

# REGULATORY IMPACT ANALYSIS

August 2010

## **Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA**

### **1. Policy Problems and Objectives**

#### *Policy*

On 30 March 2010 the European Commission published a proposal for a Directive of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting Victims to repeal a Framework Decision agreed in 2002 on combating trafficking in human beings (ref: 2002/629/JHA).

#### *Objective*

The overall goal of the proposal is to provide a framework to more effectively tackle trafficking in human beings at EU level by having common standards in relation to a range of issues. The objective of the proposal is to align measures at EU level more closely with those of the United Nations and Council of Europe in terms of addressing prevention of trafficking in human beings, prosecution of the crime, protection of the victims of this crime and the establishment of effective monitoring systems.

#### *Background*

Trafficking in human beings is a worldwide phenomenon, a gross violation of human rights, a modern form of slavery and an extremely profitable business for organised crime. Each of three distinct elements (an act, a means and a purpose) must be fulfilled for a situation to be deemed to be one of trafficking. It involves the recruitment and movement of a person, through deception, coercion, force or the abuse of vulnerability, for the purpose of exploitation. This can be a subtle process involving a gradual loss of control over time. When children are trafficked, no violence, deception or coercion needs to be involved - simply transporting them into exploitative conditions constitutes trafficking. People can be trafficking for the purposes of labour exploitation, sexual exploitation or the removal of organs.

#### *Details of the Proposed Directive*

Many of the measures in the Proposed Framework Decision on human trafficking which were agreed in November 2009 prior to the entry into force of the Lisbon Treaty (but lapsed as the measure had not been adopted at EU level) have been incorporated into the final negotiated version of the Proposed Directive on human trafficking which was published in March 2010.

The proposed Directive provides for sanctions for the crime of human trafficking, provides for the investigation and prosecution of offences of human trafficking and contains protections including assistance and support to child and adult victims of human trafficking, an outline of prevention measures, provision for National Rapporteurs or equivalent measures, transposition and reporting requirements.

The provisions of the proposed Directive are as follows:

- **Article 1** sets out the aim of the proposed Directive which is to establish minimum rules concerning the definition of criminal offences and sanctions for trafficking in human beings and to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.
- **Article 2** defines trafficking in human beings.
- **Article 3** provides that the instigation of, aiding and abetting or attempt to commit an offence of trafficking in human beings is punishable.
- **Article 4** sets out the penalties to be applied by Member States. The penalty for the substantive offence is a maximum of at least 5 years imprisonment. A maximum period of at least 10 years is to be applied in the aggravating circumstances set out in Article 4.2 e.g. the offence was committed against a victim who was particularly vulnerable; the offence has deliberately or by gross negligence endangered the life of the victim; etc. Under Article 4.3 if an offence is committed by a public official in the performance of his or her duties that is to be regarded as an aggravating circumstance. The offences of instigation, aiding and abetting or attempt must be punishable by effective, proportionate and dissuasive criminal penalties, which may include surrender under Article 4.4.
- **Article 5** provides for the liability of legal persons.
- **Article 6** sets out the sanctions to be imposed on legal persons by Member States and which should be effective, proportionate and dissuasive. These sanctions include criminal or non-criminal fines and may include other sanctions e.g. exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; etc.
- **Article 7** is a non-punishment and non-prosecution clause. It provides for the possibility of not prosecuting or imposing penalties on victims for their involvement in unlawful activities to the extent they have been compelled to become so involved.
- **Article 8** deals with the issue of investigation and prosecution. It imposes a mandatory obligation on Member States to provide that an

investigation or prosecution will not be dependent on a report or accusation made by a victim and allows for the possibility for criminal proceedings to proceed in the event that the victim withdraws his or her statement. Provision is made for the availability of effective investigative tools for those responsible for investigating or prosecuting trafficking offences. There is a mandatory obligation on Member States to train those responsible for investigation or prosecution.

- **Article 9** requires Member States - establish jurisdiction over offences in defined circumstances for example where the offence is committed in whole or in part within its territory or the offender is one of its nationals.
- **Article 10** provides for assistance and support to victims. At Article 10.3 provision is made that assistance and support for victims should not be made conditional on their willingness to act as a witness. Since the text was published the provision was supplemented to state that this assistance and support is to be provided unconditionally at least during the reflection period for those who do not reside lawfully within the State.
- **Article 11** deals with the protection of victims of trafficking in criminal investigations and procedures by ensuring that victims of human trafficking have access to legal counselling and, where appropriate, legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources. Also provision is made for the protection of trafficking victims on the basis of individual risk assessment e.g. access to a witness identity programme. Member States must ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation e.g. unnecessary repetition of interviews during investigation, prosecution and trial; the giving of evidence in open court; etc.
- **Article 12** sets out the general provisions on assistance, support and protection measures for child victims of human trafficking. These include taking into account the best interests of the child and where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe the person is a child, the person is presumed to be a child in order to receive immediate access to assistance, supports and protections.
- **Article 13** provides for assistance and support to child victims of trafficking in human beings in the short and long term. Following an individual assessment of each child provision should be made for their physical and psycho-social recovery taking account of their views, needs and concerns. Provision should also be made for access to education. Member States are required, where appropriate and

possible, to provide assistance and support to the family of the child victim of human trafficking when the family is in the territory of the Member State.

- **Article 14** deals with the protection of child victims of trafficking in human beings in criminal investigations and proceedings. Under Article 14.1 competent authorities (rather than judicial authorities) appoint a special representative for child victims, where the holders of parental responsibility are precluded from representing the child. This amendment was made during negotiations to cater for the differing systems in Member States for appointing child representatives.
- **Article 15** sets out the preventative measures to be applied by Member States. These include appropriate measures to discourage the demand that fosters all forms of exploitation related to trafficking in human beings; information and awareness raising campaigns, research and education programmes and regular training for officials likely to come into contact with victims, including front-line police officers.
- **Article 16** requires Member States to establish National Rapporteurs or equivalent mechanisms to conduct assessments on trends in the trafficking of human beings, measure results and report thereon.
- **Article 17** repeals Framework Decision 2002/629/JHA without prejudice to the obligations of Member States relating to the time limits for transposition into national law.
- **Article 18** provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 months from adoption at the latest. The 30 month timeframe for implementation has been amended from 2 years in the text which was published. Also Member States shall transmit to the Commission the text of the provisions transposing into national law the obligations posed by this Directive.
- **Article 19** provides that by 5 years from adoption (rather than 4 in the text which was published) the Commission shall submit a report to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures to comply with this Directive.

The proposed Directive contains 21 introductory recitals which address the following issues:

**Recital 1** - Notes that trafficking in human beings is a serious crime often committed in the framework of organised crime.

**Recital 2** - Sets out the commitment of the European Union to the prevention and fight against trafficking in human beings and to the protection of the rights of trafficked persons.

**Recital 3** - Notes that this Directive adopts an integrated and holistic approach to the fight against trafficking in human beings.

**Recital 4** - Refers to other international instruments (UN Protocol and the Council of Europe Convention) on human trafficking as being crucial in the process of enhancing international co-operation.

**Recital 5** - Outlines the reason for and meaning of the broader definition of human trafficking is provided for in this instrument.

**Recital 6** - Background on the reason for the penalty provisions adopted.

**Recital 7** - Sets out the need for protection of victims of trafficking in human beings from prosecution and/or punishment for criminal activities such as the use of false documents in order to safeguard their human rights.

**Recital 8** - Provides for the investigation and prosecution of human trafficking offences, training of law enforcement officials and prosecutors and the requirement that those responsible for investigating and prosecuting offences having access to the investigative tools used in organised crime and other serious crime cases.

**Recital 9** - Sets out the jurisdiction requirements for the effective prosecution of international criminal groups.

**Recital 10** - States that the Directive establishes the specific protective measures for any victim of trafficking in human beings in terms of residence permit but the Directive does not deal with the conditions of their residence in the territory of the Member States.

**Recital 11** - Deals with the assistance and support to be given to victims of human trafficking before, during and for an appropriate time after criminal proceedings.

**Recital 12** - In addition to the victims' rights in criminal proceedings as set out in the Council Framework Decision on the standing of victims in criminal proceedings<sup>1</sup>, victims of trafficking should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation including for the purpose of claiming compensation.

**Recital 13** - Provides that victims of trafficking should be protected from secondary victimisation and further trauma during the criminal proceedings following an individual needs assessment taking account of age, pregnancy, health, disability and other personal conditions as well as psychological consequences of the criminal activity to which the victim has been subjected.

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<sup>1</sup> Council Framework Decision 2001/220/JHA

**Recital 14** - In addition to the measures available to victims of trafficking Member States must ensure that specific assistance, support and protective measures are available to child victims having regard to the best interests of the child and in accordance with the UN Convention on the Rights of the Child.

**Recital 15** - Provides for the establishment and/or strengthening of policies to prevent trafficking in human beings including measures to discourage demand that fosters all forms of exploitation and measures to reduce the risk of people falling victims of trafficking in human beings by means of research, information, awareness raising and education.

**Recital 16** - Directive 2009/52/EC providing for minimum standards of sanctions and measures against employers of illegally staying third-country nationals provides for penalties for employers of illegally staying third-country national who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that he/she is a victim of such trafficking. In addition the provision states that Member States should consider the possibility of imposing sanctions on the users of any service exacted from a victim with the knowledge that he/she has been trafficked.

**Recital 17** - Provides for the establishment of national monitoring systems such as National Rapporteurs or equivalent mechanisms in a way Member States consider appropriate to their internal organisation.

**Recital 18** - States that Member States are encouraged to draw up their own tables to illustrate the correlation between the Directive and the transposition measures and to make them public.

**Recital 19** - Provides that the EU may adopt measures in accordance with the principle of subsidiarity as referred to in Article 3 and Article 5 of the Treaty on European Union. It also provides that in accordance with the principle of proportionality as set out in the latter Article this Directive does not go beyond what is necessary to achieve that objective.

**Recital 20** - Provides that this Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

**Recital 21** - Contains a provision relating to whether Ireland and the United Kingdom have indicated their wish to/or not to participate in the adoption and application of this Directive in accordance with Articles 1, 2, 3 and 4 of Protocol (No 21) and setting out the position of Denmark in accordance with Articles 1 and 2 of Protocol (No 22).

Many of the criminal law provisions in the instrument as published are covered by the Criminal Law (Human Trafficking) Act 2008 e.g. under the 2008 Act the offence of human trafficking carries a penalty of up to life

imprisonment - this exceeds the penalty set in the proposed Directive which is a maximum of at least 5 years.

### ***Relationship with UN and Council of Europe measures***

The proposed Directive takes on board many of the requirements set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Council of Europe Convention on Action against Trafficking in Human Beings. In terms of the definition of human trafficking it goes beyond that which is set out in these international instruments to cover 'forced begging and the exploitation of criminal activities'. Also in the proposed Directive more specific penalties are imposed for the offence of human trafficking.

## **2. Identification and Description of Options**

The following policy options were examined by the European Commission as a means to achieve the identified objective.

### **1. No new EU action**

The EU would take no action to combat trafficking in human beings, while Member States may continue the process of signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

### **2. Non legislative measures**

The Framework Decision agreed in 2002 would not be amended. Non-legislative measures could be put in place in the areas of victim support schemes, monitoring, prevention measures in countries of destination, prevention measures in countries of origin, training and law enforcement cooperation. Prevention measures will include information and awareness raising campaigns, research and education programmes, where appropriate, in co-operation with civil society organisations. There is also a requirement to provide targeted training for officials likely to encounter victims of trafficking in the course of their work.

### **3. New legislation on prosecution, victim support, prevention and monitoring**

A new Directive would be adopted incorporating the provisions of the existing Framework Decision along with certain provisions of the Council of Europe Convention and additional elements. In particular the new Directive would contain provisions in the areas of substantive criminal law, jurisdiction and prosecution, victims' rights in criminal proceedings, victim assistance, special protective measures for children, prevention and monitoring. Measures which would be included in the Directive are the definition of trafficking, penalties and aggravating circumstances, non-punishment of the victim, jurisdiction, investigation and prosecution, investigation tools, training, victims' rights in criminal proceedings, victim support, special measures for children, training, prevention and monitoring.

#### **4. New legislation (as in Option 3) and non legislative measures (as in Option 2)**

A new Directive would be adopted incorporating the existing Framework Decision and including new provisions. The new Directive would be supplemented by non-legislative measures and in particular those identified in Option 2.

### **3. Impact Analysis including Benefits of Each Option**

#### **Option 1 - No new EU action**

This option would mean that it would be a matter for Member States to ratify the Council of Europe Convention on Action against Trafficking in Human Beings in their own time. The lengthy national ratification procedures in the absence of an EU legally binding framework make uncertain when and to what extent the benefits of that Convention will put that into practice.

#### **Option 2 – Non legislative measures**

The Commission are of the view that a specific legal framework is required to improve prosecution. In addition, they are of the view that the low level of implementation of non-binding instruments in the past does not augur well for an approach of this nature.

#### **Economic Impact**

The economic impact of this option is mostly linked to the establishment of victims' support schemes and training. It is not easy to quantify the precise economic impact of this policy option on the national budget at this juncture, given the different options which are being explored and that structures are in the process of being developed. The Commission were unable to obtain valuable information to assist in assessing the costs of preventive measures aimed at reducing social vulnerability in countries of origin. The positive effects of such policies could be undermined as a consequence of the expected low level of implementation deriving from the non-binding nature of the instrument under this option.

#### **Social impact**

The main social impact of this option relates to victim support in the process of recovery and rehabilitation assuming compliance is high. The main social impact is that victims are supported in the process of recovery and rehabilitation and they receive help to assist their social integration including integration in the labour market, in the country of origin or in the receiving country. It should be noted that the magnitude of such an impact both in terms of costs and benefits is dramatically reduced as a consequence of the low level of expected compliance.



### **Fundamental rights**

This option is expected to have a positive impact on fundamental rights. Measures to effectively address trafficking of human beings, in particular children, contribute to promote the rights enshrined in Article 5 (3) and 24 of the EU Charter. However, since assistance programmes normally imply the collection of personal data, in case of incorrect implementation of this option, a negative fundamental rights impact could affect the right to privacy, the protection of personal data and even the right to safety. However, these risks can be minimised by ensuring the data is stored in accordance with data and privacy rules aimed at ensuring the privacy and safety of the person concerned. The impact on fundamental rights would not be significant due to poor implementation.

### *Costing in respect of Non-legislative Measures:*

<b>Measures</b>	<b>Cost</b>
Assistance and Support to victims of human trafficking	It is difficult to estimate an actual cost for this given the number of different State and NGO organisations involved in providing assistance and support to victims of human trafficking e.g. Health Service Executive (HSE), Reception and Integration Agency (RIA), Legal Aid Board, Ruhama, Migrants Rights Council of Ireland (MRCI), Immigrant Council of Ireland (ICI), etc. For example in 2010 the State provided Ruhama (an organisation which provides assistance to women in prostitution or who have been sexually exploited) with a grant of €250,000 part of which is used to provide assistance and support to victims of human trafficking.
Protection for victims of trafficking in criminal investigations and proceedings	Unable to quantify.
Prevention measures including awareness raising and training	Unable to quantify.
Establishment of a National Rapporteur or equivalent mechanism	A decision has to be taken as to the best approach to this from Ireland's perspective - an independent national rapporteur or an equivalent mechanism. The cost of having a National Rapporteur in other European countries varies from €36,000 to €60,000. <sup>2</sup>

<sup>2</sup> Source: EU Impact Assessment of Directive

### **Option 3: New legislation on prosecution, victim support, prevention and monitoring**

This option is estimated by the Commission to improve matters in comparison to the current situation. It would strengthen existing EU legislation on prosecution of offenders and protection of victims. It would also address prevention and monitoring. The financial cost is expected to be outweighed by the social and economic benefit of more efficient action against this crime.

#### **Economic Impact**

The budgetary consequences of the criminal law provisions cannot be quantified since they are included in the general costs of the criminal justice system. This option is likely to produce deterrent effects and a substantial reduction of the scale of the crime on the medium-long term. The current dimension of trafficking has a remarkable negative economic impact. While it is impossible to quantify the economic advantages deriving from the reduction of the scale of the crime, the effects should be significant.

#### **Social impact**

In the longer term significant impacts are expected, relating to security and victims' rights in criminal proceedings. By improving the process of approximation and therefore law enforcement and judicial cooperation, the number and the quality of investigations and prosecutions should significantly increase. A positive impact is also connected with the protection of victims from prosecution, which will favour their cooperation with judicial authorities and with the increased use of investigative tools which have proven effective in organised crime cases. The expected impact for victims is also positive especially concerning their access to justice. An increased capacity to claim their rights should derive from an improved role of victims in the procedure and the establishment of appropriate means designed for this purpose. It is considered that the expected impact is positive, in terms of social integration of victims during and after criminal proceedings.

#### **Fundamental rights impact**

This option has a positive impact on fundamental rights. The right to be protected from slavery, forced labour and servitude has been acknowledged by the European Court of Human Rights. In addition, measures to effectively address trafficking of human beings and, in particular children, promote the rights enshrined in Article 5 (3) and 24 of the EU Charter. The right of the victim to accurate, impartial, effective and quick investigation is also involved and would be made effective by an increased recognition of the role of the victim in the criminal procedure.

A possible negative impact deriving from the increased role of the victim in criminal proceedings could accrue, if this strengthened role would be such as to endanger the defendant's procedural rights, in particular the right to a fair trial (Article 47 EU Charter) and the right of defence (Article 48 of EU Charter). However, the European Court of Human Rights has established clear principles to reconcile the respective rights of the defendant and the

victim. The risk of violation of the defendant's rights can be avoided through a careful drafting of the legislative texts as well as proper implementation and application by Member States.

***Legislative Measures:***

<b>Measures</b>	<b>Cost</b>
Amending existing legislation to provide for the expanded definition of trafficking.	No direct cost in amending legislation but additional costs may arise when the provision is being enforced.
Other amendments to existing legislation on human trafficking to take account of other obligations set out in the Directive.	No direct cost in amending legislation but additional costs may arise when the provision is being enforced.

**Option 4: New legislation (as in Option 3) and non legislative measures (as in Option 2)**

This option is based on a combination of legislative and non legislative measures which would be binding and consequently result in a more comprehensive framework being put in place to address prevention, prosecution and protection.

**Economic impact**

This combination includes the highest level of regulation and therefore implies higher costs and benefits compared to the previous options. However, given that Ireland has already signed up to the majority of the provisions in other international instruments in this field the increased costs – if any – will be negligible.

The costs of implementation of many of the measures (with the exception of training or awareness raising) cannot be easily assessed, given that they relate to the number of victims assisted, the type and impact of the assistance rendered and the numbers of traffickers identified and prosecuted. However good implementation will result in a significant increase in victims assisted and public officials participating in training on a regular basis and this means a considerable potential economic impact for all Member States including Ireland. The expected benefit in terms of the reduction of the scale of the crime and the protection of fundamental rights fully justify any costs.

**Social impact**

Good results are expected in terms of victim support. If victims receive help in the process of recovery, rehabilitation and social integration, there will be a positive impact relating to the access of such workers to the labour market in the country of origin or destination. There could potentially be a negative impact on the labour market related to competition between migrant workers and nationals. However since trafficking victims who receive help with social inclusion normally specialise in areas where competition is scarce and job opportunities are higher it cannot be excluded that they contribute to the differential of skills within the labour market.

A positive impact on public health is expected. Insofar as trafficking for sexual exploitation is concerned, there is an increasing risk of exposure to HIV for

- (i) victims who are compelled to accept non protected sexual intercourse
- (ii) for clients who ask for such services, and
- (iii) consequently for people, mostly women, who have sexual relationships with such clients.

By empowering women, the whole dimension of the health problem will be positively influenced.

Preventive measures have a specific positive impact on third countries. This arises as a consequence of programmes aimed at poverty reduction, empowerment of women, reduction of vulnerability of children and targeted groups, especially the most at risk of poverty, the unemployed, those at risk as a consequence of armed conflicts.

#### **Fundamental rights impact**

A positive impact is also expected in the context of the respect for victims' dignity, in accordance with Article 1 of the EU Charter and Article 2 of the Framework Decision on the standing of victims in criminal proceedings, as a consequence of full implementation of victim support mechanisms. Every provision aimed at supporting victims in the concrete exercise of their rights in criminal proceedings such as assistance measures, psychological assistance and legal counselling, will empower them and contribute to strengthen the respect for their dignity. In addition, specific provisions aimed at protecting victims from secondary victimisation may contribute to enhance the respect for victim's dignity.

The costs associated with both legislative and non-legislative measures are as set out under options 2 and 3 above.

Following an analysis of economic impacts, social impacts and impacts on fundamental rights options the Commission concluded options 3 and 4 presented the best approach to the problem and should fully achieve the identified objective. The preferred option was option 4.

## **4. Consultation**

When formulating the previous proposal which is very similar to this initiative (i.e. a Framework Decision which had been substantially agreed but lapsed as it had not been adopted at the time of the entry into force of the Lisbon Treaty) the Commission consulted Member States both by means of questionnaires and three consultative meetings.

The Commission Group of Experts on Trafficking in Human Beings met on 2 and 3 October 2008 and after extensive discussions issued a written opinion. A consultative meeting with experts from different backgrounds including governments, law enforcement agencies, NGOs, international organisations and universities was held on 7 October 2008. The participants were subsequently invited to transmit written comments and several experts did so. A meeting with Member States' representatives was held on 17 October 2008.

The Attorney General, the Garda Síochána, the Department of Health and Children, the Office of the Minister for Children, the Department of Enterprise, Trade and Employment and the Director of Public Prosecutions are being consulted on the proposal.

The Anti-Human Trafficking Unit is currently working with over 36 different State and non-governmental stakeholders and international organisations in relation to the issues encompassed by the Directive.

The key issues for Ireland in the proposed Directive include:

- Definition of trafficking - the inclusion of begging and exploitation of criminal activities in the definition of human trafficking. Ireland sought to have these terms defined during the negotiations and this was agreed. An explanation of these terms is set out in Recital Number 5.
- Article 8 on investigation and prosecution provides that investigation into or prosecution of offences is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his/her statement. This posed difficulties for Ireland's legal system as prosecution in Ireland is based on having a '*prima facie*' case and it would be difficult for a prosecution of a 'human trafficking' offence to continue without a victim's statement. During negotiations on this issue Ireland was successful in getting the addition to the text of the related recital (Recital Number 8) of the words '*in principle*' to preserve the discretionary nature of the prosecutorial system in Ireland.
- Article 10 on assistance and support to victims of trafficking in human beings - Ireland was successful in having the text of Article 10(3) supplemented to provide that where the victim does not reside lawfully in the Member State assistance and support should be provided unconditionally at least during the reflection period.

- Article 11 on protection of victims of trafficking in human beings in criminal investigation and proceedings had the text '*in accordance with the role of victims in the relevant justice system*' removed from Article 11(2). This text had been included in the draft Framework Decision and Ireland successfully had it re-instated. The exclusion of this text could mean that:
  - (a) the provision could be either directly or indirectly incompatible with our common law system and
  - (b) the provision of free legal representation expanded to categories of persons entitled to free legal assistance and would require a change to existing arrangements for the provision of legal counselling and assistance. A person who is trafficked should be provided with legal services on the same basis as anyone else seeking to rely on the State for legal representation.

## 5. Enforcement and Compliance

Enforcement and compliance is primarily a matter for the Garda Síochána and the Office of the Director of Public Prosecutions. Both will be consulted on how legislative effect is given to issues associated with investigation and prosecution and the provision of assistance and support to victims of trafficking in human beings. Both will have responsibility following enactment of legislation for enforcing the measures provided for in the legislation. Following the negotiation process agreement on the final text of legislative amendments will be necessary. Many of the criminal law provisions in the instrument as published are covered by the Criminal Law (Human Trafficking) Act 2008 e.g. under the 2008 Act the offence of human trafficking carries a penalty of up to life imprisonment - this exceeds the penalty set in the proposed Directive which is a maximum of at least 5 years.

Furthermore, in accordance with Article 19 of the proposed Directive the Commission will review the measures taken by Member States to comply with the Directive four years following adoption and every three years thereafter.

## 6. Review

Article 16 of the proposed Directive requires Member States to establish National Rapporteurs or other equivalent mechanisms. The proposal provides that the task of such mechanisms shall include the carrying out of assessments on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities. The extent of obligations on Member States in this regard was not discussed during negotiations to any great extent. Concern was expressed that the role undertaken by either a National Rapporteur or an equivalent mechanism should not duplicate the work of the evaluation mechanism contained in the Council of Europe Convention namely the group of experts on action against trafficking in human beings (GRETA) and the Committee of the Parties. The

best option in relation to the establishment of a National Rapporteur or an equivalent mechanism will be examined in Ireland having regard to the nature and extent of trafficking in human beings in Ireland and similar legal systems. Within the European Union only one Member State (the Netherlands) has set up an independent National Rapporteur. A number of Member States has set up a semi-autonomous evaluation mechanism whereby an independent office evaluates a number of issues including human trafficking. Other Member States have the evaluation role as part of the work of the policy area co-ordinating the anti-trafficking role. There are advantages and disadvantages to each of these options which will have to be considered in the Irish context.

## **7. Summary of Performance Options**

As indicated previously to do nothing could mean a lengthy delay in the implementation at EU level of measures agreed for prevention, protection and prosecution by the Council of Europe.

The implementation of non-legislative measures or a non-binding instrument would be likely to result in a low level of implementation of measures to address this criminal activity. Accordingly, a Directive is the preferred option.

*Department of Justice, Equality and Law Reform.*

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