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**Comments on the European Commission’s****Proposal for a COUNCIL FRAMEWORK DECISION on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM 2009 136 final)**

Our organisations represent Churches throughout Europe – Anglican, Orthodox, Protestant and Roman Catholic – as well as Christian agencies particularly concerned with migrants, refugees, and asylum seekers. As Christian organisations we are deeply committed to the inviolable dignity of the human person created in the image of God.

Many of our member organisations have developed or are developing activities in the area of combating trafficking in human beings, be it in prevention, assistance or other areas of concern, often in cooperation with public authorities. We have over the years also developed networks of transnational cooperation against trafficking, which aim at promoting best practice in combating trafficking. As pan-European networks with global partnerships, we understand the complex nature of trafficking, which requires a multi-faceted response. It is against this vast expertise that we comment on the proposal for a recast framework decision.

**GENERAL APPRECIATION**

Our organisations have, over the last decade, argued for an EU engagement against trafficking in human beings, which goes beyond the aspect of combating organised crime and/or irregular migration and recognises trafficking as a violation of the human rights of the victims, and acknowledges the need for a rights-based protection of trafficked persons. It is against this background that we welcome the broadening of the general scope of the Framework Decision so as to include “protecting victims”. We in particular acknowledge with appreciation that the proposed Framework Decision places, for the first time in its title, the concern of victims’ protection on the same level as the aim of suppression of organised crime which trafficking represents. Similarly, we welcome the fact that the notion of prevention of trafficking is introduced. We therefore support the general intentions and main developments of the proposed Framework Decision in comparison with the Framework Decision 2002/629/JHA, which is currently in force. If adopted, the Framework Decision will represent a clear step forward in EU law.

We also appreciate the transversal nature of the proposed Framework Decision, which covers all currently known areas of trafficking in human beings and establishes the application of the framework legislation to all persons, irrespective of their nationality.

At the same time, we note with disappointment that the proposal still runs the risk of leaving substantial groups of trafficked persons without the much needed protection. We would, therefore, like to underline that an even stronger and more specific framework of protection remains necessary.

### **ISSUES OF GENERAL CONCERN**

While the introduction of the notion of a risk assessment is positive, the proposal still mainly follows the logic of protecting (potentially) “useful” witnesses. While Article 10 extends protection to witnesses beyond the end of criminal proceedings, it does not cover those victims who, for whatever reason, do not participate in criminal proceedings. Articles 9 and 10 should therefore be reformulated so as to offer specific protection to all victims, irrespective of their willingness to testify or their participation in criminal proceedings. Article 12 (6) of the Council of Europe Convention on Action Against Trafficking in Human Beings would offer a useful example to be followed in wording.

While Article 10 (4) already offers some guidance on the assistance and support to be provided by Member States, experience shows that a common understanding of such articles varies between Member States. In order to achieve a common level of protection, Articles 9 and 10 should be specified in more detail to include:

- appropriate and secure accommodation, psychological and material assistance;
- access to emergency medical treatment;
- translation and interpretation services, when appropriate;
- counselling and information, in particular as regards the legal rights and the services available to them;
- assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders, in particular in view of compensation;
- access to education for children;
- appropriate information and support on the right to seek international protection in line with Directive 2004/83/EC.

Depending on the individual needs and wishes expressed by a trafficked person, the following assistance is to be provided:

- legalization and permanent status to stay, if a trafficked person is without regular residence title. Alternatively:
- assessment if return is safe and subsequent voluntary return;
- authorization to take employment, as well as education and training (language and other);
- right to family reunification;
- spiritual assistance;
- financial assistance;
- accompaniment during visits to police/court/authorities;
- accompaniment during legal proceedings;
- referrals/contacts to other services, doctors, advice centres.

In order to achieve a high level of protection, an obligation of Member States either to provide or to finance support infrastructure on a permanent basis should be introduced. Currently, this is often left as the responsibility of the voluntary sector, too often to organizations, which do not have adequate resources to provide the support so much needed by trafficked persons. While organisations such as our member churches and related organisations are, due to their calling, happy and willing to support trafficked persons wherever possible, this commitment and engagement can under no circumstances constitute a situation in which states can do away with their respective responsibilities.

## **AREAS OF POSITIVE DEVELOPMENTS**

1. We appreciate the explicit recognition made in Article 1 that the exploitation of begging, unlawful activities or removal of organs, do comprise areas of exploitation, as they indeed constitute a highly prevalent and serious form of trafficking. Given the repeated confusion in policy debates between smuggling and trafficking, we appreciate the legal clarity of the definition in Article 1 (1), which is derived from the Palermo protocol.
2. It is laudable that Article 3, para 2 b, in conjunction with Article 9(1), 9(2), broadens the concept of particular vulnerability as constituting an aggravating circumstance, so that it also extends to adults.
3. Article 9 introduces a number of important, positive measures for the protection of victims during the criminal proceedings. In our view it is important that the issue of secondary victimization be addressed and that the scope of Article 8 of the Framework Decision 2001/220/JHA is specified and extended.
4. Article 10 provides a substantial improvement regarding assistance to victims. We welcome in particular the clause, which specifies that a person should be treated as a victim after the first indication that s/he may have been trafficked. We also support the notion that Member States have to establish a mechanism of identification and support. We however regret that the wording of the Article is not sufficiently precise and that the scope remains limited (see above).
5. We further welcome the introduction of the notion of prevention in Article 12. Measures to promote awareness of trafficking through training for officials are of great importance. We would like to add that a scrutiny of all EU policies in view of preventing trafficking would be of great relevance. So far, many EU activities have in fact not reduced the increase in vulnerability of migrants. On the contrary, we believe that the study of activities that were justified by the combat against trafficking, e.g. tougher control of access to EU territory, would show that these have driven would-be migrants into the hands of traffickers rather than protected them.

## **AREAS OF FURTHER IMPROVEMENT**

1. While we welcome the introduction of an article, which explicitly stipulates that Member States shall provide the possibility that victims will not be subject to sanctions for their involvement in unlawful activities due to their status as a victim (Article 6), we would wish that this provision would become an obligation and not a discretionary disposition.
2. We have noted with concern that Article 7(3) of the current Framework Decision establishing that where the victim is a child, each Member State shall take measures to assist his/her family, seems to have been suppressed. While there may be well-founded

reasons to consider the best interests of the child first, this will often include support to the family, which goes beyond the one mentioned in the proposed Articles 9 and 10.

3. While we also appreciate the introduction of the notion of an individual risk assessment as a guiding principle of protection (Article 9, para 5), we doubt that the vast majority of victims will have access to witness protection programmes, as such programmes are extremely resource-intensive and limited in scope.

4. While we welcome Article 13 and the introduction of the notion of monitoring, we would appreciate a more binding wording. The wording leaves a wide margin of discretion, which might endanger the added value of such a mechanism.

We therefore hope that the Council and the Parliament (as partner in the consultation procedure) will aim at a higher level of protection.

While the adoption of the Lisbon Treaty would make such provisions even more self-evident, we believe that the current legal basis allows for more binding measures and we encourage Member States to live up to the promises that they have made.

Brussels, 27<sup>th</sup> May 2009