Council of the European Union

Brussels, 2 February 2024
(OR. en)

5911/24

Interinstitutional File:
2022/0426(COD)

LIMITE

DROIPEN 8
COPEN 35
JAI 135
FREMP 40
SOC 55
CODEC 191

PUBLIC

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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 - Confirmation of the final compromise text with a view to agreement

Delegations will find in Annex the final compromise text of the above Directive.

ANNEX

2022/0426 (COD)

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

PUBLIC

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 Article 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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],]

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***, and supporting victims of trafficking, regardless of their country of origin,*** remains a priority for the Union and the Member States.

(1a) Trafficking in human beings has different root causes. Poverty, conflict, inequality, gender-based violence, the absence of viable employment opportunities or social support, humanitarian crisis, statelessness and discrimination are among the main factors that make persons, especially women, children and members of marginalised groups, vulnerable to trafficking.

(2) Directive 2011/36/EU of the European Parliament and the Council[3] 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 the assistance*** and protection of victims, taking into account the gender***, disability and child perspectives and a victim-centred approach***.

[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, OJ L 101, 15.4.2011, p. 1–11.

2(a) ***Trafficking in human beings can be exacerbated where it intersects with discrimination based on sex and other grounds of discrimination prohibited by Union law. Member States should therefore pay due regard to victims affected by such intersectional discrimination and the resulting increased vulnerability, through providing specific measures where intersecting forms of discrimination are present. Particular attention should be paid to discrimination based on racial and ethnic origin.***

(3) The EU Strategy on Combatting Trafficking in Human Beings 2021-2025[4] 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 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, ***to the cooperation and coordination at Union and national level,*** to the national systems aimed at the early ***detection,*** identification of, ***specialised*** 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) ***The exploitation of surrogacy, of forced marriage, or of 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 and*** 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, ***the exploitation of surrogacy, of*** forced marriage***, or of*** illegal adoption ***should be included as*** forms of ***exploitation in Directive 2011/36/EU,*** insofar as these fulfil the constitutive elements of trafficking in human beings***, including the means criteria. As concerns more specifically the trafficking for the exploitation of surrogacy, this should target those who coerce or deceive women into acting as surrogate mothers. The rules in this Directive are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or offences related thereto other than*** trafficking***, where provided in national or international law. It is also without prejudice to the national rules on surrogacy, including in the context of criminal law as well as family law***.

(4a) Children placed in residential and closed-type institutions are a group particularly vulnerable to trafficking in human beings. They can fall victim of trafficking when being placed in these institutions, during their placement and after.

(4b) Children are considered one of the most vulnerable groups targeted by organised criminal groups involved in trafficking of human beings. These children are often exploited by criminal groups by being recruited into joining organised criminal groups to later commit criminal activities. Member States should promote or offer regular and specialised training to professionals likely to come into contact with these children to detect and identify these victims.

PUBLIC

(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. ▌

(5a) 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.

(5b) Moreover, the level of penalties should reflect the higher concern for more serious conducts, and for the more harmful and longer-lasting impact these have on the victims. This includes the amplifying effect of the dissemination of exploitative material, also in closed groups accessible to a limited number of participants. Therefore, it is necessary to provide for an aggravating circumstance related to the dissemination of images or videos or similar material of a sexual nature involving the victim, by means of information and communication technologies.

PUBLIC

(5c) While there is no obligation to increase sentences, Member States should ensure that the judge or the court is able to take the aggravating circumstances set out in this Directive into account when sentencing offenders. It remains within the discretion of the judge or the court to determine whether to increase the sentence due to the specific aggravating circumstances, taking into account all the facts of the particular case. Member States should not be obliged to provide for aggravating circumstances where national law provides for the criminal offence of dissemination of images or videos or similar material of a sexual nature involving the victim, by means of information and communication technologies, as a separate criminal offence and this may lead to more severe sanction.

(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, ▌ the sanctions regime against legal persons ***should be clarified and brought in line with other Union criminal law instruments. According to Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU), a conviction by a final judgement for child labour and other forms of trafficking in human beings is a ground for an exclusion from participation in a procurement procedure or a concession award procedure. Nevertheless, Member States may also decide to include exclusion from tender procedures or concessions among the criminal or non-criminal*** sanctions ***or measures which can be imposed on legal persons, in order to also cover procurements and concessions below the thresholds of the relevant directives***.

(7) ▌ ***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***.

PUBLIC

(7a) In order to facilitate the payment of compensation to victims, Member States may establish a national victims fund or similar instruments, which may include laws that ensure the compensation of victims of human trafficking.

(7b) In order to reinforce national policy responses, it is necessary to establish National Anti-Trafficking Coordinators or equivalent mechanisms, and Member States should be able to establish independent bodies. It falls within the competence of the Member States to decide which entities are designated or established as national anti-trafficking coordinators, equivalent mechanisms or independent bodies, regardless of their title, in accordance with the principle of procedural autonomy of the Member States, provided that such entities have the necessary competences to carry out the tasks provided for in this Directive.

(7c) Article 8 of Directive 2011/36/EU sets out the possibility of non-prosecution and non-application of penalties of victims of trafficking in relation to criminal offences that they have been compelled to commit as a direct consequence of being subject to trafficking. It is appropriate to expand its scope to all unlawful activities that victims have been compelled to commit as a direct consequence of being subject of trafficking, such as administrative offences related to prostitution, begging, loitering or undeclared work, or other acts which are not criminal in nature but subject to administrative or pecuniary sanctions, in accordance with national law, in order to further encourage the victims to report the crime or seek for support and assistance and reassure them of the possibilities of not being held responsible.

PUBLIC

(8) In order to enhance the national capability to ***detect and*** 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*** referral mechanisms in the Member States. Establishing formal referral mechanisms and appointing ***a*** national focal ***point*** 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, cooperation arrangements or protocols. A referral mechanism should apply to all victims and to all forms of trafficking offences taking into account the individual vulnerability of the victims. The focal point should serve as a point of contact for the cross-borders referral of victims in the relations between the authorities or institutions responsible for the cross-border support of victims in the different Member States, but not for the victims themselves. 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 referral mechanism in place when the organisation of public administration allows for this.***

PUBLIC

(8a) In order to improve the assistance and support to victims of trafficking in human beings, Member States should ensure that victims have access to shelters and safe accommodation equipped to accommodate the specific needs of victims of trafficking of human beings. In order to reinforce the safety of presumed or identified victims, Member States are encouraged to require that personnel coming in contact with victims of trafficking in shelters do not have a criminal record of offences concerning the trafficking of human beings or of crimes or offences that lead to serious doubts about their ability to assume a role of responsibility with regards to victims.

(8b) Member States should also ensure that victims receive assistance irrespective of their nationality or of being stateless, their citizenship, place of residence or residence status as well as form of exploitation. The assistance should aim at their full reintegration into society, which may include access to education, training and access to the labour market, in accordance with the national law, as well as a return to an independent living.

(8c) Any measure constraining the children's liberty in order to protect them should be strictly necessary, proportionate and reasonable to the aim of protecting the individual child.

(8d) In the context of training, and in order to ensure effective implementation of the national provisions adopted regarding the non-prosecution or non-application of penalties, Member States should raise awareness among prosecutors and law enforcement authorities likely to come in contact with victims or potential victims of trafficking in human beings.

(8e) With a view to supporting the national policies, Member States should also develop National Anti-Trafficking Action Plans.

PUBLIC

(8f) ***In the case of children, Member States are encouraged to ensure that national child protection systems develop specific plans to prevent trafficking in human beings, including for children in residential or closed-type institutions.***

(9) In order to ***develop a coherent policy response to tackle demand and to*** further reinforce and harmonise the criminal justice efforts on demand reduction across Member States, it is important ***to*** criminalise the use of services ***where the victim is exploited to render such services and the user of the services knew*** that the person ***providing the service*** is a victim of an offence concerning trafficking in human beings. Establishing this as a criminal offence is part of a comprehensive approach to ***reduce*** demand 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. This Directive establishes a minimum legal framework in this regard, and Member States are free to adopt or maintain more stringent criminal rules. In national law, Member States may criminalise the purchase of sexual acts. This is without prejudice to the way in which Member States deal with prostitution in their domestic law.***

PUBLIC

(9a) ***This directive criminalises the use of a service from a victim of trafficking in human beings when it is committed with the knowledge that the person providing the service is a victim. The notion of "knew" should be interpreted in accordance with national law. In each case, when assessing whether the user knew that the person was a victim of trafficking, and without prejudice to judicial independence, the specific circumstances of the case should be taken into account. Knowledge can be inferred from objective, factual circumstances. The circumstances may relate to, inter alia, the person of the victim, the conditions under which the services had to be provided by the victim and specific facts that could be seen as signs of control of the trafficker over the victim. With regard to circumstances relating to the person of the victim the lack of proficiency in one national or regional language, manifest signs of psychological or physical harm or of fear or the lack of knowledge of the cities or places where they have been or are, can be taken into account. With regard to circumstances relating to the conditions under which the services had to be provided, the living standards and working conditions of the provider of the service could be taken into account, as well as the condition of the premises in which the service is provided. Signs of control of the trafficker over the victim could be established when there is manifest external control measures on the provider of the service, constrained freedom of movement, or the fact that the provider of the service is not in possession of their national identity card or passport.***

(9b) ***Prevention and demand reduction actions should be targeted and differentiated to efficiently address the specificities of different forms of trafficking. In order to achieve the objective of discouraging and reducing the demand that fosters trafficking, it is important that Member States consider taking further appropriate action targeting potential and current users, such as offering specifically designed awareness raising campaigns.***

PUBLIC

(9c) Persons with disabilities, in particular women and children, are at an increased risk of becoming victims of trafficking. Member States should consider the specific needs of victims of trafficking with disabilities when providing these victims with support measures.

(9d) Stateless persons are at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, it is important to pay particular attention to this vulnerable group.

(10) The collection of accurate***, coherent and anonymised*** 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. ▌

(10b) Member States should take into account the specific situation of vulnerability of victims of trafficking in need of international protection in asylum procedures, including, where applicable, through special procedural guarantees and special reception needs in accordance with Directive (EU) XX/YY of the European Parliament and of the Council [Proposed Directive on laying down standards for the reception of applicants for international protection].

PUBLIC

(10c) To prevent victims from being retrafficked within the Union, it is important that when transferring victims under Regulation XX/YYYY [...] , Member States do not transfer victims to a Member State where there are substantial grounds for believing that the victims, because of the transfer to that Member State, would face a real risk of violation of their fundamental rights that amounts to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

(10d) Victims have the right to apply for international protection or equivalent national status. They may also benefit from a residence permit under Council Directive 2004/81/EC, where applicable. Therefore, Member States should ensure that these two procedures are complementary and do not preclude one another.

(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.

PUBLIC

(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 ***physical and mental*** 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 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***[5], ▌ its wish to take part in the adoption and application of this Directive.

(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.

[5] ***8928/23.***

(15) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[6], 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 ***is replaced by the following:***

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

(2) ***in Article 2, paragraph 5, the following sentence is added at the end of the paragraph:***

'This paragraph shall not apply to the exploitation of surrogacy as referred to in paragraph 3, unless the surrogate mother is a child.'

[redacted]

[redacted]

[6] OJ C 369, 17.12.2011, p. 14.

I

(3) *Article 4 is amended as follows:*

paragraph 2 is replaced by the following:

'Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime[7];

(c) deliberately or by gross negligence endangered the life of the victim; or

(d) was committed by use of serious violence or has caused particularly serious harm to the victim, including physical or psychological harm;'

paragraph 3 is amended as follows:

'Member States shall take the necessary measures to ensure that, where they relate to an offence referred to in Article 2, the following, in accordance with relevant provisions of the national law, are regarded as aggravating circumstances:

a) the fact that it was committed by public officials in the performance of their duties;

b) the fact that the perpetrator facilitated or committed the dissemination of images or videos or similar material of a sexual nature involving the victim, by means of information and communication technologies.'

7 *OJ L 300, 11.11.2008, p. 42.*

(4) ***Article 5 is amended as follows:***

in paragraph 1, the introductory wording is replaced by the following:

(1) Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2, 3 and 18a(1) committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.'

paragraph 2 is replaced by the following:

'(2) Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2, 3 and 18a(1) for the benefit of that legal person by a person under its authority.';

paragraph 3 is replaced by the following:

'(3) Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3 and 18a.'

(5) Article 6 ***is*** replaced by the following:

PUBLIC

‘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 criminal or non-criminal sanctions or measures.***

2. Member States shall take the necessary measures to ensure that ***sanctions or measures for*** legal ***persons*** held liable pursuant to Article 5(1) or (2) for ***the offences referred to in Articles 2, 3 and 18a shall include criminal or non-criminal fines and may include other criminal or non-criminal*** sanctions ***or measures, such as***:

(a) exclusion from entitlement to public benefits or aid;

(b) exclusions from access to public funding, including tender procedures, grants, concessions and licences;

(c) temporary or permanent disqualification from the practice of business activities;

(d) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;

(e) placing under judicial ***supervision;***

(f) judicial winding-up;

(g) closure of establishments used for committing the offence;

(h) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

PUBLIC

(6) ***Article 7 of Directive 2011/36/EU is repealed.***

▌

▌

(7) ***Article 8 is replaced by the following:***

'Article 8

Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal or other unlawful activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.'

(8) ***Article 9, paragraphs 1 and 3 are replaced by the following:***

'***1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2, 3 and 18a is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.'***

PUBLIC

'3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly. Member States shall ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 2 and 3 committed or facilitated by means of information or communication technologies have adequate expertise and technological capabilities. Member States are encouraged to create specialised units within law enforcement and prosecution services, where appropriate and according to their national legal systems.'

(9) *Article 10, paragraphs 1 and 2 are amended as follows:*

'1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2, 3 and 18a where

(a) the offence is committed in whole or in part within their territory; or

(b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2, 3 and 18a committed outside its territory, inter alia, where:

(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory; or

(c) the offender is an habitual resident in its territory.'

(10) ▌ Article 11 ▌ is replaced by the following:

▌

PUBLIC

‘Article 11

Assistance and support for victims of trafficking in human beings

(1) Member States shall take the necessary measures to ensure that specialised assistance and support are provided to victims in a victim-centred, gender-, disability- and child-sensitive approach before, during and for an appropriate period of time after the conclusion of criminal proceedings, in order to enable them to exercise the rights set out in Directive 2012/29/EU and in this Directive.

(2) Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

(3) Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

(4) Member States shall take the necessary measures to establish by laws, regulations or administrative provisions, one or several mechanisms aimed at the early detection, identification of, assistance to, and support for identified and presumed victims, in cooperation with relevant support organisations, and to appoint a focal point for the crossborder referral of victims.

The tasks of the referral mechanisms operating in accordance with this paragraph, shall include at least the following:

PUBLIC

(a) establishing minimum standards for the detection and early identification of victims, adapting the procedures to the different forms of exploitation covered by this Directive;

(b) referring the victim to the most appropriate support and assistance;

(c) establishing cooperation arrangements or protocols with the asylum authorities to ensure that assistance, support and protection is provided to victims of trafficking who are also in need of international protection or wish to apply for such protection, taking into account the victim's individual circumstances.

(5) The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation, including shelters and other appropriate interim accommodation, and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

PUBLIC

(5a) The shelters and other appropriate interim accommodations referred to in paragraph 5 shall be provided in sufficient numbers and easily accessible for presumed and identified victims of trafficking. They shall assist them in their recovery, by providing adequate and appropriate living conditions with a view on a return to independent living. They shall be equipped to accommodate the specific needs of children, including child victims.

(6) The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Directive 2011/95/EU[8] and Directive 2013/32/EU[9] or pursuant to other international instruments or other similar national rules.

(7) Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

(11) *The following Article 11a is inserted:*

Article 11a

Victims of trafficking who may be in need of international protection

(1) Member States shall ensure complementarity and coordination between the authorities involved in anti-trafficking activities and asylum authorities.

---

8 *Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).*

9 *Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).*

(2) Member States shall ensure that victims of trafficking are able to exercise their right to apply for international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human being.'

(12) ***in Article 12, paragraph 1 is amended as follows:***

'1. The protection measures referred to in this Article shall apply in addition to the rights set out in Directive 2012/29/EU.'

(13) ***in Article 13, the following paragraph is added:***

'(2a) Member States shall ensure that the reporting procedures are safe, carried out in a confidential manner in accordance with national law, designed and accessible in a child-friendly manner and use language in accordance with their age and maturity.'

(14) ***Article 14 is amended as follows:***

paragraphs 1, 2 and 3 are replaced by the following:

PUBLIC

'(1) Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child, including programs to support their transition to emancipation and adulthood in order to avoid re-trafficking. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

(2) Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities when, under national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child. Member States shall ensure that, in case of a conflict of interest between the guardian or the representative and the child victim, a new guardian or representative is appointed.

(3) Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Directive 2012/29/EU to the family.'

(15) *Article 17 is replaced by the following:*

PUBLIC

'Article 17

Compensation to victims

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Member States may establish a national victims fund or a similar instrument, according to their national legislation, in order to pay compensation to victims.'

(16) Article 18 ***is replaced by the following:***

'Article 18

Prevention

(1) Member States shall take appropriate measures, taking into account the specificities of the different forms of exploitation, such as education, training and campaigns, where relevant with a specific attention to the online dimension, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

(2) Member States shall take appropriate action, in a gender-sensitive and child-friendly way, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, including the promotion of digital literacy and skills and, where appropriate in cooperation with relevant civil society organisations and other stakeholders such as the private sector, aimed at raising awareness and reducing the risk of people, especially children and persons with disabilities, becoming victims of trafficking in human beings.'

▌

Paragraphs 3 and 4 of Article 18 are repealed.'

(17) ***the following Article 18a is inserted:***

‘Article 18a

Offences concerning the use of services ***from*** a victim of ▌ trafficking in human beings

1. ▌ ***Member States shall take the necessary measures to ensure that, when it is an intentional act, the use of services provided by 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 knew 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 ▌ .’

(18) ***The following Article 18b is inserted:***

’***Article 18b***

Training

(1) Member States shall promote or offer regular and specialised training for professionals likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, court staff, assistance and support services, labour inspectors, social services and healthcare workers, aimed at enabling them to prevent and combat trafficking in human beings and avoid re-victimisation, and detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, gender-, disability- and child-sensitive.

PUBLIC

(2) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall encourage both general and specialised training for judges and prosecutors involved in criminal proceedings aimed at enabling them to prevent and combat trafficking in human beings and avoid re-victimisation, and detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, gender-, disability- and child-sensitive.'

(19) ***Article 19 is amended as follows:***

'Article 19

National anti-trafficking Coordinators and equivalent mechanisms and independent bodies

1. Member States shall take the necessary measures to establish national anti-trafficking coordinators or equivalent mechanisms and provide them with the adequate resources necessary to effectively carry out their functions. The national anti-trafficking coordinator or the equivalent mechanism shall work with relevant national, regional and local bodies and agencies, particularly law enforcement authorities, national referral mechanisms, and with relevant civil society organisations active in this field.

2. The tasks of the national anti-trafficking coordinators or equivalent mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

PUBLIC

The tasks of the national anti-trafficking coordinators or equivalent mechanisms may also include the following:

(a) setting up contingency response plans in order to prevent the threat of trafficking in human beings in case of major emergencies;

(b) promoting, coordinating and, where appropriate, financing programmes against trafficking;

3. Member States may also establish independent bodies whose role may include to monitor the implementation and impact of anti-trafficking measures, to submit reports on matters requiring special attention of the competent national authorities and carry out assessments of root causes and trends in trafficking in human beings. Where such an independent body is established, Member States may assign it one or more of the tasks referred to in paragraph 2.'

(20) 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*** 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***, as a minimum, include data available at the central level on***:

(a) the number of registered ***identified and presumed*** victims of offences referred to in Article 2, disaggregated by registering organisation, sex, age groups (child/adult), citizenship, and form of exploitation ***, in accordance with national law and practices***;

(b) the number of suspects of offences referred to in Article 2, disaggregated 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 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 by sex, age groups (child/adult), citizenship;

(f) the number of court judgments (acquittal, convictions, other) for offences referred to in Article 2 ▌ ;

(g) the number of suspects, persons prosecuted and convicted for offences referred to in Article 18a, disaggregated by sex and age groups (child/adult).

3. Member States shall transmit annually to the Commission, ***in principle by 30 September and where not possible at the latest the 31 December*** each year, the statistical data referred to in paragraph 2 for the previous year.'

(21) ***the following Article 19b is inserted:***

PUBLIC

'Article 19b

National Action Plan

(1) Member States shall adopt by [insert date-two years from the final date of transposition of this Directive] National Anti-Trafficking Action Plans, developed and implemented in consultation with the national anti-trafficking coordinators or equivalent mechanisms, in accordance with Article 19, the independent bodies and relevant stakeholders active in the field of preventing and combating trafficking in human beings. Member States shall ensure that the National Action Plans are reviewed and updated at regular intervals of no longer than five years.

(2) National Action Plans may include the following elements:

(a) objectives, priorities and measures to address trafficking in human beings for all forms of exploitation, including specific measures for child victims;

(b) preventive measures, such as education, awareness raising campaign and training, and as part of the emergency response to the risks of trafficking in human beings caused by humanitarian crises, where relevant;

(c) measures to strengthen the fight against trafficking in human beings, including to improve investigations and prosecutions of cases of trafficking in human beings and cross-border cooperation;

(d) measures to strengthen the early identification, assistance, support and protection of the victims of trafficking in human beings;

(e) procedures for regular monitoring and evaluation of the implementation of the National Anti-Trafficking Action Plans.

PUBLIC

(3) Member States shall communicate their National Actions Plans, and any updates of their Plans, to the Commission within three months from their adoption.

(4) The National Anti-Trafficking Action Plans shall be publicly available.'

(22) *Article 20 is replaced by the following:*

'*Article 20*

Coordination of the Union strategy against trafficking in human beings

(1) In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of the EU anti-trafficking coordinator (EU ATC). In particular, Member States shall transmit to the EU ATC at least the information referred to in Article 19.

(2) In order to ensure a coherent and comprehensive approach the EU ATC shall ensure coordination with national anti-trafficking coordinators or equivalent mechanisms, independent bodies, EU Agencies and relevant civil society organisations active in the field, including for the purposes of the EU ATC contribution to the reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings'

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

PUBLIC

’3. The Commission shall, ***by four*** 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 ***this Directive*** and the impact of such measures.’

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***two 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.

▌*Article 3*

Entry into force

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

PUBLIC

Article 4

Addressees

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

PUBLIC