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Fighting trafficking in human beings - an integrated approach and proposals for
an action plan

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COMMISSION OF THE EUROPEAN COMMUNITIES

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

**Fighting trafficking in human beings - an integrated approach and proposals for
an action plan**

FIGHTING TRAFFICKING IN HUMAN BEINGS - AN INTEGRATED APPROACH AND PROPOSALS FOR AN ACTION PLAN

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I. INTRODUCTION

This Communication aims at further¹ strengthening the commitment of the European Union,² and the Member States to prevent and fight against trafficking in human beings, committed for the purpose of sexual or labour exploitation as defined in the Framework Decision of 19 July 2002 on combating trafficking in human beings,³ and to the protection, support and rehabilitation of its victims.

It is based on the recognition that in order to effectively address human trafficking an integrated approach is needed, having as its fundament the respect of human rights and taking into account its global nature. This approach calls for a coordinated policy response notably in the area of freedom, security and justice, external relations, development cooperation, employment,⁴ gender equality and non discrimination. It also aims to reinforce the broad public-private dialogue in this area.

Such response is required in the Hague Programme,⁵ endorsed by the European Council in November 2004, in which the Council and the Commission are invited to develop a plan in 2005 for common standards, best practices and mechanisms to prevent and combat human trafficking and to enhance the fight against illegal immigration.⁶

The Communication that was announced in the Commission and Council Action Plan implementing the Hague Programme⁷, intends to contribute to the establishment of this plan. It takes due account of the comprehensive action plan to combat illegal immigration and trafficking in human beings of 2002 and of the reflection and recommendations presented in the Report of December 2004⁸ of the Expert Group on Trafficking in Human Beings⁹ that was set up by the Commission end 2003.

II. THE FUNDAMENTAL CONCERN: THE PROTECTION OF HUMAN RIGHTS

The persons concerned, their needs and rights shall be at the centre of the EU policy against human trafficking. This means first and foremost a clear commitment of EU institutions and Member States to follow a *human rights centred approach* and to promote it in their external relations and development policies.

Article 5(3) of the Charter of Fundamental Rights of the EU¹⁰ prohibits human trafficking in the context of inviolable human dignity which is at the very core of national constitutions and international human rights instruments binding the Member States.

According to international laws and commitments, the State which condones human trafficking or does not take any effective measure to curb it commits a human rights violation¹¹.

EU institutions and Member States shall actively pursue policies reinforcing the prohibition of human trafficking including the protection of real and potential victims at EU as well as at regional and international level.

Third country nationals who are victims of human trafficking but without a legal residence status in the EU should not be excluded from such protection¹², in particular if they have cooperated with Member States' competent authorities by testifying against their traffickers. Moreover, such persons should not be *de facto* excluded from the possibility of exercising their rights, for example to initiate an action against the perpetrator or for compensation or to seek asylum.

Regular monitoring and follow up at experts and political level ensuring compliance with the above principles throughout the EU is essential.

The Council, in close cooperation with the Commission and on the basis of an in-depth dialogue with civil society,¹³ should hold at least once a year a political debate on the EU anti-trafficking policy and assess its compliance with human rights standards and the need for further action, e.g. improving schemes for assistance, protection and social inclusion.¹⁴

It is legitimate to raise the issue in the political dialogue with third countries, drawing on the human rights essential elements clause which is included in EC trade and co-operation agreements, and in multilateral fora.¹⁵

The Community should strengthen the political dialogue with partner countries at bilateral and multilateral level on the human rights dimension of human trafficking and of anti-trafficking policies, as well as continue raising the issue in relevant regional and multilateral fora.

The European Initiative for Democracy and Human Rights gave special attention to the issue in 2005/2006 and envisaged specific support under the campaign "Fostering a culture of human rights".

EU institutions and Member States should intensify efforts to address the issue of human trafficking within the EU and in relations with third countries, e.g. by building on efforts to support anti-trafficking initiatives through development co-operation.

III. THE ORGANISED CRIME DIMENSION

Human trafficking is a serious crime against persons,¹⁶ which must be addressed as a form of organised crime linked to other serious offences and as a clear law enforcement priority. High profits from labour and sexual exploitation¹⁷ are often subject to money laundering and may enable traffickers to engage in other criminal activities and to achieve economic, social or even political power¹⁸.

Human trafficking has to be converted from a "low risk – high reward enterprise for organised crime"¹⁹ into a high risk - low reward one. Law enforcement must use all the resources and capacity available²⁰ to enforce the prohibition of human trafficking, to deprive it of any economic advantage and, where financial gain has been made, to seize and confiscate any assets.²¹ The investigation of human trafficking should be afforded the same priority as other areas of organised crime in that specialist investigative techniques and disruption strategies should be employed.

Member States should provide for necessary organisational structures,²² specialised²³ personnel and adequate financial resources to their law enforcement authorities to effectively combat human trafficking.²⁴ Insofar the Council, on the basis of evaluations of the Commission and within the competences of the Union, should ensure regular monitoring and develop standards and benchmarks.

Human trafficking for labour exploitation requires new types of specialisation and cooperation with partners, e.g. agencies responsible for the control of working conditions and financial investigations related to irregular labour.²⁵

Anti corruption strategies should make an integral part of any anti trafficking policy.²⁶

EU institutions and Member States should promote combating human trafficking as a priority in their law enforcement relations with third countries.²⁷

The testimony of the victim is highly important as evidence against a trafficker. Given the increased risk for a testifying victim,²⁸ the challenge is to find ways to have victims give testimony while ensuring their safety and without exposing them or their relatives to risks.²⁹

Member States should provide protection and assistance to testifying victims as an integral part of effective prosecution and further develop pro-active, intelligence led investigations, which do not depend on the testimony of the victims.³⁰

European bodies have been equipped with specific competencies and specialised personnel. Eurojust has a competence for human trafficking³¹. The role of Europol is particularly important.³² It can provide access to intelligence databases and offers operational support through the exchange of intelligence and expert advice.³³ It shall facilitate the exchange of information and provide operational analysis for Member States and generate strategic reports on the basis of the information and intelligence supplied by Member States, generated by Europol or gathered from other sources. However, the information flow from Member States to Europol is small compared to the number of investigations. It would appear that investigations are based more on spontaneous bi- or multilateral co-operation and the regular structures and mechanisms are seen as options. There is only one Analytical Work File managed by Europol on behalf of the Member States that is specifically focussed upon human trafficking.³⁴

Member States should ensure that national law enforcement agencies regularly involve Europol in the exchange of information, in joint operations and joint investigative teams and use the potential of Eurojust to facilitate the prosecution of traffickers.

The European Police Chiefs should regularly monitor operational cooperation between Member States and, where appropriate, make recommendations for its improvement.

CEPOL should continue to regularly organise specific training for law enforcement personnel.

EU institutions and bodies as well as Member States should support and strengthen regional forms of police cooperation, notably through programmes such as AGIS.

On 4 August 2005, only 15 Member States were party to the UN Trafficking Protocol and only 13 Member States party to the UN Protocol on Migrant Smuggling. The Commission proposed the conclusion of these Protocols by the European Community³⁵ in August 2003³⁶ but the Council has not adopted the relevant decision due to disagreement on the extent of Community competence with regard to the provisions of these Protocols.

The Council should as soon as possible³⁷ adopt the proposal for a Decision on the conclusion, on behalf of the EC, of the UN Trafficking Protocol submitted by the Commission on 22 August 2003³⁸.

EC instruments combating money laundering, in particular to strengthen the criminal law response such as the new Directive recently proposed by the Commission will form a basis to tackle the financial implications of trafficking in human beings³⁹. Full use must be made of the new Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.⁴⁰ The work of the Financial Action Task Force, in particular of the Working Group on Typologies (WGTYF), which focuses, inter alia, on *Money Laundering Methods Associated with Human Being Trafficking*, must be followed and evaluated in order to develop further political and operational options to combat human trafficking.

IV. THE ILLEGAL MIGRATION DIMENSION

The crime of human trafficking often has a transnational dimension as numerous trafficked persons move or are brought across external borders. For this reason, the prevention of and the fight against human trafficking is an essential element of the EU's efforts to improve the checks and surveillance at the external borders and to enhance the fight against illegal immigration.

Migrant smuggling and human trafficking are linked by the fact that they are frequently organised by internationally operating criminal networks and part of organised crime phenomena linked with the demand for cheap and illegal services. As far as the facilitation of unauthorised entry, transit and residence by such networks is concerned, Directive 2002/90/EC of 28 November 2002⁴¹ and the Framework Decision of the same day⁴² already play an important role to prevent these criminal activities.

In 2002, the Council adopted a comprehensive action plan to combat illegal immigration and trafficking of human beings in the EU⁴³, which contains a wide list of measures and actions ranging from visa policy, information exchange, border related measures to return issues and criminal sanctions against the traffickers. A number of measures proposed in the 2002 Action Plan were implemented,⁴⁴ in particular: (1) Directive 2004/81/EC of 29 April 2004⁴⁵, which defines the conditions for granting a residence permit to third-country nationals who are victims of human trafficking or who have been subject of an action to facilitate illegal immigration and who cooperate with the authorities, and (2) Regulation (EC) N° 491/2004 of 10 March 2004,⁴⁶ establishing the AENEAS programme for financial and technical assistance to third-countries in the area of migration and asylum, which explicitly allows for the co-financing of projects related to the prevention and the fight against human trafficking.

The same comprehensive approach is also to be found in the UN Protocol on Migrant Smuggling as well as in the UN Trafficking Protocol⁴⁷, which reflect the global recognition of the problem and should be swiftly ratified by all EU actors.

If action against human trafficking is to be reinforced, the following border control and migration management related measures should be taken:

Member States should – in order to improve the status of trafficked persons - speed-up the transposition of Directive 2004/81/EC⁴⁸.

The Commission will consider the possibility of regularly organising meetings of experts from Member States to exchange information on means and methods used for the purpose of migrant smuggling in order to draw practice oriented conclusions for preventing and combating human trafficking, e.g. regarding recruitment and transportation of victims. The European External Borders Agency (FRONTEX) and CEPOL should pay specific attention to these phenomena in their respective training programmes.

The Member States should ensure that, on the basis of the future Regulation establishing a Community Code on the rules governing the movement of persons across borders⁴⁹ particular attention will be paid to more efficient and targeted checks at the EU's external border crossing points on potential victims of human trafficking. The FRONTEX Agency will assist Member States on this task. FRONTEX should take into account the need to combat the traffic of human beings in the coordination and organisation of joint operations and pilot projects at the external borders and in the fulfilment of its risk analysis function. EUROPOL and FRONTEX should cooperate in this domain in the framework of their respective competences.

The Council should as soon as possible implement biometric identifiers in EU visa and residence permits since more secure documents are helpful for the identification of trafficked persons.

Council, European Parliament⁵⁰ and Commission should as soon as possible, in accordance with their respective responsibilities, complete the development of a common Visa Information System.

Consular staff in countries of origin should cooperate and exchange experience and be trained in recognising visa applications which could involve human trafficking⁵¹.

V. SPECIFIC GROUPS, ESPECIALLY WOMEN AND CHILDREN

The promotion of non-discrimination including gender equality, the rights of children, indigenous people and minority groups⁵² is particularly relevant as many victims or potential victims of human trafficking are women, children and individuals belonging to ethnic and minority groups who may be subject to discrimination in their place of origin. Human trafficking is not necessarily a gender specific crime as men and, in particular, boys are also victims of sexual and labour exploitation. However, trafficking in women and girls especially for commercial sexual exploitation is a wide reality.

EU institutions and Member States should promote gender specific prevention strategies as a key element to combat trafficking in women and girls. This includes implementing gender equality principles and eliminating the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation.⁵³

Within the EU, programmes such as Daphne should continue to be used for financial support of projects addressing human trafficking as violence against children, women and other groups at risk, whereas increased attention should be included in development cooperation.

Further attention and research on trafficking in children within Europe are needed. Municipalities confronted with the problem of forced child labour (including 'sweat shops', begging, pick-pocketing and prostitution) should be actively supported. Solutions to address the problem should be developed in close consultation with the countries of origin of the children.

Offences related to child trafficking, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes, have already been addressed in the Council Framework Decisions on combating trafficking in human beings and the sexual exploitation of children and child pornography.⁵⁴ But the degree of harmonisation is quite limited.

The Commission will, in 2006, when evaluating the implementation of the Council Framework Decisions on combating trafficking in human beings and the sexual exploitation of children and child pornography, focus in its evaluation reports on the need for further strengthening of legal framework specifically addressing child trafficking and related offences, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes, and where necessary submit appropriate proposals.

Child trafficking⁵⁵ must be tackled in the light of the EU Charter of Fundamental Rights that stresses the child's best interests as a primary consideration in all actions relating to children.⁵⁶ The *Convention on the Rights of the Child of 1989 (CRC)*⁵⁷ as the most important international child rights instrument includes provisions on child trafficking.⁵⁸ The Convention applies to every child under the age of 18 years, an approach which is shared by the Commission. The UN Trafficking Protocol must be read in the light of the CRC, taking into account also other relevant international instruments, such as the Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000 and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour⁵⁹ as well as the Hague Convention on the Protection of Children and Co-operation in Respect of Inter Country adoption. The actions decided in this field by the 46 Member States of the Council of Europe at their Warsaw summit should also be accounted for, in particular the 3-year Action Programme on Children and Violence.

EU institutions and Member States should ensure that the EU anti trafficking policy reflects a child rights approach based on globally recognised principles, in particular in the UN Convention on the Rights of the Child. Such approach must consequently apply to any person below the age of 18. Coordination with the Council of Europe Action Programme on Children and Violence (2006-2008) should also be ensured.⁶⁰

Particular attention has to be paid to *unaccompanied minors* or children travelling without an immediate family member⁶¹ in the context of border management as it has been done in the recently adopted *Regulation establishing a Community Code on the rules governing the movement of persons across borders*.⁶² Very soon⁶³ the Commission will address the protection of children in a specific communication.

Development co-operation must provide an effective contribution to address the plight of trafficked children in Developing Countries.

The Commission should ensure that Country and Regional Strategy Papers, wherever relevant and possible, strengthen strategies to address factors facilitating child trafficking such as the failure to secure birth registration or the lack of access to basic education.⁶⁴

VI. RELIABLE DATA

The EU anti trafficking policy must be based on a clear picture of the actual extent of the problem at EU and global level.⁶⁵ But precise figures are not available,⁶⁶ and law enforcement data, although important, are not sufficient.⁶⁷ In 2003, the Council invited the Commission and the Member States to promote measures to set up a monitoring system on human trafficking in order to provide updated data through the continuous and regular collection from the competent national authorities.⁶⁸ Taking into account the 2003 Statistics Action Plan⁶⁹ and Eurostat data in the area of migration⁷⁰ which cover aspects of the phenomenon, the first step for a coherent statistical system is to systematically collect and analyse data - disaggregated by age, sex and other relevant aspects⁷¹ - from *different* sources based on common guidelines at a central place at the national level. When data are adequately gathered at the national level, it becomes essential to collect and compare them at the European level⁷² as well as to cooperate at the EU and global level with third countries, international organisations and NGOs. Member States should dispose of independent institutions, e.g. National Rapporteurs or Bureaus, with systematically collecting data, including from NGOs, and monitoring the effects of national action plans.

The Commission will, taking into account existing bodies at EU level and the possible future role of Eurostat examine possibilities for the collection and comparison of relevant national data in order to ensure proper monitoring at EU level.

The future European Union Agency for Fundamental Rights⁷³ should – in line with its mandate and in close cooperation with the future European Migration Network (EMN)⁷⁴ as well as with the Experts Group on Trafficking in Human Beings – collect and analyse data on human trafficking. It should develop methods to improve the comparability and reliability of data at European level, in co-operation with the Commission and the Member States.

The Community and the Member States should promote such approach in the relations with third (in particular Developing) countries and key international organisations.

VII. COORDINATION AND COOPERATION

Appropriate coordination and cooperation structures are necessary⁷⁵ but can differ from one country to another as long as they ensure that major aims of an anti-trafficking policy are effectively achieved, in particular proper identification and referral of trafficked persons to protection and support mechanisms. They should bring together and balance different interests of the institutions or organisations involved.

Public-private cooperation

Throughout the EU and worldwide civil society organisations play a crucial role in assisting trafficked persons.⁷⁶ The relation between such organisations, furthermore employer organisations, and law enforcement agencies shall be based on mutual understanding and trust.

Member States should consolidate the cooperation of public authorities with civil society organisations related to the prevention of and the fight against human trafficking, e.g. by setting up rules agreed upon by both sides that promote mutual understanding and trust. Where appropriate employer organisations and representatives of specific industries should also be involved.

The Commission shall continue and enhance the dialogue with civil society organisations in this area, notably by way of the Expert' Group in Trafficking in Human Beings and the Forum on Organised Crime.

The Council, further to a contribution from the Commission, should adopt EU guidelines and/or a European Model Protocol of cooperation⁷⁷ in order to facilitate such cooperation throughout the EU and in third countries.

National cooperation

The Experts' Group gives special emphasis to establishing *National Referral Mechanisms as an instrument of national cooperation*,⁷⁸ as already recommended in the OSCE Action Plan to Combat Trafficking in Human Beings⁷⁹

Member States should consider establishing National Referral Mechanisms ensuring identification and referral of trafficked persons as well as A governmental coordination structure could draw up, coordinate and evaluate national policies and contribute to mechanisms addressing individual complaints.⁸⁰

Cooperation at EU level

National cooperation and coordination mechanisms should form the basis for a corresponding mechanism at EU level providing for expert advice and a broad public-private dialogue.⁸¹

The Commission will examine appropriate coordination and cooperation mechanism at EU level ensuring the development of minimum standards and benchmarks, evaluation rounds of the Member States' anti trafficking policy and the indication of areas for priority action, especially on victim support and protection.

*Cooperation with countries of origin, transit and destination*⁸²

The Commission will continue to address under the AENEAS programme and, where appropriate and possible, other thematic or geographical Community funds to actions in third countries aimed at combating and preventing human trafficking, protecting and assisting victims and promoting cooperation between these countries and the EU.

Where relevant, the Commission should ensure that human trafficking and the policy framework and strategies for its prevention and mitigation are assessed in the Poverty Reduction Strategy Papers, Country and Regional Strategy Papers and Indicative Programmes and their reviews.

The Community should – notably through the EU development policy, which focuses on the primary objective of poverty reduction, and the achievement of the Millennium Development Goals - continue funding measures addressing factors that make persons vulnerable to trafficking, e.g. poverty, lack of access basic and higher education, gender inequality, denial to the right of nationality, discrimination and the lack of access to services and of equal opportunity.

Cooperation at regional and global level

Cooperation has to be further strengthened at the global level⁸³, in particular, through advocating and assisting third-countries in the swift ratification and implementation of the UN Trafficking Protocol, and by supporting the work of the UN Special Rapporteur on trafficking in persons, especially in women and children

The Commission will continue to cooperate with the Council of Europe⁸⁴ and with the OSCE, especially within the Alliance against Trafficking in Persons, initiated by OSCE Special Representative on Combating Trafficking in Human Beings.

EU institutions and Member States should

- **continue to cooperate with relevant international organisations e.g. UN, OSCE and Council of Europe; the Union shall in particular make full use of Council of Europe expertise where action is required within its competence.**⁸⁵
- **aim at appropriate coordination and cooperation mechanisms based on relevant international instruments;**
- **continue to promote regional initiatives that could complement and inspire EU wide cooperation, e.g. the Nordic Baltic Task Force against Trafficking in Human Beings⁸⁶, the Southeast European Co-operative Initiative⁸⁷, the pan-European Budapest Process⁸⁸, the “5+5 dialogue” between the Western Mediterranean countries⁸⁹ and the Mediterranean Transit Migration Dialogue.⁹⁰**

ANNEX

Endnotes

¹ Regarding previous measures at EU level reference has to be made to three communications in 1996, 1998 and 2000 - COM(1996) 567 final of 20.11.1996; COM(1998) 726 final of 9.12.1998; COM(2000) 85 final, Brussels, 21.12.2000 - as well as to a number of legislative proposals from the Commission, which formed the basis of important EU/EC legislation:

Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1);

Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.1.2004, p. 44);

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

Other legal acts that strengthened the standing of victims in criminal proceedings and compensation procedures are particularly relevant for the fight against trafficking in human beings:

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 1);

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

The Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women stressed the need to, inter alia, eradicate gender inequalities (OJ C 260, 29.10.2003, p. 4).

Furthermore, the EU counter-trafficking policy has become an essential part not only in the area of freedom, security and justice but also regarding employment and social affairs, EU enlargement, external relations (Stabilisation and Association Process, Partnership and Cooperation Agreements with NIS, Action Plans against Organised Crime with Russia (2000) and on Justice and Home Affairs with Ukraine (2002), the European Neighbourhood Policy, the Euro-Mediterranean Partnership) and development (such as the Cotonou Agreement (2000) and the EU-Africa Dialogue).

Since 1996 considerable funding has been allocated to projects promoting the prevention of and the fight against trafficking in human beings in EU Member States and third countries, but to a lesser extent in Developing Countries:

STOP (1996-2000) and STOP II (2001-2002), a programme of incentives, exchanges, training and cooperation for persons responsible for combating trade in human beings and the sexual exploitation of children (OJ L 322, 12.12.1996, p. 7; OJ L 186, 7.7.2001, p. 7):

AGIS (2003-2007), a framework programme on police and judicial cooperation in criminal matters (OJ L 203, 1.8.2002, p. 5):

Daphne (2000-2003) and Daphne II (2004-2008) programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (OJ L 34, 9.2.2000, p. 1; OJ L 143, 30.4.2004, p. 1):

EQUAL: Guidelines for the second round. Communication from the Commission establishing the guidelines for the second round of the Community Initiative EQUAL concerning transnational co-operation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market - Free movement of good ideas (COM(2003) 840), in particular Chapter 7.2.

For instance: Under the Tacis programme (NIS) about €10M have been allocated over the period 2002-2004 (Belarus, Moldova, Ukraine, Russia, for specific anti-trafficking of human beings projects focussing on prevention, prosecution and protection. Under the 8th ACP programme, Benin has benefited from a €2M project against trafficking in children. €5M have been allocated for South Africa.

² Hereinafter referred to as EU.

³ Article 1(1) of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1):

“1...the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

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

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used."

This definition reflects the elements of the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (UN Trafficking Protocol) but excludes trafficking in human beings for the removal of organs. This aspect will be looked at by the Commission in more detail in the light of a Europol report on trafficking in human organs.

⁴ More and more attention is paid to trafficking in human beings for the purpose of labour exploitation. See Report (Note 6, below), e.g. Recommendations 29, 73 and Chapter 2, especially page 52; furthermore ILO: A Global Alliance against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2005.

⁵ The Hague Programme on strengthening the area of freedom, security and justice; (OJ C 053, 3.3.2005, p. 1).

⁶ The Hague Programme on strengthening the area of freedom, security and justice - paragraph 1.7.1 *in fine*; (OJ C 53, 3.3.2005, p. 7).

⁷ Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union – 5th hyphen letter c) (OJ C 198, 12.8.2005, p.14).

⁸ Report of Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004); hereinafter referred to as Report; published on the website of the Commission, DG JLS:

http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm

⁹ Established by the Commission in 2003 (OJ L 79, 26.3.2003, p. 25; OJ C 205, 30.8.2003, p. 3.) further to the Brussels Declaration of 2002 on Preventing and Combating Trafficking In Human Beings (OJ C 137, 12.6.2003, p. 1.); hereinafter referred to as Experts Group.

¹⁰ OJ C 364, 18.12.2000, p. 9. According to Explanations relating to the Charter, Article 5 (3) stems directly from human dignity and takes into account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. On the other hand, one has to take into account the non-binding legal status of the Charter and that according to a classical doctrine only States could violate individual human rights. The Charter's provisions are addressed to the Member States only insofar as they are implementing Union law. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union.

¹¹ At least seven International Conventions related to the prevention of human trafficking have been signed and mostly ratified by EU Member States (Convention on the Rights of the Child with the Optional Protocol, The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, Palermo Convention against Transnational Organised Crime and Trafficking Protocol, ILO Convention No 182 and the Convention on Eradication on all forms of Discrimination Against Women). and advocate for further provisions not ratified as yet e.g. addressing trafficking in human organs and tissues. A reference has to be made as well to "The European Convention on Human Rights and Biomedicine, 1997" and the Additional protocol concerning Transplantation of Organs and Tissues of Human Origin (2002), whose Article 22 concerns trafficking in organs and tissues.

Furthermore the Rome Statute of the International Criminal Court extends the jurisdiction of the Court on the enslavement as a crime against humanity. Enslavement is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children" (Article 7.2).

Recital 3 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings points out that it comprises serious violations of fundamental human rights; OJ L 203, 1.8.2002, p. 1.

¹² See also Report, recommendations 17, 114.

¹³ See Report, recommendation 10 concerning the development of a "human rights impact assessment model" in cooperation working with trafficked persons and human rights institutions.

¹⁴ See Report, recommendations 89 – 115.

¹⁵ Such as the UN Commission on Human Rights (CHR) and UN General Assembly Third Committee. At the annual sessions of the Third Committee and CHR in 2004, the EU co-sponsored resolutions on Trafficking in women and girls and the resolution on the rights of the child which incorporates aspects relating to trafficking. The CHR also appointed a new Special Rapporteur on Trafficking.

¹⁶ See endnote 1, which refers to the definition in Article 1 of the Council Framework Decision on combating trafficking in human beings.

¹⁷ See also: Trafficking in human beings for sexual exploitation : A Europol perspective

<http://www.europol.eu.int/publications/SeriousCrimeOverviews/2004/THB.pdf>

Furthermore, for labour exploitation: ILO, A Global Alliance against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2005, e.g. page 46, no. 221.

¹⁸ Further to the Framework Decision on combating trafficking in human beings and the one on sexual exploitation of children and child pornography (OJ L 203, 1.8.2002, p. 1; OJ L 13, 20.1.2004, p. 44) Member States are adapting their legislation, including punishment by terms of imprisonment if the offence has been committed in aggravated circumstances: Article 3 of the Council Framework Decision on combating trafficking in human beings; Article 5 of the Council Framework Decision on combating the sexual exploitation of children and child pornography. Different approaches prevail regarding the legalisation or criminalization of the purchase of sexual services in general or the criminalisation of the purchase of sexual services of forced prostitutes (see f.i. Sweden: Law That Prohibits the Purchase of Sexual Services, see also Gunilla Ekberg, The Swedish Law That Prohibits the Purchase of Sexual Services, in Violence Against Women, Vol. 10 No. 10 October 2004, p. 1187-1218.).

¹⁹ Trafficking in Human Beings: A Europol Perspective – January 2004, p. 1. Published:

<http://www.europol.eu.int/publications/SeriousCrimeOverviews/2004/OverviewTHB2004.pdf>

²⁰ The Experts Group (Report, recommendation 118) advises to continuously devote a certain percentage of these resources to the fight against trafficking in human beings.

²¹ Report, p. 118.

²² The Experts Group refers to the Italian Direzione Investigativa Antimafia and the French Office central pour la repression de la traite des êtres humains (OCRTEH) as best practices. Report, p. 122.

²³ For possible guidance see Report, p. 122.

²⁴ Report, recommendations 117, 118.

²⁵ Report, recommendation 116.

²⁶ Report, p. 125 and recommendation 122.

²⁷ Notably in line with the so-called “Libreville Declaration,” http://www.acpsec.org/fiji/gabon/final_gb.htm.

²⁸ Stressed on several occasions, e.g. in No. 14, fourth, sixth and last indent, of the Brussels Declaration (OJ C 137, 12.6.2003, p. 7, 8); Report, p.119.

²⁹ Report, p. 111-114, 119.

³⁰ However, relevant measures should not be misinterpreted and used to legitimise or suggest a disregard for the need to protect and assist a victim of trafficking. Report, p. 123 and recommendation 119.

³¹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, Article 4(1); OJ L 63, 6.3.2002, p. 1.

³² The general competence of Europol covers trafficking in human beings (Art. 2(2) of the Europol Convention).

³³ At international level Interpol offers similar services, see <http://www.interpol.int/Public/THB/default.asp>

³⁴ Within another Analytical Work File there is a possibility for Europol to collect and store data depending upon the nationality of the trafficker.

³⁵ Hereinafter referred to as EC.

³⁶ COM(2003) 512 final of 22.8.2003.

³⁷ On the basis of Articles 62 (2) and 63 (3), in conjunction with 300 (2) and (3) TEC.

³⁸ COM(2003) 512 final of 22.8.2003.

³⁹ Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004) 448 final, Brussels, of 30.6.2004).

⁴⁰ OJ L 68, 15.3.2005, p. 49. Article 3, which provides for extended powers of confiscation under certain conditions, refers to the Framework Decision on combating trafficking in human beings.

⁴¹ OJ L 328, 5.12.2002, p. 17.

⁴² OJ L 328, 5.12.2002, p. 1.

⁴³ OJ C 142, 14.6.2002, p. 23.

⁴⁴ The most recent overview on the state of implementation is to be found in the Commission’s 2004 annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents, SEC(2004) 1349 final of 25.10.2005.

⁴⁵ OJ L 261, 6.8.2004, p. 19.

⁴⁶ OJ L 80, 18.3.2004, p.1.

⁴⁷ UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime; signed in Palermo on 12 to 15 December 2000 by all EU Member States and the European Community.

⁴⁸ Deadline for transposition according to the act: 6 August 2006.

⁴⁹ A new regulation (“Border Code”), which will be based on the Commission proposal COM(2004) 391 final of 26 May 2004, will seek to clarify, restructure, consolidate and develop existing legislation on border controls on persons, which have been developed within the Schengen intergovernmental framework and integrated into the Treaty since May 1999.

⁵⁰ Hereinafter referred to as EP.

⁵¹ See Report, Recommendations 68 and 76.

⁵² The UN Committee on the Rights of the Child has stressed in several occasions the vulnerability of children belonging to minorities notably because of poor access to education and lack of birth registration. The Permanent Forum on Indigenous Issues in its session of 2003 recommended to the UN system to address the issue of trafficking of indigenous women and girls as a matter of concern.

⁵³ See UN Trafficking Protocol, Article 9 (5); furthermore: Resolution of the UN Commission on the Status of Women (CSW) of 11 March 2005 on Eliminating Demand for Trafficked Women and Girls for All Forms of Exploitation.

⁵⁴ OJ L 203, 1.8.2002, p. 1; OJ L 13, 20.1.2004, p. 44.

⁵⁵ Seriousness and extent of child trafficking for sexual and economic exploitation (child labour, prostitution, pornography, cheap labour, begging, pick pocketing, drug selling, organ trafficking, etc.) as well as for illegal adoption (Report, p. 67, 68) became clear, inter alia, at a Roundtable on EU Action against Child Trafficking and Related Forms of Exploitation, on 26 May 2004 under the auspices of the EU Forum for the Prevention of Organised Crime (Supported by the UNICEF Innocenti Research Centre, the International Federation Terre des Hommes, Save the Children and Child Focus, which were able to base their presentations on a number of research projects, for example, International Federation Terre des Hommes, Kids as commodities? Child Trafficking and What to do about it, by Mike Dottridge, 2004, and Lost Kids, Lost Futures, The European Union’s Response to Child Trafficking, by Mirjam van Reizen and Ana Stefanovic, 2004; ECPAT, Joint East West Research on Trafficking in Children for Sexual Purposes in Europe: The Sending Countries, by Murieann O’Brian, Anke van den Borne, Theo Noten, 2004; IOM Report on Trafficking in Unaccompanied Minors in Ireland, by Dr. Pauline Conroy, 2004; UNICEF Innocenti, Trafficking in Human Beings, Especially Women and Children, in Africa, 2003, and Child Trafficking in West Africa: Policy Responses, 2002. Presentations and conclusions of the Roundtable are published on the website of the Commission, DG JLS:

http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.htm

More recently, developments caused by HIV/AIDS epidemic and complex emergencies and natural disasters like the Tsunami disaster in the Indian Ocean in December 2004 have recalled the specific vulnerability of children to trafficking. For further information: UNICEF Innocenti, <http://www.childtrafficking.org/>; Save the Children, <http://www.savethechildren.org/>; or Terre des homes, <http://tdh.ch/cms/index.php?&L=0>

⁵⁶ Article 24 (2) of the Charter. Moreover, anti trafficking legislation as adopted in the first and the third pillar of the EU includes specific provisions on children. Articles 1 (3) and (4), 3 (2)(b), 7 (2) and (3) of the Council Framework Decision on combating trafficking in human beings; Council Framework Decision on combating the sexual exploitation of children and child pornography; Articles 2 (f) and 10 of Council Directive 2004/81/EC of 29 April 2004. These provisions recognise the more limited capacities of children to fully understand the consequences of their actions. Even when a child agrees to be trafficked and/or exploited, consent cannot be assumed and should never be used against the child. In the case of children the use of force, coercion or deception is not required for a trafficking offence.

The Commission, within its competencies, will strengthen the financial support for projects specifically addressing child trafficking. In particular, the Daphne II Programme will up to 2008 continue to support European organisations that develop measures and actions to prevent or to combat all types of violence against children and to protect the victims and groups at risk.

⁵⁷ Hereinafter referred to as CRC. More detailed information concerning contents and status of ratification on the websites of UNHCHR (<http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>) or UNICEF (<http://www.unicef.org/crc/crc.htm>).

⁵⁸ According to the CRC children are not only (real or potential) victims in need of protection but they also have rights that are clearly set out in the CRC: the promotion of the best interests of the child (Art. 3), the non-discrimination principle (Art. 2), the right to participate (Art. 12), the right to survival and development (Art. 6). The views of the child must be given due weight in accordance with his/her age and maturity in consistency with Article 12 of the CRC. The CRC contains specific provisions (Articles 32, 33, 34, 35, 36) dealing with exploitation, abuse and trafficking. With regard to the definition of “exploitation” the CRC states the right of the child to be protected from “economic exploitation and from performing any work that is likely to be hazardous

or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" as well as from all forms of sexual exploitation and sexual abuse, in particular the exploitation of children in prostitution or pornography. Other relevant articles include the right to protection of children deprived of their family (Art. 20) and the non use of detention (Art. 37).

⁵⁹ Report, p. 69. Other relevant international instruments are:

Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000. Contents and status of ratifications: <http://www.unhchr.ch/html/menu2/dopchild.htm>. The Report (p. 68) points out that it goes further than the UN Trafficking Protocol as it includes crimes that are not of a transnational nature and that do not involve organised criminal groups and it also covers the transfer of organs and illegal adoption. Additionally, it states that the consent of the child is not relevant as long as the overall objective is the exploitation of the child. ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182 (1999). Full text and status/ratifications of the Convention on the ILO website under: <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>. Child forced labour is one of the main causes and consequences of Human trafficking. Harmonisation of relevant legislation at regional level might also be beneficial for freeing child labourers and stop trafficking. On this specific aspect an important initiative, the Libreville Declaration, supported by the European Commission and by the ILO IPEC (International Programme for the Elimination of Child labour) took place in February 2003. Ministers from Benin, Burkina Faso, Cameroon, Ivory Coast, Gabon, Mali and Togo joined forces to denounce the issue of child-trafficking in French-speaking West and Central Africa. The meeting focused on the necessity of harmonising legislations at national level in those specific African regions in order to fight trafficking of children and child labour.

⁶⁰ We will take specific action to eradicate all forms of violence against children. We therefore decide to launch a three year programme of action to address social, legal, health and educational dimensions of various forms of violence against children. We shall also elaborate measures to stop sexual exploitation of children, including legal instruments if appropriate and involve civil society in this process." (Warsaw Summit Action Plan).

⁶¹ See Report, recommendations 85, 86.

⁶² See FN 60. In the new "Border Code", the provisions on external border controls have been strengthened, by specifying that further investigation shall be carried out by border guards when "there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them".

⁶³ End 2005/beginning 2006

⁶⁴ The EU can rely on a solid framework of international obligations and commitments as a basis for such engagement: in addition to the almost universal ratification of the CRC and substantial ratifications of other instruments by third countries, 190 national delegations to the UN General Assembly Special Assembly made specific commitments to eliminate trafficking and sexual exploitation of children.

⁶⁵ See Report, Recommendations 35 – 42.

⁶⁶ Neither the Commission nor Europol nor any other EU mechanism, such as CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration, set up by a decision of the Ministers responsible for immigration on 30 November and 1 December 1992..), is able to publish precise figures about the EU-wide extent of trafficking in human beings. Although the CIREFI data collection contains a category on facilitated aliens including, but not solely relating to, those who have been trafficked, it is currently impossible to distinguish between trafficked and non-trafficked persons and so the usefulness of this data collection for tracking the human trafficking phenomenon is rather low. Europol stated that the nature of the crime makes it difficult to estimate exactly how many victims are trafficked in the EU as well as the rest of the world but there are reasons to believe that they should be counted in the hundreds of thousands of thousands. The assumptions underlying present estimates of the extent at European or global level are however unclear. See Frank Laczko (IOM), Human Trafficking: The Need for Better Data, November 1, 2002, Migration Information Source, published under: <http://www.migrationinformation.org/Feature/display.cfm?ID=66>

⁶⁷ Data on trafficking in human beings should not only facilitate an assessment of law enforcement activities but of the entire anti-trafficking policy including measures related to prevention, to protection and support of victims or to the impact of voluntary or forced return. Therefore, it is also important to know, for example, how many trafficked persons benefited from support provided by civil society organisations, how many benefited from a residence permit and under what conditions, how many returned to their countries of origin and what happened to them after three, five or even more years. Finally, it might be useful to know the financial implications of anti-trafficking measures.

⁶⁸ OJ C 260, 29.10.2003, p. 4.

⁶⁹ COM(2003) 179 final of 15.4.2003.

⁷⁰ See the Commission's proposal for a Regulation on Community statistics on International migration and asylum, COM(2005) xxx of xx July 2005.

⁷¹ For instance, data disaggregated by ethnicity may provide empirical evidence to what extent ethnic minorities or indigenous peoples fall more easily victim to human trafficking and may allow conclusions regarding the discrimination of such groups. Furthermore, UNICEF has stressed that when traditional community bonds are eroded by lack of effective official protection and economic marginalization, indigenous women and children may be particularly at risk, especially those in remote rural areas or close to national borders (“Ensuring the rights of indigenous children”, Innocenti Research Centre, 2004)

⁷² Report, chapter 3.8, p. 76 and chapter 3.8.1, p. 77, in particular recommendations 35-37.

⁷³ Communication from the Commission, The Fundamental Rights Agency, A public consultation document, Brussels, 25.10.2004, COM(2004) 693 final.

⁷⁴ Project under preparation of Commission services.

⁷⁵ Report, Chapter 3.6. Stressed in the Brussels Declaration (OJ C 137, 12.6.2003, p. 3) and recognised by UN (Articles 10 and 11 of the UN Trafficking Protocol), OSCE (Ministerial Council, Decision No. 2/03, Combating Trafficking in Human Beings, 2 December 2003; Decision No. 13/04 The Special Needs for Child Victims of Trafficking for Protection and Assistance, 7 December 2004), Council of Europe Convention on Action against Trafficking in Human Beings adopted by the Committee of Ministers on 3 May 2005 (http://www.coe.int/T/E/human_rights/trafficking/).

⁷⁶ The useful role of victim support organisations has already been recognised in Article 13 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82, 22.3.2001, p. 4.). In number 6 (d) of its Conclusions of 8 May 2003 the Council urges Member States to provide assistance, where appropriate, in close cooperation between state authorities and independent specialised organisations (NGOs) and to encourage further development of the sharing of best practices (OJ C 137, 12.6.2003, p. 1). A workshop under the auspices of the EU Forum for the Prevention of Organised Crime on 30 June 2003 demonstrated that both trafficked persons and law enforcement agencies can benefit from the involvement of civil society organisations (http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum2003_en.htm). Some Member States have established mechanisms based on specific criteria to formally recognise or register civil society organisations that are involved in relevant public-private cooperation and entrusted with particular task. In other Member States the cooperation is less regulated. However, replies to a questionnaire of the Commission (Council Working Document 11793/03 CRIMORG 57 MIGR 73) showed that in many EU Member States competent authorities cooperate in a more or less systematic and regular way with civil society organisations.

⁷⁷ See also no. 13, ninth indent of the Brussels Declaration, OJ C 137, 12.6.2003, p. 7. as well as G. Vermeulen and H. De Pauw, Cooperation between civil society organisations and law enforcement services in the area of missing sexually exploited children, Possibilities and limits from a European perspective, Antwerp-Apeldoorn 2004, in particular p. 85-94. Although focusing on sexually exploited and missing children the proposals made for such protocols should be taken into account in the context of trafficking in human beings.

⁷⁸ See Report, Chapter 3.6.1 and Recommendations 35-37.

⁷⁹ Endorsed by the OSCE, Ministerial Council, Decision No. 2/03, Combating Trafficking in Human Beings, 2 December 2003; more detailed information in: National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, Warsaw 2004.

⁸⁰ See Report, recommendations 30, 31, 34.

⁸¹ The Experts Group proposed a European Anti Trafficking Network. See Report, recommendation 33 and Explanatory Paper 6. Such network shall consist of contact points designated by each Member State and by the Commission, include governmental and non-governmental agencies and cover the areas of prevention and victim assistance as well as law enforcement and police and judicial cooperation. The Experts Group refers to the example of the European Crime Prevention Network (Council Decision of 28 May 2001 setting up a European crime prevention network, OJ L 153, 8.6.2001, p.1; more detailed information: http://europa.eu.int/comm/justice_home/eucpn/home.html). Other options are the use of existing bodies such as Experts Group itself or the EU Forum for the Prevention of Organised Crime.

⁸² See also European Parliament resolution of 28 April 2005 on the Annual Report on Human Rights in the World 2004 and the EU's policy on the matter (2004/2151(INI))”, in particular no. 184, 185

⁸³ A tripartite plus meeting in 2003, convened by UNOG, was extremely helpful and facilitate the coordination between all the organisations that are active in this area. For more detailed information: <http://www.unhcr.ch/hurricane/hurricane.nsf/0/6031593A6D26A507C1256CD1003BA09D?opendocument>
<http://www2.unog.ch/news2/documents/newsen/dg0310e.htm>

⁸⁴ In this regard it has to be recalled that, on 3 May 2005, the Committee of Ministers of the Council of Europe adopted a Convention on action against trafficking in human being. This Convention has been opened for signature at the Summit of Council of Europe Heads of State and Government held in Warsaw on 16 and 17 May 2005. It has so far (July 2005) been signed by 15 States, including 8 EU Member States (Austria, Cyprus, Italy,

Luxembourg, Malta, Poland, Portugal, Sweden). It is not yet in force which requires 10 ratifications, including by 8 Council of Europe Member States.

⁸⁵ Guidelines on the relations between the Council of Europe and the European Union, adopted as part of an Action Plan in the Third Summit of the Council of Europe in Warsaw, 16 – 17 May 2005.

⁸⁶ This initiative was set up in 2002 at political level with emphasis on practical measures and the achievement of tangible results. According to the terms of reference a state secretary or the equivalent should represent each participating country as enhancing the treatment of the issue on a political level belongs to the three main objectives of the initiative. More detailed information, including the terms of reference and already adopted recommendations, on website of the Task Force:

http://www.against-trafficking.org/templates/news.aspx?page_id=251

⁸⁷ SECI, for more detailed information: <http://www.secicenter.org/html/index.htm>

⁸⁸ For more information:

<http://www.icmpd.org/default.asp?nav=budapest&folderid=376&id=49&subfolderId=245>

⁸⁹ This dialogue, which has been launched in 1990, brings together the Governments of France, Italy, Spain, Portugal, Malta, Mauritania, Morocco, Algeria, Tunisia and Lybia, and it serves the purpose to hold annual meetings at ministerial level to discuss trans-mediterranean issues of mutual interest. At their annual meeting in Malta on 30 June 2005, it was agreed to deepen and speed-up the cooperation on combating illegal immigration.

⁹⁰ For more information : <http://www.icmpd.org/default.asp?nav=budapest&folderid=362&id=-1>