Trafficking in human beings: prevention and control of trafficking in human organs and tissues. Framework Decision. Initiative Greece

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PURPOSE : to present a Greek initiative which aims to adopt a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues. CONTENT : to recall, the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, the Tampere European Council on 15 and 16 October 1999 and the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the scoreboard, indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions. Trafficking in human organs and tissues is a form of trafficking in human beings, which comprises serious violations of fundamental human rights and, in particular, of human dignity and physical integrity. Such trafficking is an area of activity of organised criminal groups who often have recourse to inadmissible practices such as the abuse of vulnerable persons and the use of violence and threats. In addition, it gives rise to serious risks to public health and infringes on the right of citizens to equal access to health services. Finally, it undermines citizens' confidence in the legitimate transplantation system. Opposition to the sale of the human body and its parts has been addressed repeatedly by many international organisations and has been the subject of regulation by international conventions. It is therefore necessary to introduce penalties on perpetrators sufficiently severe to allow for trafficking in human organs and tissues to be included within the scope of instruments already adopted for the purpose of combating organised crime, such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime and Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union. The draft Framework Decision stipulates that each Member State shall take the necessary measures to ensure that the following acts are punishable: - the recruitment, transportation, transfer, harbouring or eception of a person, including any exchange or transfer of control over that person, where use is made of force or threats, including abduction, or use is made of fraudulent means, or there is an abuse of authority or of a position of vunerability which is such that the person concerned has no real or reasonable possibility of avoiding such abuse, or payments, or benefits are given or received in order to obtain the consent of a person having control over another person with the aim of removal of an organ or tissues from the latter; - the removal of an organ from a living donor effected using force, threats or fraud; - the removal of an organ from a donor who has consented thereto further to the payment or promise of financial consideration; - the payment, offer or promise of a financial consideration, directly or via third parties, to a donor in order to obtain his consent to the removal of an organ; - the receipt of or demand for financial consideration by a donor or a third party so that the donor will agree to the removal of an organ; - the demand for, receipt, payment, offer or promise of financial consideration with the aim of offering or acquiring or, more generally, trafficking in human organs and tissues. - the purchase, possession, storage, transport, import, export or transfer of possession of human organs; - participation by medical or nursing staff in the transplantation of an organ in the knowledge that it has been the object of one of the abovementioned acts. In addition, each State shall take the necessary measures to ensure that the instigation of, aiding and abetting or attempt to commit an offence is punishable. As regards penalties, each Member State shall take the necessary measures to ensure that an offence is punishable by terms of imprisonment with a maximum penalty that is not less than 10 years where it has been committed in any of the following circumstances: - the offence has deliberately or by gross negligence endangered the life of the victim, - the offence has been committed against a minor, - the offence has caused further serious physical harm to the victim, - the offence has been committed within the framework of a criminal organisation. Each Member State shall take the necessary measures to ensure that legal persons can be

held liable where the lack of supervision or control by a person have rendered possible the commission of an offence referred to above for the benefit of that legal person by a person under its authority. Liability of legal persons shall not exclude the punishment of persons who are perpetrators, instigators or accessories in an offence.