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To:	Presidency
Subject:	Proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims – Opinion of the European Economic and Social Committee and the Committee of the Regions

Delegations will find attached the opinion adopted by the European Economic and Social Committee on the above-mentioned proposal. Other language versions, if needed, will soon be available on the following website: <https://dmsearch.eesc.europa.eu/search/opinion>



OPINION

European Economic and Social Committee

Anti-Trafficking Directive

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

[COM(2022) 732 final - 2022/0426(COD)]

Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Report on the progress made in the fight against trafficking in human beings (Fourth Report)

[COM(2022) 736 final]

SOC/752

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Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	03/04/2023
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Outcome of vote (for/against/abstentions)	125/01/01

1. Conclusions and recommendations

- 1.1 Trafficking in human beings is a heinous crime and a serious violation of people's fundamental rights. The European Union's 2020 Security Strategy identifies the role of organised crime in human trafficking and the human cost involved.
- 1.2 2011 saw the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. In 2021, the European Commission adopted the EU Strategy on Combatting Trafficking in Human Beings 2021-2025 and indicated that the implementation of the directive should be evaluated in order to improve it.
- 1.3 The EESC welcomes the fourth progress report highlighting the evolution of the phenomena as well as the proposal for amending the Anti-Trafficking Directive. The directive seeks to prevent and combat trafficking in human beings and to protect victims. To this end, it is structured around three policy frameworks: (i) criminalising, investigating and prosecuting trafficking in human beings, including defining offences and establishing penalties and sanctions; (ii) assisting, supporting and protecting victims of trafficking in human beings; and (iii) preventing trafficking in human beings.
- 1.4 The EESC welcomes the broadening of the definition of the different forms of exploitation. The EESC agrees that these offences should be understood as a non-exhaustive list, as, regrettably, exploitation takes on new facets every day. The Committee considers that Member States should understand the issue of trafficking in this way, providing a comprehensive overview of issues linked to exploitation.
- 1.5 The EESC believes that the gender dimension in the content and implementation of the directive should be strengthened, given that the vast majority of victims are women and girls. Similarly, attention should be paid to vulnerable situations that may facilitate recruitment and exploitation by criminal networks and others. In addition more attention is needed for other vulnerable groups including refugees, asylum seekers, and people who are undocumented or have a precarious residence status.
- 1.6 The EESC welcomes the explicit reference to the online dimension of human trafficking offences. The use of new technologies has encouraged human trafficking offences, allowing and facilitating greater access to victims and their exploitation, and creating more difficulties when it comes to monitoring the profits derived from these offences.
- 1.7 The EESC supports the development of a better sanctioning system by the Commission. As the evaluation showed that most Member States had not fully developed the optional sanctioning measures, the new mandatory system, which distinguishes between ordinary and aggravated offences, reinforces the fight against trafficking offences.
- 1.8 The EESC also welcomes the fact that legal persons can be penalised by sanctions that can exclude them from receiving public aid or support, permanent temporary or permanent closure of establishments, or temporary or permanent disqualification from carrying out commercial activities. The EESC believes that the conscious use of exploitation services could be linked to

the Directive on Corporate Sustainability Due Diligence, so that companies that benefit from the various forms of exploitation can also be held accountable.

- 1.9 The EESC believes that the directive should pay greater attention to victims of trafficking, and wishes to highlight the Member States' obligation to care for and protect victims and ensure their social inclusion as far as possible. In addition to restating the need to avoid punishing victims of trafficking, the directive should strengthen mechanisms and tools to assist and support victims, especially those from vulnerable groups.
- 1.10 The EESC calls on the Commission to include in its proposal for a directive the need to comply with Directive 2004/81/EC 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 irregular immigration and who cooperate with the competent authorities¹.
- 1.11 The EESC reiterates the importance of working to prevent trafficking, emphasising the need to reduce demand for all forms of exploitation. As noted in the report, demand for cheap labour and prostitution continues to grow, despite them often being associated with existing human trafficking offences.
- 1.12 The EESC agrees on the need to improve data collection, but also to finetune the tools in order to identify these offences more effectively. As highlighted in the report, it is clear that there are a significant number of unreported cases, a situation that must also be corrected and addressed through coordination and cooperation between the Member States, as well as with the European institutions.
- 1.13 The EESC believes that the presentation of this proposal for a directive should be used to raise awareness of and better communicate the need to strengthen the fight against trafficking in human beings. The infringement of rights that arises from different types of exploitation requires a comprehensive and multidimensional response, in which citizens play a key role in tackling the impunity and normalisation of these forms of abuse.
- 1.14 The EESC recalls that the factors influencing trafficking in human beings include: "feminisation of poverty"; different access to study and resources for men and women; medical and health inequalities; the spread of gender-based violence worldwide; and the more general social disparity between men and women.
- 1.15 The development of further national referral mechanisms by the Member States, involving civil society organisations in identifying victims and providing support services, is an important and necessary step. A further tool could be established for each Member State: an independent monitoring and assurance body, which includes a national rapporteur who monitors the effectiveness of the measures implemented by Member States in the fight against trafficking, carries out research, and engages with public and private stakeholders who deal with the phenomenon at various levels.

¹ [Council Directive 2004/81/EC of 29 April 2004.](#)

2. General comments

- 2.1 Trafficking in human beings was defined internationally by the UN in 2000, when it stated that:
- "trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (Article 3 - UN TIP Protocol - 2000);
 - exploitation is understood to mean "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".
- 2.2 Trafficking in human beings is a heinous crime and a serious violation of people's fundamental rights. The European Union's 2020 Security Strategy identifies the role of organised crime in human trafficking and the human cost involved.
- 2.3 2011 saw the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (the Anti-Trafficking Directive). The adoption of this directive marked an important step in harmonising rules between the Member States. In 2021, Commission adopted the EU Strategy on Combatting Trafficking in Human Beings 2021-2025 and indicated that the implementation of the directive should be evaluated in order to improve its implementation.
- 2.4 The evaluation carried out by the Commission covers the directive's transposition period (April 2013) to date (March 2022) and used data collected at European level as well as qualitative information resulting from discussions with experts and specialised bodies.
- 2.5 The Commission's internal evaluation highlighted the difficulties of correctly identifying the actual number of victims, as the figure of 55 314 cases identified between 2013 and 2022 is considered to be an underestimation. Sexual exploitation remains the predominant form of trafficking in human beings – accounting for 55.7 % of cases reported in 2021 – with labour exploitation becoming increasingly common, especially in sectors such as agriculture, construction and care services. Child victims account for 21% of the total victims of trafficking, while women and girls account for 75%.
- 2.6 The evaluation and the report note that the level of prosecutions and convictions is very low, which can contribute to a culture of impunity among traffickers. Social media networks have opened up new opportunities for criminal networks operating in the EU, most of which are involved in human trafficking. The war in Ukraine could also lead to an increase in human smuggling and trafficking. Trafficking in human beings continues to be a low-risk crime with high profits.

- 2.7 While the directive served to establish a common framework of anti-trafficking legislation, it has also highlighted the difficulties of making progress in tackling certain forms of exploitation that are not covered by the definition of trafficking and cross-border offences. The directive also identifies areas for improvement when it comes to investigating and prosecuting traffickers, as well as the need to improve law enforcement and judicial capacities to carry out financial investigations involving trafficking.
- 2.8 While the directive also focuses on protection from trafficking, the evaluation has shown that there is room for improvement, including on issues such as the application of the principles of non-prosecution and non-criminalisation of victims; the protection of victims throughout investigations and judicial proceedings; and the provision of assistance that matches the characteristics and needs of the victims, especially children and vulnerable groups. Poor data collection and processing has also been identified as a problem.
- 2.9 The evaluation recognises the importance of the directive as a turning point in the fight against trafficking in the EU. At the same time, it also highlights the need for progress in the development of tools to improve the monitoring, prevention, prosecution and court handling of trafficking and traffickers, as well as to improve assistance for victims.
- 2.10 In this context, the proposal put forward by the Commission is a proposal to amend the directive. The proposal seeks to provide a number of measures to improve the prevention of and fight against human trafficking in the EU, as well as to improve the protection of victims.

3. The Anti-Trafficking Directive

- 3.1 The Anti-Trafficking Directive seeks to prevent and combat trafficking in human beings and to protect victims. To this end, it is structured around three policy frameworks: (i) criminalising, investigating and prosecuting trafficking in human beings, including defining offences and establishing penalties and sanctions; (ii) assisting, supporting and protecting victims of trafficking in human beings; and (iii) preventing trafficking in human beings.
- 3.2 The EESC welcomes the proposal to amend this directive, as it agrees with the need for further progress and improvement in the fight against trafficking in human beings and the protection of victims. The EESC agrees that the crime of human trafficking has become a growing threat, in a more challenging context than in that of 2011.
- 3.3 The EESC welcomes the broadening of the definition of the different forms of exploitation, and commends the report for referring to these different forms. While sexual exploitation is still the most common form of exploitation in trafficking cases, followed by labour exploitation, there are other forms that are covered by the directive (exploitation for begging, for the purpose of carrying out criminal activities, or trafficking in organs), some of which have also been growing in recent years. Similarly, other formulas have emerged that were not included in the directive, but that could also be regarded as forms of trafficking, such as forced marriages, gestational surrogacy or illegal adoptions. The EESC would welcome the inclusion of a reference to "particular exploitative working conditions", as reflected in the EU Employers Sanctions Directive. The EESC believes that more guidance from the Commission is needed on the

definitions of all these different possible forms to ensure more uniform application by Member States.

- 3.4 The EESC agrees that these offences should be understood as a non-exhaustive list, as, regrettably, exploitation takes on new facets every day. The Committee considers that Member States should understand the issue of trafficking in this way, providing a comprehensive overview of issues linked to exploitation.
- 3.5 The EESC believes that the gender dimension in the content and implementation of the directive should be strengthened, given that the vast majority of victims are women and girls. Similarly, attention should be paid to specific vulnerable groups including refugees, asylum seekers, and people who are undocumented or have a precarious residence status, as well as to vulnerable situations that may facilitate recruitment and exploitation by criminal networks. It points out that the factors that influence trafficking in human beings include: "feminisation of poverty"; different access to study and resources for men and women; medical and health inequalities; the spread of gender-based violence worldwide and the more general social disparity between men and women.
- 3.6 The EESC welcomes the explicit reference to the online dimension of human trafficking offences. The use of new technologies has encouraged human trafficking offences, allowing and facilitating greater access to victims and their exploitation, and creating more difficulties when it comes to monitoring the profits derived from these offences. Social media networks have facilitated the recruitment and exploitation of victims, and have incorporated new forms of abuse into exploitation situations, such as the distribution of images, videos, etc.
- 3.7 The EESC is in favour of the Commission developing a better sanctioning system. As the evaluation showed that most Member States have not fully developed the optional sanctioning measures, the new mandatory system, which distinguishes between ordinary and aggravated offences, reinforces the fight against trafficking offences.
- 3.8 The EESC also welcomes the fact that legal persons can be penalised by sanctions that can exclude them from receiving public aid or support, permanent temporary or permanent closure of establishments, or temporary or permanent disqualification from carrying out commercial activities. The EESC believes that the conscious use of exploitation services could be linked to the Directive on Corporate Sustainability Due Diligence, so that companies that benefit from the various forms of exploitation can also be held accountable. Experiences with cases of labour exploitation could be a point of reference.
- 3.9 The EESC views as a step forward the proposal for an amendment criminalising the act of using services or activities originating from exploitation in the knowledge that the person providing the service or activity is the victim of a trafficking offence – i.e. the conscious or knowing use of exploitation services – which may also be accompanied by tougher measures by the Member States. The EESC considers it important to give Member States more support with implementation in this matter, to assess the impact of this point in terms of both preventing and prosecuting trafficking in the transposition report to be presented by the Commission to the Parliament and the Council, in order to ensure that it has not had harmful effects on victims or

vulnerable groups and that it has led to progress in tackling the "culture of impunity" surrounding these crimes.

- 3.10 The EESC deems it appropriate for the Commission to adapt the regulatory and sanctions framework to the online world. In this connection, it is particularly positive that the directive includes the freezing and confiscation of assets, in accordance with the regulatory frameworks established by the European Union in this regard. Assets recovered from perpetrators should become available to compensate victims, and victims should be given priority in the ranking of creditors.
- 3.11 The EESC welcomes the fact that the Commission emphasises the need to improve cooperation on trafficking offences between different Member States. Cross-border cooperation is key and can be improved by exchanging information, undertaking joint actions, and training professional staff dealing with cross-border victims, especially law enforcement services.
- 3.12 The development of further national referral mechanisms by the Member States, involving civil society organisations in identifying victims and providing support services, is an important and necessary step. The EESC believes that the Commission should support the Member States in setting up or strengthening these tools, which can be coordinated at European level to improve the care and protection of victims of trafficking. Progress in establishing a European referral tool is necessary in order to improve harmonisation in the care of and assistance to victims and in the development of support systems for victims. A further tool could be established for each Member State: an independent monitoring and assurance body, which includes a national rapporteur who monitors the effectiveness of the interventions implemented by Member States in the fight against trafficking, carries out research, and engages with public and private stakeholders who deal with the phenomenon at various levels.
- 3.13 The EESC believes that the directive should pay greater attention to victims of trafficking, and wishes to highlight the Member States' obligation to care for and protect victims and ensure their social inclusion as far as possible. In addition to restating the need to avoid punishing victims of trafficking, the directive should strengthen mechanisms and tools to assist and support victims, especially those from vulnerable groups such as minors minorities, refugees or undocumented migrants. It should also further explore and strengthen tools for victim redress and for prevention, including safe mechanisms for reporting and complaints and funds for compensation.
- 3.14 Integration into the country of destination is achieved by providing victims of trafficking with personalised assistance, information, training and empowerment projects, through: reception in specific protected structures; compulsory issue of a residence permit, as a *sine qua non* for exiting trafficking; assistance, information and health prevention; psychological support and cultural mediation; social and legal information and advice; language and literacy courses; skills and competences; vocational guidance and training; integration into the labour market.
- 3.15 The directive does not address legislative changes concerning either the protection of victims' rights or the assistance and support for trafficked persons, where there is still ample room for improvement. The EESC points out that Directive 2012/29/EU establishing minimum standards

on the rights, support and protection of victims of crime addresses, among other things, the specific needs of particular categories of victims of trafficking in human beings, sexual abuse, sexual exploitation, and child pornography.

- 3.16 The EESC calls on the Commission to include in its proposal for amending the directive the need to comply with Directive 2004/81/EC 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 irregular immigration and who cooperate with the competent authorities².
- 3.17 "Victim's cooperation" should be understood as the desire to join an individual social integration project for exiting exploitation. A residence permit cannot be granted solely to those who decide to cooperate with the judicial authorities, as the alternatives to trafficking – i.e. access to subnational skilling and empowerment services – inevitably require a residence permit to be issued.
- 3.18 Victims are reluctant to testify against their traffickers. They often live in a state of permanent blackmail and giving a testimony forces them to risk their lives and that of their families. In that regard, it is important to remember that the consent of a victim of trafficking in human beings to exploitation is irrelevant (Article 3(b) - UN TIP Protocol - 2000).
- 3.19 The EESC also calls on the Commission to make progress in implementing the recommendations contained in its publication *The EU rights of victims of trafficking in human beings*³ so that Member States always grant residence permits to victims of trafficking in the following cases:
- where the presence of the victim is necessary for the investigation or judicial proceedings;
 - where the victim has shown a clear willingness to cooperate;
 - where the victim has terminated any relationship with the perpetrator(s) of the trafficking offence;
 - where the victim does not pose a risk to public order or security.

The EESC also invites Member States to make more use of the opportunity to offer residence permits to victims on humanitarian or personal grounds, even when the above conditions are not fulfilled.

- 3.20 The EESC reiterates the importance of working to prevent trafficking, emphasising the need to reduce demand all forms of exploitation. Demand for cheap labour and prostitution continues to grow, despite them often being associated with existing human trafficking offences.
- 3.21 The EESC believes that the numerous activities that seek to improve information and awareness regarding these issues should be strengthened, including by exploring new communication

² [Council Directive 2004/81/EC of 29 April 2004.](#)

³ [The EU rights of victims of trafficking in human beings.](#)

tools, training, educational programmes and awareness-raising campaigns to strengthen the fight against trafficking in all Member States.

- 3.22 The EESC agrees on the need to improve data collection, but also to improve the tools to identify these crimes more effectively. It is clear that there are a significant number of unreported cases, a situation that must also be corrected and addressed through coordination and cooperation between the Member States, as well as with the European institutions. The proposal for an annual statistical report on trafficking could help to provide better data and to improve efforts and also improve public awareness of these offences.
- 3.23 Similarly, the EESC welcomes the Commission's recognition of the need to provide an annual report on the work of the Member States on anti-trafficking efforts to the Parliament and the European Council, highlighting the implementation of the measures and their impact.
- 3.24 The EESC believes that the presentation of this proposal to amend the directive should be used to raise awareness of and better communicate the need to strengthen the fight against trafficking in human beings. The infringement of rights that arises from different types of exploitation requires a comprehensive and multidimensional response, in which citizens play a key role in tackling the impunity and normalisation of these forms of abuse.

Brussels, 27 April 2023

Oliver Röpke

The president of the European Economic and Social Committee
