

## **P5\_TA(2003)0457**

### **Prevention and control of trafficking in human organs \***

**European Parliament legislative resolution on the Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues (7247/2003 – C5-0166/2003 – 2003/0812(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Initiative of the Hellenic Republic (7247/2003)<sup>1</sup>,
  - having regard to Articles 29, 31(e) and 34(2)(b) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0166/2003),
  - having regard to Rules 106 and 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on the Environment, Public Health and Consumer Policy (A5-0326/2003),
1. Approves the Initiative of the Hellenic Republic as amended;
  2. Insists that the Council refrain from adopting this framework decision prior to the adoption of the proposal for a directive of the European Parliament and of the Council on setting standards of quality and safety for the donation, procurement, testing, processing, storage and distribution of human tissues and cells<sup>2</sup>;
  3. Calls on the Council to alter its proposal accordingly;
  4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  5. Asks the Council to consult Parliament again if it intends to amend the Initiative of the Hellenic Republic substantially;
  6. Asks the Council to consult Parliament again if it intends to amend the abovementioned proposal for a directive to which this Initiative of the Hellenic Republic refers;
  7. Instructs its President to forward its position to the Council, the Commission and the Government of the Hellenic Republic.

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<sup>1</sup> OJ C 100, 26.4.2003, p. 27.

<sup>2</sup> OJ C 227 E, 24.9.2002, p. 505.

Amendment 1  
Title

Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues

Council Framework Decision concerning the prevention and control of **illegal** trafficking in human organs, **parts of organs** and tissues

*(This amendment applies throughout the text;)*

Amendment 2  
Recital 1

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, the Tampere European Council on 15 and 16 October 1999 and the Santa Maria da Feira European Council on 19 and 20 June 2000, **as listed in the scoreboard, indicate or call for** legislative action against trafficking in human beings, including **common definitions, incriminations and sanctions**.

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice - **Text adopted by the Justice and Home Affairs Council of 3 December 1998 and endorsed by the Vienna European Council of 11 and 12 December 1998**, the Tampere European Council on 15 and 16 October 1999 and the Santa Maria da Feira European Council on 19 and 20 June 2000, **have established repeatedly as one of the EU's political priorities the need to take joint** legislative action against trafficking in human beings, including **the definition of offences and penalties**.

Amendment 3  
Recital 2

(2) Trafficking in human organs and tissues is a form of trafficking in human beings, which comprises serious violations of fundamental human rights and, in particular, of human dignity and physical integrity. Such trafficking is an area of activity of organised criminal groups who **often** have recourse to inadmissible practices such as the abuse of vulnerable persons and the use of violence and threats. In addition, it gives rise to serious risks to

(2) **Illegal** trafficking in human organs, **parts of organs** and tissues is a form of trafficking in human beings, which comprises serious violations of fundamental human rights and, in particular, of human dignity and physical integrity. Such **illegal** trafficking is an area of activity of organised criminal groups who have recourse to inadmissible practices such as the abuse **and exploitation** of vulnerable persons, and the

public health and infringes on the right of citizens to equal access to health services. Finally, it undermines citizens' confidence in the legitimate transplantation system.

use of violence and threats. In addition, it gives rise to serious risks to public health and infringes on the right of citizens to equal access to health services. Finally, it undermines citizens' confidence in the legitimate transplantation system.

Amendment 4  
Recital 2a (new)

***(2a) Illegal trafficking in human organs, parts of organs and tissues gives rise to serious risks to public health. Financial pressure on the donor can lead to significant health risks for the donor. For example, the donation of kidneys and parts of the liver from living donors leads to bleeding which may be fatal. Donation of egg cells and the necessary hormone treatment can lead to cancer and sterility. Trade in organs and tissues can also entail significant risks for the recipient, because a donor who donates without consent or under financial pressure may not disclose his medical history. Illegal trade infringes the right of citizens to equal access to health services, and undermines citizens' confidence in the legitimate transplantation system, which may lead to a further shortage of supply of voluntarily donated tissues and organs.***

Amendment 5  
Recital 3

(3) Opposition to the sale of the human body and its parts has been addressed repeatedly by many international organisations and has been the subject of regulation by international conventions. As early as 1978, the Council of Europe in its Decision (78)29 on harmonisation of legislation of Member States relating to removal, grafting and transplantation of human substances, which was adopted by the Committee of Ministers of the Council of Europe on 11 May 1978, declared that no human substance may be offered for profit. This declaration was confirmed at

(3) Opposition ***to illegal trafficking in human organs, parts of organs and tissues and, more generally,*** to the sale of the human body and its parts has been addressed repeatedly by many international organisations and has been the subject of regulation by international conventions. As early as 1978, the Council of Europe in its Decision (78)29 on harmonisation of legislation of Member States relating to removal, grafting and transplantation of human substances, which was adopted by the Committee of Ministers of the Council of Europe on 11 May 1978, declared that

the 3rd Conference of European Health Ministers, which was held in Paris on 16 and 17 November 1987, the final statement of which stressed that a human organ may not be offered for profit by any organ exchange body, organ storage centre or any other organisation or private individual.

no human substance may be offered for profit. This declaration was confirmed at the 3rd Conference of European Health Ministers, which was held in Paris on 16 and 17 November 1987, the final statement of which stressed that a human organ may not be offered for profit by any organ exchange body, organ storage centre or any other organisation or private individual.

Amendment 6  
Recital 4

(4) An important step in the attempt to combat trafficking in human organs and tissues ***and, more generally, as regards opposition to the sale of the human body and its parts*** is the Convention of the Council of Europe on Human Rights and Biomedicine which was signed in Oviedo on 4 April 1997 and came into force on 1 December 1999. Article 21 of this Convention contains a prohibition on drawing financial gain from the human body and its parts. Article 25 requires the signatory States to make provision for sanctions – not necessarily of a penal nature – against anyone who infringes the provisions of the Convention. To this Convention was annexed an Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, which was ***drawn up*** on 24 January 2002, but has not entered into force to date. In Article 21 of the Additional Protocol it is specified that the human body and its parts may not give rise to financial gain or comparable advantage. It also prohibits any advertising of the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage. Article 22 of the Additional Protocol ***lays down the obligation to prohibit organ and tissue trafficking***.

(4) An important step in the attempt to combat ***illegal*** trafficking in human organs, ***parts of organs and tissues***, is the Convention of the Council of Europe on Human Rights and Biomedicine which was signed in Oviedo on 4 April 1997 and came into force on 1 December 1999. Article 21 of this Convention contains a prohibition on drawing financial gain from the human body and its parts. Article 25 requires the signatory States to make provision for sanctions – not necessarily of a penal nature – against anyone who infringes the provisions of the Convention. To this Convention was annexed an Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, which was ***opened for signing by the signatory states to the Convention*** on 24 January 2002, but has not entered into force to date. In Article 21 of the Additional Protocol it is specified that the human body and its parts may not give rise to financial gain or comparable advantage. It also prohibits any advertising of the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage. Article 22 of the Additional Protocol ***prohibits illicit trafficking in organs and tissues of human origin***.

Amendment 7  
Recital 6

(6) The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, ***supplementing the United Nations Convention against Transnational Organised Crime***, includes the removal of human organs ***in the definition of exploitation, which characterises trafficking in persons***. This Protocol represents a decisive step towards international cooperation to combat trafficking in human organs.

(6) The ***Additional Protocol to the United Nations Convention against Transnational Organised Crime, which aims*** to prevent, suppress and punish trafficking in persons, especially women and children, includes, ***as one of the forms which exploitation may take in the context of trafficking in persons***, the removal of human organs. This Protocol represents a decisive step towards international cooperation to combat ***illegal*** trafficking in human organs, ***parts of organs and tissues***.

Amendment 8  
Recital 6a (new)

***(6a) Article 3 of the Charter of Fundamental Rights of the European Union prohibits making the human body and its parts as such a source of financial gain.***

Amendment 9  
Recital 7a (new)

***(7a) The wide divergences between the laws of Member States in this field create a favourable environment for criminal networks, which are able to exploit the weaker legislation in place in certain Member States.***

Amendment 10  
Recital 8

(8) The important work performed by international organisations, especially the UN, the World Health Organisation and the Council of Europe, should be complemented by that of the European Union.

(8) The important work performed by international organisations, especially the UN, the World Health Organisation and the Council of Europe, ***in combating the illegal trafficking in human organs, parts of organs and tissues*** should be complemented by that of the European Union.

Amendment 11  
Recital 9

(9) It is necessary that the serious criminal offence of trafficking in human organs and tissues be addressed not only through individual action by each Member State but by ***a comprehensive approach, of which*** the definition of the elements of the offence, ***common to all the Member States***, and effective, proportionate and dissuasive penalties ***should form an integral part***.

(9) It is necessary that the serious criminal offence of ***illegal*** trafficking in human organs, ***parts of organs*** and tissues be addressed not only through individual action by each Member State but ***also*** by ***closer cooperation in penal matters between the Member States, by means of the adoption of legislation to harmonise*** the definition of the ***constitutive*** elements of the offence, and ***of*** effective, proportionate and dissuasive penalties.

Amendment 12  
Recital 9a (new)

***(9a) It is necessary to establish rules governing competence with a view to ensuring that successful legal action can be taken against the perpetrators of all offences involving illegal trafficking in human organs, parts of organs and tissues.***

Amendment 13  
Recital 9b (new)

***(9b) Special attention should be paid to ensure protection of minors and other particularly vulnerable persons who are liable to become victims of illegal trafficking in human organs, parts of organs and tissues.***

Amendment 14  
Recital 10

(10) Since the above objectives of the Framework Decision cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(10) Since the above objectives of the Framework Decision cannot be sufficiently achieved by the Member States ***acting unilaterally*** and can therefore, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity ***as referred to in Article 2 of the EU Treaty and set out in Article 5 of the EC Treaty***. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those

objectives.

Amendment 15  
Recital 10a (new)

***(10a) The illegal trade in organs will be undermined if more people are ready to donate tissues, cells and organs after their death. That is why it is necessary to promote information and awareness campaigns at national and European level on the donation of tissues, cells and organs based on the theme: 'We are all potential donors'. The aim of these campaigns should be to help European citizens decide to become donors during their lifetime and let their families or legal representatives know their wishes.***

Amendment 16  
Recital 11a (new)

***(11a) Illegal trafficking in human organs, parts of organs and tissues is driven by demand. It is therefore essential to take a comprehensive approach, pursuant to Article 152 of the Treaty, addressing the underlying causes of the problem: the severe shortage of organs available for transplant.***

Amendment 17  
Recital 11b (new)

***(11b) The Commission and the Member States should do more to inform the public on the issue of organ and tissue donation and to encourage citizens to indicate their consent or otherwise to the use of their organs and tissue in the event of death.***

Amendment 18  
Recital 11c (new)

***(11c) Particular attention should be paid to the use of the Internet as a tool***

*facilitating illegal trafficking in human organs, parts of organs and tissues, in particular due to the discrepancy between supply and demand at national level.*

Amendment 19  
Article 1, point 3, introductory phrase

**3. The term "human organs and tissues" does not cover:** *Deleted*

Amendment 20  
Article 1, point 3, point (a)

**(a) reproductive organs and tissues;** *Deleted*

Amendment 21  
Article 1, point 3, point (b)

**(b) embryonic organs and tissues;** *Deleted*

Amendment 22  
Article 1, point 3, point (c)

**(c) blood and blood derivatives;** *Deleted*

Amendment 49  
Article 1, point 4a (new)

**4a. "Illegal trafficking" shall mean trafficking in organs and/or unmodified tissues for profit.**

**Bodies or organisations operating for profit may, however, use human tissue or cells as source material when manufacturing products for biopharmaceutical use.**

Amendment 23  
Article 2, introductory phrase

Each Member State shall take the necessary measures to ensure that the following acts are punishable:

Each Member State shall take the necessary measures to ensure that the following acts, **where committed**

*intentionally*, are punishable:

Amendment 24

Article 2, point 1, introductory phrase

1. The recruitment, transportation, transfer, harbouring or reception of a person, including any exchange or transfer of control over *that* person, where

1. The recruitment, transportation, ***lodging***, transfer, harbouring or reception of a person, including any exchange or transfer of control over ***a*** person, ***carried out with the intention of illegally removing organs, parts of organs or tissues from that person***, where

Amendment 25

Article 2, point 1, point (a)

(a) use is made of force ***or*** threats, including abduction, or

(a) use is made of force, ***violence***, threats, ***deceit or other forms of coercion, in particular psychological or physical***, including abduction, or

Amendment 26

Article 2, point 1, point (b)

***(b) use is made of fraudulent means, or***

***Deleted***

Amendment 27

Article 2, point 1, point (d)

(d) payments or benefits are given, or received in order to obtain the consent of a person having control over another person ***with the aim of removal of an organ or tissues from the latter***.

(d) payment or benefits are given, ***accepted*** or received in order to obtain the consent of a person having control over another person.

Amendment 28

Article 2, point 2, point (a)

2(a) the removal of an organ from a living donor effected using force, threats or fraud.

2a(a) The removal of an organ, ***part of an organ or tissue*** from a living donor effected using force, threats, ***in particular psychological or physical, deceit or any other form of coercion*** or fraud.

Amendment 54  
Article 2, point 2, point (aa) (new)

***(aa) the removal of an organ from a living donor who has no close personal relationship as defined by law with the recipient; in the absence of such relationship, organs may be donated only under the conditions defined by law and with the approval of an appropriate independent body;***

Amendment 29  
Article 2, point 2, point (b)

2(b) the removal of an organ from a donor who has consented thereto further to the payment or promise of financial consideration;

***2a(b) the removal of an organ or part of an organ or tissue from a donor who has consented thereto further to the payment, offer or promise of financial consideration, or to the provision of a comparable advantage;***

Amendment 30  
Article 2, point 2, point (c)

(c) The payment, offer or promise of a financial consideration, directly or via third parties, to a donor in order to obtain his consent to the removal of an organ;

***(a) The payment, offer or promise of a financial consideration, or the provision of a comparable advantage, directly or via third parties, to a donor in order to obtain his consent to the removal of an organ or part of an organ or of tissue.***

Amendment 31  
Article 2, point 2, point (d)

***(d) The receipt of or demand for financial consideration by a donor so that the donor will agree to the removal of an organ;***

***Deleted***

Amendment 32  
Article 2, point 2, point (e)

(e) Action as an intermediary in carrying out any of the acts set out in ***points (a), (b), (c) and (d)***;

***(b) Action as an intermediary in carrying out any of the acts set out in this point;***

Amendment 33  
Article 2, point 2, point (f)

*(f) The demand for, receipt, payment, offer or promise of financial consideration with the aim of offering or acquiring or, more generally, trafficking in human organs and tissues.*

*Deleted*

Amendment 34  
Article 2, point (2), point (fa) (new)

*(fa) Advertising, via the Internet or any other medium, the need for, or availability of human organs, parts of organs or tissues, with a view to offering or seeking financial gain or comparable advantage.*

Amendment 35  
Article 2, point 2b (new)

*2b. Points 2 and 2a shall not prevent payments which do not constitute a financial gain or comparable advantage, in particular:*

- compensation of living donors for loss of earnings and any other justifiable expenses relating to the legal removal of human organs, parts of organs or tissues or connected with medical examinations;*
- payment of a justifiable fee for legitimate medical or related technical services rendered in connection with transplantation;*
- compensation in case of undue damage resulting from the legal removal of organs, parts of organs or tissues from living persons.*

Amendment 36  
Article 2, point 3, point (a)

(a) The purchase, possession, storage, transport, import, export *or* transfer of possession of human organs removed by

(a) The purchase, possession, storage, transport, import, export *and* transfer of possession of human organs, *parts of organs*

means of one of the acts set out in paragraphs 1 and 2;

**and tissues** removed by means of one of the acts set out in paragraphs 1 and 2;

Amendment 37  
Article 2, point 3a (new)

**3a. Provision of false documents with the intention of perpetrating the acts referred to in this Article.**

Amendment 38  
Article 4, paragraph 2, point (c)

(c) the offence has caused further **serious** physical harm to the victim,

(c) the offence has **been accompanied by severe violence or** has caused further physical harm to the victim,

Amendment 39  
Article 4, paragraph 2, point (d)

(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.**

(d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA.

Amendment 40  
Article 4a (new)

#### **Article 4a**

##### **Specific circumstances**

**Each Member State shall consider the possibility of taking the necessary measures to ensure that the penalties referred to in Article 4 may be reduced where the author of the offence supplies the administrative or legal authorities with information which they could not have obtained by other means and which helps them to:**

**(i) prevent or reduce the effects of the offence;**

**(ii) identify or bring to justice the other persons responsible for the offence;**

**(iii) establish evidence or;**

***(iv) prevent other offences among those referred to in Article 2 from being committed.***

Amendment 41  
Article 7, title

Jurisdiction and prosecution

Jurisdiction, ***legal proceedings*** and prosecution

Amendment 42  
Article 7, point (-a) (new)

***(-a) the offence is committed on board a vessel flying its flag or on an aircraft registered in its territory;***

Amendment 43  
Article 7, point (b)

(b) the perpetrator is one of its nationals; or

(b) the perpetrator is one of its nationals ***or is resident on its territory***; or

Amendment 44  
Article 7, paragraph 1a (new)

***Where an offence falls under the competence of more than one Member State and any of those Member States may legitimately initiate legal proceedings on the same grounds, the Member States concerned shall cooperate with a view to determining which will initiate legal action against the perpetrators of the offence, with the aim of concentrating those actions, as far as possible, in a single Member State. To that effect, Member States may resort to Eurojust or to any other existing competent body or mechanisms in force within the European Union in order to facilitate cooperation between legal authorities and coordinate their actions.***

Amendment 45  
Article 7a (new)

*Article 7a*

*Territory covered*

*This Framework Decision shall apply to Gibraltar.*

Amendment 46

Article 8, paragraph 1

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision *before [...]*.

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision *no later than 31 December 2004*.

Amendment 47

Article 8, paragraph 2

2. *Before the date referred to in paragraph 1*, the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

2. *No later than 31 December 2004*, the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Amendment 48

Article 8, paragraph 3

3. Before *[...]*, on the basis of a report established on the basis of this information and a written report from the Commission, the Council shall assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. Before *31 December 2005*, on the basis of a report established on the basis of this information and a written report from the Commission, the Council shall assess the extent to which Member States have complied with the provisions of this Framework Decision.