



EUROPEAN PARLIAMENT

2009 - 2014

*Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality*

2010/0065(COD)

28.6.2010

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM(2010)0095 – C7-0087/2010 – 2010/0065(COD))

Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality

Rapporteur: Edit Bauer, Anna Hedh

(Joint Committee meetings - Rule 51)

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PE442.887v01-00

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United in diversity

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Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM(2010)0095 – C7-0087/2010 – 2010/0065(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0095),
 - having regard to Article 294(2) and Articles 82(2) and 83(1) of the Treaty on the Functioning of the EU, pursuant to which the Commission submitted the proposal to Parliament (C7-0087/2010),
 - having regard to Article 294(3) of the Treaty on the Functioning of the EU,
 - having regard to the reasoned opinions sent to its President by national parliaments on the compliance of the draft act with the principle of subsidiarity,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to the opinion of the European Economic and Social Committee,
 - having regard to the opinion of the Committee of the Regions,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality pursuant to Rule 51 of the Rules of procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Women's Rights and Gender Equality (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and to national parliaments.

Amendment 1

Proposal for a directive Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article 79(2)**, Article 82(2) and Article 83(1) thereof,

Or. en

Justification

The addition of the reference to Article 79 is justified by the need of being consistent with the Treaties.

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

(3) This Directive adopts an integrated and holistic approach to the fight against trafficking in human beings. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. Children are more vulnerable and therefore at greater risk of falling victim to trafficking in human beings. In the application of the provisions of this Directive the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and United Nations Convention on the Rights of the Child.

Amendment

(3) This Directive adopts an integrated and holistic approach to the fight against trafficking in human beings ***and should be implemented in the light of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities¹ and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals²***. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. Children are more vulnerable and therefore at greater risk of falling

victim to trafficking in human beings. In the application of the provisions of this Directive the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and United Nations Convention on the Rights of the Child. ***In implementing this Directive due attention should be paid to consistency with Directive 2010/.../EU of the European Parliament and of the Council of... [on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA].***

¹ OJ L 261, 6.8.2004, p. 19.

² OJ L 168, 30.6.2009, p. 24

Or. en

Justification

The holistic approach of the Directive must result also in consistency with other linked legal instruments.

Amendment 3

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Directive is part of a global action against trafficking in human beings which includes action involving third countries as stated in the “Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings”¹.

¹Council 6865/10

Or. en

Justification

The holistic approach of the Directive must result also in action involving Third countries.

Amendment 4

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Directive is without prejudice to the principle of non-refoulement in accordance with the Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention).

Or. en

Justification

This Directive cannot general prejudice rules on asylum policy.

Amendment 5

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or service as defined in the ILO Convention No. 29 concerning Forced or Compulsory Labour of 29 June 1930. Therefore, exploitation of begging falls within the scope of the definition of trafficking in human beings only when all the elements

(5) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or service as defined in the ILO Convention No. 29 concerning Forced or Compulsory Labour of 29 June 1930. Therefore, exploitation for begging, ***including the use of a dependent person for begging*** falls within the scope of the definition of

of forced labour or services occur. In the light of the relevant case-law, the validity of the eventual consent to perform such a service should be evaluated case by case. However, when a child is concerned, the eventual consent should never be considered valid. The term “exploitation of criminal activities” should be understood as exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which ***can be linked with organ trafficking and*** constitutes a serious violation of human dignity and physical integrity.

trafficking in human beings only when all the elements of forced labour or services occur. In the light of the relevant case-law, the validity of the eventual consent to perform such a service should be evaluated case by case. However, when a child is concerned, the eventual consent should never be considered valid. The term “exploitation of criminal activities” should be understood as exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity.

Or. en

Justification

This amendment clarifies the definition of begging.

Amendment 6

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) The levels of penalties in this Directive reflect the growing concern among Member States about increased trafficking in human beings. Considering the gravity of the crime, this Directive aims to ensure further harmonisation and a higher level of penalties in the EU. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children, and adults who were particularly vulnerable on grounds of

Amendment

(6) The levels of penalties in this Directive reflect the growing concern among Member States about increased trafficking in human beings. Considering the gravity of the crime, this Directive aims to ensure further harmonisation and a higher level of penalties in the EU. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children, and adults who were particularly vulnerable on grounds of

pregnancy, health conditions *or* disability **at the time when the crime was committed**. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence or has caused particularly serious harm to the victim, this should be reflected in a particularly severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

gender, pregnancy, health conditions, disability **or if the victim has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence**. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence or has caused particularly serious harm to the victim, this should be reflected in a particularly severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

Or. en

Justification

This amendment aims at widening the notion of vulnerable person.

Amendment 7

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) To ensure that investigations and prosecutions of human trafficking offences **were** successful, their initiation should not depend on reporting or accusation by the victim. **Prosecution should be allowed for a sufficient period of time after the victim has reached the age of majority. Law enforcement officials and prosecutors should be adequately trained, also with a view to enhancing international law enforcement and judicial cooperation.** Those responsible for investigating and prosecuting **such offences** should also have access to the investigative tools used in

Amendment

(8) To ensure that investigations and prosecutions of human trafficking offences **are** successful, their initiation should not depend on reporting or accusation by the victim. **Investigations should take due account of the information and communication technologies used for the commission of the offence and develop specific tools to prevent and tackle trafficking via cyberspace.** Those responsible for investigating and prosecuting should also have access to the investigative tools used in organised crime or other serious crime cases such as

organised crime or other serious crime cases such as interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigations.

interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigations.

Or. en

Justification

Internet is becoming more and more used by traffickers and this Directive cannot ignore that.

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) ***Victims of trafficking in human beings need to be able to exercise their rights effectively. Therefore*** assistance and support should be available to victims before, during and for an appropriate time after criminal proceedings. In order for the assistance and support to be effective, it is necessary that it is provided on an informed and consensual basis, guaranteeing that the victim agrees to for example actions to detect illnesses or other essential support measures. The assistance and support provided should include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the conditions and needs of the person concerned. A person should be provided with assistance and support as soon as there is an indication that he or she might have been trafficked and irrespective of his/her willingness to act as a witness.

Amendment

(11) Assistance and support should be available to victims before, during and for an appropriate time after criminal proceedings. In order for the assistance and support to be effective, it is necessary that it is provided on an informed and consensual basis, guaranteeing that the victim agrees to for example actions to detect illnesses or other essential support measures. The assistance and support provided should include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the conditions and needs of the person concerned. A person should be provided with assistance and support as soon as there is an indication that he or she might have been trafficked and irrespective of his/her willingness to act as a witness. Assistance should be provided unconditionally at least until the competent authorities have taken a final decision with

Assistance should be provided unconditionally at least until the competent authorities have taken a final decision with regard to the reflection period and the residence permit, or otherwise acknowledge that the person is a victim of trafficking in human beings. If, after the completion of the identification process or expiry of the reflection period, the person is not considered eligible for a residence permit or does not otherwise have lawful residence in the country, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings, for example if medical treatment is ongoing due to severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to his/her statements in criminal proceedings.

regard to the reflection period and the residence permit, or otherwise acknowledge that the person is a victim of trafficking in human beings. If, after the completion of the identification process or expiry of the reflection period, the person is not considered eligible for a residence permit or does not otherwise have lawful residence in the country, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings, for example if medical treatment is ongoing due to severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to his/her statements in criminal proceedings.

Or. en

Justification

According to the draftspersons this wording is better placed in Recital 12 than in Recital 11.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

(12) The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. *In* addition victims of trafficking in human beings should be given access to legal counselling and to legal representation, including for

Amendment

(12) The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. ***Victims of trafficking in human beings need to be able to exercise their rights effectively.*** *In* addition victims of trafficking in human

the purpose of claiming compensation. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling and legal representation should be provided free of charge at least when the victim does not have sufficient financial resources in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge to them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.

beings should *also* be given access to legal counselling and to legal representation, including for the purpose of claiming compensation. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling and legal representation should be provided free of charge at least when the victim does not have sufficient financial resources in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge to them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.

Or. en

Justification

According to the draftspersons this wording is better placed in Recital 12 than in Recital 11.

Amendment 10

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. These measures *should* be provided in the best interests of the child and in accordance with the UN Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there

Amendment

(14) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. These measures *must* be provided in the best interests of the child and in accordance with the UN Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there

are reasons to believe he/she is below the age of 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. As the child victim should be reintegrated into society as soon as possible, this will by necessity include a right to access to education. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

are reasons to believe he/she is below the age of 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. As the child victim should be reintegrated into society as soon as possible, this will by necessity include a right to access to education. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

Or. en

Justification

This amendment aims at strengthening the position of the child.

Amendment 11

**Proposal for a directive
Recital 14 a (new)**

Text proposed by the Commission

Amendment

(14a) The Commission's Action Plan on unaccompanied minors (2010-2014)(COM(2010)0213) should duly be taken into consideration in implementing this Directive.

Or. en

Justification

This amendment aims at adopting consistent policies at EU level on policies involving children.

Amendment 12

Proposal for a directive Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) Sexual exploitation involving children should be defined in accordance with Directive 2010/.../EU [on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA].

Or. en

Justification

This amendment aims at adopting consistent policies at EU level on policies involving children.

Amendment 13

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) Member States should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage the demand that fosters all forms of exploitation, and measures to reduce the risk of people falling victims to trafficking in human beings, by means of research, information, awareness raising, and education. In such initiatives Member States should adopt a gender perspective and a child rights approach. Any officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. This training obligation would in particular cover police officers, border guards, labour inspectors, health care personnel and

(15) Member States should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage the demand that fosters all forms of exploitation, and measures to reduce the risk of people falling victims to trafficking in human beings, by means of research, ***including research into new forms of trafficking in human beings,*** information, ***harmonised data collection,*** awareness raising, and education. In such initiatives Member States should adopt a gender perspective and a child rights approach. Any officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. This training obligation

consular staff, but could depending on local circumstances also involve other groups of public officials that are likely to encounter trafficking victims in their work.

would in particular cover police officers, border guards, labour inspectors, health care personnel and consular staff, but could depending on local circumstances also involve other groups of public officials that are likely to encounter trafficking victims in their work.

Or. en

Justification

The widest awareness of the phenomenon is crucial and harmonised data collection is extremely relevant in this view.

Amendment 14

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained in identifying and dealing with such victims. This training obligation should in particular apply to police officers, border guards, judges and judicial staff, labour inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter g victims of trafficking in human beings in their work. Law enforcement officials and prosecutors should also be adequately trained, with a view to enhancing international law enforcement and judicial cooperation.

Or. en

Justification

Training, in particular when such vulnerable people are involved, should be enhanced.

Amendment 15

Proposal for a directive Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) Inspection and enforcement mechanisms relating to employment law should be strengthened in all Member States. Member States should ensure that they have the necessary legal framework in place and that the relevant mechanisms, training and adequate technical resources are available to enable Member States to fulfil their legal obligations, with officials from inspection bodies being given responsibility, in close cooperation with trade unions, and being provided with information and awareness training to enable them to recognise victims of trafficking whose labour is being exploited. Member States should strengthen cooperation and coordination at Union level in this area, including in cooperation with the European Economic and Social Committee and with the European Trade Unions Confederation, the Council should also consider the networking of national labour inspection.

Or. en

Justification

This amendment refers to the growing phenomenon of trafficking for labour exploitation.

Amendment 16

Proposal for a directive Recital 15 c (new)

Text proposed by the Commission

Amendment

(15c) Member States should establish better systems for monitoring the activities of employment agencies and agencies for recruitment of seasonal workers.

Or. en

Justification

This amendment refers to the growing phenomenon of trafficking for labour exploitation.

Amendment 17

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established by Member States, in the way they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings trends, measure the results of anti-trafficking actions, and regularly report to the relevant national authorities.

(17) National monitoring systems such as ***independent*** National Rapporteurs or equivalent mechanisms should be established by Member States, in the way they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings trends, measure the results of anti-trafficking actions, and regularly report to the relevant national authorities ***and to the EU Anti-trafficking Coordinator.***

Or. en

Justification

The national monitoring system should be independent and refer inter alia to the EU Anti-trafficking Coordinator.

Amendment 18

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The European Union shall establish, under the supervision of the Commissioner for Home Affairs, an EU Anti-trafficking Coordinator to coordinate Union action and policies in this field, including the activities of the network of national rapporteurs, and reporting to the European Parliament and the national parliaments.

Or. en

Justification

Coordination at EU level is crucial to tackle trafficking.

Amendment 19

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

Amendment

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging ***and the use of a dependent person for begging***, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

Or. en

Justification

This amendment clarifies the definition of begging.

Amendment 20

**Proposal for a directive
Article 4 – paragraph 1**

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by penalties of a maximum of at least **five years** of imprisonment.

Amendment

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by penalties of a maximum of at least **six years** of imprisonment.

Or. en

Justification

In the opinion of the draftspersons in consideration of the seriousness of the crime penalties should be increased.

Amendment 21

**Proposal for a directive
Article 4 – paragraph 2 – introductory part**

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by penalties of a maximum of at least **ten years** of imprisonment where it has been committed in any of the following circumstances:

Amendment

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by penalties of a maximum of at least **twelve years** of imprisonment where it has been committed in any of the following circumstances:

Or. en

Justification

In the opinion of the draftspersons in consideration of the seriousness of the crime penalties should be increased.

Amendment 22

Proposal for a directive

Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) the offence was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims, and adults who were particularly vulnerable on grounds of pregnancy, health conditions *or* disability;

Amendment

(b) the offence was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims, and adults who were particularly vulnerable on grounds of **gender**, pregnancy, health conditions, disability, **or if the victims has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence**;

Or. en

Justification

This amendment clarifies the notion of vulnerable person.

Amendment 23

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall take the necessary measures to ensure that the proceeds of and profits from the offences referred to in this Directive are seized and confiscated.

Or. en

Justification

Traffickers are moved by the enormous profits they can gain through trafficking. Therefore proceeds and profits have to be seized, confiscated and reused in combating trafficking and supporting and protecting victims.

Amendment 24

Proposal for a directive Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall take the necessary measures to ensure that the proceeds and profits seized and confiscated under this Directive are used to support victim assistance and protection, including compensation of victims.

Or. en

Justification

Traffickers are moved by the enormous profits they can gain through trafficking. Therefore proceeds and profits have to be seized, confiscated and reused in supporting and protecting victims.

Amendment 25

Proposal for a directive Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take the necessary measures to ensure that the proceeds of and profits from the offences referred to in this Directive are seized and confiscated.

Or. en

Justification

Traffickers are moved by the enormous profits they can gain through trafficking. Therefore proceeds and profits have to be seized, confiscated and reused in combating trafficking and supporting and protecting victims.

Amendment 26

Proposal for a directive Article 6 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Ib. Member States shall take the necessary measures to ensure that the proceeds and profits seized and confiscated under this Directive are used to support victim assistance and protection, including compensation of victims.

Or. en

Justification

Traffickers are moved by the enormous profits they can gain through trafficking. Therefore proceeds and profits have to be seized, confiscated and reused in supporting and protecting victims.

Amendment 27

Proposal for a directive Article 7

Text proposed by the Commission

Amendment

Member States shall, ***in accordance with the basic principles of its legal system, provide for the possibility of not prosecuting or imposing*** penalties on victims of trafficking in human beings for their involvement in ***criminal*** activities they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Member States shall ***not prosecute or impose*** penalties on victims of trafficking in human beings for their involvement in ***offences under national legislation on prostitution or immigration and/or their involvement in other unlawful*** activities ***which*** they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2. ***In accordance with national law, Member States shall take the necessary measures to enable the prosecution for the offences provided in this Directive, after the victim has reached the age of majority.***

Justification

This amendment aims at reinforcing the position of the victim.

Amendment 28

Proposal for a directive

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall take the necessary measures to ensure that evidence is gathered and secured as soon as possible by means of, for instance, video recordings of victims' statements .

Or. en

Justification

Evidence is often based on victims' statements. In order to send traffickers to justice, evidence should be secured as soon as possible while at the same time protecting the victim.

Amendment 29

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(c) and 1(d) as far as the offence is committed outside its territory. ***deleted***

Or. en

Justification

In consideration of the global tendency of this phenomenon, extraterritoriality should be enhanced.

Amendment 30

**Proposal for a directive
Article 9 – paragraph 4**

Text proposed by the Commission

Amendment

4. Member States shall inform the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

deleted

Or. en

Justification

This amendment is a consequence of the previous one.

Amendment 31

**Proposal for a directive
Article 10 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims **before, during and** for an appropriate time after criminal proceedings in order to enable them to exercise the rights set forth in Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, and in this Directive.

1. Member States shall take the necessary measures to ensure that assistance and support are provided to **all victims of trafficking** for an appropriate time **regardless of their migration status before, during and** after criminal proceedings in order to enable them to exercise the rights set forth in Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, and in this Directive.

Or. en

Justification

This amendment aims at protecting victims in the widest way.

Amendment 32

**Proposal for a directive
Article 10 – paragraph 3**

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to *act as a witness*.

Amendment

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to ***cooperate in the criminal investigation, prosecution and trial***.

Or. en

Justification

This amendment aims at widening the protection of victims.

Amendment 33

**Proposal for a directive
Article 10 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Member States shall take the necessary measures to provide a referral mechanism for persons in need of international protection pursuant to Article 9 and Article 15 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹; and ensure cooperation between law enforcement authorities and national asylum

authorities.

¹ OJ L 304, 30.9.2004, p. 12.

Or. en

Justification

This amendment enhances a consistent approach with asylum policies.

Amendment 34

**Proposal for a directive
Article 10 – paragraph 4 b (new)**

Text proposed by the Commission

Amendment

4b. Member States shall take the necessary measures to provide protection, assistance and support to address the specific needs of particularly vulnerable persons referred to in Article 4, paragraph 2(b).

Or. en

Justification

This amendment aims at widening the protection, assistance and support of victims.

Amendment 35

**Proposal for a directive
Article 11 – paragraph 2**

Text proposed by the Commission

Amendment

2. Member States shall ensure that victims of trafficking in human beings have access to free legal counselling and to legal representation, including for the purpose of claiming compensation. Legal representation shall be free of charge when the victim does not have sufficient financial resources. This paragraph will be

2. Member States shall ensure that victims of trafficking in human beings have access to free legal counselling and to legal representation, including for the purpose of claiming compensation ***as soon as the person has been identified as a victim of trafficking in human beings.*** Legal representation shall be free of charge when

without prejudice to the application of Article 14(2) when the victim is a child.

the victim does not have sufficient financial resources. This paragraph will be without prejudice to the application of Article 14(2) when the victim is a child.

Or. en

Justification

This amendment aims at widening the protection, assistance and support of victims.

Amendment 36

**Proposal for a directive
Article 11 – paragraph 3**

Text proposed by the Commission

3. Without prejudice to the right of the defence, Member States shall ***allow, if in accordance with the basic principles of its legal system and where appropriate, that the identity of a victim of trafficking in human beings acting as a witness is not disclosed.***

Amendment

3. Without prejudice to the right of the defence, Member States shall ***take any measure in order to ensure the highest protection of a victim of trafficking in human beings acting as a witness, including the use of video conference.***

Or. en

Justification

This amendment aims at balancing victims' protection with suspects' rights.

Amendment 37

**Proposal for a directive
Article 12 – paragraph 1**

Text proposed by the Commission

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection, ***taking into account the best interests of the child.***

Amendment

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. ***In the application of the provisions of this Directive the child's best interests shall be a primary***

consideration.

Or. en

Justification

This amendment aims at giving priority to the child's best interest.

Amendment 38

Proposal for a directive

Article 13 – title

Text proposed by the Commission

Assistance and support to child victims *of*
trafficking in human beings

Amendment

Assistance and support to child victims

Or. en

Amendment 39

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns.

Amendment

1. Member States shall take the necessary measures to ensure that the specific actions to ***protect***, assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns ***with a view to finding a durable solution for the child. Members States shall appoint a guardian and a legal representative for the child victim of trafficking in human beings from the moment he/she is identified by the authorities.***

Justification

This amendment aims at strengthening the child's position.

Amendment 40

**Proposal for a directive
Article 13 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. When the family is not present in the territory of the Member State, the Member State shall provide assistance to the child to return and be reintegrated with the child's family, or to join his/her family in another Member State or in a third country, when that is in the best interest of the child; where neither of these options are possible or in the child's best interest, the Member State shall find a durable solution for the child in accordance with the child's best interest including through referral to the competent national asylum authorities for child victims of trafficking in human beings who are in need of international protection.

Justification

This amendment aims at strengthening the child's position.

Amendment 41

**Proposal for a directive
Article 14 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that in criminal

1. Member States shall take the necessary measures to ensure that in criminal

investigations and proceedings, judicial authorities appoint a *special* representative for the child victim of trafficking in human beings *where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.*

investigations and proceedings, judicial authorities appoint a *guardian and a legal* representative for the child victim of trafficking in human beings.

Or. en

Justification

This amendment aims at strengthening the child's position.

Amendment 42

**Proposal for a directive
Article 15 – paragraph 1**

Text proposed by the Commission

1. Member States shall take appropriate measures to discourage the demand that fosters all forms of exploitation related to trafficking in human beings.

Amendment

1. Member States shall take appropriate measures *such as education and training, particularly from a gender perspective,* to discourage the demand that fosters all forms of exploitation related to trafficking in human beings.

Or. en

Justification

Education and training can have a relevant role in discouraging the demand of services "offered" by trafficked people.

Amendment 43

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Member States shall take appropriate actions such as information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with civil society organisations, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

Amendment

2. Member States shall take appropriate actions, ***including through internet***, such as information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with civil society organisations, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings ***while these actions shall fully integrate the gender perspective.***

Or. en

Justification

Internet is becoming more and more used by traffickers and this Directive cannot ignore that.

Amendment 44

Proposal for a directive Article 15 – paragraph 3

Text proposed by the Commission

3. Member States shall promote regular training for officials likely to come into contact with victims and potential victims, including front-line police officers, border guards, labour inspectors, health care personnel and consular staff, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

Amendment

3. Member States shall promote regular training, ***particularly from a gender perspective***, for officials likely to come into contact with victims and potential victims, including front-line police officers, border guards, labour inspectors, ***judges and judicial staff; social, child and health care personnel and consular staff***, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings; ***and identify among victims those persons who are also in need of international protection.***

Justification

Training, in particular when such vulnerable people are involved, should be enhanced.

Amendment 45

**Proposal for a directive
Article 15 – paragraph 4**

Text proposed by the Commission

4. Member States shall **consider taking** measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2 with the knowledge that the person is a victim of an offence referred to in Article 2.

Amendment

4. Member States shall **take** measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2 with the knowledge that the person is a victim of an offence referred to in Article 2 **unless the use of the service was determined by a concrete risk for the life of the users or by humanitarian reasons.**

Justification

Criminalising the use of services "offered" by trafficked people can have a strong preventive effect on trafficking.

Amendment 46

**Proposal for a directive
Article 15 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Member States shall establish a free-of-charge multilingual hotline/helpline with a single European number, with the aim of providing first assistance to the victims.

Justification

This amendment aims at strengthening victim's assistance, support and protection.

Amendment 47

**Proposal for a directive
Article 16 – paragraph 1**

Text proposed by the Commission

Member States shall take the necessary measures to establish National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities.

Amendment

1. Member States shall take the necessary measures to establish ***independent*** National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include ***the gathering of comparable statistics***, the carrying out of assessments on trafficking in human beings trends ***and of protection and assistance mechanisms***, the measuring of results of anti-trafficking actions and reporting ***at least once a year*** to the relevant national authorities ***and to the EU Anti-Trafficking Coordinator***.

Or. en

Justification

This amendment aims at improving the monitoring mechanism and to coordinate it with the activities of the EU Anti-Trafficking Coordinator.

Amendment 48

**Proposal for a directive
Article 16 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. Comparable statistics should at least include data on number of people trafficked, including data on gender, age, nationality of the victims as well as the form of trafficking; type of services victims were addressed to, number of traffickers arrested, prosecuted and

convicted the referral mechanisms to the national asylum authorities.

Or. en

Justification

Having available comparable data is crucial in establishing effective counter trafficking policies.

Amendment 49

**Proposal for a directive
Article 16 – paragraph 1b (new)**

Text proposed by the Commission

Amendment

1b. Information gathered shall be forwarded to the EU Anti-trafficking Coordinator, Eurojust, Europol and Frontex. On that basis and using any other available information the EU Anti-trafficking Coordinator shall in cooperation with Eurojust, Europol and Frontex draft an annual report on the state of play of trafficking in human beings. The report shall be presented to the European Parliament, the national parliaments, the European Commission and the Council.

Or. en

Justification

Monitoring should be coordinated between all involved EU bodies.

Amendment 50

**Proposal for a directive
Article 16 – paragraph 1c (new)**

Text proposed by the Commission

Amendment

1c. The European Parliament shall have

the right to appoint a rapporteur who will be entitled to take part into the joint activities of the national rapporteurs.

Or. en

Justification

The European Parliament should be involved in the monitoring mechanism.

Amendment 51

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16 a

EU coordinator

The legal framework of the European Union Anti-trafficking Coordinator shall be set under the supervision of the Commissioner for Home Affairs. The European Union Anti-trafficking Coordinator shall be entitled to ensure a coherent approach against trafficking in human beings across the Member States as well as at EU level, coordinate the action of the National Rapporteurs, provide harmonised monitoring and reporting to the European institutions shall be established.

Or. en

Justification

The Anti-Trafficking coordinator should act under a clear legal framework.

Amendment 52

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

2. Member States shall send to the Commission all the information that is appropriate for drawing up the report referred to in paragraph 1. The information shall include a detailed description of measures applied under Articles 8, and Articles 10 to 16, as well as a description of considerations made on possible measures under Article 15.4.

Amendment

2. Member States shall send to the Commission **and to the EU Anti-Trafficking Coordinator** all the information that is appropriate for drawing up the report referred to in paragraph 1. The information shall include a detailed description of measures applied under Articles 8, and Articles 10 to 16, as well as a description of considerations made on possible measures under Article 15.4.

Or. en

Justification

In consideration of the his-her coordinating role, the Anti-Trafficking coordinator should be entitled to received the widest amount of information.

EXPLANATORY STATEMENT

Trafficking in human beings is a modern form of slavery, a serious crime and a severe violation of fundamental human rights and reduces people to a state of dependency via threats, violence and humiliation.

Trafficking in human beings is also an extremely profitable business for organised crime, with high profit possibilities and limited risk-taking and may take many forms, relating for example to sexual exploitation, forced labour, illegal trade in human organs, begging, including the use of a dependent person for begging, illegal adoptions and domestic work.

The importance of this phenomenon is impressive but certainly not exactly known.

The Treaty of Lisbon has strengthened EU action in the field of judicial and police cooperation in criminal matters, including in combating trafficking in human beings, and the European Parliament, becoming co-legislator, has a full role to play.

The Treaty of Lisbon contains multiple references to the fight against trafficking in human beings: Article 82 and 83 sets the legal basis for establishing minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings and sexual exploitation of women and children. However, Article 79 needs to be taken into consideration as well since it sets a legal basis under the common immigration policy, including the issue of trafficking in human beings.

The EU legal framework on trafficking in human being is currently mainly based on:

- Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings which aims at a minimum harmonisation of national legislation;
- Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Experience has shown that this legal framework is not effective enough and that the EU has to do more. With this perspective, in 2009 the European Commission presented a proposal for a new Framework Decision. Due to the entry into force of the Lisbon Treaty, which interrupted all ongoing legislative procedures, negotiation at Council could not lead to the formal adoption of the Framework Decision and the European Commission has tabled a new proposal for a Directive on Preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA(COM(2010)95 final).

The European Parliament, as a co-legislator is deeply committed in cooperating with the Commission and the Council in enhancing an effective EU policy against trafficking in human beings.

In the Resolution adopted on 10 February 2010(P7_TA(2010)0018) the European Parliament expressed, inter alia, the position that:

- a) action against trafficking in human beings should be developed on the basis of a holistic approach centred on human rights and focusing on combating trafficking, prevention and protection of victims;
- b) a victim-focused approach should be adopted, meaning that all potential categories of victims must be identified, targeted and protected, with special attention being given to children and other at-risk groups;
- c) an EU anti-trafficking coordinator to coordinate EU action and policies in this field – including the activities of the network of national rapporteurs – and reporting to both the EP and the Standing Committee on Operational Cooperation on Internal Security (COSI) should be established;
- d) policies on trafficking in human beings should cover aspects linked to social affairs and social inclusion including appropriate programmes and effective methods of ensuring social rehabilitation of victims, including measures relating to the labour market and the social security system;
- e) due attention should be given to the external relations dimension of trafficking in human beings and the dimensions of immigration, asylum and reintegration policies;
- f) information and awareness campaigns should be run through the education and school system in the countries of origin, transit and destination for trafficking;

The European Parliament is of the view that the penalties of traffickers needs to be increased on the level of the 2009 proposal and confiscation of assets should also be applied.

In addition, the European Parliament is convinced that assistance to victims, in particular to child victims should be further developed. In the case of child victims the best interest of the child should be of a primary consideration.

Furthermore, the EU as well as the Member States should do more in order to discourage demand, including by awareness raising campaigns, education, training and so on and this all shall fully integrate a gender perspective. Member States also shall establish as an offence to knowingly use services of victims of trafficking. This criminalisation is in consistence with other EU policies, where legislation already sanctions employers who use trafficked labour and will have a strong preventive effect.

In order to have a better and more precise picture of the phenomenon, it is necessary to collect harmonised data that should at least include data on number of people trafficked, including data on gender, age, nationality of the victims as well as the form of trafficking; type of services victims were addressed to, number of traffickers arrested, prosecuted and convicted and the referral mechanisms to the national asylum authorities.

Finally, the Anti-Trafficking Coordinator should be set through a clear legislative framework.