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## **INFORMATION NOTE**

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From:	General Secretariat of the Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 22 to 25 April 2024)

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### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) and the Chair of the Committee on Women's Rights and Gender Equality (FEMM) Robert BIEDROŃ (S&D, PL) presented on behalf of LIBE and FEMM respectively a compromise amendment (amendment number 2) to the abovementioned proposal for a Directive, for which the rapporteurs, Malin BJÖRK (The Left, SE) and Eugenia RODRIGUEZ PALOP (The Left, ES), had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 23 April 2024, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

**P9\_TA(2024)0310**

**Amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**

**European Parliament legislative resolution of 23 April 2024 on the 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)0732 – C9-0431/2022 – 2022/0426(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0732),
  - having regard to Article 294(2), Article 82(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0431/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 27 April 2023<sup>1</sup>,
  - having regard to the provisional agreement approved by the committees responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality under Rule 58 of the Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality (A9-0285/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

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<sup>1</sup> OJ C 228, 29.6.2023, p. 108.

- Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P9\_TC1-COD(2022)0426**

**Position of the European Parliament adopted at first reading on 23 April 2024 with a view to the adoption of Directive (EU) 2024/... 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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 228, 29.6.2023, p. 108.

<sup>2</sup> Position of the European Parliament of 23 April 2024.

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, is a gross violation of fundamental rights, and is explicitly prohibited by the Charter of Fundamental Rights of the European Union (the ‘Charter’). Preventing and combating trafficking in human beings, ***and supporting the victims of trafficking, regardless of their country of origin,*** remains a priority for the Union and the Member States.
- (2) ***Trafficking in human beings has various root causes. Poverty, conflict, inequality, gender-based violence, the absence of viable employment opportunities or social support, humanitarian crises, statelessness and discrimination are among the main factors that make persons, especially women, children and members of marginalised groups, vulnerable to trafficking.***
- (3) Directive 2011/36/EU of the European Parliament and the Council<sup>3</sup> is 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 for addressing trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen the prevention of trafficking, ***the assistance*** provided to victims, as well as their protection, taking into account gender, ***disability and children’s perspectives, and using a victim-centred approach.***

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<sup>3</sup> 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).

- (4) ***Trafficking in human beings can be exacerbated where it intersects with discrimination based on a combination of 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 to 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.***
- (5) In its communication of 14 April 2021 on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, the Commission set out a policy response adopting a multi-disciplinary and comprehensive approach from the prevention of trafficking, through protection of victims, to the prosecution and conviction of traffickers. That communication 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 to amend Directive 2011/36/EU. The identified shortcomings of the criminal-law response requiring adaptation of the legal framework relate to offences concerning trafficking in human beings that are committed in the interest of legal persons, to the data collection system, ***to cooperation and coordination at Union and national level, and*** to the national systems aimed at the early ***detection and*** identification of, ***specialised*** assistance to, and support for victims of trafficking.

- (6) *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 Directive 2011/36/EU, to the extent that all the criteria constituting those offences are fulfilled. However, in view of the gravity of those practices, and in order to tackle the steady increase in 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 that Directive, in so far as they fulfil the constitutive elements of trafficking in human beings, including the means criterion. More specifically, as regards trafficking for the exploitation of surrogacy, this Directive targets those who coerce or deceive women into acting as surrogate mothers. The amendments to Directive 2011/36/EU made by this Directive are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or to those of offences related thereto other than trafficking, where provided for in national or international law. Those rules are also without prejudice to the national rules on surrogacy, including criminal law or family law.***
- (7) *Children placed in residential and closed-type institutions are a group particularly vulnerable to trafficking in human beings. They can fall victim to trafficking when being placed in those institutions, during their placement and after.*



- (8) An increasing number of offences concerning trafficking in human beings are 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, to exercise control over them and organise their transport. The internet and social media are also used to distribute exploitative materials. Information technology also hampers the timely detection of the crime and the identification of the victims and perpetrators. ■

- (9) *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, including all related financial transactions. In order to address this modus operandi of traffickers, law enforcement needs to improve its digital capabilities and expertise, and to keep up with technological developments. Furthermore, Member States are invited to consider the use of preventive measures, in particular those with the aim of discouraging demand, that address the issue of abuse of online services for the purpose of trafficking in human beings.*
- (10) *The level of penalties for trafficking should reflect higher opprobrium for more serious types of conduct, and for the more harmful and longer-lasting impact that they have on the victims. This includes the amplifying effect of the dissemination of exploitative material, including dissemination in closed groups accessible to a limited number of participants. Therefore, it is necessary to provide for, as an aggravating circumstance, the dissemination, by means of information and communication technologies, of images or videos or similar material of a sexual nature involving the victim.*

- (11) *While there is no obligation to increase sentences, Member States should ensure that judges and courts, when sentencing offenders, are able to take the aggravating circumstances set out in this Directive into account. 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 case concerned. Member States should not be obliged to provide for aggravating circumstances where national law provides for a 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, to be punishable as a separate criminal offence and this can lead to more severe penalties under national law.*
- (12) 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.*** *Under Directives 2014/23/EU<sup>4</sup>, 2014/24/EU<sup>5</sup> and 2014/25/EU<sup>6</sup> of the European Parliament and of the Council, a conviction, by way of final judgment, for child labour or other forms of trafficking in human beings is grounds for an exclusion from participating in a procurement procedure or a concession award procedure. Nevertheless, Member States can also decide to include, among the criminal or non-criminal sanctions or measures which can be imposed on legal persons, the exclusion of such legal persons from tender procedures or concessions, in order also to cover procurements and concessions below the thresholds of the relevant Directives.*

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<sup>4</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

<sup>5</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>6</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (13) **█ Directive (EU) 2024/... of the European Parliament and of the Council<sup>7+</sup> 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.***

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<sup>7</sup> Directive (EU) 2024/... of the European Parliament and of the Council of ... on asset recovery and confiscation (OJ L, ..., ELI:...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 3/24 (2022/0167(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

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

- (15) 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 and identification of, assistance to, and support for the victims of trafficking, and facilitating 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 lines of communication. Those referral 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. Member States are encouraged to have one single referral mechanism in place when the organisation of public administration so allows. The focal point should serve as a point of contact for the cross-border referral of victims, in the relations between the authorities or institutions responsible for the cross-border support of victims in the various Member States, but not as a point of contact for the victims themselves. Focal points can be based on existing mechanisms or governance structures and will not have to replace national complaint mechanisms or hotlines.***

- (16) *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 in human beings. In order to reinforce the safety of presumed or identified victims, Member States are encouraged to require that personnel coming into contact in shelters with victims of trafficking do not have a criminal record of offences concerning trafficking in human beings, or of other crimes or offences that lead to serious doubts about their ability to assume a role of responsibility with regard to victims.*
- (17) *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 them with support measures.*
- (18) *Member States should also ensure that victims receive assistance irrespective of their nationality or of being stateless, of their citizenship, their place of residence or residence status, as well as of the form of their exploitation. The assistance should aim at their full reintegration into society, which can include access to education and training, and access to the labour market, in accordance with national law, as well as a return to an independent living.*
- (19) *Member States should take into account, in the course of asylum procedures, the specific situation of vulnerability of victims of trafficking who can be in need of international protection, including, where applicable, through special procedural guarantees in accordance with Regulation (EU) 2024/... of the European Parliament and of the Council<sup>8+</sup> and special reception needs in accordance with Directive (EU) 2024/... of the European Parliament and of the Council<sup>9++</sup>.*

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<sup>8</sup> *Regulation (EU) 2024/... of the European Parliament and of the Council of ...* establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI:...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A (COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

<sup>9</sup> *Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (recast) (OJ L, ..., ELI:...).*

- (20) *To prevent victims from being re-trafficked within the Union, it is important that, when victims are transferred under Regulation (EU) 2024/... of the European Parliament and of the Council<sup>10+++</sup>, 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.*
- (21) *Victims of trafficking in human beings have the right to apply for international protection or equivalent national status. They are also able to benefit from a residence permit under Council Directive 2004/81/EC<sup>11</sup>, where applicable. Therefore, Member States should ensure that the relevant two procedures are complementary and do not preclude one another.*
- (22) *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 that vulnerable group.*
- (23) *Children are considered to be one of the most vulnerable groups targeted by organised criminal groups involved in the trafficking in human beings. Such criminal groups often exploit children by recruiting them and later using them to commit criminal activities. Member States should promote or offer regular and specialised training to professionals likely to come into contact with such children, in order to detect and identify them as victims.*

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<sup>++</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date and OJ reference of that Directive in the footnote.

<sup>10</sup> Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

<sup>+++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

<sup>11</sup> **Council Directive 2004/81/EC** of 29 April 2004 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 illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).



- (24) *Any measure constraining the liberty of children in order to protect them from trafficking should be strictly necessary, proportionate and reasonable to the aim of protecting the individual child.*
- (25) *In order to facilitate the payment of compensation to victims, Member States may establish a national victims fund or similar instruments which can include laws that ensure the compensation of victims of trafficking in human beings.*

- (26) In order to *develop a coherent policy response to tackle demand that fosters trafficking in human beings, and to* further reinforce and harmonise the criminal justice efforts across Member States to reduce such demand, it is important *to* criminalise the use of services **where the victim is exploited to render such services and the user of the services knows** 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 at tackling the high levels of demand that foster all forms of exploitation. *The criminalisation should target only the use of services provided within the framework of exploitation that are covered by the offence of trafficking in human beings. The offence should not, therefore, 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 can criminalise the purchase of sexual acts. This Directive is without prejudice to the way in which Member States deal with prostitution in their national law.*

(27) *This Directive criminalises the use of a service provided by a victim of trafficking in human beings when the user of the service has knowledge that the person providing the service is a victim. The notion of ‘knowledge’ 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 can relate to, inter alia, the victims themselves, the conditions under which the services had to be provided by the victims, and to specific facts that could be seen as signs of control of the trafficker over the victims. With regard to circumstances relating to the victims themselves, their lack of proficiency in a national or regional language, manifest signs of psychological or physical harm or of fear, or their lack of knowledge of the cities or places where they are or have been, 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 was provided. Signs of control of a trafficker over victims could be established when there are manifest external measures of control over the providers of the services, their freedom of movement is constrained, or by the fact that the providers of the services are not in possession of their national identity cards or passports.*

- (28) *Prevention and demand-reduction actions should be targeted and differentiated to efficiently address the specificities of various forms of trafficking. In order to achieve the objective of discouraging and reducing 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.*
- (29) *In the context of training, and in order to ensure the effective implementation of national provisions regarding the non-prosecution or non-application of penalties, Member States should raise awareness among prosecutors and law-enforcement authorities likely to come into contact with the victims or potential victims of trafficking in human beings.*
- (30) *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 to be designated or established as national anti-trafficking coordinators, or as 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.*
- (31) 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 a relevant step to enhance the general understanding of the phenomenon and to ensure the adoption of data-informed policies and strategies. ■
- (32) *With a view to supporting their national policies, Member States should also develop National Anti-Trafficking Action Plans.*

(33) *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 that of children in residential or closed-type institutions.*

- (34) Since the objectives of this Directive, namely preventing and combating trafficking in human beings and protecting the victims of that crime, cannot be sufficiently achieved by the Member States and can rather, 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 those objectives.
- (35) This Directive respects the fundamental rights and observes the principles recognised by the Charter, 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, 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, and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles, which are to be implemented accordingly.

- (36) ■ 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*, ■ its wish to take part in the adoption and application of this Directive.
- (37) In accordance with Articles 1 and 2 of the Protocol No 22 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.
- (38) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>12</sup>, 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.
- (39) Directive 2011/36/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>12</sup> OJ C 369, 17.12.2011, p. 14.

*Article 1*

Amendments to Directive 2011/36/EU

Directive 2011/36/EU is amended as follows:

(1) Article 2 is amended as follows:

(a) 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.’;***

(b) *paragraph 5 is replaced by the following:*

***‘5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used. This paragraph shall not apply to the exploitation of surrogacy as referred to in paragraph 3, unless the surrogate mother is a child.’;***

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

(a) *in paragraph 2, point (d) is replaced by the following:*

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

**(b) paragraph 3 is replaced by the following:**

**‘3. 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 the offence was committed by public officials in the performance of their duties;**

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

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

**(a) 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 Article 2, Article 3 and Article 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:’;**

**(b) paragraphs 2 and 3 are 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 Article 2, Article 3 and Article 18a(1) for the benefit of that legal person by a person under its authority.**

**3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of,**

*inciters to, or accessories to the offences referred to in Article 2, Article 3 and Article 18a(1).’;*

(4) Article 6 *is* 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 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 Article 2, Article 3 and Article 18a(1)*** 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) ***exclusion 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 that resulted in the relevant 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 relating to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.’;*

(5) *Article 7 is deleted;*

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(6) *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.’;*

(7) *Article 9 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

*‘1. Member States shall ensure that investigation into or prosecution of offences referred to in Article 2, Article 3 and Article 18a(1) 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.’;*

(b) *paragraph 3 is replaced by the following:*

*‘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, where those offences are 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 in accordance with their national legal systems.’;*

(8) *Article 10 is amended as follows:*

(a) *in paragraph 1, the introductory wording is replaced by the following:*

*‘1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Article 2, Article 3 and Article 18a(1) where:’;*

(b) *in paragraph 2, the introductory wording is replaced by the following:*

*‘2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Article 2, Article 3 and Article 18a(1) committed outside its territory, inter alia, where:’;*

(9) Article 11 is amended as follows:

■

(a) paragraph 1 is replaced by the following:

***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 of the European Parliament and of the Council\* and in this Directive.***

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\* ***Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012*** establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).’;



**(b) paragraphs 4 and 5 are replaced by the following:**

**‘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 and 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 cross-border referral of victims.**

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

- (a) establishing minimum standards for the detection and early identification of victims, and adapting the procedures for such detection and identification to the various 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 who 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.'*;

(c) *the following paragraph is inserted:*

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

(d) *paragraph 6 is replaced by the following:*

**‘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 Regulation (EU) 2024/...<sup>+</sup> and Regulation (EU) 2024/... of the European Parliament and of the Council,<sup>\*\*\*</sup> or pursuant to other international instruments or other similar national rules.**

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**\* Regulation (EU) 2024/... of ... of the European Parliament and of the Council 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI:...).**

**\*\* Regulation (EU) 2024/... of ... of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI:...).’**

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A (COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

**(10) The following article 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 the asylum authorities.***
- 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 beings.’;***

**(11) in Article 12, paragraph 1 is replaced by the following:**

- ‘1. The protection measures referred to in this Article shall apply in addition to the rights set out in Directive 2012/29/EU.’;***

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

- ‘3. Member States shall ensure that the procedures for reporting an offence under this Directive are safe, are carried out in a confidential manner in accordance with national law, are designed and accessible in a child-friendly manner and use language in accordance with the age and maturity of child victims.’;***

(13) in Article 14, paragraphs 1, 2 and 3 are replaced by the following:

- ‘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 programmes 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. Member 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 where, by 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 different 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.’;*

(14) *Articles 17 and 18 are replaced by the following:*

*‘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, in accordance with their national legislation, in order to pay compensation to victims.*

## *Article 18*

### *Prevention*

- 1. Member States shall take appropriate measures, taking into account the specificities of the various forms of exploitation, such as education, training and campaigns, where relevant with 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.’*■

(15) *the following articles are inserted:*

‘Article 18a

Offences concerning the use of services *provided by* 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 knows 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 **█** .



## *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 to avoid secondary victimisation, and to detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, and gender-, disability- and child-sensitive.*
  
- 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 secondary victimisation, and to detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, and gender-, disability- and child-sensitive.’;*

(16) *Article 19 is replaced by the following:*

*‘Article 19*

*National anti-trafficking coordinators or equivalent mechanisms and independent bodies*

- 1. Member States shall take the necessary measures to establish national anti-trafficking coordinators or equivalent mechanisms and to 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, with 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.*

*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 the event 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 monitoring the implementation and impact of anti-trafficking actions, submitting reports on matters requiring special attention of the competent national authorities, and carrying 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.;*

(17) the following articles are 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 persons suspected of the 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, and nature of the final decision to prosecute;
  - (d) the number of prosecution decisions (i.e. charges for offences referred to in Article 2, charges for other criminal offences, decisions not to charge, other);
  - (e) the number of persons convicted for offences referred to in Article 2, disaggregated by sex, age groups (child/adult), and citizenship;
  - (f) the number of court judgments (i.e. acquittal, convictions, other) for the offences referred to in Article 2 ■ ;
  - (g) the number of persons suspected, persons prosecuted, and persons convicted, for offences referred to in Article 18a(1), disaggregated by sex and age groups (child/adult).
3. Member States shall transmit annually to the Commission, **in principle by 30 September and, where this is not possible, at the latest by 31 December** each year, the statistical data referred to in paragraph 2 for the previous year.

## *Article 19b*

### *National Anti-Trafficking Action Plan*

- 1. Member States shall adopt by ... [four years from the date of entry into force of this amending Directive] their National Anti-Trafficking Action Plans, developed and implemented in consultation with the national anti-trafficking coordinators or equivalent mechanisms referred to in Article 19, with the independent bodies and with relevant stakeholders active in the field of preventing and combating trafficking in human beings. Member States shall ensure that the National Anti-Trafficking Action Plans are reviewed and updated at regular intervals of no more than five years.*
  
- 2. National Anti-Trafficking 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 campaigns and training, and preventive measures 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 the investigation and prosecution of cases of trafficking in human beings, and to improve cross-border cooperation;*
- (d) *measures to strengthen the early identification and assistance to, support for, 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.*

3. *Member States shall communicate their National Anti-Trafficking Action Plans, and any updates to them, to the Commission within three months from their adoption.*

4. *The National Anti-Trafficking Action Plans shall be publicly available.’;*

(18) *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 an 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, Union agencies, and with relevant civil society organisations active in the field, including for the purposes of the contribution from the EU ATC to the reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings’;*

(19) in Article 23, the following paragraph is added:

- ‘3. The Commission shall, *by ... [six years from the date of entry into force of this amending Directive]*, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with *this Directive*, and assessing 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*** from the entry into force of this amending Directive]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures 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*.

*Article 4*

***Addressees***

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

Done at ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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