

# Towards and Area of Freedom, Security and Justice

## Trafficking in Human Beings

**Jürgen MERZ**

**European Commission**

**DG Justice, Freedom and Security**

**Unit D.1 – Fight against Terrorism,  
Trafficking in and Exploitation of Persons,  
and Law Enforcement Cooperation**

# *What is trafficking in human beings? (I)*

*Fundamental concern:  
Protection of human rights*

*Serious crime – organised crime dimension*

*Transnational issue – illegal migration dimension*

*→ Integrated approach:  
respect of human rights, global nature,  
coordinated policy response.*

# *What is trafficking in human beings ? (II)*

## *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*

### *Article 1*

- 1. Specific act (recruitment ...)*
- 2. Specific means (no or no valid consent  
of the trafficked person)*
- 3. Specific purpose (sexual exploitation,  
labour exploitation)*

# *Penalties*

*(Article 3)*

*Basic offence:*

*effective, proportionate and dissuasive  
criminal penalties*

*Aggravating circumstances:*

*Maximum penalty not less than 8 years  
(life of the victim endangered, particularly  
vulnerable victim, serious violence or  
serious harm, criminal organisation)*

*Instigation, aiding, abetting, attempt (Art. 2)*

# *Liability of legal persons*

*(Article 4)*

*Liable for offences committed for their benefits by any person, who has a leading position within the legal person*

- power of representation*
- authority to take decisions*
- authority to exercise control*
- lack of supervision or control*

# *Sanctions on legal persons*

*(Article 5)*

*Effective, proportionate and dissuasive sanctions*

*Criminal or non-criminal fines (shall)*

*Other sanctions (may)*

*Exclusion from entitlement to public benefits,*

*Disqualification from practice of commercial activities,*

*Placing under judicial supervision,*

*Judicial winding-up order,*

*Closure of establishments used for committing the offence*

# *Jurisdiction and Prosecution*

*(Article 6)*

*Member State shall establish jurisdiction:*

- Offence committed within its territory*
- Offender one of its nationals, especially if own nationals are not extradited*
- Benefit of a legal person established in the Member State*

-----

*Prosecution shall not depend  
on report or accusation of the trafficked person  
(Article 7 par. 1)*

*Children (I)*  
*(Articles 1, 3, 7)*

*Any person below 18 years of age*

*Trafficking does not require specific means*

*Aggravating circumstance:  
child victim under age of sexual majority  
in the case of sexual exploitation*

*Criminal proceedings  
Appropriate assistance for his/her family*

## *Children (II)*

### *Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography*

*Offences (Art. 2, 3)*

*Penalties (Art. 5)*

*Aggravating circumstances (Art. 5)*

*Legal persons (Art. 6, 7)*

*Jurisdiction and prosecution (Art. 8)*

*Protection and assistance (Art. 9)*

# *Children (III)*

*Sexual exploitation (trafficker)*

*(Article 2 a, b)*

*Coercing into prostitution or pornographic performances, profiting, exploiting*

*Recruiting into prostitution or pornographic performances*

# *Children (IV)*

## *Sexual exploitation (client)*

*(Article 2 c)*

*Engaging into sexual activities with a child*

*- Coercion, force, threat*

*- Remuneration, payment*

*- Abuse of trust, authority, influence*

# *Children (V)*

## *Child pornography* *(Article 1 (definitions) and 3)*

*Real child, real person appearing to be a child,  
realistic images of a non-existent child*

*Production, distribution, dissemination, transmission,  
supply, making available, acquisition, possession*

# *Children (VII)*

## *Penalties*

*(Article 5)*

### *Basic offences:*

*Maximum of at least between  
1 and 3 years of imprisonment*

*Aggravating circumstances :  
Maximum of at least between  
5 and 10 years of imprisonment*

*Instigation, aiding, abetting, attempt (Art. 4)*

## *Policy development*

*2000: UN Trafficking Protocol*

*2002: Brussels Declaration*

*2003: Council Conclusions*

*Experts Group on THB*

*2004: Report/recommendations of the  
Experts Group on THB*

*2005: Commission Communication*

*EU Action Plan*

*(Council of Europe Convention)*

# *UN Trafficking Protocol*

- *Definition*
- *Criminalization*
- *Assistance and protection*
- *Status of victims in receiving States*
- *Repatriation of victims*
- *Prevention*
- *Information exchange and training*
- *Border measures*
- *Security and control of documents*
- *Legitimacy and validity of documents*

# *Integrated or Multidisciplinary Approach*

*Prevention*

*Protection / Assistance*

*Prosecution / Punishment*

*Specific groups: women, children*

*Reliable data*

*Coordination / Cooperation*

# *EU Action Plan*

*EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings*

- *Broad principles*
- *Table of actions*  
*(Council, Commission, Member States, others)*

# *Documents*

- Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, OJ L 203, 1.8.2002, p. 1
- Council Conclusions of 8 May 2003 (Brussels Declaration on preventing and combating trafficking in human beings), OJ C 137, 12.6.2003, p. 1
- Council Framework Decision 2004/68/JHA of 22 December 2004 in combating the sexual exploitation of children and child pornography, OJ L 13, 20.1.2004, p. 44
- EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, OJ C 311, 9.12.2005, p. 1
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime  
[http://www.unodc.org/unodc/en/trafficking\\_human\\_beings.html](http://www.unodc.org/unodc/en/trafficking_human_beings.html)