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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 June 2004

10690/04

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**CRIMORG 51
JUSTCIV 89
MIGR 54**

COVER NOTE

from :	Presidency
to :	JHA Counsellors/Coreper
Prev.doc.nr.	doc. 9126/04 CRIMORG 40 JUSTCIV 72 MIGR 37
Subject :	Proposal for a Common Position of the Council, on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the draft European Convention on Action against Trafficking in Human Beings being undertaken in the Council of Europe

1. On 30 April 2004 the Commission submitted a Recommendation for a Council Decision authorising the Commission to negotiate the draft European Convention on combating trafficking in human beings and a proposal for a Common Position of the Council, on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the draft European Convention on Action against Trafficking in Human Beings being undertaken in the Council of Europe (doc. 9126/04 CRIMORG 40 JUSTCIV 72 MIGR 37).

2. The Presidency decided to have the Recommendation for a Council Decision authorising the Commission to negotiate the draft European Convention discussed in the Migration Working Party and allocated the proposal for a Common Position of the Council to the Multidisciplinary Group on Organised Crime.

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3. The latter Group discussed the proposed Common Position at its meeting on 14 June 2004. Whilst the Commission's proposal was generally welcomed, a number of amendments were nevertheless proposed by delegations. Following the discussions at the MDG, delegations will find attached a Presidency compromise proposal for a Common Position of the Council, on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the draft European Convention on Action against Trafficking in Human Beings being undertaken in the Council of Europe.

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COMMON POSITION

of ???

from the Council on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the Draft European Convention on Action against Trafficking in Human Beings held in the Council of Europe

The Council of the European Union

Having regard to the Treaty on European Union, and in particular Article 34 (2) (a) thereof,

Having regard to the proposal of the Commission,

Whereas:

- (1) (...) Article 5(3) of the Charter of Fundamental Rights of the European Union recognises that trafficking in human beings is prohibited.
- (2) The Tampere European Council of 15 and 16 October 1999 called for the prevention of all forms of trafficking in human beings. The Seville European Council of 21 and 22 June 2002 expressed the need for resolute action to combat trafficking in human beings. The Thessaloniki European Council of 19 and 20 June 2003 considered the combating of trafficking in human beings, including taking legislative and other measures, to be of primary importance.
- (3) The Council addressed the issue of trafficking in human beings in Council Framework Decision (2002/629/JHA) of 19 July 2002 on combating trafficking in human beings¹.

¹ OJ L 203, 1.8.2003, p. 1.

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- (4) Furthermore, Council Framework Decision (2001/220/JHA) of 15 March 2001 on the standing of victims in criminal proceedings², Council Framework Decision (2001/500/JHA) of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime³; Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁴; Council Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁵, Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence⁶ and Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography⁷ may be relevant for the negotiations in the Council of Europe.
- (5) On 8 May 2003, the Council adopted Conclusions on the Brussels Declaration issued at the conclusion of the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century, held from 18 to 20 September 2002⁸. On 20 October 2003 the Council adopted a Resolution on initiatives to combat trafficking in human beings, in particular women⁹. On 27 November 2003 the Council adopted a Recommendation on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings¹⁰.

² OJ L 82, 22.3.2001, p. 1.
³ OJ L 182, 5.7.2001, p. 1.
⁴ OJ C 326, 21.11.2001, p. 1.
⁵ OJ L 190, 18.7.2002, p. 1.
⁶ OJ L 196, 2.8.2003, p.45.
⁷ OJ L13, 20.1.2004, p.44.
⁸ OJ C 137, 12.6.2003, p. 1.
⁹ OJ C 260, 29.10.2003, p. 4.
¹⁰ Not published.

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- (6) On 23 November 1995, the Council adopted a Resolution on the protection of witnesses in the fight against international organised crime¹¹ and on 20 December 1996 the Council adopted a Resolution on individuals, who cooperate with the judicial process in the fight against international organized crime.¹²
- (7) All Member States of the European Union and, on behalf of the European Community, the Commission signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- (8) The Council of Europe initiated negotiations concerning a European Convention on Action against Trafficking in Human Beings. It is desired to contribute as fully as possible to the negotiation of the proposed convention and to avoid incompatibility between the proposed convention and instruments drawn up under Title VI of the Treaty on European Union.
- (9) The European Commission should be authorised to negotiate, on behalf of the European Community, those parts of the convention, which are covered by Community law.

¹¹ OJ C 327, 7.12.1995, p. 5.

¹² OJ C 10, 11.1.1997, p. 1.

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HAS ADOPTED THIS COMMON POSITION:

Article 1

1. Member States shall support the drawing up of the Council of Europe's draft European Convention on Action against Trafficking in Human Beings (hereinafter referred to as "Convention"). They shall advocate the inclusion in the Convention of provisions which will facilitate to the maximum extent possible the effective prosecution and punishment of criminal offences related to trafficking in human beings.
2. Member States shall ensure that the provisions of this Convention are consistent with legislation under Title VI of the Treaty on European Union, in particular with Council Framework Decision (2002/629/JHA) of 19 July 2002 on combating trafficking in human beings¹³, Council Framework Decision (2001/220/JHA) of 15 March on the standing of victims in criminal proceedings¹⁴, and with Council Framework Decision (2004/68/JHA) of 22 December 2003 on combating the sexual exploitation of children and child pornography¹⁵. Furthermore, Member States shall take into account other Council acts related to subjects covered by the Convention and relevant for the further measures against trafficking in human beings under Title VI of the Treaty on European Union, in particular the Council Conclusions (2003/C 137/01) of 8 May concerning the Brussels Declaration on Preventing and Combating Trafficking in Human Beings¹⁶, Council Resolution (2003/C 260/03) of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women¹⁷ and Council Recommendation of 27 November 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings¹⁸.

¹³ OJ L 203, 1.8.2003, p. 1.

¹⁴ OJ L 82, 22.3.2001, p. 1.

¹⁵ OJ L13, 20.1.2004, p.44.

¹⁶ OJ C 137, 12.6.2003, p. 1.

¹⁷ OJ C 260, 29.10.2003, p. 4.

¹⁸ Not published.

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3. The (...) Convention should make it clear that trafficking in human beings undermines the enjoyment of human rights by victims and must be prohibited in accordance with Article 5(3) of the Charter of Fundamental Rights of the European Union (...).
4. The Convention's definition of trafficking in human beings should take account of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and (...) the Council Framework Decision of 19 July 2002 on combating trafficking in human beings.¹⁹
5. With regard to criminal proceedings, Member States shall support the inclusion of provisions addressing the situation and special needs of women and children who become or may become victims of trafficking in human beings. (...) With regard to children, the Convention should include provisions requiring specific treatment best suited to their circumstances, necessary protection from the effects of giving evidence in open court, suitable training with particular reference to their needs and appropriate assistance for his or her family. (...).
6. With regard to substantive criminal law, the Convention shall include provisions requiring that offences concerning trafficking in human beings at least for the purposes of labour exploitation or sexual exploitation are punishable. Effective, proportionate and dissuasive criminal penalties, which may entail extradition, shall be foreseen for offences committed in aggravating circumstances. Member States shall support the inclusion in the Convention of provisions concerning the liability of and sanctions on legal persons for offences related to trafficking in human beings as well as concerning jurisdiction and prosecution.

¹⁹

OJ L 203, 1.8.2003, p. 1.

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Article 2

Member States should ensure that the Convention does not prevent them from (...) applying (...) instruments under Title VI of the Treaty on European Union in the matters dealt with in this Convention or adopting such instruments in the future.

Article 3

In the negotiations on the proposed Council of Europe Convention, Member States shall coordinate their positions, at the Council Presidency's initiative, and seek to arrive at common standpoints on all issues which have significant implications for the interests of the European Union. The Commission shall be fully associated with this work.

Article 4

In the negotiations, the European Union will invite Candidate Countries to support this Common Position.

Article 5

This Common Position is without prejudice to the authorisation of the Commission to negotiate, on behalf of the European Community, those parts of the Convention which are covered by Community law.

Done at Brussels,

For the Council

The President