

Statement to EU Member States on the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA

Save the Children Europe Group welcomes the Commission's proposal for a revised Framework Decision on combating trafficking in human beings, and in particular, the objective of significantly improving the protection and assistance to victims in recognition that this is "an obligation under human rights standards". In contrast to the 2002 Framework Decision, the proposal expressly intends to address not only "combating trafficking" but also "prevention" and protection of victims. The adoption of this integrated and holistic approach is of great importance to ensure that the human rights violations caused by trafficking are addressed properly. Furthermore, in relation to children, the Commission has proposed distinct provisions relating to their special protection. If adopted, the Framework Decision would represent a very clear step forward in EU law.

We are optimistic that this revision would pave the way for additional and more specific EU measures on the protection and assistance of trafficked persons in the future. The entry into force of the Lisbon Treaty would allow for the adoption of a directive in the field, which would likely lead to the articulation of more concrete obligations on protection and assistance. In addition, the Lisbon Treaty would allow for a more integrated approach to the protection and migration issues that may arise in relation to trafficked children of third country origin. On migration issues, we look forward to the report on the implementation of Directive 2004/81/EC later in 2009. As in previous submissions, we note our concern that, in the absence of fuller measures either at EU or national level addressing the migration status of trafficked persons (and in particular children) of third country origin, the EU Returns Directive may oblige Member States to return such trafficked persons to countries of origin without regard to whether they have been afforded proper assistance as victims of trafficking.

More generally, we believe it important that the EU explore the need for measures addressing the common rights and needs of *all* separated or unaccompanied children outside their country of origin (including trafficked children). Not only would such a measure play an important role both in ensuring identification of trafficked children and establishing more explicit standards in relation to their protection and assistance, it would also provide an important safeguard against the risk of trafficking to such separated children, prevention being better than cure. (We emphasise that such a measure would nonetheless not cover all cases of trafficked children, as some will have been trafficked with family members.)

We would encourage the Council to adopt the proposal, taking into consideration some suggestions for clarifications set out below.

Proposed Clarifications

- Although the principle of the best interests of the child and the UN Convention of the Rights of the Child are both mentioned in the Recitals, it is important to have these references in the operative part of the Framework Decision, potentially in Article 11. We also believe "in light of the best interest" should be modified to "taking the best interests of the child as a primary consideration in actions in their regard"
- Articles 3 and 4 might refer to "minimum" rather than "maximum" terms.
- Article 6 may benefit from some clarification to ensure that it applies to the involvement of trafficked children in unlawful activities as a direct consequence of being trafficked, regardless of whether the illicit means referred to in Articles 1 and 2 were used. This would ensure consistency with Article 1(5).

- Article 10 (3): it would be useful to clarify what measures might be put in place to ensure “early identification”. We refer to our earlier submissions in this regard, in particular in relation to mechanisms to ensure co-operation between different actors.
- Art 10 (4): in place of the term “secure accommodation”, we would suggest the term “safe accommodation”; “secure” may suggest use of closed accommodation / detention.
- Article 14(1) and Article 15 (1) of the proposed revision of the FD on sexual exploitation incorporated by reference in Article 11 of the proposed revision of the FD on trafficking refer to “the offences referred to in Articles 2 to 6” – we recommend inclusion of a clarification that, in the context of their application under the FD on trafficking, Articles 14 and 15 relate to the offences identified in the FD on trafficking and not those under Articles 2 to 6 of the FD on sexual exploitation.
- Article 14 (1): in the context of trafficked children, in particular, children of third country origin where age assessment can become a difficult issue in the absence of reliable identification papers, we believe there should be an obligation on Member States to establish a proper age assessment procedure, giving the benefit of the doubt to persons in cases where there remains a doubt.¹
- Article 14 (2) of the proposed revision of the FD on sexual exploitation, incorporated by reference in Article 11 of the proposed revision of the FD on trafficking: in the case of trafficked children who have been separated from their primary caregivers or where there is a conflict of interest between the holders of parental responsibility and the child, we believe the FD on trafficking should provide for the appointment of a guardian, with a clearly defined role and qualifications. This is particularly important given that, through the trafficking, the child has been removed from their community. As background, we have recommended, in the context of the ongoing revision of the asylum measures, the following provision: “*A guardian should be appointed to advise and protect the child, to ensure that all decisions are taken in the child’s best interests and to exercise legal capacity for the child where necessary. The guardian should be consulted and informed regarding all actions taken in relation to the child. A guardian should have the necessary expertise in to ensure that*

¹ As background, we note that, in the context of the ongoing revision of the asylum directives, we have recommended the following provision:

“Member States must establish clear age assessment procedures to address cases where there is a serious doubt about the age of an individual in a timely manner. Age assessment procedures should take into consideration physical and psychological development, taking into account ethnic and cultural factors. Such procedures should be implemented by independent and trained professionals, specialized in working with children. The individual should always be informed, in a language that s/he understands and according to his/her degree of maturity, about the fact that his/her age may be assessed, on the method of the procedures, including any medical examinations, the possible consequences of the result of the assessment and the processes for appealing any assessment.

In cases where medical examinations are used as a matter of last resort, Member States should ensure that: (a) individuals and/or their guardians consent to carry out an assessment and to particular examinations to determine the age of the individual concerned; a refusal to undergo a medical examination cannot be the basis for any decision on the merits of the case; and (b) Any medical examination should be performed in full respect of the individual’s dignity, selecting the less invasive exams, based on available good practices at international level.

The guardian shall represent the individual throughout the entire process. The results of age assessments should always fully reflect the margin of error associated with the tests, based on scientific and ethical standards. A copy of the certificate of the results shall be issued to the child in a language that s/he can understand.

Age assessment procedures are subject to an appeal. Pending the age assessment results, and in case of any doubt arising out of the assessment, the person should be considered to be a minor and benefit from his or her rights as a minor under EU measures.”

the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered. Organisations or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship."

- The incorporation of Article 14(4) of the proposed revision of the FD on sexual exploitation might be expressly extended to cover compensation cases in the trafficking context. Indeed, this seems to be anticipated in Article 9(6) which specifically refers to Article 11.
- Article 12 Prevention: the inclusion of provisions on prevention is a significant addition to the Framework Directive. However, there is a risk that the provision in Article 12(1) may prove too general to oblige Member States to take concrete actions. On training, we suggest the inclusion of the term "multi-disciplinary training" to ensure its application not only to officials, but also to service providers. There also should be an emphasis on operational training, in addition to awareness raising training.

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