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REPORT

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))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Robert J.E. Evans

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 4 April 2003 the Council consulted Parliament, pursuant to Article 39(1) of the EC Treaty, 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 – 2003/0812(CNS)).

At the sitting of 10 April 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0166/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Robert J.E. Evans rapporteur at its meeting of 23 April 2003.

The committee considered the Initiative of the Hellenic Republic and the draft report at its meetings of 10 July 2003 and 30 September 2003.

At the latter/last meeting it adopted the draft legislative resolution by 31 votes to 0 with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Johanna L.A. Boogerd-Quaak, vice-chairman; Giacomo Santini, vice-chairman; Roberta Angelilli, Marco Cappato (for Mario Borghezio), Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Marie-Thérèse Hermange, (for Mary Elizabeth Banotti), Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Ilka Schröder), Jean Lambert (for Alima Boumediene-Thiery), Baroness Ludford, Lucio Manisco (for Fodé Sylla), Manuel Medina Ortega, (for Walter Veltroni), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Hubert Pirker, Martine Roure, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Christos Zacharakis (for Bernd Posselt).

The opinion of the Committee on the Environment, Public Health and Consumer Policy is attached. The Committee on Women's Rights and Equal Opportunities decided on 24 April 2003 not to deliver an opinion.

The report was tabled on 3 October 2003.

DRAFT 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)¹,
 - having regard to Articles 29, 31(e) and 34(2)(c) of the EC 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 refrains from adopting this framework decision prior to the adoption of the European Parliament and Council Directive on human tissues and cells²;
 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 Commission proposal for a European Parliament and Council Directive on human tissues and cells³ 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.

¹ OJ C 100, 26.4.2003, p. 27

² OJ C 227, 24.9.2002, p. 505

³ OJ C 227, 24.9.2002, p. 505

Amendment 1
Throughout the text and in the title

Throughout the text, and in the title, change the term "trafficking in human organs" to "illegal trafficking in human organs, parts of organs and tissues"

(This amendment applies to the entire legislative text; the adoption of this amendment means that technical adjustments throughout the text will be necessary)

Justification

It is important to differentiate between the existing legal trade in organs and tissues of human origin for therapeutic purposes, which is already properly regulated on the basis of general legal principles and specific legislation, and illicit trafficking in these materials.

The scope of the initiative of the Hellenic Republic encompasses the definition of offences and the corresponding penalties where trafficking in human organs and tissues takes place illegally.

Parts of organs and tissues must be included, reflecting the provision of Article 3 of the CFR, which prohibits making the human body and its parts as such a source of financial gain.

Illegal trade in human organs should be understood as the conscious engagement and participation in any form in provision, acquisition or use of human organs that breaches the conditions for legal transplantation.

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

(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 justice¹, 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.*

an area of freedom, security and justice², *adopted by the JHA 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.*

Justification

Paragraphs 18 and 46 of the 'Vienna Action Plan', paragraph 48 of the conclusions of the Tampere European Council, and paragraph 52 of the conclusions of the Santa Maria da Feira European Council, all reiterate that it is a political priority for the EU to adopt, as a matter of urgency, joint measures with a view to combating the offence of trafficking in human beings and the various other related offences.

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 vulnerable persons and the 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.

(2) *Illegal* trafficking in human organs, *part of organs and tissues of human origin* 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 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.

¹ OJ C 19, 23.1.1999, p. 1.

² OJ C 19, 23.1.1999, p. 1.

Justification

The illegal trafficking in human organs and tissues is carried out primarily at the expense of the most vulnerable groups of people, such as children and those living in extreme poverty. Criminal groups may use threats or violence to obtain organs from these people, but they may also exploit their vulnerable position by offering financial or other incentives in order to obtain their consent.

Amendment 4
Recital 2a (new)

(2a) Trafficking in human 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, which leads to a risk for the recipient. 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.

Justification

Public health questions are only mentioned in a small part of recital 2 in the initiative. It should be clarified that the public health risks are imminent.

Amendment 5
Recital 3, first sentence

(3) Opposition to the sale of the human body and its parts has been addressed

(3) Opposition to the ***illegal trafficking in human organs, parts of organs and***

repeatedly by many international organisations and has been the subject of regulation by international conventions.

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..

Justification

Cf. the relevant part of the justification to Amendment 1 (concerning the title).

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 organs, ***parts of organs and tissues of human origin*** 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***.

Justification

See justification to Amendment 1 (concerning the title).

The Additional Protocol to the 1997 Convention was not drawn up on 24 January 2002; that was the date on which it was opened for the signatures of those states which were already signatories to the Convention. Article 30 of the Protocol makes it clear that only those states may sign it, on the grounds that the Protocol, in legal terms, is not only complementary to the Convention but forms a whole together with it.

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 exploitative manifestations 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**.

Justification

One of the exploitative manifestations of the offence of 'trafficking in persons' (cf. the second sentence of Article 3 of the Additional Protocol) is, precisely, the removal of organs (enumerated alongside exploiting prostitution by a third party, other forms of sexual exploitation, forced labour, forced provision of services, and slavery).

Amendment 8

Recital 6a (new)

(6 a) Article 3 of the EU Charter of Fundamental Rights stipulates 'the prohibition on making the human body and its parts as such a source of financial gain'.

Justification

Amendment 9
Recital 7a (new)

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

Justification

The Schengen system enables criminal networks operating in Europe to move freely between Member States. The current wide divergences between Member States' laws in this field therefore create a situation whereby such networks are able to choose in which country to carry out each specific offence according to the penalty levels in force. Consequently, European-level action is needed to harmonise the definition of related offences and the sanctions applicable.

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 organs, parts of organs and tissues of human origin*** should be complemented by that of the European Union.

Justification

The objective of the action is indicated in the interests of clarity. See also justification to Amendment 1 (concerning the title).

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***

(9) It is necessary that the serious criminal offence of ***illegal*** trafficking in organs, ***parts of organs*** and tissues be addressed not only through individual action by each Member State but by ***closer cooperation in penal matters between the EU's Member States, via the adoption of legislation to***

States, and effective, proportionate and dissuasive penalties ***should form an integral part.***

harmonise the definition of the constitutive elements of the offence, as well as effective, proportionate and dissuasive penalties.

Justification

The aim of this amendment is to improve the accessibility and clarity of the wording. See also justification to Amendment 1.

Amendment 12
Recital 9a (new)

(9 a) 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 and tissues.

Justification

Rules must be established with a view to determining legal competence, so that no offence can escape jurisdiction.

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 organs, parts of organs and tissues of human origin.

Justification

Minors and other particularly vulnerable groups are more liable to be forced or deceived into consenting to the removal of their organs or 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 laid down in Article 2 of the Treaty on European Union and 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.

Justification

Amendment 15
Recital 10a (new)

(10a) The base for illegal trade with 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.

Justification

Even though the illegal trade in cells, tissues and organs cannot be acceptable under any circumstances, it is also necessary to look for alternatives aiming to end the shortage of donated cells, tissues and organs. This amendment is based on Amendment 4 to the directive on cells and tissues (tabled by Mrs Ries and adopted by Parliament by a large majority).

Amendment 16
Recital 11a (new)

(11a) Trafficking in organs is demand-driven. It is therefore essential to take a comprehensive approach, addressing the underlying causes of the problem: the severe shortage of organs available for transplant, pursuant to Article 152 of the EC Treaty.

Justification

Amendment 17
Recital 11c (new)

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

Justification

Amendment 18
Recital 11d (new)

(11d) Particular attention must be paid to the use of the Internet as a tool to facilitate trafficking in human organs, in particular due to the discrepancy between supply and demand at national level

Justification

Amendment 19
Article 1(3), introductory phrase

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

Deleted

Justification

The scope of the framework decision needs to be extended, not reduced by making distinctions between different types of organs and tissues. The aim must be to combat illegal trafficking in all circumstances.

Amendment 20 Article 1(3)(a)

(a) reproductive organs and tissues; Deleted

Justification

Organ and tissue transplants obviously do not have the same implications as medically assisted procreation. The latter has therefore been excluded from the scope of the Additional Protocol to the Convention on Human Rights and Biomedicine covering transplants of organs and tissues of human origin. This amendment by no means seeks to prohibit legal trafficking in reproductive organs and tissues. There is no reason, however, to exclude illegal trafficking in reproductive organs and tissues within the scope of the present legislative proposal of the Hellenic Republic.

Amendment 21 Article 1(3)(b)

(b) embryonic organs and tissues; Deleted

Justification

Cf. justification to Amendment 19, mutatis mutandis.

Amendment 22 Article 1(3)(c)

(c) blood and blood derivatives; Deleted

Justification

Blood and blood derivatives are excluded from the scope of the Additional Protocol on the grounds that they are governed by the specific rules on the preparation, use and quality control of blood components. Nonetheless, they should be included within the scope of the present legislative initiative, as illegal trafficking in them must under all circumstances be combated.

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 are punishable, **where they are committed intentionally**:

Justification

Where an action is punishable in law, there must be a conscious intention to act or to fail to act.

Amendment 24
Article 2(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

Justification

Amendment 25
Article 2(1)(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

Justification

Amendment 26
Article 2(1)(b)

(b) use is made of fraudulent means, or

delete

Justification

This provision is covered by the addition of 'deceit or other forms of coercion' in Amendment 24.

Amendment 27 Article 2(1)(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.

Justification

The final phrase of subparagraph (d) has been transferred to the introductory section of paragraph 1, on the grounds that it is a common element underlying the content of subparagraphs a), b), c), and d), serving as a basis for their various definitions of offences under the general heading of illegal trafficking in organs and tissues of human origin.

Amendment 28 Article 2(2)(a)

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

Paragraph 2(aa)

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

Justification

See justification to Amendment 1.

This amendment modifies the text so that subparagraph (a) of paragraph 2 of Article 2 becomes subparagraph a) of paragraph 2(a) (new) of Article 2. The text has also been modified.

The aim is to clarify the provisions of Article 2, which are somewhat confusing and overlapping in the original text. In the reworded Article 2, paragraph 1 concerns the recruitment of persons using violence, fraud, force or coercion with a view to the removal of organs. Paragraph 2 concerns the offer, promise or payment of financial or other incentives in order to obtain the consent of a donor to the removal of an organ. A further paragraph concerns the actual removal of an organ in the knowledge that it has been obtained by one of the acts referred to in Article 2, paragraphs 1 and 2.

Amendment 29
Article 2(2)(b)

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

Paragraph 2(a)

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

Justification

Subparagraph b of paragraph 2 of Article 2, becomes subparagraph b of the new paragraph 2(a) of Article 2. The text has also been modified.

See also the justification to Amendments 1 and 27.

Amendment 30
Article 2(2)(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)

(a) The payment, offer or promise of a financial consideration, **or the provision of 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**.

Justification

Subparagraph c) of paragraph 2 of Article 2 becomes subparagraph a) of the same paragraph. The text has also been modified.

See the justification to Amendment 1 (to the title).

The provision of comparable advantages should be regarded as equivalent to the payment of a financial consideration; otherwise the ban on organ trafficking may be too easily circumvented.

Amendment 31
Article 2(2)(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;* **(Delete)**

Justification

In the vast majority of cases, a potential donor will offer to sell an organ as a result of persuasion or coercion by criminal networks, who prey on the vulnerable position of the person concerned. The main aim of this initiative should be to tackle the agents of the illegal trafficking in human organs, not to exacerbate the suffering of its victims.

Amendment 32
Article 2(2)(e)

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

(e) Action as an intermediary in carrying out any of the acts set out in points *of this paragraph*;

Justification

Amendment 33
Article 2(2)(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)

Justification

Cf. justification to Amendment 30 (to Article 2(2)(d)), mutatis mutandis.

The illegal purchase of organs is covered by paragraph 3(a) of the same article.

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

(fa) Advertising, via the Internet or any other medium, the need for, or availability of, organs, parts of organs or tissues, with

a view to offering or seeking financial gain or comparable advantage.

Justification

This provision corresponds to Article 21(2) of the Additional Protocol to the Convention on the transplantation of Organs and Tissues of Human Origin.

Amendment 35
Article 2 (2b) (new)

Paragraph 2b

The aforementioned provision shall not prevent payments which do not constitute a financial gain or a comparable advantage, in particular:

- compensation of living donors for loss of earning and any other justifiable expenses caused by the legal removal or by the related 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, part of organs or tissues from living persons.***

Justification

The principle of human dignity states in particular that the human body and its parts must not, as such, give rise to financial gain or comparable advantage. Under this provision, organs, parts of organs or tissues should not be bought or sold or give rise to direct financial gain for the person from whom they have been removed for a third party. Nor should the person from whom they have been removed, or a third party, gain any other advantage whatsoever comparable to a financial gain, such as benefits in kind or promotion. A third party involved in the transplant process, such as a health professional or a tissue bank, may not make a profit from organs, part of organs or tissues or any products developed from them.

However, this new paragraph does not create any exception to the principle laid down: it gives examples of compensation to avoid possible financial disadvantage which may otherwise occur that are not be treated as financial gain or comparable advantage

It is necessary to state expressly that compensation/reimbursements are not to be regarded as financial gain or comparable advantage.

Amendment 36
Article 2(3)(a)

(a) The purchase, possession, storage, transport, import, export **or** transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;

(a) The purchase, possession, storage, transport, import, export **and** transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;

Justification

Obviously, the Member States should classify all the acts referred to as offences. The purchase, possession, storage, transport, import, export and transfer of possession should therefore be classified as offences, as being one of the acts referred to.

Amendment 37
Article 2(3 a) (new)

Paragraph 3a

Provision of false documents with the intention of perpetrating the acts referred to of this article.

Justification

Mention needs to be made of this type of criminal act, carried out with the intention of providing fraudulent cover for illicit trafficking in organs and tissues of human origin, together with specification of the appropriate penalties.

Amendment 38
Article 4(unnumbered second paragraph)(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,

Justification

Self-explanatory.

Amendment 39
Article 4(2)(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 ***of 23 December 1998.***

Justification

The Joint Action defines the concept of 'criminal organisation', as well as offering a penal classification of the various types of behaviour of persons participating in or associated with the criminal activities of such an organisation. However, it does not establish any penalty level.

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:

a) supplies the administrative or legal authorities with information which they could not have obtained by other means and which aids them in:

i) preventing or reducing the effects of the offence;

ii) identifying or bringing to justice the other persons responsible for the offence;

iii) establishing proofs; or

iv) preventing the perpetration of other offences among those referred to in Article 2.

Justification

The above circumstances would serve to justify a lower sentence where their effect is to prevent other offences from being committed or to reduce their impact.

Amendment 41

Article 7, title

Jurisdiction and prosecution

Jurisdiction, *legal proceedings* and
prosecution

Justification

Self-explanatory.

Amendment 42

Article 7 (-aa) (new)

*-aa) the offence is committed on board a
vessel flying the flag of that Member State
or an aircraft registered there;*

Justification

*Provision needs to be made for the possibility of offences being committed on board a ship or
on board an aircraft.*

Amendment 43

Article 7(1)(b)

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

(b) the perpetrator is *one of that Member
State's nationals or is resident there*; or

Justification

Self-explanatory.

Amendment 44

Article 7 (1a) (unnumbered) (new)

*1a. Where an offence falls under the
competence of more than one Member
State and any of those Member States may
legitimately take out legal proceedings on
the same grounds, the Member States
concerned shall cooperate with a view to
determining which will take out legal
action against the perpetrators of the*

offence, with the aim of concentrating those actions, as far as possible, in a single Member State. With this in view, Member States may resort to Eurojust or to any other existing competent body or mechanisms in the framework of the EU in order to facilitate cooperation between legal authorities and coordinate their actions.

Justification

Self-explanatory.

Amendment 45
Article 7a (new)

Article 7a

Territory covered

This framework decision shall apply to Gibraltar.

Justification

Self-explanatory.

Amendment 46
Article 8(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 before **31 December 2004**.

Justification

This deadline should give the Member States sufficient time to incorporate the measures of this proposal for a framework directive in their legal systems.

Amendment 47
Article 8(2)

2. Before the date referred to in paragraph 1, the Member States shall transmit to the General Secretariat of the

2. Within the same time-frame and no later than 31 December 2004, the Member States shall transmit to the General

Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

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.

Justification

The aim of this amendment is to introduce greater precision. In addition, the deadline indicated is consistent with that proposed in Amendment 52.

Amendment 48
Article 8(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.

Justification

This deadline should give sufficient time for the preparation of these reports, which will enable the Council to determine how far the goals set in the present legislative proposal have been achieved.

EXPLANATORY STATEMENT

Background

Over the last 25 years or more, scientific progress has transformed organ transplantation into a routine but life-saving medical procedure. Nonetheless, the serious shortage of donors means that many patients still die before a suitable organ becomes available. In the past few years, there has been growing concern that this gap between supply and demand has fostered the birth of a lucrative but abhorrent phenomenon: illicit trade in human organs. Two distinct manifestations of this trade have been identified:

- a) trafficking in human beings with a view to the removal of their organs;
- b) the purchase of organs from donors in third countries by EU patients.

a) Trafficking in human beings with a view to the removal of organs

Increasingly, reports are appearing in the international media alleging that criminal gangs are trafficking, murdering and even 'breeding' human beings with a view to the forceful removal of their organs. These reports, while disturbing, are often sensationalised, but to date there is little conclusive evidence as to the extent and exact nature of the illicit organ trade. However, a number of serious studies indicate this is a particular and growing problem in many parts of the world, especially in Eastern Europe, India and China. A recent Council of Europe report refers to the situation in Ukraine, Russia, Bulgaria, Romania and Georgia, where 'trafficking in organs appears to be extremely well organised and extremely mobile, involving a network of 'brokers, qualified medical doctors and specialised nursing staff.'¹

b) The purchase of organs from donors in third countries by EU patients

On the other hand, the practice whereby wealthy patients travel abroad to developing countries in order to buy organs from living donors is well documented. Since the 1980s, the number of cases of this so-called 'transplant tourism' has continued to rise. Further growth is expected as continued medical progress increases demand and the Internet facilitates the identification of potential donors. Although this type of commercial transaction between competent and consenting adults is very different from the use of violence, fraud, threats or abduction in order to obtain organs, it still poses both moral and practical concerns.

The removal of an organ from a donor living in extreme poverty who has invariably been persuaded to give his or her consent by the false promise of a better life can only be viewed as a gross violation of human rights and dignity. The health of the donor usually deteriorates rapidly after the operation, as does that of the recipient, who then represents an added strain on the medical service of his home country. Furthermore, there is clearly a link between 'transplant tourism' and organised crime, since it would be naive to suppose that a patient

¹ "Trafficking in organs in Europe, Doc. 9822" , Report by Mrs Ruth-Gaby Vermot Mangold, Council of Europe, June 2003

could identify and buy and organise the transplant of a matching organ without the help of a network of intermediaries and medical professionals.

National legislation

Whilst organ trafficking is illegal in 14 out of 15 Member States, significant loopholes still remain. In all Member States, with the exception of Austria, payment for organs beyond reasonable compensation is strictly forbidden. However, penal law in this area varies from country to country. Moreover, there is nothing to stop most European citizens from travelling abroad to purchase organs from living donors in countries where the practice is not illegal. Germany is the exception, having introduced an extraterritoriality clause, which makes it illegal for German citizens to purchase organs anywhere in the world.

International Action

The existence of numerous international instruments to combat trafficking in human organs demonstrates that the need for transnational action in this area has been widely acknowledged. However, it is essential that those Member States that have not yet signed or ratified the Conventions and Protocols mentioned below do so as a matter of urgency. Moreover, while these international instruments are politically important, they will not be effective in stamping out trafficking in human organs unless supplemented by legislative action. Even when finally ratified, these instruments contain no provisions on criminal law, no definition of offences or minimum sanctions, and no provision for enforcement.

All EU Member States and the European Community as a body itself are signatories to the 1997 Convention on Human Rights and Biomedicine, which entered into force in 1999. However, within the EU it had only been ratified in Denmark, Greece, Spain and Portugal (as at 7 May 2003). The Convention stipulates that transplants from living donors may be carried out solely for the therapeutic benefit of the recipient and where there is no other alternative.

The Additional Protocol to the Convention on the Transplantation of Organs and Tissues of Human Origin, which was opened for signature in January 2002, covers issues related to the coordination, facilitation and legality of transplants. However, to date the Protocol has only been signed by a small number of Member States and has not been ratified in any Council of Europe Member State. It has not yet entered into force.

The Protocol to Prevent, Suppress and Punish the Trafficking of Persons, adopted on 15 November 2000, supplements the UN Convention against transnational organised crime. It requires signatory states to establish as a criminal offence the trafficking in persons, including with a view to organ removal. Again, this Protocol has yet to be ratified.

Finally, the World Health Organisation has frequently condemned trafficking in human organs. As far back as 1989, Resolution 42.5 opposed the purchase and sale of human organs and pointed to the need for more effective legislation.

Action at European Union level

Article 3 of the Charter of Fundamental Rights, which prohibits making the human body and its parts as such a source of financial gain, provides a clear basis for EU action. However, trafficking in organs as such has been excluded from the scope of the relevant EU instruments. The Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2003) did not cover the illegal trade in human organs, despite the evident connections. Similarly, human organs have been excluded from the application of the proposed Directive on Tissues and Cells.

The characteristics of the EU therefore create a particularly favourable environment for traffickers. Organised networks are able to exploit the different legislation in Member States, since the Schengen system enables criminals operating in Europe to move freely around the Union. The forthcoming enlargements of the EU in 2004 and thereafter could potentially open a lucrative trading route. Consequently, European-level action is urgently needed to harmonise the definition of related offences and the sanctions applicable. Such legislation will be crucial in order to ensure that the EU is, and remains, an Area of Freedom, Security and Justice.

The initiative of the Hellenic Republic

In this context, the current proposal from the Greek presidency is to be welcomed. The proposal lays out common definitions of offences to be included in the scope of 'trafficking in human organs', which does not cover trading in reproductive or embryonic organs, blood and blood derivatives. It sets a minimum of ten years' imprisonment for offences committed in aggravating circumstances, such as where they are carried out against a young person or within the framework of a criminal organisation. Finally, the proposal introduces an element of extraterritoriality, in that individuals seeking to purchase organs from third-country nationals, even outside the EU, would be committing an offence under EU law.

Proposed amendments

While supporting the main aims and structure of the Greek proposal, this report proposes a number of changes. The most significant of these are outlined below.

Definitions

The title of the Framework Decision should be changed to 'illegal trafficking in human organs, parts of organs and tissues'. The original title is ambiguous in its reference to 'trafficking', which can imply both legal and illegal trade. It is necessary to acknowledge that a legitimate and regulated trade exists for medical purposes, such as fertility treatment. European legislation should not inadvertently criminalise this trade.

If the title is modified to clarify that the proposal is concerned only with illegal trafficking, then it is logical that the exemption from the original proposal of reproductive and embryonic organs and tissues, blood and blood derivatives, should be deleted. This amendment by no means seeks to prohibit the legal trafficking in reproductive organs and tissues. However,

where this trade takes place outside the legal regulatory framework for such activities it is logical that it should be criminalised.

Offences concerning illegal trafficking in human organs

Article 2 of the original text of the Greek proposal, which defines the offences falling within the scope of the Framework Decision, is open to ambiguity. Although there have been numerous allegations concerning abductions and murders with the aim of organ removal, information as to the actual prevalence and extent of these atrocities is inconclusive. There is far more concrete evidence to support the fact that a growing number of EU nationals, desperate for a transplant, are entering into commercial transactions with a person in another country where payment is not unlawful. While both these actions must be prohibited by the Framework Decision, the two should therefore be more clearly separated both in terms of the structure of the document and in terms of penalties.

In order to limit overlap and provide more clarity, the rapporteur proposes to reorder the definition of offences set out in Article 2 into three broad categories:

1. Trafficking in human beings for the purpose of organ and tissue removal;
2. Commercial dealings in human organs and tissues; and
3. The removal of organs by force, coercion and deception.

A further change that would allow donors to receive compensation is proposed. The fact that the human body should not be a source of profit is at the very core of this proposal. However, as already laid out in the Additional Protocol to the Convention on the transplantation of Organs and Tissues of Human Origin, this should not prevent voluntary donors from being offered reasonable compensation, such as loss of earnings and travel costs.

The provision which would make living donors criminally responsible for selling, or offering to sell their organs should be removed. It does not seem appropriate to criminalise a donor who, in the vast majority of cases, will have been persuaded or coerced by criminal networks in the hope of escaping from extreme poverty.

The need for a comprehensive approach

In seeking to address illegal trafficking in human organs, it is necessary to tackle not only the criminal aspects, but also the causes of this criminality, i.e. the severe shortage of organs available for transplant. This report therefore calls on the European Commission to evaluate the feasibility of a comprehensive EU Directive regulating the legal use of organs for transplant. This should include:

- a) the creation of a database of legally available organs, which would enable medical staff across the EU to check the origin of organs both quickly and accurately. Without this facility, it may be difficult to prove that medical staff found to have participated in illegal transplants were aware that the organ was not supplied legally.

b) the creation of an EU-wide database of patients in need of an organ transplant. This would enable newly available organs to be rapidly matched with potential recipients. It could also be used to prioritise patients according to objective criteria.

Likewise, the report urges Member States and the Commission to do more in the way of information campaigns. The shortage of legally available organs is due in no small part to the lack of public information and understanding on the issue. Surveys regularly show that while the vast majority of citizens say they would be willing to donate their organs after death, only a small minority have formally expressed their consent via a donor card or public register.

15 July 2003

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative by 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))

Draftsman: Peter Liese

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Peter Liese draftsman at its meeting of 22 May 2003.

It considered the draft opinion at its meetings of 16 June and 9 July 2003.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Mauro Nobilia (acting chairman); Alexander de Roo, vice-chairman; Peter Liese, draftsman; Jean-Louis Bernié, Hans Blokland, David Robert Bowe, Chris Davies, Karl-Heinz Florenz, Laura González Álvarez, Jutta D. Haug (for Bernd Lange), Marie Anne Isler Béguin, Christa Kläß, Eija-Riitta Anneli Korhola, Minerva Melpomeni Malliori, Patricia McKenna, Jorge Moreira da Silva, Emilia Franziska Müller, Rosemarie Müller, Ria G.H.C. Oomen-Ruijten, Frédérique Ries, Dagmar Roth-Behrendt, María Sornosa Martínez, Antonios Trakatellis, Kathleen Van Brempt and Peder Wachtmeister.

SHORT JUSTIFICATION

I. Background of the Greek proposal

In recent years, reports about illegal trafficking in human organs and tissues have increased. On the Internet, one can find, under the keywords, 'kidney for sale' hundreds of offers. Especially alarming are reports from the enlargement countries. Hungary and the Czech Republic are said to be epicentres of the trade in organs. Even more dramatic is the situation in third-world countries. There are serious indications that, for example, in Brazil and Guatemala children are being abducted with the aim of obtaining organs.

On 28 March 2003, the Hellenic Republic presented a proposal for a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues.

The Hellenic Republic based its initiative on Articles 29, 31(e) and 34(2)(b) of the Treaty on European Union, which means it falls within the third pillar (Justice and Home Affairs). The committee on the Environment, Health and Consumer Policy has delivered this opinion because the issue gives rise to serious risks to public health.

Member States currently share the right of legislative initiative with the Commission in the area of justice and home affairs, following the entry into force of the Amsterdam Treaty in May 1999, and will continue to do so until 2004 when the five-year transitional period expires. The European Parliament has the right to be consulted only.

The Treaty on European Union (Article 29) outlines the objective of providing EU citizens with a high level of safety within an area of freedom, security and justice. Member States have agreed to prevent and combat crime through the approximation, where necessary, of rules on criminal matters. They are committed to progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime (Article 31(e) TEU).

According to Article 34(2)(b), the Council must take measures to help achieve EU objectives. To that end, provided the Council agrees unanimously on the initiative of any Member State (in this case, Greece), or that of the Commission, it can adopt framework decisions to approximate laws in Member States. These kinds of decisions are binding as to the result to be achieved, but leave Member States some flexibility in how they go about effecting such results. They are not directly effective in Member States either, so nationals cannot rely on them in national courts.

II. A problem concerning the codecision rights of the European Parliament

Parts of the questions dealt with by the initiative of the Hellenic Republic are covered by the Parliament's amendments to the proposal for a directive on quality and safety of tissues and cells. The relevant amendments have been adopted by Parliament by a huge majority and have not been regarded as controversial within Parliament. After consulting many legal experts, the draftsman is convinced that Article 152 of the Treaty is the appropriate legal base for these

questions. That is why the European Parliament should find a way to insist on its rights of codecision and to underline these rights. Parliament's position has always been that when it is possible to regulate a case on different legal bases, it favours a basis where it has codecision rights. Therefore, a way has to be found to underline this position of Parliament.

III. Judgement on the initiative of the Hellenic Republic

The intention of the initiative of the Hellenic Republic is very welcome and should be supported by the European Parliament. Particularly with regard to the recitals, the proposal is very clear and indicates the right goals. Unfortunately, the proposal fails to be coherent in the articles. A lot of loopholes and exceptions can be found. The main problem in the view of the draftsman is that not all kinds of commercialisation of the donation and the procurement of cells and tissues are forbidden, but the trade in organs and cells is only prohibited under certain circumstances. This is not only contrary to the position of Parliament, as underlined on several occasions, it is also contrary to the rules of the Charter of Fundamental Rights. For these reasons, the draftsman proposes several amendments which will avoid loopholes and should make the proposal consistent with the position previously adopted by the European Parliament.

Although it should be made clear that we only want the trade with unmodified cells, tissues and organs to be illegal. When industry works with cells, tissues and organs and invests a lot of money in technology, it should be allowed to sell the modified cells, tissues and organs on a commercial basis. Compensation for donors must be possible so as not to discourage such donors.

Because the proposal is dealt with by the Justice and Home Affairs Ministers, the aspect of public health is not adequately addressed. It has to be stressed that illegal trade in tissues, cells and organs has serious public health implications.

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

AMENDMENT TO THE DRAFT LEGISLATIVE RESOLUTION

[The European Parliament]

Insists that the Council refrains from adopting this framework decision prior to the adoption of the European Parliament and Council Directive on human tissues and cells¹,

¹ OJ C 227 E, 24.9.2002, p. 505.

Justification

In the first reading of the directive of cells and tissues, the European Parliament adopted, by a huge majority, amendments also covering the donation of and the trade with cells and tissues. These amendments (41, 81, 6 and 62) have not been subject to controversies inside the European Parliament. The Council did not accept those amendments when drafting the common position. Parts of the questions dealt with by these amendments are covered by the proposal of the Hellenic Republic. The European Parliament has always insisted on choosing a legal basis under which it has codecision powers when it has the option to do so.

According to the legal advice taken by the draftsman, part of the questions dealt with in the proposal can legally be based on Article 152, which gives Parliament the right of codecision.

*We have to acknowledge that it is not possible on the base of Article 152(4) of the Treaty to regulate the **donation** of organs, because in Article 152(5) it is explicitly mentioned that the 'measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood'. In contrast to organs and blood, such a provision on **cells and tissues** does not appear in paragraph 5. The **procurement** (unlike the donation) of cells, tissues and organs is not subject to such a provision. As a consequence it is possible to regulate the donation of cells and tissues and the procurement of cells, tissues **and organs** on the legal basis of Article 152 of the Treaty, which gives the European Parliament the right of codecision.*

Amendment 2

AMENDMENT TO THE DRAFT LEGISLATIVE RESOLUTION

[The European Parliament]

Asks to be consulted again on this framework decision if the Council intends to substantially amend the Council text or the Commission proposal for a European Parliament and Council Directive on human tissues and cells¹ to which this framework decision refers;

Justification

See justification to Amendment 1.

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

(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.

Justification

The public health aspects should be dealt with in a separate recital (see below).

Amendment 4
Recital 2a (new)

(2a) Trafficking in human 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 livers from living donors creates bleeding which may be fatal. Donation of egg cells and the necessary hormone treatment can create cancer and sterility. The trade of organs and tissues can also lead to significant risks for the recipient, because a donor who donates without consent or under financial pressure may not disclose his

¹ OJ C ... / Not yet published in OJ.

medical history which leads to a risk for the recipient. Illegal trade infringes the right of the citizens to equal access to health services and it undermines the citizens' confidence in the legitimate transplantation system which may lead to a further shortage of supply of voluntary donated tissues and organs.

Justification

Public health questions are only mentioned in a small part of recital 2 in the initiative. It should be clarified that the public health aspect is very imminent.

Amendment 5
Recital 3a (new)

(3a) The European Charter of Fundamental Rights lists in Article 3 the prohibition on making the human body and its parts as such a source of financial gain

Justification

The proposal refers to documents of the Council of Europe and the WHO which are not binding on the EU institutions. The Charter of Fundamental Rights is, according to a declaration by Parliament and the Commission, on those EU institutions and it will probably be binding on the Council too after the ratification of the European Constitution. This is why the prohibition set by the Charter should be listed before the documents of the Council of Europe and the WHO.

Amendment 6
Recital 10a (new)

(10a) The base for illegal trade with 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.

Justification

Even though the illegal trade in cells, tissues and organs cannot be acceptable under any circumstances, it is also necessary to look for alternatives aiming to end the shortage of donated cells, tissues and organs. This amendment is based on Amendment 4 to the directive on cells and tissues (tabled by Mrs Ries and adopted by Parliament by a large majority).

Amendment 7
Article 1(3)

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

- (a) reproductive organs and tissues;***
- (b) embryonic organs and tissues;***
- (c) blood and blood derivatives;***

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

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

Justification

All tissues and cells should be covered by a ban on trade. This was also the position of the European Parliament on the directive on quality and safety of cells and tissues. There is no reason why reproductive organs and tissues or embryonic organs and tissues should be treated differently from other organs and tissues. Actually, when egg cells are donated, the health risks for the donating woman are considerable. Therefore, financial or other pressure must be avoided. To make an exception would also undermine the principle of the Charter of Fundamental Rights, because undoubtedly also reproductive organs and tissues and embryonic organs and tissues are parts of the human body.

Amendment 8
Article 1(4a) (new)

4a. The following shall not constitute financial gain or comparable advantage:

- compensation of living donors for loss of earnings and any other justifiable expenses caused by the removal or by the related 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 removal of organs or tissues from living persons.

Justification

It is necessary to state expressly that compensation/reimbursements are not to be regarded as financial gain or comparable advantage.

Amendment 9
Article 2, heading

Offences concerning trafficking in human organs

Offences concerning trafficking in human organs *and tissues*

Justification

The framework decision also covers trafficking in human tissues.

Amendment 10
Article 2(-1) (new)

-1. The removal of an organ or tissue from minors for the purpose of trafficking.

Justification

Clearly, minors need special protection.

Amendment 11
Article 2(1)

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, transfer, harbouring or reception of a person ***with the aim of removal of an organ or tissues from this person***, including any exchange or transfer of control over that person, where

Justification

In Article 2(1), the link to tissues and organs is not clear. For example, an abduction should be punished in the scope of this framework decision, when it is related to organ trafficking.

Amendment 12
Article 2(1)(a)

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

(a) use is made of force or threats, **in particular psychological or physical**, including abduction, or

Justification

It is preferable to define the type of threat in some way so as to cover psychological threats.

Amendment 13
Article 2(2)(a)

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

(a) the removal of an organ **or tissue** from a living donor effected using force, threats, **in particular psychological or physical**, or fraud;

Justification

It is preferable to define the type of threat in some way so as to cover psychological threats.

Amendment 14
Article 2(2)(b)

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

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

Justification

The provision of comparable advantages should be regarded as equivalent to the payment of a financial consideration; otherwise the ban on organ trafficking may be too easily circumvented.

Amendment 15
Article 2(2)(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;

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

Justification

The provision of comparable advantages should be regarded as equivalent to the payment of a financial consideration; otherwise the ban on organ trafficking may be too easily circumvented.

Amendment 16

Article 2(2)(d)

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

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

Justification

The receipt and demand for financial consideration by the organ donor should not be made an offence for reasons relating to policy on crime. It would make the detection of organ trafficking too difficult if the victims, i.e. the donors of human organs, were to be considered as committing an offence by donating an organ. Furthermore, the provision of comparable advantages should be regarded as equivalent to the payment of a financial consideration; otherwise the ban on organ trafficking may be too easily circumvented.

Amendment 17

Article 2(2)(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

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

Justification

The provision of comparable advantages should be regarded as equivalent to the payment of a financial consideration; otherwise the ban on organ trafficking may be too easily circumvented.

Amendment 18

Article 2(3)(-a) (new)

(-a) Trade in organs or unmodified tissues.

Justification

Trade in unmodified human tissues and organs must be expressly banned.

Amendment 19

Article 2(3)(a)

(a) The purchase, possession, storage, transport, import, export *or* transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;

(a) The purchase, possession, storage, transport, import, export *and* transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;

Justification

Obviously, the Member States should classify all the acts referred to as offences. The purchase, possession, storage, transport, import, export and transfer of possession should therefore be classified as offences, as being one of the acts referred to.

Amendment 20

Article 2(3)(ba) (new)

(ba) Advertising the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage.

Justification

The provision corresponds to Article 21(2) of the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin.