Combating trafficking in human beings: offences, penalties and sanctions, liability in criminal matters. Framework Decision

2001/0024(CNS) - 19/07/2002 - Final act

PURPOSE : to adopt a Council Framework Decision on combating trafficking in human beings. COMMUNITY MEASURE : Council Framework Decision 2002/629/JHA on combating trafficking in human beings. CONTENT : this present framework decision intends to replace Council Joint Action 97 /154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children. The reason for the current framework decision being that there was a need for further legislative action addressing the divergence of legal approaches in the Member States in this area. Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion. It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose. The Framework Decision sets out the following measures : - offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation : each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: a) use is made of coercion, force or threat, including abduction, or b) use is made of deceit or fraud, or c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography. It should be clarified that for the purpose of this Framework Decision, 'child' shall mean any person below 18 years of age. - instigation, aiding, abetting and attempt : each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence is punishable. - penalties : each Member State shall take the necessary measures to ensure that an offence is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition. There shall be a term of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances: a) the offence has deliberately or by gross negligence endangered the life of the victim; b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography. - liability of legal persons : each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence, 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. - Sanctions on legal persons : each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions. - Jurisdiction and prosecution : each Member State shall take the necessary measures to establish its jurisdiction over an offence where: the offence is committed in whole or in part

within its territory, or the offender is one of its nationals, or the offence is committed for the benefit of a legal person established in the territory of that Member State. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence when it is committed by its own nationals outside its territory. - protection of and assistance to victims : where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. Lastly, the Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision. ENTRY INTO FORCE : 01.08.2002. IMPLEMENTATION : 01.08.2004 in all the Member States including Gibraltar. From this date, Joint Action 97/154/JHA shall cease to apply in so far as it concerns trafficking in human beings.