



**Doc. 13082 – Compendium of written amendments**

**(Final version)**

## **Towards a Council of Europe convention to combat trafficking in organs, tissues and cells of human origin**

<b>Contents</b>	<b>Page</b>
A. Draft Recommendation .....	2

## A. Draft Recommendation

1. The Parliamentary Assembly welcomes the preliminary draft Council of Europe convention against trafficking in human organs. Closely associated with the preparation of the convention from the outset, the Assembly considers that this text represents the culmination of several years of efforts by the Council of Europe in the field of organ trafficking.
2. The Assembly notes that, at this stage, it has not been considered advisable to prepare an additional protocol against trafficking in human tissues and cells, largely due to the absence at both national and international levels of complete and harmonised regulation of the removal and use of tissues and cells. It nevertheless emphasises that, like organ trafficking, the trafficking of tissues and cells of human origin constitutes a grave threat to human rights and to public and individual health.
3. The Assembly points out that, once it has been adopted, the convention will be the first legally binding international instrument devoted solely to organ trafficking. This is why the Assembly takes the view that the convention must be as complete as possible in order to prevent and combat this worldwide phenomenon which contravenes the most basic standards in terms of human rights and human dignity.
4. With regard to the latter, the Assembly notes that questions relating to the prevention of organ trafficking, the protection of victims and national and international co-operation to combat such trafficking are not sufficiently detailed in the preliminary draft convention. It also notes that the draft leaves States complete freedom to decide whether donors and recipients may be prosecuted when they are involved in organ trafficking. Whatever position member States may take on this matter, the Assembly argues that these two categories of persons, because of the specific nature of their situation, which can sometimes be summed up as a "matter of life or death", may find themselves extremely vulnerable.

### Amendment 1

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, paragraph 1, replace the words "preliminary draft Council of Europe convention" with the following words: "draft Council of Europe convention".*

### Amendment 14

**Tabled by Mr Ramón JÁUREGUI, Ms Meritxell BATET, Ms Delia BLANCO, Mr Arcadio DÍAZ TEJERA, Mr Antonio GUTIÉRREZ LIMONES**

*In the draft recommendation, paragraph 2, after the words "and use of tissues and cells", add the following words: ", except for European Union directives on the matter".*

### Amendment 15

**Tabled by Mr Ramón JÁUREGUI, Ms Meritxell BATET, Ms Delia BLANCO, Mr Arcadio DÍAZ TEJERA, Mr Antonio GUTIÉRREZ LIMONES**

*In the draft recommendation, at the end of paragraph 3, add the following sentence: "It will be possible to explain the convention more clearly with other additional documents, in particular the explanatory document to be appended to it."*

### Amendment 2

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, paragraph 4, replace the words "preliminary draft convention" with the following words: "draft convention".*

### Amendment 16

**Tabled by Mr Ramón JÁUREGUI, Ms Meritxell BATET, Ms Delia BLANCO, Mr Arcadio DÍAZ TEJERA, Mr Antonio GUTIÉRREZ LIMONES**

*In the draft recommendation, paragraph 4, after the first sentence, add the following sentence: "However, this aim can be achieved with the explanatory document to be appended to the future convention."*

5. The Assembly underlines the utmost importance of protecting vulnerable persons, in particular children (under the age of 18), persons without (full) legal capacity and persons deprived of their liberty.

**Amendment 3**  
**Tabled by the Committee on Social Affairs,  
Health and Sustainable Development**

*In the draft recommendation, replace paragraph 5 with the following paragraph:*

*"The Assembly underlines the utmost importance of protecting vulnerable persons, in particular persons deprived of their liberty and persons who are unable to give full and valid consent to an intervention for reasons either of their age (in the case of minors) or their mental incapacity. In this connection, it welcomes the provision in the draft convention defining any removal of organs without the free, informed and specific consent of the living donor as illicit. This is in line with the provisions of the Convention of the Human Rights and Biomedecine (Oviedo Convention), which prohibit any organ removal from persons who do not have the capacity to consent, thereby affording special protection to that group of persons. The Assembly notes that, while it is possible for States to reserve the right not to apply this article, such a reservation would be accepted only in exceptional cases and in accordance with appropriate safeguards or consent provisions under their domestic law. The possibility of making a reservation is intended to facilitate access to the Convention for States whose legislation is less restrictive than the principles set out in the Oviedo Convention in relation to consent, while respecting the fundamental rights of the persons concerned."*

6. The Assembly notes with concern the practice followed by certain patients who travel abroad in order to obtain organs in return for payment, a practice widely referred to as "transplant tourism". In this context, it is particularly concerned about allegations that some States which are not members of the Council of Europe trade organs removed from prisoners and from executed detainees.

**Amendment 4**  
**Tabled by the Committee on Social Affairs,  
Health and Sustainable Development**

*In the draft recommendation, paragraph 7, replace the words "the Assembly calls for the future convention to have the broadest possible geographical scope" with the following words: "the Assembly welcomes the provision made in the draft convention for its opening to signature by States that are not members of the Council of Europe, even prior to its entry into force, which will foster the broadest possible geographical scope".*

7. Given that organ trafficking occurs worldwide, extending beyond the territory of the Council of Europe's member States, the Assembly calls for the future convention to have the broadest possible geographical scope. It also emphasises the importance of stringent and effective implementation of the convention, so that it can bring the desired added value to the work of the Council of Europe.

8. Consequently, the Assembly recommends that the Committee of Ministers:

8.1. complete the provisions of the preliminary draft convention relating to measures for the prevention of organ trafficking, the protection of victims and national and international co-operation against such trafficking, paying particular attention to measures to deal with the shortage of organs which is one of the main reasons for that trafficking, in particular by setting up a system of presumed consent for the removal of organs from deceased persons;

**Amendment 11**

**Tabled by Mr Jean-Yves LE DÉAUT, Mr Gérard BAPT, Ms Dzhema GROZDANOVA, Ms Foteini PIPILI, Ms Maria GIANNAKAKI, Mr Spyridon TALIADOUROUROS, Mr Hans FRANKEN, Mr Ludo SANNEN, Mr Dirk Van der MAELEN**

*In the draft recommendation, before paragraph 8.1, insert the following paragraph:*

*"include a provision whereby a human organ or a part thereof shall be defined as follows: a human body part that cannot regenerate and is essential to the integrity of the human body as a whole."*

**Amendment 17**

(If adopted, amendments 5, 12 falls)

**Tabled by Mr Ramón JÁUREGUI, Ms Meritxell BATET, Ms Delia BLANCO, Mr Arcadio DÍAZ TEJERA, Mr Antonio GUTIÉRREZ LIMONES**

*In the draft recommendation, delete paragraph 8.1.*

**Amendment 5**

(Falls if amendment 17 is adopted)

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, paragraph 8.1, replace the words "preliminary draft convention" with the following words: "draft convention".*

**Amendment 12**

(Falls if amendment 17 is adopted)

**Tabled by Mr Jean-Yves LE DÉAUT, Mr Gérard BAPT, Ms Dzhema GROZDANOVA, Ms Foteini PIPILI, Ms Maria GIANNAKAKI, Mr Spyridon TALIADOUROUROS, Mr Hans FRANKEN, Mr Ludo SANNEN, Mr Dirk Van der MAELEN**

*In the draft recommendation, paragraph 8.1, after the words, "for that trafficking, in particular", insert the following words: "by encouraging the parties to contribute, by all means at their disposal, to an increase in the supply of organs available for transplantation, in particular by seeking alternative methods and".*

8.2. include a provision in the convention on "mitigating circumstances" which includes, inter alia, the consideration of the particular vulnerability of organ donors and/or recipients who have committed the offences established in the convention, or refer to that particular vulnerability in the explanatory report to the convention, specifying that it should be taken into account when the penalties which may be applicable to these two categories of persons are determined;

8.3. include a provision in the convention whereby the usual dual criminality rule is not applicable, in order to combat "transplant tourism";

8.4. include a provision in the convention prohibiting the removal and use for transplantation purposes of organs from persons deprived of their liberty, living or deceased;

8.5. include a provision in the convention according special protection, including in matters of consent, to children (under the age of 18) and persons without (full) legal capacity;

8.6. provide for the convention to be opened for signature by non-member States of the Council of Europe as soon as it has been adopted;

8.7. provide for reporting requirements for the Parties, while encouraging the committee of the parties (the monitoring body) to carry out its duties bearing in mind the objective of ensuring that the convention is stringently and effectively implemented;

**Amendment 6**  
**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, paragraph 8.4, replace the words "for transplantation purposes" with the following words: "for transplantation or other purposes".*

**Amendment 7**  
**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, delete paragraph 8.5.*

**Amendment 13**  
**Tabled by Mr Jean-Yves LE DÉAUT, Mr Gérard BAPT, Ms Dzhema GROZDANOVA, Ms Foteini PIPILI, Mr Spyridon TALIADOURO**

*In the draft recommendation, after paragraph 8.5, insert the following paragraph:*

*"include a fifth sub-paragraph in Article 4 of the convention providing that there is presumed consent to removal if the living donor agrees to sign a contract for long-term medical follow-up;"*

**Amendment 8**  
**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, delete paragraph 8.6.*

**Amendment 9**  
**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft recommendation, replace paragraph 8.7 with the following paragraph:*

*"provide for an independent strong and effective Committee of the Parties assigned a clear function of co-ordination and monitoring on the basis inter alia of reporting requirements for the Parties; while entrusting the competent committees - the European Committee on Crime Problems (CDPC) and the Committee of Bioethics (DH-BIO) - with a role in supervising the convention's implementation."*

- 8.8. decide on a roadmap for the preparation of the additional protocol against trafficking in human tissues and cells.
9. The Assembly also recommends that the Committee of Ministers urge those member States which have not yet done so to sign and ratify the other two Council of Europe conventions which relate to the combating of trafficking in human organs, namely:
- 9.1. the Convention on Human Rights and Biomedicine (ETS No. 164) and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186);
- 9.2. the Convention on Action against Trafficking in Human Beings (CETS No. 197).

**Amendment 10**  
**Tabled by the Committee on Social Affairs,**  
**Health and Sustainable Development**

*In the draft recommendation, after paragraph 8.8, insert the following paragraph:*

*"call on those member States wishing to reserve the right not to apply the provision defining as illicit any removal of organs without the free, informed and specific consent of the living donor to instead revise their legislation in order to bring it into line with this provision and the Oviedo Convention."*