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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 3 May 2006

to: Mr Javier SOLANA, Secretary-General/High Representative

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Subject: COMMISSION STAFF WORKING DOCUMENT  
Annex to the Report from the Commission to the Council and the European  
Parliament based on Article 10 of the Council Framework Decision of 19 July  
2002 on combating trafficking in human beings

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Delegations will find attached Commission document SEC(2006) 525.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.05.2006  
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COMMISSION STAFF WORKING DOCUMENT

*Annex to the*

**REPORT FROM THE COMMISSION  
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**based on Article 10 of the Council Framework Decision of 19 July 2002 on combating  
trafficking in human beings**

{COM(2006) 187 final}

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## 1. ANALYSIS OF NATIONAL MEASURES TAKEN TO COMPLY WITH THE FRAMEWORK DECISION

As a preliminary point it should be noted that the implementation of the Framework Decision has in some Member States required the adoption of new legislation or the amendment of certain internal provisions.

### 1.1. Article 1: Offences concerning trafficking in human beings for the purpose of labour exploitation or sexual exploitation<sup>1</sup>.

The UN<sup>2</sup> Trafficking Protocol's definition of human trafficking formed the basis for the Council Framework Decision on combating trafficking in human beings (2002/629 JHA) (the "Framework Decision"). As a result, the definitions that have been agreed at EU level largely include the same elements used in the UN Protocol. Both the UN Trafficking Protocol and the Framework Decision make a clear distinction between trafficking and prostitution.

Prior to the entry into force of the Framework Decision, most of the Member States had no specific legislation on human trafficking. Meanwhile, some Member States do not have criminal law provisions that explicitly define human trafficking; in these Member States prosecution of the offences concerned is based more on general provisions that include human trafficking amongst other offences. The main aim of the Framework Decision is to render uniform the definition of human trafficking in all of the Member States by introducing specific and common elements of certain acts which amount to trafficking in human beings (and related actions).

The object of the Framework Decision is to render uniform the laws and regulations of the Member States in the area of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings.

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<sup>1</sup> *Article 1 of the Framework Decision 2002/629 JHA*

#### **Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation**

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant here any of the means set forth in paragraph 1 have been used. 3. When the conduct referred to in paragraph 1 involves a child. It shall be a punishable trafficking offences even if none of the means set forth in paragraph 1 have been used. For the purpose of this Framework Decision, "chills" shall mean any person below 18 years of age.

<sup>2</sup> In addition to the UN organization such as Council of Europe, OSCE and IOM are active in the fight against human trafficking, see also chapter VII of the Communication from the Commission to the European Parliament and the Council on "Fighting trafficking in human beings –as integrated approach and proposals for an action plan" (COM(2005)514 final).

Thus, common framework provisions are required at European level in order to address certain issues. These include criminalisation, imposition of penalties/sanctions, aggravating circumstances, jurisdiction and the prosecution of serious criminal conduct (as defined by the Framework Decision) and the subjective element of the crime. Article 1 of the Decision defines trafficking in human beings as being for the purpose of labour or sexual exploitation. The Member States must criminalise any form of recruitment, transportation, transfer or

harbouring or other treatment of a person without the latter's valid consent, as defined in the Framework Decision, in particular where the physical or mental vulnerability of a person is subject to abuse.

The victim's consent is, however, irrelevant where, for example, use is made of coercion, force or threats. This might include abduction, the use of deceit or fraud or the abuse of authority. In relation to Article 1(2), the only Member States to transpose its provisions are Belgium, Italy, Latvia, Sweden, Slovakia, Malta, France and the Netherlands.

Regarding the implementation of Article 1 of the Framework Decision, not all Member States provide a definition of human trafficking within their judicial systems. The core elements of trafficking are coercion, abuse and deceit. It has to be clear that trafficking is not only related to sexual exploitation, but also to labour exploitation. Particular attention shall be paid to children as they have a specific legal status, needs and vulnerabilities.

Belgium amended its penal code in order to comply with the Framework Decision with a law which entered into force on 12<sup>th</sup> September 2005. Art. 433 (5)(1) paragraphs (1),(2) and (3) and Article 433(7)(1) of the Belgium Penal Code set out the definitions of human trafficking and provide for the punishment of the offender with dissuasive and proportionate measures.

Article 225-4-1 of the French Penal Code lists certain categories that constitute human trafficking offences. The same Article states that human trafficking is punishable with seven years imprisonment. Pursuant to Article 225-4-2, a human trafficking offence which involves a minor as a victim is punishable by a sentence of 10 years imprisonment.

Article 3 of Chapter 25 of the Criminal Penal Code of Finland deals with human trafficking, and provides for a sentence of between 4 months and 6 years imprisonment. According to Article 3 bis<sup>3</sup>, offences committed in aggravated circumstances are punishable by at least 2 years and at most 10 years imprisonment. On 2 April 2004 the Finnish Government proposed law 34/2004vp, which was adopted by Parliament on 8 June 2004, under which human trafficking is made a comprehensive crime.

Denmark stated that pre-existing Danish Criminal legislation already satisfied the requirements of the Framework Decision, apart from the maximum penalty requirement as set out in Article 3. Bill no. L118 was adopted in February 2002 in order to amend the Criminal Code, and has been judged as fully meeting the penalty requirement set out in Article 3 of the Framework Decision and to align Articles 228, 229 260 and 261 of the Danish Penal Code to the requirements of the Framework Decision. Article 262A, which was added to the Danish Penal Code contains special provisions on human trafficking, and new provisions have been adopted which entered into force on 8<sup>th</sup> June 2002. It provides for a general maximum penalty of eight years imprisonment.

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<sup>3</sup> Chapter 25 of Criminal Penal Code of Finland.

Articles 601, 602 of the Italian Penal Code (as modified by Article 2 of Law 228/2003) provide for a definition of human trafficking, and punishment of offenders. Article 50 of the Italian Penal Code stipulates that the consent of a victim of human trafficking to the exploitation, intended or actual, shall be irrelevant.

According to Section 2 of the Cypriot Law to combat trafficking in human beings and the sexual exploitation of children<sup>4</sup>, trafficking is defined as any act or behaviour which facilitates the entry into, transit through, residence in or exit from the territory of the Republic of a minor<sup>5</sup> or adult for the purpose of their sexual exploitation. Section 3(1)(a) of Law No.3(I)/2000 prohibits the sexual exploitation of adults for the purpose of economic gain by use of coercion, force, threat, deceit or fraud. This Law also addresses the position of vulnerable persons; in particular the sexual exploitation of minors. Furthermore under Section 4<sup>6</sup>, the use of minors in the pornography trade is punishable with a maximum of ten years imprisonment.

In Greece, Law no. 3064/2002 implements the provisions of the Framework Decision. The law is entitled 'fighting of persons trading, crimes against sexual freedom, pornography of minor and in general of economic exploitation of sexual life and assistance to victims'. Articles 323A and 338 which have recently been included in the Criminal Penal Code provide the definitions of human trafficking, and Article 348A provides for the punishment of offenders who involve minors.

In the new Estonian penal code, which entered into force on 1 September 2002, there is no specific definition of human trafficking. Paragraph 89 defines what is meant by a crime against humanity, and establishes that a relevant offender may be punished by sentences of 8 to 20 years or life imprisonment. Otherwise, traffickers can only be punished under Paragraphs 133 (Enslaving) and 134 (Abduction) with a maximum penalty of 12 years imprisonment.

Section 175/B of the Hungarian Penal Code contains specific provisions regarding human trafficking. As far as Article 1(2) of the Framework Decision is concerned, the Hungarian law does not recognise the victim's consent to human trafficking as being grounds for absolving perpetrators. Section 175 B(2)(a)<sup>7</sup> of the Hungarian Criminal Code corresponds to Article 1(3) (4) of the Framework Decision. The use of force and threats counts as aggravating circumstances.

With the aim of implementing the Framework Decision, a series of measures have been approved as provided for by Spanish Organic Law 11/2003 of 29<sup>th</sup> September 2003. It modifies Articles 318 and 318 bis of the Spanish Penal Code and makes technical changes to Article 188. The new legislative text includes an important increase in the penalty for human trafficking providing a punishment from 4 to 8 years imprisonment<sup>8</sup>. In case of sexual exploitation the punishment shall be from 5 to 10 years imprisonment. The new law provides for a stronger punishment where minors and particularly vulnerable persons are involved as victims.

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<sup>4</sup> Cypriote Law No. 3(I)/2000.

<sup>5</sup> According to Section 1 of Cyprus law - Minor is a person below 18 years old.

<sup>6</sup> Cypriote Law 3(I)/2000.

<sup>7</sup> Section referring to victims under the age of 18.

<sup>8</sup> Article 318 bis (1) Spanish Penal Code.

Trafficking in human beings for the purpose of sexual or labour exploitation is punishable according to Paragraphs 232 and 233 of the German Criminal Code (StGB). These cover the provisions set out in Article 1 (1) (a) to (b) as well as in Article 1 (2) to (3) of the Framework Decision. Article 1 (3) is also applied to persons below 21 years of age.

The Maltese Criminal Code<sup>9</sup> contains specific provisions pertaining to trafficking in human beings. Those who exploit a person using violence, threats, abduction, deceit and/or fraud are to be punished with imprisonment for a term of 2 to 9 years. With regards to Article 1(2) of the Framework Decision, it is a general principle of Maltese law that the consent of the victim is irrelevant for the purpose of criminal responsibility. Article 248D (traffic of person) of the Maltese Criminal Code<sup>10</sup>, lays down provisions against offenders who involve minors as victims.

On July 1, 2004, Sweden amended existing legislation, imposing an extension to criminal liability for all trafficking in human beings including for sexual purposes. Chapter 4 Article 1 of the Swedish Penal Code expands the basis of criminal liability for human trafficking. Article 1 to 6 of Chapter 6 lists a series of criminal conduct such as sexual and labour exploitation.

In the United Kingdom, several pieces of legislation have been introduced in order to criminalise human trafficking, and bring domestic legislation in line with the Framework Decision. Sections 57-59 of the Sexual Offences Act 2003 (the “2003 Act”), for example, introduces comprehensive offences in relation to trafficking for sexual exploitation. The geographical scope of the legislation extends to England, Wales and Northern Ireland. Similar offences set out in Section 22 of the Criminal Justice (Scotland) Act 2003 apply in Scotland. These Acts have been brought into force. Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) 2004 Act (the “2004 Act”) provides for offences in relation to trafficking for the purpose of various other forms of exploitation. One of the most notable forms of exploitation covered by the 2004 Act is trafficking for the purpose of slavery and forced labour. The 2004 Act covers the whole of the United Kingdom, and the British Government intended to bring these into force by the end of 2004 (the Commission has not yet received any communication in this regard).

According to Paragraphs 104 (a), 215 (a) and 217 of the Austrian Criminal Code (StGB) trafficking in human beings, as defined in the Framework Decision, is a criminal offence.

Following an Act amending the Slovenian Penal Code<sup>11</sup>, Article 387(a) was adopted. This makes ‘Trafficking in Human Beings’ a criminal offence. Slovenia is of the opinion that this new Article (387a), as well as the pre-existing Article 387, provide sufficient measures to comply with the requirements set out in Articles 1, 2, 3 and partially with Articles 4 and 5 of the Framework Decision. Under Article 387 (a) offenders involved in human trafficking shall be punished by imprisonment for not less than 1 year and not more than 10 years. Where a minor is involved, the minimum period of punishment shall be 3 years.

Section 154(2) of the Dutch Penal Code expands the basis of human trafficking in human beings from sexual exploitation to all forms of exploitation, as referred to in Article 1 of the

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<sup>9</sup> Article 248(A) and 248(E) of the Maltese Criminal Code.

<sup>10</sup> Chapter 9 of Maltese Criminal Code.

<sup>11</sup> Act amending Slovenia Penal Code March 2004.

Council Framework Decision. Article 273(a)(1) subparagraphs (2),(5) and (8) regulate the provisions that relate specifically to the protection of children under criminal law.

Section 154(2) of the Latvian Criminal Code sets out the definition of human trafficking. Within Section 154(3) “exploitation” is defined as the involvement of a person in prostitution or in other kinds of sexual exploitation, the compulsion of a person to perform activities or provide services, the holding of a person in slavery, or other similar forms thereof (debt slavery, serfdom or the compulsory transfer of a person into dependence upon another person) and the holding of a person in servitude.

Article 232(a) of Law 140/1961 of the Criminal Law of the Czech Republic lists certain categories (slavery, forced labour and other forms of exploitation) that constitute human trafficking offences.

The Slovakian Criminal Code has been amended and human trafficking is regulated under Heading II, paragraph 26, Section 246, which lists certain types of behaviour which constitute a crime, along with other specific provisions and punishments. An offender involved in trafficking in human beings shall be punished with a custodial sentence of between 3 to 10 years. Section 246(2) complies with the terms of Article 1(2) of the Framework Decision<sup>12</sup> (i.e. that the consent of the victim of human trafficking is irrelevant).

According to the document submitted by Poland to the Commission, there does not appear to be a clear Polish legal definition of human trafficking. The Polish Penal Code instead provides for penalties in relation to those generally involved in damaging people’s health.

## **1.2. Article 2: Offences related to instigation, aiding, abetting and attempt.**<sup>13</sup>

From the information received, the majority of Member States have referred to the general rules on complicity and inchoate offences under their criminal systems. These general rules would also be applicable to offences included in the Framework Decision.

Articles 66 and 67 of the Belgian Criminal Code address the instigation and the aiding of trafficking in human beings. Article 433 quinquies (3) addresses attempted trafficking.

Article 32 of Law 2003-239 of 18<sup>th</sup> March 2003, which amended Article 225-4-1 of the French Penal Code, provides for the offence of attempted human trafficking<sup>14</sup>. Article 225-4-1 provides for offences in the case of participation in crimes related with human trafficking. The other forms of offence required by Article 2 of the Framework Decision are probably contemplated in other parts of the Penal Code, though the Commission has not received sufficient information to confirm this.

The Slovak Penal Code seems to comply with Article 2 of the Council Framework Decision, with Sections 8 (1) (2) (3) (3a-b) (4), 9 (1) (2), 10 (1) (1a-b-c) (2) and 164 providing the necessary measures.

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<sup>12</sup> Council Framework Decision 2002/629/JHA on combating trafficking human beings

<sup>13</sup> Article 2 of the Council Framework Decision 2002/629/JHA.

Instigation, aiding, abetting and attempt.

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

<sup>14</sup> Art. 32 –Section 1 bis Art. 225-4-7.



The obligation to criminalise instigation, aiding or abetting in committing one of the offences referred to in Article 1 is met by Section 23 of the Danish Penal Code, which deals with complicity. It should be noted in this context that provisions on attempt (Section 21) and complicity (Section 23) are very extensive. Under Section 21 of the Penal Code a person can be punished for attempt when he/she aims at promoting or accomplishing an offence which is not completed. In principle, the *actus reus* for attempt under Section 21 comprises any preparatory act, and stops short of criminal attempt for making the decision to commit an offence. It should be noted that attempt and complicity carry the same maximum penalty as performance of the crime in question itself. The decisive element in Denmark's compliance with the penalty requirement set out in Articles 1 and 2 of the Framework Decision is thus the maximum penalty laid down in Section 262a of the Penal Code.

Articles 56, 110, 378 and 414 of the Italian Penal Code contain the provisions required by Article 2 of the Framework Decision.

In Cyprus, Section 5 of Law No. 3(I)/2000 (in accordance with Articles 3 and 4 of the Framework Decision) provides that aiding abetting or attempting to commit an offence are punishable with 10 years imprisonment and/or a fine.

In the General Part of the Estonian Penal code, there are provisions<sup>15</sup> regarding attempting, aiding, and acting as an accomplice to an offence. There is no clear mention of instigation.

According to Hungarian legislation, attempted crimes shall be punished under Section 17. Under Section 21 of the Hungarian Penal Code, accomplices are also punishable.

Articles 16, 27.28 and 28(a) of the Spanish Penal Code provide the general definition of aiding, attempting, abetting and instigating. Articles 61, 62 and 63 of the Spanish Penal Code establish the necessary punishment.

Czech law has pre-existing, general legislation in this respect. According to Law 140/1961 paragraph 8 Sections (1) (2) and 10 of the Czech Penal Code, attempted crimes, abetting, aiding and instigating are all punishable.

In Finland, Article 3 of Chapter 25 of the penal law of Finland provides that it is possible to punish attempted offences of this type, but there is no mention of potential sanctions. In the documentation at our disposal, no mention is made of instigation and participation.

Article 42 of the Maltese Criminal Code (Cap.9) establishes culpability on the part of those deemed to be accomplices in a crime. Pursuant to Article 43, unless otherwise provided for by law, an accomplice shall receive the same punishment as the principal malefactor.

Under Section 15 of the Latvian Criminal Law<sup>16</sup> a person shall not be held criminally liable for an attempt to commit a criminal violation. A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence, as set out in the Latvian Criminal Law. The locating of, or adaptation of, means or tools, or the intentional creation of circumstances conducive to the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall only result from preparation for serious or

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<sup>15</sup> Cypriote Penal Code 1/09/2002 –Paragraph 22 and 25.

<sup>16</sup> Section 15 (6) Latvian Criminal Code.

especially serious crime. Section 20 of the Latvian Criminal Law establishes that “*a person who has induced another person to commit a criminal offence shall be considered to be an instigator*”.

Article 45 of the Dutch Penal Code stipulates that attempting to commit a crime is punishable. Articles 47, 48 and 46(a) provide that having a crime committed, helping to commit a crime or instigating a crime, being an accessory to a crime and attempting to instigate a crime are all punishable.

In the United Kingdom, pre-existing law relating to attempting, aiding, abetting, counselling or procuring crimes will cover the new offences established under the 2003 and 2004 Acts as described above.

In Germany, Austria and Poland, the general rules for instigation, aiding, abetting and attempt also apply to trafficking offences in compliance with Article 2 of the Framework Decision.

Slovenia and Greece did not forward information regarding the implementation of Article 2 of the Framework Decision.

Chapter 23 Article 4 of the Swedish Criminal Law criminalises participation in criminal offences. Chapter 23 Article 2 covers attempted offences, whilst preparation and instigation are also covered.

Only a few Member States have specific provisions on instigation, aiding, abetting and attempting vis-à-vis the specific offence stipulated in Article 1 of the Framework Decision. As such, whilst relevant provisions obviously exist in all Member States, full implementation of Article 2 of the Framework Decision largely depends on a correct implementation of Article 1 in combination with such relevant general provisions. Different systems and meanings might lead to problems with terminology, and create great difficulties when looking for an equivalent term - particularly as the Commission generally works with translated versions of national provisions.

### **1.3. Article 3: Penalties.**

Article 3 of the Framework Decision<sup>17</sup> is intended to ensure a minimum harmonisation in relation to the penalties which are applied to offences relating to human trafficking. It is not

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<sup>17</sup> Article 3 Framework decision 2002/629/JHA of 19 July 2002  
Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances: (a) the offence has deliberately or by gross negligence endangered the life of the victim; (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography; (c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim; (d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/ JHA, apart from the penalty level referred to therein.

the aim of this report to assess the way in which Member States have implemented the Framework Decision, but to check if the prescribed minimum/maximum sanctions have been respected. Article 3 is one of the key provisions of the Framework Decision. In a broad sense it is possible to say that most Member States have succeeded in meeting the obligation imposed by Article 3(2) (i.e. that the offence referred to in Article 1 shall be punishable by terms of imprisonment with a maximum penalty that should be no less than 8 years when the offence has been committed in aggravated circumstances).

The Greek Criminal Code contains a definition of trafficking in human beings (Article 323A – Person Trading) and provides for punishment of traffickers with custodial sentences of up to 10 years. The same penalty shall apply to offenders who involve a minor in human trafficking.

Section 154(1) of the Latvian Criminal Code states that a person who commits human trafficking offences shall be deprived of liberty for a term of no less than 3 years and no more than 8 years. For a person, or a group of persons, who commit the same act, but also involve a minor, the applicable prison sentence is not less than 5 and no more than 12 years. Sexual exploitation<sup>18</sup> is punished with imprisonment for a term not exceeding 4 years, and 10 years if the offence is committed against a minor.

As regards the Belgium Criminal Code, the penalties provided for human trafficking are regulated by Article 433 (5), (7) and (8). The penalties are between 5 to 20 years imprisonment.

Under Section 166 of the Hungarian Criminal Code, attempted murder is punishable with a custodial sentence of between 5 and 15 years. Under Section 170(5), life-threatening injury is punishable with a custodial sentence of between 2 and 8 years. These Articles can also be used for trafficking cases; endangering the life of the victim is punishable as torture, for which the penalty is imprisonment of between 2 to 8 years<sup>19</sup>. As a result, the maximum combined penalty applied is always more than 8 years. Article 3(2)(b) corresponds to what is punishable with imprisonment of 5 to 10 years under Section 175/B(4)(a) of the Hungarian Criminal Code. The same penalties apply to trafficking for the purpose of producing unlawful pornography<sup>20</sup>. As regards Article 3(2)(d), human trafficking and participation in a criminal organization<sup>21</sup> can be penalised in combination. The penalty for participation in a criminal organization is a custodial sentence of 5 years. In accordance with the combined penalty rules, this penalty must be increased by at least half the maximum penalty for human trafficking. Article 387 of the Criminal Code punishes trafficking in human beings with imprisonment for 2 to 9 years. All the offences pertaining to human trafficking may entail extradition.

Article 387 of the Slovenian Penal Code punishes trafficking in human beings with imprisonment for a term not exceeding 10 years. If the offence is committed against a minor, or by an organised criminal group, the perpetrator shall be punished with at least 3 years imprisonment.

Actions covered by Section 246 of the Slovakian Criminal Code (as amended by Act No. 403/2004) are punished with a custodial sentence of between 3 to 10 years. The same actions

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<sup>18</sup> Latvian Penal Code Section 165(1).

<sup>19</sup> Hungarian Criminal Code Section 175/B(3)(a)(3).

<sup>20</sup> Hungarian Criminal Code Section 175/B(4)(b).

<sup>21</sup> Hungarina Penal Code Section 263/C.

when committed against minors (Section 246/3) are punished with 5 to 12 years imprisonment, or 8 to 15 years if the offence causes serious damage to health. Section 246(5) states that the person shall be punished with a custodial sentence of between 12 to 15 years, or with an exceptional sentence if he or she commits the offence referred to Article 246(1)(2)<sup>22</sup> under certain circumstances; for example if the person is acting as a member of a criminal group, or if the offence results in the death of a number of people.

Chapter 4 Article 1 of the Swedish Criminal Code provides for punishment of the person found guilty of the crime of trafficking in human beings. The offender shall be sentenced to imprisonment for 2 to 10 years. Chapter 29 Art 2, which deals with criminal association, provides for an aggravated offence. Criminal liability also extends to anyone who takes control over another person within such a context.

The Commission received only a general reply from the UK in respect of this issue. The trafficking offences in the 2003 Act, the Criminal Justice (Scotland) Act 2003 and the 2004 Act carry a maximum sentence of 14 year imprisonment for people found guilty of trafficking in human beings, thus more than satisfying Article 3 of the Framework Decision.

The Estonian Penal Code sets out various crimes (for example paragraph 122 (torture), 123 (sale or purchase of children), 133 (enslaving) and 134 (abduction)), but there is no explicit mention of provisions which criminalise human trafficking.

In Finland, human trafficking is punishable on conviction to imprisonment for 4 months to 10 years<sup>23</sup>. The document provided to the Commission does not contain information regarding extradition measures. Chapter 25 Article 25 3 bis of the Finnish Penal Code punishes trafficking offences committed against a victim who was particularly vulnerable, a child or a person whose life was endangered as a result of gross negligence - with imprisonment of 2 to 10 years.

Article 225-4-1 of the French Penal Code provides for imprisonment for a period of 7 years. In the case of an aggravated offence<sup>24</sup> (e.g. involving minors, vulnerable people, torture, barbaric acts etc.), the guilty person is liable on conviction to imprisonment for life.

Article 312 and 318 bis of the Spanish Penal Code, along with Article 2 of the extradition Law<sup>25</sup> and Article 9 of the Law regulating the European Arrest Warrant<sup>26</sup> provide for the incrimination of persons guilty of human trafficking. The penalty for human trafficking provided for by Article 318 bis (3) (5) is from 6 to 10 years imprisonment.

Cypriot legislation provides for penalties of more than 8 years imprisonment for the offences provided for in Article 1 of the Framework Decision. Under Section 3 of Law No. 3(I)/2000, the sexual exploitation of a minor under 18 years old is punishable with 20 years maximum imprisonment, and the sexual exploitation of an adult is punishable with 15 years maximum imprisonment. Section 5 of Law No. 3(I)2000 provides that trafficking in children is punishable with 15 years maximum imprisonment and/or a fine. The trafficking of adults is punishable with 10 years maximum imprisonment and/or a fine. Section 4 of Law No.

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<sup>22</sup> Article 246 Slovakian Criminal Code – Definition and punishment of human traffickers.

<sup>23</sup> Chapter 25 Article 3 bis Finnish Criminal Code.

<sup>24</sup> Article 225-4-2 French Penal Code.

<sup>25</sup> Law 4/1985 Spanish Extradition Law.

<sup>26</sup> Law 3/2003 Spanish Law implementing the European Arrest Warrant.

11(III)/2003 provides that any offence provided for in Article 5 of the UN Convention against Organized Crime, which is committed intentionally, is punishable with 10 years imprisonment and/or a fine.

According to Articles 232 and 233 of the German Criminal Code, trafficking in human beings for sexual and labour exploitation is punishable by terms of imprisonment between 6 months and 10 years. Articles 232 (3) and 233 (3) cover offences committed in aggravating circumstances as defined in Article 3 (2) of the Framework Decision and provide for penalties between 1 and 10 years imprisonment.

In Austria, Article 104a of the Criminal Code provides for penalties of up to 3 years imprisonment in ordinary cases of trafficking for sexual or labour exploitation. A penalty between 6 months and 5 years imprisonment is foreseen for offences committed by using violence or dangerous threats (Article 104a (3) of the Criminal Code). According to Article 104a (4) a punishment between 1 and 10 years imprisonment shall be imposed for offences committed in aggravating circumstances within the meaning of Article 3 (2) of the Framework Decision.

Article 273(a) of the Dutch Penal Code covers the various alternatives of trafficking in human beings and the offenders are punished by a prison sentence of no more than 6 years. Under Article 5 of the Law on Extradition, it may take place if the offence in question is punishable both under the law of the requesting State and under Dutch law by a prison sentence of 1 year or more. If one of the offences referred to in Article 273(a) results in severe physical injury or risk to life of the other party, this is punishable by a prison sentence of not more than 12 years. Under Dutch criminal law persons aged 16 or over have reached the age of sexual majority. If the victim of the offences referred to in Article 273(a)(1) has not yet reached the age of 16, the offences are punishable by a prison sentence of not more than 8 years. If the offences are committed jointly by two or more persons in respect of a victim who has not yet reached the age of 16, these are punishable by a prison sentence of not more than 10 years.

The acts listed in the Italian Penal Code provide for a maximum of 20 years imprisonment for human trafficking. In aggravated circumstances the penalty can be increased.

The acts listed in Articles 1 and 2 of the Framework Decision are covered respectively by Section 262A and by Section 262A, combined with Section 21 or 23 of the Danish Penal Code. At the time when the Framework Decision entered into force, Section 262A of the Penal Code had a general maximum penalty of imprisonment for a term not exceeding 8 years comprising all categories of trafficking in human beings, and the provision remains in force unchanged today. The Danish Penal Code was amended by the introduction of Bill no. 118 of 26<sup>th</sup> February 2002 to satisfy the requirements set out in Article 3 of the Framework Decision.

The Polish Penal Code provides for penalties of imprisonment from 1 to 10 years where the offences are committed against a child for the purpose of sexual exploitation.

Under Section 232a of Criminal Law 140/1961 of the Czech Criminal Code, there are three categories of penalties in relation to people trafficking. Section 232a(2) provides that crime against minors, and sexual exploitation and slavery or forced labour in particular, should be punished by imprisonment for 2 to 10 years. Section 232a(3) provides that persons who carry out human trafficking as part of an organised group will be sentenced to 5 to 12 years imprisonment. If the offender's act results in a critical health situation, death or is aimed at benefiting financially from exploitation or prostitution, imprisonment can be from 5 to 12

years. Under Section 232a(4), the penalty will be imprisonment for 8 to 15 years if the crime is committed by a criminal organisation and leads to serious damage, death or other serious consequences.

According to Article 248/A/C/E (traffic of person) of the Maltese Criminal Code (Cap. 9) trafficking in human beings is punishable with imprisonment for a term from 4 to 12 years. If the offence is committed against a minor (Article 248 D) or with the involvement of a criminal organisation (Article 83 A-1) the punishment shall be increased.

We must recall in this sense that Article 3 has been implemented in different ways: either by referring to concrete provisions in criminal legislation or to general categories of crime. Only when Member States have forwarded all of the relevant information relating to the relevant offences will it be possible to assess implementation.

#### **1.4. Articles 4 and 5: Liability of and sanctions on legal persons**

Following a standard formula that can be found in other instruments, Article 4 obliges Member States to ensure that legal persons can be held liable for the offences referred to in Articles 1 and 2 when they are committed for their benefit by any person in certain leading positions within that legal person. Paragraph 2 extends a legal person's liability further, so that where lack of supervision or control by a person in a position to exercise them has rendered the commission of the offence possible, liability may likewise be found.

As regards the information on national systems provided to the Commission, the Belgian Criminal Code provides for criminal liability of legal persons for offences linked to the realisation of their object or the defence of their interests or committed on their behalf (Articles 5, 7 and 433 novies of the Penal Code). When the responsibility of a legal person derives exclusively from the conduct of an identified natural person, only the (legal or natural) person who committed the most serious fault may be convicted. When the natural person intentionally commits the offence, then both of them may be convicted.

French law specifically provides for legal persons to be held criminally liable in certain circumstances. Legal entities may be criminally liable in accordance with Article 225-4-6, regarding combating human trafficking of the French Penal code, in accordance with the conditions set out in Article 121-2.

In Finland, the provisions on criminal liability of legal persons apply to trafficking in human beings in Chapter 25 Article 10 of the Penal Code. The documents forwarded to the Commission by the Finnish Government are not clear regarding the sanctioning of legal persons.

In the Danish Penal Code (Section 25 and 27) a legal person may be punished with a fine, if such punishment is authorised by law. According to Section 306 of the Danish Penal Code, criminal liability may be imposed on legal persons under Part 5, which applies to violations of the Penal Code, including the provision set out in Section 262A of the Code dealing with trafficking in human beings.

Italian law provides for administrative liability of legal persons where crimes are committed for their benefit or interest by those who have a power of representation, administration, management or who exercise control within the legal person, or by persons subject to their management or supervision if the lack of supervision or control made the commission of the

offence possible. Finally, Article 4 of Legislative Decree 8-6-2001 n.231 provides that legal persons whose principal establishment is located in Italian territory shall be liable, in accordance with the conditions provided in Articles 7, 9 and 10 of the Criminal Code, for offences committed abroad – i.e., if the State where the offence took place does not take action against them.

According to Cypriot law, legal persons are prosecuted for the offences provided in Law 3(I)/2000 and 11(III)/2003 in the same way as natural persons. This is because the term ‘person’ under the Cyprus Interpretation Act is defined as comprising both natural and legal persons. For this reason, the same penalties exist for the above mentioned offences. In particular, Section 20 provides that every person who has taken part in the commission of an offence, either by their omission to act, enabling or aiding another to commit an offence, or by counselling or procuring someone to commit an offence is considered to be guilty for that offence. Legal persons are prosecuted pursuant to Section 20 of the Criminal Code Cap. 154.

Under Greek law, Articles 1 (2), 8(2)(4), 7(2) and 10(6) of Law no.3064 of 15<sup>th</sup> October 2002, specify that a liable person can be punished with imprisonment for up to 10 years and with a fine of 10 to 50 thousand Euros.

Estonian legislation provides for the possibility that legal persons with passive legal capacity are capable of guilt. A court may impose compulsory dissolution on a legal person which has committed a criminal offence. If commission of criminal offences has become part of the activities of the legal person a pecuniary punishment can also be imposed.

According to the Hungarian Penal Code the court may sentence a legal entity to refrain from its activities for a period of 1 to 3 years. The court may impose punishment on the person committing a criminal act, and it may also take the following measures against the legal entity: winding up, limiting the proscribed activity and imposition of a fine. The measures laid down in Hungary’s Act CIV 2001 are applicable to legal entities in the event of the commission of any wilful criminal act defined in Criminal Code Act IV of 1978.

In the Spanish Criminal Code, the liability of legal persons is regulated by Articles 31, 129, 318 and 318 bis. The provisions of Article 4 of the Framework Decision are reflected in modifications made to Article 318 (318bis) of the Spanish Criminal Code, which include the ability of the judge to dissolve entities or to suspend their activities.

Under German law, and according to Paragraphs 30 and 130 of the Regulatory Offences Act (Gesetz über Ordnungswidrigkeiten) legal persons can be held liable in accordance with the Framework Decision, and they are punishable by non-criminal fines. Restrictions regarding commercial activities are likewise possible.

Austria’s response to the Commission referred to ongoing national legislative procedures which are aimed at the adoption of a law to cover the liability of legal persons for criminal offences, and providing for sanctions as required by the Framework Decision (“Verbandsverantwortlichkeitsgesetz”).

Under Maltese criminal law, Article 248E(3) (which relates to trafficking of persons and makes reference to Article 121D (Abuse of Public Authority and Unlawful Exaction of Extortion and of Bribery)) of the Maltese Criminal Code (Cap 9) provides the relevant provisions in this respect.

According to Swedish law, only natural persons can commit crimes. Swedish legislation provides for, however, a kind of criminal responsibility for legal persons or other entrepreneurs, including state-owned and municipal trading companies. Sanctions are imposed through the imposition of corporate fines. This is regulated by Chapter 36, Section 7-10 of the Swedish Penal Code, which makes it possible to impose a corporate fine on the entrepreneur for a crime committed in the exercise of business activities.

Pursuant to Section 1 of the UK's Interpretation Act 1978, the word 'person' includes a legal person. Therefore, the offences set out in the 2003 Act, Criminal Justice Act (Scotland) 2003 and the 2004 Act can be committed by a legal person. A legal person has no mind of its own, however. Instead it can only act through its employees or agent. Therefore, under English law a company could be guilty of these offences if a director or other senior person/employee (as the directing mind and will) had the necessary mental element/*mens rea* for the crime (i.e. an intention to exploit). The Proceeds of Crime Act 2002 also provides a number of money laundering offences which could be relevant to the ability of authorities to punish a legal persons for trafficking offences. These can be found in Sections 327, 328 and 329. Where a legal person is liable for trafficking offences under the Criminal Justice (Scotland) Act 2003, the legislation allows for the imposition of fines.

Article 51 of the Dutch Penal Code provides for the criminal prosecution of the legal person as well as those issuing instructions and exercising actual leadership. They do not have to be formally a manager, director or owner of the legal person. Someone subordinated to the management of the legal person can also give actual leadership. Article 51(2) provides that relevant penalties and measures provided for by law may be imposed on a legal person. According to Article 23(7) of the Penal Code a legal person may be punished by the imposition of a fine.

Slovenia sent the Commission a general specification stating that a special law on liability of legal persons for criminal offences is in force. According to this law Articles 387 and 387(a) of the Penal Code are already included in a list of criminal offences for which legal persons can be held liable.

Article 51 of Polish Law No. 197 of 28 October 2002 regulates the liability of legal persons.

In Latvia, a legal person cannot be held liable for criminal offences. Latvian Criminal Law only recognizes the liability of the natural person when someone commits a criminal offence whilst acting as a representative of a legal person. It is interesting to refer to Article 100 of the Latvian Code of Criminal Procedure, which mentions that the legal person may be considered as a victim of a criminal offence.

The Slovak and Czech Republics do not provide for the criminal responsibility of legal persons.

### **1.5. Article 6: Jurisdiction and prosecution**

Article 6 is particularly important for States which refuse to extradite their nationals, since they must take the necessary measures to prosecute their nationals for offences committed outside their territory. International law recognises five bases for jurisdiction: territoriality, nationality, passive personality, protection principle and universality. Regarding the documents sent by the Member States to the Commission, it has not been possible to have a general view of the existing rules in this field.



The Danish penal authority covers actions carried out outside the Danish state by a Danish national or resident, under the conditions set out in Section 7 of the Criminal Code (i.e. essentially double criminality). This provision also applies to nationals and residents of other Scandinavian countries if they currently reside in Denmark. Section 8 extends jurisdiction to certain actions carried out abroad, irrespective of where the offender comes from. This applies, amongst other situations, to cases where the action violates the sovereignty, security, constitution or public authorities of the Danish State, or that of a Danish citizen or resident, and when “*the act is covered by an international agreement under which Denmark is obliged to prosecute*”. It also applies to cases where extradition is refused, provided the act is punishable in the other country and could be punished with more than 1 year of imprisonment under Danish law.

Chapter 1<sup>27</sup> of the Finnish Penal Law, Section 7 on international offences, applies to an offence committed outside of Finland. The provisions therein make specific reference to human trafficking. Article 11 of Chapter 1 of the Penal Law provides for the condition of double incrimination.

Article 6 of the Italian Penal Code provides that offences committed in whole or in part in its territory means it is under Italian jurisdiction. Article 7 of the Code extends Italian jurisdiction to acts committed abroad that constitute crimes against the personality of the Italian State. This could cover some of the offences established by the Framework Decision. Pursuant to Article 6 of the Code, an Italian citizen may also be punished for offences committed abroad, provided he is arrested on Italian territory. Pursuant to Article 9 an Italian citizen may be punished for offences committed abroad.

French criminal law is applicable to any person who, on the territory of the French Republic, is guilty as an accomplice to a felony or misdemeanour committed abroad if the felony or misdemeanour is punishable both by French law and the foreign law, and if it was established by a final decision of the foreign court. French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic (Article 113-6). It is applicable to misdemeanours committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed.

According to Cypriot law, the Cypriot Courts are competent when the offences set out in Articles 1 and 2 of the Framework Decision are committed within the territory of Cyprus. According to Section 5(1) of the Criminal Code Cap. 154, the Courts may hear cases and impose penalties for any offences committed abroad by a citizen of the Republic of Cyprus if the relevant offence is punishable with 2 years imprisonment or more. Section 5(1)(e) provides that the Courts may hear cases and impose penalties for any offence committed abroad by a person (whether a Cypriot citizen or a foreigner) if that offence is provided for in a convention ratified by the Republic. Moreover, Section 15 of Law N 3(I)/2000 extends the jurisdiction of Cypriot courts to hear cases and impose penalties for any of the offences provided for in the law, irrespective of the country in which the offence was committed or of the nationality of the offender.

In Germany Article 6 of the Criminal Code also establishes jurisdiction for offences committed abroad. Germany does not make use of Article 6(2) of the Framework Decision.

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<sup>27</sup> Scope of application of the criminal law of Finland.

According to Article 10 of the Belgium Criminal Procedure Code it was established that the offence of trafficking is often committed abroad. Belgian citizens can be prosecuted for crimes committed abroad if the conduct is punishable in both Belgium and the country in which the crimes were committed.

Paragraph 6 of the Penal law of Estonia<sup>28</sup> applies to acts committed within the territory of Estonia or to acts committed on board or against ships or aircraft registered in Estonia. Paragraph 9 states that regardless of the law of the place of commission of an act, the penal law of Estonia applies to acts committed outside the territory of Estonia if according to the penal law of Estonia the act is a criminal offence in the first degree. That is to say, if such an act causes damage to the health or life of the population of Estonia, interferes with the exercise of state authority or the defence capability of Estonia or causes damage to the environment.

In Hungary, jurisdiction is covered by Section 2 of the Hungarian Criminal Code (Act No. IV of 1978) and Section 2 of Act CIV of 2001. Hungarian law shall be applied to offences committed in Hungary, as well as to acts committed by Hungarian citizens abroad. The Hungarian Law does not cover the provisions of Article 6(1)(c) of the Framework Decision.

As regards Spain, Organic Law 6/1985, of 1<sup>st</sup> July 1985 on Judicial Power provides in Article 23.4 universal jurisdiction over certain crimes committed abroad which constitute an offence under Spanish law.

In the criminal justice system, Article 23 of the above mentioned law allows for Spanish jurisdiction to decide upon crimes and offences committed within Spanish territory or on board Spanish ships or aircrafts, without prejudice to what is indicated in the international treaties to which Spain is a party.

Austria establishes jurisdiction for offences committed by Austrian citizens abroad according to Articles 64 and 65 of the Criminal Code. Austria also makes use of Article 6 paragraph 2 of the Framework Decision with regard to legal persons, whilst jurisdiction seems to be established for most cases covered by Article 6 par 1(c).

In Malta the question of jurisdiction for human trafficking crimes is dealt with by the Criminal Code<sup>29</sup>. Maltese criminal law can be applied against any person who commits an offence in Malta, but the information provided by the Maltese authorities is not clear about jurisdiction for human trafficking offences committed abroad.

The Swedish Criminal Code already provides for extraterritorial jurisdiction when the offender is a Swedish national or resident, or has become one after committing the offence. The Swedish law does not provide for the rule established under Article 6(1) of the Framework Decision.

As regards the United Kingdom, jurisdiction over the trafficking offences set out in the 2003 Act, Criminal Justice Act (Scotland) 2003 and the 2004 Act, covers anything done in the UK or outside the UK by British citizens (and certain other categories of persons who have links with the UK), and outside the UK by a body incorporated under the law of a part of the UK.

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<sup>28</sup> The Estonian Penal Code entered in force on 1 September 2002.

<sup>29</sup> Criminal Code Cap. 9 Article 5 (preliminary provisions).

In Slovenia the rules on jurisdiction are included in the General Part of the Penal Code and are in force for all criminal offences in the Specific Offences Part. The Penal Code applies to any person who commits a criminal offence in the territory of the Republic of Slovenia. The Slovenian Penal Code is also applicable to any citizen of the Republic who commits any criminal offences abroad and who has been apprehended in or extradited to Slovenia. The Penal Code applies to any foreign citizen who has, in a foreign country, committed a criminal offence against Slovenia or any of its citizens and who has been apprehended in the territory of the Republic or has been extradited. The Penal Code is also applicable to any foreign citizen who has, in a foreign country, committed criminal offences against a Slovenian citizen and has been apprehended in the Republic of Slovenia and has not been extradited to a foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country in which the offence was committed.

Article 2 of the Dutch Criminal Code applies to anyone who commits any criminal offence in the Netherlands. Article 5 of the Penal Code establishes jurisdiction over Dutch nationals who commit criminal offences abroad. As a result of the amended Article 5, double criminality requirements do not apply to trafficking in human beings. Under the amended Article 5(a), Dutch criminal law also applies to persons who have a fixed residence or abode and who have committed human trafficking outside the Netherlands.

Art. 607 (2) paragraph 1 of the Polish Procedural Penal Code regulates extradition.

Section 489 of the Latvian Code of Criminal Procedure provides that a person who resides in the territory of Latvia can be extradited for prosecution, judgement or execution of a judgment in any other state after a request for extradition. The liability of a person who has committed a criminal offence on Latvian territory shall be determined in accordance with Criminal Law Section 2. Latvian citizens and non-citizens, and aliens or stateless persons who have a permanent residence permit in the Republic, shall be held liable in accordance with Criminal Law Section 4(1) for criminal offences committed in the territory of another state.

In Slovakia, an act committed within the territory of the Republic shall be judged in accordance with Slovak law. An offence shall be deemed to have been committed in the territory of the Republic even it was partially committed in or otherwise effects a foreign jurisdiction. Criminal liability for an act committed by a citizen of the Slovak Republic or a stateless or foreign person who is permanently resident in the Slovak Republic shall be judged in accordance with Slovak law.

The documents sent by the Greek government contain no information regarding the jurisdiction of Greek law.

Sections 17 to 21, no 19 of Czech Criminal Law 140-1961 (pertaining to jurisdiction and prosecution) provide for the implementation of the provisions of the Framework Decision. Under this law, a crime committed abroad by or against a citizen should be subject to Czech criminal jurisdiction.

From the information received, it appears that all Member States have rules which, to a variable extent, cover the principle of active personality as set out in Article 6(1)(b).

## 1.6. Article 7: Protection of and assistance to victims

The Framework Decision pays particular attention to child trafficking. Recital No. 5 of the preamble recalls that children, understood as any person below 18 years of age, are more vulnerable and are therefore at greater risk of falling victim to trafficking. They are far more likely to suffer as a result of the use of coercion, force, threat, deceit or fraud, from abuse of authority or their position of vulnerability. The use of such intimidating and exploitative methods is not a necessary component of the offence where the victim is a child, however, making the scope for prosecution far wider in these circumstances.

Specific attention should be paid to children as they have a specific legal status, needs and vulnerabilities.

Under Danish law, the investigation and prosecution of cases concerned with violation of the Penal Code<sup>30</sup> are not conditional upon reporting to the police or similar steps taken by the victims or other parties. The documents Denmark submitted regarding the implementation of Article 7(2) (3) of the Framework Decision referred instead to the general implementation of the Council Framework Decision of 15<sup>th</sup> March 2001 on the standing of victims in criminal proceedings.

In Italy, Art 13 of Law Nr. 228/2003 establishes a specific assistance programme to victims of human trafficking, and Article 12 of the same law provides for funding for the victims. Article 18 of Legislative Decree Nr. 286/1998 (residence and social protection) provides a special residence permit to victims who collaborate with the authorities in order to disrupt criminal organizations.

Cypriot Law 3(1)/2000 provides for the protection, support, compensation and rehabilitation of victims. In particular, Section 7 provides for state providence - i.e. psychological and medical care and temporary accommodation. Sections 3(2) and 4 of the Protection of Witnesses Law<sup>31</sup> provides that victims of trafficking and sexual exploitation who are witnesses in criminal proceedings relating to the crime under trial are protected against all forms of direct or indirect threat, pressure or intimidation. Child victims receive special treatment under the national action plan for the protection of children's rights, which is managed by the Social and Welfare Services.

In Finland, no accusation from the victim is required in order to initiate prosecution. Article 3 of Chapter 25 of the Criminal Code provides for a specific definition of a minor (this being a person below the age of 18) in the context of human trafficking.

Greek Law Nr. 3064/2002 implements the Framework Decision into national legislation. As regards the assistance for victims, Article 12 of Part B of the Law 3064/2002 provides for the protection of the victims. Article 12(10) states that protection is granted to the victims of the crimes provided for in Articles 323, 323A, 329 and 351A of the Criminal Code. These primarily concern the protection of life, bodily integrity and personal and sexual freedom – if they are threatened by a serious risk. Care has been taken for the incorporation of minors into programmes relevant for their educational and professional training. As regards victims (Art. 12(2)) who are foreigners and who are illegally in Greece, their deportation can be suspended.

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<sup>30</sup> Section 262A Danish Penal Code.

<sup>31</sup> Cypriot Law of the Protection of Minors - Law N. 95910 of 2001.

Article 13 provides the general rule for repatriation of foreigners who are illegally in the territory of Greece; it is possible to repatriate minors as well as adults.

France does not mention assistance to victims.

Section 171(1) of the Hungarian Code of Criminal Procedure (Act XIX of 1998) makes it possible, but not obligatory, for anyone including the victim to report an offence. Hungarian law does not recognise any restriction on this possibility in the case of the offences covered by the Framework Decision. Section 207 of the Hungarian Code of Criminal Procedure<sup>32</sup> ensures special protection for child witnesses.

In Spain, Article 14 of Organic Law 1/1996 of 15<sup>th</sup> January 1996 provides for the protection of minors involved in a trial. The information provided on Spanish Criminal Law is not very clear in relation to Article 7(1) of the Framework Decision.

In Germany the prosecution of trafficking offences does not depend upon the intervention of the victim (Article 132 Criminal Procedure Code). As regards protection and assistance for victims, Germany referred to Arts; 68 b 255 a; 395 397a 406 d 406 j 406 h.

In Malta the protection of victims is dealt with by Article 75 to 90 of Title IV (protection of witnesses and victims) of the Police Act (cap. 164). The law sets out particular arrangements that can be made for witnesses (e.g. protection, programme protection and hearing of vulnerable persons as minors). Chapter 23 Article 1 of the Swedish Procedural Penal Code provides protection to victims and seems in line with the Framework Decision.

Estonia did not provide information regarding the assistance and the protection of the victim.

In the United Kingdom, investigation and prosecution are not necessarily dependant on a victim's complaint. Provided there is sufficient evidence of an offence having been committed, a prosecution may be taken forward. The relevant sections of the Framework Decision on the standing of victims in criminal proceedings have been implemented. For example, under the Youth Justice and Criminal Evidence Act 1999 special measures have been put in place in order to make it easier for child victims and child witnesses to give evidence in court. The UK also states that advice and information will be offered in line with Article 4 of the Framework Decision, but gives no specific information in this respect

Austria does not require any accusation or report from the victim in order to initiate the prosecution.

In Slovenia the protection of vulnerable witnesses during criminal proceedings is governed by the Criminal Procedure Act, in its provisions on the protection of witnesses during the investigation and main hearing. Article 178/4 stipulates that the accused may not be present during the questioning of witnesses younger than 15 who are victims of any criminal offences against sexual integrity, neglect or cruel treatment. Paragraphs 5, 6 and 7 of Article 240 of the Criminal Procedure Act lay down that when interrogating certain witnesses during the investigation, it is not permissible to reveal their identity, so that their anonymity is protected during a criminal procedure. Procedural legislation in Slovenia provides for the possibility of having children specially represented in all procedures concerning them. The designation of a special representative to a child is governed by the Marriage and Family Relations Act.

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<sup>32</sup> Hungarian Code of Criminal Procedure – Act XIX of 1998.

Articles 3 bis, 4 and 5 bis of the Belgian Procedural Penal Code and Articles 91 bis-101 of the Instruction Criminal Code provide for the protection and assistance of victims in general.

The new Article 273(a) of the Dutch Penal Code does not require a complaint to be made, and a crime report is not a prerequisite for investigation or prosecution. In criminal proceedings account is taken, where necessary, of factors such as the standing of crime victims who are minors. Whether the crime involves human trafficking is also taken into account. The existing arrangements mean that victim care generally applies. There are specific arrangements for victims of trafficking. Provisions contained in Article 273(a)(1) subparagraphs (2), (5) and (8) relate specifically to the criminal law protection of children.

Polish law only provides general provisions, and does not address trafficking in particular.

Sections 95, 100, 106 and 160 of the Code of Criminal Procedure of the Republic of Latvia provide protection for and assistance to victims. Article 100 gives the definition of a victim: “*a victim shall be considered a natural or legal person to which moral, physical or material damage has been caused*”. Article 106(2) refers to persons entitled to special procedural protection as victims or witnesses. Under Article 106(9) the protected person shall have the right at any time to refuse protection, and shall have the right to claim compensation for harm to their health which has occurred due to protection or its insufficiency.

On 1<sup>st</sup> October 2004, the Swedish authorities amended the penal provisions in the Aliens Act. Depending on the complexity of the investigation, the victim of human trafficking shall be issued a time-limited residence permit which means that they will be entitled to health care and medical attention as well as social welfare. The Social Services Act is comprehensive in terms of the support and the compensation of the victim. No accusation from the victim is required in order to initiate prosecution.

The Slovak authorities declared that under the law in force, the public prosecutor is required to prosecute all offences reported to him/her. There is no specific requirement for a report of accusation from the victim.

Under Law 141 -1961 of the Czech Criminal Procedure Code, paragraphs 1, 2, 45(1) 45(2) 102, cover all of the requirements set out in the Framework Decision. Article 102 requires that minors (i.e. younger than 15 years) should be treated in a sensitive way during investigations and prosecutions, and likewise that they be accompanied by parents or relevant experts during all contact with authorities in such circumstances. Article 7(1) FD- 2(3) obliges authorities to prosecute offenders, whether the victim demands it or not.