Preventing and combating trafficking in human beings and protecting victims

2009/0050(CNS) - 25/03/2009 - Legislative proposal

PURPOSE: to recast Framework Decision 2002/629/JHA on preventing and combating trafficking in human beings, and protecting victims.

PROPOSED ACT: Framework Decision.

BACKGROUND: trafficking in human beings is considered one of the most serious crimes worldwide, a gross violation of human rights, a modern form of slavery, and an extremely profitable business for organised crime. It is reasonable to estimate from the available figures that several hundred thousand people are trafficked into the EU area or within the EU area every year.

To combat this type of crime, the EU created a provision in 2002: Council Framework Decision 2002/629/JHA on combating trafficking in human beings, which aims to respond to the need to harmonise Member States' legislation and legal criminal sanctions in this area.

However, although Member States have generally complied with the essential obligations set out in this text, the implementation of an effective and comprehensive policy for combating trafficking in human beings requires additional efforts. Moreover, the Framework Decision has certain shortcomings, including:

- the low number of criminal proceedings (enabling offenders to escape justice);
- the lack of assistance, protection or compensation for victims;
- insufficient monitoring of the situation.

Therefore, the Commission proposes a review of the legislation in force in order to strengthen the framework of criminal provisions and to ensure better protection for victims. Moreover, the Framework Decision would be designed to take account of the essential elements of the Council of Europe Convention of 2005 on Action against Trafficking in Human Beings, which is the highest international standard to date in criminal law, victim assistance, prevention and monitoring.

IMPACT ASSESSMENT: the Commission examined several options:

- **option 1**: no new EU action;
- **option 2**: non legislative measures: Framework Decision 2004/629/JHA would not be amended but non-legislative measures could be put in place in the areas of victim support schemes, monitoring, prevention measures in countries of destination, prevention measures in countries of origin, training, and law enforcement cooperation;
- **option 3**: new legislation on prosecution, victim support, prevention and monitoring, incorporating certain provisions of the 2005 Council of Europe Convention;
- **option 4**: new legislation (as in option 3) incorporating the existing Framework Decision and supplemented by non-legislative measures (as in option 2).

In the light of the assessment of the socioeconomic impact and the impact on fundamental rights, the Commission's preferred option is option 4.

CONTENT: the proposal will both repeal and incorporate Framework Decision 2002/629/JHA to include the following new elements:

- **substantive criminal law provisions**, including a clear definition of **offences** related to human trafficking (the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation shall also be punishable), **aggravating circumstances** (including if the offence was committed by an official in the performance of his/her duties) and **penalties** according to the seriousness of offences committed. The provision clearly provides for the non-application of sanctions to the victim;
- **jurisdiction and prosecution**: the proposal establishes a broader and more binding **extraterritorial jurisdiction rule** and provides for the **coordination of prosecution** (such a provision may be superseded once the proposal for a Framework Decision on conflicts of jurisdiction in criminal proceedings is adopted) as well as investigative tools (for example, recourse to Eurojust, if necessary);
- **victims' rights in criminal proceedings**: the new Framework Decision would incorporate special treatment aimed at preventing **secondary victimisation** (by avoiding direct contact between victims and offenders during the trial, the giving of evidence in open court or unnecessary repetition of interviews during investigation, prosecution and trial). It would also incorporate provisions on **victim protection** on the basis of a risk assessment as well as **compensation** for victims, including access to existing funds for the reimbursement of legal costs (particularly for the most vulnerable victims);
- **victim support**: the new Framework Decision would incorporate provisions aimed at establishing **mechanisms for early identification and assistance of victims**. A standard of assistance, including access to necessary medical treatment, counselling, and psychological assistance, would also be provided for, as well as special measures for children;
- **prevention**: new provisions would be adopted to **discourage the demand** for sexual services and cheap labour. Member States would also be required to promote regular **training** for officials likely to come into contact with victims. The Framework Decision would also incorporate the criminalisation of users of services exacted from a person, with the knowledge that the person has been trafficked;
- **monitoring**: it is provided that Member States shall take the necessary measures to establish **National Rapporteurs** or other equivalent mechanisms in order to monitor the implementation of the measures envisaged in the Framework Decision;
- **provisions not contained in the Council of Europe Convention**: the proposal would include elements not contained in the Council of Europe Convention, including: (i) provisions aimed at preventing secondary victimisation; (ii) a broader scope of the provision on non application of sanctions to victims for their involvement in unlawful activities; (iii) a higher standard of assistance to victims, especially concerning medical treatment; (iv) a broader and more binding extraterritorial jurisdiction rule, obliging Member States to prosecute nationals and habitual residents who have committed the crime of trafficking outside the territory of the Member State; (v) a precise level of penalties adapted to the severity of the offences. Lastly, the integration of provisions which have similar content into the EU acquis would enable the immediate entering into force, and the monitoring of implementation.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.