences in which they take part. This implies the coordination of Member States' positions and, wherever possible, negotiations on the basis of a common standpoint on specific issues. The Commission shall be fully associated with this work.

Article 4

Article 4 provides for the involvement of candidate countries.

Article 5

Articles 5 takes into account that a considerable number of provisions of the Draft Convention concern Community competencies and that the Commission also submitted recommendations authorising the latter to negotiate, on behalf of the European Community, those parts of this convention, which are covered by Community law.

6. CONCLUSION

For the reasons set out above, the Commission proposes to the Council to adopt the attached Common position. Due to the confidential nature of the negotiations addressed in the Common position, the Commission recommends that the latter should not be published in the Official Journal in accordance with Article 17 (2) of the Council's rules of Procedure.

Proposal for a

COMMON POSITION

adopted by the Council on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the Draft European Convention on Action against Trafficking in Human Beings held in the Council of Europe

The Council of the European Union

Having regard to the Treaty on European Union, and in particular Article 34 (2) (a) thereof,

Having regard to the proposal of the Commission,

Whereas:

- (1) According to Article 5(3) of the Charter of Fundamental Rights of the European Union trafficking in human beings is prohibited.
- (2) The Tampere European Council of 15 and 16 October 1999 called for the prevention of all forms of trafficking in human beings. The Seville European Council of 21 and 22 June 2002 expressed the need for resolute action to combat trafficking in Human Beings. The Thessaloniki European Council of 19 and 20 June 2003 considered the combating of trafficking in human beings, including taking legislative and other measures, to be of primary importance.
- (3) The Council addressed the issue of trafficking in human beings in Council Framework Decision (2002/629/JHA) of 19 July 2002 on combating trafficking in human beings³⁰.
- (4) Furthermore, Council Framework Decision (2001/220/JHA) of 15 March 2001 on the standing of victims in criminal proceedings³¹, 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 crime³²; Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union³³; Council Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States³⁴, Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence³⁵ and Council Framework Decision 2004/68/JHA of 22

³⁰ OJ L 203, 1.8.2003, p. 1.

³¹ OJ L 82, 22.3.2001, p. 1.

³² OJ L 182, 5.7.2001, p. 1.

³³ OJ C 326, 21.11.2001, p. 1.

³⁴ OJ L 190, 18.7.2002, p. 1.

³⁵ OJ L 196, 2.8.2003, p.45.

December 2003 on combating the sexual exploitation of children and child pornography³⁶ may be relevant for the negotiations in the Council of Europe.

- (5) On 8 May 2003, the Council adopted Conclusions on the Brussels Declaration issued at the conclusion of the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century, held from 18 to 20 September 2002³⁷. On 20 October 2003 the Council adopted a Resolution on initiatives to combat trafficking in human beings, in particular women³⁸. On 27 November 2003 the Council adopted a Recommendation on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings³⁹.
- (6) On 23 November 1995, the Council adopted a Resolution on the protection of witnesses in the fight against international organised crime⁴⁰ and on 20 December 1996 the Council adopted a Resolution on individuals, who cooperate with the judicial process in the fight against international organized crime.⁴¹
- (7) All Member States of the European Union and, on behalf of the European Community, the Commission signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- (8) The Council of Europe initiated negotiations concerning a European Convention on Action against Trafficking in Human Beings. It is desired to contribute as fully as possible to the negotiation of the proposed convention and to avoid incompatibility between the proposed convention and instruments drawn up under Title VI of the Treaty on European Union.
- (9) The European Commission should be authorised to negotiate, on behalf of the European Community, those parts of the convention, which are covered by Community law.

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. Member States shall support the drawing up of the Council of Europe's draft European Convention on Action against Trafficking in Human Beings (hereinafter referred to as "Convention"). They shall advocate the inclusion in the Convention of provisions which will facilitate to the maximum extent possible the effective prosecution and punishment of criminal offences related to trafficking in human beings.
2. Member States shall ensure that the provisions of this Convention are consistent with legislation under Title VI of the Treaty on European Union, in particular with

³⁶ OJ L13, 20.1.2004, p.44.

³⁷ OJ C 137, 12.6.2003, p. 1.

³⁸ OJ C 260, 29.10.2003, p. 4.

³⁹ Not published.

⁴⁰ OJ C 327, 7.12.1995, p. 5.

⁴¹ OJ C 10, 11.1.1997, p. 1.

Council Framework Decision (2002/629/JHA) of 19 July 2002 on combating trafficking in human beings⁴², Council Framework Decision (2001/220/JHA) of 15 March on the standing of victims in criminal proceedings⁴³, and with Council Framework Decision (2004/68/JHA) of 22 December 2003 on combating the sexual exploitation of children and child pornography⁴⁴ and with other acts related to subjects covered by the Convention and relevant for the further measures against trafficking in human beings under Title VI of the Treaty on European Union, in particular with Council Conclusions (2003/C 137/01) of 8 May concerning the Brussels Declaration on Preventing and Combating Trafficking in Human Beings⁴⁵, Council Resolution (2003/C 260/03) of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women⁴⁶ and Council Recommendation of 27 November 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings⁴⁷.

3. The provisions to be included in the Convention should reflect that according to Article 5(3) of the Charter of Fundamental Rights of the European Union trafficking in human beings is considered as a violation of human rights and therefore prohibited.
4. The Convention should define trafficking in human beings as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and in the Council Framework Decision of 19 July 2002 on combating trafficking in human beings.⁴⁸
5. With regard to criminal proceedings Member States shall support the inclusion of provisions addressing the situation and special needs of women and children who became or may become victims of trafficking in human beings. In particular with regard to children, the Convention should include provisions requiring specific treatment best suited to their circumstances, necessary protection from the effects of giving evidence in open court, suitable training with particular reference to their needs and appropriate assistance for his or her family. Furthermore, Member States shall, where appropriate, support the inclusion of provisions fostering close cooperation between state authorities and independent specialised organisations (IOs, NGOs) in criminal proceedings.
6. With regard to substantive criminal law the Convention shall include provisions requiring that offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation are punishable. Effective, proportionate and dissuasive criminal penalties, which may entail extradition, shall be foreseen for offences committed in aggravating circumstances. Member States shall support the inclusion in the Convention of provisions concerning the liability of and sanctions on legal persons for offences related to trafficking in human beings as well as concerning jurisdiction and prosecution.

⁴² OJ L 203, 1.8.2003, p. 1.

⁴³ OJ L 82, 22.3.2001, p. 1.

⁴⁴ OJ L13, 20.1.2004, p.44.

⁴⁵ OJ C 137, 12.6.2003, p. 1.

⁴⁶ OJ C 260, 29.10.2003, p. 4.

⁴⁷ Not published.

⁴⁸ OJ L 203, 1.8.2003, p. 1.

Article 2

Member States should ensure that the Convention does not prevent them from adopting or applying future instruments under Title VI of the Treaty on European Union in the matters dealt with in this Convention.

Article 3

In the negotiations on the proposed Council of Europe's Convention, Member States shall coordinate their positions, at the Council Presidency's initiative, and seek to arrive at common standpoints on all issues which have significant implications for the interests of the European Union. The Commission shall be fully associated with this work.

Article 4

In the negotiations, the European Union will invite Candidate Countries to support this Common Position.

Article 5

This Common Position is without prejudice to the authorisation of the Commission to negotiate, on behalf of the European Community, those parts of this convention which are covered by Community law.

Done at Brussels,

*For the Council
The President*