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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

- General approach

I. INTRODUCTION

1. In December 2022, the Commission submitted a proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.¹
2. The proposal was accompanied by an impact assessment and a communication.²

¹ 16322/22.

² 16322/22 ADD 1, 16322/22 ADD 2, 16322/22 ADD 3, 16322/22 ADD 4, 16322/22 ADD 5.

3. The Commission thereby noted that it is necessary to amend Directive 2011/36/EU in order to address evolving trends in the area of trafficking in human beings, as well as shortcomings identified by it, and to further step up efforts against this crime.

II. WORK AT THE LEVEL OF THE WORKING PARTY

4. Following the submission of the proposal, the Working Party on Judicial Cooperation in Criminal Matters (COPEN) started its examination under the Swedish Presidency of the Council. The examination proceeded relatively rapidly and led to a broad agreement on some adjustments of the text of the proposal.
5. After the meeting of JHA Counsellors on 17 May 2023, the Presidency concluded that a text identical to the text in Annex to this note could be submitted to Coreper with a view to preparing the general approach of the Council.

III. CONCLUSION

6. In light of the above,

the Permanent Representatives Committee is invited to

- confirm the agreement on the text of the proposal for a Directive as set out in the Annex³ to this note; and
- recommend that the Council reach a general approach on this text;

the Council is invited to

- reach a general approach on the text as set out in the Annex to this note, which will constitute the basis for the negotiations with the European Parliament in the framework of the ordinary legislative procedure (Art. 294 TFEU).

³ Modifications in relation to the original proposal are indicated in **bold** or ~~strikethrough~~.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2011/36/EU on preventing and combating trafficking in human beings
and protecting its victims

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 82(2) and 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

[Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,]

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combatting trafficking in human beings remains a priority for the Union and the Member States.
- (2) Directive 2011/36/EU of the European Parliament and the Council³ constitutes the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework to address trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen prevention and protection of victims, taking into account the gender perspective.

³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, [OJL 101](#), 15.4.2011, p. 1-11.

- (3) The EU Strategy on Combatting Trafficking in Human Beings 2021-2025⁴ sets out a policy response adopting a multi-disciplinary and comprehensive approach from prevention through protection of victims, to prosecution and conviction of traffickers. It included a series of actions to be implemented with the strong involvement of civil society organisations. In order to address evolving trends in the area of trafficking in human beings, as well as shortcomings identified by the Commission, and to further step up efforts against this crime, it is necessary, nevertheless, to amend Directive 2011/36/EU. ~~Identified threats and trends, which require the adoption of new rules concern in particular regarding the modi operandi of traffickers, including the commission or facilitation of offences concerning trafficking in human beings by means of information and communication technologies.~~ Identified shortcomings of the criminal law response requiring an adaptation of the legal framework relate to offences concerning trafficking in human beings committed in the interest of legal persons, to the data collection system, and to the national systems aimed at the early identification of, assistance to and support for victims of trafficking.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025, [COM\(2021\) 171 final](#), 14.4.2021.

- (4) In order to tackle the steady increase of the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, it is necessary to include forced marriage and illegal adoption in the forms of exploitations explicitly listed in ~~the~~ Directive 2011/36/EU and to ensure that the Member States address within their national legal systems the widest range of forms of exploitation, insofar as these fulfil the constitutive elements of trafficking in human beings. **Forced marriage and illegal adoption can already fall within the scope of offences concerning trafficking in human beings as defined in the Directive, to the extent that all criteria constituting the said offences are fulfilled. However, in view of the gravity of those practices, the exploitation of forced marriage and illegal adoption should be explicitly included as forms of exploitation in Directive 2011/36/EU. The rules in this Directive are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or offences related thereto, where provided in national or international law.**

- (5) An increasing number of offences concerning trafficking in human beings is committed or facilitated by means of information or communication technologies. Traffickers **frequently** use the internet and social media, inter alia to recruit, advertise or exploit victims, exercise control and organise transport. Internet and social media are also used to distribute exploitative materials. Information technology also hampers timely detection of the crime and identification of the victims and perpetrators. **The existing legal framework in Directive 2011/36/EU already includes, within the scope of the definition of trafficking in human beings, crimes committed with the use of information and communication technologies, for example in the recruitment and exploitation of victims, the organisation of their transport and accommodation, advertising victims online and reaching out to potential clients, controlling victims and communicating between perpetrators, included all related financial transactions. In order to address this modus operandi of traffickers, law enforcement needs to improve its digital capabilities and expertise, to keep up with technological developments. Furthermore, Member States are invited to consider preventative measures, in particular to discourage demand, that address the issue of abuse of online services for trafficking in human beings. It is therefore important to explicitly include the online dimension of the crime into the legal framework.**

- (6) In order to enhance the criminal justice response to offences concerning trafficking in human beings committed for the benefit of legal persons and to deter the commission of those offences, ~~it is necessary to strengthen~~ the sanctions regime against legal persons **should be clarified with a proportionate mandatory approach**. Therefore, ~~the optional sanctions regime set out in Directive 2011/36/EU is replaced with a mandatory sanctions regime applicable when a legal person is held liable pursuant to Article 5(1) and (2).~~
- (7) ~~In combatting trafficking in human beings, full use is to be made of existing instruments on the freezing and confiscation of proceeds and instrumentalities of crime, such as Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]⁵. The use of frozen and confiscated instrumentalities and proceeds from the offences referred to in Directive 2011/36/EU to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged. Directive [2014/42/EU] lays down minimum rules on the freezing and confiscation of the instrumentalities and proceeds of crime in criminal matters, and is applicable to the criminal offences covered by Directive 2011/36/EU. The provisions of Directive 2011/36/EU on freezing and confiscation are therefore obsolete and should be repealed.~~

⁵ COM (2022) 245.

- (8) In order to enhance the national capability to identify victims at an early stage, and to refer them to the appropriate protection, assistance and support services, it is necessary to establish by laws, regulations or administrative provisions **one or several National Referral Mechanisms** in the Member States. Establishing formal ~~national~~ referral mechanisms and appointing ~~national~~ focal points for the **cross-border** referral of victims are essential measures to enhance cross-border cooperation. **A referral mechanism should be a transparent, accessible and harmonised framework facilitating the early detection, identification, support and assistance of the victims of trafficking and their referral to the responsible national organisations and bodies. Such a framework should identify the participating competent authorities, civil society organisations and other stakeholders and set out their respective responsibilities, including the procedures and the line of communication. These mechanisms can take the form of a set of established procedures, guidelines, framework protocols or cooperation arrangements. A referral mechanism should apply to all victims and for all forms of trafficking offences taking into account the individual vulnerability of the victims. The focal points should serve as points of contact for the cross-border referral of victims. They can be based on existing mechanisms or governance structures and will not have to replace national complaint mechanisms or hotlines. Member States are encouraged to have one single national mechanism and one single focal point in place, when the organisation of public administration allows for this.**

- (9) In order to further reinforce and harmonise the criminal justice efforts on demand reduction across Member States, it is important **to criminalise the use of services when the user knows that the person providing the services which are the objects of exploitation with the knowledge that the person is a victim of an offence concerning trafficking in human beings.** Establishing this as a criminal offence is part of a comprehensive approach to demand reduction, which aims to tackle the high levels of demand that fosters all forms of exploitation. **The criminalisation should only target the use of services provided within the framework of exploitation covered by the offence of trafficking in human beings. The offence should therefore not apply to customers purchasing products produced under exploitative labour conditions, as they are not the users of a service.**

- (10) The collection of accurate and coherent data and the timely publication of collected data and statistics are fundamental to ensure full knowledge on the scope of trafficking in human beings within the Union. Introducing a requirement for Member States to collect and report to the Commission statistical data on trafficking in human beings every year in a harmonised way is expected to constitute a relevant step to enhance the general understanding of the phenomenon and to ensure the adoption of data-informed policies and strategies. ~~Due to the importance of having up-to-date statistical data as soon as possible it is appropriate to determine the date of the application of the article on data collection at the earliest point in time, which is the entry into force of this Directive.~~ **Member States are encouraged to maintain the granularity of annual data collection introduced in 2022, based upon the guidelines agreed between the Member States and EUROSTAT, which has produced the statistics used for the report pursuant to Article 20 of Directive 2011/36/EU as well as for the annual United Nations Office on Drugs and Crime Global Report on Trafficking in Persons.**
- (11) Since the objectives of this Directive, namely preventing and combating trafficking in human beings and protecting the victims of this crime, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effect of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(12) The Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the respect and protection of human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the equality between women and men, the rights of the child, the rights of persons with disabilities, and the prohibition of child labour, the right to an effective remedy and to a fair trial, the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for these rights and principles, which are to be implemented accordingly.

(13) ~~In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application. [Or]~~ In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of **20 April 2023**⁶, its wish to take part in the adoption and application of this Directive.

⁶ 8928/23.

- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (15) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (16) Directive 2011/36/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2011/36/EU

Directive 2011/36/EU is amended as follows:

- (1) in Article 2, paragraph 3, **shall have the following wording:** ~~the words “forced marriage, or illegal adoption” is added”, at the end of the paragraph.~~

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **the exploitation of forced marriage or of illegal adoption,** forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

- ~~(2) the following Article 2a is inserted:~~

⁷ OJ C 369, 17.12.2011, p. 14.

~~“Article 2a
Offences concerning trafficking in human beings
committed or facilitated by means of information or communication technologies~~

~~Member States shall take the necessary measures to ensure that the intentional acts and means referred to in Article 2(1), and exploitation as set out in Article 2(3) shall include acts committed by means of information and communication technologies.”~~

(3) Article 6 ~~is and~~ 7 are replaced by the following:

~~“Article 6
Sanctions on legal persons~~

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is **punishable by effective, proportionate and dissuasive** ~~subject to criminal or non-criminal sanctions or measures. fines and, if appropriate, to the following sanctions:~~
 - ~~(a) exclusion from entitlement to public benefits, aid or subsidies;~~
 - ~~(b) temporary or permanent closure of establishments which have been used for committing the offence.~~
2. Member States shall take the necessary measures to ensure that **sanctions or measures for a legal persons held liable pursuant to Article 5(1) or (2) for the offences referred to in Articles 2 and 3** ~~an offence aggravated by any of the circumstances set forth in Article 4(2) is subject,~~ **include criminal or non-criminal fines and may include other criminal or non-criminal sanctions or measures, such as:** ~~if appropriate, to the following sanctions:~~
 - (a) exclusion from entitlement to public benefits or aid;**
 - (b) closure of establishments used for committing the offence;**

(ac) ~~temporary or permanent~~ disqualification from the practice of **businesscommercial** activities;

(bd) placing under judicial supervision;

(ee) judicial winding-up.

~~3. Member States shall ensure that sanctions referred to in paragraphs 1 and 2 are effective, proportionate and dissuasive.²²~~

(3a) Article 7 of Directive 2011/36/EU is repealed.

Article 7

Freezing and confiscation

~~Member States shall take the necessary measures to ensure that their competent authorities are entitled to trace, freeze, manage and confiscate, in accordance with Directive EU/XX/YY of the European Parliament and of the Council [Proposed *Directive on asset recovery and confiscation*]⁸; the proceeds derived from, and instrumentalities used or intended to be used for the commission, or contribution to the commission, of the offences referred to in this Directive.~~

(4) in Article 11, paragraph 4 is replaced by the following:

“4. Member States shall take the necessary measures to establish by laws, regulations or administrative provisions, **one or several national** referral mechanisms aimed at the early identification of, assistance to, and support for victims, in cooperation with relevant support organisations, and to appoint a ~~national~~**one or several** focal points for the **cross-border** referral of victims.”

(5) Article 18, paragraph 4 is deleted.

(6) the following Article 18a is inserted:

⁸ ~~COM (2022) 245.~~

“Article 18a

Offences concerning the use of services ~~which are the object of exploitation with knowledge that the person providing the services~~ ~~person~~ is a victim of an offence concerning trafficking in human beings

- (1) ~~In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand,~~ Member States shall take the necessary measures to establish as a criminal offence **ensure that the intentional use of services provided by a victim of an offence which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2, constitutes a criminal offence, where the victim is exploited to render such services and the user of the services acts with the knowledge that the person providing the service is a victim of an offence referred to in Article 2.**
- (2) Member States shall take the necessary measures to ensure that an offence as established in accordance with paragraph 1 is punishable by effective, proportionate and dissuasive penalties and sanctions.
- (3) **Articles 5, 6, 9(1) and Article 10(1) and (2) shall apply to the offence described in paragraph 1.”**
- (7) the following Article 19a is inserted:

“Article 19a

Data collection and statistics

1. Member States shall **ensure that a system is in place for the recording, production and provision of anonymised** collect-statistical data to monitor the effectiveness of their systems to combat offences referred to in this Directive.

2. The statistical data referred to in paragraph 1 shall ~~include, as a minimum at least,~~ **include data available at the central level on the following:**
- (a) the number of **identified and presumed** ~~registered~~ victims of offences referred to in Article 2, **to the extent possible, in accordance with national law and practices,** ~~disaggregated, by registering organisation, sex, age groups (child/adult), citizenship, and form of exploitation;~~
 - (b) the number of suspects of offences referred to in Article 2, disaggregated, **to the extent possible,** by sex, age groups (child/adult), citizenship, and form of exploitation;
 - (c) the number of persons prosecuted for offences referred to in Article 2, disaggregated, **to the extent possible,** by sex, age groups (child/adult), citizenship, form of exploitation, nature of the final decision to prosecute;
 - (d) the number of prosecution decisions (charge for offences referred to in Article 2, charge for other criminal offences, decision not to charge, other);
 - (e) the number of persons convicted for offences referred to in Article 2, disaggregated, **to the extent possible,** by sex, age groups (child/adult), citizenship;
 - (f) the number of court judgments (acquittal, convictions, other) for offences referred to in Article 2, ~~for first instance, second instance and final court (or high court) decisions;~~
 - (g) the number of suspects, persons prosecuted and convicted for offences referred to in Article 18a, disaggregated, **to the extent possible,** by sex and age groups (child/adult).
3. Member States shall transmit annually to the Commission, by **31 December**~~1 July~~ each year, the statistical data referred to in paragraph 2 for the previous year.

(8) In Article 23, the following paragraph 3 is inserted:

“3. The Commission shall, [*by five years after transposition deadline*], submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with Article 18a and the impact of such measures.”

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ~~two one~~ years after the entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. ~~Point (7) of Article 1, which inserts Article 19a into Directive 2011/36/EU shall start to apply on the day referred to in Article 3.~~

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President