Basic information

2009/0050(CNS) CNS - Consultation procedure Decision	Procedure lapsed or withdrawn
Preventing and combating trafficking in human beings and protecting victims **Subject** 7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	HEDH Anna (S&D)	02/09/2009

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
FEMM Women's Rights and Gender Equality	BAUER Edit (PPE)	28/09/2009

Former committee for opinion	Former rapporteur for opinion	Appointed
FEMM Women's Rights and Gender Equality		

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2969	2009-10-23
Justice and Home Affairs (JHA)	2946	2009-06-04
Justice and Home Affairs (JHA)	2936	2009-04-06

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
25/03/2009	Legislative proposal published	COM(2009)0136	Summary
06/04/2009	Debate in Council		Summary
04/06/2009	Debate in Council		Summary
14/07/2009	Committee referral announced in Parliament		
23/10/2009	Debate in Council		Summary

Technical information

Procedure reference	2009/0050(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on European Union (after Amsterdam) M 031-p1e Treaty on European Union (after Amsterdam) M 034-p2b Treaty on European Union (after Amsterdam) M 029
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/7/00281

Documentation gateway

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2009)0136	25/03/2009	Summary
Document attached to the procedure	SEC(2009)0358	25/03/2009	
Document attached to the procedure	SEC(2009)0359	25/03/2009	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_SENATE	COM(2009)0136	24/07/2009	
Contribution	EL_PARLIAMENT	COM(2009)0136	27/07/2009	
Contribution	IT_SENATE	COM(2009)0136	15/01/2010	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

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.

Preventing and combating trafficking in human beings and protecting victims

2009/0050(CNS) - 23/10/2009

The Council discussed the state of play regarding a draft framework decision aimed at strengthening the fight against trafficking in human beings.

Ministers paid particular attention to the proposed penalties' system and possible situations of parallel criminal proceedings. They ordered Council preparatory bodies to continue work with the aim of preparing a political agreement by the next Justice and Home Affairs Council meeting on

30 November and 1 December 2009.

The new framework decision, tabled by the Commission in March 2009, is intended to replace Framework Decision 2002/629/JHA. It aims to improve the existing instruments to combat trafficking in human beings and to protect victims and includes:

- a definition of the crime, aggravating circumstances and higher punishment;
- extraterritorial jurisdiction allowing to prosecute EU nationals for crimes committed abroad and to use investigative tools such as phone listening and access to financial data;
- special treatment of the victims in criminal proceedings including non-punishment of the victims who bear the consequences of the criminal activities;
- higher standard of protection and assistance to the victims, and in particular special protective measures for children;
- preventive measures aimed at discouraging the demand side of the phenomenon.

Once adopted, the framework decision will contribute to the approximation of national legislations in this field as well as to the improvement of international law enforcement and judicial cooperation.

Preventing and combating trafficking in human beings and protecting victims

2009/0050(CNS) - 04/06/2009

The Council examined the state of play regarding two proposals aimed at:

(a) improving the fight against sexual abuse and exploitation of children (see CNS/2009/0049); and

(b) strengthening the fight against trafficking in human beings.

The Council instructed its preparatory bodies to continue examining the proposals, pending the opinion of the European Parliament.

A number of outstanding issues have been identified concerning both proposals, including:

- the question of the legal basis;
- the penalties' system, in particular the severity of the penalties and the level of differentiation according to the types and gravity of the offences;
- the question of jurisdiction, in particular the extra territorial one in order to combat phenomena such as sex tourism;
- the question of protection of and assistance to victims.

Preventing and combating trafficking in human beings and protecting victims

2009/0050(CNS) - 06/04/2009

The Council held a first **exchange of views** on a draft framework decision aimed at strengthening the fight against trafficking in human beings. The debate followed a Commission presentation on this proposal issued on 25 March 2009.

Member states made a commitment to step up initiatives and measures to combat these crimes.

The new proposal, which is intended to replace the framework decision 2002/629/JHA, is aimed at improving the existing instruments used to combat trafficking in human beings and to provide victim support, including:

- definition of the crime, aggravating circumstances and higher punishment;
- extraterritorial jurisdiction making it possible to prosecute EU nationals for crimes committed abroad and to use investigative tools such as phone tapping and access to financial data;
- special treatment of the victims in criminal proceedings including not punishing of the victims who bear the consequences of criminal activities;
- higher standard of protection and assistance to the victims. Special protective measures are envisaged for children;
- preventive measures aimed at discouraging the demand that foster trafficking.

The new proposal covers all legal instruments governing decisions in relation to prosecution, victim support, prevention and monitoring.